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	Date	Description	Prepared	Checked	Approved	
			Company			
 <p>נתיבי הגז הטבעי לישראל ISRAEL NATURAL GAS LINES</p>			<b>Document Title</b>  <b>GENERAL TERMS and CONDITIONS</b>  <b>of an AGREEMENT</b>  <b>(INGL/TENDER/2020/20)</b>			
			Company Representative: Mr. Ishay Nazhan			Document No. 429980
Document Originator: Adv. Y. Zamir						

**GENERAL TERMS and CONDITIONS of an AGREEMENT**

Made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020

Between

**ISRAEL NATURAL GAS LINES COMPANY LTD.**

Atidim Tower (building No.8), 2184 St., Floor 32

Kiryat Atidim

Tel-Aviv, Israel 6158101

(the "**Company**")

of the first part

And

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(the "**Contractor**")

of the other part

## TABLE OF CONTENTS

1. DEFINITIONS .....	8
2. PREAMBLE, APPENDICES AND INTERPRETATION .....	14
3. DRAWINGS AND DOCUMENTATION.....	17
4. THE CONTRACTOR'S DECLARATIONS, UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES.....	20
5. COMPLIANCE WITH ALL REQUIREMENTS, INSTRUCTIONS AND STANDARDS.....	23
6. GENERAL PROVISIONS FOR CARRYING OUT THE WORKS .....	29
7. SETTING OUT FOR ONSHORE WORKS.....	33
8. THE CONTRACTOR'S PERSONNEL .....	33
9. CONTRACTOR'S FACILITIES, EQUIPMENT & MATERIALS [CONTRACTOR'S MATERIALS] .....	39
10. THE DETAILED SCHEDULE .....	40
11. ALTERATIONS TO DETAILED SCHEDULE .....	41
12. PROPERTY OWNERS AND INFRASTRUCTURE OWNERS.....	43
13. DELAYS AND COSTS ARISING FROM THIRD PARTIES.....	44
14. THE SITE .....	45
15. WORKS IN SECURITY AREAS AND MILITARY FIRING ZONES ("SECURITY AREAS"), AMMUNITION, ANTIQUITIES AND INFRASTRUCTURE .....	52
16. HEALTH, SAFETY, ENVIRONMENT AND SECURITY.....	58
17. THE CONTRACTOR AS PRIME CONTRACTOR.....	60
18. INTELLECTUAL PROPERTY RIGHTS .....	61
19. THE COMPANY REPRESENTATIVE.....	64
20. CLAIMS PROCEDURE .....	68
21. APPROVAL PROCEDURES .....	69
22. PAYMENT TO THE CONTRACTOR.....	70
23. BONUS FOR EARLY COMPLETION .....	77
24. FINAL PAYMENT.....	77
25. TAX PROVISIONS.....	79
26. LINKAGE.....	82
27. OFFSET AND LIEN .....	82
28. THE ADVANCE PAYMENT AND ADVANCE PAYMENT GUARANTEE.....	83
29. PERFORMANCE GUARANTEE.....	85
30. COMPANY MATERIALS .....	87
31. INSPECTION AND TESTING DURING THE WORKS.....	89
32. SUSPENSION .....	93
33. CANCELLATION OF WORKS .....	95
34. DUTY TO MITIGATE .....	98

35. COMPLETION .....	99
36. EARLY COMPLETION.....	100
37. LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF THE WORKS .....	100
38. COMPLETION TESTS .....	101
39. TAKE-OVER.....	104
40. DEFECTS AFTER TAKE OVER.....	106
41. CHANGES AND CHANGE ORDERS .....	109
42. RISK AND RESPONSIBILITY .....	112
43. CONTRACTOR'S LIABILITY.....	114
44. CONTRACTOR'S INDEMNIFICATION OBLIGATION .....	115
45. DEFENCE OF THE PARTIES AGAINST INDEMNIFIED PROCEEDINGS.....	116
46. LIMITATION OF CONTRACTOR'S LIABILITY.....	117
47. COMPANY'S LIABILITY .....	118
48. INSURANCE .....	118
49. FORCE MAJEURE .....	124
50. DEFAULT AND REMEDIES .....	128
51. TERMINATION.....	133
52. REMEDIES FOR COMPANY DEFAULT.....	136
53. DISPUTE RESOLUTION .....	139
54. MISCELLANEOUS PROVISIONS .....	140
ANNEX AA1 .....	147
ANNEX AA2 .....	149
ANNEX AA3 .....	151
ANNEX AA4 .....	153
ANNEX AA5 .....	155
ANNEX AA6 .....	160
ANNEX AA7 .....	162
ANNEX AA8 .....	164

## **AGREEMENT ANNEXES**

### **1.1. Legal and Guarantees**

- AA1 Advance Payment Guarantee
- AA2 Performance Guarantee
- AA3 Release Form
- AA4 Contractor's Obligations Pursuant to License
- AA5 Take Over Certificate
- AA6 Completion Certificate
- AA7 Declaration regarding Conflict of Interests
- AA8 Company's Ethical Code

### **1.2. Technical Volumes**

- BB1 Subsea Basis of Design (BOD) (OP155883-01-SES-BOD-003\_Rev6)
- BB2 Ashdod-Ashkelon Survey (2029-THL-ESV-NAP-0001\_2.7.20)
  - BB2.1 Ashdod-Ashkelon infrastructure offshore orthophoto
    - (2029-THL-COO-DGA-0001\_2.7.20)
    - (2029-THL-COO-DGA-0002\_2.7.20)
    - (2029-THL-COD-DGA-0003\_2.7.20)
  - BB2.2 Ashdod-Ashkelon offshore Tama 37/A/2/7 strip (2029-THL-ATH-MOP-0001\_2.7.20)
  - BB2.3 Ashdod offshore pipeline (2029-THL-EPI-MOP-0401-P0)
  - BB2.4 Ashkelon offshore pipeline (2029-THL-EPI-MOP-0404-P0)
  - BB2.5 Ashdod longitudinal section (2029-THL-EPI-DRG-1P01-P1)
  - BB2.6 Ashdod longitudinal section (2029-THL-EPI-DRG-1P04-P3)
  - BB2.7 Project bathymetry chart
- BB3 Geophysical Survey of the Pipeline Route (not attached; shall be published prior to the Last Submission Date)
  - Ashdod Landfall 1-5000 Rev 2
  - Ashkelon Landfall 1-5000 Rev 2
- BB4 Geotechnical Survey of the Pipeline Route (not attached; shall be published prior to the Last Submission Date)

- BB5 Schematic Schedule for the Project
  - Schedule MSP format\_Rev0
  - Schedule EXC format\_Rev0
- BB6 Offshore Pipeline Directive Israel (OPDI)
- BB7 Environmental Management Monitoring Plan (EMMP) (not attached; shall be published prior to the Last Submission Date)
- BB8 Seismic Study (not attached; shall be published prior to the Last Submission Date)
- BB9 Specification for Positioning and Survey (OP155883-01-SES-SPEC-004\_Rev3)
- BB10 Specification for offshore installation and post trenching (OP155883-01-SES-SPEC-006\_Rev3)
- BB11 Specification for welding and NDT (OP155883-01-SES-SPEC-007\_Rev3)
- BB12 Specification for QA/QC Requirements for EPC CONTRACTOR and Sub-contractors (OP155883-01-SES-SPEC-008\_Rev3)
- BB13 Inline Tee Specification (OP155883-01-SES-SPEC-009\_Rev3)
- BB14 Datasheets and Specification for Valves (OP155883-01-SES-SPEC-010\_Rev3)
- BB15 Pre-commissioning Specification (OP155883-01-SES-SPEC-011\_Rev3)
- BB16 Specification for As built Survey (OP155883-01-SES-SPEC-012\_Rev3)
- BB17 Project Material Take Off (MTO) (OP155883-01-SES-MTO-013\_Rev3)
- BB18 IEN-EPI-SPC-0033 - APPENDIX 1
- BB19 Anodes for offshore pipeline (OP155883-01-SES-DWG-500\_Rev0)
- BB20 Detailed Schedule (to be prepared by Contractor and approved by Company)
- BB21 Quality Control (to be prepared by Contractor and approved by the Company)

### **1.3. Financial**

- CC1 Terms of Payment\_Rev4
- CC2 Measurements of Quantities for Payment Purposes\_Rev5
- CC3 Bill of Quantities (as approved by the Company) \_Rev7

### **1.4. Security**

- DD1 Security
- DD2 Provisions regarding Activities and Work in Security Areas and Firing Ranges

**1.5. The Tender (INGL/TENDR/2020/20)** (attached in CD only)

**1.6. Clarifications and Amendments issued as part of the Tender Process**

**Whereas** The Contractor was declared as the winning Bidder in an international public tender published by the Company for the engineering and construction of the Ashdod – Ashkelon off-shore high pressure natural gas pipeline under Tender No. **INGL/TENDER/2020/20**; and

**Whereas** These General Terms and Conditions (as well as all other documents that constitute the Agreement) will govern the execution of the Project (as defined herein below);

**Now, therefore, the parties hereby agree as follows:**

## **1. Definitions**

In this GTC (as hereinafter defined) the following words, terms and expressions shall have the following meaning:

- 1.1 **Access Road** - means any temporary or permanent road or path identified as an access road in Building Permit(s) (if applicable) and/or as approved as such by the Company Representative pursuant to Clauses 13 and 19.
- 1.2 **Agreement** – means the instrument of Agreement that shall be entered into by the Company and the Contractor for the execution of the Project, and all annexes thereto, including this GTC and the Technical Volumes.
- 1.3 **Agreement Period** - means the period commencing on the signature date of the Agreement and ending upon termination of the Defect Liability Period.
- 1.4 **Agreement Price** - means the consideration payable by the Company to the Contractor for the execution of the Works, equal to the Total Lump Sum Proposal, as approved by the Company, as may be adjusted pursuant to the GTC.
- 1.5 **Antiquity** - shall have the meaning assigned to it in the Antiquities Law, 1978, or in any other Law pertaining to antiquities, as in effect from time to time, whether such Antiquity has been discovered at a site declared an archaeological site (as defined in the Antiquities Law) or at another site which is not an archaeological site.



- 1.6 **Approved Financial Entity** - (i) a commercial Israeli bank rated with at least an AAA local rating (or an equivalent rating); or (ii) a foreign bank in a country having full diplomatic relations with the State of Israel and rated with at least a BBB-rating by a reputable international rating agency, acceptable by the Company.
- 1.7 **Best Industry Practices** - the recognised professional good practice principles of workmanlike, due care and diligence, as identified in the field of natural gas system construction works and in the field of off-shore works, subject to applicable binding standards set forth in the Israeli Natural Gas Law and listed in the Technical Volumes.
- 1.8 **Bill of Quantities** - means the Bill of Quantities attached to the Agreement.
- 1.9 **Building Permits** – permits to be issued for the execution of the Works under the Israeli Building and Planning Law, 1965 (if and to the extent necessary for the execution of the Works).
- 1.10 **Certificate of Conformity** – a certificate to be issued by the TPI upon successful completion of the Works, as a formal statement of the TPI confirming that the inspection, monitoring and verification of documents and of activities concluded that the Works have been designed, fabricated and installed in accordance with all requirements, without pending verification comments (all in accordance with DNVGL -ST-F101 (2017), DNVGL-SE-0475 and other applicable primary design codes where referenced in Technical Volumes).
- 1.11 **Change** - means an alteration, amendment, omission, addition or any other change to any part of the Works ordered by the Company or proposed by the Contractor; provided such Change is identified and approved as such by a Change Order issued by the Company Representative under Clause 41.
- 1.12 **Commencement Date for Engineering** – means the date stipulated in the Commencing Work Order that shall be issued by the Company, as the date upon which the Contractor shall commence the detailed design and the engineering plan of the Project.

- 1.13 **Commencement Date for Construction** – means the date stipulated in the Commencing Work Order that shall be issued by the Company, as the date upon which the Contractor shall commence with the construction of the Works.
- 1.14 **Commencing Work Order** - means a notice issued by the Company to the Contractor, for the commencement of the Works (or any part thereof) as specified in Clause 6 below.
- 1.15 **Company** - Means the Israel Natural Gas Lines Ltd. and/or its legal successors.
- 1.16 **Company Materials** - means the materials to be provided by the Company for the execution of the Works.
- 1.17 **Company Representative** - means the Project engineer of the Company or any other persons who may be appointed by the Company from time to time to act for and on behalf of the Company within the power delegated to him by the Company.
- 1.18 **Completion Deadline** - means the time stated in the Schematic Schedule attached hereto as Annex BB6 to the Agreement for completing the Works and passing the Completion Tests of the Project.
- 1.19 **Completion Tests** - means the tests specified in the Technical Volumes or otherwise required by the Company, which shall be performed before the Works or any Section or Sub-Section are taken over by the Company.
- 1.20 **Contractor** – means the Contractor detailed above and anyone acting on its behalf and any legal successors in title thereto.
- 1.21 **Contractor's Bid** - Means the Bid submitted by the Contractor under the Tender.
- 1.22 **Contractor's Documents** – means all documents, including and without limitation, procedures, requests, drawings, plans, specifications, protocols and programs and any other document furnished by the Contractor pursuant to the Agreement.
- 1.23 **Contractor's Equipment** - means all equipment, vessels, machines, appliances and tools of whatsoever nature used by the Contractor for the purposes of execution and completion of the Works.
- 1.24 **Contractor's Personnel** - means all staff, personnel and laborers engaged by the Contractor or by its Sub-Contractors for the execution of the Works, including but

not limited to the Contractor's employees, freelancers and Sub-Contractors and anyone on their behalf.

- 1.25 **Defects** - means any and all damages and/or disadvantageous deviations from the Agreement, errors and/or miscalculations and/or imperfections in the Works, including any legal defects, attributable to the Contractor
- 1.26 **Defect Liability Period** - Means the period following the issuance of the Take Over Certificate during which the Contractor is responsible for repairing Defects as detailed in Section 41.1.
- 1.27 **Detailed Design**- all documents, drawings, calculations, studies and all other documents required as part of the design and engineering of the Project as well as for the applying for and receiving all permits and approvals required from any Israeli authority for the construction of the Project (including the Engineering Plan).
- 1.28 **Detailed Schedule** - means the detailed schedule prepared by the Contractor based on the Schematic Schedule and approved by the Company Representative, to be attached to the Agreement as **Annex BB18**.
- 1.29 **Engineering Plan** - all documents, drawings, calculations, studies and all other documents required by NGA in order to approve the design for the construction and installation of the Project.
- 1.30 **General Terms and Conditions / GTC** - Means these General Terms and Conditions together with all Annexes thereto.
- 1.31 **Gross Misconduct** - means any act or omission by the Contractor in violation of the elementary rules of care and diligence which a skilled Contractor in the same position and the same circumstances would have followed according to Best Industry Practice.
- 1.32 **Intellectual Property Rights** - means all impalpable rights, patents, patent applications, registered designs, trademarks, copyrights and other similar rights subject to the applicable Law, including trade secrets and know-how, of actual or potential commercial value, not generally made available to the public.

- 1.33 **Interim Pro-forma Invoice** – each of the pro-forma invoices to be submitted upon the completion of each Milestone.
- 1.34 **Key Personnel** – means the essential key personnel to be employed by the Contractor in the execution of the Project as set forth in Clause 8.5.
- 1.35 **Law** - means all laws, ordinances, regulations, orders, including municipal by-laws, procedures and permits, directives, specifications, safety requirements, and decisions of any Ministry of the Government of Israel or other competent authority of the State of Israel and all rules, applicable standards and administrative orders in effect in the State of Israel, including, without limitation, the Natural Gas Market Law, 2002, the Gas Law (Safety and Licensing), 1989, the Gas Order (Safety and Licensing) (Facilities for Transporting Natural Gas), 1997, the Building and Planning Regulations (Licensing Natural Gas Facilities), 2003, the Hazardous Substances Law, 1993 and the License for the Construction and Operation of Transmission System in the form granted to the Company, all as may be amended and updated from time to time.
- 1.36 **Marine Warranty Surveyor** - means an independent third-party inspection company that the Contractor shall engage at its own cost to oversee, inspect, examine and test the Works and the System and its components, all as further set forth in the Technical Volumes.
- 1.37 **Milestones** - mean key events selected as such by the Company for their importance and defined as such in **Annex CC3** (Terms of Payment).
- 1.38 **Organization Site** - mean the sites identified as such in the Building Permit, if applicable, or as approved by the Company pursuant to Clauses 13 or 19.
- 1.39 **Project** - the detailed engineering and the construction of the Ashdod – Ashkelon off-shore high pressure natural gas pipeline.
- 1.40 **Property Owners** - means property owners or holders or land owners or holders or adjacent property owners or holders or adjacent landowners or holders of property **(i)** through which an Access Road is meant to run or **(ii)** which is adjacent to or within the Working Strip or Organization Site.

- 1.41 **Punch List** – means a list that may be attached to a Take Over Certificate that shall detail Defects in the Works.
- 1.42 **Reasonable Costs** - means reasonable costs directly incurred by the Contractor in the performance of its obligations under the Agreement and duly evidenced by documentation and receipts, as approved by the Company Representative. Such Costs shall not include: loss of profits, loss of use, loss of efficiency, loss of production or any other indirect or consequential costs or losses or damages, howsoever and whatsoever caused.
- 1.43 **Schematic Schedule** - means the general schedule for the performance of the Project or any part thereof, attached as **Annex BB6** to the Agreement.
- 1.44 **Section or Sub-Section** - means any part of the System to be identified as such by the Company.
- 1.45 **Site** - means the area where the Works are to be executed by the Contractor or areas in the territory of the State of Israel where the Contractor's Equipment and/or Company Materials are to be stored by the Contractor. The Site shall include, without limitation, any temporary storage facility, all temporary and permanent Access Roads, the Organization Sites, the Working Strips and any other area used by the Contractor for the purposes of the Works or any other area defined as such by the Company for the purposes of the Agreement.
- 1.46 **Sub-Contractor** – means a legal entity other than the Contractor, that fulfils and complies with the requirements for sub-contracting specific part of the Works, as set forth in the Technical Volumes and other Tender Documents, that shall execute any part of the Works as a sub-contractor for the Contractor.
- 1.47 **System** - The Israeli high-pressure natural gas transmission system constructed and operated by the Company.
- 1.48 **Take Over Certificate** – Means the certificate issued by the Company to the Contractor as specified in Clause 39 hereunder.
- 1.49 **Technical Volumes - Annexes BB1 – BB22** together with all Annexes thereto.
- 1.50 **Tender** - Means **Tender No. INGL/TENDER/2020/20** issued by the Company.

- 1.51 **Tender Documents** – means all documents issued or published by the Company as part of the Tender.
- 1.52 **Third Party Inspection Company** or **TPI** - means a third-party inspection company that the Contractor shall engage at its own cost to oversee, inspect, examine and test the Works and the System and its components, all as further set forth in the Technical Volumes.
- 1.53 **Total Lump Sum Proposal** – means the total lump sum quoted in the Commercial Proposal submitted by the Contractor as part of its Bid for the Tender.
- 1.54 **Underground Valve Pit(s)** - means the site(s) identified as such in the Technical Volumes.
- 1.55 **Works** – any and all the works that shall be performed by the Contractor for execution of Project, including but not limited to the Detailed Design, construction, installation, testing, completion and integration.
- 1.56 **Working Strip** - shall mean the area onshore along both sides of the pipeline, as identified in the Building Permit, if applicable, or as approved by the Company pursuant to Clause 14.6.8.

## **2. Preamble, Appendices and Interpretation**

### **2.1 Ruling Language**

- 2.1.1 The GTC Documents are drafted in the English language and all correspondence between the parties to the Agreement shall be in the English language. Notwithstanding the above, some of the GTC Annexes shall be drafted and/or provided in the Hebrew language. In such cases, the Hebrew version of the documents shall be the governing version and the translation of such documents into English shall be carried out by the Contractor at its sole expense.
- 2.1.2 Translation into the Hebrew language of the Contractor's Documents (when necessary) shall be made by the Contractor and at the expense of the Contractor.

## 2.2 The Contractor's Bid

- 2.2.1 The Contractor is obligated to carry out the Works in accordance with all the terms and conditions of the Tender with all documents prepared by it within the framework of the Tender which were formally approved by the Company.
- 2.2.2 Where the Contractor's Bid in the Tender is more stringent upon the Contractor and/or more favourable to the Company than the requirements under the Tender Documents, the Contractor's undertaking within its Bid shall be binding; but in any event, the obligation of the Contractor shall not be less than the obligations in accordance with the Tender Documents.
- 2.2.3 With the exception of the Contractor's Bid as approved by the Company, after the Signature Date, no other text, document, oral understandings or data existing prior thereto, shall have any force or effect whatsoever, or may, in any way whatsoever, be taken into consideration in the interpretation of the terms and conditions of the GTC.

## 2.3 Contradiction and Interpretation

- 2.3.1 The headings and titles contained herein are used for convenience and reference only and shall not be deemed to be part thereof or be taken into consideration in the interpretation thereof.
- 2.3.2 All annexes to this GTC constitute an integral part of the GTC hereof and part of its terms.
- 2.3.3 Words importing persons or parties shall include firms and corporations and any organization having legal capacity. Words importing the singular also include the plural and vice versa where the context requires. Words importing any one gender shall include both genders.
- 2.3.4 Wherever in the GTC a provision is made for the giving of notice, consent, approval or certificate by any person, such consent or approval shall be made in writing and the words "notify", "consent", "approve" and "certify" shall be construed accordingly.

- 2.3.5 The documents forming the GTC are to be taken as mutually explanatory of one another.
- 2.3.6 The apparent silence in the GTC as to any detail or the apparent omission there from of a detailed description concerning any point, shall be regarded as meaning that the Best Industry Practice is to be used.
- 2.3.7 The Contractor shall take no advantage of any apparent error or omission in the GTC. In the event that the Contractor has become aware of such contradiction, ambiguity or discrepancy, he shall immediately notify the Company Representative of same and act according to his instructions.
- 2.3.8 The GTC shall be interpreted in such a manner pursuant to which the Contractor shall be bound by the more stringent provision, as determined by the Company, unless the Company determines otherwise.
- 2.3.9 In the case of a contradiction between the GTC documents and other Tender Documents or a contradiction between various provisions in one document or a contradiction or lack of conformity or dual meaning regarding any provisions in the various Tender Documents, and in the absence of another express determination as to the order of precedence, the order of precedence among the provisions shall be in following order of importance:

<b>Order of precedence regarding the performance of the Works</b>	<b>Order of precedence regarding payments</b>
A. OPDI	A. Bill of Quantities
B. The Technical Volumes	B. Terms of Payment
C. Drawings approved for construction	C. Measurements of Quantities
D. Tender Documents	D. The GTC
E. The Agreement	E. The Agreement
F. The GTC	F. Tender documents
G. Israeli and International Standards	G. Israeli and International Standards
H. The Contractor's Bid	H. The Contractor's Bid



2.3.10 For scheduling issues, the orders of the Technical Volumes shall prevail over the orders of the Detailed Schedule approved by the Company.

2.3.11 If the Contractor believes that there exists a contradiction or lack of conformity or dual meaning between any of the provisions of the GTC and other provisions or if the Contractor is in doubt as to the correct interpretation, the Contractor shall act according to the instructions of the Company Representative whose professional determination shall be final. So as to avoid doubt, a dispute as to the meaning of any of the provisions of the Agreement shall not constitute grounds to delay the performance of the Works by the Contractor and/or by anyone acting on his behalf.

### **3. Drawings and Documentation**

#### **3.1 Contractor Documents**

3.1.1 The Contractor shall submit to the Company Representative for review and approval, at its own expense and in accordance with the Technical Volumes, all of the Contractor Documents, including but not limited to drawings, calculations, studies and documentation as required as part of the Detailed Design.

3.1.2 Where during the review of Company Representative's or any authority, there are any doubts as to the adequacy of the Contractor Documents, including but not limited to drawings or calculations or methods of calculation applied by Contractor, the Company Representative may request, and the Contractor shall be obligated to perform, any additional/alternative drawing and/or calculations and/or checks and/or apply other relevant methods of calculation, as the Company Representative shall request, and all at the Contractor's sole expense.

3.1.3 Where the Contractor is asked to perform any actions as contemplated in Sub-Clause 3.1.2 above, the 14 day period set forth in Sub-Clause 3.1.6 below shall begin as of the date of resubmission of such drawing and/or documentation.

- 3.1.4 The Contractor Documents shall not specify any Works or materials that are in any way inferior to those specified in the Technical Volumes.
- 3.1.5 All submissions for Company Representative's review and approval must be made in full compliance with the Technical Volumes and the Contractor shall be fully responsible for ensuring that all drawings and documents of the Works are submitted in a timely manner to ensure total Agreement continuity and obtaining of all permits and approval required for executing the Works.
- 3.1.6 Should the Company Representative have any comments to drawings and/or documentation submitted by the Contractor, such comments shall be conveyed within 14 days of the date of submission.

### **3.2 The Contractor's Use of Company Drawings and Documentation**

- 3.2.1 The Company drawings, specifications and other information included in the Technical Volumes or otherwise submitted by the Company to the Contractor shall remain the sole property of the Company.
- 3.2.2 The Company's drawings and documentations, including the Agreement, GTC, Technical Volumes and all Annexes thereto may be used by the Contractor solely for purposes of carrying out the Contractor's obligations under the Agreement. Company's documentation, in whole or in part, shall not, without the prior written consent of the Company, be used by or copied to or communicated to any third party except for procurement/purchasing matters related to the Works.
- 3.2.3 Upon completion of the guarantee period and following request of the Company, the Contractor shall return to the Company all drawings, documentation and other materials, in any format whatsoever, provided to the Contractor by the Company pursuant to the Agreement and confirm that all copies of such drawings, documentation and other materials have been destroyed.

### **3.3 The Company's Use of the Contractor Documents**

- 3.3.1 The Contractor Documents may be used by the Company as determined in Clause 18.
- 3.3.2 The Contractor shall be solely responsible for any errors or omissions in the Contractor Documentation, unless the Contractor proves to the satisfaction of the Company Representative that such errors or omissions are due to incorrect specifications or other information supplied in writing by the Company.
- 3.3.3 Review by the Company Representative of any of the Contractor Documents does not and shall not relieve the Contractor from any responsibility under the GTC nor does it constitute acceptance of the adequacy and accuracy of the documents, in whole or in part.
- 3.3.4 The Contractor shall bear any costs that may arise as a result of delay in providing the Contractor Documents or other information or as a result of errors or omissions for which the Contractor is responsible.
- 3.3.5 The Contractor shall, at its own cost, carry out any alteration or remedial works necessitated by such errors or omissions for which it is responsible.
- 3.4 Errors by the Company**
- 3.4.1 The aggregate liability of the Company where errors in the Company's drawings and documentations (including the Agreement, GTC, Technical Volumes and all Annexes thereto) provided by it to the Contractor necessitate alteration of the Works shall not exceed any additional consideration which will become due to the Contractor as a result of any extension of the Completion Deadline pursuant to Clause 35.2 and/or Reasonable Costs pursuant to Clause 11.5, as applicable.
- 3.4.2 For the removal of doubt, it is hereby clarified that the Company shall not be liable for any errors in documents and information provided by it regarding the Site and its vicinity (such as infrastructure and third-party property) other than the information explicitly included in the geotechnical survey and geophysical survey. It is also clarified that this Clause 3.4 is without derogation of the provisions of Clause 4.1.9 below regarding data concerning

the Site conditions and of Clause 14.5 below regarding site familiarity and non-reliance on information and data received from the Company.

#### **4. The Contractor's Declarations, Undertakings, Representations and Warranties**

4.1 The Contractor hereby declares and represents:

- 4.1.1 It is a corporation duly incorporated pursuant to the laws of the country in which it was incorporated, and no action the purpose and/or the possible results of which is winding up, liquidating its business, or other similar result were taken against it nor - to the best of its knowledge - shall such action be taken against it in the future.
- 4.1.2 There is no prohibition, restriction and/or prevention whatsoever, including but not limited to any law, contract or the corporation's documents of association, preventing it from engaging in the Agreement and carrying out its undertakings pursuant hereto.
- 4.1.3 The carrying out of the undertakings and obligations pursuant to the Agreement does not constitute a breach of contract and/or other undertaking and/or breach of any law including, but not limited to, regulations, orders and judgments.
- 4.1.4 It has in its possession all the licenses, permits, approvals and authorizations required by any law or contract to conduct its business activities and to carry out its undertakings pursuant to the Agreement.
- 4.1.5 It has sufficient financial means for carrying out its undertakings pursuant to the Agreement in full.
- 4.1.6 It is aware that guidelines given and to be given by the Company or on its behalf to the Contractor and/or approvals given by the Company to the Contractor do not constitute an opinion and/or declaration by the Company and that such guidelines and/or approvals may not derogate from the Contractor's liability and/or impose upon the Company any responsibility in connection with performing the provisions of the Agreement in full.
- 4.1.7 It has and shall (as applicable) fully familiarize itself with all aspects of the Works (including engineering, financial and legal aspects) and has and shall

maintain all the knowledge, experience, qualifications and ability to carry out the Works in accordance with the terms of the Agreement and the Law.

- 4.1.8 It has and shall independently acquire, review and evaluate by itself and with the assistance of experts and consultants on its behalf, all factors and data that may reasonably be deemed to affect the carrying out of its obligations under the Agreement, including, but not limited to, geological and weather conditions, technical risks, financial risks, design and construction risks and any other risk involved in the design, engineering, execution and completion of the Works in accordance with the terms of the Agreement.
- 4.1.9 It hereby acknowledges that any data concerning the Site conditions (such as climatic, hydrological, geological and seismological conditions) which is derived from research and/or observations on the part of the Company or any third party on behalf of the Company, that was or shall be included in the Tender, is only indicative, shall not bind or obligate the Company in any manner and shall not be regarded as representations that the Contractor may rely upon when presenting its Bid and/or designing, planning or executing the Works. It is the sole responsibility of the Contractor to evaluate the Site conditions, as well as any data supplied by the Company or any third party on behalf of the Company, and to proceed under its own responsibility and care and at its own expense with any supplementary research or observation necessary for the verification, extension and/or more accurate determination of the data put at its disposal.
- 4.1.10 Notwithstanding Clause 4.1.9 above, subject to Clause 42.2 below, the Contractor may reasonably rely upon the information included in the geo-technical and geophysical surveys that will be provided by the Company. The Contractor declares that it reviewed all data provided to it in the surveys and other Tender Documents and found them sufficient to execute the Works. Should any additional surveys would be required to execute the

Work this shall be executed on the cost and responsibility of the Contractor.

- 4.1.11 It has and shall demand and receive all the information, explanations and clarifications in connection with carrying out the Works and it has and shall examine and price all the factors that may influence the performance of its undertakings pursuant to the Agreement, including the location and conditions associated with carrying out the Works at the Site (including access roads and organization sites) and shall not have any allegation and/or claim in connection thereto.
- 4.1.12 All the information provided and to be provided by the Contractor to the Company prior to executing the Agreement, including the information specified in the Contractor's Bid, is complete and correct to such an extent as to enable the Contractor to fully carry out its obligations according to the Agreement and the provision of that information shall not derogate from its responsibility pursuant hereto.
- 4.1.13 It understands the Company's needs and demands, including those detailed in the Tender, examined thoroughly and assessed the possibility of carrying out each one of its undertakings pursuant to the Agreement, and it is of the opinion that performing the Agreement, including meeting the timetable, at the price and quality specified in its Bid, is possible, reasonable and practical.
- 4.1.14 In calculating its prices, the Contractor has taken into consideration all conditions, for the execution of the Works and its obligations and therefore it guarantees the accuracy of the prices offered and moreover expressly and unreservedly waives any right or remedy in this regard arising from the Agreement or from any applicable Law and accepts the risk of unforeseen changes in financial conditions and in currency markets without reservation.
- 4.1.15 It is aware that it may be that at the time of issuance of a Commencing Work Order for Construction the Company shall not hold yet building

permits for the entire Project and these shall be provided in accordance with the schedule for the execution of the Project.

- 4.1.16 It shall refrain from any activity that might constitute a conflict of interest in the execution of its duties under the terms of the Agreement and undertakes that all of its employees, Subcontractors and representatives will refrain from any activity or association that might involve such a conflict of interest, directly or indirectly, and shall notify the Company immediately should such a conflict of interest develop or arise or may potentially develop or arise and act in accordance with the Company's instructions in order to avoid the conflict. All as provided for in **Annex AA7**.
- 4.1.17 It has been presented with the Company's Ethical Code for Contractors and Suppliers (attached hereto as **Annex AA8** and available at all times on the Company website ([www.ingl.co.il](http://www.ingl.co.il))) and undertakes to comply with it.
- 4.1.18 It is aware that all payments due to it are subject to a 2% participation fee in insurance fees, pursuant to Clause 48.1.2 below.

4.2 All such representations, warranties, information and data concerning the Contractor contained in the Agreement or in any other document delivered and/or to be delivered in the framework of the Tender, are true and accurate on and as of the date of signing the Agreement.

## **5. Compliance with all Requirements, Instructions and Standards**

### **5.1 General**

The Contractor is deemed to be fully informed of and shall perform its obligations pursuant to the Agreement in accordance with the following:

- 5.1.1 The Law applicable to the Works, the Agreement and the Contractor's obligations thereunder; and
- 5.1.2 The Company's license and the Contractor's obligations pursuant to the License included in **Annex AA4**; and
- 5.1.3 All requirements, instructions and standards set forth in the Agreement and specifically in the Technical Volumes (including EN 3834-2); and

- 5.1.4 All international conventions and legislation relevant to the Contractor's obligations hereunder; and
- 5.1.5 All binding instructions and standards and norms for carrying out Works of this type; and
- 5.1.6 In the absence of other requirements, in accordance with Best Industry Practices and high-quality construction standards.

The Contractor shall be fully responsible for ensuring compliance with all of the above, in a highly and diligent professional manner and without any Defects throughout the Agreement Period.

## 5.2 **Compliance with the Law, Professional Standards and Decisions of any Public Authority**

- 5.2.1 The Works shall be carried out in compliance with the Building Permit(s) (to the extent applicable), zoning (TAMA) provisions, the Technical Volumes, engineering plan instructions and all applicable working procedures. Should there be a discrepancy between the Building Permit and the procedures, the Contractor shall abide by the more stringent provision.
- 5.2.2 The Contractor represents that it has or, alternatively, undertakes to obtain EN 3834-2 certification within 2 months as of the date that it was awarded the execution of a Project by the Company.
- 5.2.3 The Company shall provide the Contractor with an Environmental Management Monitoring Plan (EMMP) for the offshore works, that shall include instructions and restrictions for the construction period. The Contractor is fully obligated to follow all the instructions and restrictions by the study and any other instructions and restrictions that shall be imposed by any environmental authority in Israel and shall bear all costs related thereto.
- 5.2.4 The Contractor represents that it obtained or undertakes to obtain within 4 months from the issuance of the Commencing Work Order for engineering an exemption from registration under the Contractors (Registration) Law,



1969, as a precondition for the execution of any Works in Israel as required by applicable law.

### **5.3 Compliance with Instructions and Decisions of the Company Representative**

5.3.1 The Contractor shall comply with all directives and instructions of the Company Representative throughout the Agreement Period.

5.3.2 Where the Company Representative and/or any Israeli authority has made any comments or corrections with regard to the Contractor's proposed design and/or method of construction, and any document connected therewith, the Contractor shall be obliged to incorporate without delay such comments or corrections into its design and /or construction method and operate accordingly, and shall bear all costs related thereto

5.3.3 All actions, activities and/or operations by the Company itself or through a third party on its behalf or the Third-Party Inspection Company, including, managing, supervision of the Works and the supply of any of the Company Materials, or any other goods or services, shall in no way derogate from the responsibilities, obligations and liabilities of the Contractor pursuant to this Clause 5.

5.3.4 The Contractor shall be obligated to participate in the meetings organized by the Company for the purpose of reviewing the progress of the Works and exchanging information in order to ensure smooth and efficient implementation of all aspects of the Works.

### **5.4 Compliance with Permits and Licenses requirements**

5.4.1 With the exception of the Company's undertakings pursuant to Clause 14.2 [Building Permit] and Clause 14.4 [NGA's approval of the Engineering Plan], the Contractor shall be obligated, at its sole responsibility and expense, to obtain and comply with any and all registrations, permits, licenses and authorizations, as provided by the Agreement and as required pursuant to the Law, required from any government or municipal authority or from any other entity authorized by Law, for the purpose of carrying out the Works, including, without limitation:

- 5.4.1.1 Exemption from registration under the Registration of Contractors Law, 1969; and
  - 5.4.1.2 Approvals from the Employment Service of the State of Israel; and
  - 5.4.1.3 Import permits and licenses, labor permits, entry visas, residence visas; and
  - 5.4.1.4 Any other required document, permit or approval necessary for the execution of the Works; and
  - 5.4.1.5 Compliance with the requirements of the NGA and any other competent entities under the Law.
- 5.4.2 Without derogating from the generality of the above, the Contractor acknowledges that the Works are being undertaken under the regulation and supervision of the NGA. The Contractor further acknowledges that under the provisions of the Israeli Natural Gas Market Law, 2002, NGA is authorized to inspect and overlook all aspects pertaining to the System and/or the Works at all times and undertakes to comply with NGA instructions, based on the OPDI attached hereto as **Annex BB7** .
- 5.4.3 The Contractor undertakes to provide the NGA representatives, Company representatives and the representatives of any other governmental and local authority with transportation and access to the Site and to all relevant fabrication sites.
- 5.4.4 The Contractor shall prepare, as part of the detailed design of the Project, all documents required for the Company obtaining the approval of the NGA to the detailed design, construction and installation of the Project (including but not limited to Engineering Plan and As Made documents).
- 5.4.5 Furthermore, the Contractor acknowledges that the Works shall be supervised by a TPI and undertakes to comply with its instructions as well.
- 5.4.6 The Contractor shall not begin to carry out any Works prior to being granted all the relevant permits, approvals, licenses and authorizations required to carry out such Works.

- 5.4.7 Without derogating from the Contractor's obligations stated above and without assuming any responsibility, the Company engaged with an Israeli engineering company in order to assist the Contractor in communicating with the relevant Israeli authorities for the purpose of obtaining the foregoing permits, approvals, licenses and authorizations. The contractor undertakes to cooperate with the Company and the engineering company and provide them with all requested Contractor Documents, including but not limited to drawings, calculations, studies and documentation as required as part of the Detailed Design
- 5.4.8 The Contractor warrants, represents and undertakes that during the entire Agreement Period it shall have all the authorizations, records, licenses, approvals and permits required by Law in order to perform all of its obligations, including those which relate to the Contractor's Personnel. Without derogating from the above, the Contractor shall inform the Company of any license, registration, approval, permit or authorization that has been obtained for the purpose of performing the Work is about to be expired, revoked or cancelled and the Contractor shall take all necessary procedures in due course to renew all such about to expire.
- 5.5 Compliance with Safety Regulations, Quality Control and Quality Assurance**
- 5.5.1 The Contractor shall comply with all Safety Regulations in the Technical Volumes and as applicable by Law and use all reasonable efforts to assure the quality and the safety of the Works and Site. The Contractor shall bear full responsibility for assimilating and fulfilling all the safety and quality control provisions given to it from time to time, in writing, by the Company Representative as well as any duty or provision imposed upon it by Law, including but not limited to safety and quality control guidelines set forth in the Technical Volumes, and in their absence, the Contractor shall adopt and exercise such quality and safety policies and procedures as are customarily adopted and exercised by highly qualified contractors engaged in similar

fields according to the Best Industry Practices, and all this throughout the Agreement Period.

- 5.5.2 The Works carried out by the Contractor shall be supervised by the Company, through the Company Representative and the Company's quality assurance, and the Company may take all reasonable actions to verify the Contractor's compliance with the provisions of this Clause.
- 5.5.3 The Contractor undertakes to cooperate with the Company Representative or any competent authority at any time and for any matter, and to make available to the Company Representative and/or any other competent body or authority any information, data and documents at request and instruction.
- 5.5.4 The Contractor shall be responsible to establish a Quality Control System and to execute the quality control (including tests) in accordance with the provisions of the Technical Volumes and the approved Quality Control Plan. Prior to the performance of any Works, the Contractor shall complete the Quality Control Plan and shall obtain the Company's approval for such a plan in accordance with the Technical Volumes.
- 5.5.5 For the removal of doubt, it is clarified that the Quality Control Plan does not derogate from the powers or rights of the Company or any competent authority pursuant to the Agreement and any Law.
- 5.5.6 The Company shall be entitled, but not obligated, to review the implementation of the Quality Control Plan by the Contractor and all costs associated with such review shall be borne by the Contractor. Such review shall not impose any liability on the Company or anyone on its behalf and shall not derogate from the Contractor's liability to carry out the Works at the requisite standard and quality pursuant to the Agreement and the Law.
- 5.5.7 The Company Representative may, in his sole discretion, review any aspect of the Works and instruct the Contractor, at any time, to carry out any tests, sampling, measurements, trials and the like in order to check and verify the quality of the Works ("**Quality Assurance Tests**").

- 5.5.8 The Costs of the Quality Assurance Tests shall be borne by the Company, except for the Costs of additional tests that may be required due to inconformity of the Works with the quality requirements (the "**Additional Quality Assurance Tests**") and the need to repair and/or replace the Works or any portion thereof. The fact that the Contractor should follow the Quality Control Requirements set forth in the Technical Volumes, as well as the fact that the Company has the authority to conduct and/or to instruct the Contractor to conduct Quality Assurance Tests and/or Additional Quality Assurance Tests, shall not derogate from the Contractor's obligation to carry out the Works to a standard and quality required pursuant to this Agreement and the Law. The Quality Assurance Tests and the Additional Quality Assurance Tests conducted by the Company shall not be a cause for the extension of the Completion Deadline or a claim for additional cost.
- 5.5.9 Whereupon the Company finds that the Contractor has not complied with its obligation to routinely ensure quality control, in accordance with the provisions in the Quality Control Specifications and Quality Control Plan, the Company Representative may instruct to immediately stop the Works, in whole or in part, until such non-compliance is remedied to his satisfaction. The foregoing does not derogate from any other remedy available to the Company as a result thereof under the Agreement.

## **6. General Provisions for Carrying Out the Works**

### **6.1 Execution of the Works**

- 6.1.1 The Contractor shall carry out all Works professionally, without any Defects, and shall, with due care and diligence, procure, manufacture, transport to Site, erect and test the Works in order to successfully complete the Works until they are fully integrated with the System by the Completion Deadline as set forth in the Agreement, including, specifically in the Technical Volumes.
- 6.1.2 The Contractor shall execute and complete the Works in accordance with the Agreement and shall remedy any Defects according to the Company

Representative's instructions and the Agreement. The Contractor shall be responsible for the adequacy, stability and safety of the Works and for the strict compliance of all subcontractors (and their subcontractors) with the statutory requirements. For the avoidance of doubt, the Company shall not be considered as "Executor of Works" (Mevatsea Bnia) under the Work Safety Regulations (Construction Works), 1998.

- 6.1.3 Within the frameworks of its undertakings to carry out the Works and as an integral part thereof, the Contractor shall carry out all the actions and/or works associated with the Works, even if these actions and/or works are not explicitly referred to in the provisions of the Agreement, all in order to ensure completion of the Works in full and in a timely manner. These actions and/or works shall be considered, for all intents and purposes, as included in the Contractor's undertakings pursuant to the Agreement and shall be carried out by the Contractor and/or a person on its behalf without any additional consideration. Within the frameworks of such undertakings and as an integral part thereof, the Contractor shall bear responsibility for carrying out any other and/or additional obligation imposed upon the Contractor pursuant to the Agreement (including the Technical Volumes), including, without limitation, documentation, warranty, execution of changes in accordance with the Company's demand pursuant to the provisions of the Agreement (including the provisions of the Technical Volumes).

## 6.2 Commencing Work Order

- 6.2.1 The contractor shall be given two separate Commencing Work Orders – one for engineering and another for construction.
- 6.2.2 The commencing work orders shall be accompanied by updated and binding set of plans and Schematic Schedule for the Project.
- 6.2.3 The issuance of the Commencing Work Orders is subject to certain preconditions that are not in the Company's control, including various approvals of third parties and the actual pre-payment of the cost of the Works to the Company. The Company expects that all such preconditions

shall be finalized in accordance with the Schematic Schedule; yet, should they not be finalized in time or should they not be finalized at all, the Company may delay the issuance of the Commencing Work Orders or refrain from issuing the Commencing Work Orders, and the Contractor shall have no claims or rights against the Company. In view of the above, the Contractor shall refrain from undertaking any obligations and/or any making expenses prior to issuance of the Commencing Works Orders.

6.2.4 The Commencing Work Order for engineering shall include an organization period of up to 30 days prior to the scheduled date for the actual start of the detailed design and engineering. During this period and as precondition for the actual start of the detailed design and engineering, the Contractor shall submit to the Company the following documents and information regarding the Project:

6.2.4.1 A Performance Guarantee.

6.2.4.2 Contractor's organogram including all subcontractors.

6.2.4.3 A Detailed Schedule for the execution of the detailed design and engineering of the Project, including identifying any long lead items and proposed approach to delivery to meet schedule requirements, based on and in accordance with the updated Schematic Schedule that will be attached to the Commencing Work Order, for the approval of Company's Representative.

6.2.4.4 A quality control program for the detailed design and engineering of the Project, based on the Contractor's Bid for the Tender, according to the requirements and provisions as detailed in the Quality Control Volume, for the Company's approval. The approved program shall be attached as an annex to the Quality Control Volume.

6.2.4.5 In case of an External Supplier (as defined in the Regulations for Reciprocal Procurement) - the approval of the Authority for Industrial Cooperation of its program for implementation as

required by the Regulations. The Company may, at its sole discretion, subject to applicable law, decide to issue the Work Commencing Order notwithstanding the fact that the Contractor has not yet been granted such approval.

6.2.5 The Commencing Work Order for construction shall include an organization period of up to 60 days prior to the scheduled date for the actual start of construction on site. During this organization period and as precondition for the actual start of construction on site, the Contractor shall submit to the Company the following documents and information regarding the Project:

6.2.5.1 Contractor's organogram including all subcontractors.

6.2.5.2 A Detailed Schedule for the construction works, based on and in accordance with the updated Schematic Schedule that will be attached to the Commencing Work Order, for the approval of Company's Representative.

6.2.5.3 All documents, approvals and certifications as required by any relevant authority, in accordance with the building permit applications, and all other necessary documents as required by all Laws and regulations for execution the Works, in accordance with the Technical Specifications.

6.2.5.4 An exemption from registration with the Israeli Registrar of Contractors.

6.2.6 It may be that at the time of issuance of a Commencing Work Order for construction the Company shall not hold yet building permits for entire Project and these shall be provided (as so far as such permits are required under Law) in accordance with the schedule for the execution of the Works.

### 6.3 Progress Reports

6.3.1 The Contractor shall furnish Progress Reports to the Company Representative, throughout all EPC phases, in accordance with the provisions of the Technical Volumes, including detailed labour and



equipment reports, detailing the personnel and the equipment being employed by the Contractor and/or his Subcontractors.

- 6.3.2 The Company shall be entitled to demand at any time from the Contractor, an immediate report concerning the performance of the Works and/or an updated schedule, and the Contractor undertakes to make available to the Company any and all information, data and document forthwith, upon receiving such a request.

## **7. Setting Out for Onshore works**

- 7.1 The Contractor shall set out the Works in relation to original points, lines and levels approved by the Company Representative in writing and provide all necessary instruments, appliances and qualified labour for such purpose.
- 7.2 The Contractor shall, at its sole expense, engage a surveyor to carry out the functions set forth in this Clause 7 and as detailed in the Technical Volumes.
- 7.3 If, at any time during the execution of the Works, any error appears in the positions, levels, dimensions or alignment of the Works, the Contractor shall rectify the error and bear the cost of such rectification, unless the Contractor proves to the satisfaction of the Company Representative that the error results from incorrect information supplied in writing by the Company, in which case the cost shall be borne by the Company.
- 7.4 The setting out as contemplated by this Clause 7 shall be carried out by a licensed and experienced surveyor employed by the Contractor and acting on its behalf.
- 7.5 The approval and/or checking of any setting out by the Company Representative shall not relieve the Contractor from its responsibilities to the accuracy thereof.

## **8. The Contractor's Personnel**

### **8.1 The Company's approval for the Contractor's Personnel**

- 8.1.1 Without derogating from the Contractor's obligation to employ the same personnel presented in its Bid, the Contractor must obtain prior approval from the Company Representative for all Contractor's Personnel engaged for

the purposes of performing the Works, with regard inter-alia to qualifications and security clearance requirements.

8.1.2 The approval of Contractor's Personnel by the Company shall in no way derogate from the Contractor's liability nor create any liability or responsibility on the part of the Company or anyone on its behalf.

## 8.2 Replacement of the Contractor's Personnel

8.2.1 The Contractor shall not be permitted to replace any of the approved Contractor's Key Personnel or any of its Sub-contractors, for any reason whatsoever, without the Company Representative's prior written approval.

8.2.2 The Company Representative may, for professional reasons, withhold or withdraw approval previously granted and request the replacement of any of Contractor's Key Personnel or Sub-contractors within the specified time as determined in such request, provided that the Company Representative shall give such request only for professional reasons, and the Contractor hereby undertakes to comply with such request.

8.2.3 With regard to all Contractor's Personnel and without derogating from any other provisions granting any right or authority to the Company, the Company shall be entitled to instruct the Contractor, in writing, to **(a)** remove any such person from the Site forthwith, or within such time period, not to exceed 14 days, as the Company Representative shall stipulate, and not to have such person employed in connection with the Works; or **(b)** to replace such person with a suitable person subject to the Company's approval in accordance with the provisions of this Clause 8; and the Contractor shall be obligated to comply with such instructions.

8.2.4 Without derogating from the provisions aforesaid, the Company Representative may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

8.2.4.1 Commits any misconduct;

8.2.4.2 Carries out duties incompetently or negligently or in a lack of good faith;

8.2.4.3 Fails to conform with any provisions of the GTC; or

8.2.4.4 Engages in any conduct which is prejudicial to safety, health or the protection of the environment.

### **8.3 The Contractor's liabilities and responsibilities for the Contractor Personnel**

8.3.1 The Contractor shall be responsible for all of the acts and defaults of any Contractor's Personnel and all those working on its behalf, as well as any other entity employed by the Contractor, as fully as if they were the acts and defaults of the Contractor.

8.3.2 The Contractor shall be exclusively responsible to obtain all types of permits, approvals, licenses, visas, etc. required for the personnel engaged in the Works on its behalf.

8.3.3 The Contractor shall make its own arrangements, at its sole expense, for the engagement of all staff and labour, local or other, including their salaries, benefits, housing, feeding and transportation. The Contractor shall provide reasonable and appropriate working conditions, all in full compliance with the Law.

8.3.4 The Contractor shall conform to the requirements of the Law concerning working days and hours. Should the Contractor deem it necessary to work on Friday, Saturday or national holidays in Israel as defined by Law or during the night or general overtime outside of the statutory hours, then it shall only do so where it has obtained (at its own cost and responsibility) all permits and licenses required (if required) under the Law.

8.3.5 Nothing in this GTC including the aforesaid provisions constitutes an agreement in favour of a third party.

8.3.6 The Contractor declares and confirms that it is an independent contractor under this Agreement. The Contractor, its employees or its shareholders will not be considered Company's employees in any case and under any circumstances. For the avoidance of doubt, it is hereby clarified explicitly,

that in this Agreement, employer-employee relationships are not created between the Company and the Contractor, nor between the Company and any of the Contractor's Personnel and/or its Subcontractors and/or its shareholders and/or any person acting in its name or on its behalf in connection with this Agreement. Any right of the Company Representative to order, supervise, or instruct the Contractor and/or the Contractor's Personnel and/or its subcontractors in the performance of this Agreement, does not create an employer-employee relation.

8.3.7 The Contractor undertakes to pay all taxes, levies and other mandatory payments imposed due the employment of the Contractor's Personnel and/or its Subcontractors, including but without derogating from the generality of the above, income tax, national insurance, VAT and all other taxes payable by the Contractor in Israel and outside of Israel, as may be applicable.

8.3.8 The Contractor alone will be responsible for any payment for damage indemnity or compensation or any other payment due by it under any law to the people employed by it.

#### **8.4 Qualification, skill and experience**

8.4.1 The Contractor shall employ qualified, skilled and experienced Personnel, in their respective trades or occupations, all as necessary for the proper and timely fulfilment of Contractor's obligations under the Agreement.

8.4.2 The Contractor shall provide all necessary Contractor's Personnel as shall be necessary or expedient for carrying out all of the Works, maintaining the rate of progress required by the Agreement, meeting the Completion Deadline and remedying any Defects.

#### **8.5 Key Personnel**

8.5.1 The Contractor shall, at its sole expense, engage the following Key Personnel throughout the Agreement Period in accordance with the requirements set forth in the Technical Volumes and in the ITB:

8.5.1.1 Project Manager.

- 8.5.1.2 OIM – Offshore Installation Manager.
- 8.5.1.3 Qualified Welding Engineer.
- 8.5.1.4 Quality Control Expert (or the equivalent).
- 8.5.1.5 HSE Manager.
- 8.5.2 The identity of the above Key Personnel shall be as detailed in the Contractor's Bid and may not be replaced without the prior written approval of the Company.
- 8.5.3 The Contractor shall also engage throughout the execution of the off-shore works (as part of the Key Personnel) a Diving Supervisor (if required) who shall comply with the requirements set forth in the ITB and whose identity shall be subject to the Company's prior approval.
- 8.5.4 The Key Personnel shall be fluent in the English language.
- 8.5.5 All Key Personnel shall dedicate all time, efforts and skills for carrying out the Works, throughout the Agreement Period and until the Company's approval is received for the Completion of the Works. All Key Personnel, other than the Project Manager, shall remain assigned to the Project on a full-time basis throughout the Agreement Period. In case of a breach of this undertaking the Company shall be entitled, without derogating from its rights pursuant to any law and/or the Agreement, to liquidated damages in the amount of 12,000 USD for each month or part of a month that each one of the Key Personnel was not present on Site and actively involved in the project. (subject to reasonable and agreed vacation time).

## 8.6 Foreign Labour

The Contractor has taken into account all restrictions as may be applicable on the supply of labour in the State of Israel and, especially restrictions regarding security, employment of foreign labour, including, without limitation, all costs, overhead expenses, skills, special expertise, availability of personnel, timetables, repatriation, operational, legal and all statutory requirements.

## 8.7 Subcontracting

8.7.1 The Contractor shall not subcontract the Works as a whole.

8.7.2 The Contractor may subcontract the following works to the Sub-contractors presented in its Bid and approved by the Company:

8.7.2.1 Detailed design and engineering of the Project.

8.7.2.2 Execution of the landfall crossing works.

8.7.2.3 Construction and/or installation of the subsea structure.

8.7.2.4 Trenching and backfilling

8.7.2.5 Flooding, gauging, drying and testing.

8.7.3 The contractor shall engage and hire, at its own expense, throughout the Agreement Period:

8.7.3.1 TPI company.

8.7.3.2 Marine warranty surveyor.

The identity of the TPI company and the marine warranty surveyor shall be subject to the Company's prior written approval.

8.7.4 The Contractor shall not subcontract any other part of the Works, without the prior written consent of the Company, which may withhold such consent or withdraw its previously given consent to the retention of any Subcontractor, where the Company concludes that such action is desirable for the proper and timely execution of the Works in accordance with the provisions of the Agreement.

8.7.5 Where practicable, the Contractor shall give a fair, equal and reasonable opportunity to Israeli contractors to be appointed as Subcontractors.

- 8.7.6 Each subcontracting agreement shall include provisions which would entitle the Company to require that the agreement shall be assigned in favour of the Company in the event of termination of this Agreement and/or if a Subcontractor's obligations extend beyond the expiry date of the relevant Defect Liability Period.
- 8.7.7 It is incumbent on Contractor to ensure that should subcontractors further subcontract elements of the subcontracted works, that the conditions of this contract shall equally apply.

**9. Contractor's Facilities, Equipment & Materials [Contractor's Materials]**

- 9.1 The Contractor shall provide, at its own care and expense, all suitable facilities and equipment necessary to complete the Works in a timely manner, except as otherwise expressly determined by the Company.
- 9.2 The Contractor shall supply, at its own care and expense, the Contractor's Materials, including all the materials required to fulfil its undertakings pursuant to the Agreement, other than the Company Materials (as provided for in Clause 30). All Contractor Materials shall be unused and original materials.
- 9.3 The Contractor shall provide, at its own care and expense, all necessary resources on the Site in connection with and as required for the execution and completion of the Works (including for remedying of any Defects).
- 9.4 The Contractor shall supply, at its own care and expense, any component and/or part and/or software required for the purpose of carrying out the Works, even though they are not explicitly referred to in the Agreement, insofar as necessary for the purpose of completing the Works and fulfilling all of its undertakings pursuant to the Agreement.
- 9.5 The Contractor shall also provide all necessary Contractor's Equipment, and all other things, whether of a temporary or permanent nature, including all components of the System, other than the Company Materials, and also provide other consumables, as shall be necessary or expedient for carrying out all of the Works, maintaining the required rate of progress, meeting the Completion Deadline and remedying any Defects.

- 9.6 Any Contractor's Equipment and any Contractor's Materials provided by the Contractor shall be of suitable quality as set forth in the Technical Volume for the purposes and uses intended and free of any defects and deficiencies.
- 9.7 The equipment and materials brought to the Site by the Contractor and anyone on its behalf shall be used exclusively for the execution of the Works and shall not be removed from the Site without the prior permission of the Company Representative.
- 9.8 Upon entering into any subcontracting agreement, following the approval of the Company as provided for above, the Contractor shall ensure that the provisions of this Clause 9 shall be expressly incorporated therein and shall apply to all equipment, as well as any facilities or materials brought on to the Site by the Subcontractor.
- 9.9 It is hereby clarified that all Sub-contractors and suppliers of the Contractor must be given the prior written approval of the Company.
- 9.10 The vessel and other equipment used by the Contractor for welding and laying of the pipeline shall be the vessel proposed in its Bid to the Tender and may not be replaced without the prior written consent of the Company.

#### **10. The Detailed Schedule**

Following the Commencing Work Order for Engineering and within the time set therein for this purpose, the Contractor shall submit to the Company Representative for his review, comment and approval the Detailed Schedule, which shall be prepared in accordance with and on the basis of the dates set forth in the Schematic Schedule attached to the Commencing Work Order, all in the form and detail as prescribed by the Company Representative, which shall include as a minimum the following:

- 10.1 The sequence in which the Contractor intends to carry out the Works, including the anticipated timetable for providing all documents, drawing, calculations and studies required for obtaining the permits and approving the Engineering Plan and specifying all stages and parts of the Works.



10.2 Supporting report which includes a general description of the methods which the Contractor intends to adopt, according to the Schematic Schedule attached to the Tender, in the execution of the Works until Completion.

#### **11. Alterations to Detailed Schedule**

11.1 No alterations shall be made to the Detailed Schedule without the prior written approval of the Company Representative.

11.2 The Contractor shall be accountable for any delays in carrying out its obligations pursuant to this Agreement, other than the following:

11.2.1 If the Company Representative issued a Change Order with an approved extension of the Completion Deadline, in accordance with the provisions of Clause 41 (Change Order).

11.2.2 If the Company instructed the Contractor to stop the Works in accordance with the provisions of Clause 32.1.

11.2.3 If the Detailed Schedule was deferred exclusively due to delays in carrying out actions within the Company's obligations pursuant to the Agreement.

11.2.4 If the Ministry of Defence (MOD) ordered the suspension of the Works, provided that such suspension was not avoidable had the Contractor taken proper measures in coordinating the Works with the MOD.

11.2.5 Circumstances amounting to a Force Majeure, in accordance with the provisions of Clause 49.

11.3 For the removal of any doubt it is hereby clarified that weather conditions **shall not** entitle the Contractor to any delay or extension in the execution of the Works.

11.4 Where the Contractor was delayed in carrying out its obligations due to the circumstances detailed in Sub-Clauses 11.2.1 - 11.2.5 above, the Contractor shall furnish, in writing, a document describing the period of delay and the details evidencing the actual circumstances and reasons justifying the period of such delay.

11.5 If the Contractor was delayed in carrying out its obligations due to the circumstances detailed in Sub-Clauses 11.2.1 and/or 11.2.3 above (excluding any delay under the Contractor's responsibility), then the Company shall pay the

Contractor's overhead expenses (in this Clause: "**Overhead Expenses for Work Delay**") in the sum which shall be calculated according to the following formula:

$$Q = P \left[ \frac{T_1}{T_0} \times K_0 - K_1 \right]$$

Q= Overhead expenses for work delay.

P = 8% as agreed percentage of expenses (expressed as a decimal).

K0 = Agreement Price for the relevant Section in delay, for which the Commencing Work Order has been issued, excluding VAT.

K1 = Price for actual performance (including payments due to standby) excluding VAT and linkage.

T0 = Period from the Commencement Date until the original Completion Deadline.

T1 = Period from the Commencing Work Order date until the Date of Completion excluding suspension periods in accordance with Clause 32.2.

- 11.5.1 In calculating T1, any period of temporary suspension in accordance with Clause 32.2 shall not be considered.
- 11.5.2 The Overhead Expenses for Work Delay (Q) in accordance with this Clause 11.5 shall be paid to the Contractor as part of the remaining Balance of the Agreement Price, together with the Final Payment, subject to the inclusion of said expenses in the application for the Final Payment made by the Contractor.
- 11.5.3 If the outcome of the above formula (Q) shall be negative, Overhead Expenses for Work Delay shall be due to the Contractor.

- 11.6 Payments of Overhead Expenses for Work Delay (Q) in accordance with Clause 11.5 shall be deemed as full and final compensation for all of the Contractor expenses (including expenses that may not be classified as overhead expenses) in connection with the Contractor's delays as detailed in Sub-Clauses 11.2.1 and/or 11.2.3 above.
- 11.7 Without derogating from the provisions above, the Contractor shall be responsible to inform the Company in a written notice of the occurrence of circumstances of any type and nature, due to which the Contractor may be delayed in carrying out each one of its obligations and/or the timetable might be deferred. Such notice shall be provided by the Contractor as soon as it becomes aware of such circumstances.
- 11.8 Claims for Overhead Expenses for Work Delay and/or for alterations of the Detailed Schedule in accordance with this Clause 11 shall be made in accordance with the claims procedure provided for in Clause 20 below.

## **12. Property Owners and Infrastructure Owners**

- 12.1 Without derogating from the provisions of Clause 13 below, the Contractor acknowledges that the Works, in whole or in part, may be performed in the vicinity of infrastructure owned or leased by utility companies and other third parties ("**Infrastructure Owners**") and/or in or in the vicinity of property owned by Property Owners (Property owners and Infrastructure Owners together: "**Third Parties**").
- 12.2 The Contractor undertakes to coordinate the Works with Third Parties, to obtain, at its sole responsibility and expense, all permits and authorizations as may be required from time to time by Third Parties for the execution of the Works and shall comply with all Third Parties requirements and demands, including, without limitation, the execution of any undertaking in favour of Third Parties pertaining to the performance of the Works in and/or in the vicinity of their premises or infrastructure, including with regard to liability, supervision, insurances and indemnification.

- 12.3 Should the Company enter into an agreement with Third Parties regarding the performance of the Works in the vicinity of such infrastructure, all Works in Third Parties premises or vicinity shall be carried out in accordance with the terms included therein, which the Company shall provide to the Contractor. At the Company's request, the Contractor shall counter-sign such agreement.
- 12.4 For the removal of doubt, the Contractor, and anyone acting on its behalf, shall comply with all directives of the Company Representative with respect to activities in Third Parties premises or their vicinity.
- 12.5 Any and all arrangements and coordination of the Contractor with Third Parties shall be in accordance and subject to the provisions of this GTC. The Contractor shall not make any statement, promise or obligation in the name of the Company or on its behalf.
- 12.6 Without derogating of the above, the Company shall provide an Israeli designer that shall assist the Contractor with the coordination with such Third Parties.

**13. Delays and Costs arising from Third Parties**

- 13.1 If the Contractor is unable to perform the Works due to problems arising from Third Parties, it shall make best efforts to solve such problems and continue the Works.
- 13.2 Where the Contractor is unable to continue the Works, despite such best efforts, it shall inform the Company Representative in writing. In such case the provisions of Clause 35.2 and Clause 11.5 shall apply.
- 13.3 Except as provided in Clause 35.2 and Clause 11.5 the Contractor shall not be entitled to any additional payment due to any delay and/or complication in the execution of the Works arising from Third Parties and/or the need to coordinate the Works with them and any such delays arising from Third Parties, shall not derogate from any of the Contractor's obligations.
- 13.4 Notwithstanding the above, in the event that the Contractor is unable to perform the Works due to problems arising from Third Parties, despite making its best efforts to solve such problems, the Company shall have the right to cancel the relevant part of the Works.

13.5 Claims for alterations of the Detailed Schedule and/or extension of the Completion Deadline and/or additional payment in accordance with this Clause 13 shall be made in accordance with the claims procedure provided for in Clause 20 below.

## **14. The Site**

### **14.1 General**

The Contractor shall not have rights of ownership, leasehold rights or any other rights neither in the System itself nor in the Site, including, without limitation, any easement or property rights or any other rights under any other Law, except for temporary authorization in order to use the Site for the sole purpose of execution the Works, all subject to the terms of the Agreement.

### **14.2 Zoning (NSP 37/A/2/7)**

The Company shall be responsible for obtaining the approval of NSP37/A/2/7 (the "NSP") that sets the zoning requirements and instruction for the off-shore Works (in addition to the requirements set forth in the approved NSP 37/A/2/2), prior to the date set for the commencement of the Works.

### **14.3 Building Permit for On-shore (Landfall Crossing) Works**

14.3.1 Off-shore Works do not require a building permit.

14.3.2 To the extent a building permit is required under the Law for the on-shore (landfall crossing) Works or any part thereof, the Company shall apply for and obtain the relevant building permits ("**Building Permits**") by the date of commencement of the relevant on-shore Works on Site by the Contractor.

14.3.3 Notwithstanding the above, the submission of the requests for the Building Permits and approval thereof are subject to the Contractor preparing and providing in advance all the required documents to the Company and to the relevant authorities.

14.3.4 In the event that the Company obtains the Building Permits for the on-shore Works in stages, the Contractor shall be obligated to adjust the Detailed Schedule so as to enable maximum progress with the Works on

those Works for which a Building Permit has already been obtained and to avoid, mitigate and minimize any delays and additional Costs which may arise from the fact that the Building Permit, if applicable, has not yet been obtained with regard to all relevant areas.

- 14.3.5 The Contractor shall be entitled to the remedies set forth in Clause 20 and Clause 11.5 due to lack of Building Permit, if required, provided that the Contractor prepared and submitted all the necessary documents for obtaining the Building Permit in advance and made best efforts to avoid, mitigate and minimize any Delays and additional Costs.

#### **14.4 Engineering Plan**

- 14.4.1 The Company shall apply for and obtain the approval of the NGA of the Engineering Plan by the date of commencement of the Works on Site by the Contractor.
- 14.4.2 Notwithstanding the above, the submission of the request for approval of the Engineering Plan and the approval thereof are subject to the Contractor preparing and providing in advance all the required documents to the Company and to the relevant authorities.
- 14.4.3 In the event that the Company obtains the Engineering Plan in stages, the Contractor shall be obligated to adjust the Detailed Schedule so as to enable maximum progress with the Works on those Works for which the Engineering Plan has already been approved and to avoid, mitigate and minimize any delays and additional Costs which may arise from the fact that the Engineering Plan has not yet been approved with regard to all relevant areas.
- 14.4.4 The Contractor shall be entitled to the remedies set forth in Clause 20 and Clause 11.5 due to lack of approval of the Engineering Plan, provided that the Contractor prepared and submitted all the necessary documents for its approval and made best efforts to avoid, mitigate and minimize any Delays and additional Costs.

## 14.5 Site Familiarity

- 14.5.1 The Contractor acknowledges it has reviewed and checked, as an expert, the Site and its surroundings and physical condition and all information, plans, surveys and data provided in the framework of the Agreement, and is fully familiar with the terms of all Laws relevant to carry out the Works and all aspects thereof. Pursuant to such review and examination the Contractor finds the Site fit and suitable for the fulfilment of all its obligations and undertakings under the Agreement, while complying with all statutory procedures and all terms and conditions of all permits required for the execution of the Works.
- 14.5.2 The Contractor further acknowledges its willingness to enter into the Agreement with full awareness and knowledge of, inter alia, the rights and obligations derived from the physical and engineering data of the Site and the provisions of the Agreement, and it is able to fulfil all of its obligations under the Agreement precisely and in a timely manner. Consequently, the Contractor hereby waives any claim of defect or non-compliance with regard to all the above stated.
- 14.5.3 The Contractor shall receive from the Company plans (either as part of the Building Permit or in any other manner) that shall indicate all Access Roads to and from the Site where the on-shore (landfall crossing) Works are to take place and all staging areas and working strips. The Contractor shall countersign such plans as its acceptance that such Access Roads, staging areas and working strips are sufficient to complete the Works as contemplated (date to be determined).
- 14.5.4 The Contractor hereby acknowledge that any and all data concerning the Site conditions (such as climatic, hydrological, geological or seismological data and data concerning Infrastructure), whether derived from research or observations on the part of the Company or any third party or from any other source, that was or shall be included in the Tender or otherwise provided by the company or its behalf, is indicative and for general

information purposes only, and shall not bind or obligate the Company in any manner. The Contractor shall not be entitled to any compensation or additional payment if such data concerning the Site that was supplied by the Company or on its behalf shall turn out to be inaccurate or lacking in any manner.

14.5.5 It is the sole responsibility of the Contractor to evaluate such data and to proceed under his own responsibility and care and at his own expense with any and all research or observations necessary for the verification, extension and/or more accurate determination of the data put at its disposal.

14.5.6 The Contractor confirms that it has verified and shall continue to verify and update all data at its disposal and that it made and shall make all further research or observations necessary to fulfil its obligations under the Agreement. Such verifications, research and observations are deemed to be included in the Agreement Price.

14.5.7 Notwithstanding sub-clause 14.5.4 above, the Contractor may rely upon the information included in the final reports that shall be supplied to it by the Company of the geophysical survey the geotechnical survey for the route of the off-shore pipeline Works.

#### 14.6 **Access to the Site of the On-Shore Works**

14.6.1 Subject to the Contractor's compliance with the provisions of this Clause, the Company shall, in accordance with the Detailed Schedule, allow the Contractor access to the Site of the on-Shore Works.

14.6.2 The Company shall ensure that the Building Permit for the on-shore Works will provide for access road(s) to the relevant parts of the Site.

14.6.3 Subject to the issuance of a Building Permit providing for access roads, it shall be the sole responsibility of the Contractor to coordinate and maintain access to the Site of all on-shore Works.



- 14.6.4 The Contractor shall be responsible for the Site of the on-Shore Works from the date the Company provides access to the Site until obtaining a Take Over Certificate from the Company.
- 14.6.5 The Contractor shall forbid access to the Site of the on-Shore Works to any person except those authorized by the Company as set forth in this Clause: **(1)** the Company; **(2)** any Governmental Authority of the State of Israel; **(3)** the TPI; **(4)** marine warranty surveyor and **(5)** any of their respective designated representatives, who may, at any time, enter any part of the Site of the on-shore Works for the purpose of inspection, testing and supervision of the Works and in order to ensure that the Contractor is fulfilling all of its undertakings pursuant to the terms and provisions of the Agreement.
- 14.6.6 The obligation of the Company to allow the Contractor access to the Site of the on-shore Works as set forth above, shall not relate to the clearance and removal of utilities above or below ground and water within the Site or crossing the Site, such as, but not limited to, water, power, electricity, lighting, gas, sewage, fuel, control lines and communications. The removal and clearance of such utilities shall be at the sole responsibility of the Contractor, within the framework of the Detailed Schedule.
- 14.6.7 In addition, the obligation of the Company to allow the Contractor access to the Site for the on-shore Works as set forth above shall not apply to the physical removal of Third Parties that object to the performance of the Works and/or the use of the Site, which shall be done by the Contractor's responsibility and cost.
- 14.6.8 Notwithstanding the above, should the Contractor be instructed in writing by the Company to remove and/or relocate any Third Party utilities that were not displayed and accounted for in the plans and the BOQ in order to enable access to the on-shore Site, then the cost of such works shall be borne by the Company (subject to its prior approval of the removal and relocation plans and their costs).

#### 14.7 Access Roads and Working Strip for the On-shore Works

- 14.7.1 The Company is responsible to present the Contractor with **(i)** Access Roads that provide access, as determined by the Company Representative, to the Working Strip of the on-shore Works, as well as new paths that reasonably connect, as determined by the Company Representative, the public roads to the existing paths that are included in the Building Permit; and **(ii)** a Working Strip which is sufficient for the safe, effective, and efficient construction of the on-shore Works.
- 14.7.2 The Company does not guarantee the suitability or availability of particular Access Roads and all Costs due to non-suitability or non-availability of Access Roads for the purpose of the on-shore Works shall be solely borne by the Contractor.
- 14.7.3 Requests for additional Access Roads or Working Strips.
- 14.7.3.1 Without derogating from the foregoing, where the Contractor believes that the Access Roads or the Working Strip provided are not sufficient it may request approval from the Company Representative to create or use additional Access Roads and/or to expand the Working Strip, as shall be marked on a plan submitted by the Contractor to the Company Representative for his approval.
- 14.7.3.2 Where the Contractor has made a request pursuant to Sub-Clause 14.7.3 above and/or where the Company Representative has concluded, in his sole discretion that additional Access Roads and/or an expanded Working Strip are required, the Contractor shall be responsible for all the following: **(i)** reaching arrangements for the expansion of the Working Strip; **(ii)** negotiating any settlement which may be required with Property Owners; **(iii)** apply, by a prior written notice before any settlement is concluded, to receive the Company Representative's approval of such settlement reached with

such Property Owner, the terms of which shall bind the Contractor; and (iv) bearing the full costs and expenses of any settlement with Property Owners regarding any additional Access Road or Working Strip.

14.7.3.3 Other than with the prior written consent of the Company Representative, or in conformance with the Building Permits attained by the Company, the Contractor shall not make new or change existing Access Roads, staging areas and working strips without the explicit approval of the Company Representative.

14.7.4 The Contractor shall bear sole responsibility as well as all costs and charges in connection with the arrangement and maintenance of additional Access Roads (including repairing any damage to existing Access Roads) and/or organization area into and out of the Site of the on-shore Works, the organization of staging areas and any other special facilities, of any nature whatsoever which the Contractor shall require in order to perform the on-shore Works, including without limitation, office space, areas for provisional deposit, storage, and preparation for incorporation of components of the System and prefabrication, maintenance and parking of mechanical equipment, facilities for water storage, laboratories, first aid stations, maintenance and parking of mechanical equipment, residence for personnel and employees. For the avoidance of any doubt it is hereby clarified that no actions taken and/or works performed by the Contractor in accordance with this Clause 13 shall serve as cause for any deviation from the Schematic Schedule and/or for any change in the Agreement Price.

#### 14.8 Clearance of Site for the On-shore Works

14.8.1 The Contractor shall clean and prepare the Site for the on-shore Works before the commencement of these Works, keep the Site clean at all times as reasonably possible and clear away and remove to licensed disposal sites all rubbish, waste and surplus materials from the Site

(including waste that existed on Site prior to the commencement of the Works), cut down trees at the Site and relocate trees from the Site and undertake other tasks as set forth in the Technical Volumes concerning the clearance of the Site at the initial date the Company has provided access to the Site and/or from time to time during the execution of the Works and/or with the Company Representative's request.

- 14.8.2 On the completion of the on-shore Works, the Contractor shall remove all Contractor's Equipment, facilities and all other excess materials and equipment on its behalf and leave the System and the Site in a clean and workmanlike condition to the complete satisfaction of the Company Representative.
- 14.8.3 If within 14 days of receiving written instructions from the Company Representative, the Contractor does not begin the above-mentioned clearance of the Site such works may be executed by the Company and at the sole expense of the Contractor.
- 14.8.4 Facilities for inspection of the Works shall at all times be afforded by the Contractor to the Company, its representatives and other designated Third Parties, authorities or officials. The Company shall cooperate with the Contractor in order to minimize disruption to the extent reasonably practicable.

**15. Works in Security Areas and Military Firing Zones ("Security Areas"), Ammunition, Antiquities and Infrastructure**

**15.1 Works in Security Areas and Agreement with the Ministry of Defense**

- 15.1.1 The Contractor, and anyone acting on its behalf, shall comply with the instructions set forth in **Annex DD2** (as may be updated from time to time) and with all directives and instructions of the Company Representative with respect to activities in Security Areas, including without limitation, the evacuation thereof.
- 15.1.2 The Company shall negotiate and enter into an agreement with the Ministry of Defence ("**MOD**") regarding the execution of Works in

Security Areas and their vicinity (the "**MOD Agreement**") by no later than the date for the commencement of the Works on Site.

- 15.1.3 Upon execution the MOD Agreement, all Works within Security Areas and their vicinity shall be carried out in accordance with the terms included therein.
- 15.1.4 Following the execution of the MOD Agreement, it shall be the sole responsibility of the Contractor to receive permits from the MOD and/or the Israeli Defence Forces ("**IDF**") and/or any other entity acting on their behalf regarding entry into Security Areas and/or execution of works in Security Areas and their vicinity and for the ongoing coordination of above.
- 15.1.5 The Contractor shall not enter any part of the Site which requires the prior approval of the MOD and/or the IDF and/or any other entity acting on their behalf, prior to receipt of such approval.
- 15.1.6 In the event that under the MOD Agreement the Works in Security Areas of their vicinity shall be executed in stages, the Contractor shall be obligated to adjust the Detailed Schedule so as to enable maximum progress with the Works on those Works for which the MOD permission has already been granted and to avoid, mitigate and minimize any delays and additional Costs which may arise from the fact that the such permission has not yet been granted with regard to all relevant areas.
- 15.1.7 The Contractor shall be entitled to the remedies set forth in Clause 20 and Clause 11.5 should the Company not present it with the MOD Agreement prior to the date for commencement of Works on Site; provided that the Contractor prepared and submitted all the necessary documents and made best efforts to avoid, mitigate and minimize any Delays and additional Costs.
- 15.1.8 The Contractor shall indemnify the Company for any damage and/or expense caused to the Company (including payments to the MOD) due the Contractor's failure to comply with the provisions of this Clause.

- 15.1.9 Without derogating of the above, the Contractor shall fully cooperate with all of the instructions and directives of the Company with regard to obtaining permission and/or approval of the MOD, including by way of providing in a timely manner to the Company any information, details, documents and particulars that shall be required by the Company.
- 15.2 Discovery of Antiquities, Unexploded Munitions and other Discoveries on the Site**
- 15.2.1 Prior to the commencement of the Works, the Company shall, if and to the extent required by the competent authority, carry out exploratory archaeological surveys and/or excavations in coordination with the antiquity's authorities, in order to determine the existence of any Antiquities. The Company shall bear the Costs of any such surveys and/or excavation work.
- 15.2.2 All Antiquities discovered at the Site shall be the property of the Company and/or the State of Israel. The Contractor shall have neither proprietary rights nor any other rights including a lien therein. The Contractor shall take all necessary precautions to avoid damaging or moving or displacing any such object.
- 15.2.3 The Contractor agrees to abide by all instructions of the Israeli Antiquities Authority when performing the Works, including without limitation fencing off certain areas of the Site if requested by the Israeli Antiquities Authority.
- 15.2.4 Upon discovery of Antiquities or other discoveries on the Site (other than unexploded munitions as set forth below), the Contractor shall immediately inform the Company Representative and shall, in the meantime, suspend the Works in the area of the find and guard it pending instructions from the Company Representative. Where a discovery or Antiquity is movable, the Contractor shall allow the competent authority to enter the Site and effect the removal thereof. Where the discovery or Antiquity is immovable, the Contractor shall allow

the competent authority to affect any examination or investigation as required.

- 15.2.5 the Company shall bear the expenses of all permits, authorizations and supervision as may be required by the Israel Antiquities Authority for the execution of the Works.
- 15.2.6 Any dump site, munitions site (including unexploded munitions of any kind whatsoever) or any other site containing hazardous substances (including chemicals and radioactive substances) which is discovered on or under the Site, is the property of the Company and/or the State of Israel. The Contractor shall have neither proprietary rights nor any other rights including a lien therein. The Contractor shall take all necessary precautions to avoid damaging or moving or displacing such site.
- 15.2.7 Upon discovery of any unexploded munitions, the Contractor shall immediately inform the Company Representative and all other contractors and personnel that are working in the Site and its vicinity. In addition, the Contractor shall mark (by physical means on land and by digital means off-shore) the area surrounding the munitions and take all necessary precautions to guard the discovery and to protect all personnel and equipment in the vicinity of such discovery and comply with all other instructions of the Company Representative and the MOD in relation thereto.
- 15.2.8 In the event that the occurrence of one of the events contemplated by this Clause 15.1.1 has materially delayed the carrying out of the Works, the Contractor shall be obligated to carry out the Works until completion thereof within such period of time as determined by the Company Representative, and the Completion Deadline shall be correspondingly adjusted pursuant to the provisions of Clause 35. In addition, if the Contractor can demonstrate that the occurrence of such events has caused an increase in its Reasonable Costs, the Company shall compensate the Contractor for such Reasonable Costs as determined by

the Company Representative in accordance with the provisions of Clause 20 below.

15.2.9 Other than as expressly stated in this Clause the Contractor shall not be entitled to any extension of time, compensation or other relief or payments in connection with the occurrence of an event contemplated by this Clause.

### 15.3 Works Performed in the Vicinity of Infrastructure

15.3.1 Any damage caused to existing utilities and/or infrastructure or interference with their operation may result in criminal offence.

15.3.2 Any work by the Contractor near existing utility lines or facilities, such as electricity, telephone and communication, fuel, water, gas, sewage, buoys, intakes of seawater and drainage pipes ("**Infrastructure**") must be performed with utmost care, in order to ensure the integrity and functioning of the existing Infrastructure. Pipe laying, mooring, drilling, dredging, excavation and any other works near Infrastructure shall be performed in the presence of the Company Representative and of representatives on behalf the operators/owners of the Infrastructure. Ensuring the presence of such Infrastructure operators/owners' representative is the responsibility of the Contractor and the full cost of such supervision shall be borne by the Contractor.

15.3.3 Any damage caused to Infrastructure as a result of the Contractor's acts and/or omissions shall be repaired immediately upon and as instructed by Company Representative. The Contractor shall bear the sole responsibility for all Costs and for all other consequences of such damage.

15.3.4 Before starting the Works, the Contractor shall establish the exact location of the various Infrastructures, within and in the vicinity of its working area. It is hereby clarified that data regarding Infrastructure supplied by the Company or on its behalf is only indicative and that it is the sole responsibility of the Contractor to establish and verify all data regarding existing Infrastructure.



- 15.3.5 The exact location of onshore Infrastructure must be established and marked by detecting equipment, test pits etc. The test pits must be performed in the presence of the Company Representative, and in the presence of the representative appointed by the relevant owner or operator of the Infrastructure.
- 15.3.6 The exact location of offshore Infrastructure must be established and marked by detecting equipment and as made plans (if and to the extent such plans are available) in accordance with the requirements of the Infrastructure owner. Such detection and marking works must be performed in the presence of the Company Representative, and in the presence of the representative appointed by the relevant owner or operator of the Infrastructure.
- 15.3.7 The Contractor shall immediately notify the Company Representative of any deviation between the location of the infrastructure, as detected in the field, and its location as shown on as made plans. All expenses for activities in connection with locating and with securing the integrity of the Infrastructure shall be borne by the Contractor.
- 15.3.8 Obtaining of permits, coordination and supervision before and during execution of the Works near the Infrastructure, are the Contractor's responsibilities.
- 15.3.9 The Contractor shall comply with all the requirements for safe working in close proximity to existing roads, fairways, port, Security Zones and Infrastructure (subsea, aboveground and underground) and shall establish adequate emergency procedures according to the instructions of any authority and/or the Infrastructure owners/operators which shall be brought to the attention of the Company Representative by the Contractor.
- 15.3.10 In preparing the Detailed Schedule, the Contractor shall consider the existence of the Infrastructure at the Site and/or its vicinity. No action taken by the Contractor in accordance with this Clause 15 in connection

with such Infrastructure shall serve as cause for the extension of the Completion Deadline and/or for any other change in schedule.

15.3.11 All expenses required by Infrastructure owners and/or Third Parties (as mentioned in Clause 12 above) shall be borne by the Contractor.

## **16. Health, Safety, Environment and Security**

16.1 Throughout the Agreement Period, the Contractor shall bear sole responsibility for its compliance with this Clause 16, with the Health, Safety and Environment Requirements included in the Technical Volumes, the EMMP that shall be provided to it for the offshore works, all instructions of the Company Representative and all applicable Laws regarding:

16.1.1 The safety of all operations coming under the responsibility of the Contractor in accordance with the provisions of the Agreement, whether taking place at the Site or elsewhere as well as for the methods of construction of the Works.

16.1.2 The safety of all operations carried out in a surrounding of a high-pressure natural gas system, and specifically all measures and restrictions concerning the equipment used by the Contractor.

16.1.3 The environment and the protection of nature, the redevelopment and rehabilitation of the Site to its planned condition as set forth in the Technical Volumes.

16.2 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of its operations.

16.3 The Contractor shall bear sole responsibility for any damage to property, body injury and environmental damage (pollution of soil and water, etc.). The Contractor shall bear the full direct and indirect consequences and expenses (including payment of attorneys' fees and costs of litigation and investigation) resulting from his acts and/or omissions.

16.4 Where the Company Representative believes that the Works as carried out by the Contractor involve a risk of damage to any person and/or to the surrounding

environment or to any surrounding buildings and/or structures, it may order immediate suspension of the Works pursuant to Clause 19.5 and/or order an immediate change in the methods used by the Contractor in executing the Works. In such event the Contractor shall comply immediately with such orders, without entitlement to any additional costs or extension of the Completion Deadline.

- 16.5 The Contractor and all its Subcontractors shall comply with all the provision of this Clause 16 and shall indemnify and hold harmless the Company from and against any liability for damages due to the aforementioned and against all claims, demands, proceedings, damages, Costs, charges and expenses whatsoever in regard or in relation to such liability.
- 16.6 Without derogating from the Contractor's responsibility for environment and safety, where the Contractor has failed to comply with Company Safety measures, in whole or in part, the Company Representative may instruct that the Works be stopped until the non-compliance is remedied to his satisfaction. The foregoing does not derogate from any other remedy available to the Company as a result thereof.
- 16.7 Throughout the Agreement Period the Contractor shall bear sole responsibility for security, whether at the Site or at any other location where the Contractor fulfils any of its obligations pursuant to this Agreement, including at times when no Works are actually being conducted by the Contractor on Site.
- 16.8 The Contractor shall, throughout the Agreement Period or any extension determined by the Company Representative, observe the Law and all applicable regulations with regard to security, and shall execute, comply with and fulfil all of the provisions of **Annex DD2** (Security).
- 16.9 Without derogating from the foregoing, the Contractor shall abide by all of the orders, regulations, and instructions, whether written or oral, of Company Security manager or its designated representatives, the Israel Police, the Israel Navy and all other defence forces, the MOD and any other authorized authority, ministry or government office.

16.10 The Contractor shall bear the costs required in order to comply with all environmental requirements as provided for above and with the provisions of this Clause. However, the Company shall bear the costs of supervision as may be required by the Israel Nature and Parks Authority ("RATAG") for the execution of the Works.

#### **17. The Contractor as Prime Contractor**

The Contractor shall be regarded and act as a sole "Prime Contractor" and "Executor of Construction" as such terms are defined in the Safety in Works (Construction Works) Regulations, 1988 (the "**Safety Regulations**") (the "**Prime Contractor** ") with regards to all works performed at Site, whether performed by the Contractor itself or any of its Subcontractors, and all the following shall apply:

- 17.1 The Contractor shall appoint (in addition to the foreman to be appointed in accordance with the Safety Regulations) a Safety Officer (authorized as such under the Regulations of the Labour Supervision Organization (Safety Officers) 1996 that shall be present at site throughout the execution of the Works.
- 17.2 To the extent required under Law or if required by the Company Representative or any authority, different and specifically qualified Safety Officers shall be appointed for the on-shore Works and the of-shore Works.
- 17.3 The Contractor shall be responsible for the safety and hygiene of all Works performed by it and its Subcontractors at Site and for compliance of all applicable safety Laws and regulations.
- 17.4 All Subcontractors of the Contractor shall be subordinated to the Contractor and to the Safety Officer(s) appointed (offshore and onshore separately, as applicable) by the Contractor in all aspects related to safety and hygiene, coordination of Works and any other aspect required by any applicable Law and/or the instructions of the Company Representative regarding safety issues.
- 17.5 The Contractor hereby agrees and irrevocably undertakes upon itself the over-all responsibility to act and perform all the responsibilities and obligations of a Prime Contractor according to any Law (including the Safety Regulations) and taking all

necessary actions to comply with such Laws and regulations, for as long as Works are being performed at the Site.

17.6 The Contractor undertakes to notify the relevant authorities and the safety inspectors of his undertaking and nomination as a Prime Contractor and its responsibility for all safety requirements with respect to the performance of the works on the Site.

17.7 The Contractor shall cooperate with the Company including by way of execution of all documents required to comply with all applicable safety Laws and regulations as required from the party bearing the responsibility for safety and hygiene in accordance with such Laws and regulations.

## **18. Intellectual Property Rights**

18.1 The Contractor has conducted a full review and examination of all aspects of the intellectual property involved in executing the Agreement to its satisfaction, and accordingly accepts responsibility for the fact that the execution of the Works, or any part thereof, shall not involve an infringement of any Intellectual Property Rights of any third party.

18.2 The Contractor shall ensure at its own expense, that the Company shall have unlimited, irrevocable licenses to make use, without prior conditions, of any intellectual property, including know-how, related to, incorporated, and/or utilized directly in connection with the execution of the Works (including all aspects of design and engineering) and with the operation and maintenance of the System.

### **18.3 Contractor's Documents (Work Products)**

18.3.1 In accordance with the provisions contained in Israeli law relating to intellectual and/or industrial property, title to all plans, drawings, specifications, models, studies, calculations, samples and other work products produced by the Contractor or its Sub Contractors or suppliers under the Tender and/or this Agreement and/or in connection with the execution of the Works (the "**Work Products**") shall be and remain the sole and exclusive property of the Company.

- 18.3.2 The Contractor hereby conveys to the Company irrevocably and unconditionally any and all rights (if any) of the Contractor and/or of its affiliated or related entities, employees, agent, representatives and Sub Contractors, in and to the Work Products.
- 18.3.3 The Contractor shall deliver all such original Work Products to the Company upon the completion, abandonment or early termination of the Works. Copies thereof retained by the Contractor for its permanent records shall not be used by it for any purpose whatsoever without the Company's prior written consent.
- 18.3.4 The Contractor shall ensure, at its own expense, that the Company shall have unlimited, perpetual, irrevocable, transferable and royalty-free licenses (or sub-licenses) to make use, without prior conditions, of any intellectual property, related to, incorporated, and/or utilized directly in connection with the execution of the Works.

#### 18.4 **Other Contractor's Documents**

With respect to all other Contractor's Documents which are not considered as "Work Product", the Contractor shall be deemed to give the Company an irrevocable, transferable non-exclusive, royalty free license to copy, use and communicate the Contractor's Documents including making and using modifications thereof. This license shall:

- 18.4.1 Extend throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works and/or System; and
- 18.4.2 Entitle any person in proper possession of any part of the Works and/or the System to copy, use, and communicate the Contractor's Documents for the purpose of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works and/or the System; and
- 18.4.3 If the Contractor's Documents are in the form of computer programs and other software, permit their use on any computer within or without the Site.

- 18.5 The Contractor undertakes and shall be responsible for the fact that the Contractor and any copyright holder involved in the Works agrees to waive, prospectively and retroactively, as against any person or entity, any “moral right” with respect to any element of the Works and/or Work Products and/or the Contractor's Documents which shall prevent any changes or amendments of any kind or for any reason being made thereto, including but not limited to the total removal or destruction of such element, and/or agrees to waive enforcement of such right, and/or agrees to allow any changes or destruction deemed necessary by the Contractor.
- 18.6 The Contractor shall indemnify the Company against all claims of infringement of any Intellectual Property Rights in respect of Work Products, the Contractor's Documents, all construction methods, documents and information, methods and/or materials or systems used for or in connection with or for incorporation into the Works or in relation to any infringement by the Contractor of the provisions of this Clause.
- 18.7 The Company's Documents**
- 18.7.1 All the documents, plans, schedules, models, design samples, technical information or data (oral or written) furnished to the Contractor and to any Subcontractor in connection with the System and/or the Works, including, without limitation, the Technical Volumes and all other comparable material appearing in the Agreement, shall at all times be and remain the property of the Company.
- 18.7.2 All copies of such documents in written, graphic or other format shall be delivered to the Company, or destroyed, upon its reasonable request.
- 18.7.3 The Contractor and its Subcontractor/s shall use such documents solely for the purpose of performing their obligations under the Agreement and shall not use them for any other purpose without the prior written consent of the Company.
- 18.8 The provisions of this Clause 18 shall remain in force at all times, including after the termination of the Agreement.

## **19. The Company Representative**

- 19.1 The Company shall appoint the VP Engineering of the Company or any other officer of the Company as the Company Representative who shall carry out obligations and/or exercise authorities assigned to the Company in the Agreement as specified in or necessarily to be implied from the Agreement.
- 19.2 Without derogating from any other provisions of this Agreement granting authority to the Company Representative, the Company Representative's authorities shall include, inter alia, the following:
- 19.2.1 Review and approve the detailed design and engineering, which shall be prepared by the contractor pursuant to the provisions of Technical Volumes.
- 19.2.2 Monitor the implementation of the Detailed Schedule and Schematic Schedule by the Contractor.
- 19.2.3 Review and approve the Quality Assurance Manual and the Quality Plans, which shall both be prepared pursuant to the provisions of the Quality Plan and Quality Control Program included in the Technical Volumes and monitor the implementation of the quality system by the Contractor and the Subcontractors.
- 19.2.4 Review and approve the methods of construction proposed by the Contractor and identify any areas which, in his opinion, would not achieve the requisite standard or workmanship or would not meet the Detailed Schedule and Schematic schedule or would affect other contractors adversely.
- 19.2.5 Supervise the quality of the Works on Site, survey the quantities and check the progress calculations (as referred to in the Terms of Payment and the Bill of Quantities).
- 19.2.6 Provide instructions to the Contractor with regard to the frequency and content of reports and review the periodic reports issued by the Contractor in accordance with the Technical Volumes.
- 19.2.7 Provide instructions to the Contractor at Site.



- 19.2.8 Issue and agree on Change Orders and pursuant to the provisions of Clause 41 , subject to the Company's prior approval.
- 19.2.9 Settle contractual claims with the Contractor on behalf of the Company within the limits of certain authorities delegated by the Company, subject to the Company's prior approval.
- 19.2.10 Conduct any inspections and instruct the Contractor to conduct tests and oversee such tests, during the Works, all if and as the Company Representative shall deem necessary.
- 19.2.11 Coordinate the activities of the Contractor, Engineering companies, Third Party Inspection Company and the Company at the Site, without derogating from the Contractor's responsibilities and obligations as a Prime Contractor.
- 19.2.12 Recommend the issuance of a Take Over Certificate by the Company.
- 19.2.13 Provide instructions in accordance with the requirements of governmental authorities, including without limitation the MOD and the Israeli Antiquities Authority.
- 19.3 Nothing in the above authorities of the Company Representative shall be interpreted to derogate or diminish from or to replace the Contractor's obligations and responsibilities regarding the performance and quality of the Works in a timely manner according to this Agreement.
- 19.4 The Company Representative or anyone on his behalf shall have no authority to amend the Agreement and/or to relieve the Contractor of any of his obligations or responsibilities under the Agreement and under any applicable Law, and no inspection, test, review, approval or comment by the Company Representative, or absence thereof, shall in any way derogate or diminish from the obligations and responsibilities of the Contractor pursuant to the Agreement and/or any applicable Law, including, without limitation, responsibility for errors, omissions, discrepancies and non-compliance.
- 19.5 **Company Representative's Authority Regarding Emergency, Safety and Security**

19.5.1 Where, in the opinion of the Company Representative, an emergency occurs or unplanned or unexpected circumstance arises or occurs endangering the safety and/or security of persons or of the Works, the System, or any part thereof, or of adjoining property, or of the surrounding environment, the Company Representative shall have the authority, without relieving the Contractor of any of his duties and responsibilities, to instruct the Contractor to execute all such Works or to take all such actions, or to refrain from taking all such actions as may, in the opinion of the Company Representative, be necessary to eliminate or reduce the risk involved.

19.5.2 The Contractor shall forthwith comply with any such instruction of the Company Representative. The Company Representative shall determine an addition to the Agreement Price, in respect of such instruction, in accordance with Clauses 20, 35.2 and 41 (excluding to the extent of any instruction required as result of non-compliance with the Contractor's responsibility), and the Company Representative shall notify the Contractor accordingly, with a copy to the Company.

#### **19.6 Company Representative Approval**

19.6.1 Any response by the Company Representative to a Contractor's request, except as otherwise expressly specified in the Agreement, shall be given to the Contractor in writing within 28 days of receipt of such request.

19.6.2 The Company Representative must obtain the specific approval of the Company before taking any of the following actions:

19.6.2.1 Agreeing or determining an extension of time and/or additional payment.

19.6.2.2 Instructing / approving a variation, except in an emergency situation as determined by the Company Representative.

#### **19.7 Company Representative's Decisions and Instructions**

19.7.1 The Company Representative shall make his decisions in accordance with the Law and the provisions of the Agreement. In the absence of

reference, the Company Representative shall make his decision in accordance with the accepted professional principles and standards in the relevant field.

19.7.2 The Contractor shall proceed with the decisions and instructions given by the Company Representative without delay, and all such decisions and instructions given by the Company Representative shall be final and binding on the Contractor.

19.7.3 Instructions given by the Company Representative shall be in writing, except where the Company Representative considers it necessary to give any such instruction orally, in which case such oral instruction shall become binding upon provision, by the Company Representative, of written confirmation of such oral instruction within 2 working days of the date on which such instruction was given. Nevertheless, in circumstances of safety or emergency nature such oral instruction by the Company Representative shall be binding immediately and shall be followed by a writing communication after such circumstances are over.

#### 19.8 **The Company Representative's Assignee/s**

19.8.1 The Company Representative may, from time to time, assign duties and delegate authority to assistants, and/or may also revoke such assignment or delegation. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both parties.

19.8.2 The Company Representative's may appoint specific representative/s (the "**Representative's Appointee**") in writing to be responsible to the Company Representative and shall only carry out such duties and exercise such authority as may be delegated to him by the Company Representative.

19.8.3 The provisions of this Clause 19 shall apply, mutatis mutandis, to instructions issued by the Representative's Appointee or assistants appointed by the Company pursuant to the provisions of this Agreement.

## **20. Claims Procedure**

- 20.1 Within 30 days from the occurrence of an event which entitles the Contractor, in its opinion, to any alternation of the Detailed Schedule and/or any extension of the Completion Deadline and/or any additional payment under this GTC, the Contractor shall submit a written claim ("**Claim**") to the Company Representative, describing the event or circumstances giving rise to the Claim.
- 20.2 The Claim shall include full supporting particulars of the basis of the Claim and of the extension of time and/or additional payment claimed in accordance with the substantial methodology described in the Schematic Schedule for the Project. No other methodology shall be used by the Contractor, unless approved in advance and in writing by the Company.
- 20.3 If the event or circumstance giving rise to the Claim has a continuing effect the following shall apply:
- 20.3.1 this fully detailed Claim shall be considered as an interim Claim;
- 20.3.2 the Contractor shall submit to the Company Representative further interim Claims on a monthly basis, giving the accumulated delay and/or amount claimed, and such further particulars as the Company Representative may reasonably require
- 20.4 Within 60 days after receiving a Claim, the Company Representative shall respond with approval or disapproval and detailed comments. The Company Representative may also request any necessary further particulars as he may reasonably deem fit. The Company Representative may approve the Claim as is or partially or deny it. Notwithstanding the above, the Company may postpone its response to a Claim for an extension of time and/or relating to extension of time until the Works have been completed.
- 20.5 Each Payment Certificate shall include such additional payment for any Claim which has been duly substantiated by the Contractor and approved by the Company.
- 20.6 If the Contractor fails to timely submit a Claim or if the Claim is denied, the Completion Deadline shall not be extended, the Contractor shall not be entitled to

additional payment and the Company shall be discharged from all liability in connection with the Claim.

- 20.7 The Contractor shall keep such contemporary records as may be necessary to substantiate any Claim, either on the Site or at another location acceptable to the Company Representative. Without admitting the Company's liability, the Company Representative may, after receiving any Claim under this Clause 20, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Company Representative is authorized to inspect all these records, and the Contractor shall, if instructed, submit copies of any such records to the Company Representative.

## **21. Approval Procedures**

### **21.1 The Contractor's Application for the Company's Approval**

- 21.1.1 Whenever the Company's approval is required under this GTC, such approval shall be in writing and given in advance, unless expressly stipulated otherwise for a specific matter.
- 21.1.2 The Contractor shall provide Contractor's Documents including all documents, procedures, detailed requests, drawings, plans, specifications, deadlines, protocols, programs as well as any other document requiring approval pursuant to the provisions of this GTC, to be approved by the Company Representative, all as detailed in the Technical Volumes.
- 21.1.3 Unless stated otherwise in the GTC, any document requiring the Company Representative's approval shall be submitted to him at least 21 days in advance.

### **21.2 The Company Representative's Decision**

- 21.2.1 Where ambiguities, shortcomings, contradictions, omissions, lack of details, errors or inaccuracies are discovered in the document that was furnished by the Contractor, the Company Representative may request an explanation and any additional information concerning the document (including but not limited to data, calculations, prices, supplements and

any other data it deems reasonably proper) from the Contractor. The Contractor shall furnish, at its sole expense, the requested information on the date stipulated in such request.

21.2.2 The sending of an explanation and/or amendment request as stated above by the Company Representative, shall not grant the Contractor any right or grounds to extend the Detailed Schedule or any milestones set for the fulfilment of its obligations pursuant to this Agreement.

21.2.3 No response by the Company Representative within the period of 28 days shall be considered as a rejection of the request.

21.2.4 The Company Representative may approve or reject any document or Claim submitted by the Contractor, provided, however, that such approval or rejection shall be based on reasonable professional grounds. If an amendment is requested, the Contractor shall submit an amended document to the Company Representative in accordance with the amendment request and the above procedure shall apply with respect to the amended document submitted for its approval.

21.2.5 The Contractor shall not change and shall ensure that no changes are made to any document approved by the Company Representative as stated above, unless it obtains the Company Representative's approval to do so.

21.3 An approval granted by the Company Representative or on his behalf in accordance with this Clause 21 shall not derogate from the Contractor's obligations, responsibilities and liabilities imposed upon him in this GTC and/or the Agreement and/or by applicable Law.

## **22. Payment to the Contractor**

### **22.1 Determination**

22.1.1 The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of all of the rates and prices included in the Bill of Quantities, all of which shall, except as otherwise expressly set

forth in the Agreement, be deemed full, final and sufficient compensation for fulfilment of all of the Contractor's obligations under the Agreement.

- 22.1.2 The Contractor shall pay all taxes, duties and fees (whether government or local) which will be imposed from time to time in connection with the Works, and the Agreement Price shall not be adjusted as a result of the imposition of any taxes or other compulsory payments of any nature whatsoever upon the Contractor.
- 22.1.3 Without derogating from the foregoing, in its Bid the Contractor shall be deemed to have considered the following:
- 22.1.3.1 All conditions and circumstances affecting the Total Lump Sum Proposal, including taxes, duties, etc. (other than VAT in the State of Israel that shall be payable by the Company to the Contractor).
  - 22.1.3.2 The necessity of carrying out the Works precisely as described in the Agreement.
  - 22.1.3.3 The general and, if any, special conditions and circumstances of the Site.
  - 22.1.3.4 The general labour and political situation at the Site area and in Israel.
  - 22.1.3.5 All compensation and royalties due in respect of the Works and/or the acquisition of materials.
  - 22.1.3.6 Any increase or decrease in costs, taxes and any other payment resulting from a change in the Law, including a judicial or other Competent Authority decision which relates to the Contractor's obligations.
- 22.1.4 The Contractor acknowledges and agrees that changes in planning (other than changes in the Basis of Design (BOD)) and/or in unit quantities, shall not serve as cause for any change in unit prices, subject to Clause 41.1.

## 22.2 Terms of Payment

- 22.2.1 All payments made by the Company to the Contractor shall be made in USD, pursuant to the provisions of the Terms of Payment (**Annex CC1**), Measurements of Quantities for Payment Purposes (**Annex CC2**) and the Bill of Quantities (**Annex CC3**).
- 22.2.2 The Agreement Price payable to the Contractor shall be the Total Lump Sum Proposal, subject to adjustments to be made only due to the following circumstances:
- 22.2.2.1 Increase or decrease in unit quantities for items that are quantified in the BOQ; provided that any increase in quantities shall be submitted and justified by the Contractor and approved by the Company.
- 22.2.2.2 Change Orders approved by the Company.
- 22.2.3 All in accordance with the Terms of Payment (**Annex CC1**). Each payment shall be made to the Contractor subject to the Contractor having presented invoices to the Company in accordance with the Terms of Payment (**Annex CC1**) and having supplied it with all the documents connected with the Works pursuant to the Agreement, including all approvals as required under law from the tax and VAT authorities and any other document required, as well as guaranties, sureties and insurance certificates (including of Sub-Contractors) as required under the Agreement.
- 22.2.4 The failure to provide all of the necessary documents may result in a delay of payment, for which the Contractor shall be solely responsible and shall have no claim against the Company.
- 22.2.5 No linkage differential and/or interest of any kind shall be paid unless provided to the contrary in the Agreement.
- 22.2.6 The Company may deduct from any invoice any amount that is due to the Company from the Contractor up to the time of payment and/or that the Company is entitled to set off according to Clause 27.



- 22.2.7 In the event that the Company determines that a payment made to the Contractor pursuant to the Agreement was made in error or that the Company is entitled to set off any amount from the payment pursuant to the Agreement and/or by law and/or due to a pending demand or claim against the Company in connection with or arising out of an act and/or omission for which the Contractor is responsible under the Agreement, the Company may delay and/or set off the said amount from any such payment due to the Contractor, without derogating from any other relief to which the Company is entitled pursuant to the Agreement or by Law.
- 22.2.8 It is clarified that the approval of any payment, including the final payment, does not constitute the Company's or the Company Representative's approval as to the quality of the work performed or the quality of the materials used.

### 22.3 Application for Payment

- 22.3.1 The Contractor shall submit, no later than the 5th of the month following the completion of any Milestone(s), for the Company Representative's approval, its application for payment which shall include: **(a)** an Interim Pro-forma Invoice for the amount equal to the percentage due for the completion of the relevant Milestone(s) (as detailed in **Annex CC1**) multiplied by the Total Lump Sum Proposal; **(b)** a detailed statement of the quantities executed within the scope of the relevant Milestone, together with supporting documents; and **(c)** the work progress report in accordance with the Technical Volumes [Progress Reports].
- 22.3.2 Should there be a change in unit quantities for items that are quantified in the BOQ (provided that any increase in quantities shall be submitted and justified by the Contractor and approved by the Company) or should a Change Order be issued by the Company to the Contractor, then the Interim Pro-forma Invoice shall also present the adjustment of the Agreement Price due to the change in quantities or the Change Order (i.e. the applicable increase or decrease in the Total Lump Sum Proposal) to be

supported by all relevant documents and calculations, as provided for in the Terms of Payment (**Annex CC1**).

- 22.3.3 Should the adjustment of the Agreement Price, as presented by the Contractor in any Interim Pro-forma Invoice, be up to 2,000,000 USD, then it shall be reviewed and approved or disputed by the Company only as part of its review of the pro-forma invoice submitted for the final payment (as provided for in Clause 24 below) and it shall not affect the Agreement Price according to which interim payments are made to the Contractor upon completion of each Milestone.
- 22.3.4 Should the adjustment of the Agreement Price, as presented by the Contractor in any Interim Pro-forma Invoice, be 2,000,000 USD or more, then it shall be reviewed by the Company as part of its review of that Interim Pro-forma Invoice, and (if approved) shall affect a change in the Agreement Price according to which interim payments are made to the Contractor upon completion of each milestone (including a retroactive adjustment of interim payments that were already made).
- 22.3.5 The Interim Pro-forma Invoice shall include the following items, as applicable, which shall be expressed in USD, in the following sequence:
- 22.3.5.1 The amount due for the completion of the relevant Milestone(s);
- 22.3.5.2 Any amounts to be deducted for the repayment of the Advance Payment;
- 22.3.5.3 Any amounts to be deducted for the Contractor's participation in insurance fees pursuant to Clause 48 below, calculated **by applying the percentage of participation fee (2%) to the total of the above amounts**;
- 22.3.5.4 Any other additions or deductions which may have become due under the Agreement, including the deduction of the amounts certified in all previous approvals of payment signed by the Company.

22.3.6 The Contractor shall submit an estimate report ("**Estimate Report**") of the payments which he expects to become due during each quarterly period. The first Estimate Report shall be submitted within 21 days after the Commencing Work Order and shall be submitted at quarterly intervals, until the Take Over Certificate has been issued by the Company for the Works.

#### 22.4 **Measurement and Quantities**

22.4.1 Should there be a change in unit quantities for items that are quantified in the BOQ (provided that any increase in quantities shall be submitted and justified by the Contractor and approved by the Company) or should a Change Order be issued by the Company to the Contractor, the Works shall be measured and valued for payment in accordance with the Bill of Quantities (**Annex CC3**) and the rules set forth in the Measurements of Quantities for Payment Purposes (**Annex CC2**).

22.4.2 The Company shall have the right to change the quantities stated in the Bill of Quantities as it shall deem fit at its sole discretion, subject to the provisions of the Agreement.

22.4.3 Whenever the Company Representative requires any part of the Works to be re-measured, reasonable notice shall be given to the Contractor, who shall be present in making the re-measurement by the Company Representative. If the Contractor fails to attend, the measurement made by (or on behalf of) the Company Representative shall be accepted as accurate.

22.4.4 Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and shall not be paid for separately by the Company.

22.4.5 A new rate or price shall be appropriate for an item of work where all the following conditions apply:

22.4.5.1 The Works were ordered under a Change Order in Clause 41;

- 22.4.5.2 No rate or price is specified in the Bill of Quantities for such item; and
- 22.4.5.3 No rate or price for similar item, which has similar characters or was executed under similar conditions, is applicable, as shall be determined by the Company Representative.
- 22.4.6 A new rate or price shall be established by the Company Representative, subject to Sub-Clause 22.4.5 in the following sequence of criteria:
- 22.4.6.1 Any relevant rates or prices in the Bill of Quantities, with reasonable adjustments to take into account the matters described.
- 22.4.6.2 Derived from the latest addition of "Dekel's building cost manual" as published in Israel at the Signature Date of the Agreement, including "prime contractor's percentages" (prime contractor's profit, administrative costs and general site expenses), with deduction of 15%, plus linkage (if applicable) according to the linkage provisions detailed in the Terms of Payment (**Annex CC1**). To remove doubt, such "prime contractor's percentages" shall be calculated according to "The General Instructions to Determine the Prime Contractor's Percentages" as stated in the "Dekel's building cost manual".
- 22.4.6.3 Derived from the Reasonable Cost of executing the same item of work, as shall be approved by the Company Representative, considering any relevant matters such as the corresponding value of similar works or obligations and the "contractor's profit" (covering inter alia its overhead costs) at the rate of 12%. For that purpose, when applying for payment, the Contractor shall submit to the Company Representative, upon demand, three priced

statements/quotations of the relevant works or obligation  
(or less if determined so by the Company Representative).

22.4.7 Notwithstanding the aforesaid provisions, a new rate may also be derived from integration of the all or any of the alternatives criteria in Sub-clauses 22.4.6.1- 22.4.6.3 above at the sole discretion of the Company Representative.

22.4.8 For the avoidance of doubt, in no other event whatsoever shall any price stipulated in the Bill of Quantities be reconsidered and/or changed and the Contractor shall have no claim whatsoever against the Company regarding this matter.

### **23. Bonus for Early Completion**

23.1 The Contractor shall be entitled to a bonus payment should it complete all the Works (i.e. issuance of the takeover certificate and submission of all required documents, including (but not limited to) as built documents, signed by all relevant parties (including the TPI) before July 10, 2022.

23.2 The amount of the bonus shall be equal to 25,000 USD for every day of early completion before July 10, 2022 and up to 1,000,000 USD for 40 days or more of early completion.

23.3 For the removal of doubt, it is clarified that the bonus amount shall be at the maximum 1,000,000 USD, for completion on or before May 31, 2022.

23.4 In determining the Contractor's right to receive the bonus the Company shall not take into consideration any cause for delay (including Force Majeure, delays caused by the Company itself or any third parties as well as postponement in the issuance of the Commencing Work Orders, lack of permits and any other cause whatsoever).

### **24. Final Payment**

#### **24.1 Final Payment**

24.1.1 Within 60 days of the receipt of the Take Over Certificate without any Punch List, the Contractor shall submit to the Company Representative an application for the final payment, which shall include (a) the amount

equal to the percentage due for the completion of the relevant Milestone (“Issuance of taking over certificate + submission of as built documents”);  
(b) any amount due to the Contractor as a result of change(s) in unit quantities for items that are quantified in the BOQ or of Change Orders issued by the Company that (in accordance with Clause 22.3.3 above) were not paid to the Contractor. This application shall be accompanied with all documentation reasonably necessary to calculate the final payment to be made to the Contractor, along with a Release Form in the form of **Annex AA3**, duly executed by the Contractor regarding the Works with respect of which such Take Over Certificate was issued and any other documentation as may be reasonably requested by the Company Representative.

- 24.1.2 In the event that the Company does not dispute the contents of said application, the Company shall confirm in writing to the Contractor within 60 days from receiving the application:
- 24.1.2.1 The final amount which, in the opinion of the Company Representative, is due to the Contractor; and
- 24.1.2.2 The amount for payment after set off of all amounts already paid to the Contractor and all amounts which the Company is entitled to set off, withhold and/or deduct, pursuant to the Agreement.
- 24.1.3 In case of dispute by the Company as to the amount of the final payment submitted by the Contractor, the Company shall pay the Contractor the undisputed part of such payment only subject to receiving a Release Form pertaining to such part of the payment which is not disputed (in accordance with Sub-Clause 24.1.2) above and subject to the provisions of the Terms of Payment (**Annex CC1**)), and the remainder shall be paid after the settlement of the dispute.
- 24.1.4 Where the Contractor fails to apply for final payment within the time periods set in the Terms of Payment, or to submit any of the documents

listed in Sub-Clause 24.1.1 above, the Company shall inform the Contractor in writing of the amount it deems correct which shall be binding upon the Contractor.

24.1.5 The Contractor shall not be entitled to any compensation or reimbursement from the Company, including of interests and linkage, where the Company withheld any payment, including the final payment or any part thereof, caused by a failure of the Contractor to provide the Company, in a timely manner, the documents listed above for payment upon its completion according to Sub-Clause 24.1.1 above and subject to the provisions of the Term of Payment (**Annex CC1**). The above shall also apply to circumstances of a dispute, if one exists, between the parties regarding the extent of the Works performed by the Contractor and the amount of such payment or final payment.

#### 24.2 **Full and Final Remedy**

24.2.1 Claims that shall not be made in accordance with Clause 20 shall be null and void.

24.2.2 Except as set forth in Clause 20 or in Clauses 22 and 11.5 the Contractor shall not be entitled to any relief, compensation, or extension of deadlines from the Company in connection with the Works.

### 25. **Tax Provisions**

#### 25.1 **Agreement Price Inclusive of Taxes**

25.1.1 The Contractor shall bear and be solely responsible for the payment of all taxes, duties, customs and other charges (whether government or local) ("**Taxes**") which shall from time to time be imposed on all equipment, plant, machinery, materials or other things purchased, acquired or imported for or in connection with the performance of the Contractor's obligations under the Agreement and on the services performed under the Agreement.

- 25.1.2 The Agreement Price shall be deemed to include all Taxes as may be applicable from time to time during the performance of the Agreement, as follows:
- 25.1.2.1 any Taxes imposed outside the State of Israel on the production, manufacture, sale, and transport of the Contractor's Equipment, materials, and supplies to be used or furnished under the Agreement and on the services performed under the Agreement.
  - 25.1.2.2 any Taxes which may be imposed in accordance with the laws and regulations of the State of Israel on the production, manufacture, sale, and transport of the Contractor's Equipment, materials, and supplies to be used or furnished under the Agreement and on the services (including labour and related social benefits, etc.) performed under the Agreement.
  - 25.1.2.3 All Taxes which may be imposed in accordance with the laws and regulations of the State of Israel (including municipal law, property holders taxes ("**Arnona**") etc.) that relate to Contractor's organizational areas (whether inside or outside the Site) and which, by their nature, are imposed on a holder or a user of premises.
- 25.1.3 The Contractor's staff and labour shall be liable to pay personal income taxes in respect of their salaries and wages as are chargeable under all applicable Laws, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on it by Law.
- 25.1.4 Nothing in the Agreement shall relieve the Contractor from his responsibility to pay any tax that may be levied in the State of Israel on profits made by him in respect of the Agreement.
- 25.1.5 The Company shall deduct Israeli Income Tax at source from all sums stated on the Contractor's invoices, and transfer such sums to the Income



Tax Authorities, unless the Contractor submits to the Company an official exemption certificate from the Israeli Income Tax Authorities.

25.1.6 The Contractor shall, as a condition precedent to the entry into force of the Agreement and all payments there under, furnish to the Company the following:

25.1.6.1 a certificate, or a copy of a certificate, and keep such certificate in force, from an authorized officer or an auditor or an accountant or a tax adviser, required by Law for payment by a public entity to the Contractor; and,

25.1.6.2 in the event that the Contractor is an Israeli entity, all necessary documents required by Law for payment by a public entity to the Contractor, including, but not limited to, a certificate attesting that the Contractor keeps the account-books and records required to be kept under the Law.

## 25.2 Value Added Tax

25.2.1 The sums set forth in the Agreement do not include Israeli Value Added Tax (“VAT”), except where expressly stated otherwise.

25.2.2 VAT shall be added to all payments made between the parties pursuant to the Agreement as required under Law.

25.2.3 Submitting invoices and payment of VAT shall be done in accordance with the provisions of the Agreement and any Law. The Company shall pay the Contractor the Value Added Tax in respect of a given invoice on the 15th of the month following the month that such an invoice was paid and in return for a tax invoice.

25.2.4 Immediately upon the VAT obligation becoming due and payable pursuant to the Law, the Contractor shall submit to the Company a valid tax invoice (Israeli "Heshbonit Mas") for all Works for which VAT is due and payable, together with all details and information required in order to substantiate the amount of VAT set forth in the invoice.

25.2.5 The Contractor shall comply with all instructions of the Company with regard to such VAT payment, including, without limitation, any instruction to file an appeal, with the relevant authorities, regarding the amount of such VAT payment, or the time of its required payment.

25.2.6 Nothing in this Clause shall derogate from the obligation of the Contractor to duly invoice and pay any VAT to the relevant tax authorities.

### 25.3 **Customs Clearance**

25.3.1 It is the sole responsibility of the Contractor to verify in advance all requirements of the Customs Authorities of the State of Israel for the purpose of execution of its obligations under the Agreement and to abide thereby.

25.3.2 No claim for additional Costs, or extension of deadlines shall be allowed and justified as a result of failure by the Contractor to take into account the conditions under which any and all facilities, equipment, materials, etc., can be imported into the State of Israel, including payments, guarantees, taxes, charges, levies, harbour charges or any other payments, documents or requirements due to the State of Israel, and various competent authorities therein, including without limitation the Israeli Ports.

### 26. **Linkage**

Payments made to the Contractor shall **not** be linked to any currency or basket of indices.

### 27. **Offset and Lien**

27.1 The Company shall be entitled to delay, encumber and/or offset from any monies owed by it to the Contractor under the Agreement, any sum, payment or debt owed by the Contractor to the Company pursuant to the Agreement or law or for any other cause.

27.2 The Company shall be entitled to encumber any document and/or materials and/or equipment of the Contractor following the Contractor's failure to fulfill any of its obligations under this Agreement or pursuant to the provisions of the Law.

27.3 The Contractor shall not be entitled to offset any sum, payment or debt owed by it to the Company from any sum, payment or debt owed to it by the Company under the Agreement or otherwise and shall not have the right to encumber any document and/or materials and/or equipment of the Company.

## **28. The Advance Payment and Advance Payment Guarantee**

### **28.1 The Advance Payment**

28.1.1 The Contractor shall be entitled to receive, following the issuance of a Commencing Work Order, an advance payment in amount equal to up to 10% of the Total Lump Sum Proposal (without adjustments or linkage) (the "**Advance Payment**") against an Advance Payment Guarantee which will be provided by the Contractor to the Company in accordance with the provisions of Clause 28.3 hereunder.

28.1.2 The Advance Payment will be paid to it within 60 days as of the submission of a tax invoice in accordance with the Terms of Payment (**Annex CC1**), provided that the Contractor has provided to the Company all documents specified in Clause 6.2.2 above and an Advance Payment Guarantee.

### **28.2 Repayment of Advance Payment**

28.2.1 The Advance Payment shall be repaid by the Contractor to the Company by deducting an amount equal to the percentage of the Advance Payment relative to the Agreement Price from each payment made to the Contractor hereunder.

28.2.2 Deductions shall commence with the first payment (after the Advance Payment) until such time as the Advance Payment has been repaid in full.

### **28.3 The Advance Payment Guarantee**

28.3.1 Prior to, and as a precondition to receiving an Advance Payment, the Contractor shall provide the Company with an irrevocable, independent,

autonomous and unconditional on demand bank guarantee, in an amount equal to the Advance Payment (including VAT) issued by an Approved Financial Entity (the "**Advance Payment Guarantee**").

- 28.3.2 The Advance Payment Guarantee shall be in the form attached hereto as **Annex AA1**.
- 28.3.3 The Advance Payment Guarantee shall initially be in effect for 18 months, and if requested by the Company, shall be extended from time to time, by such periods as the Company shall request. The Contractor shall provide the Company with written evidence of such extension(s) at least 21 days prior to the expiry date and shall bear all costs associated with the extension of the validity of the Advance Payment Guarantee. Should the Contractor not provide with written evidence of such extension to the Advance Payment Guarantee, then the Company may drawdown the Advance Payment Guarantee, in whole or in part, without prior notice.
- 28.3.4 The Advance Payment Guarantee shall be reduced in two steps: 50% upon repayment of 50% of the Advance Payment and 100% upon full repayment of the Advance Payment.
- 28.3.5 However, if the Advance Payment has not been repaid in full (either due to the fact that Agreement Price has not been executed in full or for any other reason), the remaining Advance Payment shall be repaid either by setoff from any payment due to the Contractor or by drawdown from the remaining Advance Payment Guarantee (at the Company's choice).
- 28.3.6 Without derogating from any other remedy pursuant to the Agreement or pursuant to any Law, where the Contractor by act or omission breaches any provision of the Agreement, which has not been remedied by the Contractor within 7 days of receipt from the Company of written notice specifying such breach, the Company may, after at least 7 days as of providing prior written notice to that effect to the Contractor, draw down on the Advance Payment Guarantee, in whole or in part, without

derogating of any other applicable remedy the Company shall be entitled to under the Agreement and/or under Law.

## **29. Performance Guarantee**

### **29.1 Performance Guarantee**

29.1.1 Upon its receipt of the Company's Commencing Work Order for engineering, the Contractor shall provide the Company with a performance guarantee, in the form of an independent, autonomous and unconditional on demand bank guarantee as set forth in **Annex AA2** issued by an Approved Financial Entity, in an amount equal to 10% of the Total Lump Sum Proposal (including VAT) (the "**Performance Guarantee**").

29.1.2 The Company may demand an adjustment of the amount of the Performance Guarantee due to a change in Agreement Price. Upon such request, the Contractor shall provide the Company with a new Performance Guarantee reflecting the adjusted sum within 7 days as of the demand of the Company and shall bear all costs associated with the issuance of such new Performance Guarantee.

### **29.2 Draw Down and Forfeiture of Guarantees**

29.2.1 Without derogating from any other remedy pursuant to the Agreement or pursuant to any Law, where the Contractor, by act or omission breaches any provision the Agreement, which has not been remedied by the Contractor within 7 days of the receipt from the Company of written notice specifying such breach, the Company may, after at least 7 days as of providing prior written notice to that effect to the Contractor, forfeit or draw down on each of the Guarantees submitted to it, including the Advance Payment Guarantee, in whole or in part.

29.2.2 Nothing herein stated shall derogate from or prejudice the Company's right to any other remedy which may be available to it under the Agreement and/or Law, including, without limitation, to demand monetary compensation from the Contractor and/or enforce any other

security given under the Agreement and/or set off the sum of the compensation from any payment that the Company pays the Contractor in the framework of the Agreement, at the Company's sole discretion. It is further clarified that any such forfeiture and/or draw down shall not derogate from the Company's right to terminate the Agreement.

29.2.3 In the event of forfeiture and/or draw down, the Contractor shall ensure to restore, forthwith, the guarantee amount as stated above, by issuing the Company with new guarantee/s in the same form and amount (or supplementary guarantee/s to the same amount withdrawn by the Company), and under same conditions of the original guarantee, at the Contractor's sole expense

29.2.4 Without derogating from any other remedy pursuant to the Agreement or pursuant to any Law, the liquidated damages provided for in Clause 8.5.5 may be collected by way of draw down the Performance Guarantee and/or the Advance Payment Guarantee and/or by way of setoff from any payment due to the Contractor.

### 29.3 **Deduction of the Performance Guarantee Amount Upon Issuance of a Take Over Certificate**

Upon the issuance by the Company of a Take Over Certificate without any Punch List, the amount of the applicable Performance Guarantee shall be reduced by an amount equal to 50% of its sum ("**Reduced Performance Guarantee**").

### 29.4 **Validity**

29.4.1 The Performance Guarantee shall be valid until the issuance of a Take Over Certificate without any Punch List, and thereafter shall be reduced, as provided for above.

29.4.2 The Reduced Performance Guarantee shall be valid until 60 days after the end of the Defect Liability Period, at which time the Company shall return the Reduced Performance Guarantee to the Contractor.

29.5 In the event that the validity of the Performance Guarantee or the Reduced Performance Guarantee is about to expire before the expiry date stipulated

above, the Contractor shall supply the Company with written evidence of the extension of such guarantee, at least 21 days prior to its expiry date, or else the Company may demand the payment of the guaranteed amount by way of drawdown of the Performance Guarantee or the Reduced Performance Guarantee, in whole or in part, without any additional notice.

#### 29.6 **General Compliance**

29.6.1 All costs in connection with the compliance with this Clause shall be solely on the expense of the Contractor.

29.6.2 The Contractor shall ensure that all the guarantees are in the required amounts and currencies and valid and enforceable in accordance with the provisions of the Agreement.

### **30. Company Materials**

30.1 The Company shall supply to the Contractor all pipes (42 Km of 36" pipes) and approximately 2Km of 56" pipe-casings, as shall be required for the execution of the Project ("**Company Materials**"). The Company shall provide all of the Company Materials in a timely manner, so as to make possible the smooth progress of the Works.

30.2 If according to the Contractor's design (as approved by the Company) the diameter of the pipe casings required shall be wider than 56", then the Contractor shall be responsible to order and supply (at the Company's cost) the required casings, without causing any delay to the Project. It is the responsibility of the Contractor to ensure that a final decision is made on this matter and that (if necessary) an order for the pipe casings is made by it (after approval by the Company) within 90 days as of the issuance of the commencing work order for engineering.

30.3 The Contractor shall be responsible (at its own cost) for packing, loading, transporting, receiving, unloading, storing and protecting all materials to be used by it and/or on its behalf in connection with the Works, including, without limitation, the Company Materials.

- 30.4 The Contractor shall apply, in writing, to the Company Representative for permission to receive and be responsible for any Company Materials.
- 30.5 The Company Materials shall be collected and loaded by the Contractor at its expense and responsibility from Ashdod port or Haifa port (at the Company's choice). Notwithstanding the above, the Company may instruct the Contractor to collect the pipes from a Greek or Cypriot port (at the Company's choice) . Should the Company instruct so, the parties shall negotiate the change in price due to the change in the Contractor's cost.
- 30.6 The takeover of the Company Materials for incorporation into the System shall be done in accordance with a hand over procedure to be mutually agreed upon between the parties following the signature date within the guidelines set forth in this Clause 30 and in the Technical Volumes, at the cost of the Contractor.
- 30.7 Prior to loading of the Company Materials onto the Contractors' transportation, the Contractor shall be responsible for conducting a visual inspection necessary to ensure that such Company Materials are in good working order, without defects and imperfections, and are suitable for incorporation into the System as contemplated by the provisions of the Technical Volumes.
- 30.8 Immediately upon successful completion of visual inspection as contemplated in Sub-Clause 30.7 above, and prior to loading of the Company Materials onto the Contractors' transportation, the Contractor shall execute the delivery note to the Company Representative for such Company Materials ("Materials Takeover"). Upon the execution of the delivery note by the Contractor or in the event that the Contractor has failed to execute such delivery note although such Company Materials are in its possession, the Contractor shall be deemed to have taken over the Company Materials and to have assumed the sole and exclusive responsibility for any risk and liability with respect of such Company Materials.
- 30.9 The burden of proof to demonstrate that any Defect in the Company Materials is a result of, or arises from, the condition of such materials prior to their take over by the Contractor, shall rest solely upon the Contractor. Where such proof is not definitively provided by the Contractor, the risk and liability with regard to Defects



in the Company Materials or in any part of the System incorporating such Company Materials shall rest solely with the Contractor and all the provisions of the Agreement with regard to Contractor's risk and liability shall apply to such Defects.

30.10 Upon completion of the Works the Contractor shall submit to the Company a report detailing: **(a)** all Company Materials that were taken over by it; **(b)** any other materials that were paid for by the Company; **(c)** the materials that were used by it for the execution of the Works; and **(d)** the balance of material that were taken over by it and/or paid for by the Company and was not used.

30.11 Such balance shall be returned by the Contractor, at its own expense, according to CIF Incoterms 2010, to Ashdod port or Haifa port (at Company's choice) upon prior coordination with the Company and if not done so within 30 days as of the Company's demand, then the value of such balance, as calculated by the Company, may be deducted from any amount due to the Contractor. The Company may also instruct the Contractor to submit such report from time to time during the execution of the Works.

30.12 The Company Materials shall remain at all times property of The Company (including after being takeover by the Contractor) and the Contractor shall not have any right (including right of lien) over such materials.

### **31. Inspection and Testing during the Works**

31.1 The Contractor, at its sole expense, shall hire and employ an independent Third-Party Inspection Company ("TPI") and an independent Marine Warranty Surveyor for the entire Agreement Period.

31.2 The TPI Company shall fully review and witness all documents and activities regarding the Works for certification, monitoring and verification services, as per DNVGL-ST-F101 and DNVGL-SE-0475. Such services shall refer also to the manufacture of all materials, valves, structures, manifolds and all other items to be supplied by the Contractor (including manufacturers' plants).

31.3 Throughout the execution of the Works offshore the Contractor shall provide accommodation and transport for minimum 2 representatives of Company on any

vessel involved in the execution of the Works, in order to enable the Company inspection of activities. For vessels demobilizing from non-Israeli and/or Cyprus port, transportation will be provided by a crew vessel from an Israeli port at Contractor's expense.

31.4 The Company Representatives and the TPI shall be entitled to inspect and examine, throughout the Agreement Period, all matters which relate to the Works, including but not limited to all tests of the System and workmanship and check the quality and progress of the Works, including all equipment, personnel, materials, etc.

31.5 The Contractor, at its sole expense, shall perform, throughout the progress of the Works, such tests and inspections of the Works, as are set forth in the Technical Volumes and/or as set forth in any specific instructions of the Company Representative and/or the TPI to that effect.

31.6 The Contractor shall ensure that such tests are conducted in the presence of the Company Representative and the TPI, as applicable and as provided for in Clause 31.2 above. The Company Representative shall coordinate with the Contractor and the TPI the dates and times for such tests. No tests shall be conducted without the presence of the Company Representative or the TPI or a signed and agreed ITP. For tests and inspection executed outside of Israel the contractor will provide a 10-working day notification in advance. The dates for testing or re-testing shall not change the Completion Deadline.

31.7 Upon the successful completion of the Works and of the Completion Tests the TPI shall issue to the Company a Certificate of Conformity, as provided for under DNVGL-ST-F101 and DNVGL-SE-0475.

**31.8 Covering up the Works**

No part of the Works shall be covered up and/or installed subsea and/or incorporated into the System and/or put out of view prior to the Contractor having obtained the written consent of the Company Representative. The Contractor shall give due notice to the Company Representative so that full opportunity to examine, measure and test any of the Works is given to the

Company Representative and the TPI. The Company Representative and the TPI shall, without unreasonable delay, examine, measure or test any part of the Works or notify the Contractor and the Company that it does not consider examination necessary. Any costs related to examinations, measurements or tests shall be borne by the Contractor.

### **31.9 Uncovering the Works**

31.9.1 If instructed so by the Company Representative, the Contractor shall expose any part of the Works, or make openings in or through the same.

31.9.2 The Contractor shall reinstate and make good such parts to the Company Representative's satisfaction. Should the Works be found to be defective then all costs, including all remedial costs, of such tests and uncovering, re-covering and reinstatement shall be borne by the Contractor.

### **31.10 Facilities and Materials for Testing**

31.10.1 Where the Agreement provides for tests either on Site or on Contractor's premises or any Subcontractors' premises, the Contractor shall provide all necessary assistance, labour, material, electricity, consumable, facilities, laboratory services and instruments as may be necessary to carry out the test efficiently. Such costs shall be borne solely by the Contractor.

31.10.2 Where the tests are being conducted at premises other than those of the Contractor, then the Contractor shall make the necessary arrangements and obtain the necessary permission for the Company Representative or the TPI to carry out such inspection, examination or test.

31.10.3 All samples shall be supplied by the Contractor at his own cost, whenever such supplies are required, intended by or provided for in the Agreement.

### **31.11 Certificate of Testing**

When a specific section has successfully passed the tests referred to in this Clause 31 (and which are more detailed in the Technical Volumes), the Company Representative may furnish to the Contractor certificates confirming the same, without derogating from the provisions of Clauses 39 and 16 and the Contractor's liabilities thereof.

### 31.12 Rejection

- 31.12.1 If, as a result of the inspection, examination or test referred to in this Clause 31, the Company Representative decides that any part of the Works is defective or otherwise not in accordance with the Agreement, the Company Representative may reject such part of the Works and shall notify the Contractor immediately.
- 31.12.2 Such notice must stipulate, in writing, the Company Representative's reasons for the rejection.
- 31.12.3 The Company's Representative, at its sole discretion, may decide not to reject Works despite of minor Defects which, in its sole discretion, do not affect the commercial operation of the System or the safety and security thereof, and do not prevent the receipt of all approvals and permits required under any applicable Law, without derogating of the Contractor's obligation to repair such minor Defects or of the provisions of Clause 39 below; provided, however, that where such minor Defects are not repaired by the Contractor pursuant to its obligation to do so, the Company may, inter alia, deduct the cost of repairing such minor Defects from the Agreement Price as set forth in Clause 27.
- 31.12.4 The Contractor shall, with all speed, repair any Defects and ensure that any rejected Works fully comply with the Agreement requirements. The Company Representative shall be entitled to require such Works to be retested and the tests shall be repeated under the same terms and conditions as set forth in this Clause 31 and all costs, including those of the Company which are incurred thereby shall be borne solely by the Contractor.
- 31.12.5 For the removal of doubt, Taking Over in accordance with Clause 39, shall not occur, until the Defects, including those referred to in Sub-Clause 31.12.3, are repaired by the Contractor.

## **32. Suspension**

### **32.1 Order to Suspend**

32.1.1 Without derogating from the Company's right pursuant to Clause 33.7, hereof, the Company may suspend the onshore Works and/or the offshore Works, by giving 14 days advance notice. The Contractor shall cease all work on the suspended part of Works, but shall continue to execute the unsuspended part of the Works.

32.1.2 Suspension shall not limit or release the Contractor from its responsibilities pursuant to the Agreement including, without limitation, the obligation to properly protect and secure such suspended Works and to complete such suspended Works upon resumption in accordance to this GTC.

### **32.2 Extension of Schedule and Reasonable Cost Pursuant to Suspension**

32.2.1 If any part of the Works is suspended, as contemplated in Clause 32.1 above, the Company shall issue a Change Order making any required adjustments to scheduled milestones, Completion Deadline and Agreement Price. Adjustments to Agreement Price shall reflect only the additional Reasonable Costs incurred by the Contractor, resulting directly from said suspension or in accordance with Clause 41 or 11.5, the lower of the two, and subject to the provisions of Sub-Clause 32.2.2 below.

32.2.2 Reasonable Costs, for the purpose hereof, are:

32.2.2.1 Payments committed to suppliers of goods required in connection with the suspended Works, provided that the relevant orders were already placed before the day of the order to suspend was issued, and cannot be suspended or cancelled.

32.2.2.2 Costs related to any Contractor's Equipment (including vessels), Site office, and employees directly related to the suspended part of the Works, provided they were working on Site both on the day before the order to suspend was issued

and on the actual suspension date and their names appear on the Contractor's daily work log.

32.2.2.3 Any other expenses reasonably incurred by Contractor on account of and directly related to the suspension as duly evidenced to and accepted by the Company Representative at his sole discretion.

32.2.3 Notwithstanding the foregoing in Sub-Clause 32.2.1, the Contractor shall not be entitled to any adjustment of the Agreement Price, in cases where the suspension was:

32.2.3.1 Required as a result of a Default or non-compliance with the provisions of the Agreement by the Contractor or by anyone operating on his behalf; or

32.2.3.2 Required for the proper execution of the Works or for the safety of the Works or any part thereof (except to the extent that such requirement arises from any act or default of the Company not related to the Contractor, or from any of the Company Risks).

32.2.4 Except as expressly set forth in Sub-Clause 32.2.1, the Company shall not be held liable to Contractor for any other damages or loss, including anticipated profits, on account of suspension of any part of Works or all remaining Works.

### **32.3 Auditing Pursuant to Suspension**

32.3.1 The Contractor shall provide all audit access required by the Company to verify the costs pursuant to Sub-Clause 32.2.1 above, by independent auditors.

32.3.2 The Company shall bear the Reasonable Costs of any such auditing; unless it is found that the Contractor overstated its expenses, in which case the Contractor shall bear such auditing costs.

### 32.4 Prolonged Suspension and Cutoff

32.4.1 If the Suspension has continued for more than 30 days, and such suspension is not a result of one of the circumstances contemplated by Clause 50.3, the Contractor may by notice to the Company request permission to resume the Works within 45 days of the date of such request.

32.4.2 If permission to resume is not granted within the time period set forth above and the suspension affects the Works, in their entirety, the Contractor may terminate the Agreement as an event of default by the Company, by way of written notice to the Company whereupon the provisions of Clause 51 shall apply.

### 32.5 Resumption of Works

32.5.1 Subject to the provisions of Clause 32.4 above, the Company may at any time prior to the time period set forth in Clause 32.4 above, authorize resumption of all or any part of the suspended Works by giving 14 days prior notice to the Contractor, specifying the part of the Works to be resumed and the effective date for resumption of the Works.

32.5.2 The Contractor shall begin preparing itself for resumption of the suspended Works immediately upon receipt of such notice.

32.6 Suspension, as contemplated under this Clause 32, shall not release the Contractor from any of its obligations pursuant to the Agreement, except for the obligation to proceed with the Work which has been suspended, and only to the extent, and for the time period during which the Contractor has been so suspended.

## 33. Cancellation of Works

33.1 Without derogating from any other right to which it is entitled pursuant to the Agreement, the Company may at any time cancel any part of the Works or all remaining Works for any reason whatsoever by giving 15 days advance notice (the "**Cancellation Notice**") to the Contractor specifying the part of the Works to be cancelled and the effective date of cancellation (the "**Cancellation Date**").

33.2 Upon receipt of the Cancellation Notice, the Contractor shall cease all Works on said cancelled part, by no later than the Cancellation Date. The Contractor shall continue to execute the surviving part of the Works, if any.

**33.3 Adjustment of Schedule and Reasonable Cost Pursuant to Cancellation**

33.3.1 If any part of the Works is cancelled, the Company shall issue a Change Order making any required adjustment to the Completion Deadline for any surviving Works and to the Agreement Price.

33.3.2 The Agreement Price shall be reduced by the amount corresponding to the cancelled part of Works and in accordance with Clause 41.4. The above adjustment of Agreement Price shall also take into account:

33.3.2.1 The cost of goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to receive prior to the delivery of the Cancellation Notice, as evidenced by the Contractor to the Company Representative's satisfaction. Such goods becoming the property of the Company upon such payments being made by the Contractor.

33.3.2.2 The reasonable Costs of removal of Contractor's Equipment and, if required by the Contractor, return thereof to the Contractor's main plant yard in his country of registration (or to any other destination at no greater cost) taking into account payments made or to be made for Works executed.

33.3.2.3 The Costs as may be reasonable, of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such termination; taking into account payments made or to be made for Works executed.

33.3.2.4 All other Reasonable Costs for demobilization of the Contractor, duly evidenced, in writing, by the Contractor and approved by the Company Representative.



33.3.2.5 The amount of any Reasonable Costs arising out of or in connection with or by consequence of such cancellation provided however that such Reasonable Costs has been duly evidenced, in writing, by the Contractor, and accepted by the Company Representative.

33.3.2.6 No compensation for loss of profit shall be paid.

33.3.3 If any part of the Works is so cancelled, the Performance Guarantee shall be reduced accordingly.

33.3.4 Where the Company has elected to cancel the Works in whole or in part, the Contractor shall not be entitled to any other right and/or payments, except as provided for above.

#### **33.4 Auditing Pursuant to Cancellation**

Contractor shall provide all audit access required by the Company Representative to verify all costs, whether by himself or by independent auditors. The Company shall bear the costs of any such auditing; unless it is found that the Contractor overstated its expenses, in which case the Contractor shall bear such auditing costs.

#### **33.5 Documents upon Cancellation**

33.5.1 Where the Company so cancels the Works or any part thereof, then with respect to the cancelled part of Works, the Contractor shall execute and deliver to the Company all documents required by the Company and take all steps necessary to fully transfer to the Company the rights and benefits of the Contractor under any existing contracts with third parties concerning such cancelled Works.

33.5.2 The applicable provisions of the Agreement shall continue in full force and effect with regard to all Works performed prior to the Cancellation Date and all Works remaining to be performed, if any, which were unaffected by the Cancellation Notice.

### **33.6 Effects of Cancellation and Liability upon Cancellation**

Except as provided above in the event of cancellation hereunder, and except for Clauses 33.7 and any other Clause and/or Sub-Clause concerning indemnification and any other Clauses which by their nature are intended to survive termination of the Agreement :

33.6.1 This Agreement shall be of no further force and effect with regard to the cancelled part of the Works and the Contractor and the Company shall each be released and discharged from any claims by one against the other in connection with the cancelled part of the Works.

33.6.2 The Contractor shall deliver to the Company any drawings, documentation, plans, specifications, materials and tools at the Site or anywhere else, which are related to the cancelled part of the Works and destroy all copies of such made by the Contractor;

33.6.3 The Contractor shall take any other such action as the Company may reasonably request and require in order to give effect to the Cancellation Notice.

33.7 Cancellation of all or part of the Works as contemplated in this Clause 33, shall not derogate from the right of the Company to step in and resume such Works at another time, whether by itself or by way of any third party or an additional tender or RFP, and to take any other action, or to refrain thereof, with regard to the cancelled part of the Works, and all at the Company's sole discretion and responsibility.

### **34. Duty to Mitigate**

The Contractor shall make best efforts to rearrange the Detailed Schedule and resources in order to mitigate, minimize and avoid, to the maximum extent possible, the effects of any Delays and/or Changes and to cause any Subcontractors and any other third parties working for the Contractor or on its behalf, whether directly or indirectly, to act in a similar manner.

## **35. Completion**

### **35.1 Completion Deadline**

The Works or any part thereof shall be completed and shall have passed the Completion Tests by the Completion Deadline set forth in the Schematic Schedule, as may be extended from time to time pursuant to the terms of the Agreement.

35.2 Where reasonable grounds indicate, to the professional discretion of the Company Representative, that the actual progress of the Works is insufficient or that the Works are delayed or about to be delayed (other than pursuant to an authorized Change Order), the Company Representative may instruct the Contractor to submit a revised Detailed Schedule and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite the progress of the Works in order to meet the Completion Deadline. In such an event the Contractor shall not be entitled to any additional payment.

### **35.3 Extension of Completion Deadline**

Without derogating from any other express provision of the Agreement, where the Contractor has experienced a material delay (“**Delay**”) in the progress of the Works, resulting from any of the following causes, and to that extent only, the Contractor shall be entitled to request an extension of the Completion Deadline:

35.3.1 Extra or additional Works have been ordered in writing under Clause 41.2.

35.3.2 A failure by the Company to fulfil its obligations pursuant to the Agreement, not due to any act or omission of the Contractor, which affected the performance of the Works.

35.3.3 Limitations imposed by the Antiquity Authority as set forth in Clause 15.1.1.

35.3.4 Suspension of the Works, not due to Contractor's fault, as set forth in Clause 32.1.

35.3.5 National industrial labour dispute.

35.3.6 An event of Force Majeure provided that the provisions of Clause 49 shall apply thereto. For the removal of any doubt it is hereby clarified that war

and/or any other violent conflict, including acts of terror, shall **not** entitle the Contractor to any extension of the Completion Deadline, unless and to the extent the MOD or the IDF instructed to cease works in the areas relevant to the Works conducted at that time by the Contractor.

35.4 The Contractor shall submit to the Company Representative (with a copy to the Company) written notice of his intention to claim an extension of time within 7 days of the occurrence of a Delay. Such notice shall be followed as soon as possible and, in any event, not later than 14 days thereafter, by a detailed claim with full supporting documentation. Upon receipt of such detailed claim, the Company Representative shall decide:

35.4.1 On the measures which the Contractor shall be obliged to take to minimize, mitigate or reduce the effect of the Delay; and

35.4.2 On the extension to the Completion Deadline, if any, to which the Contractor shall be entitled on account of such Delay.

35.5 The Contractor shall be obligated to continue the Works while its claim is being considered and pending decision therein, and any dispute regarding the decision given by the Company Representative, shall not release the Contractor from any of its obligations pursuant to the Agreement.

35.6 Any claim for the extension of the Completion Deadline and/or for any additional payment due to a Delay shall be made in accordance with the claim's procedure provided for in Clause 20 above.

### **36. Early Completion**

The Company may require completion of the Works or of part thereof earlier than the Completion Deadline, provided, however, that the Company and Contractor first agree on all of the terms and provisions of such early completion.

### **37. Liquidated Damages for Delay in Completion of the Works**

37.1 In the event that the Contractor fails to complete the Works by more than 14 days as of the Completion Deadline, then without derogating from any other right of the Company under the Agreement or applicable Law, it is hereby agreed that as compensation for such delay, the Contractor shall pay to the Company the amount

equal to a quarter percent (0.25%) of the Agreement Price (including VAT) for every week (in excess of 14 days) which elapses between the Completion Deadline and the actual completion thereof ("**Liquidated Damages**").

37.2 The total amount of Liquidated Damages under this Clause 37, shall not exceed the amount of 10% of the Agreement Price (including VAT).

37.3 No Liquidated Damages shall be paid with respect to a delay of up to 14 days in meeting the Completion Deadline.

37.4 The Company may set off the amount of Liquidated Damages from any sums due or which will become due to the Contractor under the Agreement.

37.5 All sums payable by the Contractor pursuant to this Clause 37 shall be paid as an agreed upon Liquidated Damages and not as a penalty.

37.6 The Company and the Contractor declare that they have found the amount of the Liquidated Damages set forth in this Clause fit, appropriate and reasonable compensation in respect to the damages resulting from the late completion of the Works. Neither party shall have any claim whatsoever as to the correctness and/or reasonability of the Liquidated Damages.

37.7 Nothing herein shall derogate from any other right or remedy which may be available to the Company under the Agreement and/or under Law.

### **38. Completion Tests**

#### **38.1 Notice of Tests, Facilities, Resources & Personnel Attendance**

38.1.1 Without derogating from the Tests stipulated in Clause 31 above, the Contractor shall give the Company Representative and the TPI at least 21 days prior written notice of the date upon which the Contractor shall be ready to undertake the Completion Tests.

38.1.2 Unless otherwise agreed in writing between the Parties hereto, the Completion Tests shall take place within 21 days of the date set forth in such notice.

38.1.3 A Completion Test shall not be performed unless either the Company Representative or the TPI is present.

38.1.4 Passing the Completion Test by the Contractor does not derogate from the Contractor's obligations to repair Defects before Take Over by the Company in accordance with Clause 39 or from its obligation to secure the Site before the Take Over.

38.1.5 The Contractor shall provide at its sole expense all labour, materials, electricity, fuel, water, facilities and equipment and all other resources as may be required to carry out the Completion Tests.

### **38.2 Use by the Company**

38.2.1 The Company may use any part of the Works incorporated into the System, prior to issuing a Take Over Certificate.

38.2.2 Should the Company use any such part of the Works:

38.2.2.1 It shall allow the Contractor to carry out Completion Tests at the earliest possible opportunity.

38.2.2.2 Such Completion Tests and Take Over shall be subject to Punch List as set forth in Clause 39.2.3 below.

38.2.3 In considering the results of any Completion Tests carried out under the circumstances contemplated by this Clause 38.2 the Company Representative shall take into account the effect of the Company's use on the performance of the System, or any part thereof.

### **38.3 Delayed Tests**

38.3.1 Notwithstanding Sub-Clause 38.1.4 above, if the Completion Tests are being unduly delayed by the Contractor, then the Company Representative may proceed with the tests on its own, without derogating from the other remedies to which the Company is entitled pursuant to the Agreement.

38.3.2 All such delayed Completion Tests shall be at the risk and expense of the Contractor and the cost thereof shall be deducted from the Agreement Price.

38.3.3 The Completion Tests conducted under the circumstances contemplated in this Clause 38.3 shall be deemed to have been made in the presence of

the Contractor and the results of the Completion Tests shall be deemed to be accepted by the Contractor as accurate.

#### **38.4 Retesting**

38.4.1 If any part of the Works fails to pass the Completion Tests, the Contractor shall promptly make good any Defects and ensure that said Works comply fully with the Agreement requirements, including without limitation, all of the Specifications set forth in the Technical Volumes.

38.4.2 The Contractor shall inform the Company accordingly, following which there shall be a retest under the same conditions as the original Completion Tests and all the provisions of this Clause 38 shall apply to such retesting.

38.4.3 All costs relating and/or arising from any such retests shall be at the sole expense of the Contractor.

#### **38.5 Disagreement as to Results of Test**

A dispute over the results of the tests may be referred to a mutual agreed technical expert in an attempt to end the dispute by mutual understanding, provided, however, that the Contractor shall be required to implement all of the instructions of the Company Representative with regard to the Works during the time the matter is in dispute.

#### **38.6 Consequences of Failure to Pass Completion Tests**

If the Works or any part thereof fail to successfully pass the Completion Tests on repetition thereof under Clause 38.4 hereof the Company shall be entitled, at its sole discretion, to one of the following actions:

38.6.1 Order up to one further retest as per Clause 38.4 above; or

38.6.2 Reject the Works or the relevant of the Works, in which event the Company shall be entitled to the remedies set forth in Clause 40.6 below;  
or

38.6.3 Issue a Take-Over Certificate, notwithstanding that the Works or any part thereof are incomplete, in which event, the Agreement Price shall be reduced by any amount determined by the Company Representative; or

38.6.4 Suspend or cancel the Works or any part of them, in accordance with Clause 32; or

38.6.5 Terminate the Agreement pursuant to the terms of Clause 51.

### 38.7 **Completion Certificate**

The Contractor shall be responsible to submit to the Company, immediately upon its request, a Completion Certificate in the form of **Annex AA6**, which enables the Company to request NGA's approval to commission the Works. Submission of the Completion Certificate from the Contractor is a pre-condition to request a Take Over Certificate from the Company regarding the corresponding Works. The Completion Certificate shall be duly signed by all functionaries listed in such certificate. The form and content of such Completion Certificate may be amended or supplemented, from time to time, according to the request of the Company or the NGA.

## 39. **Take-Over**

### 39.1 **Take Over Certificate**

The Company shall issue a Take Over Certificate in the form of **Annex AA5**, pursuant to the provisions of this Clause 39.1, and subject to all the conditions as follows:

39.1.1 When the Works have been completed in accordance with all the terms and provisions of the Agreement and in compliance with all applicable Laws;

39.1.2 All required permits and approvals have been obtained by the Contractor;

39.1.3 All of the Completion Tests have been completed to the full satisfaction of the Company;

39.1.4 The Company has received all materials set forth in accordance to the Technical Volumes;

39.1.5 The Contractor has completed the redevelopment and rehabilitation of the Site to its planned condition as set forth in the Technical Volumes; and



39.1.6 The Contractor submitted to the Company Representative the “as-built” documents and, if applicable, operation and maintenance manuals, in accordance with the Technical Volumes and in sufficient detail for the Company to operate, maintain, dismantle, reassemble, adjust and repair the relevant part of the Works.

## 39.2 Application for Take Over Certificate

39.2.1 Without derogating of Clause 38.7, the Contractor may apply for a Take Over Certificate, by written notice to the Company, stating the extent of the Works which have been completed in an orderly manner, not earlier than 14 days before the Works are, in the Contractor's opinion, completed and ready for taking over in accordance with this Clause 39.

39.2.2 The Company shall, within 21 days of receiving such notice, either:

39.2.2.1 Based on the Company Representative's report and recommendation, issue the Take Over Certificate stating the date upon which the Works are deemed to be taken over; or

39.2.2.2 Based on the Company Representative's report and recommendation, reject the notice, giving its reasons, and specifying in writing the outstanding Works, which upon completion, and following any necessary testing as set forth in such statement of rejection, would enable a Take Over Certificate to be issued.

39.2.3 If the Contractor has not fulfilled any of its obligations concerning the Works which do not affect the safety or operation of the Works, the Company may issue, at its sole discretion, a Take Over Certificate subject to a Punch List - to be attached to such Take Over Certificate - which the Contractor shall be obligated to complete in a timely fashion in accordance with the time table set for that purpose by the Company at its sole discretion.

#### **40. Defects after Take Over**

##### **40.1 Defect Liability Period**

- 40.1.1 The Defect Liability Period shall extend for a period of 18 months from the date the Take Over Certificate is issued; provided, however, that in the event that a Punch List was attached to the Take Over Certificate, the Defect Liability Period for the entire Works shall begin only upon the completion of all the items enumerated in the Punch List, which completion shall be confirmed in writing by the Company Representative.
- 40.1.2 Without derogating from the Contractor's liability for the aforesaid period, it is clarified that the Defect Liability Period for any part of the Works used before Take Over shall begin on the date of the respective use of said part and extend until the completion of the time period set forth in Clause 40.1.1.
- 40.1.3 Following the Defect Liability Period, the Contractor shall remain liable for any latent Defects, or Defects resulting from wilful misconduct or Gross Misconduct.
- 40.1.4 Should the liability period of a Subcontractor for works executed by it or for materials supplied by it extend beyond the Defect Liability Period defined above, then the Company shall be entitled to exercise all rights under such extended liability.

##### **40.2 Repairing Defects.**

- 40.2.1 The Contractor shall be responsible for repairing all Defects, including, without limitation, any minor Defects, or damage to the Works which may appear or occur during the Defect Liability Period in order that the Section be ready and fully serviceable for the purposes for which it was intended, and in full compliance with all the terms and provisions of the Agreement, including, without limitation, all of the Specifications set forth in the Technical Volumes. Such repairs (including replacement of defective parts) shall be carried out promptly after receiving notice of the existence of such Defects from the Company or after becoming aware of

any such Defect. The Contractor shall take all necessary action to repair the Defect as soon as possible.

40.2.2 All costs required to remedy any Defects, including but not limited to re-testing and TPI attendance, within the Defect Liability Period or which the Contractor has become aware of during such period shall be at the Contractor's sole expense.

#### **40.3 Notice of Defects**

If any such Defect appears or damage occurs, the Company shall notify the Contractor within 7 days of its discovery, unless the repair is of an urgent nature, in which event the Company shall notify the Contractor at the first available opportunity and pursuant to sub Clause 40.5.

#### **40.4 Extension of Defect Liability Period**

40.4.1 The provisions of this Sub-Clause 40.4 shall apply to all replacements and/or repairs carried out by the Contractor to remedy any Defect.

40.4.2 The Defect Liability Period for such replacements and/or repairs shall extend for an additional 18 months from the completion of such replacement and/or repair.

#### **40.5 Company's right to Remedy Defects**

40.5.1 If, at any time during the Defect Liability Period, the Contractor fails to remedy any Defect or fails to timely arrive to the Site as required by the provisions of this Clause 40, or, if, at the Company's sole discretion, the repair of any Defect is of an urgent nature, then the Company may (temporarily or permanently) repair such Defect on its own or employ and engage any other person for the purposes of carrying out the same, and all costs arising there from shall be at the expense of the Contractor .

40.5.2 The exercise by the Company of its rights pursuant to Clause 40.5.1 shall not release the Contractor from any of its responsibilities and/or obligations pursuant to the Agreement, including the provisions of this Clause 40 and shall not constitute or be interpreted as a transfer of responsibilities or risks with regard to such remedying of Defects to the

Company and/or a waiver by the Company of any of its rights pursuant to the Law and the Agreement. Without derogating from the above, it is the responsibility of the Contractor to verify that any repair made by the Company pursuant to the above is adequate and to undertake any further necessary action in order to repair the Defect. The Contractor hereby waives any claim or demand it may have in connection with the above.

40.5.3 In addition, the exercise by the Company of its rights hereunder shall not derogate from any right or remedy of the Company pursuant to the terms of the Agreement, including the right to set off any cost of repair from any sums owed by Company to the Contractor, including the Agreement Price or any other payment, whether in whole or in part, to draw down on any guarantee then in force, to terminate the Agreement in accordance with the provisions of Clause 50 hereof, and where the Defect or damage is such that the Company is deprived of the benefit of the Works or any Section, then it may also terminate the Agreement in respect of the parts which cannot be put to their intended use, in which case the Company in addition to any other remedy shall be entitled to recover from the Contractor all sums paid in respect of those parts of the Works which cannot be put to their intended use.

#### 40.6 **Removal of Defective Works**

Where the Defect or damage is such that the repairs cannot be carried out on Site, then the Contractor, with the Company's consent and subject to a reasonable time table and temporary replacement measures, if applicable, may remove the defective or damaged System or Works, as the case may be, from the Site for repair and then return for reinstallation, provided that such removal shall not deprive or diminish the regular and normal operation of the System. All costs of such removal, reinstallation and temporary replacement measures shall be borne by the Contractor.

#### 40.7 Further Completion Tests

The Company may, at its sole discretion, request that further Completion Tests be repeated on any part of the Works that has been repaired during the Defect Liability Period at the Contractor's sole expense and the provisions of Clause 38 shall apply to such test.

#### 40.8 Right of Access

For the purpose of completion items in the Punch List and/or during the Defect Liability period, the Contractor shall have right-of-access to any part of the Works and to the records of the working and performance of the Works. Thereafter, access shall be coordinated with the Company subject to reasonable limitations determined by the Company which relate to safety and security of the System, the Site and regular operation of the System.

### 41. Changes and Change Orders

#### 41.1 Company's Right to Change

41.1.1 At any time before the issuance of a Take-Over Certificate, the Company may, by issuance of a written and duly signed order to the Contractor – titled as "Change Order" (hereinafter: "**Change Order**") - instruct the Contractor to execute a Change.

41.1.2 The Contractor shall not vary or alter any Works, except in accordance with a Change Order. Should the Contractor be of the opinion that a Change is required, it shall propose the Change to the Company, which shall consider the proposal at its sole discretion, and if such suggestion is acceptable to it, issue a Change Order.

41.1.3 The following circumstances shall not serve as cause for any change in unit price and shall not require issuance of a Change Order:

41.1.3.1 Instructions to be given to the Contractor by the Company Representative and/or any competent authority, including the TPI, in accordance with and within the framework of the standards referred to in the Agreement, for as long as such standards and/or Technical Volumes were not changed;

41.1.3.2 Changes in planning (other than changes contradicting or changing the Basics of Design and/or Special Specifications);

41.1.3.3 Changes in unit quantities.

41.1.4 It is hereby clarified that changes in the Basics of Design and/or Special Specification for any item and/or instruction according to Clause 41.1.3.1 above in event of a change in the standards and/or Technical Volumes, shall give cause to the issuance of a Change Order regarding price and/or schedule for the execution of such item, **only** if the Contractor proves in writing to the Company that the cost or the duration for the execution of the item was **substantially** changed.

#### 41.2 Procedure for Change Orders

41.2.1 The Company shall notify the Contractor of its intent to effect a Change in the Works by way of written notice setting forth the desired Change.

41.2.2 Within 7 days of receiving such notification, the Contractor shall submit to Company Representative for review, comment and approval, a proposal for the execution of such Change, which proposal shall contain, inter alia, the following information:

41.2.2.1 A description of the work to be performed and a timetable for its execution;

41.2.2.2 the impact on the rest of the Contractor's obligations pursuant to the Agreement, if any;

41.2.2.3 Any proposals for modification to the Detailed Schedule and Schematic Schedule or to any of the Contractor's obligations under the Agreement which the Contractor believes are required by the contemplated Change; and

41.2.2.4 The Contractor's cost proposal for carrying out such Change, to be drafted in compliance with the provisions of the Agreement.

41.2.3 Following receipt of the Contractor's submission, the Company shall, at its sole discretion, decide at the earliest opportunity whether or not the Change shall be carried out and under what terms.

### 41.3 Order to Proceed

- 41.3.1 Where the Company decides that the Change shall be carried out, it shall issue a Change Order clearly setting forth the nature of the desired Change, the timetables for the execution thereof and the cost of said Change.
- 41.3.2 Upon receipt of a Change Order the Contractor shall forthwith proceed to carry out the Change and shall be bound by all of the terms and provisions of the Agreement in so doing.

### 41.4 Adjustment of Agreement Price for Change Orders

- 41.4.1 When establishing the value of the Change the Company Representative shall consider the following:
- 41.4.1.1 The Cost of any executed Works rendered abortive by the Change.
- 41.4.1.2 The cost of modifying or making alterations to the Works already constructed or in the construction process.
- 41.4.1.3 Additional Costs incurred by the Contractor due to the disruption of the agreed progress of the Works, if any.
- 41.4.1.4 The net effect of the Contractor's Reasonable Costs caused by the Change.
- 41.4.2 For the purposes of establishing the value of any Change, any such value shall be net of any savings and/or payments of any kind which have accrued to the Contractor during the period of, and as a direct result of, such Change.
- 41.4.3 Where a calculation of such savings and/or payments is possible only after the Change has been executed, such sums may be set-off from any amounts owed by the Company to the Contractor pursuant to the terms of the Agreement.
- 41.4.4 If the Bill of Quantities does not contain any rates or prices applicable to the type of goods and services required to execute the Change Order, according to the Company Representative's professional opinion, the

adjustment of the Agreement Price shall be determined in accordance with the provisions of Clause 22.4 above.

41.4.5 For the removal of doubt, the Contractor shall not be entitled to any adjustment or any other payment in the event that the Change Order was caused due to the Contractor's failure to uphold its obligations under the Agreement.

#### 41.5 **Records of Costs**

41.5.1 In any case where the Contractor is instructed to proceed with a Change prior to establishing the Agreement Price and/or the Schedule for such Change, the Contractor shall fully document through man-hour time sheets, equipment time sheets, material usage and consumable usage (including comparative market prices of the above) the time and other expenditures.

41.5.2 These records shall be verified by the Company Representative and made available to the Company at all times.

#### 41.6 **Dispute in Connection with the Change Order**

A dispute regarding a Change Order shall not serve as grounds for the Contractor to delay the performance thereof and the Contractor shall be obligate to proceed with such Change.

### 42. **Risk and Responsibility**

#### 42.1 **Risk Transfer Date**

The Risk Transfer Date pertaining to the Works ("**Risk Transfer Date**") shall be the earliest of either:

42.1.1 The date the Take Over Certificate was issued with regard to the Works (except for items detailed in a Punch List attached to such certificate); or

42.1.2 The effective date of termination of the Agreement pursuant to a Termination Notice issued in accordance with Clause 51 or the cancellation of the relevant Works in accordance with Clause 33 hereof, as the case may be.



## 42.2 Company Risks

42.2.1 The Company shall bear responsibility only for the risks set forth in this Clause and only for such risks ("**Company Risks**"):

42.2.1.1 Any loss or damage resulting from the quality of any Company Materials, provided that such Defect in the Company Materials could not have been discovered with diligent inquiry during the completion tests performed pursuant to Clause 38.

42.2.1.2 Any loss or damage resulting from a delay in the supply of any Company Materials, provided that the Contractor was not responsible for such delay.

42.2.1.3 Any physical damage to the works and/or the System as a direct result of war and/or any other violent conflict, including acts of terror.

42.2.2 For the removal of any doubt, it is hereby clarified, that the Contractor may reasonably rely upon the information included in the geo-technical and geophysical surveys that will be provided by the Company (**Annex BB3** and **Annex BB4**). The Contractor declares that it reviewed all data provided to it in the surveys and other Tender Documents and found them sufficient to execute the Works. Should any additional surveys would be required to execute the Work this shall be executed on the cost and responsibility of the Contractor.

## 42.3 Contractor Risks

The Contractor shall bear the entire risk and responsibility for all risks not specifically identified as Company Risks in Clause 42.2 above.

## 42.4 Responsibility to Rectify Loss or Damage Prior to Risk Transfer Date

Loss or damage to any part of the Works or the System occurring prior to the Risk Transfer Date shall:

42.4.1 To the extent such loss or damage was caused solely by any of the Company Risks, it shall be made good by the Contractor at the Company's cost. The cost for making good shall be agreed prior to the execution of

such Works by the Company and the Contractor, based upon new price or Reasonable Costs as set forth in the provision of Clause 41.4.

42.4.2 To the extent such loss or damage was caused by any reason whatsoever other than those set forth in Sub-Clause 42.4.1 above, such shall be repaired, rectified and made good by the Contractor at its sole expense, in a manner that the Works and the System shall conform in every respect to the requirements set forth in the Agreement, to the complete satisfaction of the Company and the Company Representative.

**42.5 Responsibility to Rectify Loss or Damage After Risk Transfer Date**

42.5.1 The Contractor's responsibility for loss of or damage to the Works shall pass to the Company on the Risk Transfer Date.

42.5.2 After the Risk Transfer Date, the Contractor's liability in respect of loss or damage to any part of the Works shall be limited to the following:

42.5.2.1 Fulfilment of the Contractor's obligations under Clause 40 hereof; and

42.5.2.2 Repairing, rectifying and making good any loss or damage caused by the Contractor during the Defect Liability Period, as extended.

42.5.3 Nevertheless, all the above limitations upon the Contractor's liability shall not apply to events of damage, loss or expense resulting or arising out of Gross Misconduct or wilful misconduct of the Contractor or anyone working on its behalf.

**43. Contractor's Liability**

43.1 The provisions of the Agreement do not (and shall not be interpreted to) make the Company, its employees, directors and/or any person working in its name or on its behalf, liable to indemnify or make any other payments concerning any loss, damage or expense that may have been caused to the body or property of any person or entity, including, without limitation, that of the Contractor, its employees or other person or entity working on its behalf; and the Contractor shall bear sole responsibility for all loss, damage or expense relating to or caused

by the fulfillment of the Agreement by it, its employees or other person and/or entity working on its behalf or performing the Works. The Contractor shall remedy all damage and harm, at its sole expense, in an efficient manner and to the complete satisfaction of the parties authorized to deal with the damages.

43.2 Without derogating from the above, and subject to the provisions of Clause 44 below, it is hereby clarified that the Contractor shall be liable for:

43.2.1 any and all damage and/or harm caused to the property of third parties, including the property of governmental or local authorities or Property Holders; and

43.2.2 Any latent Defects or Defects in the Works resulting from wilful misconduct or Gross Misconduct.

#### **44. Contractor's Indemnification Obligation**

44.1 The Contractor shall be liable for, and shall indemnify and hold the Company, its employees, directors, the Company Representative, the State of Israel, anyone operating on their behalf, and any successors or assigns thereto, harmless against all damages, losses, liabilities, expenses, all costs (including legal costs), penalties, compensation and claims in respect of any loss and damage which may arise out of or in consequence of the execution of the Works and/or act or default of the Contractor, including losses, damages and claims which are discovered after the completion of the Works, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, including all of the following:

44.1.1 Death of, or injury to any third party, including, without limitation, the employees of the Contractor, the Sub-Contractor(s) and/or other persons acting on behalf of the Contractor, the Company and/or anyone acting on behalf of the Company; and

44.1.2 Loss of, or damage to, any property owned by the Contractor or the Company or any third party, whether tangible or intangible property rights, including the loss of use arising from the damage to the property; and

- 44.1.3 Any trespass to any property adjoining the Site, any noise or any other nuisance insofar as such trespass, noise, or nuisance arises out of, or in the course of, or be reason of the carrying out of the Works; to the extent that any of the above arise out of or are related to the carrying out of the Works or arising out of or related to any act or omission of the Contractor or anyone acting on its behalf; and
- 44.1.4 Any damage for or on account of infringement of any Intellectual Property Rights arising out of the Works and all losses and expenses related thereto.
- 44.1.5 Any damage and/or liability arising out of any breach of any statutory or regulatory environmental requirements.
- 44.2 Upon receipt of a written request from the Company for indemnification pursuant to this Agreement, the Contractor shall promptly provide the Company with the requested sum.
- 44.3 Contractor's indemnification obligations set forth in this Clause shall also apply to the State of Israel.
- 44.4 Without derogating from the above, in the event where, as a result of any act or omission of the Contractor, a court order is issued against the Company, the Contractor shall reimburse all parties damaged by such order, in addition to Contractor's obligation to take all necessary measures to remove such order.
- 44.5 Nothing in the above shall derogate from the provisions of this GTC and from any liability and responsibility of the Contractor pursuant to any Law.

**45. Defence of the Parties against Indemnified Proceedings**

- 45.1 If any legal action is brought or any other proceedings (hereinafter "**Proceedings**") are commenced against the Company and the Company claims that it is entitled to indemnification pursuant to this GTC, then the Company shall promptly give written notice of such Proceedings to the Contractor. Failure to give such notice, however, shall not affect the Company's right to indemnification, unless and to the extent that the Contractor is prejudiced by such failure.

- 45.2 The Contractor shall have the right, at its expense, to join the Proceedings, to be represented by attorneys of its choice and to conduct the defense of any claim that relates to losses or damages in respect of which the Company claims indemnity; provided, however, that where there is a conflict of interests between the Contractor and the Company with regard to such claim, the defense shall be conducted by the Company at the Contractor's expense.
- 45.3 If Proceedings are commenced as stated above against the Company and against the Contractor, the Contractor shall give the Company notice of this, promptly after receiving notice of the Proceedings. The Company and the Contractor shall cooperate fully in connection with the defense, negotiation or settlement of any Proceedings.
- 45.4 In the event that, in accordance with the foregoing, the Company conducts the defense of such Proceedings (in cooperation with the Contractor), the Company shall be entitled to employ or to retain the services of attorneys on its behalf. In the event that the Contractor is required to indemnify the Company, such indemnity shall include also the expenses of the attorneys of the Company.
- 45.5 Without derogating from the foregoing, it is agreed that any settlement of such Proceedings requires the prior written consents of each of the Contractor and of the Company (which consents shall not be unreasonably withheld).

**46. Limitation of Contractor's Liability**

- 46.1 The Contractor shall not be liable towards the Company for any consequential loss and/or loss of profit.
- 46.2 The liability of the Contractor towards the Company for any damage (other than consequential loss and/or loss of profit) shall be limited to the total Agreement Price.
- 46.3 The above limitations of liability shall not apply in each one of the following: **(i)** in case of fraud, Gross Misconduct or wilful misconduct by the Contractor or by anyone acting on its behalf; **(ii)** death or any kind of personal injury; **(iii)** third party claims relating to an act or omission of the Contractor, including IP claims and

labor claims and/or (iv) Contractor's liability satisfied by the proceeds of insurance required to be maintained in accordance with the Agreement.

#### **47. Company's Liability**

47.1 The Company shall be liable for and shall indemnify the Contractor and hold it harmless against all direct losses, expenses or claims in respect of loss of or damage to any physical property, or of death or personal injury whenever occurring to the extent caused by or arising out of any of the Company Risks as set forth in Clause 42.2.

47.2 In no event shall the Company be liable for any loss of profit, loss of use, loss of production, or for any other indirect or consequential damage howsoever and whatsoever caused that may be suffered by the Contractor.

#### **48. Insurance**

##### **48.1 Company Insurance**

48.1.1 Without derogating from the liability of the Contractor pursuant to the GTC or the Agreement or any Law, and without the Company assuming any liability towards the Contractor, the Company hereby declares that it shall maintain a Contractor's All Risk Insurance Policy (the "**CAR Policy**") covering the Works performed by the Contractor, subject to the conditions, exclusions and the retention amounts of the CAR Policy and shall include the following insurance chapters:

- (a) Chapter 1 – Damage to the Works - Covering unexpected physical loss or damage caused to the Works at the Site during the period of the execution of the Works;
- (b) Chapter 2 – Third Party Liability - Covering liability towards third parties for personal injury or damage to property caused during the insurance period.

The CAR Policy may be procured on a WELCAR 2010 basis or any other form available in the international insurance market.

48.1.2 The name of the insured under the CAR Policy shall be extended to cover the Contractor and the Subcontractors working on its behalf in

connection with the Works. The Company shall deduct an amount equal to two percent (2%) of any payment, partial or otherwise, due to the Contractor from the Company (before any withholding or set-offs to which the Company may be entitled), as participation in the insurance fees of the CAR Policy. The Company reserves the right to increase the Contractor's participation as detailed above in proportion to any changes that may occur in the premium to be paid by the Company.

- 48.1.3 The description of the policy set forth in this Clause 48.1 is a general description only and does not obligate the Company.
- 48.1.4 At the Contractor's request, the Company shall provide a copy of the CAR Policy. The Contractor hereby undertakes to **(i)** study the content of the CAR Policy; **(ii)** be familiar with all its terms prior to commencing the Works; and **(iii)** fulfill all of the terms set forth therein, including without limitation, provisions concerning safety measures, damage to adjacent third-party property or existing property. Contractor undertakes to immediately inform the Company, in writing, of any occurrence which may constitute a claim under the CAR Policy. The Contractor further undertakes to cooperate with the Company as may be required in order to file any insurance claim under the CAR Policy.
- 48.1.5 The Company's procurement of the CAR policy does not impose any liability upon the Company, and the Contractor hereby represents, warrants and affirms that it shall be precluded from raising and waiving any claim, action or demand of any kind with respect to the insurance, its content or the scope of coverage against the Company and/or the State of Israel.
- 48.1.6 The Contractor shall pay all deductibles set forth in the CAR Policy, in accordance with the decision of and as may be determined by the Company. The Company may set-off such amounts from any payment due to the Contractor.

- 48.1.7 The Company reserves the right to make improvements to the CAR Policy, and the Contractor shall be notified in writing of any such change.
- 48.1.8 The provisions of this Clause shall not derogate from the Contractor's obligations under the Agreement. The CAR Policy does not cover the risks and/or insurance events which the Contractor must insure under its own insurance policies set forth in Clause 48.2 below.
- 48.1.9 Subject to the fulfilment by the Contractor of all its obligations hereunder, it is hereby agreed that in the event of the occurrence of an insurance event under Chapter 1 (Damage to Works) of the CAR Policy, the Company shall transfer to the Contractor, upon remedy by the Contractor of the damage causing such insurance event, the proceeds from the insurance payments actually received from the insurer, up to a maximum of the amount necessary to repair the damage or loss, as approved by the insurer and its appraiser, less the participation amount set forth in the policy.
- 48.1.10 The Company may instruct the Contractor, at least 90 days prior to the issuance of the Work Commencing Order, that the Contractor must insure itself separately and independently, with an insurance policy to replace the CAR Policy, and which shall cover the risks covered there under. In such case, the Contractor shall not be required to transfer its participation set forth in Sub-Clause 48.1.2 to the Company. The general provisions detailed in Sub-clauses 48.2 – 48.7 below shall apply (mutatis mutandis) to such insurance as well as a provision according to which the Company has been designated as Sole Loss Payee in respect of any insurance proceeds due for damage to the Works or the Company's property.

## 48.2 Contractor's Insurance

- 48.2.1 The Contractor undertakes to procure and maintain, for the entire duration of the Works, the following insurance policies (hereinafter: "**Contractor Insurances**")



- 48.2.1.1 Employers Liability and/or Workers Compensation Insurance covering the Contractor's and all its Sub-contractors' liability towards their personnel with a limit of liability of not less than \$20,000,000 per event and in the aggregate. The policy shall include the Company as additional insured.
- 48.2.1.2 P&I cover in respect of any marine vessel involved in the Works with a limit of liability of no less than \$1,000,000,000 (one billion USD) for accidental pollution emanating from the vessel and in respect of rule 59 (Specialist Operations) cover shall be limited to \$100,000,000 (one hundred million USD) and in respect of rules 43 (Towage), Rule 55 (Terms of Contract), Rule 61 (Submarine, Diving bells, Diving), Rule 63.1f (Salvage Operations) and Rule 73 a (nuclear perils) cover shall be limited to \$20,000,000 (twenty million USD). The Company shall be included as Co-Assured in the policy.
- 48.2.1.3 Hull & Machinery for any vessel of any type employed by the Contractor or any sub-contractor in the performance of the Works. The Company shall be included as Co-Assured in the policy.
- 48.2.1.4 Product liability/Completed Operations insurance for as long as it is liable with respect to the Works and/or equipment supplied by it under the Agreement with a limit of liability of not less than \$30,000,000 per event and in the aggregate.
- 48.2.2 The Contractor Insurances shall include the following provisions:
- 48.2.2.1 Shall include primary/non-contributory to any insurance procured by the Company, except for the CAR policy.
- 48.2.2.2 Shall include 30 days' notice of cancellation to the Company.
- 48.2.2.3 Contractor alone shall be liable for the payment of premiums and deductibles.
- 48.2.2.4 Shall be procured on a worldwide basis.

- 48.2.3 In the event the Contractor is of the opinion that the coverage amounts of the CAR Policy issued by the Company should be broadened, or that additional policies should be maintained, the Contractor undertakes to expand or maintain the additional insurance at its own expense.
- 48.2.4 Contractor shall submit to the Company, at least 60 days prior to commencement of the Works, an insurance certificate signed by its insurers, evidencing the existence of the Contractor Insurances, in a form acceptable to the Company (the “**Insurance Certificate**”).
- 48.2.5 The Contractor may elect, at his own risk, not to insure, in whole or in part, tools and or equipment used by the Contractor. However, the Contractor hereby waives any right to claim any damage to such property from the Company and the State of Israel.
- 48.2.6 In addition to the Contractor Insurances set forth above, the Contractor hereby undertakes to maintain, during the Agreement Period and for as long as the Contractor is providing services to the Company, the following insurance policies:
- 48.2.6.1 Compulsory insurance as required by Law covering bodily injuries caused by the use of a vehicle by the Contractor or anyone on its behalf, and insurance against bodily injuries not covered by such compulsory insurance;
- 48.2.6.2 Comprehensive motor insurance as well as third party liability insurance property damage which shall be extended to indemnify the Contractor in respect of any liability devolving upon the Contractor as a result of the utilization of such vehicles.
- 48.3 The Contractor undertakes to the following:
- 48.3.1 Fulfil all of the terms of the insurance policies procured pursuant to the Agreement;
- 48.3.2 Pay all insurance fees in full and in a timely fashion;

- 48.3.3 Ensure that the insurance policies are renewed from time to time, as may be necessary and that they remain in effect until the end of the Defect Liability Period, as extended;
- 48.3.4 Cooperate with the Company for the preservation and realization of the Company's rights pursuant thereto, including without limitation, by informing the Company and the insurer, in writing, of the occurrence of an event which may serve as a basis for a claim pursuant to the Contractor's insurance policies immediately upon it becoming aware of such event.
- 48.4 The Contractor represents and warrants that it shall not have any claims, demands and/or actions against the Company and/or anyone on its behalf, concerning damage with respect to which it is entitled to receive indemnification under the insurance policies the Contractor is obliged to maintain according to this Agreement; and Contractor hereby relieves the Company of any liability for such damage. The foregoing shall not apply to damage caused maliciously.
- 48.5 The Contractor hereby undertakes to cause the insurance terms to be brought to the attention of its managers, employees, and Sub-Contractors, and the Contractor shall ensure that the changes necessary to effectuate the terms of the Agreement shall be executed both with respect to its insurance policies and with respect to the insurance policies of Sub-Contractors for the performance of the Works. In this respect, the Contractor undertakes that all agreements with Sub-Contractors, shall not include a Clause\provision in which the Contractor waives (in its own name, in the name of the Company, and in the name of the insurer of the Company relevant to the CAR Policy) the right of subrogation or indemnification against such contractors or relieves them from their legal or contractual liability. The Contractor hereby represents and warrants that it is aware that the obligation not to waive such right constitutes a condition for the rights of the Contractor and the Company under the Contractor Insurance Policy, and the Contractor shall indemnify the Company for any breach of this condition.

48.6 Without derogating from the above, at all of the stages of the Works, the Contractor undertakes that it and all the Sub-Contractors shall fulfil all of the requirements and provisions of the Israeli National Insurance Institute Law and the Israeli Public Health Insurance Law, and all of the orders, regulations, etc., issued pursuant to such laws, including without limitation to ensure that all of its employees and others who may be engaged in the Works on its behalf, including those temporarily engaged, shall at all times and during the entire period of the performance of the Works be entitled to all rights pursuant to such laws.

#### **49. Force Majeure**

##### **49.1 Definition of Force Majeure**

49.1.1 Force Majeure shall mean an occurrence which is beyond the reasonable control of either of the Parties, constituting an exceptional and/or unforeseen circumstance and which (despite the exercise of diligent efforts by the affected Party to prevent, limit, or minimize the same):

49.1.1.1 Materially delays the scheduled time of completion of all or any material portion of the Works; or

49.1.1.2 Causes material and unavoidable physical damage or destruction to all or any material portion of the Works; or

49.1.1.3 Results in or causes the failure (including by delay) or inability of a Party to fulfil any of its material obligations under this Agreement.

49.1.2 For the avoidance of doubt, the following events shall be specifically excluded from the definition of the term Force Majeure:

49.1.2.1 Shortage of materials or employees, except a national general shortage declared by order of the Government of Israel.

49.1.2.2 Strikes, labour disputes, lockouts, boycott or other similar occurrence declared directly against the Contractor or any of its Sub-Contractors or caused as a result of an act or omission of the Contractor or any of its Sub-Contractors; and

49.1.2.3 Suspension, termination, interruption, denial or failure to obtain or renew any permit, license, consent or approval which is required for the carrying out of the Contractor's obligations under this Agreement; except where the foregoing in this Clause 49.1.2 is a result of a Force Majeure event as set forth in Sub-Clause 49.1.2.1 above.

49.1.2.4 War and/or any other violent conflict, including acts of terror, unless and to the extent the MOD and/or the IDF instructed to cease works in the areas relevant to the works conducted at that time by the Contractor.

49.1.2.5 Unavailability, late delivery or changes in cost of machinery, equipment, materials, spare parts or consumables, except and to the extent that such unavailability, late delivery or changes result from an event that would have been a Force Majeure if it had affected a Party.

49.1.2.6 The Corona pandemic and any restrictions imposed by an authorized government or body, as a result thereof (including 14 days quarantine).

49.1.2.7 Weather conditions.

#### **49.2 Procedure Pursuant to Force Majeure**

Immediately after the affected Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure, it shall give a written notice to the other Party of the occurrence of a perceived Force Majeure event and when such event has ceased to exist.

#### **49.3 Consequences of Force Majeure**

49.3.1 Where the Contractor is unable to continue the Works due to Force Majeure, then without derogating of the Contractor's obligation to do its best efforts to perform the Works and provided that the Company Representative confirmed that the Contractor exerted such best efforts, then:

- 49.3.1.1 The provisions of Clause 35.2 of the GTC shall apply regarding the extension of the Completion Deadline.
- 49.3.1.2 The Contractor shall be entitled to adjustment of Agreement Price that shall reflect the expenses directly and reasonably incurred by it on account of and directly related to the delay in the execution of the Works exceeding 3 working days (in total) that arose from the Force Majeure.
- 49.3.1.3 Should the total delay in the execution of the Works exceed 15 working days, then either party shall be entitled to terminate the Agreement, and the provisions of Clause 33.3 above shall apply with regard to the compensation paid to the Contractor upon such event.
- 49.3.1.4 The Contractor's right to terminate the Agreement may be postponed by the Company by up to 15 additional days (i.e. 30 days of delay in total) provided that the Agreement Price shall be adjusted to reflect all expenses directly and reasonably incurred by the Contractor on account of and directly related to the delay over the additional days.
- 49.3.2 It is hereby clarified that for the purpose of Clause 49.3.1 above, circumstances whereby the MOD ordered the suspension of the Works shall be deemed as Force Majeure, provided that such suspension was not avoidable had the Contractor taken proper measures in coordinating the Works with the MOD.
- 49.3.3 Claims for the alteration of the Detailed Schedule and/or the extension of the Completion Deadline and/or any additional payment under this Clause 49.3 shall be made in accordance with the claims procedure provided for under Clause 20 above.
- 49.4 Insured Events of Force Majeure**

To the extent that the consequences of an event which, if it had not been insured, would have been deemed an Event of Force Majeure, fall within the terms of the

insurance coverage required under Clause 48.1.1 above, and the insurance covers at least 80% of the required sum for completion of the Work or restoration of damage, the Contractor shall not be entitled to be released from performing its undertakings under this Agreement and the following shall apply:

- 49.4.1 The Contractor shall submit to the approval of the Company Representative a proposed recovery schedule for the completion of the Work or the restoration of the damage and the schedule shall be adjusted accordingly.
- 49.4.2 The Contractor shall forthwith make the appropriate claims under the relevant insurance policies and shall apply the relevant proceeding, subject to the Company Representative's approval in advance of the proposed recovery schedule referred to above, for the completion of the Work or the restoration of the damage; and the provisions of Clause 35 shall apply, in the applicable changes.

#### 49.5 **Non-Termination**

- 49.5.1 Should an event of Force Majeure prevent the performance of all the undertakings of either party pursuant to the Agreement, or any part thereof, then the party claiming the event of Force Majeure shall be excused from whatever performance is prevented thereby, but only to the extent so affected. In such circumstances, the other party shall not be entitled to terminate the Agreement on the basis of such non-performance, except as provided in Sub-Clause 49.3.1 and provided that the party claiming the event of Force Majeure shall have complied with the provisions of Clause 49.2.
- 49.5.2 The provisions of this Clause 49 shall not release the party claiming an event of Force Majeure from its undertakings under this GTC or from fulfilling the provisions of the Agreement due prior to the occurrence of the event of Force Majeure, or the performance of undertakings not affected by the event of Force Majeure, or from the full performance of its obligations pursuant to the Agreement, once the effects of the event

of Force Majeure have ceased to exist. In this regard, the Contractor shall, to the maximum extent possible, continue the Works during the occurrence of an event of Force Majeure.

## **50. Default and Remedies**

### **50.1 Default**

If at any time during execution of the Works the Contractor shall be in default of any of his obligation under the Agreement, including, but not limited to, any of the following ("**Default**"):

- 50.1.1 Failure to provide a sufficient number of properly qualified employees;
- 50.1.2 Failure to provide satisfactory and sufficient equipment and supplies;
- 50.1.3 Failure to execute any Works in accordance with the Agreement and with generally accepted best engineering and construction practices in respect of Engineering, Works, Equipment, supplies or workmanship;
- 50.1.4 Failure to meet the Completion Deadline as such date may be adjusted in accordance with the terms of the Agreement;
- 50.1.5 Failure to indemnify, hold harmless and protect the Company from any claims by third parties for which the Contractor is liable pursuant to the terms of the Agreement;
- 50.1.6 Failure to execute the Works and any Change Order in accordance with the Detailed Schedule or Schematic Schedule and the provisions of the Agreement;
- 50.1.7 Failure to provide or renew any guarantee or security which the Contractor undertook to provide or renew under the Agreement, or upon the expiry of any of the guarantees or securities, whether fully or in part, or failure to remedy the above within 14 days of being required to do so in writing by the Company;
- 50.1.8 Failure to take out and/or maintain required insurances, in accordance with Clauses 48.2 - 48.6 above or failure to supply the Insurance Certificate of the Contractor and/or its Sub-Contractors according to the Agreement; or



- 50.1.9 Failure to uphold safety and security requirements as set forth in sub-Clause 16 and/or anywhere else in this GTC.
- 50.1.10 Failure to commence the Works or any part thereof, or unauthorized suspension of the Works or any part thereof, where such failure is a result of reasons attributable to the Contractor;
- 50.1.11 The committing of any material or persistent breach of the Agreement;
- 50.1.12 The Company Representative decides that any part of the Works executed by the Contractor or the Subcontractors is defective or does not conform to the Agreement or that their performance is deficient;
- 50.1.13 The Contractor is neglecting to perform its obligations in a professional workmanlike manner, in any way.

Or one of the following events occurred:

- 50.1.14 a court of competent jurisdiction makes an order for the liquidation of the Contractor or a resolution for voluntary liquidation of the Contractor was received, except for the purposes of merger or reconstruction on terms approved in advance and in writing by the Company, provided, however, that prior to exercising any of its rights pursuant to the Agreement in such event, the Company shall be entitled to review any plan presented by the Contractor for continuing to perform all of its obligations pursuant to the Agreement, and then decide, at its sole discretion, whether to accept such a plan, demand changes or amendments thereto, or reject such plan and exercise any of its rights pursuant to the Agreement;
- 50.1.15 a petition is filed in court for receivership, liquidation or reorganization proceedings against the Contractor, unless such proceedings are discharged within 60 days; or if an interim or permanent receiver or liquidator is appointed over the Contractor or its rights under this Agreement, or if the Contractor has become insolvent;

**Then**, without derogating from any other rights and remedies to which the Company is entitled pursuant to this Agreement and and/or the Tender and/or pursuant to any applicable law, the provisions of this Clause shall apply.

## 50.2 **Cure Notice**

50.2.1 The Company shall, prior to exercising any of its rights under this Clause (Default), send a written notice to the Contractor (hereinafter the “**Company Cure Notice**”) requesting it to remedy the event of Default or other material incompliance with its obligation under the Agreement within a period of time prescribed by the Company, provided that the above-mentioned period of time shall not be less than 7 days after receipt of said notice.

50.2.2 The Company Cure Notice shall state that if the event is not remedied within the said period of time the Company shall be entitled to any of its rights according to the Agreement and the Law (such as without limiting, suspension the Works, removal of the Contractor or termination of the Agreement).

50.2.3 In case of a material breach of any of the Contractor's obligations, causing material and immediate damage to the Company and/or any third party and requiring immediate action, the Company shall not be required to send a Company Cure Notice prior to exercising its rights under this Clause 50.

## 50.3 **Suspension due to Contractor Default**

50.3.1 Without derogation from any other right or remedy to which the Company is entitled under this Agreement, where the Contractor does not, upon receipt of the Company Cure Notice, promptly undertake and proceed with diligence to remedy the Default set forth in the Company Cure Notice to the full satisfaction of the Company Representative, then the Company may order the Contractor, in writing, to suspend all or part of the Works within not later than 7 days from the date of such Suspension Order.

50.3.2 Suspension pursuant to this Clause 50.3 shall not:

50.3.2.1 Release the Contractor from any of its obligations under the Agreement;

50.3.2.2 Entitle the Contractor to any additional Costs, extensions of deadlines, or any other remedies provided for by the Agreement.

The Contractor shall be required to proceed with work on all unsuspending parts of the Works.

50.3.3 The suspended Works shall not be resumed until the Company Representative shall be satisfied and shall have advised the Company that the Contractor is prepared to promptly correct said Default and comply with the Agreement. In such event, the Company shall give notice to the Contractor to proceed.

50.3.4 For the removal of doubt, any additional costs to the Contractor resulting from a suspension pursuant to this Clause 50.3 shall be solely at the sole expense of the Contractor.

#### 50.4 **Removal and Step-In**

50.4.1 Without derogating from any other rights and remedies to which the Company is entitled pursuant to the Agreement, where the Contractor does not, upon receipt of the Company Cure Notice, promptly undertake and proceed with diligence to remedy the Default set forth in the Company Cure Notice, then the Company may, as an alternative or in addition to suspending any part of the Works pursuant to Clause 50.3 above, remove the Contractor from any part of the Works or all remaining Works, by giving it a written notice specifying the part of the Works from which the Contractor has been removed and the effective date of such removal.

50.4.2 Effects of Removal

50.4.2.1 Upon issuance of a removal notice as set forth in this Clause 50.4.1 above, the Company may step in and complete part of

the Works or all of the remaining Works from which the Contractor has been removed, by whatever means the Company deems most expedient, including, without limitation, by way of engaging a substitute contractor for such purpose without need for an additional tender, at the sole expense and risk of the Contractor.

50.4.2.2 The Contractor shall execute and deliver to the Company all documents required by the Company, and shall take all steps necessary to fully vest to the Company all of the rights and benefits of the Contractor under any existing contracts, and shall take any and all actions requested by the Company in order to enable the Company to carry out the Works, as contemplated in this Clause 50.4 including, without limitation the following:

50.4.2.2.1 Guaranteeing step in rights of the Company in any contract with any Sub-Contractor, supplier, or any third party and;

50.4.2.2.2 Returning or providing to the Company all drawings, documents, specifications necessary to complete the Works.

50.4.3 Removal of the Contractor, as contemplated under this Clause 50.4, shall not release the Contractor from any of its obligations pursuant to the Agreement, except for the obligation to proceed with the Works from which the Contractor has been removed, and only to the extent that the Contractor has been so removed. For the avoidance of doubt, all provisions of the Agreement shall continue in full force and effect as to all Works performed prior to the effective date of removal, and all provisions regarding risk and responsibility in Clause 0 and remedy of Defects in Clause 50 shall apply to any part of the Works from which the Contractor

has been removed, after such Works have been completed as contemplated in Sub-Clause 50.4.2.1 above.

50.4.4 In the event of removal of the Contractor hereunder, the Company shall not be held liable for any damages or loss of anticipated profits by Contractor on account of such removal.

50.4.5 Where the Contractor has been removed from all or part of the Works pursuant to this Clause 50.4, the Agreement Price shall be reduced by an amount equal to the actual Costs to the Company for completing said part of the Works. Where the unpaid balance of the Agreement Price is less than the amount by which the Agreement Price is reduced hereunder, the Contractor shall promptly refund the difference to the Company, which shall be deemed as a debt to the Company and shall be recoverable according to all of the provisions of the Agreement, including by way of offset as set forth in Clause 27 or drawdown on any of the bank guarantees which shall be then in force.

## **51. Termination**

51.1 Without derogating from any other rights or remedies to which the Company is entitled pursuant to this Agreement and the Law, where the Contractor has not promptly and diligently undertaken to remedy a Default or other material incompliance with its obligations under this Agreement, as set forth in a Company Cure Notice, then the Company shall have the right by written notice to the Contractor (the "**Termination Notice**"), to terminate this Agreement effective as of the date of the Termination Notice, regardless of whether any Works under the Agreement remain to be executed or not, or whether the time limit for the completion of the Works has expired or not.

### **51.2 Effects of Termination**

51.2.1 Upon declaring the Agreement terminated, the following provisions shall apply:

51.2.1.1 The Company shall have the right, by any legal means and proceedings it finds most expedient, to enter the Site, seize the

Works and expel the Contractor there from (as well as all Contractor's personnel and any other person or persons and third parties deriving any rights from the Contractor) without thereby affecting the rights and powers conferred on the Company by the Agreement or the Law. The Company shall have full proprietary rights to any and all Works completed as of the date of such termination, and all temporary works, supplies or materials supplied by the Contractor, which have been deemed to be reserved exclusively for the construction and completion of the Works under the provisions of the Agreement as the Company may think proper. The Company may at any time sell any of the said temporary works and unused supplies and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to it from the Contractor under the Agreement.

51.2.1.2 This Agreement (other than the Clauses providing for compensation in the event of termination and all Clauses concerning indemnification, applicable law, notices, and such other clauses which by their nature are intended to survive termination) shall cease to have effect, subject to all rights and obligations of the parties hereto existing prior to such date, unless otherwise provided in this Agreement. All rights of the Contractor pursuant to this Agreement shall be terminated.

51.2.1.3 The Contractor shall deliver to the Company all drawings and documentation, plans, specifications and materials at Site or anywhere else, which are related to the Works and destroy all copies of such, which was made by the Contractor.

51.2.1.4 In the event of Termination pursuant to this Clause, the Advance Payment Guarantee and the Performance Guarantee shall be forfeited in favour of the Company, in addition to any

agreed liquidated damages and any other agreed payments in this Agreement, which may have accrued under the respective provisions of the Agreement or at Law.

51.2.1.5 The Contractor shall promptly and diligently execute all such documents and take all such other actions as may be reasonably required by the Company, in order to give effect to this Clause.

51.2.1.6 The Company Representative shall, as soon as may be practicable after any such entry into the Site, determine the Preliminary Breakage Amount (as herein defined), ex parte, or after discussion with the Contractor or after such investigations or inquiries as he may think it fit.

51.3 The "**Preliminary Breakage Amount**" shall be equal to the following:

51.3.1 the amount of the Agreement Price, if any, which had been reasonably earned by or would reasonably accrue to the Contractor in respect of the Works actually done by it, considering the quality of the Work and its consistency with the Contractor obligations under the Agreement and the Law as of the date of the Termination Notice; plus

51.3.2 the value of any of the unused or partially used materials and any temporary works which the Contractor shall transfer to the Company pursuant to this Clause; less

51.3.3 damages, penalties, offset sums, debts, obligations or any other sums due by the Contractor pursuant to this Agreement.

51.4 Where the Company has terminated the Agreement pursuant to this Clause, it shall not be liable to pay to the Contractor any Breakage Amount on account of the Agreement, until the expiration of the Defect Liability Period under the Agreement. At such time, the Preliminary Breakage Amount shall be reduced to take into account the Costs for execution, completion, remedy of defects and guarantee of the Works by the Company, and all damages for delay and all other relevant expenses incurred by the Company as a result of termination of the

Agreement have been ascertained and certified by the Company (the “**Defect Liability Period Expenses**”). The Company shall pay the Contractor the Preliminary Breakage Amount less the Defect Liability Period Expenses. Where such Defect Liability Period Expenses exceed the Preliminary Breakage Amount, then the Contractor shall be obliged to pay, upon demand, to the Company, the Defect Liability Period Expenses less the Preliminary Breakage Amount.

51.5 Any legal procedure shall not postpone the results of effects of termination, as set forth in Clause 51.2. Without derogating of the above, the Contractor may not request the issuance of an injunction or any other legal relief the outcome of which shall be the continuing execution of the Works or any part thereof by the Contractor despite its removal by the Company.

51.6 if the Competent Court issues a decision in favor of the Contractor, both parties hereby agree, as a material provision of this Agreement, that the Company shall not be required to reinstate the Contractor but rather the termination shall be deemed to be Cancellation of the Works by the Company pursuant to Clauses 32 and 33 and shall be subject to all the relevant provisions thereof.

## **52. Remedies for Company Default**

52.1 The provisions of this Clause shall apply without derogating from any other rights and remedies, to which the Contractor is entitled pursuant to this Agreement, if, at any time during execution of the Works, any of the following occurs (each a “**Company Default**”):

52.1.1 The Company fails to pay the Contractor any amount due under the Agreement and not disputed by the Company, within 3 months after the due date of the payment;

52.1.2 Consistently fails to meet its contractual obligations pertaining to access and/or possession of the Site as provided for in Clauses 14.6 above;

52.1.3 Gives written notice to the Contractor that, for whatever reason, it is impossible for the Company to perform its contractual obligations.



## 52.2 Contractor Cure Notice

- 52.2.1 The Contractor shall not be entitled to exercise its right to terminate the Agreement pursuant to this Clause prior to sending a written notice to the Company, setting forth exactly the nature of the Company Default, requesting that the Company remedy said Default within, not less than 14 days after receipt of said notice (the “**Cure Period**”).
- 52.2.2 Where the Company has not remedied the Company Default by the expiry of the Cure Period, the Contractor shall be entitled to terminate this Agreement by giving a written notice thereof to the Company. That notice shall take effect 14 days after the date thereof.
- 52.2.3 Upon termination as set forth in this Clause 52, the Contractor shall be entitled to remove immediately all Contractor Equipment from the Site.

## 52.3 Payment upon Contractor Termination

- 52.3.1 In the event that the Agreement is terminated by the Contractor as aforesaid, the Company shall pay to the Contractor, insofar as such amounts or items have not already been covered by payments on account made to the Contractor, for all Work executed prior to the date of Termination, at the rates and prices as set forth in the Terms of Payment attached to the Bill of Quantities and in addition to:
- 52.3.1.1 The amounts payable in respect of any preliminary items referred to in the Bill of Quantities, so far as the work or service comprised therein has been carried out or performed.
- 52.3.1.2 The Reasonable Cost of materials or goods reasonably ordered for the Works which have been delivered before the end of the Cure Period to the Contractor or for which the Contractor cannot annul and is legally bound to accept delivery. For the avoidance of doubt, such materials, or goods shall become the property of the Company upon such payments.
- 52.3.1.3 The Reasonable Cost being the amount of any expenditure reasonably incurred by the Contractor in the expectation of

completing the entire Works pertaining to any relevant Section insofar as such expenditure has not been covered by any other payments referred to in this Clause and provided the Contractor cannot annul and is legally bound to it .

- 52.3.1.4 Such proportion of the cost as may be reasonable, taking into account payments made or to be made for work executed, of removal of Contractor's Equipment from the Site and return thereof, if required, to the Contractor's main plant yard in his country of registration or to such other destination as the Contractor shall request, at no greater cost than the cost of transportation thereof to the Contractor's country of registration.
- 52.3.1.5 The reasonable cost of repatriation of all the Contractor's Personnel employed on or in connection with the Works at the time of such Termination.
- 52.3.1.6 Subject to the provisions of Clause 47 above, the amount of any loss or damage to the Contractor directly arising out of or in connection with or by consequence of such Termination.
- 52.3.2 Against any payment due from the Company under this Clause, the Company shall be entitled to set off or be credited with any outstanding balances due from the Contractor any other sums which, at the date of Termination, were recoverable by the Company from the Contractor under the terms of the Agreement.
- 52.3.3 Any sums payable under this Clause shall, after due consultation with the Company and with the Contractor, be determined by the Company Representative, who shall notify both parties thereof.
- 52.3.4 Notwithstanding anything to the contrary herein, the amount of payments under this Clause shall not exceed the Agreement Price.

#### 52.4 Full and Final Remedy

- 52.4.1 Except as set forth in this Clause or in Clause 4141 the Contractor shall not be entitled to any relief, compensation, or extension of deadlines from the Company in connection with the Works.
- 52.4.2 Claims not made in accordance with Clause shall be null and void.
- 52.4.3 Whereupon, in this Agreement, the Contractor is explicitly entitled to any kind of consideration and/or remedy and/or compensation, in no way whatsoever shall it be entitled to double consideration and/or remedy and/or compensation and always only one option, which is the most suitable option at the sole discretion of the Company shall prevail.

#### 53. Dispute Resolution

- 53.1 The parties to this Agreement shall endeavor to settle by negotiation and in good faith any dispute arising out of or in connection with this Agreement. Such dispute shall be duly notified in writing by the claiming party to the other party, with due reference to the present Clause, and the parties shall endeavor to settle such dispute by negotiation within 14 days from receipt of said notice.

#### 53.2 Court

- 53.2.1 Subject to the provisions of Clause 53.1 above, in the event of any dispute between the parties hereto as to any matter arising out of or relating to this Agreement, which cannot be settled between the parties, such dispute shall be submitted only to the competent court of the city of Tel Aviv - Israel which shall have exclusive jurisdiction with regard to any matter relating to this Agreement.
- 53.2.2 Neither party may refuse to perform or delay the performance of any obligation under the Agreement unless the competent court has issued an order which expressly allows it to do so. Subject to the foregoing and until the final decision, the parties shall continue to perform all of their respective obligations under the Agreement.
- 53.2.3 The Contractor is aware of the urgency and the national importance of the System; the necessity of the Works; the need of the Company to

uphold its obligations to natural gas suppliers and consumers; the great damage, inter alia financial damages, that may be caused to the Company, its clients and to the Israeli economy due to the failure to supply natural gas caused by non-completion of the Works according to this Agreement in a timely manner. Therefore, the Contractor undertakes to refrain from taking any action, directly or indirectly, that may result in stopping and/or delaying of the Works.

### **53.3 Applicable Law**

The Agreement shall be governed and construed exclusively in accordance with the laws of the State of Israel.

## **54. Miscellaneous Provisions**

54.1 This Agreement, including all attachments hereto, and the Tenders documents represents the entire Agreement between the Parties and supersedes any or all previous representations, contracts or arrangements, whether oral or written, between the Parties.

54.2 All provisions of this Agreement shall apply to all contracts with regard to the carrying out of the Works, including contracts made with third parties including but not limited to Sub-Contractors on behalf of the Contractor.

54.3 The Contractor shall cause that all such contracts with third parties shall include provisions incorporating the relevant provisions of this Agreement. Furthermore, the contracts with third parties shall include a provision relating to remedies for breach of Agreement as set out above. The Contractor acknowledges and is aware that the Company has entered into this Agreement on the basis of these representations, warranties, information and data.

54.4 Amendment and updates to this Agreement shall be binding only if made in writing and signed by authorized representatives of each of the parties.

### **54.5 Confidentiality**

54.5.1 The Contractor shall keep in strict confidence any information and document received by it or on its behalf, from the Company or anyone operating on its behalf in connection with the Agreement or the System,

and shall not disclose such information or document in any manner otherwise than for the purpose of the Works.

54.5.2 Without derogating from the abovementioned, the Contractor acknowledges that any confidential information relating to the Company may be considered as "**Internal Information**" as defined in the Securities Law, 1968 (the "**Securities Law**"). The Contractor is aware of and recognizes the legal limitations applicable to the use of Internal Information. The Contractor shall not make any use of the confidential information in a manner that violates the provisions the Securities Law. The Contractor shall notify the Company immediately and without delay, in any event where such confidential information was disclosed.

54.5.3 The foregoing obligations of confidentiality shall not apply to:

54.5.3.1 Information which is available to the public or which hereafter becomes available to the public not as a result of the acts or omissions of the Contractor;

54.5.3.2 Information which was lawfully in the possession of the Contractor before the beginning of the Tender process;

54.5.3.3 Information which the Contractor is obliged to disclose as a matter of law or upon the request of any authorized authority, provided that it makes every reasonable effort to obtain confidential treatment by the person or entity to whom the information is disclosed and provided that prior to such disclosure the Contractor shall notify the Company, accordingly.

54.5.4 The provisions of this Clause 54.5 (Confidentiality) shall survive termination of this Agreement for any reason whatsoever.

#### 54.6 **Time and Indulgence**

54.6.1 The failure of either party to insist upon the full and strict performance of any provisions of this Agreement, or to take steps to enforce their rights or to seek remedies to which they are entitled under the Law or this

Agreement, shall not be construed as a waiver for such matter or as estoppel or as a waiver of a subsequent breach.

54.6.2 The consent or approval by either party of any act by the other party requiring the consent or approval of such party shall not be construed as waiving or rendering unnecessary the requirement for the Company's or the Contractor's, as the case may be, consent or approval of any subsequent similar act by the other party or as estoppel.

54.6.3 The payment of any amount due to the other party under this Agreement with or without knowledge of a breach of any provision of the Agreement by the party receiving the payment, shall not be deemed a waiver of such breach or as creating any estoppel of the party making the payment.

54.6.4 Unless stated otherwise, any extension or other indulgence allowed by one party to the other, regarding performance of its duties and obligations under this Agreement or to remedy any breach, shall not be construed as a waiver by the party giving such extension of time or indulgence of any of its rights under this Agreement or under any Law.

54.6.5 If a provision prescribing a demand for approval by the Company or the Company Representative in accordance with this Agreement or requiring a decision by the Company or the Contractor does not state the date for receiving the approval or not giving the approval, or granting the decision, then this date shall be after 30 days have elapsed from receipt of notice in writing from the Contractor of the subject requiring approval or decision.

## 54.7 Assignments

### 54.7.1 Contractor Assignment of Agreement

The Contractor may not assign the Agreement or any part thereof or any benefit therein or there under, without the prior written consent of the Company, which consent shall be at the sole discretion of the Company, including for the purposes of any substitute entity, affiliates entities and/or merger or reconstruction, on terms approved in advance and in

writing by the Company; provided, however, that prior to exercising any of its rights pursuant to this Agreement in such event, the Company shall be entitled to review all undertaking presented by the surviving entity for continuing to perform all obligations pursuant to the Agreement, and the Company may decide, at its sole discretion, whether to accept such an undertaking, demand changes or amendments thereto, or reject such request and exercise any of its rights pursuant to this Agreement. Any assignment against the above shall be regarded as void without the need to terminate such assignment.

#### **54.7.2 Company Assignment of the Agreement**

If required by the government of the State of Israel, the Company may assign the Agreement or any part thereof to a third party, provided it ensures that any assignee shall be bound by all of the relevant terms and provisions of the Agreement. In such event, a written notice shall be delivered to the Contractor.

### **54.8 Relationship of Parties**

54.8.1 The Contractor is an independent contractor and shall not be deemed an agent or representative of the Company. In addition, this Agreement should not be construed as creating any legal relationship whatsoever between the Company and the Contractor's Personnel or any third party whose services are retained by the Contractor, or anyone on behalf of the Contractor.

54.8.2 Except if expressly stated otherwise in this Agreement, the Contractor has the sole authority and responsibility vis-a-vis the Company to employ, discharge and to control its employees. The Contractor has a complete and sole responsibility for the Contractor's Personnel and neither the Contractor nor the Contractor's Personnel shall be deemed to be employees of the Company. The Contractor shall pay the wages, salaries and any other payments due to the Contractor's Personnel as a result of

their employment, and shall be responsible for all reports and obligations in connection with them under the provisions of any Law.

**54.9 No Third-Party Beneficiaries**

This Agreement is made exclusively for the benefit of the Company and the Contractor, and no third party shall have any rights hereunder or be deemed to be a beneficiary hereof.

**54.10 Subcontractors**

The Contractor shall be fully responsible to the Company for the acts and omissions of the Subcontractors, including their sub-contractors, and any other third party whose services are retained by the Contractor including anyone acting on their behalf.

**54.11 Severability**

If any provision of this Agreement is invalid or unenforceable as against any person, party or under certain circumstances, the remainder of this Agreement and the applicability of such provision to other persons, parties or circumstances shall not be affected thereby. Each provision of this Agreement shall, except as otherwise herein provided, be valid and enforceable to the fullest extent permitted by the Law.

**54.12 Duty Same as Covenant**

Whenever in this Agreement any words of responsibility, obligation or duty regarding the Contractor or the Company are used, they shall have the same force and effect as those in the form of express covenant or undertaking.

**54.13 Binding Effect**

This Agreement is legally valid and binding on the Contractor, in accordance with the Contractor's constitutional documents and does not require any further approval in any form in order to give full effect thereto.

**54.14 No Conflict**

The execution and the fulfillment of the provisions of this Agreement in their entirety do not conflict with, create legal impediments under, or breach the



terms of any other contracts, Law or other applicable law binding upon the Contractor.

**54.15 Rights and Remedies**

Unless stated otherwise, the duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation upon, any of the duties, obligations, rights and remedies otherwise imposed or available at Law or in equity.

**54.16 Execution and Counterpart**

This Agreement may be executed on several dates and each counterpart shall be deemed an original. All of the signed counterparts cumulatively shall constitute the original Agreement.

**54.17 Notices**

54.17.1 A notice shall be deemed to have been duly served as follows:

- a) if personally delivered, at the time of receipt; or
- b) if sent by registered mail, on the third (3<sup>rd</sup>) business day following the date of posting; or
- c) if sent by facsimile, the business day following receipt of confirmation of successful transmission.
- d) if sent by e-mail, the business day following the date of successful transmission.

54.17.2 For the purpose of such service it shall be sufficient to prove that personal delivery was made or that the letter was properly addressed and dispatched by registered mail.

54.17.3 Any notice or correspondence to be given under this Agreement by personal delivery or registered mail shall be to the following addresses:

If to the Company:

ISRAEL NATURAL GAS LINES COMPANY LTD.

Atidim Tower (building No.8), 2184 St., Floor 32

Kiryat Atidim

Tel-Aviv, Israel 6158101

Att: VP Engineering

e-mail: both to [nazhan@ingl.co.il](mailto:nazhan@ingl.co.il) and [violetta@skzlaw.co.il](mailto:violetta@skzlaw.co.il)

If to the Contractor:

[ \_\_\_\_\_ ]

[ \_\_\_\_\_ ]

[ \_\_\_\_\_ ]

Att: \_\_\_\_\_

Facsimile: \_\_\_\_\_

e-mail: \_\_\_\_\_

or to such other address in Israel as may be specified by the party by notice in writing to the other Party, as its substitute address for the purpose of this Agreement.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written above:**

<p><b>Israel Natural Gas Lines Company Ltd.</b></p> <p>Signed on behalf of INGL by the following:</p> <p>Name: Shmuel Turgeman</p> <p>Title: CEO</p> <p>Signature: _____</p> <p>Name: Daniel Szobel</p> <p>Title: CFO</p> <p>Signature: _____</p> <p>Company's Seal: _____</p>	<p style="text-align: center;">_____</p> <p><b>The Contractor</b></p> <p>Signed on behalf _____ by</p> <p>the following:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Signature: _____</p> <p>Company's Seal: _____</p>
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**ANNEX AA1**

**FORM OF THE ADVANCE PAYMENT GUARANTEE**

Date: \_\_\_\_\_ Bank \_\_\_\_\_

To: Israel Natural Gas Lines Ltd.

Atidim Tower, Kiryat Atidim

Tel-Aviv 6158101, Israel

**Re: Letter of Guarantee No....**

1. Pursuant to the request of \_\_\_\_\_ (the "**Contractor**"), the undersigned, \_\_\_\_\_ [insert name of the Bank] (the "**Guarantor**"), having its official address at \_\_\_\_\_, hereby guarantees, by this guarantee (the "**Guarantee**"), to pay Israel Natural Gas Lines Ltd. (the "**Company**") any and all amounts, up to the aggregate amount of \_\_\_\_\_ [insert 10% of the Agreement Price including VAT] (the "**Guaranteed Amount**"), that the Company may demand in connection with the Agreement for the engineering and construction of the Ashdod – Ashkelon off-shore high pressure natural gas pipeline (the "**Agreement**").
2. This Guarantee is irrevocable, independent, autonomous and unconditional. Within 7 days of the receipt by the Guarantor of a written request setting forth the amount demanded and signed by the Company or the Company CFO (the "**Letter of Demand**"), sent by messenger or registered mail, we shall pay the Company the full amount demanded in such Letter of Demand up to the Guaranteed Amount. Prior to sending such Letter of Demand and payment of the Guaranteed Amount the Company shall not have to (i) prove or substantiate its demand; or (ii) demand such amount from the Contractor; or (iii) start with legal proceedings against the Contractor. The Guarantor shall have no claim of whatsoever nature against the Company that the Contractor could have had against it and shall not assume any such claim.
3. Any amendments or changes to the Agreement shall not affect the Guarantor's obligations hereunder and the Guarantor shall have no right to annul this Guarantee on whatsoever ground.
4. The Company may drawdown on this Guarantee in installments, provided that all payments made in such installments shall not exceed the Guaranteed Amount. The amount of this Guarantee shall be reduced by the amount of any payments made by the Guarantor to the Company hereunder. Forfeiture of any part of this Guarantee shall not impair the validity of the part which has not been forfeited.
5. This Guarantee is effective as of [\_\_\_\_\_] and shall remain valid and in full force and effect until [\_\_\_\_\_] (included) [Insert date of 18 months as of the date of the Work Commencing Order for engineering]. At the Company's or the Company's CFO written request from time to time we shall extend the validity of this Guarantee until such time the Company shall have presented to us a written confirmation that the Advance Payment (as such term is defined in the Agreement) has been set off in full but in any event not later than [insert date of 3 months after the completion of the works according to the Schematic Frame Schedule]

6. Any demand under this Guarantee shall be submitted to the address set forth above during regular working hours.
7. The benefit of this Guarantee may be assigned by Company to the State of Israel whether in whole or in part. A notice of such assignment shall be provided to Guarantor.
8. This Guarantee shall be governed by the Laws of the State of Israel and any proceedings in connection with this Guarantee shall be brought before the competent courts of the Tel Aviv District, Israel.

IN WITNESS WHEREOF, we have caused this Guarantee to be executed by one or more of our officers thereunto duly authorized on this \_\_\_\_ day of \_\_\_\_\_, 202\_.

[ \_\_\_\_\_ ] [Insert complete name of Bank]

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

Name: \_\_\_\_\_

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

**ANNEX AA2**

**FORM OF THE PERFORMANCE GUARANTEE**

Date: \_\_\_\_\_ Bank \_\_\_\_\_

To: Israel Natural Gas Lines Ltd.

Atidim Tower, Kiryat Atidim

Tel-Aviv 6158101, Israel

**Re: Letter of Guarantee No....**

1. Pursuant to the request of \_\_\_\_\_ (the "**Contractor**"), the undersigned, \_\_\_\_\_ [Insert name of the Bank] (the "**Guarantor**"), having its official address at \_\_\_\_\_, hereby guarantees, by this guarantee (the "**Guarantee**"), to pay Israel Natural Gas Lines Ltd. (the "**Company**") any and all amounts, up to the aggregate amount of \_\_\_\_\_ USD [insert 10% of the Agreement Price including VAT](the "**Guaranteed Amount**"), that the Company may demand in connection with the Agreement for the engineering and construction of the Ashdod – Ashkelon off-shore high pressure natural gas pipeline (the "**Project**" and the "**Agreement**").
2. This Guarantee is irrevocable, independent, autonomous and unconditional. Within 7 days of the receipt by the Guarantor of a written request setting forth the amount demanded and signed by the Company or the Company CFO (the "**Letter of Demand**"), sent by messenger or registered mail, we shall pay the Company the full amount demanded in such Letter of Demand up to the Guaranteed Amount. Prior to sending such Letter of Demand or payment of the Guaranteed Amount the Company shall not have to (i) prove or substantiate its demand; or (ii) demand such amount from the Contractor; or (iii) start with legal proceedings against the Contractor. The Guarantor shall have no claim of whatsoever nature against the Company that the Contractor could have had against it and shall not assume any such claim.
3. Any amendments or changes to the Contract shall not affect the Guarantor's obligations hereunder and the Guarantor shall have no right to annul this Guarantee on whatsoever ground.
4. The Company may drawdown on this Guarantee in installments, provided that all payments made in such installments shall not exceed the Guaranteed Amount. The amount of this Guarantee shall be reduced by the amount of any payments made by the Guarantor to the Company hereunder. Forfeiture of any part of this Guarantee shall not impair the validity of the part which has not been forfeited.
5. This Guarantee is effective as of the date set forth above and shall remain valid and in full force and effect until \_\_\_\_\_ (included) [insert the date for the issuance of a Take Over Certificate according to the Schematic Frame Schedule]. At the Company's written request, from time to time, we shall extend the validity of this Guarantee as shall be necessary in order for it to be valid until the Guarantor's receipt of a written confirmation signed by the Company or the Company CFO confirming that the issuance of a Take Over Certificate without any Punch List was completed.

6. At the Company's or the Company's CFO written request, from time to time, we shall extend the validity of this Guarantee as shall be necessary in order to comply with the provisions of Section 5 above, but in any event not later than \_\_\_\_\_.
7. Any demand under this Guarantee shall be submitted to the address set forth above during regular working hours.
8. The benefit of this Guarantee may be assigned by Company to the State of Israel whether in whole or in part. A notice of such assignment shall be provided to Guarantor.
9. This Guarantee shall be governed by the Laws of the State of Israel and any proceedings in connection to this Guarantee shall be brought before the competent courts of the Tel Aviv District, Israel.

IN WITNESS WHEREOF, we have caused this Guarantee to be executed by one or more of our officers thereunto duly authorized on this \_\_\_ day of \_\_\_\_\_, 202\_.

[ \_\_\_\_\_ ] [Insert complete name of Bank]

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

Name: \_\_\_\_\_

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

**ANNEX AA3**

**RELEASE FORM**

(To be annexed to the Final Invoice)

To:

Israel Natural Gas Lines Company Ltd.

(the "**Company**")

All the expressions herein shall have the meanings attributed to them in the Agreement for the engineering and construction of the Ashdod – Ashkelon off-shore high pressure natural gas pipeline dated \_\_\_\_\_, (doc. no. \_\_\_\_\_) and the General Terms and Conditions for the Agreement for the engineering and construction of the Ashdod – Ashkelon off-shore high pressure natural gas pipeline dated \_\_\_\_\_ (doc. no. \_\_\_\_\_) (together with all annexes thereto, the "**Agreement**"), unless expressly provided otherwise herein

Pursuant to the Agreement, the undersigned, hereby submit the attached Final Invoice to the Company for execution of the Works.

We hereby declare and confirm on behalf of the Contractor as follows:

1. That upon payment of the Final Invoice to which this Release Form is annexed, the undersigned and/or anyone on our behalf shall not have any claims, demands or pleas against the Company and/or its directors, managers, shareholders, employees and officers, in connection with the Agreement and the Works performed by us pursuant thereto, directly or indirectly, including any claims regarding to court and/or legal representation expenditures in connection with the Agreement and the Tender process to the selection of a contractor to implement the Works.
2. In any case in which, notwithstanding the foregoing, any claim and/or demand as aforesaid is raised on behalf of anyone who acted on our behalf and/or on behalf of our sub-contractors, the undersigned hereby undertakes to indemnify and compensate the Company and/or anyone mentioned above, pursuant to their first demand and without them being required to give grounds for their demand, in respect of any damage or loss and/or expense caused to them in consequence of any claim and/or demand as aforesaid.
3. Nothing in this Release Form shall: (i) derogate from any of the Guarantees under the Agreement, or; (ii) release us from the performance of any of our remaining obligations under the Contract.
4. The foregoing does not prejudice our claim for payment of the annexed Final Invoice in the amount of \_\_\_\_\_ [Insert the amount in the Final Invoice].

Name of Contractor	Contractor's authorized representative	Signature & Stamp
	By: Position: Date:	
	By: Position: Date:	



#### **ANNEX AA4**

### **CONTRACTOR'S OBLIGATIONS PURSUANT TO INGL'S LICENSE AND ITS FINANCING AGREEMENT WITH THE STATE**

**WHEREAS** Pursuant to the License that was granted to Israel Natural Gas Lines Ltd. (INGL), as well as the financing agreements between INGL and the State, INGL is required to include certain provisions in its agreements with subcontractors engaged in performing works on its behalf; and

**WHEREAS** INGL wishes to include such provisions in the Agreement entered into with the Contractor for the the engineering and construction of the Ashdod – Ashkelon off-shore high pressure natural gas pipeline;

**Therefore, the Contractor warrants and agrees as follows:**

1. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.
2. The Contractor confirms that it is highly skilled, has a vast experience and expertise in executing projects requiring works similar to the Works, and that it, as well as the employees and subcontractors engaged for the purpose of the Works, have the appropriate training as well as the certifications required by the Law for the purpose of the Works.
3. In the performance of the Works, Contractor hereby undertakes:
  - a. To act in a manner that reduces, to the extent reasonably possible, hazards to the public, nuisances, damage to infrastructures and to nearby property.
  - b. To avoid, to the extent reasonably possible, causing damage to sites of historical or national value and to tourist and landscape attractions, all in coordination with the relevant authorities according to the Antiquities Law, 1978.
  - c. To keep the sites where the Works are being executed, clean and ensure the removal, on its own expense and responsibility, of any leftovers, materials, equipment, slime and the like, resulting directly or indirectly from execution of the Works.
  - d. To take all reasonable measures required in order to avoid causing damage to infrastructure facilities and/or property.
  - e. To coordinate with the Shipping Division of the Ministry of Transport in matters relating to shipping and in accordance with the instructions of the Director of the Natural Gas Authority provided to it by INGL.
4. The Contractor confirms that it was brought to his attention that the transmission system is fully and solely owned by the State and that INGL was only granted a right to use the system facilities.
5. The Contractor and its subcontractors shall adopt and maintain procedures for quality assurance and quality control and any other procedure under "good industry practice" used by contractors performing works of similar nature to the Works and in a manner a prudent and accountable contractor would act in order to prevent accidents and damages to any person, property or the environment. INGL shall be entitled to take any reasonable actions to ensure the compliance of

the Contractor with such procedures and to assure the performance of precise and reliable works.

6. The Contractor shall enable the Director Natural Gas Authority under the Natural Gas Sector Law, 2002 and the Commissioner of Safety under the Gas Law (Safety and Licensing), 1989 (hereinafter, together "**Inspectors**"), or anyone duly empowered by any of them in advance and in writing, to supervise and review all the actions of the Contractor in connection with building and operating the transmission system or any part thereof. The contractor shall enable the Inspectors access to the sites where the Works are being performed and to the employees engaged in performing the Works and shall cooperate with the Inspectors for this purpose. The Contractor shall include such provision in its agreements with subcontractors on its behalf.
7. The Contractor shall purchase all insurances necessary for its activities in accordance with the provisions of the Contract and as common for performing projects of similar nature. The Contractor shall demand such insurances from the subcontractors performing the Works on its behalf.
8. The Contractor acknowledges that it is aware that INGL and/or the State will be the owners of all copyrights with respect to the Works. In carrying out the Works, the Contractor shall not violate intellectual property rights, including copyright, of any entity.
9. The Contractor acknowledges that it is aware that upon the expiration of the License and subject to License and any applicable Law, INGL is obliged to transfer the transmission system to the State or to whom the State shall instruct, including assignment of the Agreement.

Name of Contractor	Contractor's authorized representative	Signature & Stamp
	By: Title: Date:	
	By: Title: Date:	

**ANNEX AA5**

**TAKE OVER CERTIFICATE**

**for Project** \_\_\_\_\_ [insert name & no. of Project]

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

To: \_\_\_\_\_ [Insert full name of the Contractor] (the "**Contractor**")

All capitalized terms not defined herein shall have the meaning attributed to them in the Agreement for the Construction of High Pressure Natural Gas Pipeline for the Project \_\_\_\_\_ [insert name & no. of Project] dated \_\_\_\_\_ (doc. no. \_\_\_\_\_) including the General Terms and Conditions and all other annexes attached thereto (the "**Agreement**"), to which this Annex is attached.

This is to confirm that on \_\_\_\_\_ [insert starting date of takeover] based upon the Completion Certificate dated \_\_\_\_\_ (ref. no. \_\_\_\_\_) issued by and on behalf of the Contractor and attached herein as **Exhibit A**, subject to a successful passing of the Completion Tests in accordance with provisions of the Agreement, the Contractor became eligible to receive the Take Over Certificate pursuant to the Agreement for Project \_\_\_\_\_ [insert name & no. of Project], with the exception of the Works enumerated in the Punch List/s attached as **Exhibit C** [delete the reference to the Punch List if not applicable] in accordance with the hand over protocol set forth in **Exhibit B** attached herein.

The above confirmation shall not in any way derogate from the provisions of the Agreement including all the annexes and attachments thereto and the obligations of the Contractor thereunder and from the attached Punch Lists [Delete if not applicable].

IN WITNESS WHEREOF, the parties hereto have executed this Take Over Certificate:

Israel Natural Gas Lines Company Ltd.  By: _____  Signature: _____  Company's Seal: _____  Date: _____	_____ [The "Contractor"]  By: _____  Signature: _____  Company's Seal: _____  Date: _____
--	---

EXHIBIT A to TAKE OVER CERTIFICATE

CONTRACTOR'S COMPLETION CERTIFICATE

**EXHIBIT B to TAKE OVER CERTIFICATE**

**HAND OVER PROTOCOL BETWEEN THE CONTRACTOR & THE COMPANY**

for Project \_\_\_\_\_ [insert name & no. of Project]

All capitalized terms not defined herein shall have the meaning attributed to them in the Agreement, to which this Annex is attached.

This Hand Over Protocol is executed on this \_\_\_\_ day of \_\_\_\_\_, by the Company and by \_\_\_\_\_ (the "**Contractor**").

WHEREAS this Hand Over Protocol and the declarations and undertakings set forth hereunder shall be deemed to be agreed upon by and binding on the parties hereto and shall constitute an integral part of the Agreement; and

WHEREAS the Contractor applied to the Company for a Take Over Certificate for the Works in accordance with the provisions of the Agreement.

**NOW, THEREFORE, the parties hereby agree as follows:**

1. The Contractor undertakes to complete the Works pursuant to the provisions of the Agreement and the Punch list/s, within the time frame indicated in such Punch Lists [Delete the reference to the Punch List if not applicable];
2. The Contractor declares that the Works were, and shall be executed in accordance with applicable Law and the Agreement to the full satisfaction of the Company;
3. The Contractor undertakes to settle any claim against the Company, including without limitation any monetary claim, which results from a responsibility of the Contractor according to the Agreement and the Law, to the full satisfaction of the Company;
4. The Contractor undertakes to perform all the following to the full satisfaction of the Company: [Delete if not applicable]
  - a. To complete the redevelopment and rehabilitation of the Site to its planned condition as set forth in the Technical Volumes;

- b. To submit to the Company all the plans, drawings, documentation and files as set forth in the Agreement and the Technical Volumes.
- 5. The Contractor declares that any entrance to the Site shall be subject to all the following, all at the sole expense of the Contractor:
  - a. The Company's prior approval;
  - b. The relevant Company's procedures and;
  - c. The Company's supervision.
- 6. The Contractor hereby declares that it has no claims and will not have any claims with respect to simultaneous Works in the Site.
- 7. The Defect Liability Period according to the Agreement shall commence from the date that the Company shall issue the Take Over Certificate. However, where a Punch List attached to such Take Over Certificate, than the Defect Liability Period regarding all and any of the Works in this Project shall commence at the date of the Company Representative's written approval that all remaining Works or Defects in the System existed at the time of Taking over, have been remedied to the full satisfaction of Company.

Subject to the declarations and undertakings of the Contractor above, and without derogation from any of the rights of the Company under the provisions of the Agreement and all Agreement Documents, the Company is willing to issue this Take Over Certificate for the Works.

IN WITNESS WHEREOF, the parties hereto have executed this Take Over Certificate to the Project:

Israel Natural Gas Lines Company Ltd.  By: _____  Company's Seal: _____  Date: _____	_____ [The Contractor]  By: _____  Company's Seal: _____  Date: _____
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**EXHIBIT C to TAKE OVER CERTIFICATE**

**for Project \_\_\_\_\_** [insert name & no. of Project]

**PUNCH LIST/S**

(If applicable)

**ANNEX AA6**

**COMPLETION CERTIFICATE**

Dated \_\_\_\_\_

**For INGL Transmission System Project**

Project description (the "**Project**"): [insert name & no. of Project]

This is to certify that \_\_\_\_\_ (the "**Contractor**") has completed the construction of  
aforementioned Project as follows:

1. All works of the Project have been performed according to the design, the NEN 3650 and INGL standards and specification.
2. All materials have been purchased by INGL and constructed by the Contractor according to the design and in accordance with INGL standards and specification.
3. All welds have been welded, checked, approved and accepted according to the design, the NEN 3650 and INGL standards and specifications.
4. Holiday Detection was performed according to the standard and accepted.
5. All hydrostatic tests and leak tests, dewatering and drying of the pipeline have been performed according to the INGL standard and specifications. Pressure test, dewatering and drying of the pipeline were completed and accepted.
6. All Golden Welds of the pipeline and valves stations have been performed in according to the INGL standards and specifications and tested and accepted by all parties.
7. All NCR's and CAR's related to the works of the Contractor have been successfully closed out (erase this line if no NCR's/CAR's)
8. Permanent/Temporary (erase the non-relevant) Cathodic protection has been put in place as per the design and relevant standards and accepted by all.
9. The Project (erase the non-relevant) is ready for gassing up.



10. The technical data relating to this Completion Certificate is specified in the Mechanical Completion Certificate issued by E-On Engineering dated \_\_\_\_\_ (doc. ref. no. \_\_\_\_\_) attached herewith.

For and on behalf of _____ (the Contractor):  _____ Project Manager	Acknowledged by, for and on behalf of _____ (Professional Company and Supervision):  _____ Project Manager
Acknowledged by, for and on behalf of _____ (Third Party Inspection Company):  _____ Project Manager	Acknowledged by, for and on behalf of _____ (Supervision and Management Company):  _____ Project Manager

**ANNEX AA7**

**DECLARATION REGARDING CONFLICT OF INTERESTS**

To:

Israel Natural Gas Lines Ltd.

Atidim Tower, Kiryat Atidim

Tel-Aviv 6158101, Israel

We the undersigned: \_\_\_\_\_ (hereinafter the “**Contractor**”) hereby declare, warrant and undertake, jointly and severally, to the Company as follows:

1. We hereby undertake to act loyally and professionally and to avoid any and all conflict of interest in the execution of our duties under the terms of the Agreement, and shall undertake that all of our employees, subcontractors and representatives will refrain from any activity or association that might involve such a conflict of interest, directly or indirectly.
2. We hereby undertake to notify the Company in any event when the Works involve or may involve any conflict of interest with other work that we have performed, are performing and/or intends to perform, we shall notify the Company immediately of any such conflict with connection to the Works and/or any personal interested of us and/or the like and we will act in accordance with the instructions of the Company in connection with any such conflict of interest.
3. We hereby declare that we are not shareholder/holder of other convertible securities and/or officers (including but not limited to directors in any of corporation involved in the natural gas market and/or energy and/or infrastructure and/or any related area which competes with the Company's business) is/may become the Company's client.
4. Our positions and/or other occupations do not create and are not liable to create any conflict of interest whatsoever, whether directly or indirectly, whether professional or business, with our duties under the terms of the Agreement.
5. We hereby declare that there are no conflicts of interest between any of our prior or current engagements or activities and/or those of our employees and/or subcontractors.
6. We hereby declare that neither we nor any of our subcontractors are connected with the Company or its employees.
7. We hereby undertake to report to the CEO, immediately upon our becoming aware of a possible conflict of interest with regards to our duties under the terms of the Agreement. Furthermore, we undertake to take all necessary and reasonable measures under the circumstances to remove the conflict of interest and to act in regard to the services in accordance with the instructions of the Company.

8. We undertake to give immediate notice to the Company about any change of the details provided hereto and/or about any matter included in this statement.
9. We hereby declare that we have reviewed this declaration and all parts thereof. We declare that we have understood its content and we undertake to abide by and fulfil all its instructions.

**In witness hereof:**

Name of Contractor	Contractor's authorized representative	Signature & Stamp
	By: Position: Date:	
	By: Position: Date:	

**ANNEX AA8**

**ETHICAL CODE**

**Israel Natural Gas Lines Ltd.**

**The Ethical Code for Contractors and Suppliers**

**1. Introduction**

Israel Natural Gas Lines Ltd. (hereinafter: "**the Company**") is a governmental company holding the license to construct and operate the national natural gas transmission system, a project of great importance to the Israeli economy due to its vast contribution to economics, industry and quality of the environment.

The Company acknowledges the importance of the relation and partnership with its contractors and suppliers, and regards them as essential factor to achieving its goals.

The purpose of this ethical code is to delineate the basic principles for the Company's contractors' and suppliers' behaviour, in relation to integrity, fairness, respect, avoiding concern for conflict of interests and confidentiality. Operating in accordance with the ethical code shall strengthen the business relationships between the Company and its contractors and suppliers and shall contribute to the parties' collaboration as well as the success of the task at hand.

For the avoidance of doubt, it is hereby clarified that the code applies to anyone acting on behalf of the Company's contractors and suppliers, including their employees and subcontractors, vis-à-vis the Company, its employees and anyone acting on the Company's behalf. Accordingly, the Company's contractors and suppliers shall be responsible for bringing the content of the code to the attention of anyone acting on their behalf and for taking all the measures required in order to ensure that they shall carry out the provisions of the code.

The ethical code applies in addition to the provisions of the contract between yourselves and the Company and shall not be interpreted as derogating therefrom. It is additionally clarified, that certain matters specified in the ethical code are regulated by statutory provisions, the violation of which carries severe penalties.

**2. Integrity, Fairness and Respect**

In order to establish trust and partnership with the Company, you are hereby required: to act towards the Company with personal and professional integrity as well as morality; to act with a fair, transparent and practical manner towards the Company; to treat the Company's representative with whom you are in professional contact, respectfully, create a fair and deferential dialogue and operate to resolve disagreements in a manner agreed upon the parties.

It is hereby clarified that the Company shall deem any deviation from the rules of integrity and morality as acute and severe, and shall use all legal measures against anyone who shall be found acting in such deviation.

### **3. Conflict of Interests**

- 3.1 You are hereby required to avoid any conflict of interests with respect to the services provided by you to the Company, and to avoid any contact which could potentially create concern for conflict of interests.
- 3.2 Should you become aware of the existence of concern for possible conflict of interests, you are hereby required to inform the Company immediately in order for the Company to examine its nature.
- 3.3 Without derogating from the generality of the foregoing, you are hereby required to divulge to the Company, prior to entering into contractual relations with the Company and during the term of these relations, any information concerning -
  - a. Your being holders of securities, directors, role holders or having a business relation with a corporation that is a client, supplier, competitor, supervisor or other entity related to the Company, in a manner creating or might create concern for conflict of interests;
  - b. Other positions and/or duties of yours, which might harm your ability to perform your duty of providing services to the Company.
- 3.4 You are hereby required to avoid soliciting and/or collaborating, directly or indirectly, with anyone on behalf of the Company and/or any other party, in order to -
  - a. Receive information regarding a preliminary process for entering into a contract with the Company and/or any agreement and/or an order deriving therefrom, other than in the manner stipulated in the procedure of request for offers or in the instructions for contracting with the Company;
  - b. Set prices in an artificial and/or non-competitive manner.
- 3.5 You are hereby required to avoid representing any party against the Company and/or in a proceeding of any kind which the Company is involved in, pertaining the particular matter in relation to which you performed services for the Company, unless you shall receive the Company's prior and written consent, which may, at its sole discretion, decide whether your doing so does or does not entail a conflict of interest.

### **4. Benefits**

- 4.1 You are hereby required to avoid offering / giving / receiving / requesting, directly and/or indirectly, prior to, during or after the conclusion of your contractual relationship with the Company, for yourself and/or for another person and/or for your businesses and/or the business of other party, any benefit, including recommendation and/or decision and/or right and/or money and/or anything valuable in relation to the Company and/or anyone on its behalf.

4.2 Notwithstanding the foregoing, an offer or benefit shall be permitted in the following cases or events, provided that they shall not be given in order to influence integrity, incorruptibility and good governance: an infrequent, minor / symbolic gift which its worth is up to NIS 200, such as: a calendar given on a national holiday, a retirement gift or a meal at a conference you have organized.

## 5. Job Offers to the Company's Employees

As long as you are engaged with the Company, you are required to avoid offering to the Company's employees to work for you or for a third party. Should you nevertheless do so, any former employees of the Company employed by yourself shall withheld from executing services related to the Company for at least a year, and the Company shall additionally be entitled to terminate its contract with you immediately, according to the circumstances and subject to the law. The Company shall take severe measures in cases where such an offer is made in order to influence the employee's discretion.

## 6. Kinship

6.1 You are hereby required to divulge to the Company all the information in your possession regarding any kinship of anyone on your behalf and any of the Company's employees and/or anyone on its behalf.

6.2 Should you have kinship to any of the Company's employees and/or anyone on its behalf, you must avoid acting directly in conjunction with your relative when an agreement is being negotiated with you or during the provision of your services.

## 7. Confidentiality

7.1 You are required to keep confidential and not to transfer, pass on or bring to the attention of any person, directly or indirectly, at any time, including after the conclusion of your contractual relationship with the Company, information and documents relating to the Company and the contractual relationship with it (hereinafter: "**the Confidential Information**"), that shall come into your possession, unless the aforementioned information and/or documents are common knowledge or were given to you in order for you to pass them onto a third party for the purpose of providing the services specified in your contract with the Company.

7.2 The provision of your services for the Company may not be publicized without the Company's prior written authorization.

7.3 Since the Confidential Information belongs exclusively to the Company, you may not duplicate it in any manner without prior written authorization.

7.4 Upon termination of your contractual relations with the Company or immediately upon receiving the Company's initial demand, you must return to the Company any information, document and material in your possession and/or in the possession of anyone on your behalf, which belongs to the Company and/or contains the Confidential Information, regardless of whether it had been prepared by the Company and/or anyone on its behalf and/or by yourselves.

7.5 No information, document or material containing the Confidential Information may be removed from your premises without the Company's prior written authorization and subject to the conditions specified in the aforementioned authorization.

**8. Reporting a Breach of the Ethical Code**

If you wish to report a possible breach of this code, you may apply to your main contact person in the Company, to the Company's CEO, Internal Auditor or Legal Advisor. Insofar as possible under the circumstances, the Company shall keep the confidentiality and anonymity of the reporting person.

In witness hereof:

Name of Contractor	Contractor's authorized representative	Signature & Stamp
	By:  Position:  Date:	
	By:  Position:  Date:	