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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 for</b> <b>High Pressure Vessel Integrity Assessment</b>  <b>(INGL/TENDER/2020/25)</b>			
			Company Representative: Mr. Itai Cohen			Document No.
Document Originator : Mr. Ezra Daniel Adv. Sivan Levy			<b>432810</b>		1	

**GENERAL TERMS and CONDITIONS of an AGREEMENT**

Made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021

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

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## **AGREEMENT ANNEXES**

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

- B1 Performance Guarantee
- B2 Release Form
- B3 Contractor's obligations pursuant to the License
- B4 Declaration regarding Conflict of Interests
- B5 Ethical Code

### **1.2. Technical Volumes**

- C1 Specification for Integrity Assessment of Pressure Vessels
- C2 Example Drawings of PRMS Gezer Pressure Vessels & 18" PIG trap

### **1.3. Financial**

- D1 Terms of Payment
- D2 Commercial Proposal (as submitted by Bidder and approved by Company)

### **1.4. Insurance, Security & Safety**

- E1 Security
- E2 Provisions regarding Activities and Work in Security Areas and Firing Ranges

### **1.5. The ITB (INGL/TENDER/2020/25)** (not physically attached)

### **1.6. Clarifications and Amendments issued as part of the ITB** (not physically attached)

**Whereas** The Contractor was declared as the winning Bidder in a Tender procedure conducted by the Company for the execution of High Pressure Vessel Integrity Assessment no. INGL/TENDER/2020/25 (the "**Tender**" and the "**Assessment**"); and

**Whereas** These General Terms and Conditions (as well as all other documents that shall constitute the Contract) will govern the execution of the Assessments by the Contractor;

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

## **1. Definitions**

In this GTC the following words, terms and expressions shall have the following meaning:

- 1.1 **Agreement** – Means the instrument of Agreement that shall be entered into by the Company and the Contractor for the execution of the Assessments.
- 1.2 **Antiquity** - Shall have the meaning assigned to it in the Antiquities Law, 1978, or in any other Law pertaining to antiquities.
- 1.3 **Approved Financial Entity** - **(i)** a commercial Israeli bank or Israeli financial institution rated with at least an AA 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.
- 1.4 **Best Industry Practices** - The recognised professional good practice principles of workmanlike, due care and diligence, as identified in the field of the Works, subject to applicable binding standards, as set forth in the Technical Volumes.
- 1.5 **Bill of Quantities** or **BOQ** - Means the Bill of Quantities attached to the Agreement.
- 1.6 **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 35.
- 1.7 **Commencement Date** – Means the date stipulated in the Commencing Work Order, issued by the Company for the Assessments, as the date upon which the Contractor should commence with the execution of the Works.
- 1.8 **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.
- 1.9 **Company** - Means the Israel Natural Gas Lines Ltd and/or its legal successors.
- 1.10 **Company Representative** - Means the VP Operations of the Company or any other person who shall 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.
- 1.11 **Completion Deadline** - Means the time stated in the Schematic Schedule which is part of the Specification for Integrity Assessment of Pressure Vessels (Annex C1) for completing the Works.

- 1.12 **Company Option** - Means the right of the Company at any time during the Company Option Period, to order additional Assessments for up to 150%., in accordance with the provisions of the Tender.
- 1.13 **Company Option Period** - Means the execution of two additional extensions, 24 months each, commencing on the date the Company shall sign the Contract with the Contractor.
- 1.14 **Contract** – Means the Agreement and all annexes thereto, including these GTC and the Technical Volumes.
- 1.15 **Contract Period** - Means the period commencing on the signature date of the Contract and ending upon termination of the Works, and no longer than 5 years commencing on the day of Company's announcement of the Winning Contractor under the Tender.
- 1.16 **Contract Price** - Means the payment which is payable by the Company to the Contractor for the execution of the Assessments, consistent with the stipulated consideration in the Contractor's Bid for the Tender as approved by the Company and as may be adjusted pursuant to the GTC.
- 1.17 **Contractor** - Means the entity specified above as the Contractor for the execution of the Assessments and anyone acting on its behalf and any legal successors in title thereto.
- 1.18 **Contractor's Documents**– Means all documents, including and without limitation, procedures, requests, drawings, plans, specifications, protocols and programs as well as any other document furnished by the Contractor pursuant to the Agreement.
- 1.19 **Contractor's Equipment** - Means all equipment, machines, appliances, tools or any other materials of whatsoever nature as required for the purpose of execution and completion of the Works.
- 1.20 **Contractor's Personnel** - Means all staff, personnel and laborers engaged by the Contractor or by its Sub-Contractors.
- 1.21 **Contractor's Bid** - Means the Contractor's Bid to the Tender.
- 1.22 **Detailed Schedule** - Means the detailed schedule prepared by the Contractor based on the Schematic Schedule and approved by the Company Representative.
- 1.23 **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 under Best Industry Practice.
- 1.24 **General Terms and Conditions / GTC** - Means these General Terms and Conditions together with all annexes hereto.
- 1.25 **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.
- 1.26 **Key Personnel** – Means the essential key personnel to be employed by the Contractor in the execution of the Assessments as set forth in Clause 9.2.

- 1.27 **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, all as may be amended and updated from time to time.
- 1.28 **Milestones** - Mean the key events in the Schematic Schedule selected for their importance.
- 1.29 **Property Owners** - Means owners of holders of property which is adjacent to or within the Working Strip.
- 1.30 **Reasonable Costs** - Means reasonable costs directly incurred by the Contractor in the performance of its obligations under the Agreement and duly evidenced by documentation, 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 loss or damages, howsoever and whatsoever caused.
- 1.31 **Schematic Schedule** - Means the general schedule for the performance of the Assessments attached hereto as Annex C1.
- 1.32 **Site** - Means the area where the Works are to be executed by the Contractor.
- 1.33 **Sub-Contractor** – Means a legal entity other than the Contractor that shall execute any part of the Works as a sub-contractor for the Contractor.
- 1.34 **System** - Means the natural gas transmission system in the State of Israel.
- 1.35 **Technical Volumes** - The documents attached as **Annexes C1 – C2** together with all annexes thereto, including all technical specifications and typical drawings.
- 1.36 **Tender** – Means Public Tender No. INGL/TENDER/2020/25 issued by the Company for High Pressure Vessel Integrity Assessment.
- 1.37 **Works** - Means any and all works which are to be provided and/or performed by the Contractor under the Contract, including but not limited to the receipt of all required permits and permissions and the coordination with any and all third parties, the execution of the Assessments and the issuance of the preliminary report and the final report to be approved by the Company.

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

### **2.1 Ruling Language**

- 2.1.1 The Contract 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, should any of the Contract documents be drafted and/or provided in the Hebrew language, 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 expense.
- 2.1.2 Translation into the Hebrew language of documentation produced by the Contractor (when necessary) shall be made by the Contractor and at the expense of the Contractor (including but not limited to all contact with authorities).



## 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 and the Contract. However, wherever the Contractor's Bid is more stringent or more favourable to the Company in relation to provisions of the Tender and the Contract, then such provisions in the Contractor's Proposal shall be binding upon the Contractor.

## 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.

2.3.3 Words importing persons or parties shall include any organization having legal capacity. Words importing the singular only also include the plural and vice versa. Where the context requires, words importing any gender shall include both genders.

2.3.4 Wherever in the GTC a provision is made for the giving of notice, consent, approval, certificates by any person, such consent or approval shall be made in writing and the words "notify", "certify" and "determine" 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 error or omission, 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 Tender Documents and the Contract or in any case of a contradiction or lack of conformity regarding any provisions in the various documents that constitute the Tender or the Contract or the annexes thereto, 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 declining order of importance:

<b>Order of precedence regarding the performance of the Works</b>	<b>Order of precedence regarding payments</b>
A. The Technical Specifications	A. Commercial Proposal
B. The Tender Documents	B. Terms of Payment
C. The Agreement	C. The Agreement
D. The GTC	D. The GTC
E. Israeli and International Standards	E. The Tender Documents
F. The General Governmental Specifications for Performing the Works (the "Blue Book") (Hebrew only)	F. Israeli and International Standards
G. The Contractor's Bid	G. The Contractor's Bid

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

2.3.11 A dispute as to the meaning of any of the Contract provisions 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's Documentation**

3.1.1 The Contractor shall submit, at its own expense and in accordance with the Technical Volumes, all drawings and documentation to the Company Representative for review and approval as well as any such additional drawings and/or documentations which the Company Representative shall reasonably request.

3.1.2 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.

3.1.3 The Contractor shall be solely responsible for any errors or omissions in the Contractor's Documentation. Review by the Company Representative of any of the Contractor's Documentation shall not relieve the Contractor from any responsibility nor does it constitute acceptance of the adequacy and accuracy of the documentation.

#### **3.2 The Contractor's Use of Company 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 documentation may be used by the Contractor solely for purposes of carrying out the Contractor's obligations under the Contract.
- 3.2.3 Upon completion of the Works, the Contractor shall return to the Company all Company documentation and confirm that all copies have been destroyed.
- 3.2.4 The aggregate liability of the Company where its documentation proves incorrect shall not exceed any additional consideration, which will become due to the Contractor as a result of any additional Works pursuant to Clause 33.3 and/or Reasonable Costs pursuant to Clause 12.5, as applicable.

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

The Contractor hereby declares and represents:

- 4.1 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.
- 4.2 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 Contract and carrying out its undertakings pursuant hereto.
- 4.3 It has in its possession all the licenses, permits, approvals and/or authorizations (other than those that should be issued as part of the execution of the Works) required by any law or contract to conduct its business activities and to carry out its undertakings pursuant to the Contract.
- 4.4 It is aware that guidelines and/or approvals given and to be given by the Company or on its behalf 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 Contract.
- 4.5 It has and shall independently acquire, review and evaluate all factors and data that may reasonably be deemed to affect the carrying out of its obligations under the Contract, including, but not limited to, geological and weather conditions, permits, permissions and coordination required, technical risks, financial risks, design and construction risks and any other risk involved in the execution or completion of the Works in accordance with the terms of the GTC.
- 4.6 It hereby acknowledges that any data concerning the Site conditions, such as climatic, hydrological, geological, geo-technical, seismological and weather, which is derived from research, observations etc. on the part of the Company or any third party on behalf of the Company, that was or shall be included in the Tender Documents, 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 Proposal 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 such 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.

- 4.7 It shall refrain from any activity that might constitute a conflict of interest in the execution of its duties under the terms of the Contract and shall undertake 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, either for itself or for any of its employees, Subcontractors or representatives, and act in accordance with the Company's instructions in order to avoid the conflict. All as provided for in **Annex B4**.
- 4.8 It has been presented with the Company's Ethical Code for Contractors and Suppliers (attached hereto as **Annex B5** and available at all time on the Company website ([www.ingl.co.il](http://www.ingl.co.il)) and undertakes to comply with it.

## **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 Contract in accordance with the applicable Law, the Company's license and the Contractor's obligations pursuant to the License included in **Annex AA4**, all relevant international conventions and legislation, all relevant standards and norms for carrying out the Works, all requirements set forth in the Contract and specifically in the Technical Volumes, Best Industry Practices and high-quality construction standards.

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

The Works shall be carried out in compliance with the Law, professional standards, decisions of any public authority and with all working procedures provided to the Contractor. Should there be a discrepancy between the permits and the procedures, the Contractor shall abide by the more stringent provision.

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

The Contractor shall comply with all directives and instructions of the Company Representative.

The Contractor shall be responsible to update and cooperate with the Company Representatives at all stages of carrying out the Works. 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.

All actions by the Company itself or through a third party, including managing and supervision of the Works and the supply of any goods or services, shall in no way derogate from the responsibilities of the Contractor.

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

- 5.4.1 The Contractor shall be obligated to obtain and maintain at its sole responsibility and expense any and all registrations, permits licenses and authorizations, as provided by the Contract and as required pursuant to the Law for the purpose of carrying out the Works. 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 the Works and before completing all coordination required to carry out the Works.
- 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 Israeli Natural Gas Authority ("NGA") and that the NGA is authorized to inspect and overlook all aspects pertaining to the Works at all times and the Contractor undertakes to comply with its instructions.
- 5.4.3 Furthermore, the Contractor acknowledges that the Works may be supervised by a TPI and undertakes to comply with its instructions as well.
- 5.4.4 Without derogating from the Contractor's obligations stated above, the Company may, but shall not be obligated to, at the Contractor's request, yet without assuming any responsibility, take reasonable measures to assist the Contractor in obtaining permits, approvals, licenses and authorizations.

#### 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 Contract Period.
- 5.5.2 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.
- 5.5.3 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 Specification for Integrity Assessment of Pressure Vessels (**Annex C1**) 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.
- 5.5.4 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 and shall not derogate from the Contractor's liability to carry out the Works at the requisite standard and quality pursuant to the Contract and the Law.

- 5.5.5 Whereupon the Company finds that the Contractor has not complied with its obligation to routinely ensure quality control, 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 this Contract.

## **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 in order to successfully complete the Works in accordance with the approved Detailed Schedule.
- 6.1.2 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 Contract.

### **6.2 Commencing Work Order**

- 6.2.1 The Company shall have the full and unreserved right to decide at its sole discretion whether or not to issue a Commencing Work Order for the Assessments. The Contractor shall have no claim whatsoever regarding the Company's decision not to order the execution of the Assessments and shall not be entitled to any remedy or compensation of any kind whatsoever due to such decision.
- 6.2.2 The Commencing Work Order issued shall be accompanied by an updated Schematic Schedule and a binding set of plans.
- 6.2.3 The Commencing Work Orders shall include an organization and mobilization period of up to 90 days prior to the scheduled date for the actual start of Works on Site, unless stipulated otherwise by the Company in the Tender documents at its sole discretion.
- 6.2.4 Within 14 days as of the issuance of the Commencing Work Order and as precondition for the actual start of the Works, the Contractor shall submit to the Company the following documents and information:
- 6.2.4.1 Performance Guarantee (as provided for in Clause 30 below).
- 6.2.4.2 The Detailed Schedule, in accordance with the Company's updated Schematic Frame Schedule, for the Company's approval.
- 6.2.4.3 A quality control program for the Assessments, based on the Bid according to the Tender requirements, for the Company's approval.
- 6.2.4.4 A certificate confirming the issuance of an insurance policy as provided for in Clause 50 hereunder.

### 6.3 Progress Reports

The Contractor shall furnish Progress Reports to the Company Representative, in accordance with the Technical Volumes. The Company shall be entitled to demand at any time from the Contractor, an immediate report concerning the performance of the Works and the Contractor undertakes to make available to the Company any and all information upon receiving such a request

### 7. Setting Out

The Contractor shall set out the Works in relation to the route approved by the Company Representative in writing. 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. Deleted

### 9. The Contractor's Personnel

#### 9.1 The Company's Approval for the Contractor's Personnel

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. 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.

#### 9.2 Key Personnel

9.2.1 The Contractor shall engage throughout the Contract Period Key Personnel as required under the Tender, whose identity shall be subject to the prior written approval of the Company, including (but not limited to) Project Manager and Risk Based Inspection (RBI) Surveyor. The identity of the Key Personnel shall be as detailed in the Contractor's Bid (if detailed) and may not be replaced without the prior written approval of the Company.

9.2.2 The Key Personnel shall be fluent in the English language.

9.2.3 All Key Personnel shall remain on Site and shall dedicate all time, efforts and skills for carrying out the Works, on a full-time basis throughout the Contract Period and until the Company's approval is received for the completion of the Works.

#### 9.3 Replacement of the Contractor's Personnel

9.3.1 The Contractor shall not be permitted to replace the approved Project Manager and other Key Personnel without the Company Representative's prior written approval.

9.3.2 The Company Representative may, for professional reasons, withhold or withdraw approval previously granted and request the replacement of any of Contractor's Personnel or Sub-contractors, and the Contractor hereby undertakes to comply with such request.

#### 9.4 The Contractor's Liabilities and Responsibilities for the Contractor Personnel



9.4.1 The Contractor shall be exclusively responsible to obtain all types of permits, approvals, licenses etc. required for the purpose of carrying out the Works pursuant to the Contract by the Contractor's Personnel, including work permits, visas etc.

9.4.2 The Contractor shall provide reasonable and appropriate working conditions, all in full compliance with the Law. The Contractor shall conform to the requirements of the Law concerning working days and hours.

## 9.5 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 and requirements regarding employment of foreign labour.

## 9.6 Subcontracting

9.6.1 The Contractor shall not subcontract any part of the Works, without the prior written consent of the Company, which may withhold such consent or withdraw its previously given consent. Permission is granted to subcontract the supply of equipment, yet the identity of the sub-contractor is subject to the prior approval of the Company.

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

9.6.3 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 the Contract and/or if a Subcontractor's obligations extend beyond the Contract Period.

## 10. Contractor's Facilities, Equipment & Materials [Contractor's Equipment]

The Contractor shall be responsible to supply, at its expense, the Contractor's Equipment, including all the materials, machinery, software, licenses all other resources required to fulfil its undertakings pursuant to the Contract.

## 11. The Detailed Schedule

Following the Commencing Work Order the Contractor shall submit to the Company Representative for his review and approval the Detailed Schedule, which shall be prepared in accordance with the Schematic Schedule attached to the Commencing Work Order, which shall include as a minimum, the sequence in which the Contractor intends to carry out the Works, including the anticipated timetable, and a general description of the working methods.

## 12. Alterations to Detailed Schedule

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

12.2 The Contractor shall be responsible to inform the Company in a written notice of the occurrence of circumstances due to which the Contractor may be delayed in carrying out its obligations pursuant to the Contract. Such notice shall be provided by the Contractor as soon as it becomes aware of such circumstances.



- 12.3 The Contractor shall be accountable for any delays in carrying out its obligations pursuant to this Contract, other than the following:
- 12.3.1 If the Company Representative issued a Change Order with an approved extension of the schedule, in accordance with the provisions of Clause 35.
  - 12.3.2 If the Company instructed the Contractor to stop the Works in accordance with the provisions of Clause 30.1.
  - 12.3.3 If the timetable was deferred due to delays in carrying out actions within the Company's responsibility.
  - 12.3.4 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.
  - 12.3.5 Circumstances amounting to a Force Majeure, in accordance with the provisions of Clause 44.
- 12.4 Where the Contractor was delayed in carrying out its obligations due to the circumstances detailed in Sub-Clauses 12.3.1 - 12.3.4 above, it shall furnish, in writing, a document to be approved by the Company Representative, describing the period of delay and the details evidencing the actual circumstances and reasons justifying the period of such delay.
- 12.5 Where the Company Representative determined that the Contractor was delayed in carrying out its obligations due to the circumstances detailed in Sub-Clauses 12.3.1 and/or 12.3.3 above (excluding any delay under Contractor's responsibility), then the Company shall pay the Contractor, as full and final compensation for all of the its expenses due to the delay (including expenses that may not be classified as overhead expenses) 3% of the Contract Price per day.

### **13. Infrastructure Owners and Holders**

- 13.1 The Contractor acknowledges that the Works, in whole or in part, may be performed in the vicinity of infrastructure owned and/or used by utility companies and other third parties (all together in this Clause 13 and Clause 14 "**Third Parties**").
- 13.2 The Contractor undertakes to coordinate the Works with Third Parties and to obtain, at its sole responsibility and expense, all permits and authorizations as may be required from Third Parties for the execution of the Works and shall comply with all Third Parties requirements and demands.
- 13.3 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 vicinity. 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 need to be carried out in accordance with the terms included therein.
- 13.4 Any such agreement or coordination with Third Parties shall be subject to the provisions of this Contract.

13.5 The Company shall assign (at its expenses), at its sole discretion, an Israeli engineering company that shall act as Third Party Inspector during the Assessment.

#### **14. Delays and Costs arising from Infrastructure Owners and Holders**

14.1 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.

14.2 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 33.3 shall apply, provided that the Company Representative confirms that the Contractor exerted such aforementioned best efforts.

14.3 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.

#### **15. The Site**

##### **15.1 Site Familiarity**

The Contractor shall review and check, as an expert, the Site and its surroundings and physical condition and all relevant information, plans and data. The Contractor hereby acknowledges that any and all data concerning the Site conditions (such as climatic, geological and geophysical conditions, weather, infrastructure, active ports, fairways and firing zones) that was included in the Tender document or otherwise provided by the Company or its behalf, is indicative and for general information purposes only. It is the sole responsibility of the Contractor to check and evaluate such data and to conduct any and all research or observations necessary for the verification and accurate determination of such data.

##### **15.2 Access to the Assessment Equipment**

The Contractor shall allow access to the Assessment equipment and/or the reports to any person authorized by the Company Representative.

##### **15.3 Delays due to Limitations on Access to Site**

If the Contractor is unable to perform the Works due to limitations set by any third party on the access to Site (such as port authorities), it shall make best efforts to solve such problems and continue the Works.

Where the Contractor is unable to access the Site despite such best efforts, it shall inform the Company Representative in writing. In such case, the provisions of Clause 33.3 shall apply, provided that the Company Representative confirms that the Contractor exerted such aforementioned best efforts.

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 limitations set by any third party on the access to Site.

## **16. Works in Security Areas and in the Vicinity of Infrastructure**

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

- 16.1.1 Without derogating from the foregoing, 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.
- 16.1.2 Should it be necessary to enter a Security Area, the Contractor shall provide the Company Representative with a reasonable advance written notification that shall allow the Company the necessary period to obtain a permit to work in Security Areas from the Ministry of Defense ("MOD"). In such case, subject to the obligations of the Contractor set forth in the following paragraph, the Company shall be responsible for obtaining the requisite permit and/or approval of the Ministry of Defense and presenting the same to the Contractor.
- 16.1.3 The Contractor undertakes that it shall not enter any part of the Site which requires the prior approval of the Ministry of Defense, prior to receipt of a copy of such approval from the Company. The Contractor shall fully cooperate with all of the instructions and directives of the Company Representative and/or the Company with regard to obtaining permission and/or approval of the Ministry of Defense, including by way of providing in a timely manner to the Company and/or the Company Representative, any information, details, documents and particulars which are required, in the sole judgment of the Company for the obtaining of a permit or approval.
- 16.1.4 The Company, from time to time, according to its needs, shall negotiate with the Ministry of Defense regarding the execution of Works in Security Areas. Upon execution of such Agreement with the Ministry of Defense, all Works within Security Areas shall be carried out in accordance with the terms included therein, which the Company shall provide to the Contractor.
- 16.1.5 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.

### **16.2 Works Performed in the Vicinity of Infrastructure**

- 16.2.1 Prior to the commencement of the Works in any Section of the Site, 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 antiquities authorities in order to determine the existence of any Antiquities. The Company shall bear the Costs of any such surveys and/or excavation work.
- 16.2.2 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.

- 16.2.3 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 so requested by the Israeli Antiquities Authority.
- 16.2.4 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.
- 16.2.5 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.
- 16.2.6 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 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 Ministry of Defense in relation thereto.
- 16.2.7 In the event that the occurrence of one of the events contemplated by this Clause 16.2 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 33 [Completion Deadline]. 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 hereto.
- 16.2.8 Other than as expressly stated in this Clause 16.2 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.

## **17. Health, Safety and Environment**

- 17.1 Throughout the Contract Period, the Contractor shall bear sole responsibility for its compliance with this Clause 17, Health, Safety and Environment Requirements included in the Technical Specification, all instructions of the Company Representative and all

applicable Laws regarding the safety of all operations coming under the responsibility of the Contractor, the safety of all operations carried out in a surrounding of any existing Infrastructure and of the environment.

- 17.2 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. The Contractor shall bear sole responsibility for any damage to property, harm to body and damage to the environment (pollution of soil and water, etc.).
- 17.3 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 Infrastructures, it may order immediate suspension of the Works pursuant to Clause 20.2 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 extensions of the Completion Deadline.
- 17.4 The Contractor 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 in relation to such liability.
- 17.5 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.

## **18. Security and Weather**

- 18.1 Throughout the Contract Period the Contractor shall bear sole responsibility for security at the Site and at any other location where the Contractor fulfils any of its obligations.
- 18.2 The Contractor shall, throughout the Contract Period, observe the Law and all applicable regulations with regard to security and shall comply with all of the provisions of **Annex E1**.
- 18.3 Without derogating from the foregoing, the Contractor shall abide by all of the instructions of Company Security manager or its designated representatives, the Israel Police, the Israel Defence Forces, the Ministry of Defence, and any other authorized authority.
- 18.4 Weather decisions shall be recorded on a daily log and an agreed formal acceptance/rejection procedure for stoppage due to adverse weather put in place relying on agreement between Contractor and the Company. The skipper of the vessel has final and absolute authority in respect of safety of his vessel; however, his decision-making process shall be transparent and logical.
- 18.5 Where the Contractor is unable to continue the Works due to weather conditions, it shall inform the Company Representative in writing. In such case, the provisions of Clause 33.3 shall apply.

18.6 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 weather conditions.

## **19. Intellectual Property Rights**

19.1 The Contractor undertakes that the execution of the Works shall not involve an infringement of any Intellectual Property Rights of any third party.

19.2 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 utilized in the execution of the Works. The Contractor shall indemnify the Company against all claims of infringement of any Intellectual Property Rights in respect of all documents and information, methods and/or materials or systems used for or in connection the Works.

19.3 Title to all plans, drawings, specifications, models, samples or other tangible work product produced by the Contractor (the "**Work Products**") shall be the sole and exclusive property of the Company. The Contractor shall deliver all such Work Products to the Company upon the completion or early termination of the Works. Copies thereof retained by the Contractor shall not be used by it for any purpose whatsoever without the Company's prior written consent.

19.4 The Contractor shall be deemed to give the Company an irrevocable, unlimited in time, transferable, non-exclusive, royalty free license to copy, use and communicate, including making and using modifications thereof, to all Contractor's Documents which are not considered as "Work Products".

19.5 All the documents and information (oral or written) (collectively the "**Plans**") furnished to the Contractor in connection with the Works shall at all times be and remain the property of the Company and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract.

## **20. The Company Representative**

20.1 The Company Representative shall carry out duties and/or exercise authorities assigned to the Company in the Contract as specified in or necessarily to be implied from the Contract. Without derogating from any other provisions of the Contract granting authority to the Company Representative, the Company Representative's duties shall include, inter alia, the following:

20.1.1 Supervise the Works on Site and check their progress.

20.1.2 Issue and agree on Change Orders within the limits of certain authorities delegated by the Company, and pursuant to the provisions of Clause 35 , subject to the Company's prior approval.

20.1.3 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.

20.1.4 Coordinate the activities of the Contractor, Third Party Inspection Company and the Company at the Site.



20.1.5 Provide instructions in accordance with the requirements of governmental authorities.

The Company Representative or anyone on his behalf shall have no authority to amend the Contract and/or to relieve the Contractor of any of his obligations or responsibilities under the Contract 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 Contract and/or pursuant to any applicable Law, including, without limitation, responsibility for errors, discrepancies and non-compliance.

## 20.2 **Company Representative's authority regarding emergency, safety and security**

Where, in the opinion of the Company Representative, an emergency or unplanned or unexpected circumstance occur, endangering the safety and/or security of persons or of the Works, the System or any other existing Infrastructure, the Company Representative shall have the authority, without relieving the Contractor of any of his duties and responsibilities, to instruct the Contractor to take or to refrain from taking all such actions as may be necessary to eliminate or reduce the risk involved.

## 20.3 **Company Representative Approval**

The Company Representative must obtain the specific approval of the Company before agreeing or determining an extension of time and/or additional payment and before instructing or approving a Change, except in an emergency situation as determined by the Company Representative.

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

20.4.1 The Company Representative shall make his decisions in accordance with the Law and the provisions of the Contract. 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.

20.4.2 The Contractor shall proceed with the decisions and instructions given by the Company Representative without delay, including where the Contractor believes that the Company Representative has not acted in accordance with the above.

20.4.3 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 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 written communication after such circumstances are over.

20.4.4 The Company Representative may, from time to time, assign in writing duties and delegate authority to assistants.

## **21. Claims Procedure**

- 21.1 Within 30 days from the occurrence of an event which entitles the Contractor, in its opinion, to any extension of the Detailed Schedule and/or any additional payment under the Contract, the Contractor shall submit a written claim ("**Claim**") to the Company Representative, describing the event or circumstances giving rise to the Claim. The Claim shall include full supporting particulars of the basis of the Claim and of the extension of time and/or additional payment claimed.
- 21.2 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. Notwithstanding the above, the Company may postpone its response to a Claim for an extension of time until the Works have been completed.
- 21.3 If the Contractor fails to timely submit a Claim or if the Claim is denied, the Detailed Schedule shall not be changed, the Contractor shall not be entitled to additional payment and the Company shall be discharged from all liability in connection with the Claim.
- 21.4 The Contractor shall keep and provide all records as may be necessary to substantiate any Claim.

## **22. Approval Procedures**

- 22.1 Whenever the Company's approval is required under the Contract, such approval shall be in writing and given in advance, unless expressly stipulated otherwise for a specific matter.
- 22.2 Unless stated otherwise in the Contract, any document requiring the Company Representative's approval shall be submitted to him at least 21 days in advance.
- 22.3 The Company Representative may request an explanation and any additional information concerning the document and the Contractor shall furnish the requested information on the date stipulated in such request. The sending of an explanation and/or information as requested by the Company Representative, shall not grant the Contractor any right for extension of time.

## **23. Payment to the Contractor**

### **23.1 Determination**

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 Contract 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.

Without derogating from the foregoing, in the Contractor's Proposal the Contractor shall be deemed to have considered the following:

- 23.1.1 The general and special conditions and circumstances of the Site.
- 23.1.2 All conditions and circumstances affecting the Contract Price, including taxes and duties (other than VAT in the State of Israel payable by the Company to the Contractor).



- 23.1.3 The general labour, security, military and political situation at the Site area and in Israel..
- 23.1.4 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.

### 23.2 **Terms of Payment**

- 23.2.1 All payments made by the Company to the Contractor shall be made in Euro, pursuant to the provisions of the Terms of Payment (**Annex D1**) and the Commercial Proposal (**Annex D2**).
- 23.2.2 Each payment shall be made to the Contractor subject to the Contractor having presented invoices to the Company and having supplied it with all the documents connected with the Works pursuant to the Contract, including all approvals as required (if required) under Law from the tax authorities and any document required according to the Terms of Payment, as well as guaranties, sureties and insurance certificates (including of Sub-Contractors) as required.
- 23.2.3 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.
- 23.2.4 It is clarified that the approval of any payment, including the final payment, does not constitute the Company's or the Company Representative's agreement as to the quality of the Works performed.

### 23.3 **Application for Payment**

- 23.3.1 The Contractor shall submit upon the completion of each Milestone (as defined in the Terms of Payment) and no later than the 5th of the month following the completion of the Milestone, for the Company Representative's approval, its application for each payment which shall include the detailed calculated amount to which it is entitle under the Contract, together with supporting documents and a work progress report, and all amount to be deducted and/or set off for the repayment.

## 24. **Final Payment**

- 24.1 Within 60 days of the approval by the Company of the final Assessment report, the Contractor shall submit to the Company Representative an application for the final payment, along with a Release Form in the form of **Annex B2**, duly executed by the Contractor, and any other documentation as may be reasonably requested by the Company Representative.
- 24.2 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, the final amount which, in the opinion of the Company Representative, is due to the Contractor and 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 Contract.

- 24.3 In case of dispute by the Company as to the amount of the final payment, the Company shall pay the Contractor the undisputed part of such payment, subject to receiving a Release Form pertaining to such part of the payment which is not disputed, and the remainder shall be paid after the settlement of the dispute.
- 24.4 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 above, the Company shall inform the Contractor in writing of the amount it deems correct which shall be binding upon the Contractor.
- 24.5 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 above and subject to the provisions of the Terms of Payment (**Annex D1**). 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.

## **25. Tax Provisions**

### **25.1 Contract 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, materials or other things purchased or imported in connection with the performance of the Contractor's obligations under the Contract.
- 25.1.2 The Contract Price shall be deemed to include all Taxes as may be applicable from time to time during the performance of the Contract, including (but not limited to): all Taxes imposed outside the State of Israel or in accordance with the laws and regulations of the State of Israel in relation to Contractor's Equipment and/or on the Works performed under the Contract.
- 25.1.3 The Contractor's Personnel 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 Contract.
- 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 Contract and all payments there under, furnish to the Company 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.

## 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

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 Contract (if any) and to abide thereby. 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 equipment, materials, etc., can be imported into the State of Israel.

## 26. Offset and Lien

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

- 26.2 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 Contract or pursuant to the provisions of the Law.
- 26.3 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.

**27. Deleted**

**28. Performance Guarantee**

- 28.1 Upon receipt of the Commencing Work Order, the Contractor shall provide the Company, at its own cost, with a performance guarantee, in the form set forth in **Annex B1**, issued by an Approved Financial Entity, in the amount of 5% of the Contract Price (the "**Performance Guarantee**").
- 28.2 Without derogating from any other remedy pursuant to the Contract or pursuant to any Law, where the Contractor breaches any provision of the Contract, 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 draw down on the Performance Guarantee, in whole or in part.
- 28.3 In the event of draw down, the Contractor shall ensure to restore the guarantee amount as stated above, by issuing the Company with new guarantee/s in the same form and amount of the original guarantee, at the Contractor's sole expense.
- 28.4 The Performance Guarantee shall initially be in effect for 12 months, and if requested by the Company, shall be extended from time to time, until approval of the Company of the final Assessment report. In the event that the validity of the 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.

**29. Inspection during the Works**

- 29.1 The Company Representative and/or the Third-Party Inspection Company (TPI) shall be entitled to inspect and examine, throughout the Contract Period, all matters which relate to the Works, and check the quality and progress of the Works.

**30. Suspension**

**30.1 Order to Suspend**

- 30.1.1 Without derogating from the Company's right pursuant to Clause 31.5.5 hereof, the Company may, at any time, suspend any part of the Works or all remaining Works for any reason whatsoever by giving 14 days advance notice to the Contractor specifying the part of the Works to be suspended and the effective date of suspension (the "**Suspension Date**"). The Contractor shall cease all work on said suspended part of Works on the Suspension Date, but shall continue to execute the unsuspended part of the Works.

30.1.2 Suspension shall not limit or release the Contractor from its responsibilities pursuant to the Contract, including, without limitation, the obligation to complete the suspended Works upon resumption, 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.

### 30.2 Reasonable Cost Pursuant to Suspension

30.2.1 If any part of the Works is suspended, as contemplated in Clause 30.1 above, the Company shall issue a Change Order making any required adjustments to scheduled milestones and Contract Price. Adjustments to Contract Price shall reflect only the additional Reasonable Costs incurred by the Contractor, resulting directly from said suspension or in accordance with Clause 35 or 12.5, the lower of the two. Reasonable Costs, for the purpose hereof, are:

30.2.1.1 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; and/or

30.2.1.2 Costs related to any Contractor's Equipment or Contractor's Personnel directly related to the suspended part of the Works; and/or

30.2.1.3 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.

30.2.2 Notwithstanding the foregoing in Sub-Clause 30.2.1, the Contractor shall not be entitled to any adjustment of the Contract Price, in cases where the suspension was required as a result of a Default or non-compliance with the provisions of the Contract by the Contractor or by anyone operating on his behalf or when 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).

30.2.3 Except as expressly set forth in Sub-Clause 30.2.1, 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.

### 30.3 Alternate Employment During Suspension

30.3.1 The Company may request that, during any period of suspension of part of the Works, the Contractor employ any personnel and equipment affected by the suspension in the unsuspended part of the Works. Where such alternate employment is feasible, the Company shall bear any additional Reasonable Costs of such alternate employment, including, without limitation, any transportation costs, except where the Contractor is not entitled to any additional costs pursuant to Clause 35 or adjustment of Contract Price pursuant to Clause 35.

30.3.2 Where it proves impossible to employ personnel and equipment related to the suspended part of the Works in any unsuspended part of the Works, the Company may ask the Contractor to demobilize such personnel and equipment and the Company shall bear all direct expenses connected with the demobilization of the said personnel and equipment and with the remobilization thereof, if any.

#### 30.4 **Auditing Pursuant to Suspension**

The Contractor shall provide all audit access required by the Company to verify the costs pursuant to Sub-Clause 30.2.1 above, by independent auditors. 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.

#### 30.5 **Prolonged Suspension and Cutoff**

30.5.1 If the Suspension has continued for more than 90 days, and such suspension is not a result of one of the circumstances contemplated by Clause 45.3, the Contractor may by notice to the Company request permission to resume the Works within 45 days of the date of such request.

30.5.2 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 Contract as an event of default by the Company, by way of written notice to the Company whereupon the provisions of Clause 46 shall apply.

#### 30.6 **Resumption of Works**

Subject to the provisions of Clause 30.5 above, the Company may at any time prior to the time period set forth in Clause 30.5 above, authorize resumption of all or any part of the suspended Works by giving 15 days prior notice to the Contractor specifying the part of the Works to be resumed and the effective date for resumption of the Works. The Contractor shall begin preparing itself for resumption of the suspended Works immediately upon receipt of such notice.

### **31. Cancellation of Works**

31.1 Without derogating from any other right to which it is entitled pursuant to the Contract, 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**"). Upon receipt of the Cancellation Notice, the Contractor shall cease all Works specified in the Cancellation Notice, by no later than the Cancellation Date. The Contractor shall continue to execute the surviving part of the Works, if any.

#### 31.2 **Cost Pursuant to Cancellation**

If any part of the Works is cancelled, the Company shall issue a Change Order making any required adjustment to the schedule for any surviving Works and to the Contract Price. Without derogating of the above, The Contract Price shall be reduced by the amount

corresponding to the cancelled part of Works and in accordance with Clause 35.4. Such adjustment of Contract Price shall also take into account:

- 31.2.1 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.
- 31.2.2 The reasonable Costs of repatriation of all the Contractor's Personnel employed on or in connection with the Works at the time of such cancellation; taking into account payments made or to be made for Works executed.
- 31.2.3 All other Reasonable Costs for demobilization of the Contractor, duly evidenced by the Contractor and approved by the Company Representative.
- 31.2.4 The amount of any Reasonable Costs arising out of or in connection with or by consequence of such cancellation.

### 31.3 **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.

### 31.4 **Documents upon Cancellation**

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.

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

Except as provided above, in the event of cancellation hereunder, and except for Clauses 31.5.5 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 Contract:

- 31.5.1 The Contractor shall not be entitled to any other right and/or payments, except as provided for above for cancellation in the Contract.
- 31.5.2 This Contract 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.
- 31.5.3 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.



- 31.5.4 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.
- 31.5.5 The applicable provisions of the Contract 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.
- 31.6 Cancellation of all or part of the Works as contemplated in this Clause 31, 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, 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.

### **32. 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.

### **33. Completion**

#### **33.1 Completion Deadline**

The Works or any part thereof shall be completed and the final Assessment report shall be completed to the full satisfaction and the approval of the Company by the deadline set forth in the Schematic Schedule (**Annex C1**), as may be extended from time to time pursuant to the terms of the Contract ("**Completion Deadline**").

- 33.2 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.

#### **33.3 Extension of Completion Deadline**

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

- 33.3.1 Extra or additional Works have been ordered in writing under Clause 35.2.
- 33.3.2 A failure by the Company to fulfil its obligations pursuant to the Contract which affected the performance of the Works.
- 33.3.3 Suspension of the Works, not due to Contractor's fault, as set forth in Clause 30.1.



- 33.3.4 An event of Force Majeure, provided that the provisions of Clause 44 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 Israeli Defence Forces ("IDF") instructed to cease works in the areas relevant to the Works conducted at that time by the Contractor.
- 33.4 The Contractor shall submit to the Company Representative 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 on the measures which the Contractor shall be obliged to take to minimize the effect of the Delay and on the extension to the Completion Deadline, if any, to which the Contractor shall be entitled on account of such Delay.
- 33.5 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.

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

- 34.1 In the event that the Contractor fails to complete the Works by the Completion Deadline, then without derogating from any other right of the Company under the Contract or applicable Law, it is hereby agreed that as compensation for such delay, the Contractor shall pay to the Company the amount equal to half percent (0.5%) of the Contract Price (including VAT) for every week (or a part of it) which elapses between the Completion Deadline and the actual completion thereof.
- 34.2 The Company may set off the amount of such agreed upon Liquidated Damages from any sums due or which will become due to the Contractor under the Agreement.
- 34.3 The total amount of agreed upon Liquidated Damages under this Clause 34, shall not exceed the amount of 5% of the Contract Price (including VAT).
- 34.4 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 set forth in this clause 34.
- 34.5 Nothing herein shall derogate from any other right or remedy which may be available to the Company under the Contract and/or under applicable Law.

#### **35. Changes and Change Orders**

##### **35.1 Company's Right to Change**

- 35.1.1 At any time before the completion of the Works, the Company may, by issuance of a written and duly signed order to the Contractor – titled as "Change Order" ("**Change Order**") - instruct the Contractor to alter any part of the Works.

35.1.2 The Contractor shall not vary or alter any Works except in accordance with a Change Order.

### 35.2 Procedure for Change Orders

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. Within 7 days of receiving such notification, the Contractor shall submit to Company Representative for review and approval, a proposal for the execution of such Change, which proposal shall contain, inter alia, the Contractor's cost proposal for carrying out such Change and for the modification of the Detailed Schedule. Following receipt of the Contractor's submission, the Company shall, at its sole discretion, decide whether the Change shall be carried out and under what terms.

### 35.3 Order to Proceed

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. Upon receipt of a Change Order the Contractor shall forthwith proceed to carry out the Change.

### 35.4 Adjustment of Contract Price for Change Orders

35.4.1 When establishing the value of the Change the Company Representative shall consider the Cost of any executed Works rendered abortive by the Change and the effect of the Contractor's Reasonable Costs caused by the Change, net of any savings and/or payments which have accrued to the Contractor as a direct result of the Change. 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.

35.4.2 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, the adjustment of the Contract Price shall be determined in accordance to an agreed upon quotation by both parties, prior to the job commencement.

35.4.3 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 Contract.

### 35.5 Dispute in Connection with the Change Order and Records of Costs

In any case where the Contractor is instructed to proceed with a Change prior to establishing the price adjustment and/or the schedule for such Change, the Contractor shall fully document all its related Costs and delays. These records shall be made available to the Company at all times. A dispute regarding a Change Order shall not serve as grounds for the Contractor to delay the performance thereof and the Contractor shall proceed with Change.

### **36. The Company Option**

- 36.1 At any time during the Company Option Period, the Company may, at its sole discretion (but in no way is obligated to) order the execution of additional Assessments.
- 36.2 A notice whether the Company is interested to exercise the Company Option will be given to the Contractor at least 6 months in advance of each additional batch of Assessments.
- 36.3 For the execution of any additional Assessments, the Contractor will be paid the amount quoted presented in its Commercial Proposal for the execution of the Assessments.
- 36.4 Payments made after twenty four (24) full months following the contract date with the Contractor and at the beginning of the option period, shall be linked to the changes in the HICP index as of the Submission Date until the date of actual Purchase Order of the relevant service.
- “HICP”: Shall refer to the monthly harmonized index of costumer prices, as published by the Europe Central Bank.
- 36.5 It is hereby clarified that the Company may also decide, at its sole discretion, to exercise the Company Option with regard order to only part of the Services, taking into consideration the capabilities of the Contractor and Company needs.
- 36.6 As part of any such future Assessments to be held, the Company may (at its sole discretion) include additional conditions and requirements.

### **37. Risk and Responsibility**

- 37.1 The Contractor alone shall bear the entire risk and responsibility for all risks arising from the execution of the Works and/or the carrying out of its obligations under the Contract.
- 37.2 Without derogating from the above and for the removal of any doubt, it is hereby clarified, that infrastructure and/or physical or geological conditions and/or weather conditions and/or the need to coordinate the Works and get approvals from any authority and any third party are **not** part of the Company Risks.

### **38. Contractor's Liability**

- 38.1 The provisions of the Contract do not, and shall not, be interpreted to make the Company 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 negligent acts and omissions or other reason relating to or caused by the fulfillment of the Contract or performing the Works.
- 38.2 Without derogating from the above, and subject to the provisions of Clause 39 below, it is hereby clarified that the Contractor shall be liable for any and all damage and/or harm caused to the property of third parties, including the property of governmental or other authorities or infrastructure owner and holders.

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

- 39.1 The Contractor shall be liable for, and shall indemnify and hold the Company, 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, costs, penalties, compensation and claims in respect of any loss and damage which may arise out of or in consequence of the execution Works, 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:
- 39.1.1 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
  - 39.1.2 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
  - 39.1.3 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
  - 39.1.4 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.
- 39.2 Upon receipt of a written request from the Company for indemnification pursuant to the Contract, the Contractor shall promptly provide the Company with the requested sum.
- 39.3 Contractor's indemnification obligations set forth in this Clause shall also apply to the State of Israel.
- 39.4 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.
- 39.5 Nothing in the above shall derogate from the provisions of the Contract and from any liability and responsibility of the Contractor pursuant to any Law.

### **40. Defence of the Parties against Indemnified Claims**

- 40.1 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 the Contract, 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.

- 40.2 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.
- 40.3 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.
- 40.4 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.
- 40.5 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).

#### **41. Limitation of Contractor's Liability**

- 41.1 The Contractor shall not be liable towards the Company for any consequential loss and/or loss of profit.
- 41.2 The Contractor's liability towards the Company for any direct damage shall be limited to the total Contract Price.
- 41.3 The above limitation of liability shall not apply in each one of the following: **(i)** in case of Gross Misconduct by the Contractor or by anyone acting on its behalf; **(ii)** on any kind of personal injury; **(iii)** third party claims relating to an act or omission of the Contractor; and/or **(iv)** Contractor's liability satisfied by the proceeds of insurance required to be maintained in accordance with the Contract.

#### **42. Company's Liability**

- 42.1 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.
- 42.2 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.

#### **43. Insurance**

- 43.1 For the guarantee of the Contractor's liability as detailed in the Contract, and without derogating from the liability and the obligations of the Contractor pursuant to the Contract or Law, and without the Company assuming any liability towards the Contractor, prior to the

commencement of the provision of the Works by the Contractor according to the Contract, the Contractor hereby undertakes to maintain, at its expense, the following insurance policies (hereinafter: “**Contractor’s Insurances**”):

43.1.1 Commercial General Liability/Third Party Liability Insurance:

Limits of Liability: USD 1,000,000 per any one occurrence and in the aggregate.

Covering the Contractor’s as well as anyone operating on its behalf, for their legal liability towards any third party in respect of any loss or damage caused during the period of the Contract.

43.1.2 Workers Compensation/Employer’s Liability:

Workers' Compensation in such form and amounts as required by all applicable law and Employers Liability (or its equivalent) and/or any other statutory insurance required by law with respect to work-related injuries or disease of employees of Contractor applicable to Contractor's employees in such form(s) as required by all applicable law, with a limit of indemnity of not less than USD 5,000,000 cumulative total of underlying and excess coverages, with respect to Employers Liability for any one occurrence and for any one insurance period. With respect to Workers’ Compensation, the relevant standard statutory scheme terms shall apply.

43.1.3 Professional Indemnity Insurance:

Issued in the name of the Contractor, with a limit of Liability: USD 10,000,000 per occurrence and in aggregate.

Covering the Contractor and those acting on its behalf due to any claim and/or demand which is first made during the period of Insurance in respect of any professional error and/or omission in any manner related to the Work, pursuant to the Contract.

The Policy applies retroactively commencing no later than the date on which the Contractor began performing the Works and/or services under the Contract.

The policy is not subject to any restriction in respect of postponement and/or a delay in works or delivery, loss of documents, dishonesty, and infringement of intellectual property, consequential and pure financial loss.

The policy includes a clause allowing for an extended reporting period of at least 12 months that shall be in force in case that this policy is not renewed for any reason, the policy will cover claims originating prior to the date of non-renewal of which the insurers are notified during the reporting period.

43.2 The Contractor shall provide an insurance certificate, in the format acceptable to its insurer that shall include all substantive requirements of this Clause. The certificate shall also include provisions according to which:

43.2.1 The Contractor’s insurer waives the right of subrogation against the Company and the State of Israel as well as anyone operating on behalf of the above mentioned;



- 43.2.2 all Insurances are primary and non-contributory to any insurance arranged by the company and include a waiver of all rights of recourse or claim for insurance participation against the company;
- 43.2.3 the insurer shall provide the Company with 60 days written notice prior to the cancellation, or material reduction of coverage during the insurance period;
- 43.3 With regards to professional indemnity the policy shall be periodically renewed and maintained for a minimum period of 7 years and for the duration that liability may attach under Law, following completion of this Contract.
- 43.4 In addition to the insurance policies referred to in the Contractor's Insurance Certificate and any other insurance as may be required by any applicable law, the Contractor undertakes to obtain, for anyone operating on its behalf on the Working Strip, automobile liability insurance in respect of any motor vehicle as follows:
- 43.4.1 Compulsory Motor Bodily Injury Insurance as legally required in respect of bodily injury due to the use of motor vehicles; as well as
- 43.4.2 Third Party Property Damage Liability Insurance due to the use of vehicles up to the sum of USD 150,000 per occurrence.
- 43.5 If in the opinion of the Contractor there is a need to extend the scope of the Contractor's Insurances and/or to arrange additional insurance covers and/or supplement them, the Contractor must arrange the additional and/or supplementary insurance as aforementioned, at the Contractor's sole expense. In any additional and/or supplementary insurance cover which is arranged by the Contractor, an express clause must be included confirming that the insurer waives the rights of subrogation against the Company and the State of Israel and anyone operating on their behalf.
- 43.6 The Contractor represents and warrants that it shall not have any claims, demands or actions of any sort against the Company and/or the State of Israel and anyone acting on their behalf, with respect to damage to its property brought to the Working Strip.
- 43.7 Without derogating from the provisions of this Contract regarding assigning the Contract, if the Contractor engages any subcontractors in connection with the Works, the Contractor must ensure as a precondition to commencing their engagement that they hold the insurance covers detailed in this clause 42 mutatis mutandis to the nature and scope of their Contracts, and this for the entire Contract period with the Contractor or for a longer period as defined in clause 42.2.

For the sake of avoidance of doubt, it is hereby clarified that the Contractor is the party responsible for execution of the Works towards the Company in accordance with this Contract including Works and services which are performed by Contractor's subcontractors.

#### **44. Force Majeure**

##### **44.1 Definition of Force Majeure**

Force Majeure shall mean an occurrence which is beyond the reasonable control of either of the Parties to the Contract, 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, materially delays the scheduled time of completion of all or any material portion of the Works.

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

- 44.1.1 shortage of materials or employees, except a national general shortage declared by order of the Government of Israel.
- 44.1.2 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
- 44.1.3 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 Contract; except where the foregoing in this Clause 0 is a result of a Force Majeure event as set forth in Sub-Clause 44.1.1 above.
- 44.1.4 War and/or any other violent conflict, including acts of terror, unless and to the extent the Israeli Defence Forces instructed to cease works in the areas relevant to the Works conducted at that time by the Contractor.

#### 44.2 **Procedure Pursuant to Force Majeure**

- 44.2.1 Within 14 days 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.
- 44.2.2 If the event for which notice is given in Sub-Clause 44.2.1 above continues for more than 30 days, and the parties hereto have not succeeded in resolving, in good faith, whether the perceived event is actually an event of Force Majeure, then the affected party shall submit a request in accordance with the provisions of Clause 21 (claim procedure).

#### 44.3 **Consequences of Force Majeure**

##### 44.3.1 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 by Clause 42 above (Insurance Certificate), and the insurance covers at least 80% of the required sum for completion of the Work, the Contractor shall not be entitled to be released from performing its undertakings under this Contract and the following shall apply:

- 44.3.1.1 The Contractor shall submit to the approval of the Company Representative a proposed recovery schedule for the completion of the Work in accordance with the Schematic Schedule.



44.3.1.2 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; and the provisions of Clause 33 shall apply, in the applicable changes.

44.3.2 Termination of the Agreement

If the effects of one or more events of Force Majeure continue for 60 consecutive days or more, then either party shall be entitled to terminate the Contract upon 30 days prior notice and the provisions of Clause 31.2 shall apply with regard to the compensation paid to the Contractor upon such event.

44.3.3 Non-Termination

Should an event of Force Majeure prevent the performance of all the undertakings of either Party pursuant to the Contract, 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 Contract on the basis of such non-performance, except as provided in Sub-Clause 44.3.2 and provided that the party claiming the event of Force Majeure shall have complied with the provisions of Clause 44.2.

44.3.4 The provisions of this Clause 44 shall not release the party claiming an event of Force Majeure from its undertakings under the Contract or from fulfilling the provisions of the Contract 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 Contract, 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.

## 45. Default and Remedies

### 45.1 **Default**

If at any time during execution of the Works the Contractor shall be in default of any of his obligation under the Contract or if 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 or 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 Contract or if the Contractor has become insolvent ("**Default**"); Then, without derogating from any other rights and remedies to which the Company is entitled pursuant to the Contract and pursuant to any applicable law, the provisions of this Clause shall apply.

### 45.2 **Cure Notice**

The Company shall, prior to exercising any of its rights under this Clause, send a written notice to the Contractor (hereinafter the “**Company Cure Notice**”) requesting it to remedy the event of Default within a period of time prescribed by the Company and stating 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 Contract and the Law.

#### 45.3 **Suspension due to Default**

- 45.3.1 Without derogation from any other right or remedy to which the Company is entitled, where the Contractor does not promptly undertake and proceed with diligence to remedy the Default set forth in the Company Cure Notice, then the Company may order the Contractor, in writing, to suspend all or part of the Works.
- 45.3.2 Suspension pursuant to this Clause 45.3 shall not release the Contractor from any of its obligations under the Contract and shall not entitle the Contractor to any additional Costs, extensions of deadlines, or any other remedies provided for by the Contract.
- 45.3.3 The suspended Works shall not be resumed until the Company Representative shall be satisfied that the Contractor is prepared to promptly correct said Default and comply with the Contract. In such event, the Company shall give notice to the Contractor to proceed.

#### 45.4 **Removal and Step-In**

- 45.4.1 Without derogating from any other rights and remedies to which the Company is entitled, where the Contractor does not promptly undertake and proceed with diligence to remedy the Default set forth in the Company Cure Notice, then the Company may remove the Contractor from any part of the Works or from 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.
- 45.4.2 Upon issuance of a removal notice, the Company may step in and complete the 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.
- 45.4.3 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 45.4.
- 45.4.4 Removal of the Contractor, as contemplated under this Clause 45.4 shall not release the Contractor from any of its obligations pursuant to the Contract, except for the obligation to proceed with the work 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 Contract shall continue in full force and

effect as to all Works performed prior to the effective date of removal, and all provisions regarding care, responsibility and remedy of Defects 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 45.4.2 above.

45.4.5 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.

45.4.6 Where the Contractor has been removed from all or part of the Works pursuant to this Clause 45.4 the Contract Price shall be reduced by an amount equal to the actual Costs to the Company for completing said part of the Works.

#### **46. Termination**

46.1 Without derogating from any other rights or remedies to which the Company is entitled pursuant to this Contract and the Law, where the Contractor has not promptly and diligently undertaken to remedy a Default, 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 the Contract effective as of the date stated in the Termination Notice.

#### **46.2 Effects of Termination**

Upon declaring the Contract terminated, the following provisions shall apply:

46.2.1 The Company shall have the right, by any legal means and proceedings it finds most expedient, to enter the Site 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 Contract or the Law. The Company shall have full proprietary rights to any and all Works completed as of the date of such termination.

46.2.2 The Contract (other than the 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 the Contract. All rights of the Contractor pursuant to this Contract shall be terminated.

46.2.3 The Contractor shall deliver to the Company all drawings and documentation, plans, specifications and materials which are related to the Works and destroy all copies of such, which were made by the Contractor.

46.2.4 In the event of Termination pursuant to this Clause, 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 Contract, which may have accrued under the respective provisions of the Contract or at Law.

46.2.5 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.

- 46.2.6 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 parties or after such investigations or inquiries as he may think it fit.
- 46.3 The "**Preliminary Breakage Amount**" shall be equal to the amount of the Contract 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 under the Contract as of the date of the Termination Notice, less damages, penalties, offset sums, debts, obligations or any other sums due to the Contractor pursuant to this Contract (the "**Preliminary Breakage Amount**").
- 46.4 Where the Company has terminated the Contract pursuant to this Clause, it shall not be liable to pay to the Contractor any Breakage Amount on account of the Contract, until the completion of the Works. At such time, the Preliminary Breakage Amount shall be reduced to take into account the Costs for completion 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 Contract have been ascertained and certified by the Company.
- 46.5 Any legal procedure shall not postpone the results of effects of termination, as set forth in Clause 46.2.
- 46.6 If a competent court issues a decision in favor of the Contractor, both parties hereby agree, as a material provision of this Contract, 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 30 and 31 and shall be subject to all the relevant provisions thereof.

#### **47. Remedies for Company Default**

- 47.1 The provisions of this Clause shall apply if at any time during execution of the Works, the Company fails to pay the Contractor any amount due under the Contract and not disputed by the Company, within 3 months after the due date of the payment, or if the Company gives written notice to the Contractor that, for whatever reason, it is impossible for the Company to perform its contractual obligations (each a "**Company Default**").
- 47.2 **Contractor Cure Notice**
- 47.2.1 The Contractor shall not be entitled to exercise its right to terminate the Contract 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**").
- 47.2.2 Where the Company has not remedied the Company Default by the expiry of the Cure Period, the Contractor shall be entitled to terminate this Contract by giving a written notice thereof to the Company. That notice shall take effect 14 days after the date thereof.

#### 47.3 **Payment upon Contractor Termination**

In the event that the Contract 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, and in addition to:

- 47.3.1 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.
- 47.3.2 The Reasonable Cost being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the entire Works insofar as such expenditure has not been covered by any other payments.
- 47.3.3 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 (at no greater cost than the cost of transportation thereof to the Contractor's country of registration).
- 47.3.4 The reasonable cost of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such Termination.
- 47.3.5 Subject to the provisions of Clause 42 above, the amount of any loss or damage to the Contractor directly arising out of such Termination.

#### 47.4 **Full and Final Remedy**

- 47.4.1 Notwithstanding anything to the contrary herein, the amount of payments under this Clause shall not exceed the Contract Price. Except as set forth in this Clause or in Clause 35 the Contractor shall not be entitled to any relief, compensation, or extension of deadlines from the Company in connection with the Works.
- 47.4.2 Claims not made in accordance with Clause shall be null and void.
- 47.4.3 Whereupon, in this Contract, 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.

### 48. **Dispute Resolution**

- 48.1 The parties to this Contract shall endeavor to settle by negotiation and in good faith any dispute arising out of or in connection with the Works and the Contract. 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.

#### 48.2 **Court**

- 48.2.1 Subject to the provisions of Clause 48.1 above, in the event of any dispute between the parties hereto as to any matter arising out of or relating to this Contract, 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 Contract.

48.2.2 Neither party may refuse to perform or delay the performance of any obligation under the Contract 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 Contract.

48.2.3 The Contractor is aware of the urgency and the national importance of the completion of the Works. Therefore, the Contractor undertakes to refrain from taking any action, directly or indirectly, that may result in stopping and/or delaying any works contemplated by the Company regarding the System.

#### 48.3 **Applicable Law**

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

### 49. **Miscellaneous Provisions**

49.1 The Contract represents the entire agreement between the Parties and supersedes the Tender and any previous representations, contracts or arrangements, whether oral or written, between the Parties.

49.2 All provisions of the Contract shall apply to all contracts with regard to the carrying out of the Works, including contracts made with third parties, such as Sub-Contractors on behalf of the Contractor. The Contractor shall cause that all such contracts with third parties shall include provisions incorporating the relevant provisions of this Contract. Furthermore, the contracts with third parties shall include a provision relating to remedies for breach of contract as set out above.

49.3 Any addition, amendment or update to this Contract shall be binding only if made in writing and signed by authorized representatives of each of the Parties.

#### 49.4 **Confidentiality**

49.4.1 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 Contract or the System, and shall not disclose such information or document in any manner other than for the purpose of the Works.

49.4.2 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.



- 49.4.3 The foregoing obligations of confidentiality shall not apply to: (i) information which is available to the public or which, in the case of the Company, hereafter becomes available to the public not as a result of the acts or omissions of the Contractor or, in the case of the Contractor, hereafter becomes available to the public as a result of acts or omissions of the Company; (ii) information which was lawfully in the possession of the Contractor before the beginning of the Tender; and (iii) 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.
- 49.4.4 The provisions of this Clause 49.4 shall survive termination of this Contract for any reason whatsoever.

#### 49.5 Time and Indulgence

- 49.5.1 The failure of either party to insist upon the full and strict performance of any provisions of this Contract, or to take steps to enforce their rights or to seek remedies to which they are entitled under the Law or this Contract, shall not be construed as a waiver for such matter or as estoppel of a subsequent breach.
- 49.5.2 The payment of any amount due to the other party under this Contract with knowledge of a breach of any provision of the Contract 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.
- 49.5.3 Unless stated otherwise any extension or other indulgence allowed by one party to the other regarding performance of its duties and obligations under this Contract 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 Contract or under any Law.
- 49.5.4 If a provision prescribing a demand for approval by the Company or the Company Representative in accordance with this Contract 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.

#### 49.6 Assignments

- 49.6.1 The Contractor shall not assign the Contract 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. Any assignment against the above shall be regarded as void without the need to terminate such assignment.
- 49.6.2 If required by the government of the State of Israel, the Company may assign the Contract 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 Contract. In such event, a written notice shall be delivered to the Contractor

#### 49.7 **Relationship of Parties**

49.7.1 The Contractor is an independent contractor and shall not be deemed an agent or representative of the Company. The Contract 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.

49.7.2 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.

#### 49.8 **No Third-Party Beneficiaries**

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

#### 49.9 **Subcontractors**

The Contractor shall be fully responsible to the Company for the acts and omissions of the Subcontractors and any other third party whose services are retained by the Contractor including anyone acting on their behalf. All agreements between the Contractor and its subcontractors shall clearly state that the subcontractors are subject to the provisions of this Contract.

#### 49.10 **Severability**

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

#### 49.11 **Rights and Remedies**

Unless stated otherwise, the duties and obligations imposed by this Contract 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.

#### 49.12 **Execution and Counterpart**

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

**49.13 Notices**

49.13.1 A notice shall be deemed to have been duly served as follows: **(i)** if personally delivered, at the time of receipt; **(ii)** if sent by registered mail, on the third (3rd) business day following the date of posting; and **(iii)** if sent by facsimile or e-mail, the business day following receipt of confirmation of successful transmission.

49.13.2 Any notice or correspondence to be given under this Contract shall be delivered personally or sent by registered mail 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  
 Facsimile: 972-3-561-1320

If to the CONTRACTOR:

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

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 Contract.

**IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date and year below written:**

<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>_____</p> <p>Signed on behalf of Contractor by:</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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