

**A Contract for the Design, Manufacture, Supply, Installation and Commissioning of Electrically
Operated Pumping Units and Associated Services
- Kisalon 2 Pumping Station**

Between

Mekorot Water Company Ltd ("MWC")

and

[Supplier's Name]

[If JV – each one a “Member” of the “Joint Venture” jointly and severally] (the “Supplier”)

(the “Contract”)

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Preamble

This Contract is entered into as of this day ___ of ___, 2017, by and between MWC Water Company Ltd., a company existing under the laws of the State of Israel with its principal offices located at 9 Lincoln St., Tel Aviv, Israel (hereinafter: "MWC") and [Supplier's name] with its principal office located at [address of the Supplier] (hereinafter: the "Supplier") (each, MWC and the Supplier, shall be separately referred to as a "Party" and both shall be referred to as: the "Parties").

WHEREAS, MWC issued a tender for the design, manufacture, supply and installation of electrically operated Pumping Units and associated services for a new pumping station known as Kisalon 2 Pumping Station (the "Project");

WHEREAS, pursuant to the tender and clarification process, the Tender Committee declared the selection of the Supplier the Preferred Tenderer, subject to its fulfillment of all requirements set forth in the Contract Documents including, but not limited to, all Conditions Precedent set forth in Section 21.2 to **Volume 1** (*Request For Proposals*);

WHEREAS, the Supplier was awarded this Contract, all in accordance with the terms and requirements of the Contract Documents; and

WHEREAS, the Supplier 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

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:
 - 1.2.1. **Appendix A** – Scope of Works
 - 1.2.2. **Appendix B** – Technical Specification;
 - 1.2.3. **Appendix C** - Insurance Requirements and Certifications;
 - 1.2.4. **Appendix D** - Project Milestones;

- 1.2.5. **Appendix E** – Project's Detailed Time Schedule;
- 1.2.6. **Appendices F** - Guarantee Appendices
 - 1.2.6.1. **Appendix F(1)** – Performance Guarantee.
 - 1.2.6.2. **Appendix F(2)** – Warranty Guarantee
 - 1.2.6.3. **Appendix F(3)** Insurance companies and Israeli Banks – approved as Performance & Warranty Guarantee issuers.
- 1.2.7. **Appendices G** – Safety Instructions
- 1.2.8. **Appendix H** – Supplier's Information
- 1.2.9. **Appendix I** – Efficiency Drop Rebate
- 1.2.10. **Appendix J** – Adjustment to Indices
- 1.2.11. **Appendix K** – Kisalon Area Plan
- 1.2.12. **Appendix L** - Financial and Economical Regulations issued by the Accountant General of Israel on 16.5.2010

1.3. **Contract Documents**

The following documents jointly constitute the Contract Documents:

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

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

Volume 3 - the Supplier's Proposal.

1.4. **Discrepancy between Contract Documents**

In any event MWC determines that a discrepancy exists any of the Contract Documents or the Supplier argues that such contradiction exists, then MWC shall instruct the order of precedence.

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

1.5. **Interpretation**

- 1.5.1. 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.
- 1.5.2. In the Contract Documents, except where the context otherwise requires or as otherwise expressly provided:
 - 1.5.2.1. The masculine includes the feminine;
 - 1.5.2.2. The singular includes the plural and vice versa;
 - 1.5.2.3. References to Sections and Appendices, contained in each Contract Document shall be regarded as references to Sections and Appendices of such Contract Document.
 - 1.5.2.4. 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.
 - 1.5.2.5. The terms “including”, “includes” and “inter alia” mean including without limiting the generality of any provision and/or description;
 - 1.5.2.6. 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
 - 1.5.2.7. The term "approval", "consent" or any synonym thereof shall mean the prior written approval.
- 1.5.3. Unless specified otherwise in the Contract Documents the Supplier shall use the metric system in the Information originated by the Supplier. The Supplier shall require all Sub-Contractors' documents to comply with this provision.

2. **Terms:**

Term	Definition
Authorized	The Authorized Representative as declared in the Supplier's

Representative	Proposal as accepted by MWC, or as substituted by the Supplier and approved by MWC.
Basic Index	The CPI known on Signature Date as published by the Israeli Central Bureau of Statistics
Commencement Date	The date specified in the Notice to Commence as the date on which the Supplier shall commence the manufacturing of the Pumping Units.
Contract Period	The period of time commencing as of Signature Date and ending at the end of the Warranty Period.
Contract Price	The price defined in the Supplier's Proposal as may be adjusted in accordance with the Contract Documents.
Day	Any calendar day
Index	The Israeli Consumer Price Index- ("CPI")
Information	All designs, drawings, plans, specifications, reports, surveys, estimates, calculations, data, schedules, programs, bills of quantities, budgets, manuals and any other materials and documentation and all updates, amendments, additions and revisions to them, prepared by the Supplier in connection with the Project
Laws and Regulations	All laws, statutes, ordinances, regulations, orders, including municipal by-laws, procedures and permits, and all rules, 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 from time to time.
MWC's Representative	A MWC delegate appointed and authorized to serve as MWC's representative for the Project.
Motor	A motor to be assembled as part of each Pumping Unit which shall be a horizontal asynchronous motor, all as specified in the Technical Specification and the Supplier's Proposal.
Motor Manufacturer	The Supplier, or a manufacturer of Motors engaged by the Supplier as a Sub-Contractor as named in the Proposal or the Contract and approved by MWC, as applicable.
Notice to Commence	Shall have the meaning ascribed to such term in Section 8 (Notice to Commence).
Permits	All permissions, permits, consents, approvals, certificates, licenses and authorizations required for the execution of the Project by the Relevant Authorities and all applicable Laws and Regulations.

Project	The design, manufacture, supply and installation of electrically operated Pumping Units and associated services for Kisalon 2 Pumping Station.
Proposal	The Proposal submitted by the Supplier pursuant to the RFP Process as accepted by MWC and which constitutes Volume 3 of the Contract Documents.
Pump	A pump to be assembled as part of each Pumping Unit which shall be a horizontal, double suction, axially split-case, single stage centrifugal pump as specified in the Technical Specification.
Pump Manufacturer	The manufacturer of the Pumps who shall be the Supplier under this Contract.
Pumping Station	Kisalon 2 Pumping Station as described in the Contract Documents.
Pumping Unit	The Pumping Unit designed and supplied by the Supplier under the Contract in accordance with the Technical Specification, which consists of Pump, Motor, all the auxiliary systems necessary to make a complete, autonomous, functional unit and all the connections (pipes, cables) between Pump, Motor and their auxiliary systems.
Relevant Authorities	Any ministry, department, agency, authority or body of the State, district and local authority and any other public authority having jurisdiction under the Laws and Regulations with respect to any aspect of the Project and/or the Site.
Signature Date	The date on which MWC has signed the Contract.
Site	The area within the boundaries of the drawing attached as Appendix K (Kisalon Area Plan).
Spare Parts	Shall have the meaning ascribed thereto in Section 18
Standards and Codes	Israeli, International or other standards and codes applicable in relation to all aspects of the Project, as amended and/or modified and/or updated from time to time.
Sub-Contractor	Any third party employed on behalf of the Supplier on the Project.
Technical Specification	The document attached to the Contract as Appendix B .
Works	All activities to be executed by the Supplier under the Contract throughout the Contract Period as detailed in the Scope of Works attached to the Contract as Appendix A .

Working Day A day (other than a Friday or Saturday) on which banks are open for domestic business in the State of Israel.

3. **The Supplier's Declarations, Warranties and Undertakings**

Without derogating from the Supplier's full and sole responsibility to fulfill all of its undertakings and execute the Project, the Supplier hereby undertakes and confirms:

- 3.1. To perform the Project on a design build (DB) basis, to timely and comprehensively execute all Works including, proper and full integration of all elements, comprising the Project.
- 3.2. To execute the Works in strict compliance with (i) the provisions of the Contract Documents, (ii) MWC's directives and (iii) all Laws and Regulations, Standards and Codes.
- 3.3. To comply with the provisions set forth under Section 17 (*Warranty*) below. In this framework the Supplier shall ensure it timely provides MWC with all preventive, and repair services throughout the Warranty Period (without derogating from its obligations to provide preventive, maintenance and repair services as of Signature Date and until the commencement of the Warranty Period) including by way of keeping sufficient stock of Spare Parts which shall be reserved and designated for the Project.
- 3.4. To prepare and timely submit to MWC all Information items listed under **Appendix H** (*Supplier's Information*).

The Information shall be provided to MWC and/or anyone on its behalf for unlimited use with respect to the Project. The Supplier warrants that the use of such Information by MWC and/or for the purpose of executing the Project does not and shall not infringe any of its and/or Sub-Contractor's and/or any other third party's rights including intellectual property rights. Accordingly, the Supplier shall not initiate any action to prevent MWC, in full or in part, to make use and/or claim any right in all or part of the Information and shall bear full and sole responsibility in any event such action is initiated by a third party and shall immediately indemnify MWC in any such event.

- 3.5. Any Sub-Contractor employed by the Supplier in the performance of the Project shall be approved in advance and in writing by MWC and set comply with the requirements set forth under all Laws and Regulations, that beyond the Supplier's own compliance with all Laws and Regulations and instructions by any Relevant Authority or MWC. Substitutions of any of the Sub-Contractors shall be subject to approval of MWC. In the event the Supplier successfully demonstrates that (i) the

proposed substitute complies with the applicable requirements of the Contract Documents and all Laws and Regulations; and (ii) the proposed substitute qualifications are equivalent or superior to the qualifications of the approved Subcontractor, MWC will not unreasonably reject the Supplier's request for substitution.

- 3.6. To timely obtain MWC's approval of the Sub-Contractors it wishes to employ. It is hereby explicitly provided, that the employment, by the Supplier, of any approved Sub-Contractor, shall not derogate in any manner from the Supplier's full and sole responsibility and liability for the execution of the Project. The Supplier shall bear all direct and indirect liability towards MWC for any act or omission including those of any Sub-Contractor. In the event of a civil wrong arising from any act or omission of a Sub-Contractor in the execution of the Project, the Sub-Contractor shall be deemed to be the agent of the Supplier and the Supplier shall be prevented from claiming an exemption from its liability, including through reliance on any Laws and Regulations, including **Section 15 of the Civil Wrongs Ordinance (New Version)**.
- 3.7. Ensure that it and its Sub-Contractors timely obtain and hold valid, at all times throughout the Contract Period, all required Permits and are duly registered in all mandatory registrations, applicable to the performance of any part of the Works.
- 3.8. The Contract Price to be paid by MWC, subject to the terms of this Contract and specifically Section 15 (*Contract Price*), is appropriate; reflects the adequate consideration to be paid for the execution of the Works and in view of the Supplier's undertakings and MWC's rights as set forth herein. The Contract Price is paid for all aspects of the Works to be executed also in the event such are not explicitly indicated in Section 15 (*Contract Price*) below.
- 3.9. To procure and maintain valid, throughout the Contract Period, the Insurance Policies, in accordance with the attached **Appendix C** (*Insurance Requirements and Certifications*). The Insurance Policies, shall remain valid, and shall apply to all Works and stages of the Project and up to the issuance of the Project Completion Certificate. For the avoidance of any doubt, the Supplier undertakes to independently extend the validity of the Insurance Policies in the event the Contract Period is extended in accordance with the provisions of the Contract Documents. The aforesaid undertakings of the Supplier shall equally apply with regard to all additional insurances (beyond the Insurance Policies) which in accordance to all Laws and Regulations and/or in accordance to leading international market practice and/or in the opinion of the Supplier, are required, given the nature and scope of the Project.

Immediately upon request, the Supplier shall keep MWC and/or anyone on its behalf fully indemnified, against any claim, procedure or requirement which is a, direct or indirect, result of any act or omission of the Supplier and/or the Supplier's Personnel and/or anyone on its behalf and for which the Supplier is liable in accordance with Clause 23A.1.

For the avoidance of doubt, the Supplier acknowledges that procurement of the Insurance Policy referred to in the aforesaid **Appendix C**, constitutes, in accordance with the provisions of Section 21.2 to **Volume 1**, a condition precedent for signature of this Contract. In any event the Supplier renounces its obligations, MWC may, without derogating from the Supplier's undertakings, resolve its liability by its own or via third party on its behalf at the Supplier's expense. In this event MWC may make use of any of its contractual or legal rights and remedies including by way of set-off and/or the forfeiture of any guarantee.

Without derogating from the above, any adjustments to the Insurance Policies or the requirements of **Appendix C** (*Insurance Requirements and Certifications*) as may be required by the Supplier's insurers are subject to the written approval of MWC prior to Signature Date.

- 3.10. Provide MWC's Representative with at least thirty (30) Working Day prior notice of any tests to be performed, *inter alia*, pursuant to the requirements of **Appendix B** (*SOW*).
- 3.11. Neither the Supplier nor any of its employees, agents, Sub-Contractors, its Project Manager, Site Manager, suppliers and any other third party engaged by the Supplier in order to assist it in the performance of its obligations shall be deemed as employees of MWC (herein above and after: the "**Supplier's Personnel**"). Accordingly the Supplier shall bear full and sole responsibility for the Supplier's Personnel including for all applicable requirements set forth under (i) all Laws and Regulations; and/or (ii) specific or collective agreements including the payment of wages, salaries and any other payments due to or in connection with the engagement between the Supplier and its Personnel in relation to the Project. As such the Supplier shall be fully and solely responsible for any act and/or omission of the Supplier's Personnel.
- 3.12. Comply with all official Israeli Standards (SI) and/or international standards, as applicable and as required in **Appendix B** (Technical Specification), which apply to the Project and any of its elements. In the absence of such standards the Products supplied shall be of leading international standards and in the absence of such standard - according to recognized international standards approved by MWC.
- 3.13. To conduct, at the place and time set forth by MWC and/or any Relevant Authority, frontal presentations, including but not limited to, with respect to the Pumping Units

and/or any issue to which the Supplier's clarifications and/or elaboration may be requested.

3.14. Joint and Several Liability

If the Supplier constitutes a joint venture:

3.14.1. each Member shall be deemed to be jointly and severally liable towards MWC for the performance of the Contract; and

3.14.2. the Supplier shall not alter its composition or legal status without the prior consent of MWC.

3.15. The Supplier shall comply with all the relevant labour Laws applicable to the Supplier's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Supplier shall require his employees to obey all applicable Laws, including those concerning safety at work.

The Supplier shall pay any and all taxes, levies and other mandatory payments with respect to its personnel, including, without limitation, social security, income tax and health insurance, as applicable

The Supplier shall obtain, at his sole and exclusive responsibility and expense, permits and authorizations with regard to the employment and presence on Site of the Supplier's Personnel, including foreign employees.

The Supplier is aware of the provisions of the Financial and Economical Regulations issued by the Accountant General of Israel on 16.5.2010 (attached as **Appendix L**) [עידוד העסקת "בעניין" מיום 16.5.2010, 7.12.9 מס' הוראה – התכ"ם – הוראות התכ"ם – עובדים ישראלים במסגרת התקשוריות הממשלה], and undertakes that all of his activities will be performed in accordance thereof.

4. Health and Safety

4.1. The Supplier as a sub-contractor on Site: It is hereby provided that MWC shall nominate a third party which shall serve as the "Primary Contractor", "Constructor", "Executer of the Work" and "Works Manager" as these terms are defined in the Work Safety Regulations (Construction Works) 5748-1988. The Supplier shall act as a sub-contractor of such Primary Contractor and

shall adhere to the Primary Contractor's, MWC's or any Relevant Authority's instructions in this regard. The Supplier acknowledges and is fully aware of its duties as a sub-contractor and all attached constraints and shall not have any claim or demand in this regard from any third party or MWC.

- 4.2. The Supplier shall, at all times, strictly comply with the provisions of any and all Laws and Regulations Standards and Codes applicable to the execution of the Works and the Project including the provisions set forth under **Appendix G** (Safety Instructions). Within this framework the Supplier shall assume full and sole responsibility for releasing, holding harmless and for indemnifying MWC and anyone on its behalf, immediately upon receiving a demand from MWC for such, and for taking any other action in order to release MWC and anyone on its behalf from any liability, expense, damage or other loss, and from any action filed against them as a result of or in connection with a breach of any such provision by the Supplier, by any of the Supplier's Personnel, any of its consultants, contractors, or anyone else on the Supplier's behalf.
- 4.3. The Supplier hereby undertakes to execute the Works in a manner that shall prevent any harm to any person or property and to any third party, as well as in a manner that shall minimize, to the extent possible, any disturbance to others while executing the Works. The Supplier undertakes to ensure the employees' safety conditions, and to ensure conditions for preserving the health and welfare of its employees.
- 4.4. All goods, materials and equipment used for implementing the Project shall enter and leave the site via such points of access and egress as shall be approved by the Relevant Authorities (as applicable) and MWC. Such request shall be submitted in accordance with the provisions of all applicable Laws and Regulations. All movements of workers and goods, materials or equipment on or across lanes open to public traffic shall be performed in a manner that will not endanger public safety.
- 4.5. The Supplier hereby undertakes to provide every means safety measures necessary for the Works, including fire-extinguishing equipment, means for administering first aid, and all other safety and precautionary means for the security and convenience of the public, and of any person on or in close proximity to the Works, or as shall be required by MWC, or as shall be required by any Laws and Regulations, or by order of any Relevant Authority.
- 4.6. The Supplier hereby assumes all liability for any accident, injury or damage to its employees and to any person and to any third party, whose personal safety or the safety of their belongings is the Supplier's responsibility, which might be caused as a result of or in relation to the execution of the Works. The

Supplier hereby releases MWC from any and all responsibility or liability in relation to any such accident, injury, damage or loss.

- 4.7. No goods, material or equipment shall be stored where it will interfere with the free and safe passage of public traffic.
- 4.8. Temporary structures which the Supplier uses during the execution of the Project shall not be installed or placed where they will interfere with the free and safe passage of public traffic. Such structures shall comply with all provisions of applicable Laws and Regulations, MWC's instructions; **Appendix G** (Safety Instructions) and the respective Final Submittals.

5. **Environment**

With regard to all aspects of the Works and the Project including with regard to conduct within the Site and outside thereof in any place Works are performed, the Supplier shall ensure it and anyone on its behalf complies with the requirements set forth under any and all applicable Laws and Regulations Standards and Codes, including all applicable Statutory Plans, the requirements of all Relevant Authorities including those of the Ministry of Environmental Protection (MOEP) and the provisions of the Contract Documents and the respective Final Submittals.

6. **Preservation of the Surroundings**

The Supplier shall bear full and sole responsibility for protection from injury or damage of buildings and structures, pole lines, fences, signs, markers and monuments, infrastructure, utilities, roads, sidewalks, roadway facilities, plants and any other facilities which may be caused as a result of its performance of the Works. The Supplier shall provide and install suitable safeguards to protect such facilities from injury or damage.

7. **MWC's Undertakings**

MWC undertakes to:

- 7.1. Pay the Supplier the Contract Price, as stipulated in the terms and conditions of the Contract Documents.
- 7.2. Nominate MWC's Representative and inform the Supplier of the representatives' contact details.
- 7.3. Where circumstances require and without derogating from the Supplier's undertaking to perform the Project at its full and sole responsibility, MWC will cooperate and assist the Supplier in fulfilling its contractual obligations.

8. **Notice to Commence**

- 8.1. The Supplier shall commence the design works immediately after the Signature Date and shall complete it within the time specified in **Appendix D** (*Project Milestones*).
- 8.2. MWC shall give the Supplier notice of the Commencement Date for the manufacturing works (“**Notice to Commence**”). Such Notice to Commence shall be issued by MWC no later than six (6) months from Signature Date. Upon issuance of the Notice to Commence, the Supplier shall commence the manufacturing of the Pumping Units.
- 8.3. The Supplier shall not be entitled to terminate the Contract or to any costs, payment, compensation or remedy in respect of the timeframe by which MWC shall issue the Notice to Commence.

9. **Independent Examinations and Inspections by MWC**

MWC may, at its sole discretion and if it deems fit, conduct inspections, samplings, measurements and/or any other examination regardless if such examinations constitute part of the Works. For this purpose and/or any other purpose MWC deems fit, MWC and/or anyone on its behalf shall have at all times, free access to any premises where Works relating to the Project are being executed. The Supplier shall fully cooperate with MWC and any one on its behalf in all such inspections whether such were initiated by MWC or whether it had decided to be present while the inspections are executed by the Supplier. In any event the findings of the examinations executed by MWC differ from the findings performed by and/or on behalf of the Supplier (if such were previously performed), then MWC's examinations and findings shall supersede and serve as reference and for all purposes and means provided in the Contract Documents, provided that such examinations are done in accordance with the requirements of the Contract Documents.

10. **MWC's Rights to Cease Works**

MWC at its sole discretion at any stage of the Project may instruct the Supplier to cease, temporarily or permanently, all or part of the Works at its sole discretion.

In the event of an instruction to cease the Works permanently, the Supplier shall be eligible for payment in accordance with Section 11.4.1 herein below.

11. **Termination by MWC**

- 11.1. Without derogating from all other rights and remedies available to it under the Contract or under all Laws and Regulations, MWC shall have the right to terminate

the Contract, by issuing a Notice of Termination pursuant to this Section 11 (Termination by MWC), upon the occurrence of any one of the following circumstances:

- (a) For its own convenience;
 - (b) The Supplier failed to complete Milestones no. 1, 4 – 7 (inclusive) by the time designated for the completion of each of these Milestones;
 - (c) Delays shall have occurred for a period of¹ sixty (60) consecutive days or for a period of one hundred and twenty (120) days in aggregate and which were not approved in writing by MWC;
 - (d) the Supplier ceases to execute its undertakings for reasons other than those permitted under the Contract;
 - (e) a court makes an order for the liquidation of the Supplier or any of its Members, or a resolution for a voluntary liquidation of any of the aforesaid is passed, except for the purposes of merger or reconstruction on terms approved in advance and in writing by MWC;
 - (f) liquidation, receiverships, or reorganization proceedings shall have been commenced by or against the Supplier or any of its Members, unless such proceedings are discharged within sixty (60) days;
 - (g) the Supplier or any of its Members shall have become insolvent, or does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of creditors, or failure of any of the aforesaid to discharge when due, whether at maturity, by acceleration or otherwise, or on lawful demand, any indebtedness of the Supplier or any of its Members the sum of which by itself or in the aggregate exceeds a sum equal to 5% of the Fixed Lump Sum unless such failure is justified in the opinion of MWC;
 - (h) any representation or warranty made by the Supplier in the Contract or any approval, certificate, schedule, instrument or other document delivered by the Supplier pursuant to the Contract shall have been false or materially misleading or invalid when made;
-

- (i) the Supplier commits a persistent breach of its obligations under the Contract for more than sixty (60) days which materially adversely impact upon the overall performance of its obligations;
- (j) the Supplier commits a material breach of any undertaking, obligation, representation or warranty contained in any of the Contract Documents;
- (k) the Supplier is in default of any material undertaking, obligation, representation or warranty, contained in the Contract;
- (l) The Supplier is in default (including potential anticipatory default under Law); of any undertaking, obligation, representation, Permits or warranty, contained in any of the Contract Documents.
- (m) The Supplier is subject to payment adjustments and Liquidated Damages, as referred to in the aforesaid Section 16 (*Liquidated Damages*), which exceed the LD Cap defined in Section 14.3.3.

11.2. Notice of Termination by MWC

11.2.1. Prior to exercising its right to issue a Notice of Termination, MWC will issue a written notice to the Supplier, specifying the circumstances and in the event of a Supplier's default, requesting the Supplier to remedy the cause of such event of default within the period of time specified therein, which shall be no less than thirty (30) days following receipt of such notice ("**Initial Notice**" and "**Cure Period**", respectively).

11.3. Termination of the Contract

MWC will be entitled to issue a notice of termination to the Supplier which shall be effective within seven (7) days following issuance of such notice (the "**Notice of Termination**") if the event of default is not remedied by the expiration of the Cure Period or in the event of termination for convenience.

11.4. Effects of Termination by MWC

11.4.1. **Effects of Termination for MWC's Convenience**

In the event of a termination for MWC's convenience, MWC shall make payment to the Supplier in respect of:

- (a) any Milestone certified as completed and not already paid for;
- (b) the actual direct costs MWC acknowledged that the Supplier incurred with respect to any Works MWC confirmed as completed and were not already paid for (including overheads and profit directly associated with such relative costs); and

(c) 5% of the Milestones which were cancelled as a result of such termination.

11.4.2. The Supplier shall not be entitled to any additional claim, payment or right including for actual or potential loss of profit in the Project and/or elsewhere, beyond the payments specified hereinabove and subject to the terms and stipulation of any other provision of the Contract Documents. **Effects of Termination due to Supplier's Default**

In the event that a Notice of Termination is issued by MWC due to a Supplier's default (under Sections 11.1(b) - (m)), then:

- a) the Supplier shall compensate MWC for all costs, damages and reasonable expenses incurred by MWC in connection with the Project. For the removal of doubt it is hereby emphasized that such costs and expenses will include, inter alia, costs and expenses incurred by MWC due to early works (if such were advanced by MWC), all additional costs and expenses incurred by MWC (or expected to be incurred by it) in connection with the replacement of the Supplier, including as a result of changes in the market conditions, differences in the construction prices, and delay in the Project implementation; and
- b) the Supplier shall be entitled to payment in accordance with the provisions of Section 11.4.1 only to the extent such entitlement exceeds MWC's entitlement to compensation under Section 11.4.2 a) above.

12. **Supplier's Information**

- 12.1. The Supplier shall submit to MWC's Representative the Information specified in **Appendix H** (*Supplier's Information*) within the times specified therein and in accordance with the review process set out in Section 12.5 below.
- 12.2. Items 1 to 11 (inclusive) in **Appendix H** (Supplier's Information) shall be submitted for the review of MWC's Representative in accordance with the time schedule specified therein. The Supplier shall proceed with the manufacture of the Pumping Units only upon the "Final Submittal" (as defined hereunder) of Items 1 to 11 (inclusive) in **Appendix H** (Supplier's Information) and issue of the Notice to Commence.
- 12.3. It is hereby explicitly emphasized that the requirements set forth under the aforesaid **Appendix H** (Supplier's Information) with regard to the Information, manner of preparation and contents, constitute minimum requirements only. These requirements should not be construed as exhaustive and comprehensive for all

purposes of the Project nor should the Supplier assume that the requirements contained herein reflect all relevant requirements under all Laws and Regulations Standards and Codes.

12.4. It is hereby explicitly emphasized that the Supplier may be required, by MWC or by any Relevant Authority, to prepare and submit additional Information. In such an event the requirements relating to the preparation of such Information and the schedule for its submission and destination will be provided to the Supplier in a designated notice, which shall also specify the Milestone to which such additional Information is related to. It is further clarified that the provisions of the Contract Documents shall apply to such Information, mutatis mutandis.

12.5. Submittal of Supplier's Information

12.5.1. Each submittal of Information shall be marked by the Supplier with a stamp, seal (if applicable), date and a signature of a responsible and qualified person upon the first page of the respective submittal. In the event a submittal of Information is submitted without the above requested indication - MWC may reject it and return it to the Supplier for completion and resubmission.

12.5.2. In the event Information is resubmitted, the Supplier will add version marks so as to identify the nature of each and every change made.

12.5.3. At any stage during MWC's review of Information, it may require the Supplier to provide clarifications MWC deems needed for the purpose of its review.

12.5.4. In such event the Supplier shall be provided with a notice setting the issues requiring clarifications and a schedule for the submission thereof. The period elapsing between the time MWC issues its request and by the time the clarifications are submitted by the Supplier shall not be taken into account with regard to the timeframe, set forth in Section 12.5.7 below, designated for MWC's review.

12.5.5. MWC may instruct the Supplier to furnish its written clarifications or present them in a meeting before a forum and at a time and place determined by MWC.

12.5.6. MWC may reject a submittal of information in the event it finds it unsuitable for review. In such event MWC will indicate the reasons for the rejection and the amendments or supplements required for its resubmission. The designated timeframe for MWC's review, as indicated in Section 12.5.7 below, shall commence only after it has received the Information for review.

- 12.5.7. For each submittal of Information (and re-submittal in any event applicable), MWC will respond, within the timeframe designated in any of the Contract Documents and if not defined otherwise therein thirty (30) Working Days, in accordance with one of the following:
 - 12.5.7.1. "Reviewed as submitted"; or
 - 12.5.7.2. "Revise as noted - do not resubmit"; or
 - 12.5.7.3. "Revise as noted - and resubmit"; or
 - 12.5.7.4. "Not reviewed".

- 12.5.8. A submittal shall be considered a "**Final Submittal**" if MWC responds by "Reviewed as submitted", "Revise as noted - do not resubmit", subject to its revision as per any comments noted by MWC or "Not reviewed".

- 12.5.9. MWC's review, comments or acceptance of any of the Information as well as any instructions issued pursuant thereto shall not be construed as MWC's approval of the quality, compatibility or conformity of the Information to the requirements of the Contract Documents or any Laws and Regulations.

- 12.5.10. Furthermore, MWC's review process shall not be construed to release the Supplier from any of the following:
 - 12.5.10.1. Fulfilling on its own all requirements of the Contract Documents;
 - 12.5.10.2. The requirements set forth under all Laws and Regulations Standards and Codes;
 - 12.5.10.3. The requirements of any Relevant Authority;
 - 12.5.10.4. Any error, omission, fault, inaccuracy or deviation existing in any of the Information (whether such constitutes a Final Submittal or not).

13. **Project Milestones**

- 13.1. **Appendix D** (*Project Milestones*) sets out the Project Milestones and includes the following details:
 - 13.1.1. Milestone Title and Description.

- 13.1.2. Time for completion of each Milestone.
- 13.1.3. Associated Liquidated Damages for delay, if applicable.
- 13.2. The Supplier shall complete each Milestone in accordance with the dates set-forth therefor and complete its entire scope as detailed in the Contract Documents.
- 13.3. In the event the Supplier is of the opinion it had completed all Works which are stated in the Contract as being required for the Milestone to be complete, it shall submit to MWC a notice to such effect (hereinafter: the "**Milestone no. [number] - Completion Notice**").
- 13.4. MWC will thereafter act as follows:
 - 13.4.1. In the event MWC determines that not all applicable requirements of the Contract Documents including those set forth in the aforesaid **Appendix D (Project Milestones)** relating to the respective Milestone were met, in full or in part, it may instruct the Supplier to amend, change or complete all outstanding items.
 - 13.4.2. In the event MWC determines that all applicable requirements of the Contract Documents including those set forth in the aforesaid **Appendix D (Project Milestones)** were fulfilled, it shall issue the Supplier a notice testifying the completion of the respective Milestone (hereinafter: "**Milestone no. [number] - Completion Certificate**" or "**Milestone Completion Certificate**").
- 13.5. Upon receipt of Completion Certificates for all Milestones 1 - 7; and receipt of all Permits from all Relevant Authorities and/or Permits required under any Laws and Regulations, the Supplier shall apply to MWC for the issuance of a certificate of Project completion (hereinafter: the "**Final Completion Certificate**").

14. **Project's Detailed Time Schedule**

- 14.1. The Supplier has provided within its Proposal a detailed Project time schedule. The detailed time schedule proposed by the Supplier within the framework of its Proposal as amended per MWC's instructions and approved by MWC is attached hereto as **Appendix E (Project's Detailed Time Schedule)** (the "**Project's Detailed Time Schedule**").
- 14.2. The Supplier shall perform the Works in strict conformity with the Project's Detailed Time Schedule.
- 14.3. In the event the Supplier incurs any delay in the Project's Detailed Time Schedule it shall promptly exercise its best efforts, and take all steps and measures to expedite

the Works and any other Project activities in order to ensure that the delay caused to Project's Detailed Time Schedule is entirely rectified.

- 14.4. Unless explicitly provided otherwise in the Contract Documents, the Supplier shall not be entitled to any adjustments in the Project's Detailed Time Schedule.
- 14.5. In the event MWC determines, at its sole discretion that an effective delay was caused to the Works as a direct result of an act or omission by MWC, not concurrent with any delay by the Supplier, then MWC shall determine at its sole discretion:
- a) an appropriate adjustment to the Project's Detailed Time Schedule; and
 - b) the Supplier's entitlement to costs incurred by the Supplier as a direct result of such effective delay by MWC.

MWC's discretion as applied shall be conclusive upon the Parties.

15. **Contract Price**

- 15.1. The total price to be paid by or on behalf of MWC to the Supplier in full consideration for the performance by the Supplier of the Works including but not limited to the design, manufacture, supply and delivery, Installation and erection (via crane or any other or additional measure or mean) and Commissioning shall consist of a fixed sum as indicated in Volume 3, Supplier's Proposal, **Tender Form O - Price Proposal** (herein above and below: the "**Fixed Lump Sum**"). Value Added Tax shall be added by MWC according to the Laws to the Fixed Lump Sum upon the payment of any portion thereof. Payments shall be made to a bank account of the Supplier's choice, provided such bank account is established and managed in a bank branch which is located either in Israel or in a country maintaining diplomatic relations with Israel,

The Supplier shall notify MWC in writing upon Signature Date his choice of currency for payment of the Fixed Lump Sum which shall be either New Israeli Shekels, Euros or US Dollars. The entire Fixed Lump Sum shall be paid in the same currency.

- 15.2. The percentage of the Fixed Lump Sum to be paid for each of the Project Milestones, set forth in **Appendix D (Project Milestones)** shall be paid for in accordance with the procedures set forth in this Section.

15.3. **Payment Procedure –**

- 15.3.1 Payment Application – once the Supplier ensures it has completed all Works pertaining to a Milestone for the completion of which it is entitled, as per the provisions of the aforesaid **Appendix D (Project**

Milestones) for payment, it shall submit to MWC a payment application in a form as instructed by MWC, to which it shall attach the respective Milestone Completion Certificate issued by MWC pursuant to the provisions of the aforesaid Section 13.4.2.

15.3.2 MWC's Review of Payment Application - within fourteen (14) Working Days of receipt of each Payment Application, MWC will either:

- a) Approve the application by way of issuing a Payment Application Approval; or
- b) Return the Payment Application to the Supplier indicating in writing the reasons for the application's rejection. Upon such circumstances the Supplier shall attend to the reasons for which the Payments Application was rejected. Once the Supplier is of the opinion all issues were resolved, it shall resubmit the respective Payment Application and the provisions of Section 15.3.1 (Payment Application) and Section 15.3.2 (MWC Review of Payment Application) shall apply.

15.3.3 Final Payment Application— once a Final Completion Certificate was issued by MWC, and all remaining Permits were obtained, the Supplier may submit its final Payment Application of Milestone no. 7 - Final Completion Certificate upon Successful site tests of all Pumping Units ("Final Payment Application"). The Supplier shall attach the Final Completion Certificate and all aforesaid Approvals to its Final Payment Application. In addition to the material to be submitted as part of any Payment Application, as per the provisions of Section 15.3.1 above, the Supplier shall add to its Final Payment Application the following documentation:

- a) As-built drawings, maintenance and operating instructions, the Warranty Guarantee, certificates of insurance, certificates of inspection, all documents required to be maintained at the Site and all other documents required by the Contract to be delivered to MWC upon the Final Completion Certificate;
- b) The Approvals of any Relevant Authority including any surety, if any, to the final payment made under Section 15.3.4 (Final Payment and Acceptance); and

Releases, as shall be required by MWC, from the Supplier and any Sub-Contractor, , signed by a director or officer of the Supplier or Sub-Contractor as

applicable, 15.3.5 Final Payment and Acceptance - After receipt of the Final Payment Application , the provisions of the aforesaid Section 15.3.2 (MWC Review of Payment Application) shall apply upon MWC's review of the application mutatis mutandis.

15.3.6 In the event MWC's responds as per the provisions of the aforesaid Section 15.3.2(b), the Supplier will promptly take such actions as are necessary to satisfy the outstanding obligations referred to by MWC. Once the Supplier has satisfied all such obligations, the Supplier will deliver an amended Final Payment Application.

15.3.7 Payment made to the Supplier under this Section 15.3.4 (Final Payment and Acceptance), shall not relieve the Supplier from any of its obligations or liabilities under the Contract.

15.4. **Payment Terms -**

15.4.1 In the event MWC approves the Payment Application, as per the provisions of the aforesaid Section 15.3.2(a), payment of the respective Milestone shall be made within sixty (60) days after MWC's approval was issued to the Supplier. However, in the event the date for payment is not a Working Day, a Friday, a Saturday, a Holiday and/or any other day where banks are not open for business (for any reason), the respective payment shall be made on the following Working Day.

15.4.2 Payment shall be made to the following bank account :
_____. MWC shall not bear any responsibility for delay within the banking system for transfer of the payment, provided MWC had timely initiated all acts required for the purpose of transferring the respective payment. MWC shall bear the costs resulting directly solely with the wire transfer to be made by it.

15.4.3 Payment Adjustments – each payment to be made pursuant to the provisions of this Section 15 (Contract Price) shall be adjusted in accordance with the provisions of **Appendix J** (Adjustment to Indices).

15.5. It is hereby explicitly provided that notwithstanding any contrary provision in the Contract Documents, the Supplier shall not be entitled to any additional consideration other than the Contract Price as set forth in this Section 14. For the avoidance of doubt, the above sum is deemed to include:

- (a) any costs or expenses incurred by the Supplier during the performance of the Works, including transportation costs, travel expenses and subsistence costs, delivery, installation, erection costs including for use of any means or

measures, interface with MWC or anyone on its behalf on Site or elsewhere, traveling time and waiting time;

- (b) the costs of any delay in the performance of any tests or the commissioning of the Pumping Units on site including their interface to any associated system provided by MWC or anyone on its behalf; and
- (c) any and all consideration of the Supplier's obligations under the Warranty including all related services it shall be required by MWC or Relevant Authority to provide.

15.6. The Supplier shall bear full and sole responsibility for the payment of all taxes, levies, fees and all other compulsory payments, imposed and/or which may be imposed under any Laws and Regulations and/or by any Relevant Authority with relation to the Project. It is hereby provided that MWC shall deduct, from the payments the Supplier is entitled for, the respective withholding tax sum unless the Supplier furnishes MWC, in advance, with an approval on behalf of the Relevant Authorities certifying the Supplier is exempted from withholding tax against its payments.

15.7. MWC reserves the right to set-off any sum which it paid the Supplier in excess from any payment due or to be due to the Supplier.

16. **Liquidated Damages**

16.1. Liquidated Damages for Delay

In the event the Supplier fails to obtain timely Completion Certificates for any Milestone, MWC shall be entitled to liquidate damages as specified in **Appendix D** (*Project Milestones*) for each of the respective Milestones. In the event the Supplier achieves Milestone no. 7 by the designated time for completion as set forth under **Appendix D** – then MWC shall return all Liquidated Damages deducted for any delay in the achievement any previous Milestones. Such sum shall be linked to the CPI as of the time the Liquidated Damages were retained and up to the time they was returned.

16.2. Liquidated Damages for Reduction in Efficiency

In any event of a drop in the in the Guaranteed Efficiency Rate or the Accepted Efficiency Rate, MWC shall be entitled to liquidated damages, all as defined in **Appendix I** (*Efficiency Drop Rebate*).

16.3. Liquidated Damages – General

- 14.3.1 The liquidated damages set forth in the above Sections 16.1 (Liquidated Damages for Delay) and 16.2 (Liquidated Damages for Reduction in Efficiency) shall both be referred to as "**Liquidated Damages**".
- 14.3.2 The Supplier may be liable for payment of both sums, if applicable.
- 14.3.3 The total amount of Liquidated Damages payable under the Contract shall not exceed the sum of twenty percent (20%) of the Fixed Lump Sum ("**LD Cap**"). Notwithstanding it is hereby clarified that in the event of breach of the Contract by the Supplier, which event leads to termination of the Contract by MWC, the aforesaid LD Cap shall not apply and MWC shall not be prevented from seeking actual damages incurred in any event it had experienced due to such breach, actual damages which exceed the LD Cap.
- 14.3.4 MWC may set off the amount of the Liquidated Damages due under the provisions of this Section 16 (*Liquidated Damages*), or any part thereof, from any sums due or which become due to the Supplier under the Contract Documents, or any part thereof.
- 14.3.5 The sum of Liquidated Damages, under this Section 16 (Liquidated Damages), shall be deemed to be a genuine pre-estimate of the foreseeable damages incurred by MWC due to any of the Supplier's delays. As such, the Liquidated Damages are not and will not be considered to constitute any form of penalty.
- 14.3.6 In any event, the payment of Liquidated Damages shall not relieve the Supplier from its obligation to apply its best efforts and use all means to expedite the Works so as to comply with the Detailed Time Schedule, to achieve the Guaranteed or the Accepted Efficiency Rate (as applicable) or from any other of its obligations under the Contract.
- 14.3.7 It is hereby clarified that payment of Liquidated Damages shall not derogate from MWC's right to pursue and exercise any other right and/or remedy reserved to it in the Contract Documents and/or under all Laws and Regulations, including the right to set-off from any sum due or to become due to the Supplier.

17. **Warranty**

- 17.1. The Supplier warrants and guarantees to MWC that notwithstanding anything else in the Contract, the Pumping Units, the Works and the Project will in all respects be fit for the purposes intended by the Contract.
- 17.2. The Warranty Period shall commence upon issuance of the Final Completion Certificate and remain valid for a period of 24 months thereafter.

Hereinabove and after: the "**Warranty Period**".

- 17.3. Upon the conclusion of the Warranty Period, as may be extended by MWC from time to time in accordance with the provisions of the Contract Documents, MWC shall issue to the Supplier a certificate certifying the completion of the project (the "**Project Completion Certificate**").
- 17.4. Throughout the Warranty Period the Supplier shall bear the full and sole responsibility for the full functionality and operation of the Pumping Units and each of their components separately. In order to fulfill this undertaking, the Supplier shall:
- 17.4.1. participate in any meeting relating to the Pumping Units' warranty and/or maintenance;
 - 17.4.2. Remedy any Fault in the Pumping Station throughout the Warranty Period.
 - 17.4.3. Ensure that sufficient Spare Parts are available whenever needed in order to fulfill its undertakings in accordance with this Section 17 (*Warranty*).
 - 17.4.4. In any event of the replacement or renewal of any of the Pumping Units' components for whichever reason, the Warranty Period for such replaced or renewed parts shall be renewed for an additional period of 2 years from the date of its replacement or renewal, as applicable.

18. **Spare Parts**

- 18.1. The Supplier shall furnish MWC with a Spare Parts list in accordance with the provisions of **Appendix H** (Supplier's Information). The Spare Parts list shall contain prices and ordering instructions in accordance with the provisions of Section 11 to **Appendix B**. The Supplier shall keep in stock all listed Spare Parts for a period of fifteen (15) years from the date of the Final Completion Certificate.
- 18.2. As of the date of the Final Completion Certificate and up to the expiry of the Warranty Period the Supplier, at MWC's request, shall provide any of the items in the Spare Parts list at no cost to MWC. All spare parts (whether included in the Spare Parts list or not) supplied during this period shall constitute part of the Works. For the removal of doubt, it is hereby clarified that the Contract Price includes any and all consideration of the Supplier's obligations under this Section 18.2.
- 18.3. Subsequently and until the conclusion of 15 years from the date of the Final Completion Certificate, the Supplier, at MWC's request, shall provide any of the items in the Spare Parts list at the price quoted therein.

19. **Remedy of Faults**

In any event of fault or malfunction in the Pumping Units, or failure to meet the requirements set forth in the Contract Documents of any of its components during the Warranty Period (hereinafter "**Fault**"):

- 19.1.1. The Supplier will be required to remedy the Fault within seven (7) Days of MWC's issuance of a notice to such effect (hereinafter: the "**Fault Remedy Notice**"). Within 48 hours of receipt of the Fault Remedy Notice, the Supplier shall be required to provide MWC, with a proposed remedy plan (hereinafter: the "**Proposed Remedial Plan**") which shall, *inter alia*, include (i) a diagnosis of the existing Fault; (ii) the Fault's causes; (iii) proposed remedial works; (iv) proposed measures and steps which shall prevent similar Fault's reoccurrence.
- 19.1.2. Notwithstanding the aforesaid, in case a Fault causes severe disruption in the operation of the Pumping Station, MWC may determine the Fault to be of urgent nature and thus determine shorter timeframes for the submission of a Proposed Remedial Plan and for the remedy of the Fault.
- 19.1.3. MWC may accept the Proposed Remedial Plan (hereinafter: the "**Approved Remedial Plan Notice**") or instruct that revisions and/or amendments and/or additional explanations be introduced therein by the Supplier. In the event MWC decides to issue an Approved Remedial Plan Notice, the Supplier, at its full and sole responsibility, shall immediately commence the execution of the Approved Remedial Plan. If MWC has instructed that revisions and/or amendments and/or additional explanations to be introduced, the Supplier shall amend its Proposed Remedial Plan accordingly and the provisions of this Section 19 shall apply *mutatis mutandis*.
- 19.1.4. The Fault will be considered remedied upon issuance of a notice by MWC (hereinafter: the "**Fault Remedy Approval**").
- 19.1.5. If the Supplier fails to timely remedy the Faults, in accordance with MWC's instructions and the provisions of this Section 11 (Warranty) MWC may (but shall not be obliged to) remedy the fault by its own or via third party on its behalf on the Supplier's expense (hereinafter: "**MWC's Recourse**"). In this event MWC may make use of any of its contractual or legal rights and remedies including by way of set-off and/or the full or partial forfeiture of the Warranty Guarantee. MWC's Recourse shall not infringe or derogate in any manner the Supplier's full and sole responsibility in respect of the Pumping Units, including the remedied component.

- 19.1.6. Without derogating from any of the rights reserved to MWC in the Contract Documents and all Laws and Regulations, the Supplier shall not be entitled for any payment in respect of fulfilling his obligations under this Section 19.

20. **Guarantees**

20.1. The Performance Guarantee

- 20.1.1. For securing the fulfillment of the Supplier's obligations under the Contract and as a precondition for the execution of the Contract and the performance of the Works, the Supplier shall submit (at its own cost) to MWC a bank guarantee in the amount of ten percent (10%) of the Fixed Lump Sum (herein above and after: the "**Performance Guarantee**").
- 20.1.2. The Performance Guarantee shall be in the form attached hereto as **Appendix F(1)** (Performance Guarantee). The Performance Guarantee shall be valid, to the order of MWC, and remain in effect from the Signature Date until it is replaced with the Warranty Guarantee, in accordance with the provisions of Section 17.
- 20.1.3. The Performance Guarantee shall serve to secure the Supplier's timely, leading standard, complete and comprehensive compliance with all warranties, representations, obligations and undertakings under the Contract Documents.
- 20.1.4. In the event MWC draws down on the Performance Guarantee or any part thereof, then the Supplier shall restore the Performance Guarantee to its original sum at the same terms and conditions within seven (7) days.
- 20.1.5. The Supplier shall be entitled to adjust the amount of the Performance Guarantee in the event the Contract Price is decreased in accordance with the provisions of the Contract. All costs associated with such adjustment shall be at the Supplier's full and sole responsibility.
- 20.1.6. The Supplier shall be required to adjust the amount of the Performance Guarantee with each increase of the Contract Price, at the Supplier's costs.

20.2. The Warranty Guarantee

For securing the fulfillment of the Supplier's obligations during the Warranty Period, including the Supplier's obligations in relation to the Efficiency Drop Rebate as detailed in Section 16.2, and as a precondition for the issuance of the Final Completion Certificate, the Supplier shall submit (at its own cost) to MWC a Warranty Guarantee in the amount of ten percent (10%) of the Fixed Lump Sum (herein above and after: the "**Warranty Guarantee**"). Upon submission of the Warranty Guarantee and its approval by MWC the Performance Guarantee shall be returned to the Supplier. The provisions of Section 20.1 (Performance Guarantee) with regard to the form, order and manner of issuance and MWC's rights with respect to thereto shall apply upon the Warranty Guarantee *mutatis mutandis*. The Warranty Guarantee shall be returned to the Supplier within 21 days of the issuance of the Project Completion Certificate.

20.3. Guarantees – General

- 20.3.1. The guarantee shall be autonomous irrevocable and unconditional bank guarantees issued by an Israeli bank or by an Israeli insurance company (in which event the Performance Guarantee shall be issued directly by an insurance company included in the list specified in the attached **Appendix F(3)** (Insurance companies and Israeli Banks - approved as Performance Guarantee issuers) and not through an insurance agent).
- 20.3.2. All guarantees shall remain in full force and effect until returned to the Supplier by MWC in accordance with the Contract. The Supplier shall extend the guarantees from time to time and shall bear any and all costs associated therewith.
- 20.3.3. MWC may require the Supplier to replenish the amount secured by any guarantee to its original amount, if it reduces as a result of partial or full forfeiture, and the Supplier shall submit to MWC a renewed or supplementary guarantee within 7 days of such request. The Supplier shall bear any and all costs related to such renewal.
- 20.3.4. Enforcing, in full or in part, any of the guarantees, shall not substitute nor derogate from MWC's ability to exercise any of its rights and/or remedies under the Contract Documents and/or under all Laws and Regulations, including the right to set-off against the Contract Price payments, or any part thereof, which the Supplier is entitled to.

21. **Set-off right**

- 21.1. Without derogating from any set-off right specified in the Contract Documents, MWC shall have the right to immediately set-off any sum, which is due to MWC by the Supplier, including any due Liquidated Damages and Efficiency Drop Rebate, from any sums due (or to become due) by MWC to the Supplier pursuant to the Contract Documents.
- 21.2. In any event MWC's right to set-off shall not derogate from any other rights and/or remedies reserved to it within the Contract Documents and/or under all Laws and Regulations.
- 21.3. The Supplier shall not be entitled to set-off, retention or lien, under any circumstances whatsoever and hereby explicitly waives any right thereof.

22. **Changes to the Works**

- 22.1. MWC reserves the right to instruct the Supplier to change the scope of the Works by way of adding, deducting or altering any part thereof (the "**Change**"). In such an event MWC will issue the Supplier a "**Change Review Notice**". The Supplier shall be required to provide a response relating to the implications of the Change with regards to the design, procurement, construction, commissioning, operation and maintenance aspects, the financial implications if any (without derogating from the provisions of Section 22.2 below) and any other implication the Change may have on the Project (hereinafter: the "**Supplier's Change Review Response**"), within the timeframe set forth within the Change Review Notice.
- 22.2. The cost evaluation of the considered Changes shall be based upon the following:
 - (a) **Electrical & Mechanical ("E&M")** - based on two (2) price quotes the Supplier shall furnish MWC and in case the Supplier is the manufacturer of such E&M parts, the two (2) most recent price quotes the Supplier provided to other customers and which were accepted by such customers.
 - (b) **Design** - a sum equal to five percent (5%) of the approved cost of the Change.
 - (c) **Overheads** - the Supplier shall not be entitled for any overhead payments in any event.
- 22.3. After receipt of the Supplier's Change Review Response MWC shall instruct the Supplier to execute or not to execute the Change or any part thereof. MWC reserves the right to instruct the Supplier to execute the Change also in the event the Parties do not agree on the Change's implications and/or costs. In such event the Parties will enter bona fide discussions aimed at reaching an adequate and reasonable agreement.

These discussions, however, will not delay the immediate execution of the Change in the event MWC instructs the Change to be immediately executed.

- 22.4. For the avoidance of any doubt, unless explicitly specified otherwise within the Change Review Notice, the Supplier shall not be entitled for additional payment in consideration of the Supplier's Change Review Response preparation and submission regardless of whether MWC had instructed to execute the respective Change or not. It is understood that the obligation to provide the Supplier's Change Review Response constitutes part of the Suppliers obligations under this Contract and that as such is reflected in the Fixed Lump Sum.
- 22.5. Unless explicitly agreed to in writing, the implementation of any Changes will not bear any financial and/or schedule adjustments.

23. **Force Majeure**

- 23.1. Neither Party shall be liable for any loss or damage resulting from any delay or failure to perform any of its contractual obligations within the time specified there for, in the event such prevention is directly caused by a Force Majeure event.
- 23.2. A "Force Majeure" is an extreme condition beyond the reasonable control of either Party, which constitutes exceptional unforeseeable circumstances, and which, despite the exercise of every reasonable effort, such Party was unable to prevent or minimize, directly and materially preventing a Party from fulfilling its contractual undertakings.
- 23.3. Where the affected Party was able to limit, mitigate or minimize the consequences of any of the above detailed events, such events shall constitute Force Majeure only to the extent which the affected Party could not limit, mitigate or minimize them.
- 23.4. For the avoidance of doubt, the following events (but not only these events) **shall not**, in any way, be regarded as Force Majeure:
- (a) shortage of materials or employees except a national general shortage declared by a governmental order;
 - (b) The occurrence of exceptionally adverse weather conditions, inclement weather and other material disturbances which are reasonably foreseeable;
 - (c) physical conditions or obstacles (both above or below the ground and including subterranean water sources) encountered in the course of the Project or otherwise;
 - (d) suspension, termination, interruption, denial or failure to obtain or renew any permit, license, consent or approval which is required for the carrying out of the Supplier's obligations under this Contract;
 - (e) any acts of undeclared war, terror, hostilities or animosities; and

(f) any other event the consequences of which are specifically provided for in this Contract which otherwise would constitute Force Majeure as defined above.

23.5. For the avoidance of doubt, the Parties acknowledge they will be required, to the extent possible, to fulfill their obligations despite the Force Majeure event occurrence. In any case a Force Majeure event prevents the execution of a specific obligation the affected Party undertakes to fulfill all other obligations the execution of which is not prevented by the Force Majeure event. The Parties undertake to mitigate the implications of the Force Majeure event/s and minimize to minimum its adverse implications on the Project. The Parties undertake to use their best efforts in order to resume all activities and Works related to the Project promptly after the consequences of the Force Majeure events ceased to effect the execution of the Works and/or its impact and effect has eased.

23.6. Notwithstanding the above, with regards to eligibility for consideration, the provisions of Section 8 (*MWC's right to cease Works*) shall apply, *mutatis mutandis*. In the event of a Force Majeure, and subject to the terms and stipulations detailed hereinabove, the affected party will be excused from performance during the existence of the Force Majeure and the date of performance of the respective obligations will be adjusted to reflect the impact of the Force Majeure event's consequences upon the Project's Time Schedule.

23.7. When a Force Majeure event occurs, the affected Party will immediately notify the other Party in writing of the existence of the Force Majeure. If the consequences of a Force Majeure event continues for more than six (6) months, the Party injured by the inability of the other to perform shall have the right, upon written notice to the other party, to terminate this Contract. The above is without prejudice to the rights already accrued to the Parties as a result of their performance or failure to perform, either in whole or in part pursuant to their obligations under this Contract, prior to the occurrence of the events of Force Majeure.

23A. Liability

23A.1 The Supplier's Liability

- a. The Supplier shall bear full, unlimited and sole responsibility and liability for any damage, including but not limited to loss, expense, costs, harm, consequential damage or other liabilities, incurred or suffered by MWC or any other Relevant Authority or any other third party, person or property (“**Damage**”) arising directly or indirectly out of or related to any act or omission of the Supplier or the Supplier’s Personnel or anyone acting on its behalf.
- b. However, the aggregate liability of the Supplier directly to MWC for Damage under this Contract shall not exceed the Contract Price.
- c. This limitation of liability does not apply to:
 - a. Damage caused by fraudulent behavior, willful misconduct or misrepresentation;
 - b. any death or personal injury; or
 - c. any event where liability cannot be limited under Laws and Regulations.

23A.2 MWC's Liability

MWC shall not be liable to the Supplier under or in connection with this Contract for any damage outside the obligation of MWC to pay the Contract Price for the Works performed by the Supplier in accordance with the Contract.

24. **Miscellaneous**

24.1. **Governing Law and Jurisdiction**

This Contract shall be governed by and construed in accordance with the Laws and Regulations of the State of Israel. Without derogating from the aforesaid, the applicable courts in Tel-Aviv-Jaffa shall have the exclusive jurisdiction with respect to all matters and all disputes arising in connection with the Contract.

24.2. **Assignment**

The Supplier shall not assign or transfer any of his rights, privileges, or obligations set forth herein, arising under, or created by this Contract without the prior approval in writing of MWC.

MWC may assign or transfer its rights, privileges, or obligations set forth herein, arising under, or created by this Contract as it sees fit.

24.3. **Amendment**

Any addition, amendment and update to the Contract Documents and/or any part thereof shall be binding only if made in writing and duly signed by both Parties.

24.4. **Delays or Omissions**

No delay or omission to exercise any right, power, or remedy accruing to any Party upon any breach or default under this Contract, shall be deemed a waiver of any other breach or default therefore or thereafter occurring. Any waiver, permit, consent, or approval of any kind or character on the part of any Party of any breach or default under this Contract, or any waiver on the part of any Party of any provisions or conditions of this Contract, must be in writing and shall be effective only to the extent specifically set forth in such document.

24.5. **Severability**

Any part, provision or section of the Contract Documents being found to be invalid or unenforceable shall not affect the validity or enforceability of any other part, provision or Section. Such invalid or unenforceable part, provision or Section shall be deemed severed from the Contract Documents, which shall be construed and enforced without reference to such part, provision or Section.

24.6. **Notices and Communication between the Parties**

All notices and other communications required or permitted hereunder to be given to a Party to this Contract shall be in writing and shall be copied (with a copy by mail) or mailed, postage prepaid, or otherwise delivered by hand or by a guaranteed courier, addressed to such Party's address as set forth in the preamble above or at such other address as the Party shall have furnished to each other Party in writing in accordance with this provision. Any notice sent in accordance with this Section 24.6 shall be deemed as received (i) if mailed, during a Working Day at the same day and if mailed after 17:00 pm at the following Working Day, (ii) if sent by guaranteed courier, the third day following pick-up by the guaranteed courier, and (iii) if sent via telecopy, upon transmission and electronic confirmation of receipt until 17:00 PM or (if transmitted after 17:00 PM or on a day which is not a Working Day) on the Working Day following transmission and electronic confirmation of receipt.

IN WITNESS WHEREOF, the Parties have signed this Contract as of the date first hereinabove set forth.

MWC

The Supplier

To be accompanied by a legal counsel's confirmation approving signatory rights of the signatory on behalf of the Supplier and that such signature binds the Supplier for the purpose of this Contract.