

**Annex D: the Agreement**

**Agreement No. \_\_\_\_\_**

**Made and Signed in Herzliya, on \_\_\_\_\_**

Between: **Energy Infrastructures Ltd. / Oil Products Pipeline Ltd.**  
of 3 Hasadnaot St., Herzliya,  
ISRAEL  
(the “**Company**”)

**of the first part;**

And: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(the “**The Supplier**”/“**the Framework Supplier**”)

**of the second part;**

Each a “**Party**” to this Agreement, and together, the “**Parties**”.

**Whereas:** The Company is interested in the supply of storage batteries and engineering-procurement-construction (EPC) services of battery storage power stations (hereinafter: “**the Services**” or “**the Project**”); and

**Whereas:** The Company has published an online Framework Tender No. \_\_\_\_\_ for the supply of storage batteries and engineering-procurement-construction (EPC) services of battery storage power stations (hereinafter: “**the Tender**”) in order to establish a Pool of Framework Suppliers with whom this Agreement will be signed, and from whom, pursuant and subject to the provisions in this agreement, the Company may choose a Framework Supplier, for the execution of Specific Tasks, from time to time and as the Company shall order pursuant to this agreement; and

**Whereas:** The Company has accepted the Supplier’s Proposal for the Tender in the relevant Category and, by signing this Agreement with the Supplier, the Supplier has been included in the Pool of Framework Suppliers and has accepted the execution of Specific Tasks pursuant to this Agreement, the Company’s procedures and as the Company shall order from time to time; and

**Whereas:** During the Qualification Period the Company shall conduct RFQ procedures and/or other procedures, under which it shall invite Framework Suppliers to submit Quotations for the Services, all in accordance with the terms of this Agreement and with all other terms and conditions included in the Tender Documents and the RFQ Documents; and

**Whereas:** This Agreement shall govern any Purchase Order that shall be awarded to the Supplier in accordance with the Tender and future RFQs and other procedures to be conducted by the Company; and

**Whereas:** In this Agreement, the Parties wish to define their relationship regarding the inclusion of the Supplier in the Pool of Framework Supplier, all as detailed in this Agreement;

NOW THEREFORE, the Parties hereby declare, represent, agree and covenant as follows, with intent to be legally bound by the same:

## **1. Preamble, Headings and Appendices**

- 1.1. The preamble to this Agreement forms an integral part of it and the parties are making this Agreement in accordance with that stated in the preamble.
- 1.2. The headings of the sections are for information only and shall not be used for purposes of interpretation of this agreement.
- 1.3. The appendixes to this agreement constitute an integral part thereof.

## **2. Definitions**

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

- 2.1. **Company Representative** means the person, firm or company appointed by the Company acting per delegation of Company as its duly authorized representative.
- 2.2. **Agreement** or **Contract** means this document, the Tender, the Specifications, RFQ's and all annexes thereto that will be signed between the Company and each of the Framework Suppliers. The Agreement shall apply and obligate any future Purchase Order issued by the Company from time to time to the Supplier.
- 2.3. **Contract Price** means the consideration stipulated in the Purchase Order.
- 2.4. **Day/Days** mean Gregorian calendar days and unless otherwise stated, days shall mean consecutive calendar days (including holydays, eve of holydays, Fridays, Saturdays, Sundays etc.).
- 2.5. **Effective Date** means the issuance date of the Purchase Order by the Company to the Supplier, as specified in the relevant Purchase Order.
- 2.6. **Force Majeure** means the effective occurrence of any act/event which is unforeseeable, insurmountable and outside the control of the Party which invokes it, and which renders said Party unable to comply with all or a part of its/his obligations under the Contract. Provided all such criteria are met, the following qualify as a Force Majeure: acts of God, war, riots (otherwise than among Supplier's and/or Supplier's sub-vendors' employees) and national, regional or professional strikes. Force Majeure does not include events such as insolvency of any Party, shortage of materials or employees, suspension, termination, interruption, or failure to obtain or renew any permit, license, consent or approval which is required for the carrying out of the Supplier's obligations under the Contract. It is hereby clarified, that any occurrence related to the COVID-19 pandemic will not account as a Force Majeure for the purposes of the Agreement, the Tender Documents and/or any Purchase Order.

- 2.7. **Goods** means any product to be supplied according to this Agreement and/or the Tender documents and/or any Purchase Order.
- 2.8. **Laws** mean all laws and regulations of the State of Israel.
- 2.9. **Party (ies)** means Company and/or Supplier.
- 2.10. **Qualification Period** means the period of time in which the List of Approved Suppliers shall be valid in accordance with the Tender; in which the Company shall have the right, at any time to issue Purchase Order(s), and/or to approach any or all of the Approved Suppliers and invite them, by way of RFQ to supply the Services, all in accordance with the terms and conditions of the Contract.
- 2.11. **Purchase Order** means an order issued by the Company to an Approved Supplier for the specific execution of services which shall be subject to all the provisions of the Contract, Time Schedule, technical comments and emphases.
- 2.12. **RFQ or Individual Referral or Task Execution** means an invitation for bids issued by the Company to all Framework Suppliers in a certain Category, for the provision of services or the supply of goods, for one of the Categories that are the subject of the Tender, that will be executed by those among the Framework Suppliers. Task Execution will include transporting the goods to the Company facility, complete installation as may be required, and providing **warranty** for maintenance and repair of faults during the period that will be defined in the relevant RFQ.
- 2.13. **Time Schedule** means the schedule for the supply of the Services as defined in the Purchase Order.

### 3. **Scope and Contract Period**

- 3.1. The Contract shall commence on its execution and shall continue in full force and effect until the latter of: the end of the Qualification Period, and (2) the elapse of the Warranty Period (including any extension thereof) without derogating from any other term stated in the Contract.
- 3.2. At any time during the Qualification Period, the Company may, at its sole discretion, approach the Supplier with a RFQ and/or issue Purchase Order(s) in any one or all of the Categories the Supplier has been declared as an Approved Supplier by the Company, all in accordance with the terms and conditions of the Contract.
- 3.3. It is hereby clarified that the Qualification Period is the period during which the Company is entitled to convey the Framework Suppliers with an RFQ for the purposes of executing a Specific Task.
- 3.4. Upon the termination of the Qualification Period, the Company shall no longer be entitled to convey the Framework Suppliers with an RFQ, while the performance of Specific Tasks of which the Specific Invitations were conveyed to the Framework Suppliers within the Period of Engagement, must be completed according to the schedules set forth, and all the provisions in this Agreement shall apply, even if the completion of the performance of that work exceeds the termination of the Period of Engagement.
- 3.5. The Company may, at its sole discretion, terminate the Period of Engagement, with any or

all of the Framework Suppliers, in a 45 days in advance notice, without derogating from any other provision in this Agreement.

#### **4. Quality Assurance**

- 4.1. The Supplier undertakes to perform the inspection and testing of the services supplied to the Company.
- 4.2. The Company may assign a representative for the inspection of the Services. Such representative shall be authorized to inspect the installation and/or any other process and quality assurance of the Services and/or perform other examinations and tests required by the Company, with or without the Suppliers attendance. The inspection shall not derogate from any of the Supplier's undertakings under the Contract.
- 4.3. Should it become apparent to the representative, at the conclusion of the tests, that an Incompatibility exists pertaining to the Services; the Supplier shall bear all reasonable costs and expenses of the tests, without derogating from any of its other undertakings under the Contract and all other Purchase Order documents.

#### **5. Expediting**

- 5.1. Supplier shall expedite the progress of his obligations under the Contract and any of his orders to sub-vendors.
- 5.2. Should the Supplier encounter or anticipate delays including, but not limited to, delays in obtaining materials from his sub-vendors, or in receiving information from Company, he shall immediately advise the Company with indication of cause, estimated period of delay, and corrective actions to be taken. Such notice shall not be construed as an agreement by the Company to extend the Time Schedule and shall not derogate from any of the Company's rights under the Contract.
- 5.3. Without derogating from Supplier's responsibilities, Company shall be entitled to perform any expediting of the goods that may be deemed necessary over and above that performed by Supplier pursuant to this Clause. For this purpose, Supplier shall promptly provide all reasonable and free access to Supplier's worksites and ensure that his sub-vendor(s) do the same, together with all reasonable and free assistance including, but not limited to, the provision of a list of sub-vendors, together with unpriced copies of sub-vendor orders placed, schedules, progress reports, and any shipping information pertaining to sub-vendor(s) orders when and as requested by Company.

#### **6. Delivery of Goods**

- 6.1. Supplier shall properly pack and secure the Goods, according to the highest standards acceptable in the industry, and shall deliver and/or dispatch and/or convey to destination same, as the case may be, at the dates and in the manner specified in the Purchase Order, or as may be subsequently agreed in writing.
- 6.2. Every shipment of Goods will be coordinated in advance with the Company. Early supply from the predetermined date specified in the Purchase Order shall not be accepted unless approved and coordinated by the Company in advance and in writing.

6.3. Receiving of the Goods by the Company shall not be regarded as confirmation for the quality of the Goods.

## **7. Time Schedule**

7.1. The Supplier shall comply with the Time Schedule of the relevant Purchase Order, and will ensure the fulfillment of its obligations regarding the services pursuant to the Agreement.

7.2. The Supplier is aware of the utmost importance for complying with the schedule, for providing the services continuously and for the availability of the Supplier. The Supplier undertakes to complete the Specific Tasks in accordance with the schedules and milestones detailed in the Purchase Order for each task.

7.3. If due to any Force Majeure Supplier is unable to comply with the specified Time Schedule, then provided that Supplier shall have given Company notice in writing of his intention to claim an extension of time no later than 5 days from occurrence of the Force Majeure situation, then the Time Schedule shall be extended by the actual delay resulting from such Force Majeure, as evidenced by Supplier. No compensation whatsoever shall be payable by Company to Supplier on account of Force Majeure.

7.4. If the Time Schedule, or any agreed extension thereof, is not complied with, the Company shall be entitled to terminate the Contract in respect of all of the Goods not delivered to the Company in accordance with the Time Schedule.

7.5. This right shall not in any way derogate from the Company's rights for the any compensation and/or of termination with respect to Goods already delivered in the event the termination arises from any default, other than late delivery or, to exclude any Goods from the Purchase Order which are behind Time Schedule, at Supplier's costs and risks.

## **8. Variation**

8.1. No amendment to the Contract shall be valid unless set down in a Variation that has been duly signed by the Company. The issuance of information, advice, approvals or instructions by Company's technical personnel or other representatives shall not be deemed requests for, or approvals of a change to the Contract and shall not affect the Parties rights and obligations hereunder unless the same is issued as a Variation, duly signed by the Company and expressly states that it constitutes a change to the Contract and/or the Purchase Order.

8.2. Company has the right to make any change to the form, quality or quantity of the Goods or any part thereof that may in its opinion be necessary and no such change shall in any way vitiate or invalidate the Contract, but the value (if any) of all such changes shall be taken into account in ascertaining the amount of the Contract Price. Supplier shall proceed with the implementation of the Variations upon receipt of Company's written notice thereof and shall be bound by all of the terms and provisions of this Contract in so doing.

8.3. No change shall be made by Supplier without a previous duly signed Variation.

8.4. Should the Supplier consider himself entitled to any claim for additional expense or extension of Time Schedule, Supplier shall send to the Company an account giving particulars (as full and detailed as possible) within 7 Days of the occurrence considered by Supplier as constituting a variation or extra to the Purchase Order; it being understood that any failure to comply with this provision shall debar the Supplier from his claim being

considered.

## **9. Supplier's Representations and Warranties**

The Supplier warrants, covenants and represents the following:

- 9.1. **Organization and Qualification.** Supplier is a corporation duly organized, and validly existing. Supplier is duly qualified to do business and is in good standing in all jurisdictions in which the ownership of its properties or the nature of its business makes such qualification necessary.
- 9.2. **Power and Authority.** Supplier has the corporate power and authority to own its properties and assets, to conduct its business as presently conducted and to execute, deliver and perform this Contract.
- 9.3. **Execution and Binding Effect.** The Contract has been duly and validly executed and delivered by Supplier and constitutes the legal, valid and binding obligation of Supplier enforceable against Supplier in accordance with its terms.
- 9.4. **No Breach, Default, Violation or Consent.** The execution, delivery and performance by Supplier of the Contract does not and will not: violate Supplier's charter, Clauses of association or certificate of organization or operating agreement or by-laws; breach or otherwise violate any order, writ, judgment, injunction or decree issued by any governmental entity which names Supplier or is directed to Supplier, its business or any of its assets; violate any law, rule, regulation, ordinance or code of any governmental entity; or require any consent, authorization, approval, exemption or other action by, or any filing, registration or qualification with, any governmental entity.
- 9.5. Nothing prohibits the Supplier from performing any of its obligations under the Contract in accordance with its terms; the Supplier and any of its subcontractors (insofar as any exist and only after having been approved by the Company in advance and in writing), are proficient, experienced, possess adequate personnel and equipment, has the financial means and capability, hold and will continue to hold throughout the term of the engagement all applicable licenses, authorizations, permits and qualifications adequate and required in accordance with applicable law for the performance of its obligations.
- 9.6. As far as the Supplier is an Israeli entity - it complies with all the terms stipulated in the Transactions with Public Entities Law 1976, and declares that none of the conditions detailed in Clause 2B of the Transactions with Public Entities Law prohibit the Company from engaging the Supplier in this engagement.

### **9.7. Skills and Know-How**

Supplier possesses:

- 9.7.1. All the skill, know-how, ability, experience and means, financial and otherwise, to successfully complete its obligations under this Contract in complete and total conformance with the Time Schedule and any other relevant information or know-how in the field of the Supplier. The Supplier provides this representation and warranty fully aware of all factors and conditions that may affect the progress or completion of its obligations under this Contract; and,

9.7.2. All the skill, know-how, ability, experience, means, financial and otherwise, to successfully manage the execution of the work of the Subcontractors according to the provisions of this Contract, including, without derogating from the generality of the above, the Time Schedule.

#### **9.8. Conflict of Interests**

Supplier 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.

### **10. Supplier's General Obligations**

- 10.1. Supplier hereby agrees to execute any and all works and services required for the execution of the Services in accordance with the terms and the conditions of the Contract, including, inter alia, the manufacture, inspection, testing, supply, delivery, warranty as well as the fulfilment of Supplier's obligations in accordance with the Specifications and Supplier's Bid and Quotation in the Tender and/or any RFQ.
- 10.2. That all its presentations and obligations pursuant to the Framework Tender Documents and the Agreement will remain in force during the entire Qualification Period, and that it will inform the Company, immediately, in the event of any change in a presentation or obligation given by the Supplier regarding the Agreement, which could affect its ability to perform the Specific Tasks.
- 10.3. That it holds all the authorizations and/or licenses and/or permits required by law, and that it has all the means, facilities and equipment needed for its operation and, particularly, for performing its commitments pursuant to the Agreement.
- 10.4. That all the goods and services that the Supplier will provide to the Company shall be of a high quality and precision and will comply with the requirements of any law. The Framework Supplier is responsible for complying with the provisions in this section; that any goods and/or services supplied by the Supplier will comply with all the provisions of the law and with any standard, stipulation or other instruction.
- 10.5. That it will perform all the required preparations for the purposes of providing the services efficiently, excellently and to the Company's satisfaction.
- 10.6. That it has examined everything that requires prior inspection in relation to the provision of services; that it is well aware of all that is required for the provision of services; and it irrevocably waives any claim and/or demand and/or other objection against the Company relating to the aforementioned.

- 10.7. The Framework Supplier hereby declares that it owns, or shall own any licenses and/or authorizations and/or permits which will be used for the purpose of providing the services pursuant to any RFQ, and that, at all times, it will have licenses and/or authorizations and/or permits required for the purpose of providing the services.
- 10.8. That it is aware that the Company is entering this Agreement based on its representations, statements and obligations detailed in the Agreement and its Bid. Any inaccuracy in its presentations and statements and/or non-compliance with any of its obligations pursuant to the Agreement, shall constitute a fundamental breach of its obligations and the Agreement.
- 10.9. During execution of his commitments, the Framework Supplier shall act within reasonable endeavours in order to prevent delays or disturbances during the course of execution of the services.
- 10.10. The services will be executed constantly, and at the required rate, in order to prevent any delay to the timetable for execution of the specific task, and in every place and at any time, as required for execution of the specific task.
- 10.11. The Supplier shall manufacture and execute the Services in accordance with every applicable law, the Tender, any RFQ (when applicable) and shall be fully & solely accountable towards the Company for any work, activity, material and product pertaining to the Tender and/or the RFQ and the Purchase Order including any work, activity, material and product provided by its subcontractors (if any) even after having been pre-approved by the Company.
- 10.12. The Supplier warrants, covenants and represents that the execution, delivery and performance by the Supplier of the Contract does not and shall not violate the Law.
- 10.13. **Warranty**
- 10.13.1. The warranty period for the Goods and any other item supplied to the Company by the Supplier shall extend for as long as will be specified in the relevant RFQ (the "**Warranty Period**").
- 10.13.2. If any of the Goods do not comply with the provisions of the Contract or are found defective or if any defect or fault originating in connection with the design (if furnished by Supplier), materials or workmanship, of any of the Goods arise at any time within the Warranty Period, Supplier shall at his own cost promptly make such alterations, repairs and/or replacement, including packing, transportation, and retesting, wheresoever located, as are necessary so that said item conforms to the provisions of the Contract and fulfils the preceding warranties to Company's entire satisfaction; Supplier shall in addition reimburse the Company for the following costs and expenses incurred in completing the necessary remedial and repair works: (a) seeking and finding of defective Goods; (b) removal of defective Goods; (c) transportation of defective Goods and replacement Goods; (d) purchase and installation of replacements; (e) testing of replacements.
- 10.13.3. If the fault or failure to function properly cannot be corrected or is not promptly corrected as set forth above, the Incompatible Goods shall be removed by or at the expense of Supplier and Supplier shall without cost to the Company promptly



deliver satisfactory Goods which completely fulfils the provisions and intent of the Contract. Moreover, where such faulty Goods are no longer in the condition in which they were delivered due to use or acts by Company prior to discovery of the Incompatibility(ies) of the Goods, and unless such use or acts are inconsistent with the nature of the Goods, then Supplier shall accept the rejected Goods in such condition, shall replace such Goods in accordance with the terms hereof and shall have no further claim against Company in connection therewith.

10.13.4. In the event of any alteration, repair or replacement as aforesaid, Supplier Warranty Period shall extend to such altered, repaired or replaced Goods for a new period of same duration as initially stipulated, from the date of acceptance of same by Company, but in any event not less than one year from the date of repair or replacement.

10.13.5. If the faulty Goods are not removed and satisfactory replacement Goods are not furnished by Supplier within such reasonable time as Company shall determine, then the Company shall be entitled to carry out such remedial work or have such remedial work carried out by others or provide replacement Goods all at the sole risk and expense of Supplier.

10.14. The Supplier shall provide the Company with all documentation required under this Contract, without limitation, to enable custom clearance, payment, receiving and use of the Goods by the Company.

10.15. The Supplier shall update the Company at any time it may no longer meet the threshold of the Tender and/or RFQ, including the financial requirements. At any time during the Contract or the Qualification Period the Company may instruct the Supplier to validate all of the above representations, warranties, information and data, as well as any other information (such as financial statements) that was provided by the Supplier as part of its Bid for the Tender and/or RFQ.

## **11. Taxes and Customs Duties**

11.1. Supplier shall bear and discharge under his sole liability all taxes assessed against profits, dividends, corporate income, personal income of his employees, all taxes and/or withholdings that may derive from any use of sub-vendor(s) or from the place of payment designated by Supplier, and more generally all and any taxes, imposts, levies, fees, stamps, customs duties and the like, levied by whatsoever authorities, (not expressly payable by Company under the Purchase Order). Supplier shall likewise bear and discharge under his sole liability any fines and/or penalties pertaining to any of the above. In addition, The amounts required by the applicable law to be withheld at source by the Israeli Tax Authorities shall be paid by Company directly to the Israeli Tax Authorities and shall be deducted from the Contract Price, unless all relevant approvals for the Tax authority shall be provided to the Company by the Supplier

11.2. Supplier shall indemnify and hold Company harmless against liability to claims in respect of the foregoing.

## **12. The Consideration**

12.1. In consideration for full compliance with the Supplier's obligations, including the

provision of the services pursuant to the Agreement to the Company's satisfaction, the Company will pay the Supplier the amount specified in the Supplier's price quote for the RFQ, pursuant to the quantities and units as actually ordered and approved by the Company (hereinafter: "**the Consideration**").

- 12.2. For the avoidance of doubt, it is clarified that the data detailed in the price quote does not constitute a presentation and/or commitment regarding the scope of the services and/or works actually ordered from the Supplier. The Company reserves the right to increase or decrease the quantities as aforementioned.
- 12.3. The Consideration will be paid to the Supplier, subject and upon receipt of the Company's written approval.
- 12.4. The Supplier's proposal includes all the preparation and necessary works for the supply, installation, operation and maintenance of the services subject to the Tender and the Specific Invitation and pursuant to the details in the technical specifications, to the Company's full satisfaction. It is hereby expressly clarified that all the aforementioned services are included in the Supplier's price proposal and the Supplier will not be paid any additional consideration in respect of the aforementioned.
- 12.5. For the avoidance of doubt, it is clarified that the Consideration is final and includes all the service components (including additional and/or indirect services) that are the subject of this Agreement, as detailed in the Tender Documents and Specific Invitation and this includes: overhead expenses, price increased, office and/or general expenses, equipment costs, wages of employees and/or those employed by the Supplier, including staff members (including full social expenses), and any additional and/or other expense of any kind and type. For the avoidance of doubt, it is clarified that the Supplier shall not be entitled to any consideration and/or additional payment for/or regarding its work beyond the aforementioned.
- 12.6. It is clarified that the Supplier shall not be entitled to any consideration and/or additional payment for its services beyond the Consideration, unless otherwise stipulated expressly in the Agreement or if the parties have agreed upon this expressly in writing.
- 12.7. The Company's liability in matters regarding Consideration and/or the scope of the Agreement, is subject to prior written document signed by the Company's signatories. The Supplier is aware and agrees that any instruction that may affect the Consideration and/or scope of the Agreement which wasn't approved by the Company as aforementioned, shall not bind the Company and the Supplier shall not be entitled to act pursuant to it and, should it act pursuant to it, it shall not be entitled to any consideration whatsoever in this regard.
- 12.8. VAT will be lawfully added to the Consideration, subject to the issuance of a lawful tax invoice.

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- 12.9. For the avoidance of doubt, it is hereby emphasized that the Company may offset any amount due to it by the Supplier pursuant to this Agreement and/or any other agreement that it has with it and/or pursuant to any law, including reimbursement for advances and/or payment of damages, against any sum it owes the Supplier.

**13. Statutory Requirements**

- 13.1. The Supplier shall comply at any time with all laws and regulations applicable to its activities in relation to the Contract and shall, at his own cost and expense, prior to the delivery of the Goods, supply whatsoever governmental or other administrative documents as required for the performance of the Contract.
- 13.2. The Supplier warrants, covenants and represents that the execution, delivery and performance by the Supplier of the Contract does not and will not violate the Laws.

**14. Intellectual Property**

- 14.1. The Supplier shall fully indemnify and hold the Company harmless against any action, claim, demand, costs, charges, damages, and expenses arising from or incurred by reason of any infringement or alleged infringement of any patent, registered design, trade mark, or trade name protected in the country of origin or elsewhere and resulting from the Services and/or Goods and/or their use.
- 14.2. In the event of any claim being made or action brought against the Company arising out of the matters referred to in this Clause, the Supplier shall be notified thereof and, subject to the following, may at his own cost and expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Supplier will not, without the Company's prior written consent, settle, admit liability or compromise any pending or threatened claim, proceeding or investigation in respect of which indemnification could be sought under this Clause (whether or not the Company or any other Affiliates, employees or agents is an actual or potential party to such claim proceeding or investigation), unless such settlement, admission or compromise includes an unconditional acknowledgement that none of the Company, its Affiliates, employees or agents had any responsibility for the matter giving rise to such claim, proceeding or investigation. The Company will not owe any responsibility to other indemnified persons for providing or failing to provide such consent.
- 14.3. Either the Supplier or the Company shall, at the request of the other, afford all reasonably available assistance for the purposes of this Clause and the Company shall be repaid by the Supplier for any expenses incurred by the Company in so doing.
- 14.4. If the Services and/or Goods or part thereof involved in such action, claim, etc. are prohibited from use, Supplier shall at his own expense, at the Company's option, either replace or modify them, or purchase the necessary licences in order to remove the infringement to the satisfaction of Company.

## **15. Ownership of the Work Products, Documents and Information**

- 15.1. Any document, including adaptations, photographs, copies, materials and auxiliary materials, presentations, plans, calculations, sketches, innovations, developments, inventions, patents, and any other products of the services, including interim products etc., or information to be prepared by the Supplier and/or received by the Supplier in relation to the services (hereinafter: "the Products of the Services" or "the Documents"), shall be owned by the Company and shall constitute the Company's sole intellectual property and will be transferred to its possession immediately upon its demand. The Supplier and/or anyone on its behalf shall not have any claim and/or demand against the Company and/or anyone on its behalf regarding this and/or any lien on the documents;

In this regard, "document" – including data stored on magnetic media and/or on any other media. It is hereby clarified that documents in the possession of any other third party, are the sole property of the Company.

It is clarified that the aforementioned shall not apply to products and services that were not developed for the Company, and that were developed regardless of the provision of the services subject of this Agreement

- 15.2. Without derogating from the aforementioned, the Supplier hereby confirms and undertakes that the Company shall be entitled to make any use of the Products of the Services at its sole discretion and, inter alia, transfer them to any party (including the Ministry of Transport) and for any other purpose, including: modification of the Documents and/or for any other use at its sole discretion, without having to request permission from the Supplier. The Supplier will not be entitled to any consideration or increment for the use as aforementioned.
- 15.3. It is clarified that, the Company may decide to transfer the performance of the services, in whole or in part and/or any additional work linked, directly or indirectly to the performance of the services, including its products and/or conclusions. In this event, the Supplier undertakes to assist, to the best of its ability, in transferring the activity and/or knowledge and/or Products of the Services, to any other party within a period that shall not exceed fourteen (14) days, in accordance with the Company's instructions and at its sole discretion.
- 15.4. Without derogating from the aforementioned, it is hereby declared and clarified that the Company has an exclusive right to the Products of the Services and it shall have the sole copyrights and other rights of any kind, whether intellectual property rights or licenses of use, trademarks etc., that are imparted pursuant to any law in any document (including physical or magnetic media), any professional opinion or intellectual property that will be prepared by the Supplier or reliant on consultation provided by the Supplier and/or by third parties in relation to this Agreement. The Supplier undertakes to take any required action in order to allow the Company to register such rights in the Company's name and pursuant to any law.
- 15.5. Upon termination of this Agreement for any reason, the Supplier will provide the



Company with all the original documents and copies of any documents in its possession that are related to the Products of the Services, within fourteen (14) days, as well as a written affidavit stating that the Supplier has no original documents or copies in possession or that of any other person. The Supplier shall not be entitled to any payment beyond the provisions in this Agreement for the aforementioned services in this section or for updating the documents.

- 15.6. The provisions in this section and all its subsections are fundamental to the Agreement and any breach hereof will be perceived as a fundamental breach of the Agreement.

## **16. Assignment and Sub-Contracting**

### **16.1. Assignment**

16.1.1. The Supplier shall not transfer or assign all or any of his rights and obligations under the Contract, without prior written consent of the Company. Notwithstanding any assignment to which the Company has given its consent, Supplier shall be and remain fully responsible for the due performance of his obligations under the Contract.

16.1.2. The Company, may at any time, transfer or assign all or any of its rights and obligations under the Contract to the State of Israel, including to any other third party, provided that such third party demonstrates reasonable financial ability which allows him to comply with the payments obligations to the Supplier under the Contract.

### **16.2. Sub-contracting**

16.2.1. The Supplier shall not without prior written approval of Company subcontract directly or indirectly at any level the performance of this Contract or any part thereof.

16.2.2. A proposed list shall be prepared by Supplier and provided to the Company for its approval within 14 Days of the issuance of the relevant Purchase Order with indication, for each named sub-vendor, of field and volume of activities possibly to be sub-contracted. The Company may at its sole discretion refuse to include a sub-vendor in such approved list.

16.2.3. The Company refusal to approve any sub-vendors not named in the aforementioned list shall not increase the Contract Price or extend the Time Schedule.

16.2.4. The Company shall be entitled to approve all subcontract documents relating to sub-vendors as aforesaid, excluding prices, prior to award of each subcontract. Such subcontract documents shall provide that sub vendors shall not be authorized to subcontract their order, or part thereof, at any level without written consent of Supplier.



- 16.2.5. Supplier shall remain fully responsible for any part of the Contract performed by his sub-vendors, at any level, and for the acts and omissions of such sub-vendors and their personnel. Notwithstanding anything to the contrary in the Contract, the Supplier shall indemnify and hold harmless Company against all such acts/omissions of sub-vendors, and against any consequence of use of sub-vendors at any level.
- 16.2.6. The Company's approval of sub-vendors at any level shall not create any contractual relation between the sub-vendor and Company.

### **17. Safety and Security on Site**

- 17.1. Before entering any of the Company's sites and/or facilities, including any related premises to the supply of the Services and/or the Goods, the Supplier will undergo a safety and security briefing performed by one of the Company's representatives, and will be issued an entry permit, as a precondition for such entry.
- 17.2. Throughout the duration of Supplier in the Company's premises (including any other premises of a third party related to the supply of the Goods), the Supplier shall adhere to all of Company's (including the third party if applicable) safety and security regulations.

### **18. Liability and Insurance**

#### **18.1. Liability**

- 18.1.1. Supplier shall hold harmless and indemnify the Company in respect of loss or of damage to the Goods until the risk thereof has been transferred to Company in accordance with the terms of the Contract.
- 18.1.2. Without derogating from anything stipulated in the Contract and the Purchase Order, the Supplier shall be liable for: (i) any bodily injury or property damage resulting from any act or omission by the Supplier and/or anyone on its behalf in connection with the Services and/or supplying of the Goods under this Contract; (ii) any damage or loss resulting from any defect in the Goods, including Incompatibility due to poor workmanship and/or quality of materials used for the production of the Goods and/or late delivery, incurred by the Company and/or any third party including, among others, third parties employed by the Supplier.
- 18.1.3. The Supplier's liability towards the Company for any consequential loss and/or loss of profit deriving out of Supplier's execution of the Services and/or physical defect or damage to the Goods, including in case of any liability imposed on or attributed to the Company by any third party, as well as termination of the Contract by the Company for a reason attributed to the Supplier, shall be limited to the total Contract Price. These limitations of liability shall not apply in respect of indemnity provided under Supplier's insurance, as well as in case of Gross Misconduct by the





Supplier or by anyone acting on its behalf.

## 18.2. Insurance

Without derogating from the Supplier's obligations and liability under this Agreement and under any law, the Supplier undertakes to carry out and maintain at its own expense, in its own name and in the name of any Subcontractor on its behalf, during the period of this Agreement and as long as the Supplier's liability exists under the terms of this Agreement and/or according to any law, the Insurance Policies as will be specified in the relevant Purchase Order.

## 19. Termination

### 19.1. General

Termination of the Contract shall not relieve the Parties from obligations, such as confidentiality obligations, which by their nature survive the termination.



## 19.2. Termination on Account of Force Majeure

- 19.2.1. Neither Party shall be liable for any delay in the performance of the Contract, if such delay is due to Force Majeure and without fault or negligence of the Party.
- 19.2.2. A Party affected by an event of Force Majeure shall (a) promptly notify the other Party in writing of any such event, the expected duration thereof, and its anticipated effect on the Party affected in terms of the performance required hereunder; and (b) make reasonable efforts to promptly remedy any such event of Force Majeure. Any supply delayed due to an event of Force Majeure shall be extended for such time as the event shall continue.
- 19.2.3. Either of the Parties may terminate the Contract if the completion of the Services is made impossible on account of Force Majeure which lasted for a period of more than 45 consecutive Days, as evidenced by the Party claiming such event as occurred, and a corresponding notice has been served to the other Party. If the Contract is so terminated, Supplier shall be paid the remaining unpaid balance of the Contract Price up to the percentage of the Services completed and duly delivered to the Company at the date of such termination.

## 19.3. Termination through Supplier's fault or deficiency

- 19.3.1. Company shall be entitled to terminate the Contract in the following cases:
- 19.3.1.1. With immediate effect if Supplier fails to either meet the Time Schedule and/or supply the Company any of the guarantees or the insurance certificate required under the Contract and/or commits any material breach of the Contract; or
- 19.3.1.2. If the Supplier persists for a period of 7 Days in failing to comply with any of his obligations under the Contract after receipt of Company's notice summoning him to perform such obligation(s).
- 19.3.2. In the event of such termination, the Company has the right at Supplier's own costs and risks to take over any material, equipment, service, supply or right totally or partially performed at the time of termination and to complete the supply of any unsupplied Goods, either directly or through any other vendor or supplier. The resulting additional expenses shall be reimbursed by Supplier to Company.
- 19.3.3. The exercise of any of the rights granted to Company under this Clause shall not prejudice or affect any rights of action or remedy which shall have accrued or shall accrue thereafter to Company.

## 19.4. Termination attributable to Company

- 19.4.1. Without prejudice to the above, Company reserves the right to terminate





the Contract at any time without justifying its decision, but shall in such case:

19.4.1.1. Pay Supplier the remaining unpaid balance of the Contract Price up to the percentage of the Services completed and Goods delivered by Supplier prior to the date of termination.

19.4.1.2. Subject to the obligation of Supplier to use its best efforts to mitigate its damages, reimburse Supplier for all costs reasonably and irrevocably incurred and paid in respect of the part(s) of the Services not completed and supplied on such termination, proved by the Supplier.

19.4.2. Such payments shall constitute the sole and full compensation payable by Company.

## **20. Complementary Tender**

20.1. It is clarified that in light of the character of the Services, and the need for a dynamic response to projects in the fields relating to the Services, the Company reserves the right, as per its sole discretion, to publish a Complementary Tender concerning the tendered services (hereinafter: “**Complementary Tender**”), and the suppliers in the Complementary Tender will be added to the Framework Suppliers’ Repository.

20.2. Nothing stated in this section will obligate the Company to publish Complementary Tenders as stated, and the publication of the Complementary Tender is given to the sole and professional discretion of the Company.

20.3. Without derogating from the mentioned above, the Company retains the right to as part of a Complementary Tender as stated, request additional services to those required in the framework of any previous Tender, and determine additional Framework Suppliers’ Repository in additional categories including the split of the Framework Suppliers into several repositories, all as per its sole discretion.

20.4. It is hereby clarified that this Agreement and/or the Framework Tender do not detract in any way or form from the Company's right to publish any other tender and/or other procedure and/or to engage in any agreement in the fields relating to Services, all according to the Company full discretion, and the Supplier will have no claim in that regard.

## **21. An Individual Referral for RFQs**

21.1. The Company may distribute, according to its complete discretion, RFQs relating to a Specific Task/s and/or Purchase Orders in the relevant category.

21.2. Distribution of an RFQ, its content, instructions regarding the Framework Suppliers’ response to the Specific Invitation, the selection mechanism of the



Framework Supplier for performing the task, cancellation of award to a Framework Supplier and the removal from the Pool of Framework Suppliers, shall be as detailed in the Tender.

- 21.3. As detailed in the Tender, the Framework Suppliers are not granted exclusivity in provision of the services and the Company does not undertake to distribute RFQs at all.
- 21.4. The Supplier will be obligated to participate in each of the RFQs that will be conveyed to it by the Company and submit its bids relative to these RFQs.
- 21.5. It will be further clarified that the Tenders Committee of The Company, in the context of a written reasoned decision, will be entitled to turn to only some of the Framework Suppliers, and as part of this framework be further entitled to consider among its considerations the capacity and experience of the bidder in the execution of similar works including previous works executed for The Company and/or other public entities, its organizational and economic capabilities, and any other consideration or reasoning that the Company may deem appropriate and correct.
- 21.6. The Company will be entitled to assign Purchase Orders to a Framework Supplier without conducting the above mentioned pricing competition among the Framework Suppliers, in the case that the Company, at its sole discretion, is led to believe that execution of the Purchase Orders cannot be assigned to the other Framework Suppliers, because of the burden of activity facing one or more Framework Suppliers that would prohibit meeting the requested timetable, cause a late date on delivery of other projects, execute works at a quality deemed unsatisfactory by the Company, in those circumstances in which uniformity is required for the sake of cost savings and efficiency, etc.
- 21.7. For the avoidance of any doubt, it should be clarified there is nothing in this Agreement to ensure the Supplier that the Company will indeed convey any Purchase Orders for execution whatsoever and will order any of the services and/or in any volume thereof.
- 21.8. Without derogating from the above mentioned, this Agreement does not establish towards the Supplier any commitment, except the commitment of the Company to incorporate it in Framework Supplier Repository, from which the Company will select from time to time and in accordance with the provisions of this tender, the framework supplier with whom it will engage for execution of a specific Purchase Order.
- 21.9. This Agreement does not form an obligation of the Company not to engage with the Supplier in any further agreement concerning the services mentioned in the Framework Tender. The Company may, at its sole discretion, engage with third parties in any agreement and/or publish any tender or other documents concerning the supply of the services mentioned in this tender, as it sees fit, and the Supplier will have no claim towards the Company in this regard.
- 21.10. It will be further clarified that the Company is incapable of knowing and/or



presenting at this time the specific Purchase Orders for execution that will be conveyed for actual execution by the framework suppliers, their financial scope and/or their nature. The Purchase Order's scope in relation to each specific Purchase Order will be known and final only near the publication of the Individual Referral relative to the Purchase Order.

- 21.11. Indeed, signing this Agreement views the Supplier as one who agrees and approves the above mentioned, and waives any claim, demand and/or suit against the Company and/or those acting on its behalf for and/or in connection with the provisions of this tender.
- 21.12. For the avoidance of doubt, it is clarified that there is nothing in the Tender Documents and in this Agreement, to ensure the Supplier any scope of work whatsoever for the execution of any Purchase Orders, which will be implemented solely as per the Company's needs and at its sole discretion, and which will give the Supplier no grounds for any demand and/or claim and/or argument whatsoever as to the mentioned above.
- 21.13. It will be further clarified, to dispel any doubt that the Company is entitled to execute some of the purchase orders on its own or by means of third parties outside the proceedings and/or publicize tenders and conduct additional proceedings with respect to the execution of any Purchase Order whatsoever that could be implemented within the Tender framework, all at its sole discretion, and the Tender Documents and in this Agreement do not constitute any obligation on the part of the Company to the Supplier.
- 21.14. For the avoidance of doubt, it is clarified that the Company, at its sole and professional discretion, will be entitled not to turn to any Framework Supplier for the execution of a Purchase Order, and instead contract and/or publicize Tenders and/or conduct other competitive proceedings concerning Purchase Orders that could be executed in the framework of this Tender, or contract with any other entity for such purposes, all within the provisions of the law. Accordingly, it will be stated explicitly that a framework supplier will not be granted any exclusivity whatsoever by the Company in relation to the application and/or assimilation of solutions in the tendered fields.

## **22. Absence of Employee-Employer Relationship**

- 22.1. The relationship between the parties, pursuant to this Agreement, are those of service provider-recipient relationship. Nothing in this Agreement shall be construed as creating an employer-employee relationship.
- 22.2. The Supplier is an independent service provider and wishes to remain independent in managing its business and subject to the provisions in this Agreement, the Supplier is free to engage with other customers for the provision of services. Therefore, the Supplier hereby waives any claim and/or demand deriving from employee-employer relationship between it and the Company. The Supplier declares that it is aware of the legal and factual implications deriving from this



waiver.

- 22.3. The Supplier undertakes that it shall not sue the Company for any cause regarding an employee-employer relationship between it and the Company and/or the state. If, despite its commitment, it does so, or if any additional expenses beyond those provided in this Agreement are imposed on the Company, deriving from a determination that employee-employer relationships prevailed between the Company and the Supplier and/or its employees and/or those employed by it, during the Period of Engagement – then, the Supplier will indemnify the Company, on its first demand, for any expense incurred by it relating to a claim as aforementioned, including legal fees.
- 22.4. Without derogating from the aforementioned, if, for any reason, a competent authority, including a judicial body, has determined that the Supplier and/or any of its employees and/or anyone on its behalf is an employee of the Company or is entitled to rights as an employee, or if the Company is imposed with additional expenses beyond those provided in this Agreement, deriving from such determining, the following provisions shall apply:
- 22.4.1. The Consideration paid to the Supplier from the commencement of the Period of Engagement will be replaced by a reduced consideration (gross) at a rate of 40% of the Consideration actually paid. In this instance, the Supplier shall be deemed as entitled solely to the reduced consideration (gross) retroactively from the said date (i.e., to a consideration of 60% of the consideration that was actually paid).
- 22.4.2. The Supplier will refund the Company for any amount paid from the date of commencement of the Agreement which was paid above the reduced consideration, linked to the Consumer Price Index (regarding this section, "the Base Index" – the known Index on the date of each payment; "the New Index" – the known Index on the actual date of repayment) and with linked monthly interest rate differentials at a rate of 4% per annum.
- 22.4.3. Without derogating from any right at its disposal, the Company shall be entitled to offset these excess amounts against any amount that it owes the Supplier or anyone on its behalf.
- 22.5. The Supplier shall bear any payments to which its employees and/or anyone on its behalf providing the services to the Company are entitled, including income tax payments, social security payments and any additional payment that applies or shall by virtue of the Labor Laws in the state of Israel and/or state laws that are applicable to the Supplier in its country, including severance pay, vacation, provisions to provident funds, pension funds, travel expenses, convalescence, expenses repayments of any kind, advance notice or redeeming it or for any other social conditions and additional social payments as prescribed in any law.
- 22.6. It is hereby clarified that the Consideration to be paid to the Supplier in any Specific Agreement, was determined on the assumption that it includes all the





payments to which the Supplier is entitled and/or shall be entitled. The Supplier shall be solely responsible for making the payments and any deductions that must be made pursuant to the law and, is solely responsible for making all the aforementioned payments.

- 22.7. It is agreed and conditioned that the Company's rights pursuant to this Agreement, including its right to inspect and/or supervise the services provided by the Supplier, do not create any employee-employer relationship between the Company and the Supplier.
- 22.8. The provisions in this section and all its subsections are fundamental to the Agreement and any breach hereof will be perceived as a fundamental breach of the Agreement.

### **23. Maintaining Confidentiality**

- 23.1. The Supplier undertakes, without any time limitation: to keep confidential; not to transfer in any manner; not to deliver, publish, disclose, copy or use any knowledge, information, Document and any other information disclosed to the Supplier relating to the Agreement or to the provision of services, whether prior to the execution of the Agreement or during the Period of Engagement or after its termination.
- 23.2. Such undertaking shall not apply to information that is public knowledge on the date of signing this Agreement, or that will become public knowledge thereafter, provided that the information did not become public knowledge after the date of signing this Agreement, due to a direct or indirect act or omission of the Supplier or anyone on its behalf, including by tacit consent. The burden of proof, that the principles of this Section have been maintained shall be imposed on the Supplier.
- 23.3. The provisions in this section and all its subsections are fundamental to the Agreement and any breach hereof will be perceived as a fundamental breach of the Agreement.
- 23.4. The Supplier shall be responsible towards the Company in the event that his workers or anyone in his service, regarding the execution of the Work, violates his confidentiality undertaking of any material of information as said.

### **24. Assignment of the Agreement / Execution of the Services by a Third Party**

- 24.1. The Framework Supplier may not assign the Agreement or any part thereof to any other party and may not transfer or assign or encumber or pledge any right or obligation pursuant to the Agreement to any other party, including a right to payments which it may be owed pursuant to the Agreement, without the Company's advanced written approval.
- 24.2. The Supplier shall not endorse and/or transfer and/or pledge to another person his rights or commitments in accordance with the provisions of this Agreement, in whole or part, and shall not transfer or endorse any right or commitment according



to it, unless he has received approval to do so in advance and in writing from the Company, and all subject to the provisions of this Agreement.

- 24.3. The Supplier may not hand over to anyone else the execution of the Work, in whole or part, except with the Agreement of the Engineer in writing in advance. In order to remove doubt, the employment of experts by the Supplier in accordance with the provisions of this Agreement shall not be regarded as handing over the execution of the Work to someone else.
- 24.4. Without derogating from the provisions in Sections 25.1 and 25.2 above, in case the Supplier transferred its rights or obligations pursuant to this Agreement and/or deliver performance of the services, in whole or in part, to another, the Supplier shall continue to bear full responsibility for its obligations to the Company pursuant to this Agreement.
- 24.5. The Company may assign its rights and obligations by virtue of the Agreement, in whole or in part, to the Ministry of Transport and/or any ministry and/or other government entity and/or an entity controlled by the State of Israel and/or to any other relevant entity, as long as the Supplier's rights pursuant to this Agreement are not prejudiced.
- 24.6. Without derogating from the aforementioned generality, it has hereby agreed that the Supplier's services and the Specific Tasks assigned to it pursuant to the provisions in this Agreement, may be given to it directly by the Ministry of Transport and/or any ministry and/or other government entity and/or entity controlled by the State of Israel and/or to any other entity, all pursuant to the provisions in the Agreement, the Tender conditions and subject to the fact that the Supplier's rights shall not be prejudiced.

## 25. Offset

The Company shall be entitled to offset and deduct any amount due to it from the Supplier, in accordance with this Agreement or in accordance with any other contract held with the Company, from the consideration to be paid to the Supplier in accordance with the provisions of this Agreement.

## 26. Miscellaneous

- 26.1. **Non-Enforcement does not Prejudice Rights.** Failure by a party to this Agreement to enforce its rights, does not constitute a waiver of such rights or the right to sue (including enforcement) for breach thereof, and shall not prevent enforcement of the provisions of the Agreement at the request of that party, on a later date or for another breach of the agreement.
- 26.2. **An Annuling and Exhaustive Agreement.** The Agreement, accompanying agreements and other documents between the parties, dated as the date of the Agreement, constitute the entire agreements between the parties and annul any previous agreement and any previous consent, whether in writing or oral, between them subject to the Agreement.



26.3. **Jurisdiction and Governing Law.** This Agreement shall be governed by the Israeli Law. The parties agree the competent court of law in Tel Aviv-Yaffo shall have exclusive jurisdiction on any dispute arising between the parties.

**In witness whereof, the Parties have hereto set their hands and executed this Agreement, effective as of the Effective Date:**

**THE COMPANY**

**THE FRAMEWORK SUPPLIER**

\_\_\_\_\_

\_\_\_\_\_

By (name): \_\_\_\_\_

By (name): \_\_\_\_\_

Position: \_\_\_\_\_

Position: \_\_\_\_\_



