

Volume 2

DATED

[REDACTED]

**CONTRACT FOR THE APPOINTMENT OF A CONSTRUCTION MANAGEMENT COMPANY
& ITS KEY PERSONNEL**

relating to

Services provided with respect to the Eastern Segment
of the 5th Water Supply System to Jerusalem

between

MEKOROT WATER COMPANY LTD.

and

[CONSTRUCTION MANAGEMENT COMPANY] [FULL NAME]

**[IN THE EVENT OF A JOINT VENTURE – JOINTLY AND SEVERALLY WITH EACH OF ITS
MEMBER**

MEMBER ONE [FULL NAME] & MEMBER TWO [FULL NAME]

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PARTIES

- (1) Mekorot Water Company Ltd, a government owned company incorporated and registered in Israel, whose registered office is at 9 Lincoln Street Tel-Aviv, Israel ("MWC").
- (2) **[FULL COMPANY NAME]** incorporated and registered in **[COUNTRY]** with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** OR a Joint Venture which Participating Entities are: **[FULL COMPANY NAME]** incorporated and registered in **[COUNTRY]** with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** and **[FULL COMPANY NAME]** incorporated and registered in **[COUNTRY]** with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]**.
("Construction Management Company" or "CMC").

WHEREAS, MWC issued a tender for the provision of Services in connection with the DB Tunnel Project to be provided by the CMC and designated Key Personnel on its behalf with expertise in the fields of tunnel construction management, quality assurance and tunnel boring machine (the "**Project**");

WHEREAS, pursuant to a tender and clarification process, the Tender Committee declared the selection of the CMC as the Preferred Tenderer, subject to its fulfilment of all requirements set forth in the Contract Documents including, but not limited to, all Conditions Precedent set forth in Section 16.2 to **Volume 1** (*Request For Proposals*);

WHEREAS, after it had confirmed it holds all approvals to engage in this Contract and hence is not prevented, in any manner, from engaging in this Contract and that it is interested to engage in this Contract and provide, as an independent contractor, the Services and warranted it and its Key Personnel hold all qualifications, experience, manpower, know-how, means, measures and capabilities required for the fulfilment of its undertakings under the Contract Documents;

WHEREAS, the CMC acknowledges that the Project is within the critical path of the 5th Water Supply System to Jerusalem and therefore considered a bottleneck for its operation to which any delay will entail severe and crucial implications for the entire 5th water supply system; and

WHEREAS, MWC awarded this Contract to the CMC based on the latter's warranties, representations, undertakings, responsibilities and duties provided herein and within its Proposal, all in accordance with the terms and requirements of the Contract Documents.

NOW THEREFORE, the Parties hereto declare, stipulate and agree, as follows:

1. **PREAMBLE AND APPENDICES**

1.1 The preamble to this Contract forms an integral part hereof.

1.2 The following appendices enclosed to this Contract form an integral part thereof:

- (a) **Appendix 1** – Services;
- (b) **Appendix 2** – Fees and Payment;
- (c) **Appendix 3** - Personnel;

- (d) **Appendix 4** –Trade Contracts;
- (e) **Appendix 5** – Confidentiality Statement;
- (f) **Appendix 6** – No Conflict of Interests Statement;
- (g) **Appendix 7** – MWC’s Advisors.

1.3 **Contract Documents**

The following documents jointly constitute the Contract Documents:

Volume 1 - the Request for Proposals (RFP) (and all Appendices);

Volume 2 - this Contract (and all Appendices detailed in Section 1.2 above);

Volume 3 - the CMC's Proposal as accepted by MWC.

1.4 **Discrepancy between Contract Documents**

1.4.1 In any event MWC determines that a discrepancy exists any of the Contract Documents or in the event the CMC argues that such contradiction exists, MWC shall instruct the order of precedence to be applied.

1.4.2 The CMC shall be bound to its Proposal, as accepted by MWC. For the avoidance of doubt, in case of a discrepancy between the CMC’s Proposal and any of eh remaining Contract Documents, MWC may determine which documents or provisions, or part thereof, shall prevail.

1.5 **Contract Documents - Order of Precedence**

Without derogating from MWC's discretions as provided under the above Section 1.4.1, the following order of precedence shall apply:

1.5.1 **Volume 2** – Contract;

1.5.2 **Volume 1** – Request for Proposal; and

1.5.3 **Volume 3** – CMC's Proposal (as accepted by MWC). In the event deemed fit by it, MWC may determine that a specific provision(s) of Volume 3 shall supersede any other part of the Contract Documents.

1.6 **Interpretation**

1.6.1 In the Contract Documents, the headings of Volumes and Appendices and Sections and the tables of contents are provided for convenience only and shall be ignored in interpreting the Contract Documents. References to Appendices and Volumes are made for the purpose of indication and guidance and are not comprehensive.

1.6.2 In the Contract Documents, except where the context otherwise requires or as otherwise expressly provided:

- (i) The masculine includes the feminine;
- (ii) The singular includes the plural and vice versa;
- (iii) References to Sections and Appendices, contained in each Contract Document shall be regarded as references to Sections and Appendices of such Contract Document.
- (iv) A period of Working Days shall be deemed consecutive even if such period was interrupted by a Friday, a Saturday, or any other national holiday.
- (v) The terms “**including**”, “**includes**” and “**inter alia**” mean including without limiting the generality of any provision and/or description;
- (vi) Except where explicitly stated otherwise, whenever it is determined that a party “*shall bear full and sole responsibility*”, such responsibility shall include the bearing of any costs, fees, taxes and other payments incurred in relation therewith
- (vii) The term “**approval**”, “**consent**” or any synonym thereof shall mean the prior written approval.

(viii) The Contract shall not be construed against its author, but rather based on the meaning derived from the context, and the provisions of Article 25(b)(1) of the **Contracts Law (General Part), 1973**, shall not apply.

2. **DEFINITIONS:**

- 2.1 **CMC's Authorised Representative:** the person identified in **Appendix 3** who may be replaced from time to time by MWC as provided under Section 9 (*CMC's Representatives and Personnel*).
- 2.2 **Contract:** this **Volume 2** including its Appendices.
- 2.3 **Contractor:** the contractor to be appointed for the design and execution of the DB Tunnel Project.
- 2.4 **DB Contract:** a contract to be entered into between MWC and the Contractor.
- 2.5 **Fee:** the amount payable by MWC to the CMC for the Services provided by it and by the Key Personnel in accordance with the Contract Documents including as set forth under **Appendix 2** herein.
- 2.6 **Key Personnel:** the CMC's personnel approved and accepted by MWC identified in **Appendix 3**, as may be removed or replaced from time to time by MWC per Section 9 (*CMC's Representatives and Personnel*).
- 2.7 **Laws or Laws and Regulations:** all laws, statutes, ordinances, regulations, orders, including municipal by-laws, procedures and permits, and all rules, standards (including MWC' standards), administrative orders, and administrative instructions or directives issued by a regulator, applicable in the State of Israel, as amended and/or modified and/or updated and/or added and/or omitted from time to time..

- 2.8 **Material:** all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project or the DB Tunnel Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating thereto.
- 2.9 **MWC's Authorised Representative (MAR):** the person identified in **Appendix 3**, who may be replaced from time to time by MWC as provided under Section 9.
- 2.10 **Professional Team:** the CMC, the organisations or individuals listed in Part 4 of **Appendix 3** and any other organisations or individuals notified by MWC to the CMC and as may be amended from time to time.
- 2.11 **Project:** the performance of the CMC's obligations, including the Services, in accordance with the Contract Documents.
- 2.12 **Programme:** the programme agreed by the CMC and MWC, setting out key dates and time periods for:
- (a) completing key activities;
 - (b) crucial activities requiring the Services of the TBM Expert
 - (c) issuing Material and other documents; and
 - (d) providing information relating to the DB Tunnel Project,
as may be adjusted from time to time by agreement between MWC and the CMC.
- 2.13 **Required Standard:** all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the CMC's profession undertaking the Services on works similar in scope and character to the Project.

- 2.14 **Services:** the services set out in **Appendix 1** and any other or additional activity, consultation or service which according to best engineering practice is associated therewith also in the event it isn't explicitly indicated.
- 2.15 **Trade Contracts:** any agreement between MWC and a third party relating to the Project, including the DB Contract (of which relevant documentation is attached, for reference purposes, hereto), and of which:
- (a) a copy, or relevant extract, is attached to **Appendix 4**; or
 - (b) MWC notifies the CMC in writing after the date of this Contract to be attached to **Appendix 4**.
- 2.16 **Tunnel Project or DB Tunnel Project:** see Section 3 (*Background*) hereunder.
- 2.17 **VAT:** value added tax imposed by the Laws, or any similar tax in addition to or replacing it from time to time.
- 2.18 **Working Day:** a day other than a Friday, Saturday or public holiday in Israel when banks in Israel are open for business.

The meaning of all terms capitalized hereunder but not defined hereinabove shall be as ascribed in the DB Contract.

3. **BACKGROUND**

- 3.1 MWC was authorised by the Government of Israel to procure a new water supply system, titled the "5th Water Supply System to Jerusalem".
- 3.2 Due to the topography along the route of the intended water supply system, which is characterized by steep terrain, and to minimize environmental impact on the nature reserves in this area, a TBM tunnel has been planned.

- 3.3 MWC have published a tender for the selection of a contractor for the design and construction, *inter alia*, of a tunnel, a surge facility, the tunnel inlet and outlet, connections to the water supply and distribution system, temporary works required for the construction of the tunnel and closure/rehabilitation of the temporary works in the project known as the design and construction of the Eastern Segment of the 5th Water Supply System to Jerusalem (DB Tunnel Project).
- 3.4 In conjunction with the tender process for the selection of a Contractor for the DB Tunnel Project, MWC have published this tender for the provisions of Construction, QA and TBM expertise management services for the DB Tunnel Project **Tender no. 69-2015-ב**. The CMC was declared as the Preferred Tenderer.
- 3.5 Consequently, MWC wishes to appoint the CMC to provide, *inter alia*, the Services described in general above and in detail in the Contract Documents including **Appendix 1** (Services), which the CMC and each of its proposed Key Personnel has agreed to provide and execute on the terms of the Contract Documents. The aforesaid shall be reflected in the engagements executed between the CMC and its Key Personnel including a statement providing that the engagements are subject and shall not contradict the provisions of the Contract Documents and in any such event the latter shall prevail. MWC, may require such engagement(s) to be submitted for its review.
- 3.6 MWC may, at its sole discretion, require that any service (including any of the Services) is provided, also in parallel, by any third party.

4. **APPOINTMENT AND CONTRACT PERIOD**

- 4.1 **Appointment** - MWC appoints the CMC to carry out the Services including directly by the Key Personnel introduced in its Proposal (Volume 3), all subject to the terms of this Contract.

4.2 **Contract Period** - this Contract is entered into for a period of five (5) years (the "**Contract Period**"). The Contract Period shall commence upon the date upon which MWC determines that Services have first been provided by the CMC (regardless of the date the Contract was signed as indicated in its heading above). The above shall not derogate from MWC's exclusive right and discretion to terminate this Contract, at any time, for its convenience, all in accordance with the provisions of Section 14.1 hereunder – that without derogating from any other right for termination reserved to MWC under this Contract or by Law.

4.3 **MWC's Independent Option to Extend the Contract Period** – MWC may, at its sole discretion, extend the Contract Period by an additional period of up to twelve (12) months. In the event MWC wishes to exercise its option – it shall issue the CMC with a notice indicating the extended period it requires. Such notice shall be issued by no later than three (3) months prior to the elapse of the Contract Period. The provisions of the Contract shall apply, *mutatis mutandis*, upon the extended period – should MWC instruct of such extension. MWC is under no obligations to exercise its option. MWC may exercise its option by extending the Contract Period by an additional period of any time up to twelve (12) months.

5. **CMC'S OBLIGATIONS**

The CMC warrants and undertakes that, at all times, it shall, at its full and sole responsibility:

5.1 Exercise the Required Standard ensuring Best Engineering Practise and MWC's standards are met and complied with at all times;

5.2 Abide by all Law and Regulation and requirements of any Relevant Authority;

- 5.3 Ensure Health and Safety procedures, precautions, means and measures are kept, documented and reported;
- 5.4 Perform the Services according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the DB Tunnel Project as instructed by the MWC;
- 5.5 Provide the Services at the DB Project site, MWC' offices, Contractor's offices or any other place where works relating to the DB Project are being performed including, for instance, the factory where the TBM machine shall be manufactured;
- 5.6 Ensure that the Project and the DB Tunnel Project comply with all Laws, the Contract Documents and DB Contract, instructions of MWC and all Relevant Authorities;
- 5.7 Not cause, by act or omission, any breach of its obligations under the Contract Documents including by way of delay of any duty or undertaking;
- 5.8 Not cause, by act or omission, any harm to MWC or anyone on its behalf;
- 5.9 Not reveal to any party save explicitly to MWC, the CMC's Key Personnel and the Contractor (as and to the extent applicable) with any information, whether written or other, which comes to its knowledge as a direct or indirect consequence of this engagement. This applies also to the DB Contract's relevant parts provided for reference purpose only. The DB Tunnel Project's entire contract documents are listed under the DB Contract provided.;

- 5.10 Ensure that each Key Personnel introduced in the Proposal provides, in person, the Services in the field of the person's expertise as was demonstrated for the purpose of the applicable Professional Threshold Requirement set forth under **Volume 1** (Sections 6.4.2 (TCM), 6.4.3 (QAM) and 6.4.4 (TBME), that its conduct complies with the applicable provisions of the Contract Documents and that the above is included as a binding requirements within an engagement to be signed between the CMC and Key Personnel;
- 5.11 To cooperate with any entity MWC requires the CMC to cooperate with for the purpose of this engagement;
- 5.12 In the event the CMC is formed of a Joint Venture – all representations, duties, undertakings and responsibilities are applied thereupon *jointly and severally*; and
- 5.13 Provide the Services to MWC's complete and entire satisfaction.

6. **CO-OPERATION AND CO-ORDINATION**

The CMC shall, at all times at its full and sole responsibility:

- 6.1 Co-operate with the other members of the Professional Team and any other entity MWC instructs of;
- 6.2 Comply with the instructions of MWC; and
- 6.3 Notify MWC if its performance of the Services or the DB Project's execution is delayed, or is likely to be delayed, setting out the cause of the delay and its likely duration and taking all steps and measures (including those instructed by MWC) for the purpose of mitigating such delay.

7. **RECORDS**

- 7.1 All documents prepared or reviewed by the CMC or anyone on its behalf shall be considered for all means and purposes as MWC's sole property and as such shall be furnished to MWC by the CMC once required to do so.
- 7.2 Without derogating from the generality provided in Section 7.1 above, the CMC shall keep and maintain records of all Services provided by the TBME: including dates, hours spent, actual Services executed, the place where the Services were executed and any other or additional detail MWC may require.
- 7.3 Upon MWC's written request, the CMC shall allow MWC (or its representative) to inspect or be provided with any document. MWC's right to inspect and demand the receipt of any document shall continue to bind the CMC also beyond the Contract Period (whether concluded upon elapse of the Contract Period or terminated, for which any reason, prior thereto).

8. CMC'S AUTHORITY

- 8.1 Where the CMC or any of its Key Personnel are delegated duties and discretions under the DB Contract by MWC, they shall exercise their powers, duties and discretions fairly, impartially and as required by the DB Contract, the provisions of this Contract and MWC's instructions.
- 8.2 Notwithstanding any other provision of this Contract, other than with the prior written consent of MWC, the CMC and its Key Personnel have no authority to:
- (a) Make (or instruct the Contractor or any member of the Professional Team to make) any alteration to the DB Tunnel Project or DB Contract that might be regarded or may result in a Change;
 - (b) Vary any agreed design or specification of work or materials, their type, brand, substance, quality or quantity;

- (c) Vary, terminate or waive compliance with the terms of:
 - (i) The DB Contract;
 - (ii) The appointment of any member of the Professional Team (including Key Personnel); or
 - (iii) Any Trade Contract.
- (d) Enter into any contract, commitment or undertaking, written or verbal, on behalf of MWC; or
- (e) Issue any instruction or notice under the DB Contract, the appointment of any member of the Professional Team or any Trade Contract that:
 - (i) Delays the DB Tunnel Project; or
 - (ii) Has any effect on the cost or quality of the DB Tunnel Project or any item forming part thereof.

9. **REPRESENTATIVES AND PERSONNEL**

- 9.1 MWC's Authorised Representative is the person identified in **Appendix 3** or any replacement notified to the CMC by MWC from time to time. MWC's Authorised Representative has full authority to act on MWC's behalf in connection with this Contract.
- 9.2 The CMC's Authorised Representative has full authority to act on the CMC's behalf in connection with this Agreement. Instructions given to the CMC's Authorised Representative shall be deemed to have been issued to the CMC or Key Personnel.
- 9.3 The CMC shall make arrangements for the engagement of its Key Personnel and for their payment, housing, feeding and transport and any other task, cost or expense that is or may be associated with the Services they are to provide in accordance with this Contract.

- 9.4 The CMC shall comply with all the relevant labour Laws and Regulations applicable to the CMC's personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights. In this context the CMC confirms it is aware of the provisions of the Financial and Economical Regulations issued by the Accountant General of Israel on 16.5.2010 [– הוראות התכ"ם – הוראה מס' 7.12.9 מיום 16.5.2010, בעניין "עידוד העסקת עובדים ישראלים במסגרת [התקשורת הממשלה]", and undertakes that all of his activities will be performed in accordance thereof.
- 9.5 The CMC shall ensure that the CMC's Authorised Representative and the Key Personnel:
- (a) Devote sufficient time and attention fulfilling their respective roles and in view of the Services each is to provide;
 - (b) Are at all times available for communication and consultation with MWC and the Professional Team;
 - (c) Are not removed without MWC's prior written consent, except in the event of:
 - (i) Death;
 - (ii) Permanent incapacity;
 - (iii) An illness making the relevant individual unavailable for work; or
 - (d) Are promptly replaced by persons of comparable competence in the event any of them cease to hold their post.
- 9.6 MWC may, at any time, instruct the CMC to remove any person engaged in performing the Services including any Key Personnel if, in MWC's opinion, that person's performance or conduct is or has been unsatisfactory. The CMC shall remove any such person promptly and appoint, subject to Section 9.7 below, a replacement of comparable competence to be determined as satisfactory by MWC. The cost of such replacement shall also be borne by the CMC.

9.7 Any replacement of personnel by the CMC shall be subject to MWC's approval of (i) the actual replacement; and (ii) that the replacing person is of comparable competence as stipulated under Section 9.6 above.

9.8 The CMC shall appoint a replacement for any CMC's Authorised Representative or Key Personnel in advance of the cessation or suspension of their employment or temporary leave, allowing a sufficient hand-over period as shall be determined by MWC. If, however, a post has become vacant unexpectedly, the CMC shall appoint a replacement without delay and by no later than ten (10) Working Days from the day the post has become vacant - unless MWC for the replacement to be appointed prior or later thereto.

In any event a replaced CMC's Authorised Representative or Key Personnel shall not leave its position until the substitute is qualified to act on its own. Such qualification shall be determined by MWC. Without derogating from the above, the position shall, at all times, be staffed.

9.9 The CMC shall ensure all replacements receive appropriate training and induction prior to the commencement of their appointment.

9.10 The CMC approves it has been provided with all documentation it required for the purpose of this engagement including the provision of the Services and has found such material to be sufficient (without that applying any responsibility upon the CMC for such material it had not prepared).

Without derogating from the above, at the time MWC instructs so the CMC shall provide MWC with comments it may have with regard to any material it was provided with relating to the DB Contract.

9.11 The CMC shall hold the full and sole responsibility for the Services provided by the Key Personnel and any damage incurred to MWC or anyone on its behalf thereby. MWC's right to inspect any of the Services shall not derogate from the CMC's full and sole responsibility also in this regard. Upon MWC's notice, the CMC shall indemnify MWC for all damages, as provided hereinabove; it or anyone on its behalf may incur or may be required for.

9.12 All valid permits, licenses, approvals, authorisations, consents required by Laws and Regulations for the provision of the Services are at the CMC and Key Personnel's possession and in the event all or part are not – all such authorisations shall be obtained by the time required for the purpose of the timely provisions of the Services. The CMC shall not be entitled for payment until such authorisations are obtained and confirms that in the event it fails to obtain any up to the time set by MWC – such, too, shall be considered a Fundamental Breach.

9.13 Whereas this engagement shall be conducted in English including with respect to the provisions of the Services and documentation to be reviewed by the Key Personnel or prepared by them - the CMC represents that all Key Personnel and its Authorised Representative fully command the English language both verbally and in writing,

9.14 The performance of the CMC's duties and obligations under this Section 9 are at its full and sole responsibility.

10. REMUNERATION

10.1 MWC shall pay the Fee as a **fixed lump-sum payment in full and final consideration** for the Services provided by the Key Personnel and the CMC's involvement and support as may be instructed by MWC.

10.2 The Fee shall be the CMC's entire remuneration under the Contract Documents including all current or probable costs associated with all duties, responsibilities and undertakings provided in the Contract Documents or under any Laws and Regulations.

10.3 All direct and indirect costs, expenses and disbursements that the CMC incurs or may incur with relation to this engagement and provisions of Services, including, celeries, travel expenses, hotel and subsistence costs, are deemed to be included in the Fee.

Offices – office space and basic office furniture, computers and associated hardware and software (which are at MWC's use) as well as, photocopying, regular office supplies, and telephone - for the Key Personnel themselves - shall be provided for by MWC. In the event the CMC deems any additions to the above are required for the purpose of this engagement and provisions of Services (for instance different or additional software), it shall bear the full and sole responsibility with respect thereto.

10.4 MWC shall add VAT to any payment made to the CMC in accordance with the Laws and Regulations. Any amount expressed as payable to the CMC under this Contract is exclusive of VAT unless stated otherwise.

10.5 The CMC confirms the Remuneration (and all stipulation associated therewith) reflects the total consideration it shall be entitled for under the Contract Documents and is fair and adequate consideration in view of all its obligations, undertakings, duties, representations, warranties are requirements set forth under the Contract Documents and by Law – all of which shall be timely fulfilled by it in their entirety at the quality required under the Contract Documents which shall, at all times, reflect, at least, best engineering practise.

11. PAYMENT

- 11.1 The Fee the CMC shall be entitled for in accordance with the provisions of this Contract, shall be paid on a monthly basis.
- 11.2 The Fee shall be paid in New Israeli Shekels (ILS) and shall be linked and adjusted in accordance with the provisions of **Appendix 2**.
- 11.3 The CMC shall submit to MWC an invoice for each monthly instalment of the Fee together with particulars of the basis on which that sum was calculated as follows:
- (a) The monthly rate applicable to the Construction Manager (TCM);
 - (b) The monthly rate applicable to the QA Manager (QAM);
 - (c) The daily rate applicable to the TBM Expert multiplied by the number of days of actual service during the respective month (TBME);
 - (d) Any fees applicable for Additional Services (as applicable);
 - (e) Any adjustments to indices; and
 - (f) VAT (if applicable).

It is hereby explicitly provided that the Services, know-how and support to be given by the CM,C or any other person on its behalf, shall not entitle it for additional payment and it is hereby agreed that such entitlement is reflected within the TCM's and QAM's Monthly Rates and the TBME's Daily Rate, as applicable.

- 11.4 The final date for payment shall be 60 calendar days after the last day of the respective month in which the invoice was submitted and approved by MWC.
- 11.5 Subject to Section 11.7 and unless MWC has served a notice under Section 11.6, MWC shall pay the CMC the sum referred to in CMC's invoice on or before the final date for payment of each invoice as provided in the above Section 11.4.

11.6 Not less than seven (7) Working Days before the final date for payment MWC may give the CMC notice that it intends to pay less than the notified sum (in this Section 11, a “**Pay Less Notice**”). Any Pay Less Notice shall specify:

- (a) The sum that the MWC considers to be due on the date the Pay Less Notice is served (including any reduction due to Services not timely provided or as per the required quality or standard); and
- (b) The basis on which that sum is calculated.

11.7 Notwithstanding Sections 11.5 and 11.6 and without prejudice to Section 15, if the CMC becomes Insolvent (as defined in Section 14.2 below) after the prescribed period, MWC shall not be required to pay the CMC the notified sum.

12. **ADDITIONAL SERVICES**

MWC may instruct the CMC to perform services which are additional or represent an alteration to the Services as defined ("**Additional Services**"). In such event the Additional Services shall be priced, to the extent possible, in view of the monthly rates of the TCM or QAM or daily rate of the TBME (as applicable). In the event required, the Additional Services shall be priced in accordance with the valid Accountant General applicable hourly tariff as determined by MWC

(<http://www.sviva.gov.il/infoservices/mimshalzamin/tenders/documents/consultinghourshashkal.pdf>).

12.1 The CMC shall perform an Additional Service immediately on receipt of a written instruction to do so by MWC.

12.2 At the time determined by MWC, the CMC shall provide MWC with a detailed and elaborated written estimate of the Additional Service's effect on the Programme.

12.3 The CMC shall not be entitled for any additional payment in circumstances under which MWC determines that an Additional Service is required due to an act or omission of the CMC or anyone on its behalf. In such event the CMC shall perform the Additional Service without any entitlement for additional payment.

13. **SUSPENSION OF SERVICES BY MWC**

13.1 MWC may, at any time, suspend the performance of all or part of the Services by giving a written notice to the CMC. Subject to Section 14.2 below, the CMC shall resume performance of the Services at the time MWC instructs so.

13.2 In the event of a suspension of all of the Services by MWC in accordance with Section 13.1, MWC shall pay the CMC twenty five percent (25%) of the Fee it would have been entitled for in the event MWC would not suspend the performance of the Services.

13.3 The period of time during which the Services are suspended shall not alter or suspend the Contract Period.

14. **TERMINATION**

14.1 **MWC's Termination for Convenience** - MWC may terminate the CMC's engagement under this Contract, or part thereof, at any time at its sole discretion by giving a fourteen (14) Working Days' notice in writing to the CMC.

14.2 **MWC's Termination due to CMC's Breach** - without derogating from any of its rights and privileges under the Contract Documents or the Law, MWC may immediately (or at any other time it deems fit) terminate the CMC's engagement under this Contract if:

- (a) The CMC is in Fundamental Breach of its obligations under this Contract;
- (b) The CMC is in breach of any of its obligations under this Contract and fails to remedy that breach within the timeframe set by MWC;
- (c) MWC is in the opinion, at its sole discretion, that any of the representations, warranties or undertakings or requirements set forth under any Law are abused by the CMC or become invalid (in whole or in part);
- (d) MWC is in the opinion, at its sole discretion, that the Services are not provided in an adequate manner as per the requirements of the Contract Documents including with regard to the schedule, efficiency or professional aspects associated therewith; or
- (e) The CMC becomes Insolvent.

For the purposes of this Section 14.2-

"Fundamental Breach" – shall bear the meaning ascribed to such term under **Contracts Law (Remedies for Breach of Contract) Law, 5731–1970**.

"Insolvent" shall mean: insolvent, bankrupt, goes into liquidation, has a receiving or administration order made against him, compounds with its creditors, or carries on business under a receiver, trustee, liquidator or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

14.3 The CMC may immediately terminate its engagement under this Contract by giving written notice to MWC If:

- (a) A suspension of all of the Services in accordance with Section 13.1 continues for a continuous period of six (6) months or more and MWC does not instruct the CMC to resume the Services within ten (10) Working Days of receiving a written notice from the CMC requiring it to do so; or
- (b) A payment approved by MWC for payment is delayed for more than three (3) months after the last date such payment was supposed to be paid to the CMC in accordance with the provisions of Section 11.4 hereinabove.

15. CONSEQUENCES OF TERMINATION

15.1 On termination in accordance with Section 14, for any reason whatsoever, MWC shall pay the CMC any amount properly due for payment under this Contract at the date of termination.

15.2 If the CMC's engagement under this Contract is terminated by MWC in accordance with Section 14.2, the CMC shall pay MWC the reasonable cost of procuring replacement for the professionals to carry out any unperformed Services, to the extent that such cost exceeds the Fee (or, where the Fee is yet to be determined, MWC's reasonable estimate of the Fee). Any such cost shall be set-off and deducted from the amount payable to the CMC under Section 15.1 and if any shortfall remains following such deduction MWC may claim it as a debt due from the CMC.

15.3 Payment under Section 15.1 shall be:

- (a) The CMC's sole entitlement to compensation for termination of its engagement under this Contract; and
- (b) Claimed by the CMC as if it was a payment under Section 11.

15.4 Except as set out in Section 15.1, MWC shall not be liable to the CMC for:

- (a) Any costs, expenses, disbursements or losses;
- (b) Any loss of profits, loss of fees, loss of chance or other similar losses; or
- (c) Any indirect losses or consequential losses

arising out of termination of the CMC's engagement under this Contract.

15.5 Termination of the CMC's engagement under this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.

15.6 MWC may, in any event of termination, transfer the performance of the Services or any part thereof, to others and in doing so may use and rely on any Material produced by the CMC.

15.7 Termination under Section 14.2 shall entitle MWC with the right, at its sole discretion, to engage directly with any of the Key Personnel or any other entity or person on its behalf.

16. ASSIGNMENT AND SUB-CONTRACTING

16.1 MWC may assign the benefit of this Contract to and from any subsidiary or other associated companies, and to the State of Israel or to any entity duly appointed or designated by the State of Israel.

16.2 MWC shall notify the CMC of any assignment. If MWC fails to do this, the assignment shall still be valid.

16.3 The CMC shall not contend that any person to whom the benefit of this Contract is assigned under Section 16.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract provided the CMC's rights and entitlements are not harmed.

16.4 The CMC may not assign or transfer any of its rights or obligations under this Contract to any other person or entity without MWC's prior written consent.

16.5 Execution of Services by a Key Personnel on-behalf of the CMC, also in the event such are not employees of the CMC, shall not be considered as an assignment of obligations.

16.6 The CMC shall not sub-contract the performance of any of the Services without MWC's prior written consent. The CMC shall be responsible for any Services it sub-contracts to a third party (in the event MWC has provided prior consent thereto) as if it had performed those services itself.

17. COPYRIGHT AND INTELLECTUAL PROPERTY

17.1 MWC owns all intellectual property rights (including copyright) relating to the Material produced by the CMC in relation to the Project and the DB Tunnel Project and all material provided to the CMC or anyone on its behalf including material provided to it by the Contractor.

17.2 MWC grants to the CMC, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the CMC solely for performing the Services.

17.3 MWC may, at any time (whether before or after completion of the Services, or after termination of the CMC's engagement under this Contract), request a copy or copies of (some or all of) the Material from the CMC and the CMC shall provide the copy (or copies) to MWC upon such request. MWC may require that the CMC keeps no copy or record of such Material – and the CMC shall comply with such requirement including by way of providing a statement testifying to such effect.

18. CONFIDENTIALITY

18.1 The CMC is aware of the DB Tunnel Project's strategic nature and significance to national security. Accordingly it acknowledges and agrees that all information it receives during the Project is highly confidential and sensitive and shall strictly be kept as such. The CMC is aware that any disclosure of such information is a violation of Sections 118 and 119 of the **Penal Law of Israel, 5737 - 1977**.

18.2 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Section 18.3.

18.3 Each party may disclose the other party's information:

- (a) to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses the other party's confidential information comply with this Section 18; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

18.4 No party shall use the other party's information for any purpose other than to perform its obligations under this Contract.

18.5 The CMC undertakes to obtain the consent and of each of its personnel engaged on the Project and have them sign the confidentiality statement attached herein as **Appendix 5**, immediately upon the commencement of their employment, and deliver such signed statement to MWC within 5 Working Days of its signature.

19. CONFLICT OF INTERESTS

19.1 The CMC, including its subsidiaries, employees, consultants or subcontractors or any entity related to the CMC or acting on its behalf shall not have any conflict of interest between any of their other activities or obligations, and the activities, obligations and rights under this Contract. In the event the CMC is in doubt as to whether a certain engagement or employment is in conflict of interests with this Contract, the CMC shall request a prior written approval from MWC.

19.2 Without derogating from Section 19.1, the CMC shall not engage or employ any of the entities listed in **Appendix 7** in relation to the Project, without MWC's prior written approval. MWC reserves the right to update from time to time the list in **Appendix 7**.

That in addition to the Contractor and its Lead Tunnel Designer with which the CMC and each Key Personnel state they have no contact with whatsoever.

19.3 The CMC undertakes to obtain the consent and signature of each of its personnel engaged on the Project to the no conflict of interest statement attached herein as **Appendix 6**, immediately upon the commencement of their employment, and deliver such signed statement to MWC within 5 Working Days of its signature.

19.4 The CMC shall not be engaged or employed, whether directly or indirectly, in any other capacity or appointment which relates to the Project, other than under this Contract, whether by MWC or by any third party.

20. SECURITY CLEARANCE

Security clearance is required for each of the CMC's personnel working on the Project or attending MWC's facilities. Security clearance shall be granted by MWC's security officer at his sole discretion. For this purpose, the CMC shall provide MWC with a list of its personnel for the Project, which list shall include first name, surname, home address and ID or Passport number. The CMC shall continue to provide such details for each consultant, expert or new personnel it wishes to engage or employ for on the Project throughout the Project period.

Any person who fails to pass the security clearance conducted by MWC's Security Officer will be prohibited from participating in any capacity or appointment as part of the Project and will be replaced promptly in accordance with the provisions of this Contract, at the CMC's own costs.

21. **INSURANCE**

Without derogating from the CMC's liabilities under this Contract and Law, the CMC undertakes, at its full and sole responsibility, to issue, and maintain, throughout the Contract Period as may be extended, the following insurance policies:

21.1 Third Party Liability or General Commercial Liability insurance with liability limits of not lower than \$ 1,000,000 (one million U.S. dollars) for any one occurrence and in the aggregate for the insurance period. This insurance will be in force during the entire Contract Period as may be extended in accordance with the Contract's provisions.

21.2 Worker's Compensation and/or Employers' Liability insurance on behalf of all those who are employed or hired by the CMC for the performance of the Services, including subcontracted workers, with liability limits of not lower than \$5,000,000 (five millions U.S. dollars) for any one occurrence and in the aggregate for the insurance period. This insurance will be in force during the entire Contract Period as may be extended in accordance with the Contract's provisions.

21.3 Professional liability insurance covering the CMC's professional legal liability, with limits of liability of not lower than \$ 5,000,000 (five millions U.S. dollars) for any one occurrence and in the aggregate for the insurance period. This insurance will be in force during the entire Contract Period as may be extended in accordance with the Contract's provisions for as long as an obligation of the CMC concerning its professional liability exists by Law.

21.4 All the above insurance policies shall include following conditions:

21.4.1 MWC will be included as a co-insured party, in connection with the scope of the CMC's activities according to the Contract;

21.4.2 A cross liability clause;

21.4.3 Cancellation of the right of subrogation of the insurer towards MWC and/or its employees and /or any one acting on behalf of MWC.

21.4.4 Express condition, according to which, it has primary preference over any insurance taken out by MWC and that the CMC's insurer waive all the rights of claim and/or demand regarding participation in MWC's insurance.

21.4.5 Express condition, according to which, it shall not be canceled, reduced or expire during the Contract Period as may be extended, unless the insurer gave MWC a written notice thereof by registered mail, at least 60 Working Day prior to cancellation, reduction or expiry.

- 21.5 Prior to signing of the Contract, and during the Contract Period as may be extended, the CMC will provide MWC with valid certificates of insurance confirming the existence of the aforementioned policies including all the above conditions, duly signed by one of the following: (a) an insurance company, holding permission from Insurance Supervisor in Ministry of Finance, to conduct business in Israel; or (b) by a highly reputable insurance company, rated by one or more widely recognized insurance market's rating agency, at least under international A- /A minus/ (for S&P corporate rating or similar rating by other agencies).
- 21.6 The CMC undertakes as follows:
- 21.6.1 To cooperate with MWC in the investigation of all damages and/or losses, including exact circumstances of these;
- 21.6.2 To comply with, and fulfill all the provisions of the above insurance policies. Without derogating from the aforesaid, the CMC undertakes to comply with all of the requirements concerning security and caution contained in these insurance policies.
- 21.6.3 Should the CMC breach any of the policies' provisions in a way which undermines its rights and/or the rights of MWC under the said policies, the CMC shall be fully and exclusively liable, with respect to MWC, for all damages and/or losses, which may occur henceforth, waiving rights of claim and/or demand towards MWC for any pecuniary damages and/or other damages and/or losses which may be incurred by the CMC in this instance.
- 21.7 Only the CMC shall be liable for payment of premiums and deductibles as well as for payment of damages and / or losses regarding which, for any reason, there is no insurance coverage.
- 21.8 The issuance of the aforementioned insurance policies does not release the CMC of any of his / its liabilities or obligations under the Contract or the Law.

21.9 For the purpose of this Section 21, “MWC” shall mean to include MWC and any and all MWC’s subsidiaries and its officers, directors, and employees.

22. NOTICES

22.1 A notice given to a party under or in connection with this Contract:

- (a) shall be in writing and in English or accompanied by an accurate translation into English;
- (b) shall be signed by or on behalf of the party giving it;
- (c) shall be sent to the party for the attention of the contact and at the address, or fax listed in Section 22.2;
- (d) shall be sent by a method listed in Section 22.4; and
- (e) unless proved otherwise is deemed received as set out in Section 22.4 if prepared and sent in accordance with this Section.

22.2 The parties' addresses and contacts are as set out in this table:

Party	Contact	Address	Fax number
MWC	[POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]
CMC	[POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]

22.3 A party may change its details given in the table in Section 22.2 by giving notice, the change taking effect for the party notified of the change at [9.00 am] on the later of:

- (a) the date, if any, specified in the notice as the effective date for the change; or
- (b) the date [five] Working Days after deemed receipt of the notice.

22.4 This table sets out:

- (a) delivery methods for sending a notice to a party under this Contract; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this Section have been satisfied and subject to the provisions in Section 22.5:

Delivery method	Delivery date and time
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid recorded delivery post or other delivery service providing proof of delivery.	at the time recorded by the delivery service.
Pre-paid airmail providing proof of delivery.	at the time recorded by the delivery service.
Fax.	At the time of transmission.

22.5 For the purpose of Section 22.4 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Friday or Saturday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

22.6 This Section does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22.7 A notice given under this Contract is not valid if sent by e-mail.

23. ENTIRE CONTRACT

23.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 Each party agrees that in entering into this Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

23.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

23.4 Nothing in this Section shall limit or exclude any liability for fraud.

24. CONTRACTUAL RELATIONSHIP

The relationship between MWC and the CMC and anyone on the CMC's behalf including any of the Key Personnel shall be that of independent contracting parties and nothing herein shall be construed to create an employer employee relationship, a principal and agent relationship, a joint venture or a partnership between MWC and CMC or between MWC and any of CMC's personnel.

The CMC waives any right of lien or right for set-off, which he may have including under the provisions of any Laws (including the **Contract for Services Law 1974**), with respect to the Services and Material (or any part thereof).

It is agreed that sections 3 of the Contract for Services Law 1974 shall not apply to the contractual relationship between the parties under this Contract.

25. DISPUTES

The parties shall use their reasonable endeavours to amicably resolve any dispute or difference between them through negotiations.

26. GOVERNING LAW

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Laws of the State of Israel.

27. JURISDICTION

Each party irrevocably agrees that the courts of Tel-Aviv, Israel shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Appendix 1 – Services

Part 1 - Construction Manager Scope of Services

The Services shall be those normally performed by a reputable Construction Manager including but not necessarily limited to those specified hereunder.

1. Pre-Construction Period – Planning and Programming

1.1 Design Development

During the design process the Construction Manager shall:

- 1.1.1 Assistance and consultation to MWC's Project manager with all matters regarding the establishment, appointment, work and interface with the DB Tunnel Project Management Organization (see current chart attached hereto);
- 1.1.2 Attend such meetings as MWC considers necessary including with any member of the Professional Team, Trade Contractor, Contractor and its Lead Tunnel Designer (LTD) and Relevant Authorities and arrange meetings with any of the above as instructed by MWC;
- 1.1.3 Recommend economics in buildability, methodology, cost and time that are consistent with the MWC's objectives and requirements and with sound construction practice;
- 1.1.4 Regularly review and comment upon the design and the progress of the Material of the Trade Contracts and the Tunnel Project, with particular reference to compliance with safety requirements and the other obligations of the Contractor;;
- 1.1.5 Advise upon the selection, availability and price of materials and goods;
- 1.1.6 Advise upon methods of working, building systems and equipment and alternative design solutions;
- 1.1.7 Advise upon the proposed requirements for the Trade Contractors to carry out off-site design and off-site manufacture of components for incorporation in the Tunnel Project;

- 1.1.8 Advise on all aspects of added value and buildability in relation to the proposed design for each element of the Tunnel Project, advise on the feasibility of construction tolerances and suggest any changes to design which could be made with a view to reducing the incidence of disputes;
- 1.1.9 Advise on the need for pre-construction works e.g. exploration works, mock-ups, tests on components;
- 1.1.10 Advise on any inconsistencies, where found, in any preliminary information issued for construction purposes;
- 1.1.11 Advise MWC and cooperate with the Professional Team on the measures necessary to satisfy the requirements of the Laws and their cost implications and suggest, where possible, alternative proposals.

1.2 Cost Planning

- 1.2.1 Together with MWC and the Professional Team, consider and assist in the preparation and agreement with MWC and those consultants of the Tunnel Project cost plan. In particular the Construction Manager should:
 - a) Obtain budget costs of systems, assemblies, equipment and materials;
 - b) Evaluate costed alternative materials, construction techniques, and installation methods;
 - c) Advise on current pricing levels and trends in the area of the Tunnel Project;
 - d) Prepare a cash-flow forecast for the Tunnel Project.
- 1.2.2 Prepare and obtain the agreement and signatures of MWC and the Professional Team to the Tunnel Project cost plan.

1.3 Tenders preparations

- 1.3.1 Prepare in consultation with the Professional Team lists of suitable contractors from whom tenders may be invited for each trade contract. Advise and agree with MWC an appropriate tender list and obtain references and appraise the resources of each proposed tenderer. Agree with MWC effective tendering procedures having regard to the time available, quality, cost and (where relevant) public procurement requirements.
- 1.3.2 As appropriate, interview, together with MWC each proposed tenderer to ascertain their suitability and to describe the nature of the Tunnel Project, the scope of the work, the duties and functions of the Construction Manager (as agent for MWC under each trade contract) and of the Professional Team, and such other factors that may be reasonably necessary to secure the interest of tenderers in providing competitive tenders.
- 1.3.3 Obtain from the Professional Team tender designs, drawings, bills of quantities and specifications and procure or prepare such pricing Appendix, scopes of works, programmes, health and safety documentation and site rules as are necessary to obtain competitive tenders from Trade Contractors. Check for adequacy, consistency and completeness. Reproduce and collate the various documents and dispatch the same on behalf of MWC to the agreed tenderers.

1.4 Tenders evaluation

- 1.4.1 Interview, in conjunction with the Professional Team where appropriate, each tenderer during the tender period to ensure that their tenders will comply with the tender documents. Open all tenders received in the presence of MWC and the Professional Team. Provide to MWC and to the Professional Team a tender report in tabulated form recording the tenders received. Interview tenderers, in conjunction with the Professional Team, as appropriate to resolve any matters raised by the analysis and to consider possible economies.

- 1.4.2 Analyse, in consultation with the Professional Team, the tenders received and issue to MWC a written report agreed with the Professional Team setting out the analysis of the tenders and recommending a contractor with whom MWC should enter into a trade contract, or if the Construction Manager and the Professional Team Leader cannot make a joint recommendation, setting out their respective recommendations and their reasons.
- 1.4.3 Conduct any negotiations that may be appropriate to finalise the trade contracts and arrange for MWC and the Professional Team to participate as required. Prepare and collate the trade contract documentation for execution by MWC and trade contracts.

2. Construction Period and Post-Construction Period

The Construction Manager shall supply the services set out in the next paragraphs during the Construction and Post-Construction Periods (in addition to those services he is required to supply during the Pre-Construction Period but which remain necessary during either or both of these later periods):

2.1 Setting Out

Procure the establishment of all datums and basic setting out of the Tunnel Project and generally coordinate setting out carried out by the Contractor and other Trade Contractors.

2.2 Management of Trade Contractors

2.2.1 Upon MWC's approval of a Trade Contractor's tender, immediately notify the Trade Contractor and make all necessary arrangements for the execution of a trade contract and of any other documents, deeds or bonds required by the tender documents.

- 2.2.2 Reproduce from suitable originals supplied by the Professional Team all necessary copies of drawings issued for the purposes of construction and deliver them to such Trade Contractors and authorities as are identified by the Professional Team. Provide and deliver further copies of such drawing for the use of MWC and the Professional Team.
- 2.2.3 Issue a notice to each Trade Contractor to commence work on site.
- 2.2.4 Issue instructions and directions to the Trade Contractors as required in writing by or on behalf of MWC. The Construction Manager has no authority to issue any instruction or give any approval or do any other thing pursuant to a Trade Contract which would or might alter the cost of the Tunnel Project to MWC by more than the limits set out in the Contract Particulars without first referring the matter in writing to MWC's Authorised Representative, with his comments. These limits do not apply to existing entitlements of the Trade Contractors or restrict the Construction Manager's ability to administer the terms of the Trade Contracts so as to give effect to them. MWC shall notify the Construction Manager in writing within 3 clear Working Days of receipt of any reference from the Construction Manager of his approval or disapproval of it. The Construction Manager shall immediately copy to MWC, all instructions, approvals and other things issued or given by him pursuant to a Trade Contract.
- 2.2.5 Receive and check all applications for payment from Trade Contractors ensure the preparation of valuations as necessary in accordance with the terms of the Trade Contracts and comment to the Professional Team and Employer. Agree administrative procedures with MWC for submitting applications and valuations and for resolving any queries arising in connection with them. Promptly issue to MWC (with a copy to the Trade Contractors) all certifications for payment at such times as required by and in accordance with the Trade Contracts.

- 2.2.6 Prepare and serve notices where necessary or appropriate in accordance with the Laws and the relevant provisions of the Trade Contracts, including payment notices and withholding notices.
- 2.2.7 Receive and co-ordinate all shops drawings, product data and samples and check their conformity with information contained in other related documents and transmit them to the Professional Team for approval. Establish and implement procedures for expediting, processing and approval.
- 2.2.8 After consultation with MWC's Authorised Representative, issue certificates of practical completion in accordance with the Trade Contracts and advise MWC of their issue.
- 2.2.9 Review and report to MWC on any variations which result from 'on-site' considerations (including, but not limited to, Construction Manager's instructions) and report and advise on the associated cost and time implications, including, if appropriate, the cost and time implications under other Trade Contracts.
- 2.2.10 Carry out such inspections as are necessary to ensure compliance with the Trade Contracts. Inform the Professional Team of defects in workmanship and/or materials apparent from such inspections and take appropriate action to have such defects corrected in accordance with the instructions of the Professional Team. Supervise the making good of defects and after consultation with MWC's Authorised Representative issue the performance certificates under the Trade Contracts and advise MWC of their issue.
- 2.2.11 With the relevant Trade Contractors' assistance, prepare the necessary commissioning documentation and check that all plant equipment and materials are complete, prior to advising the Professional Team of the programme of testing and witnessing. Manage the commissioning of the Tunnel Project, tabulate the outcome of the various tests, prepare an action/activity Appendix of works which may require rectification and provide MWC and the Professional Team with proposals for such rectification work.

- 2.2.12 Check and approve with MWC's Authorised Representative a detailed technical specification and drawings showing the Tunnel Project 'as built' and produce bound volumes (with 4 copies of each) of all operating and maintenance manuals and the health and safety file for the Tunnel Project.
- 2.2.13 Collate and assess any Trade Contractor's claim relating to loss and/or expense, extensions of time or variations and report to MWC. Identify and inform MWC as soon as practicable of any sums to be contra-charged to the Trade Contractors and, with MWC's Authorised Representative, conduct such negotiations with Trade Contractors as may be appropriate in that connection.

2.3 Progress, co-ordination and information control

- 2.3.1 Provide all management, control, administration and planning of Trade Contractors' work. Review Trade Contractors' methods of working and temporary works with regard to their adequacy and safety.
- 2.3.2 Manage and co-ordinate the work of Trade Contractors.
- 2.3.4 Make visits as necessary to the premises of Trade Contractors and their suppliers where located in Israel (or overseas, where agreed in writing with MWC).
- 2.3.5 Conduct regular meetings with the Trade Contractors to monitor all aspects of progress both on-site and off-site relevant to the Tunnel Project Programme and to review all information requirements, and provide monthly written reports of those meetings to MWC.
- 2.3.6 Arrange and chair site progress meetings at intervals agreed with MWC and the Professional Team. Prepare and circulate minutes of such meetings.

- 2.3.7 Expand, update and adapt the Tunnel Project programme as necessary until completion of the Tunnel Project to reflect the Trade Contractors' detailed programmes, any extensions of time given under any Trade Contract or any changed circumstances. Report to MWC and the Professional Team on any expansion, updating or adaptation of the Tunnel Project programme and provide to MWC and the Professional Team such information in relation thereto as is reasonably required. Carry out any further programming exercises that may be agreed with MWC.
- 2.3.8 After consultation with Trade Contractors prepare 'short period' programmes for use in coordinating the work of Trade Contractors.
- 2.3.9 Expand, update and adapt in conjunction with the Professional Team the Programme as necessary to reflect the Trade Contractors' detailed programmes, extensions of time awarded under any Trade Contract and any changed circumstances. Discuss and agree the same with MWC. Expedite and co-ordinate the supply of information to be provided by the Trade Contractors and by the Professional Team and report to MWC as necessary but not less than monthly.
- 2.3.10 Advise MWC of any objections the Construction Manager may have to drawings or other information provided by the Professional Team.
- 2.3.11 Advise MWC and the Professional Team of any action that may be necessary for MWC to take in connection with any of the Trade Contracts or the Trade Contractors. Report to MWC on all matters related to the progress and quality of the Tunnel Project. Consult with the Professional Team on any matter which may cause delay to the completion of the Tunnel Project.

2.4 Cost control

- 2.4.1 Monitor the actual expenditure in connection with the Trade Contractors against the Tunnel Project cost plan and produce reports for MWC, immediately advising MWC and the Professional Team of any deviations from that plan.
- 2.4.2 Advise MWC and the Professional Team on anticipated expenditure in connection with the Trade Contractors and on any items likely to impact on either the final accounts under the Trade Contracts.
- 2.4.3 Generally, endeavor to keep costs to a minimum consistent with MWC's requirements, good construction practice and the Tunnel Project Programme.

2.5 Accounting

- 2.5.1 Collate and check applications for payment from Trade Contractors for compliance with the Trade Contract and after consultation with MWC's Authorised Representative, submit the certifications to MWC for their payment.
- 2.5.2 Expedite the verification of the Trade Contractors' dayworks and agree their value.
- 2.5.3 Assist MWC to keep proper accounts of all monies expended pursuant to the Trade Contracts. Provide MWC with copies of such information and documents sent to or received from the Trade Contractors at the same time as they are sent or received.
- 2.5.4 Prepare interim and final statements of account for each of the Trade Contracts, and report to MWC by means of a regular accounts settlement register and obtaining thereafter from each of the Trade Contractors agreement to the relevant interim or final settlement of account, as the case may be, and signature thereon.

2.6 Records

- 2.6.1 Maintain complete and accurate records and provide MWC and the Professional Team with such copies of correspondence and minutes of meetings as may be necessary and any other documentation issued or sent to the Trade Contractors, authorities or others which MWC and the Professional Team would not otherwise receive.
- 2.6.1 As agent for MWC obtain as relevant from each Trade Contractor full operating and maintenance manuals and procure 'record' and 'as-built' drawings as required under the Trade Contracts and all information reasonably required by the Construction Manager for the preparation of the health and safety file(s) relating to the Tunnel Project.

Part 2 - QA Manager

- Support the Construction Manager in overseeing and supervising the entire tunnel quality assurance and site inspection.
- Oversee the inspections of portals, shafts and tunnels to determine the quality of workmanship and materials used conform to the contract documents, applicable codes and state and federal requirements.
- Make inspection reports on the progress, performance and quality of workmanship and of materials used in the construction.
- Review submitted shop drawings for any deviations from contract documents, notifying the construction manager of any discrepancies found.
- Arrange, coordinate, and oversee special inspections such as structural steel, welding, and reinforced concrete and any other technical inspections such as landscaping, soil testing, surveys, concrete and grout mixes, and reinforcing steel, checking test results for conformance to specification requirements.

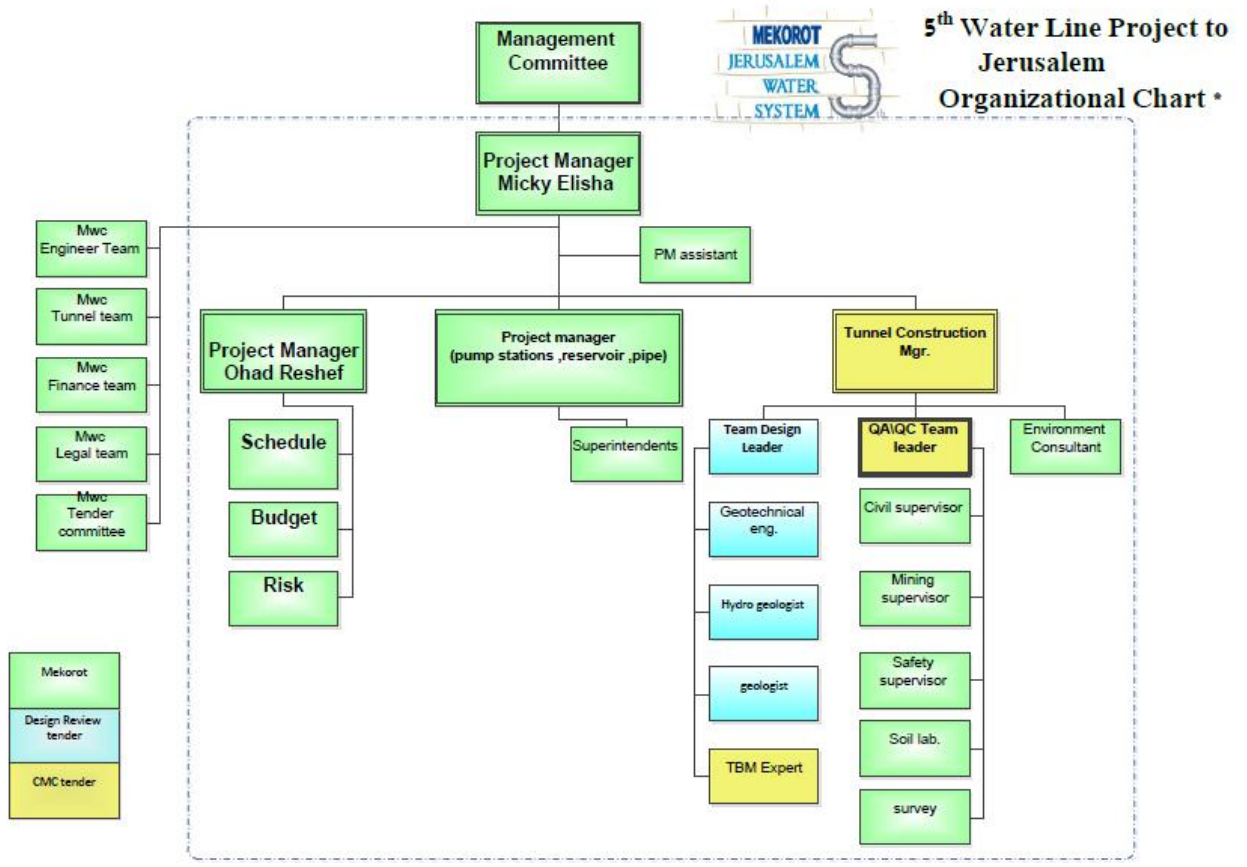
Part 3 - TBM Expert

- Responsible for overseeing and reviewing the TBM design and Specifications prepared by the Contractor and its manufacturer.
- Witness of Factory Acceptance Tests (FAT), TBM on-site assembly, and On Site Acceptance Tests (OSAT).
- Work with Tunnel Construction Manager, Supervision & Q/A Team Leader, and Geology Expert, and verify or monitor performance of TBM during tunneling operations to ensure conformance with tunneling specifications.
- Insure timely review, interpretation and compilation of TBM performance data and reporting of data to MWC.
- Utilize forms for collecting and presenting data in graphical form and electronic transfer of data to the parties involved. Includes analysis of data to compare to allowable values and observe trends.
- Communicate with MWC, Contractor, and Design-build geotechnical staff.
- Monitor of TBM's work up to 1,000 meter of TBM excavation.
- Optional: Continue monitoring & consulting as per MWC's decision.

Part 4 – General to the CMC and all Key Personnel –

- **Supervision, Qualification, Guidance and Training of MWC's Staff**
Closely and thoroughly guiding and tutoring MWC's staff in all fields and aspects of Services provided as part of this engagement. The CMC acknowledges this is one of the paramount objectives of this engagement and the reason for which it and the entire DB Tunnel Project management structure was formed by MWC the way it was formed.
- **Claims and Changes**
Provide assistance, consultation, analyses, diagnose and expert opinion and estimates in all matters relating to claims raised by the Contractor or anyone on its behalf and Changes whether initiated by the Contractor or by MWC.

All other Services not explicitly indicated in this Appendix 1 but provisions of which stems of best engineering practice of the DB Contract.



*Subject to modification at MWC's sole discretion

Appendix 2 - Fees and payment

Part 1 – Fee Structure

Fee Structure for the Services of the Tunnel Construction Manager (TCM) and the QA Manager (QAM):

The Tunnel Construction Manager and the QA Manager are each to provide the Services in their field of expertise, as demonstrated within the Proposal, as required by the Programme or as instructed by MWC's Authorised Representative on a full time basis, consisting of, at least, 250 hours per each month. The monthly rate for each of these Key Personnel is set out in the table below.

Fee Structure for the Services of the TBM Expert (TBME):

The TBM Expert is to provide the Services in its field of expertise, as demonstrated within the Proposal, as required by the Programme or as instructed by MWC's Authorised Representative. The daily rate of the TBME Expert is set out in the table below. The daily rate applies to a working day of 8 hours or more. The Fee for any shorter working day will be pro rata to the daily rate. No adjustment will be added for a longer working day. MWC shall be entitled, during the Contract Period, to require Services be provided by the TBME for 180 days (non-consecutive).

ADJUSTMENT TO INDICES

Each sum approved for payment, in accordance with the provisions of the Contract, shall be adjusted fifty percent (50%) to the Consumer Price Index ("CPI") and the remaining fifty percent (50%) to the CMC's choice: either to (i) the Euro (EMU) - NIS exchange rate; or (ii) to the Dollar (USA) – NIS exchange rate; or (iii) to the Pound (Great Brittan) – NIS exchange rate ((Euro - NIS, Dollar - NIS or Pound - NIS – shall be defined as the "**Exchange Rate**") as follows:

- (a) **CPI adjustment** – 50% of the sum approved by MWC for payment shall be linked from the CPI known on Submission Date as published by the Israeli Central Bureau of Statistics (the "**Basic CPI**") and last CPI known on the date by which the CMC's payment application was submitted by the Contractor to MWC's review and approval.
- (b) **Exchange Rate adjustment** - 50% of the sum approved by MWC for payment shall be linked from the respective Exchange Rate known on Signature Date as published by the Bank of Israel to the Exchange Rate known on the date by which the CMC's payment application was submitted by the Contractor to MWC's review and approval.

To be completed by the nominated CMC upon Signature Date (not applicable to the Tenderer's Proposal):

The Exchange Rate to apply as Chosen by the nominated CMC shall be (circle chosen option of the three following):

- (a) Euro (EMU) – NIS; or
- (b) Dollar (USA) – NIS; or
- (c) Pound (Great Brittan) – NIS.

In the event the nominated CMC does not submit to MWC, in writing, the Exchange Rate it requests at apply (one of the three rates indicated in sections (a) – (c)) then only 50% of the sums approved shall be adjusted in accordance with the above "CPI adjustment" section while the remaining 50% shall not be adjusted hence only 50% of the sum approved for payment shall bare linkage differences.

Part 2 - Time Charges

Role	Name¹	Daily Rate	Monthly Rate
Tunnel	[Will be completed		[the proposed sum

¹ The Key Personnel nominated in the Proposal and accepted by MWC

Construction Manager (TCM)	after award of tender as per the Proposal]		in Tender Form L as accepted by MWC]
QA Manager (QAM)	[Will be completed after award of tender]		[the proposed sum in Tender Form L as accepted by MWC]
TBM Expert (TBME)	[Will be completed after award of tender]	[the proposed sum in Tender Form L as accepted by MWC]	

Part 3 – Method of Payment

To be completed by the nominated CMC upon Signature Date (not applicable to the Tenderer's Proposal):

[Local Bank Account Details to be inserted after award of Tender]

Appendix 3 - Personnel

Part 1 - Key Personnel

Name and complete contact details ²	Role
<u>[Will be completed after award of tender]</u>	Tunnel Construction Manager
<u>[Will be completed after award of tender]</u>	QA Manager
<u>[Will be completed after award of tender]</u>	TBM Expert

Part 2 - MWC's Authorised Representative

[NAME AND CONTACT DETAILS] Will be completed after award of tender

Part 3- CMC's Authorised Representative

[NAME AND CONTACT DETAILS] Will be completed after award of tender

Part 4 – Professional Team

Name	Role
[MEMBER OF PROFESSIONAL TEAM'S NAME]	[MEMBER OF PROFESSIONAL TEAM'S ROLE]
Ed. Zublin AG and Jager Bau GmbH	Contractor (DB Tunnel Project)
ILF Consulting Engineers and ED. Zublin AG Technical Headquarter, Tunnel Engineering (TUB)	Lead Tunnel Designer

² The Key Personnel nominated in the Proposal and accepted by MWC

Appendix 4 - Trade Contracts

[COPIES OR EXTRACTS OF TRADE CONTRACTS]

Please find attached CD containing the DB Contract's relevant parts, excluding commercially sensitive information and provided as reference only.

Appendix 5 – Confidentiality Statement

To

Mekorot Water Company Ltd. (the "Company")

Re: Irrevocable Commitment to Confidentiality

1. I, the undersigned, _____ carrier of Israeli ID/Passport No. _____, hereby undertake that in providing any services to Company, to maintain complete confidentiality of all Confidential Information,

For the purpose herein, the term “**Confidential Information**” means all information related to the Company and the Project, including any data, document, policy, design, information of any kind, commercial and professional terms and details and formulations.

2. I hereby undertake not to use any Confidential Information for any purpose other than for the performance of the Services, and not to transfer any Confidential Information to any entity.
3. I hereby undertake to inform the Company immediately upon becoming aware of, any damage to or accidental loss of the Confidential Information, including transfer or use by persons not authorized.
4. The undertakings contained herein shall survive the termination of my performance of the Services, and will remain in full force and effect during my engagement in relation to the Project and at any time thereafter.
5. My obligations above were given of my own free will and are irrevocable.

And in witness hereof I hereby affix my signature:

Date: _____

Name: _____

Signature: _____

Appendix 6 – No Conflict of Interests Statement

To

Mekorot Water Company Ltd. (the "Company")

No Conflict of Interests Statement

I the undersigned, bearer of _____ Passport /, I.D. No. _____, hereby state and undertake as follows:

1. After conducting queries and investigations to the best of my ability, I declare and undertake that I personally do not, nor do my family members, have any personal, financial or other interest that may constitute a conflict of interests and/or a concern of a conflict of interests with the interests of the Company or its activities, or create a concern to such conflict of interests.
2. As long as the engagement shall remain valid and in any matter concerning the engagement also in the event it expires, I state and undertake as follows:
 - 2.1. I shall notify the Company promptly in the event I shall hold familial and/or business relations with any of the Company's employees and/or any other person that may have any influence on my engagement with the Company in the framework of **Tender no. 69-2015-ב**.
 - 2.2. In any event of a concern of a conflict of interests, as specified hereinabove, I shall immediately notify the Company about it and present the reasons for such concern. Only after receiving the Company's approval, to the extent such shall be given, I shall be entitled to continue my engagement with the Company in the framework of **Tender no. 69-2015-ב**.
 - 2.3. In the event of circumstances that may give rise to a conflict of interests, I shall notify the Company immediately with no delay, provide it the relevant information in writing and act in accordance with its instructions.
3. Not to offer and/or give and/or receive, directly and/or indirectly, any benefit and/or money and/or anything of value for the purpose of influencing directly and/or indirectly upon any decision and/or action and/or omission of the Company, or any of the Company's officers and/or employees and/or any one related to such officers and/or employees and/or anyone acting on the Company's behalf, with respect to the Tender and/or the process of engaging in a contract in accordance thereto, and/or any agreement/order deriving there-from.

4. Not to solicit and/or cooperate, directly and/or indirectly, with an officer of the Company and/or an employee of the Company and/or anyone on the Company's behalf and/or any other person for the purpose of receiving confidential/privileged information in connection with the Tender and/or the process of engaging in contract in accordance thereto and/or any agreement/order deriving there-from.
5. Not to solicit and/or cooperate, directly and/or indirectly, with an officer of the Company and/or an employee of the Company and/or anyone on the Company's behalf and/or any other person for the purpose of setting prices artificially and/or in an uncompetitive and/or unlawful manner.
6. I have not acted in contradiction to the provisions of the aforesaid sections 3 - 5, in the framework of the Tender procedures and the contracting process of the Company and/or any agreement/order deriving therefrom.

And in witness hereof I hereby affix my signature:

Date: _____
Name: _____
Signature: _____

Appendix 7 – Advisors of MWC

Weinstock – Zecler Law Offices;

TASC – Consulting and Capital;