

# **Tender No. 36/17**

**For the Design, Acquisition, Installation,  
Integration and Support of an  
Automated Vehicle Occupancy Detection  
System**

**AGREEMENT**

**Volume B**

\_\_\_\_\_ 2018

1.	<b>Preamble &amp; Definitions</b> .....	3
2.	<b>The Main Principals and Responsibilities</b> .....	9
3.	<b>Plans</b> .....	10
4.	<b>Installation</b> .....	10
5.	<b>Acceptance</b> .....	15
6.	<b>Compliance Warranties</b> .....	15
7.	<b>Contractor’s Representations and Warranties</b> .....	18
8.	<b>Staff</b> .....	21
9.	<b>Contractor's Representatives</b> .....	22
10.	<b>Subcontractors</b> .....	23
11.	<b>Documentation</b> .....	24
12.	<b>Training Services</b> .....	24
13.	<b>Compliance</b> .....	25
14.	<b>AVOD System License, and IP</b> .....	25
15.	<b>Pricing and Terms of Payment</b> .....	26
16.	<b>Guarantees</b> .....	27
17.	<b>Confidential Information</b> .....	28
18.	<b>Indemnification</b> .....	28
19.	<b>Limitations of Liability</b> .....	29
20.	<b>Insurance</b> .....	29
21.	<b>Remedies and Reliefs</b> .....	32
22.	<b>Liquidated Damages</b> .....	32
23.	<b>Term and Termination</b> .....	33
24.	<b>Change Request</b> .....	35
25.	<b>Import Permits and Duties</b> .....	35
26.	<b>Force Majeure</b> .....	36
27.	<b>General</b> .....	36
28.	<b>Counterparts</b> .....	39

## **AUTOMATED VEHICLE OCCUPANCY DETECTION SYSTEM AGREEMENT**

This Automated Vehicle Occupancy Detection System Agreement (together with all Exhibits attached thereto, the "**Agreement**"), made and entered into as of the \_\_\_\_ day of \_\_\_\_, 2018 ("**Effective Date**"), by and between Ayalon Highways Company Ltd., a company organized under the laws of the State of Israel with principal offices at Al Parashat Drachim Str. PO Box 32294, Tel Aviv, Israel ("**Company**"), and \_\_\_\_\_, a [company] organized and existing under the laws of \_\_\_\_\_ with principal offices at \_\_\_\_\_ ("**Contractor**").

**WHEREAS** Contractor has been awarded tender no. 36/17 published by Company on [ ] attached hereto as **Exhibit A** ("**Tender**") for the procurement, supply, design, installation, operation, integration, warranty, support, training and other services and works in respect of the AVOD System (as defined below), all as further detailed in the Tender and in this Agreement, as a turnkey project with full liability and end to end responsibility ("**Project**"); and

**WHEREAS** The portion of the Project in respect of the optional stage detailed in Section 1.3.2 of the Tender (the "**Optional Stage**") and all other requirements set forth in the SOW and in the Tender in respect thereof including, without limitation, the provision of additional AVOD System Units (the "**Additional Units**"), are deemed as an irrevocable, assignable, option granted to Company, that may at any time according to this Agreement be exercisable by Company, in whole, in part or if at all, at its sole discretion, by providing Contractor with a written notice; and

**WHEREAS** Contractor has thoroughly investigated all aspects of the Project, and the terms and conditions herein reflect the Contractor's provision for all costs and expenses related to the Project, whether direct, indirect, foreseen or unforeseen; and

**WHEREAS** Contractor represents that it has all the requisite experience, expertise, know-how, resources, staff, materials, qualifications, authorizations, permits and licenses and ability (including without limitation financial ability) to carry out the Project and obligations herein and grant the rights and licenses herein, at the highest professional level and in accordance with this Agreement; and

**WHEREAS** Based on the Bid and the aforementioned Contractor representations and those contained herein, the Company has decided that it wishes to retain Contractor as an independent contractor to carry out the Project in accordance with the terms of this Agreement;

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

### **1. Preamble & Definitions**

1.1. The appendices, schedules and exhibits to this Agreement shall form an integral part hereto.

1.2. The following Exhibits to this Agreement shall form an integral part thereof:

1.2.1. **Exhibit A: Tender.**

1.2.2. **Exhibit B: AVOD System Specifications (including list of Third Party Off-the-Shelf Software and Licenses).**

- 1.2.3. **Exhibit C: SOW.**
- 1.2.4. **Exhibit D: Warranty Plan (including Preventive Maintenance Plan and Corrective Maintenance Plan, Periodic Test Procedures, ATP and SLA).**
- 1.2.5. **Exhibit E: Consideration.**
- 1.2.6. **Exhibit F: Performance Guarantee.**
- 1.2.7. **Exhibit G: Insurance Certificate.**
- 1.2.8. **Exhibit H: NDA.**
- 1.3. The Company shall not be committed or obligated by the terms and conditions set forth in the Bid, nor shall such terms and conditions bind the Company in any manner, even if Company was made aware of the existence thereof.
- 1.4. In the event of a contradiction between the provisions of this Agreement, the provisions of the Exhibits hereto or any Standards, the more severe/stringent requirements shall prevail; or if not applicable then the provisions of the Agreement and/or mandatory Standards shall prevail. Notwithstanding the foregoing, the determination of which requirements shall prevail shall be decided by Company in its sole discretion. The Agreement and Exhibits shall supersede any terms in the Bid and any different or additional terms therein.
- 1.5. The headings and titles in this Agreement shall not affect the meaning thereof nor be taken into consideration in the interpretation or construction of the Agreement. Any requirement herein to comply with applicable laws shall include, without limitation, compliance with Israeli Law as defined herein.
- 1.6. Words importing persons or parties shall include firms, corporations and any organization or entity having legal capacity. Where the context requires, words importing the singular also include the plural and vice versa and words importing the masculine also include the feminine and neuter and vice versa.
- 1.7. Any and all Contractor obligations, representations, warranties and terms and conditions required of Contractor under this Agreement shall apply to all entities comprising Contractor jointly and severally and to any entity acting on its behalf, including, for the avoidance of doubt to the Major Subcontractor (as defined in the Tender).
- 1.8. The use in this Agreement of the term “including” means “including, without limitation.” The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole, including the schedules and exhibits, as the same may from time to time be amended, modified, supplemented or restated, and not to any particular section, subsection, paragraph, subparagraph or clause contained in this Agreement
- 1.9. For the purpose of this Agreement, the following capitalized terms shall have the following definitions ascribed to them:
  - 1.9.1. **Acceptance** - shall occur only upon successful completion of the ATP and upon Company issuing an Acceptance Test Certificate signed by Company explicitly stating that the applicable Sub-Project complies with this Agreement, including without limitation the Specifications, the Plans and the SOW.
  - 1.9.2. **Additional Staff** - shall have the meaning ascribed to it in Section 9.1 below.
  - 1.9.3. **Additional Unit(s)** – shall have the meaning ascribed to in the Preamble above.

- 1.9.4. **Agreement** - shall have the meaning ascribed to in the Preamble above.
- 1.9.5. **ATP** - hardware & software test procedures and test plans, which shall be carried out according to the terms and conditions of this Agreement pursuant to Company's general ATP requirements and the criteria and/or Company's requirements, respectively, with respect to the Project.
- 1.9.6. **AVOD System** - An advanced technological system that performs automated detection of vehicle occupants and fulfill all the functional requirements as detailed in the Tender, including, all of the AVOD System Units and the M&C System.
- 1.9.7. **AVOD System Unit** - a part of the AVOD System that is responsible for the detection of the vehicle occupants at a specific Site.
- 1.9.8. **Bankruptcy Event** - the occurrence of any of the following events to each or all other entities comprising the Contractor and/or to the Major Subcontractor (if applicable): (i) a receiver is appointed for Contractor and/or of the Major Subcontractor or its property; (ii) Contractor and/or the Major Subcontractor makes a general assignment for the benefit of its creditors; (iii) Contractor and/or the Major Subcontractor commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within forty five (45) days; or (iv) Contractor and/or the Major Subcontractor is liquidated or dissolved.
- 1.9.9. **Basic Stage Payment** - shall have the meaning ascribed to it under Section 15.1.
- 1.9.10. **Bid** - the final form of the Contractor's response to the Tender, as approved by the Company and including all schedules, exhibits and documents attached thereto, as attached to the SOW.
- 1.9.11. **Business Day** - Sunday to Thursday, with the exception of official bank holidays in Israel.
- 1.9.12. **Change Request** - shall have the meaning ascribed to it in Section 24.1.1 below.
- 1.9.13. **Company** - shall have the meaning ascribed to it in the Preamble above.
- 1.9.14. **Company Project Manager** - shall have the meaning ascribed to it in Section 9.4 below.
- 1.9.15. **Contractor** - shall have the meaning ascribed to in the Preamble above.
- 1.9.16. **Defect** - any damage, error, defect, rejects, discrepancies, non-conformance (including, without limitations, with the requirements and/or thresholds set forth in the SOW, the Plans, the Tender and/or the Specifications), bug and/or failure of or caused in connection with any Site/ Project component/item, including without limitation the AVOD System, whether hardware or software, and any viruses, worms or disrupting, disabling, harming, or otherwise impeding code. The determination of whether and to what extent a Defect has occurred will be made by Company in its sole and exclusive discretion. For avoidance of doubt any non compliance and implications set forth in Sections 7.13 and 4.8 shall also be deemed a Defect to be remedied by Contractor at Contractor's sole expense.
- 1.9.17. **Documentation** - all the softcopy and hardcopy of documentation and any other documents provided from time to time by Contractor according to

Company's criteria and requirements which relate to the Plan, Project, AVOD System, and/or the Installation.

- 1.9.18. **Effective Date** - shall have the meaning ascribed to it in the Preamble above.
- 1.9.19. **Encumbrance** - shall have the meaning ascribed to it in Section 7.12 below. 7.19
- 1.9.20. **Force Majeure Event** - shall have the meaning ascribed to it in Section 26 below.
- 1.9.21. **Government Agency** - shall mean any local, regional, state, foreign or other government and/or municipal agency, instrumentality, commission, authority, board or body, including without limitation NTA-Metropolitan Mass Transit System Ltd.
- 1.9.22. **Indemnified Parties** - shall have the meaning ascribed to it in Section 18 below.
- 1.9.23. **Israeli Law/law** - all statutes, laws, by-laws, regulations, binding court precedents, directives, orders, decrees, injunctions, consents, codes, guidelines and standards, draft bills (including without limitation Israeli standards and revised sheets (known in Hebrew as "*Gilyonot Tikun*"), environmental and other regulations, building and planning law and safety regulations, all the foregoing as enacted by the State of Israel or by any relevant municipality, institute, organization or authority which applies and/or is related to this Agreement and/or the Project and as may be amended or enacted, from time to time, by the State of Israel or by the relevant Israel municipality, institute, organization or authority (including without limitation Standards). This Agreement is not subject to the Sale Law, 5728-1968.
- 1.9.24. **Installation** - means all construction, engineering, procurement, manufacturing, transport, erection, commissioning, testing, labor, supervision, training, services, works, facilities, equipment, supplies, tools, materials, spares and consumables to be furnished by the Contractor and its Subcontractors which may be required to design, support, construct, build, test, and/or complete the Project, all as further detailed in the Plans and in the SOW, including any work which is necessary to satisfy the Company's requirements and/or is implied by the Agreement and/or arises from any obligation of the Contractor hereunder, including work to remedy Defects and including any works conducted under the Optional Stage the Optional Stage.
- 1.9.25. **Insurance** - insurance complying with all terms set forth in Section 20.
- 1.9.26. **Insurance Certificate** - shall have the meaning ascribed to it in Section 20 below and Exhibits G.
- 1.9.27. **Intellectual Property Rights** - means all worldwide (i) patents, patent applications and patent rights; (ii) rights associated with works of authorship, including copyrights, copyrights applications, copyrights restrictions, mask work rights, mask work applications and mask work registrations; (iii) rights relating to the protection of trade secrets and confidential information; (iv) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; (v) trade names, together with the goodwill attached thereto, trademarks, logos, service marks, merchandise marks and brands, domain names, whether registered or not, together with all translations, adaptations, derivations

and combinations thereof and all applications, registrations and renewals in connection therewith; (vi) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vii) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing) and (viii) all divisions, continuations, renewals, reissues and extensions of the foregoing (as applicable) now existing or hereafter filed, issued, or acquired.

- 1.9.28. **M&C System** – means Management & Control system as detailed under Section 6 of the SOW.
- 1.9.29. **Major Subcontractor** –shall have the meaning ascribed to it in the Tender.
- 1.9.30. **NDA** - the Non-Disclosure Agreement, **Exhibit H** hereto.
- 1.9.31. **Open Source** - any software that is licensed under terms which require, as a condition of use, modification and/or distribution of such software and/or any other software incorporated into, derived from or distributed with such software ("**Derivative Software**"), either of the following: (i) that the source code of such software and/ or any Derivative Software be made available to third parties; and/or (ii) that permission for creating derivative works of such software and/or any Derivative Software be granted to third parties or any software under the definition of Open Source Initiative. By means of example and without limitation, Open License Terms include the following licenses or distribution models: the GNU General Public License (GPL), the GNU Lesser or Library GPL (LGPL).
- 1.9.32. **Optional Stage** - shall have the meaning ascribed to in the Preamble above.
- 1.9.33. **Parties** - Company and Contractor, each - a **Party**.
- 1.9.34. **Performance Guarantee** - shall have the meaning ascribed to it in Section 16.1 below.
- 1.9.35. **Periodic Test Procedure** – the periodic test procedures detailed to be conducted by the Contractor in order to test the conformity of the AVOD System with the Specification, the Plans, the Tender and/or the requirements of the SOW.
- 1.9.36. **Plans** - shall have the meaning ascribed to it in Section 3.2 below.
- 1.9.37. **POC Results**- the results of the Proof of Concept tests conducted under the Tender, including all schedules, exhibits, documents attached thereto and the Company's comments and additions, as attached to the SOW.
- 1.9.38. **Proceedings** – shall have the meaning ascribed to it in Section 7.16 below.
- 1.9.39. **Project** - shall have the meaning ascribed to it in the preamble of this Agreement. For the sake of clarity the term Project as used throughout this Agreement includes the Optional Stage to the extent exercised, any Upgrades, Upgrades and/or Change Requests, as the case may be.
- 1.9.40. **Project Manager**- shall have the meaning ascribed to it in Section 9.1 below.

- 1.9.41. **Schedule** – With respect to each Sub-Project timeline pertaining to all works and procedures underlying such Sub-Project.
- 1.9.42. **Site** - Any site where AVOD System Unit is to be installed and/or any other Project component is located.
- 1.9.43. **SLA** - the Service Level Agreement requirements.
- 1.9.44. **SOW** - the statement of work for the Project, attached hereto as **Exhibit C**, including the Bid and the POC Results attached thereto.
- 1.9.45. **Specifications** - the specifications, design and functionality of the AVOD System, as set forth in **Exhibit B**.
- 1.9.46. **Staff** – all, staff personnel, employees, and/or representatives of Contractor and Subcontractor, as the case may be, involved in connection with the Project, Installation and/or Contractor's obligations in this Agreement, including without limitation the Additional Staff set forth in Section 9.1 below.
- 1.9.47. **Standard(s)** - means any rule, principle and/or guideline adopted under any Law or by any Government Agency, including, without any limitation, by the Standards Institution of Israel (SII).
- 1.9.48. **Sub-Project** – means the, supply, design, installation, operation, integration, warranty, support, and other services and works in respect of a specific AVOD System Unit in a specific Site, and with respect to the first Sub-Project, the installation of the M&C System as well.
- 1.9.49. **Subcontractor(s)** - means any person to whom the Contractor has subcontracted performance of a part of the Installation in accordance with Section 10 below, including but not limited to suppliers, vendors and subcontractors (including their subcontractors), and the subcontractor's legal successors in title, but not any assignee of the Subcontractor, except as otherwise agreed in writing between the Parties.
- 1.9.50. **Subcontract Terms** - shall have the meaning ascribed to it in Section 7.4 below.
- 1.9.51. **Supervisor** - shall have the meaning ascribed to it in Section 9.4 below.
- 1.9.52. **Tender** - shall have the meaning ascribed to in the Preamble above, and including any and all documents, schedules, and documents attached thereto.
- 1.9.53. **Termination** - shall have the meaning ascribed to it in Section 23.2 below.
- 1.9.54. **Termination for Convenience** - shall have the meaning ascribed to it in Section 23.3 below.
- 1.9.55. **Updates** - a new version/update of the AVOD System software, that contains error fixes, maintenance, work product that corrects programming and/or design errors (usually designated by a progressing of the release number right of the decimal point following the version initially licensed).
- 1.9.56. **Upgrades** - superseding and new releases of the then current release of the AVOD System software that add to, improve, correct or enhance existing features and capabilities of the then current release such software, including any major enhancements (which may be designated by a progressing of the release number left of the decimal point following the version initially licensed).

1.9.57. **Warranty Period(s)** - shall have the meaning ascribed to it in Section 6.2 below.

1.9.58. **Warranty Plan**- the Warranty Plan attached **Exhibit D**.

## **2. The Main Principals and Responsibilities**

2.1. **The Project**. Based on Contractor's representations and warranties, Company hereby appoints Contractor to execute the Project (which may include, at Company's sole discretion, the Optional Stage). Contractor hereby agrees to timely execute the Project and to carry out all obligations in connection therewith in accordance with the terms and conditions of this Agreement. The Project is divided into two stages as follows:

### **2.2. Basic Stage.**

2.2.1. At the Basic Stage the Contractor shall:

2.2.1.1. Provide the Company 20 AVOD System Units.

2.2.1.2. Design, supply, install and maintain the M&C System.

2.2.2. The aforesaid shall include without limitation all integration, engineering, design, construction, operation, installation, and provision of support, training, maintenance and other services and works to the entire AVOD System, all according to this Agreement, the Plans and the SOW in full compliance with the Specifications, according to the timetable contained therein and in the Schedule.

### **2.3. Optional Stage.**

The Company will have the option to purchase each of the following optional components. The purchase of each component included in the Optional Stage, in whole or in part, shall be at the Company's sole discretion and option, exercisable by Company at any time, during the period of ten years (the "**Option Period**") from and after the Effective Date hereof, upon Company providing Contractor with a written notice, under the terms of this Agreement, pertaining. Company may decide to exercise the Optional Stage in any manner, as further detailed in the Tender. Any description of the Optional Stage included herein shall not be deemed as a binding commitment by the Company to exercise the Optional Stage, in whole or in part, if any, or to purchase any Additional Units. To the extent that Company provides Contractor with a written notice pertaining to the purchase of Additional Units and/or to any other service or product, Contractor hereby irrevocably agrees and undertakes that it shall timely execute the Optional Stage, and shall have no discretion in connection therewith.

#### **Optional Stage Components**

The Optional Stage components include:

2.3.1. Design, supply, install and maintain of Additional Units, including without limitation all integration, engineering, design, construction, operation, installation, and provision of support, training, maintenance and other services and works to such Additional Units, all according to this Agreement, the Plans and the SOW in full compliance with the Specifications, according to the timetable contained therein and in the Schedule.

2.3.2. Extension of Warranty Period as set forth under Section 6.9 below.

- 2.3.3. Provision of Break & Fix Maintenance services, as set forth under Section 6.10 below.
- 2.3.4. The Contractor will provide the Company with professional services through highly qualified personnel detailed under Exhibit E for the various purposes, as may be required by the Company, including, but without limitation, for the purpose of developing interfaces to additional peripheral systems that interface with the M&C System (such as billing, enforcement etc.). The payment for the aforesaid professional services will be made in accordance with the fees set forth under Exhibit E.

### **3. Plans**

- 3.1. At any time during the Option Period, the Company may provide the Contractor with a written notice instructing the Contractor to initiate a Sub-Project and install one or more AVOD Systems unit in one or more Sites.
- 3.2. Upon the receipt of such written notice, and in accordance with the provisions of the SOW, the Contractor shall provide Company for its approval with the detailed plans for the performance of the Installation as set forth under the SOW, including, but without limitation, planning, design and Schedule for the applicable Sub-Project (collectively, and following the approval of the Company, the "**Plans**"), in compliance with the terms and conditions of this Agreement, and in accordance with the time frames as set forth under the SOW. It is understood that the Plans for the first Sub-Project will include planning, design and Schedule for the installation of the M&C System.
- 3.3. If revisions to the Plans, as required under the SOW are not made by the Contractors within a reasonable time, at Company's sole discretion, Company may terminate this Agreement without derogating from any rights and remedies available to Company by contract and/or law.
- 3.4. Neither the approval nor the disapproval of documents, including without limitation the Plans, nor any objections, representations, comments or suggestions, nor any failure to make the same in relation to thereto shall relieve the Contractor in whole or in part of any duty, obligation, responsibility or liability undertaken by the Contractor in relation to the Project, or diminish or vary any such duty, obligation, responsibility or liability.
- 3.5. Neither (i) any approval of the Plans, nor (ii) the implementation pursuant to Sections 3.1 - 3.3 above of any modification as a condition to such approval, shall constitute a Change Request and no additional payment of any kind or delay in the Schedule shall be granted in respect of such approval or modification.
- 3.6. Contractor shall be solely responsible for the accuracy (including without limitation location and design of signage and control bridges) and for performance of the Plans and any expenses incurred in connection therewith, shall be solely borne by Contractor.

### **4. Installation**

- 4.1. The Contractor hereby undertakes to:
  - 4.1.1. Perform the Installation in accordance with the SOW and the Plans and the Supervisor's instructions, including installation of the AVOD System Units and M&C System, in their entirety in accordance with the Specifications, in the exact timeframes detailed in the Schedule.
  - 4.1.2. Use only excellent materials, appropriate for the fulfillment of all the conditions as set out in the SOW and the Plans.

- 4.1.3. Obtain all the necessary licenses and/or permits required under any law for the performance of the Installation (other than those specifically set forth under the SOW), in whole or in part, including any coordination of the Installation which may be necessary, at its own expense and without being entitled to further consideration to that detailed in this Agreement.
- 4.1.4. Make sure that upon completion of the Installation the Project will fully, accurately and entirely fill the requirements as they are detailed in the Specifications, the Plans and SOW and will be to the satisfaction of the Company.
- 4.2. It is clarified that any supervision which may be conducted by the Company during execution of the Installation is merely as a precaution, and shall not release the Contractor and/or anyone on its behalf from any obligation it may have towards the Company under this Agreement, and the Contractor shall be solely responsible for any actions or omissions in connection with the Installation.
- 4.3. Notwithstanding any dispute that may arise between the Parties, Contractor shall in any event not be entitled to suspend the Installation and/or any of its obligations in this Agreement.
- 4.4. In view of the importance and complexity of the Project, the Contractor agrees that all other works and services which, for any reason whatsoever, have not been specifically described in the Agreement, but are, according to the generally accepted international standards, necessary to complete the Project, or any of its parts, are deemed to be included in the Installation and will be provided by the Contractor as if they would have specifically been contemplated in this Agreement.
- 4.5. Protection of Existing Infrastructure, Drainage and the Road Surface
  - 4.5.1. The Contractor undertakes to avoid causing damage to any infrastructure and/or to any component which is an integral part of the Project, and to take any and all measures necessary for prevention of any such damage, including placing warning signs and any other necessary precaution measures.
  - 4.5.2. The Contractor undertakes to prevent any damage to the road surface on the Site or its vicinity, and the Contractor undertakes that any and all equipment, tooling equipment used is in good order and will not damage and/or cause harm to the road surface.
  - 4.5.3. Without derogating from Contractor's liability, the Contractor undertakes to immediately inform the Company of any such damage, and immediately repair the damage at its own expense upon occurrence thereof.
- 4.6. Prevention of Disruptions

Without derogating and in addition to the provisions of the SOW:

- 4.6.1. The Contractor undertakes to perform the Installation in a manner which shall prevent any disruption and/or disturbance to the public and/or property in the vicinity of the Site, and to act in strict accordance with any applicable law.
- 4.6.2. Furthermore, the Contractor undertakes that during the performance of the Installation it will prevent any disruption to the ongoing traffic on any road and in their vicinity.
- 4.6.3. In the event that during the performance of the Installation the Contractor will be obligated to act in a way which may disrupt traffic, Contractor shall perform these actions only with prior written approval of the

Company, subject to the authorization of the Israeli police and to receiving the required permits in accordance with any legal requirement.

#### 4.7. Safety and Direction of Traffic

Without derogating and in addition to the provisions of the SOW, the Contractor undertakes that during the Installation it will guarantee the safety of ongoing traffic at the Site, and comply with the provisions of the SOW, and, without derogating from the above, ensure, *inter alia*, that:

- 4.7.1. Any and all requirements made by the Company, Israeli police and any applicable Government Agency are fulfilled.
- 4.7.2. Appropriate signs and any signs required by law shall be placed at the Site and its vicinity, including direction signs, warning signs of "works conducted on the road" and "obstructions on road".
- 4.7.3. The Installation will be performed within the timeframe detailed in the Schedule.
- 4.7.4. Luminous signaling devices shall be installed at the Site and activated at nighttime to caution drivers that they are approaching a worksite.
- 4.7.5. The Installation and safety measures will be conducted in accordance with the terms of this Agreement and the instructions and requirements set forth in the SOW and the Tender.

#### 4.8. Safety Requirements

Without derogating and in addition to the provisions of the SOW:

- 4.8.1. The Contractor shall comply, and shall ensure that, while performing its obligations under the Agreement, the Staff comply with all safety regulations, rules and orders under any applicable Law, including among else, with *Working Safety Regulations (Construction Installation)*, 5748-1988 and *the Working Safety Ordinance (New Version)* 5730-1970. The Contractor confirms and undertakes that:
- 4.8.2. It shall take all the necessary measures and precautions related to the performance of the Installation in order to ensure the safety of, and shall provide protection to prevent damage, injury or loss to, the Staff and the Company, including its employees and invitees, the public and other third parties, to other property at the Site or at other locations where any part of the Installation is carried out.
- 4.8.3. It shall be responsible for any damage, injury or loss caused to the Staff or the Company, including its employees and invitees, the public and other third parties, property, materials and equipment at the Site as a result of or in connection with the performance of the Installation.
- 4.8.4. It will fence the Site as required by Israeli Law, Government Agency, the Israeli police and the Company.
- 4.8.5. The Contractor will exercise in the performance of its obligations under the provisions of this Section 4.8 with all skill and care to be expected of a properly qualified and highly competent design and build contractor, experienced in carrying out the functions of a safety coordinator and supervisor for projects of a similar size, scope, complexity and purpose.
- 4.8.6. Without derogating or in any way releasing the Contractor from any obligations under the Agreement, the Contractor undertakes to appoint at its expense a professional and certified safety consultant to audit and verify compliance with all safety requirements.

#### 4.9. Environmental Regulations

- 4.9.1. The Contractor shall perform the Installation in full compliance with any and all environmental related requirements under the Israeli Law and in accordance with the SOW and the Plans.
- 4.9.2. During the performance of the Installation, the Contractor shall clean and clear the Site, at its own expense, from any waste, garbage, debris, excess materials, temporary structures, construction equipment, which is not necessary to the performance of the Installation, and other waste or any contamination created as result of the performance of the Installation.

#### 4.10. Suspension of Installation

- 4.10.1. Order to Suspend. Company may, at any time, instruct the Contractor to suspend progress of all or any part of the Installation. Contractor shall comply with the Company's instructions and shall, during such suspension, properly protect, secure and store any material or equipment supplied on Site and/or elsewhere, as the case may be, against any deterioration, loss or damage.
- 4.10.2. Cost of Suspension. The sole payment to which the Contractor will be entitled due to an order by the Company to suspend shall be the due direct costs to the extent pre-approved by Company in writing. Notwithstanding the foregoing, the Contractor shall not be entitled to be paid any costs (a) for suspensions that continue for less than five (5) consecutive days nor any number of days per year that in aggregate are less than ten (10) days per year; a suspension of less than one day will not be considered as a suspension and will not be taken into consideration for the above calculations; or (b) if such suspension is due to Contractor's or any third party on its behalf fault; or (c) if such suspension is caused as of a Force Majeure Event.

#### 4.11. Installation Inspection

Contractor shall be deemed to have inspected and satisfied itself as to all existing or foreseeable matters affecting or relating to the Installation and the Site including accordance with the procedures as set out in the SOW and shall provide Company with detailed monthly reports, to Company's satisfaction.

#### 4.12. Completion of Installation

- 4.12.1. Upon completion of the Installation and/or Acceptance, or any part thereof, the Contractor shall remove all tools and leave the whole of the Site clean and in a workmanlike condition to the reasonable satisfaction of the Company. The Site shall be restored to its original state, as may be necessary, including any potholes and/or bumps that may have been created in the Site, to the reasonable satisfaction of the Company.
- 4.12.2. Contractor undertakes that no later than the dates set out in the Schedule, it will complete the Installation of the C&M System and of the applicable AVOD System Unit, and hand the Project or any part thereof over to the Company. Prior to such date the Contractor shall complete all inspections detailed in the, SOW and the Plans and/or requested by the Company at any time, and complete all its obligations according to the Agreement and any other document, as may apply.
- 4.12.3. The Contractor shall deliver to the Company immediately upon demand all Documentation, including the final drawings and documents of the

as-mades, together with an electronic copy of all drawings and documents and all hardware and software. All plans and documents shall comply with the requirements set forth in the SOW and the Plans.

- 4.12.4. It is clarified that any handing/taking over of the Project or any component thereof shall not constitute approval that the Contractor fulfilled all its obligations according to the Agreement.

4.13. Damage Liability

- 4.13.1. The Contractor shall be solely liable for damages caused in connection with the Installation for any reason.
- 4.13.2. The Site is surrounded by roads used by the general public – Contractor warrants that no damages or interruptions shall be caused with regards to any such roads.
- 4.13.3. The Contractor shall be held liable for any damages – whether bodily harm or property damages or any other expense, which may be caused to the Company and/or its representatives to the Contractor itself and/or its representatives and/or the Staff and/or any other third party, as result of an act or omission of the Contractor, and/or its representatives during the performance of the Installation and/or in connection with the Installation and/or the Project and/or resulting from breach of any obligation under this Agreement and/or any obligations under Law.
- 4.13.4. With regards to the burden of evidence and burden of proof in tort, the Contractor shall be considered in all matters relating to the Project, the systems and facilities which have been brought to the Site, as having had full and exclusive control, as having solely and exclusively supervised, and if any damage shall be caused due to fire or due to fire which emerged from the above, as the sole and exclusive occupant of the Site, the structure, and the systems and facilities in real-estate.
- 4.13.5. The Company shall be exempt from any liability for damages, whether bodily harm or property damages – which shall be caused to the Contractor or its employees or to any one else acting for it or on its behalf, or their agents, during or following performance of the Installation and/or resulting from the defective performance of the Installation. If liability shall be imposed upon Company for damages aforementioned in this Section – the Contractor shall indemnify, defend and hold the Company harmless from and against any loss, damage and expense, including attorney fees.
- 4.13.6. It is hereby conditioned that any authorization given to Contractor by the Company and/or the Company Project Manager and/or the Supervisor and/or their assigns – including completion certificates, authorizations, specifications, completion of parts of the performance, accounting authorization, licensing authorizations, sub-contractor identity authorizations, suppliers, manufacturers, materials, equipment, etc. – shall not in any way impose liability upon the Company and/or the Company Project Manager and/or the Supervisor and/or exempt Contractor from liability and/or diminish its liabilities in accordance with the Agreement and/or by law.
- 4.13.7. Contractor shall be solely liable for the integrity of the Installation, temporary works made in connection therewith, and in any case of damage and/or injury and/or loss, and/or to any temporary works whatsoever, due to any reason, including floods, storm winds, etc., and

Contractor shall repair the damage at its expense, as soon as possible, in a manner that after repairing the damage, the AVOD System shall be in good condition and comply with all the Specifications and requirements set forth in this Agreement. Without derogating from the above, this Section shall also apply towards any damage, and/or injury and/or loss, caused by Contractor during the Warranty Period and/or Acceptance, while performing repair and/or inspection related works, for the purpose of complying with this Agreement.

- 4.14. Coverage of Work. To the extent applicable, the Contractor undertakes to prevent coverage or hiding of works (or any part thereof), without the approval of the Company, that is to be covered or hidden in accordance with the Agreement and/or applicable law.
- 4.15. Contractor shall throughout the term of this Agreement maintain offices and storage facilities containing required tools and spare parts in Tel Aviv or any other area pre-approved in writing by Company. Contractor shall attend meetings with applicable third party contractors providing works at the Site, at Company's request. Contractor shall: fully cooperate with such third party contractors, provide such contractors with technical and other reasonable assistance at Company's discretion. Contractor shall be responsible for the AVOD System during any such contractors' works (including without limitation the supervision, coordination, safety and safeguarding thereof). In the event of any dispute between the Contractor and any such Company third party contractors the dispute shall be determined by the Company at its sole discretion.

## **5. Acceptance**

- 5.1. Each Sub-Project, including each applicable timeline set forth in the Plans and in the Schedule and any and all payment obligations herein, are and shall be subject to final Acceptance by Company, following acceptance testing to be carried out in respect of each of the Sub-Project. Acceptance testing (including trial operation) shall be carried out by Company with the active assistance of Contractor in accordance with the ATP, SOW and the Plans, to verify the Sub-Project's compliance with Specifications, the Plans and SOW and the terms of this Agreement.
- 5.2. As part of the Acceptance process, Company shall provide Contractor with a list of Defects that do not meet the Specifications, the Plans and/or SOW, respectively. Contractor shall cure the Defects within the timeframe set forth in the ATP and re-submit the AVOD System and/or other Project component for re-testing, in any event, by no more than fourteen (14) days from receiving Company's list of Defects. Acceptance tests will, if required by Company, be repeated as many times as is reasonably necessary. All costs incurred due to any rejection and/or repetition of the tests shall be borne by Contractor. Additional Acceptance tests shall not act as a waiver of Contractor's obligations to meet the Schedule detailed therein and in the SOW and the Plans. If, after three (3) repeated Acceptance tests, no Acceptance occurs, then Company may at any time upon fourteen (14) days prior written notice, notwithstanding anything to the contrary in this Agreement, terminate this Agreement, in whole or in part, without derogating from any rights or remedies available to Company at law, contract or otherwise.
- 5.3. For the sake of clarity the processes, planning, testing and other terms and conditions (including without limitation Acceptance) set forth in this Agreement shall also apply respectively to any Optional Stage (to the extent exercised by Company) and to any AVOD System Upgrades and Change Requests.

## **6. Compliance Warranties**

- 6.1. Contractor undertakes that the AVOD System shall be of excellent quality and standard and, to the extent applicable, shall comply with the requirements of the Israeli Standards Regulations, and the Standards Law 5713-1953, and/or Israeli Law requirements as such exist and will exist at any time.
- 6.2. Contractor undertakes, warrants and represents that the Project, including without limitation each AVOD System Unit and the M&C System, will, for period(s) of twenty four (24) months from date of each applicable Acceptance: (i) perform in accordance with the Specifications, the Plans, SOW and related documentation provided by Contractor and manufacturer (and will achieve any functions and criteria described therein), (ii) be free from defects to all parts of the AVOD System (iii) be free from viruses, worms or any code which has the effect of disrupting, disabling, harming, or otherwise impeding in any manner whatsoever ("**Warranty Period(s)**").
- 6.3. Any replacement or repaired component will be warranted for the remainder of the original Warranty Period or twelve (12) months, whichever is longer. Notwithstanding the foregoing, to the extent that the AVOD System, or any part thereof, manufacturer warranty period exceeds the foregoing Warranty Period, then the Warranty Period in respect thereof shall be extended accordingly. Contractor hereby assigns and transfers to Company all warranties provided to Contractor with respect to the AVOD System and other Project items, or any portion thereof, and represents and warrants that such warranties are fully assignable to Company.
- 6.4. Without derogating from the foregoing and/or from any rights and remedies available to Company, Contractor shall during the Warranty Period: repair and/or replace any Defect and provide all works required in connection therewith, including as set forth in the Warranty Plan and/or in the SOW, and all Supports Services and SLA, at Contractor's expense, to Company's satisfaction. Contractor shall be solely responsible for all costs, fees and expenses in connection with fulfilling its obligations under this Section 6, including all labor, material, parts, shipping, taxes, customs and other costs, fees and expenses arising from, among other things, the removal, repair, replacement, reinstallation, inspection, shipping and testing of any defective or nonconforming items. If any such costs, fees or expenses are incurred or paid by Company, or if Company incurs increased costs as a result of Contractor's breach of warrant, Company may charge and bill such costs to Contractor, and may offset such costs against amounts otherwise due to Contractor. All costs reimbursable to Company under this Section 6 shall be due and payable on demand.
- 6.5. During the Warranty Period the Contractor will conduct the Periodic Test Procedure, and shall immediately inform the Company with respect to the results of such tests, including, among else, with respect to any Defect identified during the Periodic Test Procedure.
- 6.6. Contractor shall be responsible for detecting any Defect that arises during the Warranty Period. Upon detecting a Defect and/or upon receipt of any notice from Company, Contractor shall immediately commence corrective action to correct the Defect and shall proceed to prosecute such corrective action with all due diligence, at its own cost, in accordance with any instructions of the Company.
- 6.7. If a Defect is such that repairs cannot be expeditiously carried out on the Site, the Contractor may, with the consent of the Company, remove from the Site for the purposes of repair any part of the AVOD System which is Defective. Contractor shall bear all costs relating to such removal, including the cost of insurance.

6.8. Contractor shall use best efforts to ensure that any work conducted under the warranty and Support Services do not interfere with the ongoing operation or maintenance of the AVOD System. In the event that the Contractor or its Subcontractor causes any damage to the AVOD System as a result of its Installation in remedying any Defect, the Contractor shall repair such damage at its own cost.

6.9. **Extensions of Warranty Period**

6.9.1. Following the lapse of the Warranty Period, the Company shall be entitled, by providing the Contractor with a written notice, (A) to extend the Warranty Period for one or more of the AVOD System Units by additional period of one (1) year each time, and up to a total period of additional eight (8) years following the lapse of the initial 2 years Warranty Period of the applicable AVOD System Unit, and (B) to extend the Warranty Period of the M&C System beyond the initial 2 years Warranty Period by additional period of one (1) year each time until the lapse of the Term of this Agreement.

6.9.2. During the period of 8 years following the lapse of the initial 2 years Warranty Period the Company may decide whether or not to extend (or renew) the Warranty Period, at any given time, at its sole discretion.

6.9.3. Under no circumstances whatsoever shall any "end of life" status relating to the AVOD System and/or any components thereof and/or any Project deliverables, derogate from any or all of Contractors obligations in this Agreement.

6.10. **Break & Fix Maintenance Services**

6.10.1. Without derogating from any of the Contractor's obligations under this Agreement (including, inter alia, its obligations under this Section 6), following the completion of the Installation of the first AVOD System Unit and the M&C System, and throughout the Term of this Agreement, the Contractor will provide the Company spare parts and Break & Fix Maintenance Services for the AVOD System within two (2) Business Days following the Company's request to that effect.

6.10.2. The price payable by the Company for the spare part and the Break & Fix Maintenance Services will be the lower of: (a) 70% of the applicable services and spare part's price as reflected in the Contractor's catalog or other price list available to the public; or (b) the average consideration paid to the Contractor in the course of the 3 Lowest Price Transactions (as defined below). Upon the Company's request the Contractor shall provide the Company with a certificate issued by the Contractor's auditor confirming the price paid pursuant to the aforesaid Lowest Price Transactions. "**Lowest Price Transactions**" means the transactions conducted in the country in which the applicable spare part is manufactured, during the year immediately prior to the applicable Company's request to provide the spare part and services, and in which the lowest price was paid to the Contractor in consideration for the applicable spare part and/or services.

6.10.3. The Contractor undertakes that following the completion of the Installation of the first AVOD System Unit and the M&C System, and throughout the Term of the this Agreement it will hold an adequate inventory of original spare parts for all components of the AVOD System, in a manner that will allow it to comply with all of its obligations and undertakings under this Agreement.

## **7. Contractor's Representations and Warranties**

Contractor warrants, represents and undertakes to Company that on its behalf and on behalf of and in respect of its Subcontractors (including for the avoidance of doubt the Major Subcontractor, if applicable ):

- 7.1. It is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation, and has the full corporate power and authority to execute, deliver and perform this Agreement and any other agreement, document and instrument which is ancillary hereto, to perform the acts required of it hereunder and to perform its obligations and consummate the transactions contemplated hereby and thereby. The Agreement is in full force and effect and constitutes the legal, valid and binding obligation of the Contractor, enforceable in accordance with its terms.
- 7.2. There are no restrictions, limitations, and/or impediments, either by contract, law or otherwise or due to any existing legal dispute between Contractor and any relevant third party, in respect of Contractor's entering into this Agreement, and the fulfillment of all its undertakings and obligations under this Agreement.
- 7.3. There are no litigation, arbitration or administrative proceedings against the Contractor, current or pending or, to the knowledge of the Contractor, threatened, that could (whether individually or in the aggregate) prejudice, affect or impair the ability of the Contractor to perform any of its obligations under this Agreement.
- 7.4. It has obtained or possesses, and shall continue to possess, at its sole responsibility, cost and expense, any and all authorizations, approvals, consents, licenses, standards or all other rights necessary to enable it to provide Company with all Project deliverables and services in accordance with the provisions of this Agreement, and for it to perform under this Agreement and fully comply with any and all of its obligations under this Agreement. All the foregoing are in full force and effect and Contractor hereby warrants that it is not aware of any reason that the existing permits or consents should be revoked or not renewed when due. The Project, the AVOD System, as well as Contractor's performance of the Installation and all other obligations and undertakings under this Agreement shall at all times comply with all applicable laws, regulations, guidelines and standards, in effect as may be updated by the applicable jurisdictions from time to time.
- 7.5. The Project and all deliverables (whether software and/or hardware), Installation and services including without limitation the AVOD System and use thereof, do not and will not infringe, misappropriate and/or violate any and all third party Intellectual Property Rights. Contractor has and will continue to have all the rights and licenses required to grant the rights and licenses granted herein. There has been no action, suit or proceeding or any written communications alleging that the Installation and/or components of the Project without limitation the AVOD System have infringed, misappropriated, or violated any Intellectual Property Rights of any other person or entity and such are not subject to any proceeding, order, judgment, and/or settlement agreement.
- 7.6. Contractor represents that it has not received any notice or claim from a third party alleging that any part of the Project and/or the AVOD System infringes any Intellectual Property Rights of any third party. Without derogating from the foregoing, Contractor has all necessary legal and other rights to use all the Intellectual Property Rights which are required from time to time in order to carry out the Project, and the Contractor does not, and shall not, in carrying out the Project, infringe any Intellectual Property Rights of any third party. No Intellectual Property Rights which are necessary for the Project are, to the Contractor's knowledge, being infringed nor, to its knowledge, is there any threatened infringement of those Intellectual Property Rights by any third party.

- 7.7. It has all the requisite skills, production ability, experience, expertise, know-how, resources, staff, materials, qualifications, authorizations, permits and licenses and ability (including without limitation financial ability) and facilities necessary to design, to carry out and execute the Project and obligations herein and grant the rights and licenses herein, at the highest professional level and in accordance with this Agreement, fully and timely and in accordance with good engineering practice and prudent electrical and mechanical engineering skills. The Installation performed in connection with this Agreement will be performed with reasonable skill and care, in a competent, professional and workmanlike manner, free from defects, and in accordance with the best professional practices in the industry.
- 7.8. The AVOD System are and shall at all times be free from viruses, worms or any code which has the effect of disrupting, disabling, harming, or otherwise impeding in any manner whatsoever.
- 7.9. The Installation, AVOD System shall at all times (24 hours a day) comply with the Specifications and the requirements in the SOW and the Plans, respectively, and also with the quality assurance, information security and safety requirements as set forth in this Agreement and in the SOW respectively.
- 7.10. AVOD System shall at all times consist of open system architecture enabling integration and interfacing with any additional field equipment and units as Company deems fit. The AVOD System open system architecture and design shall without limitation: (i) ensure interoperability, interfacing and integration with tools, services, hardware and software (including those procured by Company from third parties) and with all protocols, applications, platforms, codes, SDKs and technology contained therein, (ii) ensure that third party hardware, software and service providers may integrate additional field equipment, software and services with the AVOD System; (iii) enable expansion thereof; and (iv) shall at all times support any and all Additional Units to the extent purchased at Company's discretion. Contractor shall cooperate with any third party engaged by Company as a supplier of hardware, software and/or services with respect to the AVOD System. Contractor shall provide Company and applicable third parties, at Company's discretion, with all documents, information and applicable licenses (consistent with Sections 14.1-14.3 below) as required to enable the integration, interface and interoperability of the AVOD System with third party products, software, systems and services and with all protocols, applications, platforms, codes, and technology contained therein, at no charge or licensing restrictions. To that end Contractor shall provide without limitation, APIs as set forth in the SOW).
- 7.11. Contractor hereby reconfirms all the representations and warranties that it made in the Bid, all of which shall continue to apply in full force and effect throughout the Term of this Agreement.
- 7.12. All items and deliverables supplied by Contractor pursuant to this Agreement shall be free and clear of any right of lien, encumbrance or pledge ("**Encumbrance**"). Contractor hereby expressly waives any Encumbrance on any item supplied to Company pursuant to this Agreement. In addition Contractor hereby expressly agrees that it shall not initiate the issuance of any injunction or any other writ or order in connection with the Project including without limitation one resulting in any delay, interruption or obstruction to the Project and that its sole remedy, if available pursuant to this Agreement, shall be limited to monetary compensation.
- 7.13. Contractor has thoroughly investigated and familiarized itself with all aspects of the Project, Company's existing systems, field equipment, the Site, and has found the foregoing suitable and sufficient to complete its obligations under this Agreement. All information provided to Company prior to signing of the Agreement, including the information detailed in the Bid, is true and complete, to

the fullest extent required to perform all of Contractor's obligations, and in no way shall providing any such information derogate from Contractor's liability under this Agreement. Notwithstanding anything to the contrary, the terms and conditions herein reflect the Contractor's provision for all costs and expenses related to the Project, whether direct, indirect, foreseen or unforeseen. The Contractor hereby represents that it has been provided with all the documents attached to this Agreement, it has read and understood all such documents, and has been provided all the explanations and has obtained any additional information required. Contractor represents that it has obtained and shall continue to obtain at its own responsibility and expense any and all information that may impact the implementation and execution of its obligations under this Agreement. Any implications and liabilities in connection with the foregoing information shall be at the Contractor's sole and exclusive responsibility at Contractor's sole cost and expense and Contractor hereby waives, releases and forever discharges the Company from and against any and all current and future claims in respect thereof.

- 7.14. The Contractor and its Subcontractors performing the Installation, or any part thereof, have obtained all consents, permits (other than those permits referred to specifically under the SOW as being under the responsibility of the Company) and licenses required under Israeli Law in connection with the Installation, and, to the extent required under the Israeli Law, are duly registered under the Engineering Construction Contractors Registration Law 5729 – 1969 in the class and with the ranking required to perform the Installation. In addition, the Contractor, undertake to maintain the required registration and/or licenses throughout the term of the Agreement and provide Company with copies thereof upon request.
- 7.15. Contractor has not instituted any proceedings with respect to a Bankruptcy Event, and no proceedings have been instituted against Contractor with respect to a Bankruptcy Event. There is no reasonable basis for a third party to claim that a Bankruptcy Event has occurred or is reasonably likely to occur. Contractor has paid all of its liabilities as they have become due, and, subject to receipt of the consideration pursuant to this Agreement, will be able to pay all of its known and anticipated future liabilities as they become due, in each case in accordance with their respective terms.
- 7.16. There are no (i) actions, suits, claims, hearings, arbitrations, proceedings (public or private) or governmental investigations against or affecting the Contractor's ability to perform its obligations under this Agreement and/or any part of the Project, pending or threatened, against or by Contractor (collectively, "**Proceedings**"), nor any Proceedings or investigations or reviews by any Government Agency against or affecting Contractor, pending or threatened against or by Contractor, relating to any of part the Project or which seek to enjoin or rescind the transactions contemplated by this Agreement; or (ii) existing orders, judgments or decrees of any Government Agency naming Contractor as an affected party in connection with, or otherwise affecting, any of the Project.
- 7.17. Other than the exhaustive list set forth in section 11 of the SOW (which contains items that are at Company's expense), all expenses and costs in connection with the Project including without limitation all components, licenses, permits, approvals, hardware, software, AVOD System, Installation and compliance with any and all requirements are and shall be at the Contractor's expense.
- 7.18. The Contractor is in compliance with the terms and conditions of all third party software licenses, including without limitation Open Source. The AVOD System do not and shall not incorporate and/or use Open Source in a way that, creates, or purports to create obligations for the Company with respect to any Company owned Intellectual Property Rights or grant, or purport to grant, to any third party,

any rights or immunities under any Company Intellectual Property Rights, including without limitation that is required to be (A) disclosed or distributed in source code form, (B) licensed for the purpose of making derivative works, or (C) redistributable at no charge.

- 7.19. The AVOD System and its Installation shall comply with any and all information security, cyber security and privacy requirements and restrictions set forth in this Agreement, under the SOW and under any and all applicable Laws.
- 7.20. The Contractor, its Staff and permitted Subcontractors and anyone on their behalf shall fulfill their obligations faithfully and conscientiously and shall use their best skills and knowledge to the benefit of the Company.

## **8. Staff**

- 8.1. Contractor shall during the whole term of the Agreement employ and retain for the Installation the number of employees required for the due and diligent performance of the Installation, including, without limitation, the personnel referred to in the SOW and in the Plans with respect to each Sub-Project.
- 8.2. All Contractor employees engaged in the performance of this Agreement will be suitably qualified and experienced to perform the tasks or work allocated to them and (where appropriate) shall hold such licenses, permits or registrations as are required under any applicable law.
- 8.3. Contractor shall comply with all the requirements of the Israeli Law regarding the employment of the employees in Israel, including without limitation the Foreign Workers Law, 5751-1991 and the Employment Service Law, 5719-1959. Without derogating from the above, Contractor shall obtain all approvals and work permits for foreign employees who will be assigned to the Project, required by the applicable Israeli Law and reimburse their expenses (including flights, accommodation, *per diem* expenses etc.)
- 8.4. Without derogating from the above, the Contractor shall be responsible for ensuring that all the Staff working in Israel shall be insured, if and when required, in accordance with applicable Israeli Law. Furthermore, the Contractor shall be liable to pay any payment required by the Israeli National Social Security Institution. With respect to employees to which the Israeli National Health Insurance Law 5754-1994 does not apply, the Contractor shall obtain adequate medical insurance.
- 8.5. The names and personal information (i.e. profession, company, ID No./Passport No.) pertaining to all of the Staff, including the employees and representatives of the Contractor and/or the Subcontractors, will be submitted to Company in advance no later than the due date for submission of the Plans (set forth in Section 3.2 above) in order to obtain security clearance, if necessary and to allow entrance to the Site. In the event that any applicable security approval shall not be granted (including by the appropriate agency), for any reason whatsoever, the Contractor and/or the Subcontractor shall be responsible for substituting the unapproved Staff.
- 8.6. Contractor shall be obliged to inform Company of any change in the list of Staff. Company shall have the right to object to any such change. Without derogating from the above, the Company shall have the right to require that the Contractor remove from the Site and/or the Project any person employed by Contractor or by a Subcontractor, even if the Company previously agreed to the employment of such person, and such person shall not be again employed at Site and/or in connection with the Project without the written permission of Company. Any person so removed from the Site and/or Project shall be replaced as soon as possible and in any event no later than seven days of removal, by a competent

substitute, pre-approved by Company. The above shall not cause any delay in the Schedule set forth in this Agreement, and shall not entitle the Contractor to any right or remedy.

- 8.7. Contractor shall ensure proper gear, clothing and equipment for the Staff including those required in cases of special and/or high risk works, and take any precaution measures necessary to ensure the safety and health of the Staff as required by any law.
- 8.8. Contractor hereby states that it is aware of the legal requirements related to the performance of the Installation, employment of workers and their safety, including any such, and undertakes to act accordingly.
- 8.9. Contractor shall make sure that the Staff does not wander in the Site and its surroundings unnecessarily and will not interrupt with the traffic and/or other works being performed on the Site.
- 8.10. Contractor undertakes that the Installation will be managed to the satisfaction of the Company and in compliance with all Israeli Law requirements, including without limitation personnel books listing the name, occupation and professional classification of each employee and also each employee's work days and work hours.
- 8.11. Contractor shall give or provide all necessary supervision to plan, arrange, direct, manage, inspect and test the Project during the execution thereof for the proper fulfillment of the Contractor's obligations under this Agreement. Such superintendence shall be given by skilled and experienced Staff having in depth knowledge of the Installation to be performed (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory completion of the Project.
- 8.12. Without derogating from the above, the Contractor shall perform at its sole responsibility and expense continuous, on-site supervision (known in Hebrew as: "*Pikuach Tsamud*") of the performance of the Installation, including overall supervision (known in Hebrew as: "*Pikuach Elyon*") by its Staff, all as required under any applicable law, including the Planning and Construction Law 5725-1965.
- 8.13. The provisions of this Section shall not under any circumstances constitute employee-employer relations between the employees and/or subcontractors of the Contractor and the Company.
- 8.14. The Contractor shall carry out each Sub-Project in accordance with the Schedule and solely in strict accordance with working hours/days as permitted by the Israeli Law. Contractor shall plan such compliance ahead of time to meet the Schedule.

## **9. Contractor's Representatives**

- 9.1. Upon the signature of this Agreement Contractor shall appoint a project manager, as set forth under the SOW (the "**Project Manager**", and the additional personnel required to be appointed by law, respectively adhering to the requirements set forth in the Tender, the SOW and any applicable law ("**Additional Staff**").
- 9.2. Company may, at any time, require the Contractor to remove and replace the Project Manager and/or any other Additional Staff in which case the Contractor shall, after receiving written notice of such request, remove such Project Manager and/or any other Additional Staff, as appropriate, from the Project and promptly replace that Project Manager and/or any other Additional Staff, as appropriate with another skilled and experienced person, pre-approved in writing by Company.

- 9.3. The Contractor is not entitled to replace the Project Manager and/or any other Additional Staff without prior written consent from the Company and the provisions of SOW shall apply, *mutatis mutandis*.
- 9.4. Company may appoint a company project manager and a supervisor, on behalf of the Company ("**Company Project Manager**" and "**Supervisor**", respectively). Company shall notify Contractor of such appointment of said Company personnel or any replacement thereof. It is hereby agreed that the Company, the Company Project Manager and/or the Supervisor have the right to supervise, guide, or give instructions to Contractor or to anyone employed by it. Contractor shall comply with such instructions, provided however, that the instructions may only be construed as a means to ascertain full performance of the provisions of this Agreement and that the Contractor shall have no grounds to claim that he has not fulfilled his obligations as detailed in this Agreement due to acts, omissions, or lack of instructions from Company, the Company Project Manager and/or Supervisor.

## **10. Subcontractors**

- 10.1. Contractor may not sub-contract or assign any part of the Project conducted in Israel without the explicit prior written consent of the Company, which shall be at the Company's sole discretion. It is being clarified that no delay in Schedule shall be granted in the event of refusal by the Company to grant such consent. Contractor shall provide Company with all applicable information regarding such Subcontractors, and to the extent approved, Contractor shall be permitted to engage the Subcontractors only in execution of the part of the Installation pre-approved by the Company.
- 10.2. Without derogating from the aforementioned, the Contractor shall list Subcontractors it wishes to engage in connection with execution of each Sub-Project, the nature and scope of the engagement, the Subcontractor's experience and expertise in performing the Installation to be assigned to them and methods of inspection.
- 10.3. Neither the approval of any Subcontractor by the Company nor any subcontract executed by the Contractor shall relieve the Contractor from any of its liabilities under the Agreement. The Contractor shall be fully responsible for the acts and omissions of all of its Subcontractors, including their employees or workmen.
- 10.4. Contractor shall ensure that any permitted subcontracting shall be made by Contractor under a written agreement between Contractor and the applicable Subcontractor, which stipulates, *inter alia*, that the Subcontractor shall: (i) protect Company, the Project and any Intellectual Property Rights in connection therewith to at least the same degree as the terms and conditions of this Agreement and shall contain at the least terms and conditions not less restrictive than those set forth in Sections 4, 6, 7, 8, 9, 11, 12, 13, 14, 17, 18, 19, 2021, 22, 23, 25 and 27 ('**Subcontract Terms**'); (ii) permit Contractor and/or Company to immediately terminate the said subcontract agreement for violation or breach of any of the Subcontract Terms and otherwise terminate such agreement upon termination or expiration of this Agreement for any reason; (iii) ensure that all representations and warranties made towards Contractor by any Subcontractor and/or Staff shall be valid and apply towards the Company as a third party beneficiary; and (iv) ensure that the Company shall not be bound or liable towards any Subcontractor and/or Staff. The Contractor undertakes to provide the Company with the foregoing subcontract agreement, immediately upon request.
- 10.5. For the sake of clarity, Subcontractors and Staff shall enter into contractual relationship only with Contractor and shall be paid only by the Contractor. The

Contractor shall hold harmless and indemnify the Company from any claims, proceedings, damages, costs, charges and expenses arising out of or in connection with the Installation performed by the Subcontractors/Staff and/or any claims made by Subcontractors/Staff.

- 10.6. Contractor shall remain fully responsible for the performance of the subcontracted parts of the Installation, and for the cooperation and coordination between the Subcontractors to whom any part of the Installation are assigned, and Contractor shall remain liable for its Subcontractors compliance with the terms hereof and for any and all of their acts and omissions. Nothing herein contained shall be deemed as Company granting any right to Subcontractors or any third party by reason of this Agreement or by Company approving any such Subcontractor.
- 10.7. In the event that the Company shall determine, at its sole discretion, that any Subcontractor and/or any person acting on its behalf is not suitable to carry the Project, Company may instruct their evacuation from the Site, and the Contractor shall duly comply with such instruction at its own expense. In this event, the Contractor shall carry out the works itself or promptly find a suitable replacement pre-approved in writing by Company.
- 10.8. Contractor, at its own expense, shall obtain, maintain and renew all permits, licenses or consents required by any applicable laws, regulations, guidelines, standards, in connection with the performance of the obligations under this Agreement and for the execution of the Project including by Subcontractors. Contractor shall indemnify and hold Company harmless from and against any failure to obtain, maintain or renew such permits, licenses or consents to the extent necessary to perform its obligations under this Agreement and/or any claims from Subcontractors and/or any third parties in connection with such Subcontractor's acts and omissions.

## **11. Documentation**

- 11.1. Contractor shall provide the Company with all final versions, and if requested by the Company any prior version existing, of the complete, accurate and detailed Documentation in accordance with the Schedule, Specifications, Plans, Tender and the SOW.
- 11.2. The AVOD System operator manual and training shall be provided in Hebrew and all other Documentation and all correspondence with Company shall be provided in English and no other additional language (other than Hebrew if so desired by Contractor or required in the Exhibits hereto).
- 11.3. During the Warranty Period and as part of the Support Services Contractor shall furnish Company, free of charge, with all updates of Documentation including in connection with the AVOD System operation documentation pursuant to any software corrections, additions, modifications, enhancements, upgrades and new releases.
- 11.4. Company shall have the right, at no additional charge, to reproduce the Documentation solely for the use of Company and/or the third parties listed in Section 14.1 below.

## **12. Training Services**

- 12.1. Contractor undertakes to train Company's employees, representatives and subcontractors and parties as shall be required by the Company. Such training services will include instructions with respect to the issues and topics as provided in the SOW.

- 12.2. The training will be conducted at Company's premises unless otherwise agreed by Company in writing. All costs associated with the training, including travel and lodging for Contractor's instructors, will be borne by the Contractor.
- 12.3. Training and related training documentation shall be provided in the Hebrew language, or if required by the Company in English.

### **13. Compliance.**

- 13.1. Contractor shall execute the Project and carry out all obligations in connection therewith in strict compliance with the Specifications, the Plans, the SOW, the Schedule, all the terms and provisions of this Agreement and applicable laws, regulations, guidelines and Standards, upon completion of which Company shall receive the AVOD System fully integrated with Company's systems as required under the SOW (without derogating from Company's right to exercise the Optional Stage in whole or in part as set forth in Section 2.3 above).

### **14. AVOD System License, and IP**

- 14.1. AVOD System License. Contractor hereby grants Company, its affiliates and/or any third party acting either on their behalf and/or for the purpose of the Project (including without limitation: the State of Israel and any Government Agency): a non-exclusive, irrevocable, perpetual, fully paid up, royalty free, transferable (upon assignment) and sub-licensable license to use and operate the AVOD System and/or Project and the Documentation in any location(s) in Israel and to make any development required in order to enable the integration, interface and interoperability of the AVOD System with third party products, software, systems and services and with all protocols, applications, platforms, codes, SDKs and technology contained therein. Company shall be entitled to make copies of the AVOD System software as required for use under the license terms set forth herein including back-up copies.
- 14.2. The foregoing license is not limited including without limitation by: number of users and/or concurrent users and any amount of users may use the AVOD System at any given time on any number of devices, processors, CPUs including without limitation multicore processors and devices. The AVOD System software may be moved (in Israel) to different CPUs, processors, cores or any other physical or virtual device at any time and from time to time, all the foregoing with no additional license fees.
- 14.3. Off-the-Shelf License. The AVOD System does not contain any third party software other than the off-the-shelf software set forth in the Specification. The third party software listed in the Specification is sufficient for all purposes required for the Project as set forth in this Agreement and no further third party software is required. Contractor shall secure and obtain on behalf of the Company all the perpetual, irrevocable licenses and rights for third party software the set forth in this Section 14.3 and any third party software required pursuant to any Updates and/or Upgrades and/or Optional Stage, all as required for Company to enjoy its rights under Section 14.1 above and this Agreement, at Contractor's expense, including, without limitation, payment by the Contractor of all license fees and/or royalties in connection therewith, if applicable, including for the purpose of operation, maintenance, repair, and adjustments of the AVOD System. To the extent that any third party software licensed shall no longer available, Contractor shall provide Company a six months prior written notification and shall at its expense promptly replace such third party software with equivalent software, approved by the Company, that complies with all the terms and conditions of this Agreement.

- 14.4. Reservation of Rights. All Intellectual Property Rights existing prior to the effective date of this Agreement, or developed or acquired within or outside the frame of this Agreement, shall remain with the Party which owned such rights. Neither Party shall, by virtue of this Agreement, acquire ownership of Intellectual Property Rights of the other Party existing on the Effective Date hereof. Notwithstanding the foregoing it is hereby agreed that ownership of Intellectual Property Rights with respect to any development created specifically for Company shall be owned by Company and Contractor shall provide Company all tangible assets and Documentation representing such Intellectual Property Rights upon their creation, including without limitation the corresponding Source Code.

## **15. Pricing and Terms of Payment**

### **15.1. Payment for Basic Stage**

15.1.1. As full and final consideration for fulfillment of all Contractor's obligations and all rights and licenses granted herein in connection with the Basic Stage of the Project as set forth under Section 2.2 above, the Company shall pay Contractor the amount of [REDACTED], as set forth under Exhibit E (the "**Basic Stage Payment**").

15.1.2. Payment Terms. Payment for each Sub-Project shall become due, at the Contractor's discretion, subject to the provision of a written notice to the Company, in accordance with one of the following alternatives (A) 100% of the applicable payment upon the Acceptance of the applicable Sub-Project; or (B) (i) 30% of the applicable payment upon commencement of the applicable Sub-Project, subject to the provision by the Contractor to the Company of an unconditional bank guarantee issued by a recognized Israeli banking institution or by a reputable international bank having S&P rating of at least AA (or an equivalent rating assigned by one of the other "Big Three" credit rating agencies), payable to Company according in a form reasonably satisfactory to the Company which shall remain in full force and effect until the Acceptance of the applicable Sub-Project and (ii) 70% of the applicable payment upon the Acceptance of the applicable Sub-Project.

15.2. Payment for Additional Units. As full and final consideration for fulfillment of all Contractor's obligations and all rights and licenses granted herein in connection with the installment of an Additional Unit, Company shall pay the Contractor, for each Sub-Project pertaining to the installment of an Additional Unit an amount of [REDACTED]. Payment terms as set forth under Section 15.1.2 shall also apply to each Sub-Project pertaining to the installment of an Additional Unit.

15.3. Payment for Extension Warranty Period. As full and final consideration for the extension of the Warranty Period, as set forth under Section 6.9 above, to the extent Company actually elects to extend the Warranty Period, after the initial 2 years Warranty Period, Company shall pay Contractor, for each year of Extension Warranty ("**Extended Warranty Fee**") the amount set forth under Exhibit E. Payment of the Extended Warranty Fee shall become due on a quarterly basis for the precedent quarter of the extended Warranty Period.

15.4. Payment for Break & Fix Maintenance Services- The payment for the professional services as set forth under Section 6.10 above shall become due upon the end of the month in which the applicable professional services were provided

- 15.5. Payment for Professional Services. The payment for the professional services as set forth under Section 2.3.4 above shall become due upon the end of the month in which the applicable Break & Fix Maintenance Services were provided.
- 15.6. Final Consideration. The consideration set forth in this Section 15 constitutes the total and final consideration due to Contractor in consideration for all deliverables, services, the Installation, obligations, rights and license in respect of the Project and/or set forth in this Agreement and except for the said consideration, unless expressly agreed otherwise by the Parties in writing, Contractor hereby warrants that Company shall not be required to pay Contractor and/or any third party any additional payments, fees, royalties, expenses and/or costs, with respect to the Project and/or this Agreement.
- 15.7. Delivery and Payment Terms
- 15.7.1. Delivery shall be DDP Incoterms 2000 terms. Title shall transfer to Company upon the earlier of: delivery or payment. Risk of loss shall remain with Contractor until final Acceptance, without derogating from Contractor's obligations under this Agreement.
- All payments due under this Agreement shall be paid in United State Dollars to the following Contractor designated Israel bank account in Israel \_\_\_\_\_
- 15.7.2. Payments will be made, subject to the terms set forth in this Agreement, within ninety (90) days after the applicable payment becomes due as set forth above, subject to receipt of a duly issued invoice.
- 15.7.3. Other than VAT to the extent applicable by Law, prices and payments herein are inclusive of all taxes of any nature. Contractor will duly pay all applicable taxes or will supply appropriate tax exemption certificates in a form satisfactory to Company. If required to do so by law and only to the extent so required by the Israeli Tax Authorities and subject to Contractor's failure to provide Company with a certificate of exemption from withholding tax Company shall withhold tax from any payments due under this Agreement.
- 15.8. Link to Exchange Rate [*The currency to which the payments will be linked shall be determined at the Contractor's discretion, and in the event that the Contractor is not interested in such mechanism this part will be deleted*]
- 15.8.1. All Prices set forth in the Agreement are linked to the exchange rate as defined below, which shall be calculated according to the last exchange rate known on the last date determined for the submission of the Tender's proposals and according to the exchange rate published by the Bank of Israel known on the date of issuance of invoice.
- 15.8.2. exchange rate for the purpose of the Agreement is an exchange rate composed of: [ ] of the representative exchange rate of the USA dollar to NIS; and [ ] of the representative exchange rate of the USD dollar to Euro, both as published by the Bank of Israel
- 15.8.3. During the said ten years term, unless agreed otherwise in writing between the parties hereto, the Optional Stage pricing and payment terms set forth in this Agreement shall remain fixed other than exchange rate linkage as set forth in this Section 15.8 below

## 16. Guarantees

- 16.1. Project Performance Guarantee. To ensure any and all undertakings of Contractor, its Staff and Subcontractors (including for the avoidance of doubt of the Major

Subcontractor), upon the Effective Date Contractor shall obtain and deliver to Company, an unconditional bank guarantee issued by a recognized Israeli banking institution or by a reputable international bank having S&P rating of at least AA (or an equivalent rating assigned by one of the other "Big Three" credit rating agencies), payable to Company according to the wording set forth in Exhibit F hereto which shall remain in full force and effect at least until the lapse of the Warranty Period (including, for the avoidance of doubt, any extension thereof) in a sum equal to: (A) seven percent (7%) of the Basic Stage Payment which sum shall apply from the Effective Date until the Acceptance of the tenth (10) AVOD System Unit; and (B) six percent (6%) of the Basic Stage Payment which sum shall apply from the Acceptance of the tenth (10) AVOD System Unit until the Acceptance of the twentieth (20) AVOD System Unit; and (C) five percent (5%) of the Basic Stage Payment which sum shall apply from the Acceptance of the twentieth (20) AVOD System Unit the lapse of the last Warranty Period (including, for the avoidance of doubt, any extension thereof) ("**Performance Guarantee**"). The Performance Guarantee shall serve as security and a guarantee for all of the Contractor's obligations hereunder, including, but not limited to, material breach and liquidated damages for delays and/or un-remedied Defects. The Performance Guarantee shall be renewed at least sixty (60) days prior the date on which it is scheduled to expire, and shall remain in full force and effect at least until the end of the Warranty Period (including, for the avoidance of doubt, any extension thereof). The Performance Guarantee shall be extended proportionally to any delay in the performance of the Installation for any reason. Failure to extend as aforesaid shall be sufficient reason to forfeit the Performance Guarantees.

#### **17. Confidential Information**

Contractor shall comply with the provisions of the Non-Disclosure Agreement attached hereto as Exhibit H.

#### **18. Indemnification**

- 18.1. Contractor shall defend, indemnify and hold Company, its affiliates, the licensees (set forth in Section 14.1 above) and their respective officers, directors, employees, shareholders, customers, agents, successors and assigns ("**Indemnified Parties**") harmless from and against any and all damages, liabilities, claims, settlement and losses arising out of, resulting from or in any manner related to: (i) injury, bodily harm, sickness, disease, death or damage to property in connection with the Project, including without limitation the Installation; (ii) employment issues in respect of an employee/Staff of Contractor and/or its Subcontractors (such as but not limited to salary, social security, health insurance); (iii) breach of this Agreement, including without limitation breach of any representations and/or warranties set forth herein; (iv) any acts, errors or omissions by Contractor its Staff and/or Subcontractors; (v) any claim of product liability in connections with the AVOD System; (vi) damage to or loss of any property, real or personal, to the extent that such damage, loss or expense arises out of, in the course of or by reason of the actions or omissions of the Contractor in the remedying of Defects or (vii) any claim which alleges that the Project, the AVOD System (or any components thereof) including without limitation the use, manufacture, import, service, support, enhancement, modification design and/or construction thereof, infringe upon, misappropriate and/or violate any Intellectual Property Rights or other proprietary rights of persons, firms or entities who are not parties to this Agreement.
- 18.2. In the event of any such claim set forth in Section 18.1 above, Company shall (i) promptly notify Contractor and (ii) at Contractor's expense, reasonably cooperate with Contractor in the defense of such claim. Company may employ

counsel at its own expense to assist it with respect to any such claim; provided, however, that if such counsel is necessary because of a conflict of interest of either Contractor or its counsel or because Contractor does not assume control, or provide sufficient defense, Contractor will bear the expense of such counsel.

- 18.3. If the use, manufacture, import, service, support or use of any Project component, including with limitation the AVOD System and any part thereof, is enjoined or becomes the subject of a claim of infringement, Contractor shall obtain such licenses, or make such replacements or modifications, as are necessary to the continue the manufacture, use or use thereof without infringement and in compliance with the Specifications, as the case may be. If Contractor is unable to achieve either of the foregoing within thirty (30) days (or such longer period as determined by Company in good faith) after the holding of infringement or the entry of the injunction, as applicable, Contractor shall promptly refund to Company the consideration paid in connection therewith. Nothing in this Section shall limit any other remedy of Company.

### **19. Limitations of Liability**

- 19.1. WITH THE EXCEPTION OF CONTRACTOR'S LIABILITY UNDER SECTIONS 17 AND 18 ABOVE, UNDER NO CIRCUMSTANCES WILL INDEMNIFIED PARTIES BE LIABLE UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, EVEN IF THE INDEMNIFIED PARTIES AND/OR CONTRACTOR WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT LIMIT COMPANY'S AND/OR CONTRACTOR'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH OR PHYSICAL DAMAGE TO PROPERTY ARISING FROM FRAUD OR WILLFUL MISCONDUCT OF THE COMPANY AND/OR CONTRACTOR.
- 19.2. INDEMNIFIED PARTIES LIABILITY UNDER, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE HIGHER OF (A) THE BASIC STAGE PAYMENT AND (B) THE TOTAL AMOUNT ACTUALLY PAID TO CONTRACTOR UNDER THIS AGREEMENT. THIS SECTION DOES NOT LIMIT COMPANY'S AND/OR CONTRACTOR'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH OR PHYSICAL DAMAGE TO PROPERTY ARISING FROM FRAUD OR WILLFUL MISCONDUCT OF THE COMPANY AND/OR CONTRACTOR.

### **20. Insurance**

- 20.1. Without derogating from any of the Contractor's liabilities under this Agreement or under any Law, and without the Company taking upon itself any responsibility towards the Contractor, the Company shall effect and maintain Contractors All Risk Policy, covering all the Project, issued by an Israeli Insurance Company (hereinafter: "**the Contractors' Works Insurance**") in the name of the Company and/or anyone on its behalf, extended to indemnify the Contractor and/or its Subcontractors, for their liability in respect of losses and/or Damage and/or liabilities arising from the performance of construction/erection of the Project pursuant to this Agreement. It is hereby clarified that the rights of the Company set out in this Section and/or the exercise of this right cannot and will not impose any kind of liability on the Company with respect to the Contractor for and/or in connection with the performance of the work associated with the Project.
- 20.2. The Company reserves the right not to purchase the policy for the Contractor, and instead to obligate the Contractor to purchase the Contractors' Works Insurance (as

defined above) by itself in the terms provided by the Company. In any event, the Contractor is responsible for ensuring that Contractor's Works Insurance policy is in effect upon commencement of the Project, whether said policy has been purchased by itself or by the Company.

For the purposes of this Section, "**Damage**" shall mean damage covered by the Contractors' Works Insurance Policy –excluding consequential damages.

- 20.3. The name of the insured party in the Contractor's Works Insurance shall include the Contractor (as well as other entities employed by the Company) and the Contractor will indemnify the Company for the insurance premiums and the Company's expenses with respect to this insurance, including any addition and/or extension of the insurance. The indemnification for the policy by the Contractor shall be deducted by the Company, in an amount equivalent to 0.55% of any payment, partial or otherwise payable to the Contractor by the Company. The Company reserves the right to raise the indemnification rate in excess of the aforementioned rate, relative to the changes to the premium paid by the Company.
- 20.4. The description of the policy as stated in Section 1 above constitutes a general description only, and does not bind the Company. The Contractor will be required to study the contents of the Contractor's Works Insurance Policy, and to be familiar with all of its conditions before commencing the execution of the Project, and must also comply with all the provisions of the policy.
- 20.5. The Contractor shall give written notice to the insurer and to the Company immediately upon the occurrence of any event with respect of which the policy may apply.
- 20.6. For the avoidance of doubt, it is clarified that the Contractors' Works Insurance will not cover the risks and/or events and/or insurance cases that the Contractor must insure under the Contractor's insurances detailed herein.
- 20.7. The Contractor undertakes that in the course of its engagement with Subcontractors the Contractor shall not include any provision under which it waives (on its behalf, on behalf of the Company or in the name of the insurer that will provide the Contractors' Works Insurance) any claim, right of return, indemnification right or subrogation right against those Subcontractors or that releases them from any of their liabilities under any Law or agreement.
- 20.8. The Contractor declares that it is aware that the requirement not to waive such rights constitutes a condition for the rights of the Contractor and the Company pursuant to the Contractors' Works Insurance Policy, and the Contractor will indemnify the Company for breach of this requirement.
- 20.9. The Company reserves the right to make changes to the Contractors' Works Insurance Policy, or to cancel it without the Contractor's approval, provided that any change that may reduce the scope of the coverage of the Contractor shall be brought to the attention of the Contractor, in writing within a reasonable time prior to its execution.
- 20.10. Additional Insurance Coverage:

Without derogating from Contractor's liability and obligations pursuant to the Agreement and/or under any applicable Law, in addition to the foregoing insurance the Contractor shall effect and maintain the following insurances:

  - 20.10.1. During the entire term of this Agreement, Third Party Liability Insurance and Employers Liability Insurance on an annually renewable basis, as specified in Exhibit G hereto. These insurances shall apply only to the liability not insured by the Contractors' Works Insurance, as defined above.

- 20.10.2. From the date of the first Sub-Project and through all periods in which Contractor and/or the Company may be held legally liable, provided that such period shall not be less than seven (7) years or the term of this Agreement, whichever is longer, a Product Liability Insurance on an annually renewable basis, as specified in Exhibit G hereto.
- 20.10.3. Any and all vehicles that will be brought to the Project/Site by the Contractor and/or anyone acting on its behalf will be covered, throughout the entire terms of this Agreement and any subsequent period, by Compulsory Insurance (for bodily injury) as required by Law, Comprehensive Property Insurance for the vehicles and also Third Party (vehicle) Insurance covering property damages and also bodily injuries that there is no legal requirement to insure, with a limit of liability of not less than the standard limit of liability that is customary at the time of arranging or renewing such insurance, as the case may be.
- 20.11. The Contractor hereby waives any right for compensation and/or indemnification from the Company in respect of any loss or damage covered by the aforementioned insurances. The Contractor further undertakes to ensure that each of the insurances set out above (except for Compulsory Insurance) shall include a provision according to which the insurer waives the right of subrogation against the Company and/or anyone acting on its behalf, other than against a person who has caused damage with malicious intent, and that the insurance is extended to indemnify the Company and/or anyone on its behalf for their liability and/or for their liability in respect of acts and/or omissions of the Contractor and/or anyone acting on its behalf, subject to a cross-liability clause.
- 20.12. Contractor undertakes to ensure that all Subcontractors engaged in the Project, or in connection therewith, shall effect and maintain all required insurances.
- 20.13. Contractor undertakes to cooperate with the Company in the investigation of all damages, including the exact circumstances surrounding the occurrence of the said damages. Contractor undertakes to strictly comply with, and fulfill, all of the provisions of the Insurance policies.
- 20.14. Contractor shall at all times comply with Israeli National Insurance Law 5755-1995 and all regulations and orders therein so as to ensure that all Israeli personnel employed or engaged by or on behalf of the Contractor or any sub-contractor (of any tier) in the performance of the Project and the making good of any defects during the Warranty Period, shall be entitled to the full benefits due under such law. The foregoing shall not apply with respect to any non-Israeli personnel engaged as aforesaid, in respect of whom the Contractor undertakes to effect and maintain National Insurance or Workmen's Compensation Insurance as required under the laws applicable to the employment of such persons. Furthermore the Contractor shall procure adequate and suitable travelers insurance (including medical, hospitalization and repatriation expenses) on behalf of all non-Israeli personnel, whilst sojourning in Israel.
- 20.15. Contractor confirms and acknowledges that it is aware that the extent of coverage and limits of liability afforded under the Insurance requirements represent a minimal insurance requirement and Contractor may effect, at his sole expense, additional or excess coverage as he may deem fit. Contractor declares and acknowledges that neither the Company nor any one acting on its behalf shall bear any liability towards Contractor with regard to the extent of the coverage (or lack thereof) under the Insurance and expressly as to the limits of liability afforded therein and Contractor hereby waives all right to raise any demand or claim whatsoever in respect thereof. For the avoidance of doubt, it is expressly agreed that the Contractor shall bear all deductibles applicable under the Insurance.

- 20.16. If and to the extent that any of the Insurances taken out or to be taken out in connection with the Project are cancelled or are subject to restrictions such as additional exclusions and/or increased deductibles and/or increased premiums by reason of manufacturing, design or other defects in the AVOD System and/or M&C System or the operating history of projects similar to the Project contemplated in this Agreement, Contractor shall indemnify the Company against any increased costs the Company incurs by reason of obtaining and maintaining such insurances and, if any such insurance is or becomes unavailable for the same reasons, Contractor shall indemnify the Company against all costs, expenses and losses incurred by the Company as a result of such insurance being unavailable.
- 20.17. The issuance of the aforesaid Insurance policies shall not limit or derogate in any way from Contractor's liability or obligations under this Agreement and/or at law.
- 20.18. If Contractor fails to take out the Insurance policies as required above, the Company, in its sole discretion, may hold back amounts due to the Contractor and/or pay the premium for said policies in lieu of Contractor, and charge Contractor for all direct and indirect costs.
- 20.19. Contractor shall provide Company with the Certificate of Insurance (Exhibits M) by no later than seven (7) days before commencement of the first Sub-Project, signed by its insurers.

## **21. Remedies and Reliefs**

- 21.1. Without derogating from any relief and/or remedy the Company may have under any law and/or agreement, the Company may act as follows, alternately or cumulatively, whether during the Term of this Agreement Period, in the event of Contractor's breach of its obligations herein:
- 21.1.1. Temporarily or permanently discontinue the Installation, in whole or in part, at Company's own discretion.
- 21.1.2. Clear the Site of any materials and/or tools belonging to the Contractor and store them in appropriate storage places at the Contractor's expense without incurring any liability.
- 21.1.3. It is clarified that the Contractor shall bear any and all expenses incurred or that shall incur in connection with the performance of any of the aforementioned actions, including expenses due to transportation, insurance, storage and/or auction.

## **22. Liquidated Damages.**

- 22.1. In the event of failure or a delay of more than 3 days in performance of the Project (or any part thereof) in accordance with the Schedule and the Plans, then without derogating from any other right or remedy of the Company under the Agreement or the Israeli law, Contractor shall pay Company a predetermined minimum amount of liquidated damages of USD 1,000, for each day of delay, until final completion and/or delivery is made. In the event of any such delay, Contractor shall take all remedial actions to minimize the delay.
- 22.2. In the event that an AVOD System Unit does not meet the minimum performance criteria set forth in the SOW, Plans and/or the Tender ("**Performance Default Event**") then without derogating from any other right or remedy of the Company under the Agreement or the Israeli law, Contractor shall pay Company a predetermined minimum amount of liquidated damages of USD 6,000, for each such Performance Default Event.
- 22.3. In the event of delay of more than 1 day in the performance of any maintenance service with respect to a AVOD System Unit and/or the M&C System as set forth

in the SOW and in accordance with the time table set forth therein, then without derogating from any other right or remedy of the Company under the Agreement or the Israeli law, Contractor shall pay Company a predetermined minimum amount of liquidated damages of USD 500, for each day of delay in the performance of the aforesaid maintenance services.

- 22.4. In the event that an AVOD System and/or the M&C System unit does not meet the minimum availability criteria set forth in the SOW, Plans and/or the Tender then without derogating from any other right or remedy of the Company under this Agreement or the Israeli law, Contractor shall pay the Company a predetermined minimum amount of liquidated damages of USD 500, for each whole day in which the applicable AVOD System and/or the M&C System is unavailable exceeding the aforesaid availability criteria.
- 22.5. In the event of delay of more than 1 day in the performance of any maintenance service with respect to a AVOD System Unit as set forth in the SOW and in accordance with the time table set forth therein, then without derogating from any other right or remedy of the Company under the Agreement or the Israeli law, Contractor shall pay Company a predetermined minimum amount of liquidated damages of USD 1,000, for each day of delay in the performance of the aforesaid maintenance services.
- 22.6. In the event that an AVOD System Unit does not meet the minimum availability criteria set forth in the SOW, Plans and/or the Tender then without derogating from any other right or remedy of the Company under this Agreement or the Israeli law, Contractor shall pay the Company a predetermined minimum amount of liquidated damages of USD 1,000, for each whole day in which the applicable AVOD System exceeding the aforesaid availability criteria.
- 22.7. Notwithstanding the aforementioned it is understood that total amount of liquidated damages payable by the Contractor pursuant to this Section 22 will not exceed an amount equal to 10% of the Basic Stage Payment.

### **23. Term and Termination**

- 23.1. Term. This Agreement shall be effective from the Effective Date, and shall remain in force until the later of (a) last to expire of the Warranty Periods (then in effect or that are to come into effect, including by way of extension as set forth under Section 6.9 above) and (b) the lapse of the Option Period ("**Term**"), unless otherwise terminated as provided herein.
- 23.2. Termination. This Agreement may be terminated by Company for cause immediately upon the occurrence of and in accordance with the following (for the avoidance of doubt it is being clarified that such termination shall not derogate in any manner from any other remedy available to the Company under this Agreement and/or under any applicable Law):
- 23.2.1. Bankruptcy Event. Company may terminate this Agreement by delivering written notice to the Contractor upon the occurrence of dissolved Bankruptcy Event.
- 23.2.2. Change of Control. If there is any change in the control over the Contractor and/or the Major Subcontractor following which the Contractor and/or the Major Subcontractor will be controlled, directly or indirectly by a person who is the citizen of a non-Authorized State and/or by an entity that is organized under a non-Authorized State, Company may, at its option, terminate this Agreement upon written notice to Contractor.

"Authorized State" means a state which is a member of the OECD and has full diplomatic relations with the State of Israel.

- 23.2.3. Default. Company may terminate this Agreement effective upon written notice to the Contractor if the Contractor materially violates any covenant, agreement, representation or warranty contained in this Agreement or defaults or fails to perform any of its obligations or agreements hereunder, which violation, default or failure is not cured within thirty (30) days after notice thereof from Company stating its intention to terminate this Agreement by reason thereof.
- 23.2.4. Performance Default Events: Company may terminate this Agreement effective upon written notice to the Contractor in the event that more than 10 Performance Default Events (as set forth under Section 22.2), have occurred.
- 23.2.5. Termination of Agreement with Major Subcontractor: to the extent that the Contractor has designated a Major Subcontractor for the purpose of conducting any or all of its obligations under this Agreement, the Company may terminate this Agreement effective upon written notice to the Contractor in the event that the agreement between the Contractor and the Major Subcontractor expires and/or terminated, and the Contractor hereby undertakes for immediately inform the Company (i) in the event of such expiration and/or termination and (ii) in the event that circumstances arise that may reasonably lead to termination and/or expiration of its agreement with the Major Subcontractor.
- 23.3. Termination for Convenience. Company may terminate this Agreement at any time for its convenience, at its sole discretion, upon delivery of a sixty (60) days prior written notice to Contractor ("**Termination for Convenience**"). In the event of such Termination for Convenience (as opposed to termination for default), Contractor shall be entitled to (i) receive all payments payable by the Company prior to the date of such Termination for Convenience; and (ii) in the event that the total amounts actually received by the Contractor prior to such termination and to which it is entitled pursuant to (i) above, are lower than the Basic Stage Payment, then the Company will pay the Contractor an additional amount equal to the Basic Stage Payment minus the amounts actually received by the Contractor prior to such Termination for Convenience and that he is entitled to receive pursuant to (i) above. It is understood that The Company shall have no further payment obligation pursuant to this Agreement.
- 23.4. Survival; Support After Termination. Sections 1, 6, 7,13, 14, 16,17, 18, 19,20, 22,23, 25 and 27 of this Agreement shall survive termination or expiration of this Agreement. Furthermore, in the event of any termination or expiration of this Agreement (i) all licenses granted to Company and its representatives shall remain in effect; and (ii) Contractor shall continue to provide to the Company all of the services set forth under section 6, at Company's request, at the rates set forth in this Agreement (on a pro-rated basis) for a minimum of thirty (30) months after termination or expiration.

- 23.5. **Consequences.** Upon termination of this Agreement, the Contractor shall take all necessary steps to ensure a smooth and complete turnover of the Project to Company, including without limitation: (i) delivery and transfer of the AVOD System, and all Documentation (including without limitation Specifications, designs and Confidential Information) to Company, in good working order and in compliance with the terms and conditions of this Agreement (any non-conformities or Defects shall be repaired/replaced at Contractor's expense); (ii) cooperation with Company's contractors and providing all reasonable assistance and information as required.

## **24. Change Request**

- 24.1.1. Company shall have the right to request, in writing, that changes, enhancements and/or supplements shall be made to the Project in whole or in part including without limitation to the Specifications, AVOD System, and/or scope of Installation ("**Change Request**").
- 24.1.2. Following the receipt of a Change Request, Contractor shall inform Company in writing, within five (5) Business Days as of Company's Change Request: as to all the costs involved in the performance of such Change Request; and provide Company with a detailed description of the works, deliverables; the schedule and timeframe for completion of such Change Request, anticipated impact on the entire AVOD System, detailed pricing (including material and manpower and all documentation and information as required by Company in connection therewith. Contractor shall not begin the performance of any Change Request before Company has submitted in writing to the aforesaid it.
- 24.1.3. Fulfillment of each Change Request shall be subject to the terms and conditions of this Agreement, including without limitation: testing, planning and Company approvals and Acceptance. All deliverables in connection with any Change Request shall be deemed as part of the Project and subject to the terms of this Agreement.
- 24.1.4. For the sake of clarity, any Change Requests materially within the scope of the Specifications, Installation, Plans and SOW and/or required as remedial works pursuant to a Defect and/or as Updates and/or Upgrades and/or required for Acceptance and/or for compliance with the terms of this Agreement and/or daily works shall not be deemed as a Change Request and shall not require additional payment. In the event of any *bona fide* controversy between the Parties whether a certain task should be considered as a Change Request, such controversy will not withhold or delay the performance of such action by Contractor, to the extent required by Company in writing despite the controversy, provided that any non-disputed amount will be duly and timely paid. Exercise of Optional Stage (in any quantities whatsoever) shall not be deemed as a Change Request even if entitled as such. Without derogating from the foregoing, Change Requests may be required at any given time.
- 24.1.5. Company retains the right and option to reject a Contractor's proposal in connection with any Change Request, and to implement the change through a third party in which case Contractor shall then cooperate with any such third party including as required to provide integration services and transfer to maintenance.

## **25. Import Permits and Duties**

- 25.1. Contractor shall be responsible for the payment of all customs, duties, fees and taxes, import duties and/or import surcharges, withholding tax on imports and sales tax imposed on or as a consequence of the importation of the AVOD System and part thereof and any part of the Project into Israel. Contractor shall be also responsible for the payment of port fees and customs clearance charges related to the import of the AVOD System and part thereof or any part of the Project into Israel.
- 25.2. Without derogating from any of the Contractor's obligations to pay all customs, fees, taxes and all clearance charges related to the import of the AVOD System and part thereof and any part of the Project, Company hereby agrees to reasonably cooperate with Contractor to the extent necessary and sign the necessary documents in order to assist the Contractor with receiving certain tax exemption, and, to the extent necessary, to be registered as the importer of the Project, provided, however, that such cooperation shall not create any obligations on Company other than what is specifically set forth herein. Contractor shall, for the purposes of importation of any of the Installation, the AVOD System and part thereof and any part of the Project obtain all import permits, licenses, authorizations, certificates and approvals in a timely manner, including: the preparation, processing, and submission of all documentation to the competent authorities of Israel; the provision of all necessary explanations relating to the nature of the machinery and equipment and the manner in which it will be used; and any other matter specified in the relevant procedures required by the authorities of Israel as a condition to the granting or maintaining of any exemption from, or reduction of any taxes and import duties. Contractor shall consult with Company before submission of any documentation or the provision of any explanation to the authorities of Israel and Company shall give reasonable assistance to the Contractor therewith, at Contractor's expense, provided that such assistance shall not relieve the Contractor of its responsibilities referred to above.

## **26. Force Majeure.**

- 26.1. Neither party shall be liable to the other for delays or failures in performance resulting from causes unforeseeable and beyond the reasonable control of that party ("**Force Majeure Event**"). Without derogating from the foregoing, for the sake of clarity, any damages, failures and/or delays that may result from electricity failures/shortages, level of wind-speed, lightening, act of war or terrorism (that does not affect the Project directly), labour disputes and/or rodents, (are not and shall not be deemed as a Force Majeure Event and Contractor shall account for them in advance and at Contractor's sole expense. In the event that Contractor fails to comply with its obligations herein due to such a Force Majeure Event, Company may either: (i) terminate this Agreement or any part hereof as to such failure (and such termination shall be deemed Termination For Convenience); or (ii) suspend this Agreement in whole or in part for the duration of the delaying cause. Contractor shall resume performance under this Agreement immediately after the delaying cause ceases and, at Company's option, extend the then current term period for a period equivalent to the length of time the excused delay endured. Notwithstanding anything to the contrary, the following events are not and shall not be regarded as "Force Majeure Event": Any act or omission (including delay) of an associate or affiliate of the Contractor or its Staff and/or Subcontractors; and/or any recommendation and/or instruction of any foreign governmental authority to its nationals to refrain from travelling to Israel and/or to leave Israel.

## **27. General**

- 27.1. Relationship of Parties. The Contractor serves as an independent contractor and there exists no employer – employee relation and/or any other relationship, including a partnership, franchise, joint venture, agency, fiduciary, master/servant relationship, or other special relationship between the Company and the Contractor and/or its employees and/or the employees of its Subcontractors and/or the employees of any entity acting on their behalf. Notwithstanding the foregoing, should it be determined, in contrast to the express intent of the parties, that an employer – employee relations did exist between the Company and the Contractor and/or its employees and/or the employees of the Contractor and/or the employees of its subcontractors and/or the employees of any entity acting on their behalf, the Contractor shall indemnify the Company in respect to any expense and/or damage caused as a result thereof. Neither party shall act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party.
- 27.2. OBU Based AVOD Systems. Without derogating from any other provision under this Agreement, in the event that the AVOD System will include the placement of transmitters in the driving vehicles, than in addition to the applicable provisions in the SOW, the Contractor will be obligated to insure the compliance of the AVOD System and the transmitters with any and all applicable laws and regulation and will be fully and exclusively liable for the procurement, supply, engineering, design, operation, installation, integration, migration, provision, customer support, training, maintenance, replacement, upgrades, and distribution to end user and to all other services and works associated with the transmitter. And it is being clarified that the Company shall not be required to pay the Contractor and/or any third party any additional payments, fees, royalties, expenses and/or costs, in connection with the transmitters and/or with the use thereof.
- 27.3. No Third Party Beneficiaries.
- 27.3.1. Unless as expressly provided, and subject to the below paragraph, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than Company and Contractor any rights, remedies or other benefits under or by reason of this Agreement.
- 27.3.2. Notwithstanding the aforementioned it is agreed that this Agreement shall be deemed an agreement for the benefit of a third party, and accordingly, the Israeli Ministry of Transportation and Road Safety, and whoever else is designated by it, shall be deemed a third part beneficiary under this Agreement pursuant to Section 34 of the Israeli Contract Law (General Part) 5733-1978.
- 27.4. Equitable Relief. Each Party acknowledges that a breach by the other Party of any confidentiality or proprietary rights provision of this Agreement may cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation. Consequently, the non-breaching party may institute an action to enjoin the breaching Party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching Party may be entitled at law or in equity.
- 27.5. Attorneys' Fees. In addition to any other relief awarded, the prevailing party in any action arising out of this Agreement shall be entitled to its reasonable attorneys' fees and costs.
- 27.6. Notices. Any notices or other documents to be given hereunder shall be in writing and delivered or sent by personal delivery, courier, registered mail, e-mail or by



27.12. Headings. Headings used in this Agreement are for ease of reference only and shall not be used to interpret any aspect of this Agreement.

27.13. Entire Agreement. This Agreement, including all exhibits which are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter.

**28. Counterparts.**

This Agreement may be executed in two counterparts, each of which shall be an original and together which shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first above written.

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Exhibit F: Performance Guarantee****Date: \_\_\_\_\_****To****Ayalon Highways Co. Ltd.****Al Parashat Drachim Str. PO Box 32294, Tel Aviv, Israel**

By this Guarantee, we \_\_\_\_\_ [*name of bank and branch*] (the Bank'), having our address at \_\_\_\_\_ [*address of bank*], hereby guarantee to pay you any and all amounts up to the aggregate sum of [*insert number amount*] ([*insert amount in words*) (the "Guaranteed Amount") that you may claim in writing, on account of [*insert name(s) of Contractor*] \_\_\_\_\_ (hereinafter collectively referred to as the "Contractor"), jointly and severally, in connection with Contract/Agreement No. [Insert contract number/name] signed by the Contractor and you.

We hereby agree to pay you any amount up to the Guaranteed Amount, within up to seven (7) days of receipt of your first demand specifying the amount claimed by you.

Our obligation hereunder is unconditional and absolute, and accordingly you are not required to substantiate, justify or prove your demand, or to resort to any action against the Contractor or against any other party, or to exhaust any other remedies.

You are entitled to make one or more requests for payment under this Guarantee, provided that the total amount to be paid by us does not exceed the Guaranteed Amount.

This Guarantee shall remain in full force and effect until [*insert date of expiry*\_\_\_\_\_].

This Guarantee may not be assigned or transferred.

This Guarantee shall be governed by the laws of the State of Israel.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Signature of the Bank: \_\_\_\_\_

Signed by: \_\_\_\_\_

Seal (where applicable)

**Exhibit G****INSURANCE CERTIFICATE**

Messrs.,

Ayalon Highways Company Ltd.

Al Parashat Drachim Street

Tel Aviv (hereinafter "**Company**")

Dear Sirs,

**Re: Confirmation of Insurance –**

In respect of the Automated Vehicle Occupancy Detection System Agreement between Ayalon Highways Company Ltd. (hereinafter: "**Company**") and \_\_\_\_\_ Ltd. (hereinafter jointly and severally "**Contractor**") for procurement, supply, design, installation, operation, integration, warranty, support, training and other services and works with respect to the Automated Vehicle Occupancy Detection System , including, without limitation, the Project, AVOD System and the Warranty Plan as such terms are defined in the said agreement (hereinafter "the **Work** " and/or "the **Product**")

We, the undersigned, do hereby confirm that subject to exclusions and conditions, except as amended hereunder, that Contractor is insured as follows:

The scope of cover provided under the following policies shall not be inferior to terms of the coverage provided by the policy terms known as Bit 2013 (except for Professional Liability policy), and subject to the following

Period of Insurance : From \_\_\_\_\_ to \_\_\_\_\_ (both days inclusive)

**1. Third Party Liability Insurance – Policy no. \_\_\_\_\_**

Covering the liability of The Contractor for loss, injury or damage occurring to any person and/or property of any person and/or entity, with limits of liability of not less than \$5,000,000 (Five million U.S. dollars) any one occurrence and in all for an annual insurance period.

It is noted and agreed that the property of the Company shall be considered third party property.

This insurance is extended to include the Company as an additional insured, subject to Cross Liability clause.

**2. Employers Liability Insurance – Policy no. \_\_\_\_\_**

Covering the liability of the Contractor as an employer towards its employees, for death or injury occurring during and/or as a result of their employment. Limit of liability of \$5,000,000 (Five million U.S. dollars) any one occurrence and in all for an annual insurance period. This insurance has no exclusion regarding contractors and/or sub-contractors, works in heights, depths and/or working hours.

This insurance is extended to include the Company as an additional insured insofar it is considered as the employer of the Contractor's employees and/or it is determined that it is vicariously liable in respect of the Contractor's liability towards its employees

**3. Product liability insurance – Policy no. \_\_\_\_\_**

Limit of liability of not less than \$ 5,000,000 (Five million U.S. dollars) any one occurrence and in all for an annual insurance period. Retroactive date not later than the commencement date of the agreement. The Insurance covers the Contractor's legal liability in respect of any liability arising out of bodily injury or property damage which may devolve upon him due to any defect in the Work and/or the Product. The policy insurance includes a 12-month Discovery Period and a retroactive date not later than the commencement date of the services.

This insurance is extended to indemnify the Company and anyone acting on behalf of the Company in respect of their liability for the acts and/or omissions of the Contractor or anyone acting on its behalf, subject to Cross Liability clause.

**General**

We hereby confirm that the Contractor shall be solely responsible for paying the premiums and deductibles under the above policies.

The aforementioned policies include an express condition whereby they are primary to any insurance taken out by Company and we waive any claim and/or demand with regard to contribution and/or participation of Company's insurances. In addition, the Policy includes an express condition according to which it will not be cancelled nor reduce insurance coverage during the period of insurance, unless at least 60 days prior notice thereof be sent to Company by a registered mail.

Any breach of the conditions in good faith by Contractor does not derogate from Company's right to receive indemnity under the said insurances

We confirm that Contractor is solely responsible for the payment of any insurance premiums and/or any form of deductible.

_____ Name of the insurer	_____ Insurer's stamp and signature	_____ Name of the signatory	_____ Position	_____ Date
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## Exhibit H

### NDA

#### UNILATERAL CONFIDENTIALITY UNDERTAKING ("NDA")

\_\_\_\_\_ [Please complete], a company organized and existing under the laws of \_\_\_\_\_ [Please complete], with an address at \_\_\_\_\_ [Please complete] (“**Recipient**”), hereby undertakes towards Ayalon Highways Company Ltd. (“**Disclosing Party**”) the undertakings set forth below,

**Whereas** This NDA is an integral part of the Automated Vehicle Occupancy Detection System Agreement (“**Agreement**”) and capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement; and

**Whereas** Recipient is aware that Disclosing Party may disclose, from time to time, Confidential Information (as such term is defined hereunder), to Recipient, pertaining to the subject matter of the Tender, Project and/or the Agreement, for the purpose of fulfilling Recipient's obligations under the Agreement (“**Purpose**”), and other information deemed by Disclosing Party as being Confidential Information; and

**Whereas** The Disclosing Party would like to protect the confidentiality of, maintain its respective rights in, and prevent the unauthorised use and disclosure of such Confidential Information,

**Now therefore** Recipient hereby undertakes as follows:

1. **Confidential Information.** Recipient agrees that all information disclosed by the Disclosing Party, or obtained by Recipient in connection with the Purpose, whether oral, visual or in writing, including but not limited to, all pricing, specifications, formulas, prototypes, computer programs (source and/or object code) and any and all records, data, ideas, methods, techniques, processes and projections, plans, marketing information, materials, financial statements, memoranda, analyses, notes, legal documents and other data and information (in whatever form), as well as improvements, patents (whether pending or duly registered) and any know-how related thereto, relating to the Disclosing Party, its agents and/or contractors and information learned by the Recipient from the Disclosing Party through the inspection of the Disclosing Party's property, that relates to Disclosing Party's products, designs, business plans, business opportunities, finances, research, development, know-how, personnel, or third-party confidential information, the terms and conditions of this NDA will be considered and referred to collectively in this NDA as “**Confidential Information**”. Notwithstanding, Confidential Information, shall not include information that: (i) is now or subsequently becomes generally available in the public domain through no fault or breach on the part of Recipient; (ii) Recipient can demonstrate in its records to have had rightfully in its possession prior to disclosure of the Confidential Information by the disclosing party; (iii) Recipient rightfully obtains from a third party who has the right to transfer or disclose it, without default or breach of confidentiality or this undertaking; or (iv) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; *provided, however*, that Recipient shall make the best effort to provide prompt notice of such court order or requirement to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure. Disclosing Party retains all right, title and interest in and to the Confidential Information and all improvements, enhancements and derivatives thereof and all Intellectual Property Rights thereto, all of which is and shall continue to be exclusively owned by Disclosing Party and no right or license therein are granted to recipient hereunder.
2. **Non-Disclosure and Non-Use of Confidential Information.** Recipient agrees to accept and use Confidential Information solely for the Purpose. Recipient will not disclose, publish, or disseminate Confidential Information to a third party other than those of its employees with a need to know, bound in writing by the terms hereof and further agrees to prevent any unauthorised use, disclosure,

publication, or dissemination of Confidential Information and ensure that such Recipient's employees fully perform the duties and obligations hereunder, and to this end such party shall obtain appropriate written agreements with its employees, but in any event the Recipient agrees to be responsible for any use or disclosure of Confidential Information of any of its said employees. Recipient agrees not to use Confidential Information otherwise for its own or any third party's benefit without the prior written approval of an authorised representative of the Disclosing Party in each instance. In performing its duties and obligations hereunder, Recipient agrees to use at least the same degree of care as it does with respect to its own confidential information of like importance but, in any event, at least reasonable care. Further, Recipient agrees that it shall not make any copies of the Confidential Information on any type of media, without the prior express written permission of the authorised representative of the Disclosing Party.

3. **Compliance with Law.** Recipient hereby undertakes to comply at all times with Israeli Law, including without limitation the provisions of the Protection of Privacy Law, 5741-1981, all regulations promulgated thereunder, all standards, guidelines and regulations of the National Cyber Bureau and/or the Israeli, Law, Information and Security Authority and/or the Ministry of Transportation and Road Safety (including without limitation the Emergency, Security, Information and Cyber departments) and other government authorities in respect of privacy, cyber and data security. In the event that Recipient will have access to any personally identifiable information, Recipient shall comply with the Guidelines on the Use of Outsourcing Services of Processing Personal Information (Guideline 2-2011), of the Israeli, Law, Information and Technology Authority and will take all actions and sign all documents required in order to allow the Disclosing Party to be in full compliance with any of the aforementioned laws, regulations and guidelines.
4. **No License or Joint Venture.** All Confidential Information, and any derivatives thereof is and shall remain the property of the Disclosing Party and no license or other rights to Confidential Information is granted or implied hereby to have been granted to the Recipient, now or in the future. Further, this NDA is not a joint venture or other such business arrangement; and any agreement if at all, between the parties hereto will be set forth in subsequent written agreements, at the absolute discretion of the parties hereto.
5. **No Warranty.** THE CONFIDENTIAL INFORMATION AND ANY OTHER INFORMATION IS PROVIDED BY THE DISCLOSING PARTY "AS IS", WITHOUT ANY WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO ITS ACCURACY OR COMPLETENESS, OPERABILITY, USE OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE NON-INFRINGEMENT OF TRADEMARKS, PATENTS, COPYRIGHTS OR ANY INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS OF THIRD PERSONS.
6. **Indemnification.** Recipient shall, upon demand, indemnify Disclosing Party and its affiliates, its and their shareholders, directors, agents and employees ("**Indemnities**") for any loss, cost, liability, damage, expense or harm (including, without limitation, reasonable attorneys' fees and court costs) suffered or incurred by Indemnities as a result of Recipient's breach of any of its undertakings herein and/or for loss of goodwill. In the event of breach of any provision in this undertaking, Recipient shall return to Disclosing Party all payments made in consideration of the services it provided to Disclosing Party.
7. **Return of Confidential Information.** Disclosing Party may decide to discontinue the disclosure of Confidential Information at any time, at will, with or without cause. Upon request of Disclosing Party, Recipient shall (i) return to Disclosing Party any information disclosed in any tangible form, and all copies thereof (on whatever physical, electronic or other media such information may be stored) containing any of the Confidential Information, if such Confidential Information is stored in electronic form, it is to be immediately deleted; and (ii) provide a certification, in writing, executed by an appropriate officer of the Recipient, that it has retained no copies of the Confidential Information on any media and that it has retained no notes or other embodiments of the information contained in the

Confidential Information. The obligations set forth herein regarding confidentiality and use of Confidential Information shall survive any expiration or termination of this undertaking.

8. **Equitable Relief.** Recipient hereby acknowledges that unauthorised disclosure or use of Confidential Information could cause irreparable harm and significant injury to Disclosing Party that may be difficult to ascertain. Accordingly, the Recipient agrees that Disclosing Party, in addition to any other right or remedy that it may have available to it at law or in equity, will have the right to seek and obtain immediate injunctive relief to enforce obligations under this NDA without the necessity of proving actual damages and without the necessity of posting bond or making any undertaking in connection therewith.
9. **Entire Agreement and Governing Law.** This NDA constitutes the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. This NDA may not be amended except by the written agreement signed by authorised representatives of both parties. This NDA shall be governed and construed solely in accordance with the laws of the state of Israel, without giving effect to conflicts of law principles thereof, and only the courts in Tel Aviv, Israel shall have jurisdiction in any conflict or dispute arising out of this NDA.
10. **Term.** This NDA shall govern the communications relating to Confidential Information between the parties during the Term of the Agreement and any survival period. The obligations set forth in this NDA shall bind Recipient from the date of disclosure of the Confidential Information and any part thereof in perpetuity, and such obligations shall survive the termination or earlier expiration of this NDA and/or the Agreement.
11. **Assignment.** This NDA may not be assigned by Recipient without the prior written consent of Disclosing Party and any purported assignment not permitted hereunder shall be construed null and void.

**IN WITNESS WHEREOF**, the recipient has caused this NDA to be executed by its duly authorised representative.

Signed this \_\_\_\_ day of \_\_\_\_\_

**[Recipient]**

By: \_\_\_\_\_

[Name and Title]