

**FORM OF CONTRACT NO. \_\_\_\_/17**

This contract (hereinafter referred to as the "**Agreement**") is made  
this \_\_\_ day of \_\_\_\_, 2017

**Between**

**JERUSALEM TRANSPORTATION MASTERPLAN TEAM**

From 97 Jaffa Street, Jerusalem, Israel  
(hereinafter referred to as the "**JTMT**")

**on the one side;**

**and**

**DUE DILIGENCE CONSULTANT,**

Name and address of Consultant  
(hereinafter referred to as the "**Consultant**")

**on the other side;**

- WHEREAS:** JTMT, operating through "The Association for Urban Planning, Development and Preservation – Jerusalem (R.A.)" as part of its work towards providing a transport network in the metropolitan area of Jerusalem and towards providing full information for the bidders in the tender to for the Green Line and extensions to the LRT network in Jerusalem (hereinafter: the "J-Net tender") concerning the existing LRT System in Jerusalem (hereinafter: the "Red Line LRT System"), is interested in receiving the Services which form the subject of this Agreement for a due diligence survey of the existing Red Line LRT System and consultancy to the J-Net tender committee in this regard; and
- WHEREAS:** JTMT is interested in receiving the Services from the Consultant in accordance with the terms set forth in this Agreement and in the annexes attached thereto; and
- WHEREAS:** The Consultant declares that it has read and understood and agrees to all the terms set forth in this Agreement, and that it is capable, both professionally and financially and in all other respects, of accepting on itself the performance of the work set forth herein to the highest standard and in accordance with the terms set forth herein; and
- WHEREAS:** JTMT, acting in accordance with the decision of the Steering Committee as defined in the Special Conditions, and based on the Consultant's aforementioned representations and undertakings, has resolved to bestow on the Consultant the performance of the Services as defined hereunder, and the Consultant wishes to perform the Services, all in accordance with the terms of this Agreement;

**NOW THEREFORE the Parties hereto agree as follows:**

1. The following documents shall form an integral part of this Agreement:
  - a) The preamble and introduction to the Agreement
  - b) The General Conditions of Contract;

- c) The Special Conditions of Contract; and
- d) The appendices attached to this Agreement and/or detailed in the Special Conditions of Contract, including but not limited to the following appendices:

List of appendices shall include the following:

- **Appendix A** Invitation to Bidders (ITB)
- **Appendix A1** Clarifications
- **Appendix B** Specification of Services and Fee
- **Appendix C** Consultant's Technical Proposal
- **Appendix D** Consultant's Financial Proposal
- **Appendix E** Consultant's Declarations and Power of Attorney
  - 1 - Declaration regarding contacts and absence of conflict of interest
  - 2 - Declaration, Warranty and Undertaking
  - 3 - Confidentiality Undertaking
  - 4 - Declaration regarding absence of Litigation
  - 5 - Declaration regarding the absence of fraud and corruption listing in the Word Bank
  - 6 - Power of Attorney
- **Appendix F** Consultant's Insurance Policy/ies Certificates
- **Appendix G** Consultant's Incorporation Documentation

## 2. Order of Precedence

Unless otherwise specified in the Special Conditions, in the event of contradiction between the various documents forming part of this Agreement, the following order of precedence shall apply:

The Special Conditions of Contract;

The General Conditions of Contract;

Appendices

## **Part I: General Conditions of Contract**

### **1. GENERAL PROVISIONS**

#### **1.1. The Agreement**

1.1.1. JTMT hereby procures the Services as defined hereunder from the Consultant and the Consultant hereby undertakes to provide JTMT with such Services, all in accordance with, and subject to the terms of this Agreement.

1.1.2. In the event of additional agreements with the Consultant in the course of the Project, including regarding additional services as defined hereunder, these may be performed by the execution of addendums to the Special Conditions of Contract. In this event the terms of the General Conditions of Contract shall continue to apply.

### **2. Definitions**

The following terms whenever used in this Agreement shall have the following meanings:

<b><i>Authorities</i></b>	Any authority with powers under all Laws and Regulations which relate to the Project;
<b><i>Agreement</i></b>	The Agreement signed by the Parties, an integral and inseparable part of which are these General Conditions of Contract together with all documents listed in Section 1 to the preamble to this Agreement ;
<b><i>Blue Line</i></b>	As described in the Terms of Reference which form part of Appendix A to this Agreement
<b><i>Foreign Currency</i></b>	Euros (EUR €);
<b><i>Consultant</i></b>	_____, the consultant engaged by JTMT for the performance of the Services as defined hereunder, including any person and/or body engaged by such consultant for the performance of such Services.
<b><i>General Conditions</i></b>	The General Conditions of Contract;
<b><i>General Consultant</i></b>	The general consultant to JTMT (currently Egis Rail), supervising and coordinating the work for the planning and design of the Blue and Green Lines.
<b><i>Green Line</i></b>	As described in the Terms of Reference which form part of eement
<b><i>Government</i></b>	The Government of the State of Israel;
<b><i>JTMT</i></b>	The Jerusalem Transportation Masterplan Team, operating through “The Association for Urban Planning, Development and Preservation – Jerusalem (R.A.)”. The execution of this Agreement is subject to the Laws and Regulations applying to such operation and the terms of this Agreement. The executive director of JTMT or his/her authorised representative, or the professional body for the implementation of this Agreement, shall hereby be authorised to act on behalf of JTMT in all matters pertaining to the performance of

	this Agreement
<b><i>Laws and Regulations</i></b>	The laws and regulations as may be issued and in force from time to time in the State of Israel;
<b><i>Local Currency</i></b>	New Israeli Shekel (NIS);
<b><i>Liquidated Damages</i></b>	The amounts as set forth in Sections 10 and 16.4 of the Special Conditions of Contract relating to late submission and the unauthorised replacement of Personnel and reflecting the damage caused to JTMT in such cases.
<b><i>LRT</i></b>	Light Rail Transit
<b><i>Party</i></b>	The JTMT or the Consultant, as the case may be; "Parties" refers to both of them;
<b><i>Personnel</i></b>	Persons assigned by the Consultant, whether as employees or otherwise, to the performance of the Services or any part thereof; "Overseas Personnel" means such persons who at the time of being so assigned had their domicile outside Israel; and "Local Personnel" means such persons who at the time of being so assigned had their domicile inside Israel;
<b><i>ITB</i></b>	The Invitation to Bidders attached hereto as Appendix A.
<b><i>Special Conditions</i></b>	The Special Conditions of Contract by which the General Conditions may be amended or supplemented;
<b><i>Services</i></b>	The due diligence and consultancy services to be performed by the Consultant pursuant to this Agreement, as described in the Special Conditions and the ITB attached hereto as Appendix A;
<b><i>Steering Committee</i></b>	The managing committee of the JTMT comprising representatives from the Ministry of Transport and the Municipality of Jerusalem;
<b><i>Third Party</i></b>	Any person or entity other than the Government, JTMT, the Consultant or a sub-consultant;
<b><i>TOR</i></b>	The Terms of Reference, which include the scope of works, describing the services and deliverables to be provided by the Consultant.

### 2.1. **Law Governing Agreement**

This Agreement, its meaning and interpretation, and any relation between the Parties shall be governed by the Laws and Regulations of the State of Israel.

## 3. **Headings**

Headings in this Agreement are used for purposes of convenience only, and shall not serve for purposes of interpretation.

## 4. **Miscellaneous**

### 4.1. **Notices and addresses**

The addresses of the Parties for the purposes of this Agreement shall be as set out in the Preamble. Any notice sent by registered mail in Israel to either of the aforementioned addresses shall be considered as having been lawfully received within seventy two (72) hours of it being sent by registered mail.

#### **4.2. Location of performance of Services**

The Services shall be performed at such locations as are specified in Appendix A and, where the location of a particular task is not so specified, at such locations, whether in Israel or elsewhere, as may be approved by JTMT.

#### **4.3. Taxes and Duties**

4.3.1. Unless otherwise specified in this Agreement, the Consultant and/or the Consultant's Personnel shall pay such taxes, duties, fees, levies and other impositions as may be levied under all Laws and Regulations.

4.3.2. Notwithstanding the provisions of Section 4.3.1 above, where, under all Laws and Regulations, the Consultant becomes liable for Israeli income tax the requirement for payment of Income Tax by the Consultant may be performed by JTMT deducting the relevant tax sums from the regular payments to the Consultant. This deduction will be performed according to the Tax Authorities' instructions.

4.3.3. For the purposes of the fulfilment of JTMT's undertaking as set forth in Section 4.3.2 above, the Consultant hereby undertakes to cooperate fully with JTMT in all contacts with the Income Tax Authorities.

### **5. Representations, warranties and undertakings of the parties**

5.1. The Consultant hereby represents and warrants that it has the qualifications, ability and professional experience necessary to perform the Services in accordance with this Agreement and in accordance with all Laws and Regulations, to the highest professional standard, and that it will perform the Services in accordance with the provisions of this Agreement, and adhere to the instructions received from JTMT to its full satisfaction, and that it will be solely responsible for the performance of such Services.

5.2. The Consultant hereby represents and warrants that there is no prohibition against, and/or no impediment of any kind, including by force of law or contract to its contracting under this Agreement and performing its obligations hereunder. The Consultant is not subject to any obligation, including any conditional obligation, which may contravene its undertakings under this Agreement, and there is nothing in the execution of this Agreement or its implementation of its undertakings hereunder which might constitute a breach of any contract or other undertaking and/or a breach of any law.

5.3. Where the Consultant has undertaken to perform the Services or any part thereof through or by a specific representative whose name it has presented before JTMT, the Consultant shall not replace such representative without the prior written approval of JTMT. Such approval shall be at the exclusive discretion of JTMT and shall be subject to any such replacement having the same or superior experience,

qualifications and skills as the representative being replaced. It is hereby clarified that any such replacement may not serve as grounds for postponing and/or delaying and/or derogating from and/or any diminution in the performance of the undertakings of the Consultant as set out hereunder, and the Consultant shall be prevented from raising any claim of any kind whatsoever in this regard.

- 5.4. The Consultant undertakes to fulfil all the conditions precedent for the implementation of this Agreement including as set forth in Appendix A attached hereto and any addenda to this Agreement, throughout the period of the Agreement. Any deviation from the fulfilment of such conditions precedent shall constitute a material breach of this Agreement, with all that this entails.
- 5.5. The Consultant undertakes to act in good faith towards JTMT, its employees and/or contractors, and not perform any act liable to harm JTMT, its business, its good name, or the Project.
- 5.6. JTMT represents and warrants that it is a body set up and funded by the Jerusalem Municipality and the Ministry of Transport of Israel. JTMT currently functions through “The Association for Urban Planning, Development and Preservation – Jerusalem (R.A.)”. The Consultant hereby declares that it is aware and in agreement, that the transaction in accordance with this Agreement is subject to the Laws and Regulations applicable in Israel to activity of the kind entailed hereunder and in accordance with the essence and scope of the Project and the Agreement.
- 5.7. It is hereby clarified and agreed by the Consultant that, in light of the complexity of both this present Project and other projects currently being undertaken by JTMT and the numerous bodies involved in such projects, and also in light of the fact that JTMT is a body which may assign its rights and obligations to an alternative body which will lead the implementation of the Project, changes to the Services may be necessary which will require full compliance on the part of the Consultant and total cooperation with JTMT, in accordance with the instructions which may be issued from time to time by JTMT at its sole discretion.
- 5.8. The Consultant shall submit to JTMT a detailed work programme and a report on the progress of the Services, as well as any documents, explanations and/or information regarding the Services which JTMT may require from time to time. The submission of documents shall be in accordance with the time schedule determined by JTMT in each case.
- 5.9. JTMT shall make available to the Consultant all the information and data in its possession which the Consultant deems necessary and relevant for the performance of the Services. Nothing in the foregoing shall derogate from the obligation of the Consultant to obtain all material necessary for the performance of the Services in accordance with this Agreement.
- 5.10. The Consultant will receive instructions from a representative of JTMT with regard to all aspects of the Services and their performance, as well as with regard to the reports, programmes and documents to be prepared by the Consultant. It is hereby agreed that the absence of such instructions shall in no way release the Consultant from its obligations under this Agreement, nor does this provision entail an obligation upon JTMT to issue such instructions to the Consultant.

- 5.11. JTMT shall be entitled to require modifications and/or clarifications and/or additions to the work to be performed by the Consultant and likewise shall be entitled to require that any written opinion, piece of work or other document submitted by the Consultant be rewritten or otherwise revised. The Consultant undertakes to make whatever modifications to its work as may be required of it at any time by JTMT.

Notwithstanding the foregoing, it is hereby agreed that where, as a result of such request and for the performance of such modifications, clarifications or additions, the Consultant is required to incur material additional outlays, the Parties shall agree on an additional consideration to be paid to the Consultant for the performance of such modifications, clarifications or additions as the case may be. In all other events it is hereby agreed that the consideration to be paid to the Consultant under this Agreement represents full and adequate consideration including for the performance of such modifications.

- 5.12. Without derogating from the generality of the foregoing, it is hereby agreed that any document to be submitted by the Consultant shall be prepared on computer and shall be submitted in electronic medium (CD, memory stick, or forwarding of computer file(s) or any other way) in a form and format which are compatible with the JTMT computer and information systems. Subject to the directions of JTMT, any such submission shall be accompanied by a hard copy print-out of the contents of the submission. The Consultant likewise hereby undertakes to receive and/or enable transfer to or from it of any material in electronic form, using software in accordance with the directions of JTMT.
- 5.13. Where any aspect of the Services requires a registration or the obtaining of a licence or permit in accordance with any Laws and Regulations as these may be in force, or changed, from time to time, the Consultant shall be required so to comply at its own expense.
- 5.14. The Consultant shall bear full and exclusive responsibility for ensuring that all of its actions undertaken for the provision of the Services shall be performed in accordance with the Laws and Regulations in force. The Consultant undertakes to perform any action or service so as to ensure that at all times the implementation of the Services meets the requirements of any Laws and Regulations. The Consultant shall not be entitled to any additional payment in lieu of such actions, and all such actions performed shall be at the sole expense of the Consultant. The Consultant hereby undertakes immediately to inform JTMT in the event of the discovery of a discrepancy of any kind between the performance of the Services and the provisions of any Laws and Regulations. The Consultant shall bear full and exclusive responsibility for compliance with the provisions of this Section 5.14.
- 5.15. In addition, the Consultant undertakes to perform any act which an expert would perform so as to perform the Services under this Agreement, in accordance with the rules of its trade, the highest standards of professional practice and the provisions of all Laws and Regulations applying to the performance of the Services. The Consultant further undertakes to take any measures which may be required for the efficient and effective performance of the Services.
- 5.16. The Consultant shall participate in meetings regarding and/or connected with the Project and/or the performance of the Services, as may be required from time to

time by JTMT for the purposes of performing the Services.

- 5.17. The Consultant shall work in cooperation with all other consultants and experts engaged on the Project, and/or with any other body as JTMT may direct, and as may be required for the performance of the Services. It is hereby clarified that JTMT's authorised representative shall have the exclusive authority to provide the Consultant with instructions as regards the Project, the performance of the Services and the manner of cooperation as set forth herein.
- 5.18. The Consultant shall keep a written record of all hours worked under this Agreement. This written record shall be submitted to JTMT at its request. Where the Consultant is engaged to work a set number of hours, it undertakes to inform the JTMT representative immediately when the number of hours worked amounts to 75% of the total number of hours set forth in the Special Conditions of Contract. It is hereby clarified that, where the number of hours worked by the Consultant exceeds the number of hours set forth in the Special Conditions of Contract, the Consultant shall not be entitled to any payment/consideration in lieu of this and shall have no claim whatsoever against JTMT in this regard.
- 5.19. In addition, and without derogating from the generality of the foregoing, it is hereby agreed that nothing in this Agreement shall give the Consultant exclusivity with regard to the performance of the Services and/or to affect the scope of work of other consultants. JTMT shall be entitled at all times, and at its exclusive discretion, to engage additional consultants for the performance of the Services and/or for the performance of similar services, to change consultants or perform the Services itself, and to do so in any way it chooses, including during the course of this Agreement.

## **6. Remuneration and payment**

- 6.1. Remuneration for the consulting Services is provided for in the Special Conditions and set out in detail in Appendix B attached hereto.
- 6.2. It is hereby clarified that the remuneration shall be rendered only for Services actually performed, and in accordance with the instructions of JTMT.
- 6.3. The remuneration shall be rendered in accordance with the *de-facto* progress of the performance of the Services, and according to the decision of JTMT. Notwithstanding anything to the contrary in Appendix B and the Special Conditions of Contract, it is hereby clarified that where the progress of the work under this Agreement does not proceed as swiftly as planned, or where there is a delay or change in the schedule for the performance of the Services for whatever reason, JTMT shall be entitled to change the schedule of payments at its sole reasonable discretion, and in accordance with circumstances which may arise.
- 6.4. Payments owed to the Consultant shall be made at the scheduled date + sixty (60) days after submission of an invoice by the Consultant and the approval of such by JTMT's representative.
- 6.5. The Consultant shall submit its invoices on invoice forms which JTMT shall provide. It shall be the responsibility of the Consultant to make sure that its invoice is detailed and includes all the relevant necessary documentation (such as: approved order for

work, calculations and so forth) in order for JTMT to be able to understand the manner in which the invoice has been made out. It is hereby clarified that invoices which are not submitted as set forth in this Section 6.5 shall not be considered, and the number of days for JTMT payment as set forth in Section 6.4 shall not apply.

- 6.6. Where the performance of Services is to be calculated by number of hours worked, the Consultant shall be required to submit a detailed breakdown of hours worked, showing the days, dates and hours worked together with a detailed explanation of the work undertaken and the matters dealt with.
- 6.7. The Consultant shall submit its invoices on a regular basis and immediately following the performance of the relevant part of the Services.
- 6.8. The remuneration as stipulated in the Special Conditions shall be in full satisfaction of all consideration due to the Consultant as a result of the Services and as a result of any rights or claims relating thereto, including other expenses incurred in the preparation of the Services, except as specifically set forth in the Special Conditions.

## **7. Schedule for performance of Services**

- 7.1. Except where otherwise stated in the Special Conditions of Contract, the Consultant shall perform the Services in accordance with the schedule for the performance of the Services to be defined by JTMT's representative.
- 7.2. A delay of more than fourteen (14) days in the performance of any stage in the stages of work defined in the schedule for the performance of the Services shall entitle JTMT to deduct 5% of the remuneration owed to the Consultant for such stage of work for each week of delay, or part thereof, beginning on the fifteenth (15<sup>th</sup>) day of such delay onwards up to a cumulative maximum of no more than ten per-cent (10%) of the remuneration for such stage of work, applicable to each stage of work.

## **8. Liability Indemnification and Insurance**

- 8.1. The Consultant shall be professionally liable towards JTMT and towards any third party for the performance of the Services to the highest professional standard and with the greatest expertise and as provided in accordance with all Laws and Regulations.
- 8.2. The Consultant accepts full and complete liability, in accordance with all Laws and Regulations for any accident and/or injury and/or damage and/or loss (hereinafter: the "damage") of any kind caused for whatever reason to JTMT and/or to the Consultant and/or to JTMT's property and/or to the property of the Consultant or any third party, arising from an action and/or an omission, whether directly or indirectly in the course of and/or as a result of the performance of this Agreement and/or in connection thereto.
- 8.3. The liability of the Consultant for the work of the Consultant shall be borne solely by the Consultant itself in accordance with all Laws and Regulations. The Consultant shall bear similar liability with respect to the type and manner of the provision of the Services and/or the performance of the work by it and/or by any employee acting on its behalf. The agreement and/or approval of JTMT with regard to matters related to the performance of the Services do not release the Consultant from its exclusive

liability for such work or Services.

8.4. It is hereby set forth and agreed that JTMT shall under no circumstances bear any vicarious liability for any actions, torts or omissions of the Consultant or any employee acting on its behalf which are not included under the professional liability insurance as set forth hereunder. The Consultant undertakes to compensate JTMT for any damage or cost incurred by JTMT as a result of negligence by the Consultant in the performance of its work, or as a result of the breach of a statutory duty, or as a result of a breach of this Agreement.

8.5. The Consultant shall be solely liable for payment for the indemnification of any damages, or compensation or any other payment owed by the Consultant, in accordance with all Laws and Regulations, to JTMT and/or any body connected with the procurement of the Project and/or the employees of such body and/or other any third party. In addition the Consultant shall compensate and indemnify JTMT for all expenses and/or payments and/or losses of any kind resulting from any claim or lawsuit submitted against it by any third party in connection with the performance of the Services and/or the results of such performance. JTMT shall duly inform the Consultant of the filing of any such claim or lawsuit and will enable it to participate in any dispute settlement negotiations and/or to undertake the defence of the lawsuit at its expense.

**8.6. Insurance to be taken out by the Consultant**

The Consultant shall (i) take out and maintain, and cause any sub-consultant to take out and maintain, at its own cost (or that of the sub-consultant's, as the case may be) but on terms and conditions approved by the JTMT, insurance against the risks, and for the coverages, as shall be specified in the Special Conditions of Contract; and (ii) at the JTMT's request, provide JTMT with documentation showing that such insurance has been taken out and maintained and that the current premiums therefor have been paid. JTMT shall not require an insurance policy unreasonably exceeding the coverage used in projects similar to the Project.

**9. Assignment of Rights**

9.1. The Consultant hereby undertakes not to assign this Agreement or any part of it, and not to transfer to any third party whatsoever any right and/or obligation arising from this Agreement without specific advance written approval from JTMT. The granting of such approval shall not release the Consultant from any of its obligations and/or responsibilities in accordance with all Laws and Regulations and/or in accordance with this Agreement.

9.2. JTMT shall be entitled to assign transfer or pledge its rights and obligations under this Agreement, in whole or in part, to a third party, without requiring the agreement of the Consultant.

**10. Relations between the Parties**

10.1. The Consultant shall be considered an independent contractor in its relations with JTMT. The right of JTMT to instruct, supervise or otherwise direct the Consultant and/or its employees and/or those it engages in the implementation of this Agreement shall not be construed as establishing a relation of employer and

employee or of principal and agent between JTMT and the Consultant.

- 10.2. For the removal of any doubt the Parties declare that neither the Consultant nor its employees nor those engaged by it in the implementation of this Agreement shall have any rights as employees of JTMT, and accordingly shall not be entitled to any of the rights accruing to JTMT employees, nor to any compensation and/or benefits of any kind in connection with the performance of this Agreement and/or its cancellation or termination and/or the termination of the performance of the work, for any reason.
- 10.3. JTMT shall not pay any amount in lieu of National Insurance, parallel tax, or any other employee rights with regard to the Consultant's Personnel. Where under any Laws and Regulations there exists a duty to deduct amounts from the salaries of the Consultant's Personnel, this shall be done by the Consultant and at its sole expense.
- 10.4. The Consultant undertakes that the employment of its employees shall be in accordance with the provisions of all Laws and Regulations and that it shall act in accordance with Israeli Labour Law.
  - 10.4.1. In the event the Consultant is in breach of one or more of the provisions of the Law for the Increased Enforcement of Labour Law – 5772-2011, JTMT shall be entitled to send the Consultant notice of the fact that it is required to act immediately to correct such breach.
  - 10.4.2. In the event JTMT sends the Consultant such notice, it shall correct the breach within a reasonable space of time.
  - 10.4.3. Where the Consultant fails to correct the breach within a reasonable space of time, JTMT shall be entitled to cancel the Agreement forthwith, and the Consultant shall not be entitled to demand any compensation of any kind for the cancellation of the Agreement.
- 10.5. Where a claim is filed against JTMT by any of the Consultant's Personnel, including where JTMT receives a final demand prior to the filing of such a claim, the Consultant undertakes to indemnify JTMT for any amount which may be required this in light of the fact that this Agreement covers the entire remuneration to which the Consultant may be entitled. JTMT shall inform the Consultant of such demand and/or claim at the first opportunity and shall give the Consultant reasonable opportunity to defend against such demand or claim. Without derogating from the foregoing –
  - 10.5.1. It is hereby agreed between the Parties that, in any event that a claim is made against JTMT by any of the Consultant's Personnel, and to the extent JTMT shall requests, the Consultant shall agree to JTMT being joined as a defendant in such claim.
  - 10.5.2. Where JTMT is required in any court judgement in such case to pay an amount to one or more of the Consultant's Personnel, the Consultant undertakes to indemnify JTMT for the entire amount it was required to pay under the court judgement, together with reasonable legal costs.

## **11. Intellectual Property**

- 11.1. It is hereby clarified that all materials collected and/or prepared by the Consultant for JTMT in connection with its performance of the Services under this Agreement, including any written or unwritten product of its work in connection with the Project, including, without limitation, reports, programmes, drawings, analyses, planning ideas, and any other ideas, specifications, designs, and software (hereinafter “Project Material”), shall be the property of JTMT exclusively, and the Consultant shall have no intellectual property rights with respect to these other than the right to append its name to the products of its work. Likewise, JTMT will be entitled to require that the name of the procurer of the work and/or the body financing the work and/or JTMT and/or the Ministry of Transport and/or the Municipality of Jerusalem and/or the “Association for Urban Planning Development and Preservation – Jerusalem” shall appear on documents relating to its work on the Project.
- 11.2. It is hereby agreed that JTMT shall be entitled to make use of the Project Material, including, without limitation, to apply it in whatever manner it deems appropriate, or to amend it or transfer it to third parties for amendment, performance or for whatever other purpose. The Consultant shall not be entitled to make any claim in this regard. In particular, it shall not be entitled to claim that the amendments are to be performed by it and/or that the amendments detract from its copyright and/or from its moral rights in the Project Material.
- 11.3. The Consultant shall not be entitled to make any use of the materials (including software and the results of professional development) which have been prepared and paid for by JTMT. The Consultant shall not be entitled to sell or offer for sale to any of its clients any products which have been developed for JTMT.
- 11.4. The Consultant shall have no rights of lien with regard to the Project Material including any document relating to the performance of its work or which it obtained as part of the implementation of this Agreement. The aforementioned shall not derogate from the obligation of the Consultant to keep copies of all documents as required under all Laws and Regulations.
- 11.5. The intellectual property provisions in this Agreement shall continue to apply whether the Agreement is implemented in full, or whether the Agreement is annulled for whatever reason or its performance interrupted, whatever the cause of the annulment and/or interruption, and whatever the identity of the party in breach and/or the contributory negligence of the other party.
- 11.6. The parties hereby declare that the remuneration of the Consultant as stipulated in the Special Conditions represents ample consideration owed to the Consultant even taking into consideration the provisions of this Section 11.
- 11.7. Equipment and materials made available to the Consultant by JTMT, or purchased by the Consultant with funds provided by JTMT, shall be the property of JTMT exclusively, and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall make available to JTMT an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with JTMT's instructions.

## **12. Confidentiality**

- 12.1. The Consultant undertakes to keep confidential and not to disclose, transfer, or bring to the attention of any person or body, any information and/or data and/or programmes and/or software of any kind received or made known to it in whatever way, in connection with the performance of this Agreement or JTMT, and shall also see to it that its employees shall also observe such confidentiality, both during the term of this Agreement and also following the expiration thereof. Notwithstanding the foregoing, the disclosure of such information as directed in accordance with any Laws and Regulations shall not be considered a breach of the confidentiality undertaking under this Agreement, provided, however, that JTMT receives prior forewarning of such disclosure.
- 12.2. The Consultant shall not disclose or publish any information with regard to its work under the Project, including, without limitation, information regarding the results of its work or any details of such work, without the prior written consent of JTMT.
- 12.3. The Consultant undertakes not to use, whether directly or indirectly, outside its work for JTMT, any professional or commercial information or intellectual property which serves and/or will serve the Consultant in the performance of the Services. Any such use may be permitted only with the authorisation of the JTMT executive director.

## **13. Conflict of Interest**

- 13.1. The Consultant hereby declares and undertakes that its execution and performance of this Agreement does not conflict with any of its other obligations and/or those of its Personnel towards third parties, and that neither it nor its Personnel will face a claim from any third parties with regard to the fulfilment of their obligations in accordance with this Agreement.
- 13.2. In the event of JTMT becoming aware that it faces such a claim as set forth above, JTMT shall be entitled to take whatever steps it considers necessary so as to ensure the efficient and swift progress of the Project, including, without limitation, by reaching a settlement with such third party after informing the Consultant of such claim and/or settlement. In this event, the Consultant shall fully indemnify JTMT for all costs and/or damages caused to JTMT arising from such settlement.
- 13.3. The Consultant and its Personnel undertake to refrain from any activity which may constitute a conflict of interest between the fulfilment of their duties under this Agreement and the fulfilment of any other duty of theirs and/or any corporation directly or indirectly controlled by them, or between the fulfilment of their duties under this Agreement and their private interests. The interest of JTMT and the Project shall supersede all other interests.
- 13.4. The Consultant and its Personnel agree to report to JTMT immediately regarding anything that may create a situation of conflict of interest or the risk of such. Such reporting shall take place at any time in the course of the performance of the Services under this Agreement, and immediately upon the Consultant becoming aware of such situation.

- 13.5. Throughout the period of this Agreement and for two (2) years after its termination for whatever reason, the Consultant, including its shareholders, managers and Personnel shall refrain from any activity which may constitute taking advantage of a business opportunity to obtain a benefit for themselves and/or any corporations under their direct or indirect control, arising from its Services under this Agreement.
- 13.6. The Consultant hereby agrees and undertakes to accept no money or other consideration for anything relating to the performance of its Services under this Agreement, other than that to be received from JTMT and in accordance with the terms of this Agreement.
- 13.7. For the removal of any possible risk of conflict of interest and for the sake of good order, the Consultant and its Personnel shall declare all professional and business connections with any bodies directly or indirectly connected with the following bodies:
- (i) The Concessionaire of the Red Line of the LRT System of Jerusalem, CityPass Ltd;
  - (ii) Any of the Concessionaire's shareholders;
  - (iii) Any of the Concessionaire's sub-contractors;
  - (iv) Any other organization or entity involved in the design, construction, testing and commissioning of the Red Line;
  - (v) All entities participating in the pre-qualification process as part of the J-Net tender (including entities participating with any of such pre-qualification participants as shareholders, experience providers or major subcontractors of such participants).
- [NOTE: A list of the entities participating in the J-Net pre-qualification process will be forwarded to all Bidders during the course of the (due diligence) Tender Process in accordance with the progress of the pre-qualification process. This list will be updated as relevant during the course of the J-Net tender process.
- (vi) The staff of JTMT and/or any of its consultants. In this regard, the Bidder shall include all existing and past contacts which it or any of its sub-consultants may have or have had;
  - (vii) The General Consultant, Egis Rail (S.A.);

The Consultant's declaration shall be attached as an appendix to this Agreement. The Consultant shall set out in this appendix any relevant information, including with respect to the nature and duration of the connection.

- 13.8. All the Consultant's Personnel and/or its managers and/or its shareholders shall refrain from entering into any transaction, whether directly or indirectly with any of the aforementioned bodies or their representatives which may constitute a conflict of interest. The Consultant undertakes to update JTMT regarding any approach or possibility of such a transaction. It is hereby clarified that JTMT in this event shall be entitled to demand any further details, or append conditions to such transaction by the Consultant with said bodies. The Consultant shall be

entitled to enter such a transaction only with the prior written approval of JTMT and subject to the directives of JTMT with regard to the terms and/or details of the transaction.

#### **14. Termination and Annulment**

- 14.1. JTMT may decide, at any time, and at its sole and exclusive discretion, to cancel the performance of the Services under this Agreement, or part thereof. Such cancellation shall take place by JTMT's representative giving the Consultant thirty (30) days advance written notice, and without need to provide any justification for its decision.
- 14.2. In the circumstances of a decision in accordance with Section 14.1 above, JTMT shall only pay the Consultant an amount out of the Remuneration as set forth in the Special Conditions of Contract relating to the work actually performed by the Consultant up to the date of the cancellation. In this event JTMT shall not be liable for any compensation, remuneration or other payment in connection with the cancellation of the Services or part thereof as relevant.
- 14.3. JTMT shall be entitled to demand the immediate cessation of the work of any person engaged by the Consultant in the implementation of this Agreement. Such demand may be for reasons of security, for professional reasons, or for any other reasonable cause.
- 14.4. Without derogating from the above, this Agreement shall be terminated immediately, and without JTMT having any obligation with respect to its contractual relations with the Consultant, in the event the Consultant becomes (or, where the Consultant consists of more than one entity, if any of its Members becomes) insolvent or bankrupt, or enters into any agreement with any of its creditors for relief of debt, or takes advantage of any law for the benefit of debtors, or goes into liquidation or receivership whether compulsory or voluntary (and, in the event of a registered corporation, including, without limitation, in the event of a freezing order being issued against it). It is clarified that JTMT shall pay the Consultant for the work performed by it up to the date of the termination of the Agreement because of the insolvency of the Consultant. It is further clarified that JTMT reserves to itself the right to set off against such payment for any damage incurred by JTMT as a result of the sudden termination of the work because of the financial circumstances of the Consultant. The Consultant undertakes to bring to the immediate attention of JTMT any change in its legal circumstances as set forth in this Section 14.4.

#### **15. Assistance of JTMT**

JTMT shall use its best efforts to assist the Consultant to obtain those approvals and/or permits which may be necessary to enable the Consultant's personnel to perform the Services provided, provided however that JTMT shall bear no liability whatsoever if the Consultant does not succeed in obtaining any such approval and/or permit, nor shall the above be construed as permitting the Consultant to avoid complying with and satisfying the requirements of any Laws and Regulations.

## **16. Breaches and Remedies**

- 16.1. In the event of a failure in the performance of the obligations of the Consultant under this Agreement, JTMT shall be entitled to require a remedy of such failure within seven (7) days of the occurrence of such breach. Where the Consultant fails so to remedy such failure, it will be considered a material breach, and JTMT will be entitled to terminate this Agreement and, in addition, to any remedies to which it may be entitled under all Laws and Regulations and under this Agreement. Without derogating from the foregoing, JTMT shall be entitled to take action to correct the breach, whether by itself or by another acting on its behalf and to hold the Consultant liable for the full amount of any costs and/or damages incurred as a result.
- 16.2. Where the Consultant has breached one or more of its obligations under this Agreement, it shall be liable to pay JTMT compensation for damages and losses caused to JTMT as a result of such breach. Without derogating from the generality of the foregoing, JTMT in this event shall be entitled to obtain any other legal remedy against the Consultant, including, without limitation, a court preventive injunction, a court order, an ex parte interim injunction without need to deposit any bond.
- 16.3. For the removal of doubt, the omission or non-response by JTMT to such breach or non-performance of the Consultant's obligations under this Agreement shall not be construed as a waiver of its rights by JTMT pursuant to such breach, and the Consultant shall be prevented from claiming such waiver unless it receives a notice of waiver in writing from JTMT regarding such specific event or breach or specific provision in the Agreement. No waiver shall have any validity unless made out in writing and signed by a JTMT representative.

## **17. Right of Set off and Miscellaneous**

- 17.1. JTMT shall be entitled to set off from any payment to the Consultant, any amount owed to JTMT, whether as payment, reimbursement, compensation or indemnification by the Consultant, whether in accordance with this Agreement or any other agreement and/or transaction between JTMT and the Consultant.
- 17.2. This Agreement exhausts all agreements between the Parties. There shall be no force or significance to any negotiations, declaration, representation, undertaking or agreement between the Parties made, if made, whether in writing or oral, whether explicit or implied, prior to the execution of this Agreement.
- 17.3. The behaviour of either of the Parties shall not be construed as a waiver of any of its rights, whether under this Agreement or any Laws or Regulations, and/or as a waiver or agreement on its part to accept the existence of any breach by the other or the non-performance of any of the terms of this Agreement, unless the waiver, agreement, postponement, modification, annulment or addendum are made explicitly and in writing.
- 17.4. No modification or change of any kind to this Agreement shall have any validity unless in a written document signed by the Parties to be attached to this Agreement. For the removal of all doubt it is hereby clarified that it shall not be possible to change any term of this Agreement by means of practice, behaviour

and so forth.

- 17.5. Without derogating from the generality of the foregoing and further to Section 5.7 above, it is hereby clarified, and the Consultant hereby agrees that, throughout the duration of the Agreement JTMT may at its complete and sole discretion and exclusive prerogative reduce the scope of the Services, in part or in full, and request the performance of only part of the Services at any time, and adjust the remuneration and payment accordingly.
- 17.6. The Consultant shall have no claim of any kind whatsoever against JTMT with respect to the exercise of its prerogative as set out in Section 17.5 above, including with respect to any damages, expenses or other relief.

## **18. Settlement of Disputes**

### **18.1. Amicable Settlement**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or the interpretation thereof.

### **18.2. Jurisdiction and Dispute Settlement**

The competent court in Jerusalem shall have exclusive jurisdiction over any matter, including disputes, arising out of and/or in connection with the execution of this Agreement.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have signed these General Conditions.

**FOR AND ON BEHALF OF JTMT:**

_____	_____
Mr. Zohar Zoler CEO, JTMT	Date

_____	_____
Mr. Eli Zitouk – Authorized Representative of the Association for Urban Planning, Development and Preservation – Jerusalem (R.A.)	Date

**FOR AND ON BEHALF OF THE CONSULTANT:**

_____	_____
Authorized Representative	Date

_____	_____
Company Stamp	Date

## **PART II: SPECIAL CONDITIONS of CONTRACT**

### **1. Entire Agreement**

- 1.1. These Special Conditions of Contract, hereinafter referred to as the "Special Conditions", define the provisions referred to in the corresponding Sections of the General Conditions of Contract, hereinafter referred to as the "General Conditions".
- 1.2. These Special Conditions supplement the General Conditions and together with the Appendices attached hereto form the entire Agreement and represent an integral part thereof.
- 1.3. All the provisions of the General Conditions shall apply except where specifically modified by the provisions of these Special Conditions.

### **2. Notices**

#### **2.1. Names of Authorised Representatives and Addresses for Delivery of Notices**

2.1.1. The names of the authorised representatives of the Parties, their addresses for delivery of Notices by registered mail and their facsimile numbers are as follows:

(i) JTMT:

Authorised Representative:

Mr Simcha Orenstein

Head of Engineering Unit, and/or anyone appointed by him for such purpose.

Address:

Jerusalem Transportation Masterplan Team,

Post Office Box Number 28034

First Floor, 97 Jaffa Street,

91280 Jerusalem

ISRAEL

Facsimile: +972 2-6221063

(ii) The Consultant:

Authorised Representative and point of contact:

Address:

Facsimile:

2.1.2. Any action required or permitted to be performed, and any document required or permitted to be executed under this Agreement by JTMT or the Consultant, may be performed or executed by the Parties aforesaid authorised

representatives.

### **3. Change of Address**

In case of change of address for receipt of Notices from that set out in the Preamble to this Agreement, the relevant party is required to notify the other party of such change in writing no less than one (1) month prior to the effective address change date, indicating the new address. The provisions of Section 4.1 of the General Conditions shall apply to the new address.

### **4. Location for performance of the Services**

4.1. With reference to Section 4.2 of the General Conditions, the addresses of the locations for performance of the majority of the Services are at JTMT's offices and the Consultant's offices (as detailed above) and any other location as may be required.

4.2. In addition to the aforesaid, the Services may be performed at additional locations as detailed in Appendix A attached hereto or as previously approved in writing by JTMT.

### **5. Document Management System**

5.1. Further to Section 5.12 of the General Conditions of Contract, the Consultant shall use JTMT's document management system, current the Mezzoteam software, as a document exchange and communication tool.

5.2. In keeping with the above, the Consultant shall ensure that:

5.2.1. all electronic submissions and/or any material of any kind furnished to JTMT are in a format compatible with the Mezzoteam software.

5.2.2. all documents uploaded to Mezzoteam are also stored externally and made available, at any time, to JTMT.

5.3. Without derogating from the above and for the sake of clarity, the Consultant shall also ensure that all deliverables (electronic and/or hard copy) accord with the contractual submission provisions detailed in the Agreement.

### **6. Effectiveness, Commencement and Completion of Agreement**

#### **6.1. Effectiveness of Agreement**

This Agreement shall come into force and effect upon the signing thereof by the Parties.

#### **6.2. Commencement of Services**

6.2.1. The Consultant shall commence performance of the Services immediately following the signing of this Agreement in accordance with the schedule for performance of the Services as more fully detailed in Section 9 below.

6.2.2. Without derogating from the generality of the above, the Consultant shall complete the mobilization of its personnel for performance of the Services by no later than twenty one (21) days from the signing of this Agreement.

### **6.3. Completion of Contract**

Unless terminated earlier pursuant to the provisions of this Agreement, this Agreement shall come to an end after JTMT confirms in writing that the Services rendered by the Consultant have met its approval and have been completed to its full satisfaction.

## **7. The Services**

7.1. The scope of work of the Services to be provided by the Consultant under this Agreement, including the required deliverables and the schedule for the performance thereof are set out in detail in the Request for Proposal and Terms of Reference, the clarifications thereto, all attached hereto as appendices to this Agreement (hereinafter: “the **Services**”).

7.2. Without derogating from the aforesaid, the Services to be provided by the Consultant under this Agreement and its Appendices, consist of, inter alia, the provision of the due diligence and consultancy services and the optional assignment (should JTMT decide at its sole and exclusive prerogative to implement such optional assignment, in full or in part or not at all) and all related and/or derived tasks and/or ancillary services as set out below.

## **8. Deliverables**

8.1. The Consultant shall submit to JTMT all the deliverables detailed in Appendix A attached hereto and its annexes in accordance with the time frame set forth therein for submission of such deliverables.

8.2. Further to the provisions of the General Conditions, the overall responsibility for the provision of the Services shall rest upon and be solely borne by the Consultant.

8.3. In the event of failure in the performance of the obligations of the Consultant under this Agreement, including with respect to all matters set out in the Invitation to Bidders (TOR) and its own proposal attached hereto respectively as Appendix A and Appendix C, the Consultant shall pay JTMT compensation for any loss or damage incurred as a result of such failure all without derogating from:

8.3.1. any other remedies and/or course of action to which JTMT may be entitled under all Laws and Regulations and under this Agreement; or

8.3.2. the Consultant’s obligation to take any action and/or measures to ensure the successful performance of the Services in their entirety at its sole expense without entitlement for compensation and/or reimbursement as a result thereof.

8.4. Subject to the provisions of Section 14 of the Special Conditions as detailed below, the Consultant shall not perform any Services not included under this Agreement without prior receipt of JTMT's explicit written instruction to this effect, signed by both JTMT's authorized representative for this Agreement and JTMT's CFO.

## 9. Schedule for performance of the Services

- 9.1. Unless otherwise specified in this Agreement the Services shall be provided according to the schedule (as may be updated from time to time) for rendering the Services as detailed in Appendix A attached hereto and the deployment schedule included as part of the Consultant's Technical Proposal attached hereto as Appendix C.
- 9.2. In accordance with the above, the dates for the completion of any stage of the Services may be altered, including as a result of the progress of the statutory process and the Consultant shall not be entitled to any additional remuneration in this regard. The Consultant's responsibility to provide full and continuing services to JTMT, in coordination with the Blue Line Consultant in all the relevant proceedings relating to the statutory process shall apply notwithstanding any change to the schedule.
- 9.3. Without derogating from the above, a general timetable for the completion the Services is set out below:

### *Timetable to be finalized prior to signature of Special Conditions of Contract*

- 9.4. For the removal of doubt, the aforesaid shall not derogate in any way from:
- 9.4.1. JTMT's sole prerogative to revise and/or update the schedule for performance of the Services for whatever reason, including instructing the Consultant to submit, at its sole expense, a revised and/or updated schedule for performance of the Services and/or optional assignments or derogate from the provisions of the GCC or any other right available to JTMT in accordance with the Agreement and all Laws and Regulations ; and
- 9.4.2. the Consultant's obligation to:
- (i) Perform the Services in accordance with the instructions received from JTMT's representative, including submitting a revised and/or updated schedule detailing the proposed revised work method and mitigation measures to be implemented by the Consultant, at its sole risk and expense, in order to minimise and avoid in each case, to the maximum extent possible, such delays and the consequences thereof and expedite and successfully complete the work on time.
  - (ii) Performing the Services, including implementing the revised work method following JTMT's approval thereof at its sole risk and expense, in accordance with such revised and/or updated schedule.
  - (iii) Update JTMT in writing immediately upon becoming aware of any actual and/or expected events and/or circumstances which may delay the performance of the Services and/or require a revising and/or update of the schedule. Such update shall include a detailed account of the delaying events and/or circumstances and the anticipated subsequent effects thereof (including increase of costs), together with the proposed updates to the work schedule and required methods of work and mitigation measures to be implemented by the Consultant, at its sole risk and expense, to ensure in order to minimise and avoid in each case, to the maximum extent possible, such delays and the

consequences thereof and expediting the successful completion of the Services by no later than the new proposed completion date.

9.5. It is clarified that in the event that delays occur in the performance of the Services and such delays are not directly attributed to and/or not caused by any act and/or omission of the Consultant and/or any of its sub-contractors, employees, personnel and/or affiliates, then and only then, the Consultant shall not be required to incur additional outlays beyond those included under its contractual obligations in connection with the aforesaid.

## **10. Liquidated Damages for Delay in Submitting Due Diligence Report**

10.1. In the event of delay in the submission by the Consultant of the final draft of the due diligence report following receipt of comments by JTMT (Section 6.5 of the TOR (Annex A)), the Consultant shall pay JTMT Liquidated Damages of one thousand Euros (€1,000) for each working day of delay, up to a maximum amount of fifty thousand Euros (€50,000).

10.2. For the removal of doubt, the Liquidated Damages referred to in Section 16.4 below, relating to the unauthorized replacement of personnel, shall apply to the period up to the submission of the updated report as set out in Section 6.8 of the TOR (Annex A).

## **11. Remuneration**

### **11.1. General**

11.1.1. The currencies of payment shall be the Euro (€) and the New Israeli Shekel (NIS).

11.1.2. JTMT may withhold from payment such portion of an invoice that is not satisfactorily supported or that JTMT disputes the Consultant's right to receive payment with respect thereto. Should any discrepancy be found to exist between payment already effected and costs authorized to be incurred by the Consultant, JTMT may add or subtract the difference from any subsequent payments.

11.1.3. In consideration for the provision of the Services and fulfilment of all its obligations under this Agreement, the Consultant shall receive payment in accordance with the various work packages and the rates specified in Appendix B attached hereto, and as further detailed below.

11.1.4. The pricing of any item, component or service contained in the Consultant's Financial Proposal attached hereto as Appendix D and as detailed below, shall be deemed to constitute full, total and complete consideration with respect to such component, item, or service, including with respect to the provision of all ancillary activities such as, without limitation, the supply, delivery and installation of the item, or component, or service, and the payments of all duties, taxes, and other levies with the exception of Israeli VAT.

### **11.2. Payment for Lump Sum Tasks**

11.2.1. Payment for the Services to be provided by the Consultant under this Section shall be designated as Lump Sum Tasks.

11.2.2. For the removal of doubt, payment for the Services shall be made only after JTMT issues a written approval confirming that the Services and/or any part thereof rendered by the Consultant including with respect to the quality of deliverables submitted in the form of reports and/or other materials were performed to its full satisfaction.

### **11.3. Payment for Due Diligence and Consultancy Services**

For the successful completion of the Basic Assignment to JTMT's full satisfaction, the Consultant shall be entitled to receive payment up to a total aggregate amount which shall not exceed €\_\_\_\_\_ (Euro) and NIS \_\_\_\_\_ (New Israeli Shekels) in accordance with the various work packages further detailed in Appendix B attached hereto.

### **11.4. The Optional Assignment**

11.4.1. In the event that JTMT requests the Consultant to perform the optional assignments, or any part thereof, then following the successful completion thereof to JTMT's full satisfaction, the Consultant shall be entitled to receive payment up to the total aggregate amounts as further detailed in Appendix B attached hereto.

*Section to be completed prior to execution of Special Conditions of Contract*

### **11.5. Travel and Accommodation**

The amounts specified above are all inclusive including with regard to travel, accommodation in Israel, and Per Diem, as such the Consultant shall be entitled to receive any additional and/or further amounts to the remuneration detailed above. The Consultant shall have no recourse or claim whatsoever against JTMT with respect to the aforesaid.

### **11.6. Total Fee for the Agreement**

11.6.1. The total fee for the Agreement including Travel and Accommodations shall not exceed \_\_\_\_\_ Euros (€ \_\_\_\_\_) and \_\_\_\_\_ New Israeli Shekels (NIS \_\_\_\_\_), all as set forth in Appendix B attached hereto.

11.6.2. The aforementioned amounts are exclusive of VAT. VAT shall be added, upon payment, by JTMT, in accordance with all Laws and Regulations.

## **12. Payment Milestones**

12.1. All payments shall be made in accordance with the de facto progress of the performance of the Services subject to the approval of JTMT and in accordance with the contractual provisions.

- 12.2. Without derogating from the above, the payment milestones divided according to the main (due diligence and consultancy) assignment and the optional assignments are detailed below:

*To be completed prior to execution of Special Conditions*

**13. Indexation**

- 13.1. Where the Services extend beyond the schedule for performance of the Services defined in Section 9 above, due to an event which is beyond the control of the Consultant and which prevents the Consultant from completing the Services, and for this reason alone, the instalments payable thereafter shall be adjusted in accordance with:

13.1.1. with regard to the local currency – the Israeli consumer price index (also known as the cost of living index) which includes fruit and vegetables and which is published by the Central Bureau of Statistics;

13.1.2. with regard to amounts stated in EUR – the European Central Bank's Harmonized Index of Consumer Prices (HICP), both the above indices shall be linked to the index known on the submission date of the Consultant's Financial Proposal attached hereto as Appendix D, dated \_\_\_\_\_.

**14. Adjustment of Payments**

- 14.1. In the event of any occurrence that suspends the performance of the Services for whatever reason, then payments for the Services shall be postponed until resumption of the Services and following JTMT's approval to this effect.

- 14.2. Without derogating from the above, should the progress of the work under this Agreement extend beyond the periods mentioned in the schedule for the performance of the Services, except for extensions due to delays in the performance of the Services caused by any act and/or omission of the Consultant and/or anyone acting on its behalf, then the instalments payable thereafter shall be adjusted in accordance with the price escalation provisions of the Agreement. In this event the Consultant shall not be entitled to any additional and/or further payment beyond that stated therein.

**15. Modification of the Scope of Services**

- 15.1. Further to Sections 17.5 and 17.6 of the General Conditions of Contract, modification of the scope of the Services provided by the Consultant under this Agreement and/or the performance of Services not included under this Agreement, may only be made following the receipt of JTMT's prior written approval thereof.

- 15.2. Without derogating from the aforesaid, the Consultant shall be required to carry out all instructions issued by JTMT. The Consultant shall not be entitled to any additional remuneration for complying with such instructions except in the circumstances set forth below.

- 15.3. The Consultant hereby undertakes to notify JTMT in writing immediately upon receipt of an instruction, written or orally, which it believes is not covered and/or is

not part of the scope of the Services included under this Agreement and which should therefore entitle it to further compensation.

15.4. Such written notification shall specify in detail:

15.4.1. the content of such instruction and the reasons why, in its view, such instruction is not covered and/or is not part of the Consultant's scope of Services set forth in the Agreement;

15.4.2. Its best and most up to date estimation of all the implications (bill of quantities, cost, time implications, man hours, other) arising from the implementation of such instruction. Such estimation shall be based on the rates detailed below, and in the absence of any such rate, the estimation shall be priced proportionately in accordance with similar services required under the Agreement.

15.5. The Consultant's above written notification shall be sent immediately upon receipt of the instruction from JTMT and in any event no later than within 10 days of receipt of the instruction and in any event prior to performing such instruction whichever is the earlier.

15.6. Where JTMT agrees that the performance of the instruction is not part of the scope of the Services included under this Agreement, the Parties shall negotiate in good faith the remuneration for the carrying out of such instruction in accordance with the provisions of Section 14.8 below. Where, notwithstanding the Consultant's written notification, JTMT considers that the carrying out of the instruction forms part of the scope of work under this Agreement, the Consultant shall be obliged to carry out the instruction and shall pursue its claim for additional compensation in accordance with the dispute resolution provisions of the Agreement.

15.7. Failure of the Consultant to provide JTMT with such detailed written notification in the above timeframe shall result in such instruction being considered to be part of the Consultant's obligations and scope of services under this Agreement which it is required to perform without entitlement to any additional payment and which has no implications with respect to cost or time.

## **16. Appointment and Removal of the Consultant's Personnel**

16.1. The Consultant shall employ, or otherwise provide, such qualified and experienced Personnel as required to perform the Services in accordance with the minimum professional qualification prerequisites and mandatory requirements set forth in the Request for Proposals attached hereto as Appendix A and as detailed in its proposal attached hereto as Appendix C.

16.2. Except as JTMT may otherwise agree in writing, no changes shall be made in the Consultant's personnel with particular attention to the key personnel scored in accordance with the evaluation criteria annex detailed in Annex C to the RFP attached hereto as Appendix A.

- 16.3. The Consultant hereby declares that all Personnel and/or sub-consultants acting on its behalf in performing the Services are qualified and experienced and possess the required professional skills and know how to perform the Services.
- 16.4. Replacement of the personnel detailed in Section 15.2 above without prior notification and receipt of JTMT's written approval for such replacement, shall be considered a material breach of this Agreement entitling JTMT to €10,000 (ten thousand Euro) in Liquidated Damages in addition to terminating the Agreement subject to the provisions of the General Conditions, and in addition to any remedies to which JTMT may be entitled under all Laws and Regulations.
- 16.5. Without derogating from the above, if JTMT shall have reasonable cause to be dissatisfied with the performance of the Consultant's Personnel for any reason, then the Consultant, at JTMT's written request, shall provide as a replacement a person with equivalent or better qualifications within 45 days of such written request, subject to JTMT's approval. JTMT shall not bear any additional expense arising from the removal and/or replacement of personnel. The consequences to the performance of the Services, including delays or other damages (monetary or other), related to such replacement of personnel shall be solely borne by the Consultant without derogating from any remedies to which JTMT may be entitled under all Laws and Regulations.
- 16.6. It is clarified that JTMT's refusal to approve any or all of the Consultant's proposed candidates for the replacement of personnel shall not be deemed unreasonable.
- 16.7. In addition to the above, and except as JTMT may otherwise agree:
  - 16.7.1. The Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and
  - 16.7.2. The remuneration to be paid for any of the personnel provided as a replacement shall not exceed the remuneration which would have been payable for the personnel replaced.

## **17. Liability and Indemnification**

- 17.1. Further to Section 8 of the General Conditions of Contract, the Consultant shall adhere to the provisions of the Agreement and its declarations regarding its liability, indemnification and insurance obligations which shall solely apply to the provisions of the Services under the Agreement.
- 17.2. The Consultant shall be solely liable for payment for the indemnification of any damages, losses, expenses or compensation or any other payment of any kind whatsoever owed by the Consultant, in accordance with all Laws and Regulations up to and including the total amount of the remuneration for the Consultant under the Project, to JTMT and/or any body connected with the procurement of the Project and/or the employees of such body and/or other any third party. In addition, the Consultant shall, compensate and indemnify JTMT for all damages and/or expenses and/or payments and/or losses of any kind up to and including the above amount resulting from any claim or lawsuit submitted against it by any third party in connection with the performance of the Services and/or the results of such performance. JTMT shall duly inform the Consultant of the filing of any such

claim or lawsuit and will enable it to participate in any dispute settlement negotiations and/or to undertake the defense of the lawsuit at its expense.

- 17.3. Without derogating from the aforesaid, the Consultant, at its own expense, shall indemnify, protect and defend JTMT, its agents and employees, from and against all actions, claims, losses or damages arising out of the Consultant's performance of the Services and any other and/or additional services related thereto required for the performance of the Services and implementation of this Agreement. With respect to the above, it is hereby clarified that subject to the cross liability clause included in the Consultant's insurance policies, the Consultant's insurance policies shall be extended to indemnify JTMT, the State of Israel, the Ministry of Transport and the JPTA for any liability and/or claim that may devolve upon said bodies due to an act or omission of the Consultant arising from the performance of the Services as further detailed in Section 17 below.
- 17.4. The liability of the Consultant in accordance with the provisions of Sections 16.2 and 16.3 above shall be limited during the course of this Agreement to the amount of five million Euros (€5,000,000). Notwithstanding the foregoing, it is explicitly provided that Liquidated Damages or penalties incurred during the course of this Agreement shall not be counted towards the above sum.
- 17.5. It is hereby clarified that consequential and/or indirect damages are excluded from the Consultant's liability under this Agreement.
- 17.6. Notwithstanding any of the foregoing, the liability of the Consultant for damage arising from impairment of life, physical injury and impairment of health and/or damages arising from the Consultant's willful negligence or intentional wrongdoing and / or Fiduciary duty and / or breach of the duty of confidentiality and / or copyright and / or intellectual property and/or damage to any third party shall not be affected by the limitation of liability provisions detailed above. Moreover, for the removal of any doubt, nothing in the foregoing shall be construed as derogating from the Consultant's insurance obligations under the Agreement and/or in accordance with all Laws and Regulations.

## **18. Insurance**

### **18.1. Insurance to be taken out by the Consultant**

Further to the provisions of Section 8.6 of the General Conditions of Contract, the Consultant shall (i) take out and maintain, and cause any sub-consultant to take out and maintain, at its own cost (or that of the sub-consultant's, as the case may be) but on terms and conditions approved by JTMT, insurance against the risks, and for the coverages, as set out herein-below; and (ii) at JTMT's request, provide JTMT with documentation showing that such insurance has been taken out and maintained and that the current premiums therefor have been paid. JTMT shall not require an insurance policy unreasonably exceeding the coverage used in projects similar to the Project.

### **18.2. Insurance Coverage**

The insurance coverage shall be as follows:

18.2.1. **Professional liability insurance**, as is customary in assignments similar to the Consultant's assignment under this Agreement, with limits of liability of not less than five million Euros (€5,000,000) for any one event and in the annual aggregate.

The insurance shall also cover liability with respect to damages and/or losses arising from the following:

(i) Employees Dishonesty - intended to insure against damages and/or losses due to false or fraudulent activities or omissions of an employee or group of employees of the Consultant and/or sub-consultant's and/or anyone acting on their behalf.

(ii) Unintended violation of authority/Misuse of power - intended to insure against misuse (unintentional or in good faith and by action or omission) of the powers provided to the Consultant (including the sub-consultant's and/or anyone acting on their behalf) under the Agreement and/or pursuant to all Laws and Regulations.

(iii) Loss of documentation and/or magnetic media.

The insurance shall include:

a) an extended 'reporting and disclosure period' of 36 months; and

b) A retroactive date - as from the date of signing this Agreement.

18.2.2. **Employer's liability and workers' compensation insurance** in respect of the Personnel of the Consultant, in accordance with the relevant provisions of the Laws and Regulations, as well as, with respect to such Personnel, any life, health, accident, travel or other insurance as may be appropriate and in any event with limits of liability of not less than five million Euros (€5,000,000) for any one event and in the annual aggregate; and

18.2.3. **Third Party Liability insurance** with limits of liability of not less than one million Euros (€1,000,000) for any one event and in the annual aggregate.

### 18.3. **Period of Insurance**

The period of insurance of the above policies shall be twelve (12) months, shall be valid at the signing date of the Agreement and shall be renewed annually as long as this Agreement is force and up to 3 years after the completion of the services. The Consultant will present certificates of insurance in respect of the insurance policies that it is required to maintain under this Section 17 within ten (10) days of the execution of this Agreement and/or since the beginning of services (upon the earlier).

### 18.4. **Insured Parties and Insurance Provisions**

18.4.1. The insured parties to all the aforementioned policies shall be as follows:

(i) The Consultant, the Consultant's Personnel and/or employees, and the Consultant's sub-contractors;

(ii) JTMT, the State of Israel, the Ministry of Transport shall be named as the

insured parties without losing its status as third parties, and for claims arising from the works performed by \_\_\_\_\_ (the Consultant)

18.4.2. The afore-mentioned Insurance Policies shall also include provisions as follows:

- (i) A cross liability section.
- (ii) A waiver of subrogation in favor of the insured parties, subsidiaries and or shareholders of the above mentioned entities, directors and officers and other employees of the above mention entities.
- (iii) The insurance policies are “primary insurance” to the policies held by JTMT.

18.4.3. Insurance policies may not be terminated and/or their terms adversely modified, whether by the Consultants and/or by the insurance company, except, in both cases, with the prior written approval of JTMT and following a written request by the Consultant to JTMT, by registered mail, no later than 60 days prior to the requested termination and/or modification date.

IN WITNESS WHEREOF, the Parties hereto have signed these Special Conditions.

**FOR AND ON BEHALF OF JTMT:**

\_\_\_\_\_  
Mr. Zohar Zoler  
CEO, JTMT

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mr. Eli Zitouk – Authorized Representative  
of the Association for Urban Planning,  
Development and Preservation – Jerusalem (R.A.)

\_\_\_\_\_  
Date

**FOR AND ON BEHALF OF THE CONSULTANT**

By:

\_\_\_\_\_  
Authorized Representative

DATE:\_\_\_\_\_

COMPANY STAMP: \_\_\_\_\_

DATE: \_\_\_\_\_