

Israel Railways Ltd.

**Supply and Maintenance of Double Deck Electric Multiple
Units**

VOLUME C

Form of Agreement

TENDER DOCUMENTS

VOLUMES A TO C

Volume A

Instructions to Bidders

Schedules

Attachments to the Instructions to Bidders

Volume B

Technical Specifications

Volume C

Form of Agreement

Attachments to the Agreement

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Agreement No.

**This Agreement is made and entered into in Tel Aviv, Israel
this ___ day of ___, 2016**

BETWEEN

ISRAEL RAILWAYS LTD.

Company No. 52-004361-3
of Tel Aviv Central Train Station, P.O.B 18085
Tel-Aviv 61180, Israel
(“ISR”)

of the first part

AND

 (“Supplier”)

of the second part

Preamble

- WHEREAS** ISR is in the process of electrifying its railway network; and
- WHEREAS** ISR wishes to purchase a fleet of new electric multiple units to be designed, manufactured, delivered, commissioned, and put into full operation; and
- WHEREAS** ISR has published the Tender to select the supplier that will perform any and all Works for the supply to ISR of a fleet of double deck electric multiple units, warranty thereof, construction of a Maintenance Depot and Maintenance of a part of the fleet; and
- WHEREAS** the proposal submitted by Supplier in the Tender was selected as the winning proposal; and
- WHEREAS** Supplier represents and warrants that it has the know-how, ability, expertise, facilities, financial and all other resources, experience, Intellectual Property Rights, and all rights and permits necessary for the performance of the Works, and all that is required for the timely completion of all of its obligations and undertakings pursuant to this Agreement; and
- WHEREAS** Supplier desires to perform the Works on a "turn-key" basis, in accordance with the provisions of this Agreement, including but not

limited to perform all that is necessary and required in connection with the Works and, *inter alia*, to design, obtain required permits, procure and supply all necessary materials, components and equipment, manufacture, assemble, construct and deliver to ISR, commission and put into full operation the Units, design-build of the Maintenance Depot, and provide Warranty and Maintenance under the terms and for the period stipulated in this Agreement for the consideration and on the other terms and conditions specified herein, and ISR has agreed to engage Supplier for such consideration and on such terms and conditions.

NOW THEREFORE, INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO AGREE AS FOLLOWS:

1. PREAMBLE AND ATTACHMENTS

The Preamble to this Agreement and all the attachments hereto constitute an integral part hereof.

2. DEFINITIONS

Capitalized terms defined below shall have the meaning ascribed to them, as specified opposite each of them.

- 2.1 “**Additional Purchase**” – Shall mean the purchase by ISR of any Unit under this Agreement, other than purchase under the Initial Purchase.
- 2.2 “**Additional Purchase Order**” – Shall mean Additional Purchase order in the form attached as **Attachment J** hereto.
- 2.3 “**Additional Units**” – Shall mean any Unit ordered by ISR under an Additional Purchase Order.
- 2.4 “**Agreement**” – Shall mean this agreement, as may be amended in accordance with its terms from time to time, including any attachments thereto (and including for the removal of doubt the LUL Agreement and the Maintenance Depot Contract).
- 2.5 “**Applicable Law**” – Shall mean any Israeli statute, law, ordinance, rule, regulation, order, writ, injunction, judgment, decree or other requirement of any governmental entity existing as of the Effective Date or at any time during the term of the Agreement and applicable to ISR, Supplier, its Subcontractors and/or the Works.
- 2.6 “**Basic Performance Guarantee**” – Shall have the meaning indicated in Section 25.2.1 below.
- 2.7 “**Bid Guarantee**” – Shall mean that certain bank guarantee that was furnished by Supplier to ISR together with Supplier's Proposal.
- 2.8 “**Body Shell Tests**” – Shall have the meaning indicated in Section 16.3 below.
- 2.9 “**Business Day**” – Shall mean any day other than (i) Friday, (ii) Saturday, and (iii) any day which is a legal holiday in Israel. For the removal of

- doubt, the intermediate days of Passover and Sukkot ('Hol Hamoed') are considered Business Days..
- 2.10“**Certificate of Completion of Body Shell**” – Shall have the meaning indicated in Section 16.3 below.
- 2.11 “**Certificate of Completion of Factory Tests**” – Shall have the meaning indicated in Section 16.3 below.
- 2.12 “**Change Order**” – Shall have the meaning indicated in Section 8.1.5 below.
- 2.13“**Commercial Invoices**” – Shall have the meaning indicated in the Payment Schedule.
- 2.14“**Communications**” – Shall have the meaning indicated in Section 43 below.
- 2.15“**Completion**” [*of the Maintenance Depot*] – Shall have the meaning indicated in the Maintenance Depot Contract.
- 2.16“**Cost-Plus Mechanism**” – Shall have the meaning indicated in Section 23.11 below.
- 2.17“**Cost-Plus Works**” – Shall have the meaning indicated in Section 23.11 below.
- 2.18“**Daily Rates**” – Shall have the meaning indicated in Chapter 3 of the Payment Schedule.
- 2.19“**Damages**” – Shall have the meaning indicated in Section 28.1 below.
- 2.20“**Delegation**” – Shall have the meaning indicated in Section 10.3.2 below.
- 2.21“**Delivery Schedule**” – Shall mean the delivery schedule approved by ISR with respect to each Purchase order, as applicable. The delivery schedule for Final Acceptance of the Units included in IPO1 is attached as **Attachment B**.
- 2.22“**Delivery Terms**” – "Delivered at Place" (DAP) - as defined in "INCOTERMS 2010", to a Site, subject to the provisions of Section 24.2 below.
- 2.23“**Depot Equipment**” – Shall have the meaning indicated in Section 19.5.2 below.
- 2.24“**Depot Maintenance**” – Shall have the meaning indicated in Section 19.5.2 below.
- 2.25“**Depot Site**” – Shall have the meaning indicated in the Maintenance Depot Contract.
- 2.26“**Depot Subcontractor**” – Shall have the meaning indicated in the Instructions to Bidders.
- 2.27“**Dispute**” – Shall have the meaning indicated in Section 32.1 below.
- 2.28“**Down Payment**” – Shall have the meaning indicated in the Payment Schedule.
- 2.29“**Down Payment Guarantee**” – Shall have the meaning indicated in

Section 25.3.1 below.

- 2.30“**Effective Date**” – Shall mean the date first mentioned in the header of this Agreement.
- 2.31“**Endemic Failures**” – Shall mean any failure and/or malfunction of any component and/or system and/or part and/or software which occurs:
- (i) on at least ten percent (10%) of all such components and/or systems and/or parts and/or software of all Units ordered under the same Purchase Order (as applicable); or .
 - (ii) at least three (3) times on the same component and/or system and/or part and/or software,
within the Warranty Period in Section 18.4.2 below, as a result from defect(s) of the same root cause in design, material, workmanship, and/or manufacturing process.
- 2.32 “**Excluded Maintenance Works**” – Shall have the meaning indicated in the Maintenance Chapter.
- 2.33“**Excluded Warranty Works**” – Shall have the meaning indicated in Section 18.19.1 below.
- 2.34“**End of 3 Years Warranty Certificate**” – Shall have the meaning indicated in Section 18.7 below.
- 2.35“**End of Maintenance Certificate**” – Shall have the meaning indicated in the Maintenance Chapter.
- 2.36 “**End of Maintenance Warranty**” – Shall have the meaning indicated in the Maintenance Chapter.
- 2.37 “**End of Maintenance Warranty Guarantee**” – Shall have the meaning indicated in Section 25.8 below.
- 2.38 “**Equipment**” – Shall have the meaning indicated in Section 21.1 below.
- 2.39“**Escrow Agent**” – Shall have the meaning indicated in Section 22.6 below.
- 2.40“**Factory Tests**” – Shall have the meaning indicated in Section 16.3.2 below.
- 2.41“**Fault**” – Shall have the meaning indicated in Section 18.1 below.
- 2.42“**Fault Free Service Running Certificate**” – Shall have the meaning indicated in Section 16.5.1 below.
- 2.43“**Final Acceptance**” – Shall mean, with respect to each Unit, issuance by ISR of a signed Final Acceptance Certificate.
- 2.44“**Final Acceptance Certificate**” – Shall have the meaning indicated in Section 16.4.6 below.
- 2.45“**Final Acceptance Tests**” – Shall have the meaning indicated in Section 16.4 below.
- 2.46“**Final ITP**” – Final Inspection and Test Plan - shall have the meaning indicated in Section 16.1.3 below.

- 2.47“**Final Payment**” – Shall have the meaning indicated in the Payment Schedule.
- 2.48“**Fourth Payment**” – Shall have the meaning indicated in the Payment Schedule.
- 2.49“**Guarantees**” – Shall have the meaning indicated in Section 25 below.
- 2.50“**Imported Goods**” – Shall have the meaning indicated in Section 24.1 below.
- 2.51“**Indexation Linkage Mechanisms**” – Shall have the meaning indicated in Chapter 5 of the Payment Schedule.
- 2.52“**Initial Purchase**” – Shall have the meaning indicated in Section 7.2 below.
- 2.53“**Intellectual Property Rights**” – Shall have the meaning indicated in Section 22.2 below.
- 2.54“**IPM**” – ISR's Project Manager - shall have the meaning indicated in Section 10.2.1 below.
- 2.55“**IPO1**”, “**IPO2**”, “**IPO3**” – Shall have the meaning indicated in Section 7.2 below.
- 2.56“**IPR**” – IPM's Representative - shall have the meaning indicated in Section 10.3.1 below.
- 2.57“**ISR**” – Israel Railways Ltd.
- 2.58“**ISR Maintained Fleet**” – Shall mean all Units regarding which a Final Acceptance Certificate has been issued by ISR and which are not part of the Supplier Maintained Fleet.
- 2.59 “**Israeli Affiliate**” – Shall have the meaning indicated in Section 23.4 below.
- 2.60“**Israeli Affiliate Duties**” – Shall have the meaning indicated in Section 23.4 below.
- 2.61“**Late Delivery Cap**” – Shall have the meaning indicated in Section 26.1.1 below.
- 2.62“**Liquidated Damages for Late Delivery**” – Shall have the meaning indicated in Section 26.1 below.
- 2.63“**Local Services**” – Shall have the meaning indicated in Section 23.3 below.
- 2.64“**Locations**” - Shall mean the Sites, ISR's tracks, ISR's Maintenance Control Center, ISR's facilities, ISR's depots, the Depot Site, the Maintenance Depot, and any other ISR's sites where Maintenance and/or Warranty shall be rendered, as will be determined by ISR from time to time.
- 2.65“**Locations Use License Agreement**” or “**LUL Agreement**”- Shall mean the Locations Use License Agreement attached as **Attachment U** to this Agreement.
- 2.66 “**Long Unit**” – Shall mean a DDEMU (double deck electric multiple

- units) comprised of six (6) vehicles and complying with all the requirements of the Technical Specifications.
- 2.67 “**Maintenance**” or “**Maintenance Services**” – Shall have the meaning indicated in the Maintenance Chapter, with respect to Supplier Maintained Fleet only.
- 2.68 “**Maintenance Chapter**” – Shall mean **Attachment F2** to this Agreement.
- 2.69 “**Maintenance Depot**” – Shall mean the Maintenance depot to be designed, constructed and warranted by Supplier under the Maintenance Depot Contract, including but without limitation the Depot Equipment.
- 2.70 “**Maintenance Depot Contract**” – Shall mean **Attachment F1** to this Agreement.
- 2.71 “**Maintenance Depot Guarantee**” – Shall have the meaning indicated in Section 25.7 below.
- 2.72 “**Maintenance Guarantee**” – Shall have the meaning indicated in Section 25.6 below.
- 2.73 “**Maintenance Liquidated Damages**” – Shall have the meaning indicated in Annex 12 to the Maintenance Chapter.
- 2.74 “**Maintenance Period**” – Shall have the meaning indicated in Section 19.2 below.
- 2.75 “**Maintenance Price**” – Shall have the meaning indicated in Chapter 3 of the Payment Schedule.
- 2.76 “**Maintenance Year**” – Shall have the meaning indicated in Section 19.2.1 below.
- 2.77 “**Monitoring Period**” – Shall have the meaning indicated in **Attachment M**.
- 2.78 “**Order Period**” – Shall have the meaning indicated in Section 6.2 below.
- 2.79 “**Overhauls**” – Shall have the meaning indicated in the Maintenance Chapter.
- 2.80 “**Parent Company**” – Shall have the meaning indicated in Volume A.
- 2.81 “**Payment Guarantee**” – Shall have the meaning indicated in Section 25.4.1 below.
- 2.82 “**Payment Schedule**” – Shall mean the payment schedule attached as **Attachment H**.
- 2.83 “**PCP**” – Project Control Plan - shall have the meaning indicated in Section 11.2.1 below.
- 2.84 “**Performance and Warranty Guarantee**” – Shall have the meaning indicated in Section 25.5.1 below.
- 2.85 “**Poor Performance Liquidated Damages**” – Reliability Liquidated Damages and/or Availability Liquidated Damages, as these terms are defined in **Attachment M**.

- 2.86“**Portion A**” – Shall have the meaning indicated in the Payment Schedule.
- 2.87“**Portion B**” – Shall have the meaning indicated in the Payment Schedule.
- 2.88“**Preliminary ITP**” – Preliminary Inspection and Test Plan - shall have the meaning indicated in Section 16.1.1 below.
- 2.89“**Price per Kilometer**” – Shall have the meaning indicated in the Maintenance Chapter.
- 2.90“**Proceedings**” – Shall have the meaning indicated in Section 28.3 below.
- 2.91“**Purchase Order**” – Shall mean IPO1, IPO2, IPO3 and/or Additional Purchase Order(s), as the case may be, issued by ISR in the form attached as **Attachment J** hereto.
- 2.92“**QAP**” – Quality Assurance Plan –Shall have the meaning indicated in Section 11.2.2 below.
- 2.93“**Retention Rights**” – Shall have the meaning indicated in Section 35.1 below.
- 2.94“**Second Payment**” – Shall have the meaning indicated in the Payment Schedule.
- 2.95“**Shipping Certificate**” – Shall mean a certificate issued by ISR to authorize the delivery by Supplier of a Unit to the Site, in the form attached as **Attachment D2**.
- 2.96“**Short Unit**” – Shall mean a DDEMU (double deck electric multiple unit) comprised of four (4) vehicles and complying with all the requirements of the Technical Specifications.
- 2.97 “**Site**” – Shall mean an ISR's site in Haifa, Ashdod, Ashkelon or any other location designated by ISR at its sole discretion.
- 2.98“**Source Codes**” – Shall have the meaning indicated in Section 22.6 below.
- 2.99“**Spare Parts**” – Shall have the meaning indicated in Section 20.1 below.
- 2.100“**SPM**” – Supplier's Project Manager - shall have the meaning indicated in Section 10.1.1 below.
- 2.101“**Subcontractors**” – Shall have the meaning indicated in Section 12.1 below.
- 2.102“**Supplier**” – As defined in the header to the Agreement.
- 2.103“**Supplier Maintained Fleet**” – Shall have the meaning indicated in Section 19.1 below.
- 2.104“**Supplier's Materials**” – Shall have the meaning indicated in Section 14.6 below.
- 2.105“**Supplier's Proposal**” – Shall mean Supplier’s last Proposal in the Tender.
- 2.106“**Technical Specifications**” – Shall mean the technical specifications attached as **Attachment A**.
- 2.107“**Technical Support Team**” – Shall have the meaning indicated in

Section 18.23.1 below.

- 2.108 “**Tender**” – Shall mean Tender No. 51403 published by ISR in which it requested proposals for the execution of the Works.
- 2.109 “**Tender Documents**” – Shall mean any and all documents issued by ISR to Supplier in the course and as a part of the Tender and/or submitted by Supplier to ISR as required by ISR in the course and as a part of the Tender, whether or not attached or referred to in this Agreement.
- 2.110 “**Tests**” – Shall have the meaning indicated in Section 16.1.1 below.
- 2.111 “**Third Payment**” – Shall have the meaning indicated in the Payment Schedule.
- 2.112 “**Training**” – Shall have the meaning indicated in Section 14.4 below.
- 2.113 “**Transfer**” – Shall have the meaning indicated in Section 27.1 below.
- 2.114 “**Unit**” – Shall mean a Short Unit and/or a Long Unit, whether ordered in the Initial Purchase or under an Additional Purchase Order.
- 2.115 “**Unit Price**” – Shall have the meaning indicated in the Payment Schedule.
- 2.116 “**VAT**” – Shall have the meaning indicated in Section 23.1 below.
- 2.117 “**Warranty**” – Shall have the meaning indicated in Section 18.2 below.
- 2.118 “**Warranty Committee**” – Shall have the meaning indicated in Section 18.22 below.
- 2.119 “**Warranty Period**” – Shall have the meaning indicated in Section 18.4 below.
- 2.120 “**Warranty Team**” – Shall have the meaning indicated in Section 18.18 below.
- 2.121 “**Works**” – Shall mean all works, components, materials and equipment to be executed or supplied by Supplier and its Subcontractors in connection with the design, manufacture, supply, assembling, Tests, test running, commissioning, Warranty and Maintenance of the Units under this Agreement, and design-build and warranty of the Maintenance Depot under the Maintenance Depot Contract. Works shall include, but shall not be limited to, works to be implied therefrom or incidental thereto and including all temporary works of every kind required in or about the carrying out and completion of the Works, provision of all labor, provision and use of software, materials, equipment, machinery, works, tools, spare parts, accessories, components, Spare Parts, Unit parts, Units, and other implements of every kind and description (including Intellectual Property Rights) - all in accordance with the Technical Specifications and/or the Maintenance Depot Contract (as applicable).

3. INTERPRETATION AND ORDER OF PRECEDENCE

- 3.1 **Section or Attachment References**. When a reference is made in this Agreement to a Section or Attachment, such reference shall be to a Section of, or an Attachment to, this Agreement unless otherwise

specifically indicated.

- 3.2 **Table of Contents and Sections Headings.** The table of contents and Sections headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 3.3 **Definition of Certain Terms.** Except where the context otherwise requires or as may be otherwise expressly provided in the Agreement, all capitalized terms used in this Agreement shall have the meaning ascribed thereto in Section 2 above or in the Maintenance Chapter, as applicable. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, and the language following “include,” “includes” or “including” shall not be deemed to set forth an exhaustive list. Words contained in this Agreement are applicable to the singular as well as the plural forms of such words and to the masculine as well as to the feminine and neuter genders of such words; and words importing persons shall include corporations or any other legal entity.
- 3.4 **Discrepancies between Amounts.** In case of discrepancies between amounts in words and in numerals in this Agreement, the amount in words shall prevail.
- 3.5 **Order of Precedence.**
- 3.5.1 In the event of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty between the provisions of this Agreement, the attachments hereto and/or the Tender Documents, the following order of precedence will apply:
1. This Agreement, including for the purposes of this Section 3.5.1 the Payment Schedule, the Maintenance Depot Contract, and the Maintenance Chapter (including for the removal of doubt Annex 10 to the Maintenance Chapter);
 2. The attachments to this Agreement (excluding the Payment Schedule, the Maintenance Depot Contract and the Maintenance Chapter);
 3. The other Tender Documents.
 4. Supplier's final technical proposal in the Tender.
- 3.5.2 In case of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty as to the interpretation of any provision contained in this Agreement and/or the order of precedence between the various provisions contained in this Agreement, which discrepancy, ambiguity, conflict, inconsistency or uncertainty is not resolved by applying the above order of precedence, those provisions that best serve the interest of ISR under the circumstances will control and govern.
- 3.5.3 For the removal of doubt (i) nothing contained in the Maintenance Depot Contract shall be construed as derogating from ISR's rights under this main Agreement, and (ii) the mere fact that a specific provision beneficial to ISR is included in the Maintenance Depot Contract and is not included in this main Agreement shall not be

construed as if such provision has been intentionally omitted from this main Agreement, and to the extent applicable, such beneficial provision should be deemed to be included in this main Agreement.

- 3.6 **Language.** Notwithstanding any translation that may be provided by ISR for convenience purpose or prepared by Supplier, the binding version of all Tender Document shall be the version in the original language published by ISR. Without derogating from the generality of the above, it is hereby clarified that the binding version of the Maintenance Depot Contract is the Hebrew version.

4. **DECLARATIONS, REPRESENTATIONS AND WARRANTIES OF THE SUPPLIER**

Supplier hereby represents and warrants to ISR as follows:

- 4.1 **Requisite Power.** Supplier has all requisite power and authority to own, lease and operate its properties and assets and carry on its business as now being conducted and as proposed to be conducted.
- 4.2 **Authority Relative to this Agreement.** Supplier has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action of Supplier, and no other corporate proceedings on the part of Supplier are necessary to authorize this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Supplier and constitutes a valid, legal and binding agreement of Supplier, enforceable against Supplier in accordance with its terms.
- 4.3 **Parent Company, Affiliate(s) and Depot Subcontractor.**
- 4.3.1 Supplier's Parent Company's Declaration, Warranty and Undertaking is attached hereto as **Attachment P1**. [*Note: only applicable if Supplier has complied with the Financial Pre-requisites through its Parent Company.*]
- 4.3.2 The Depot Subcontractor is [REDACTED]. [*Note: the subcontractor submitted by Bidder and approved by ISR in accordance with the provisions of Volume A - to be completed prior to the Effective Date*].
- 4.3.3 The Affiliate (as defined in Volume A) presented in Supplier's Proposal for the purpose of fulfilling the Technical Pre-requisites in Section 5.1.2 of the Instructions to Bidder, is [REDACTED]. The Affiliate shall provide to Supplier any and all know-how and technical, professional and other support and assistance as requested through the entire term of the Agreement in order to enable Supplier to timely and fully fulfill all its obligations under the Agreement in connection with the design, manufacturing, assembly, supply, commissioning, Warranty and Maintenance (if

applicable) of the Units, as further detailed in the Affiliate Undertaking attached as **Attachment P2** hereto. [*Note: only applicable if Supplier has complied with the Technical Pre-requisites in Section 5.1.2 of the Instructions to Bidders through an Affiliate. If applicable, please complete name, address, and incorporation number of the Affiliate*]

For clarification: (i) any support and assistance granted by the Affiliate shall not derogate from Supplier's responsibility under the Agreement; and (ii) the consideration to which the Affiliate may be entitled to for the support and assistance granted in connection with this Agreement is included in the consideration to be paid by ISR to Supplier under the Payment Schedule, which contain ample financial provisions concerning such payment by Supplier to the Affiliate, and the Affiliate shall not be entitled to any payment or reimbursement of expenses by ISR.

4.3.4 The Affiliate (as defined in Volume A) for the performance of Maintenance is , which shall be deemed to be a Subcontractor of Supplier for any and all purposes. For clarification, and without derogating from Supplier's responsibility and liability under this Agreement, the Affiliate shall perform Maintenance, which is the subject matter of the Technical Pre-requisite regarding which compliance was demonstrated through such Affiliate at the RFP stage (as such terms are defined in the Instructions to Bidders in Tender 51403). [*Note: only applicable if Supplier has complied with the Technical Pre-requisites in Section 5.2 of the Instructions to Bidders through an Affiliate. If applicable, please complete name, address, and incorporation number of the Affiliate which was presented in Supplier's Proposal to fulfill the Technical Pre-requisite in Section 5.2 of the Instructions to Bidders.*]

4.4 **No Conflict.** No actual or potential conflict of interest or unfair competitive advantage exists with respect to Supplier's acting hereunder, and Supplier shall not engage in any contractual relationship that may cause such conflict of interest or unfair competitive advantage to exist.

4.5 **No Litigation or Impediment.** There are no (i) litigation that is currently in effect or threatened, against Supplier, which would challenge the authority of Supplier to enter into this Agreement or to carry out its obligations under this Agreement, or (ii) impediment, whether legal or stemming from a prior or simultaneous commitment made by Supplier, or any other impediment of whatever nature, which might prevent Supplier from entering into this Agreement or hinder the performance of any or all of its obligations hereunder.

4.6 **Supplier Examination and Evaluation.**

Supplier hereby represents and warrants to ISR that:

4.6.1 Supplier has examined the Tender Documents, this Agreement (including for the removal of doubt the Technical Specifications) and all other documents compiling the Agreement, and is satisfied

with regard to the data, specifications, terms and conditions under which the Units shall be designed, manufactured, assembled, integrated, completed, tested, supplied and delivered to ISR.

- 4.6.2 Supplier has been given ample opportunity to examine the conditions for supplying the Units and all factors relating to this Agreement and has satisfied itself (independent of, and without relying on, any information or data provided by ISR) with regard to the conditions under which the Works will have to be designed, manufactured, assembled, integrated, completed, tested, installed, supplied, commissioned and delivered to ISR, and Warranty and Maintenance provided, as well as with regard to all other necessary information for the performance of the Works, including, but not limited to climatic characteristics, extent and nature of Works and material required for the execution, completion, commissioning, Warranty and Maintenance thereof, accommodation of components and equipment for storage purposes and ISR's rules and procedures, including but not limited to the ISR safety regulations and access conditions to the Site.
- 4.6.3 Supplier has evaluated (independent of, and without relying on, any information or data provided by ISR) any and all other factors that may be deemed to affect the carrying out of its obligations under this Agreement, including but without limitation technical risks and environmental influences, and any other risk involved therewith, and such other conditions that may be expected to affect the progress or completion of the Works in accordance with this Agreement, and has reasonable grounds to believe and does believe that such performance is feasible and practicable.
- 4.6.4 Supplier has examined and is fully content with all of the information provided to it by ISR, including ISR's rules and procedures.
- 4.6.5 Supplier is well aware of all of the relevant parameters affecting the Works, including but not limited to loading gauge, climate conditions, station platform dimensions, station platform distance from track axis, and the conditions under which the Units will operate.
- 4.6.6 Supplier has satisfied itself with all necessary information regarding existing and planned rails, the rails conditions and their surroundings, permissible wheel and rail loads, dimensions, railway platform dimensions, rail and roadbed conditions, nature of the loads to be carried and/or transported, and the conditions under which the Units will operate in all lines to be electrified. Without derogating from the generality of the above, Supplier warrants that the Units will operate in accordance with the Technical Specifications on all ISR's rails in all lines to be electrified.
- 4.6.7 Supplier shall make no claim for additional payment from ISR on the grounds of any misunderstanding or misapprehension in

respect of any matter which a reasonable and expert manufacturer of Units knew or should have known or on the grounds of any allegation or fact that incorrect information was given to Supplier by any person (subcontractors included), firm or any legal entity which it knew or should have known to be incorrect as a reasonable and expert manufacturer of Units, whether the person, firm or legal entity was employed by ISR or not, or on the grounds of the failure on its part to obtain correct information with regard to the Works.

- 4.6.8 Supplier has been advised by ISR that the Technical Specifications can be changed at any time. Accordingly, Supplier hereby waives any claim, demand and causes of action against ISR relating to any delays, or changes introduced to the Technical Specifications, except as expressly specified in Section 8 below.
- 4.6.9 Supplier is aware that the activities contemplated under this Agreement constitute part of the process of electrification of ISR's railway's network.
- 4.6.10 Supplier has been informed by ISR that this Agreement is subject to various approvals, including (i) the required budgetary approval by the Government of the State of Israel, the receipt of which is not guaranteed (except that issuance of IPO1, IPO2 and IPO3 as set forth in Section 7.2 below, execution of the Maintenance Depot Contract and order of Maintenance in the initial Maintenance Period for the Units to be supplied under IPO1 is not subject to budgetary approval); and (ii) the successful completion of various internal procedures and requirements of ISR.
- 4.6.11 Supplier undertakes to comply with and fulfill the obligations specified in the Foreign Supplier's Industrial Cooperation Undertaking submitted by Supplier as part of Supplier's Proposal with regard to offset procurement which is to be carried out in connection with the execution of this Agreement. Without derogating from the generality of the above, Supplier undertakes to fulfill the aforesaid obligations in accordance with the Mandatory Tenders Regulations (Mandatory Industrial Cooperation) 5767-2007, including but without limitation Section 8 of such regulations with respect to the period of fulfillment of the aforesaid obligations.
- 4.7 **Compliance with Applicable Law.** Supplier is aware and has knowledge of all legal requirements prevailing in the State of Israel that must be followed for the execution of the Works. Without derogating from Section 33 below, Supplier shall abide by any Applicable Law, as shall be in effect from time to time, and shall perform and execute the Works in strict compliance therewith (including but without limitation in compliance with regulations and orders relating to the employment of its employees).

5. DECLARATIONS, REPRESENTATIONS AND WARRANTIES OF ISR

ISR hereby represents and warrants to Supplier as follows:

- 5.1 **Authority Relative to this Agreement.** This Agreement constitutes the legal, valid and binding obligation of ISR.
- 5.2 **Payments to Supplier.** In consideration for the full and timely performance by Supplier of all of its obligations under this Agreement, ISR shall pay to Supplier the sums stated in the Payment Schedule at the times and in the manner prescribed in the Payment Schedule and in this Agreement.

6. CERTAIN PERIODS IN THIS AGREEMENT

- 6.1 The entry into force of this Agreement shall be as of the Effective Date.
- 6.2 ISR shall be entitled to order Units during a period of ten (10) consecutive years from the Effective Date (the "**Order Period**").
- 6.3 The Maintenance Period for the Supplier Maintained Fleet shall be as specified in Section 19.2 below.

7. PROCEDURES FOR INITIAL PURCHASE, AND ADDITIONAL UNITS

7.1 **Maximal Monthly Quantity of Units for Final Acceptance under all Purchase Orders.**

The aggregated number of Units regarding which Final Acceptance will be completed during any calendar month, under all outstanding Purchase Orders, as shall be determined by ISR, shall be at least two (2). [*Note to Bidders – if Bidder has proposed a higher monthly quantity in its Bid, this section will be amended accordingly, subject to approval by ISR*].

7.2 **Initial Purchase.**

- 7.2.1 **Initial Purchase:** ISR hereby undertakes to order sixty (60) Units, in three (3) orders, in accordance with the applicable prices specified in the Payment Schedule (each of such three (3) orders, respectively "**IPO1**", "**IPO2**" and "**IPO3**"; IPO1, IPO2 and IPO3 collectively – the "**Initial Purchase**").
- 7.2.2 IPO1 will be issued by ISR within thirty (30) days from the Effective Date and shall include twenty four (24) Units (eighteen (18) Long Units and six (6) Short Units). The scheduled dates for Final Acceptance of such Units are specified in **Attachment B** hereto.
- 7.2.3 IPO2 shall be issued by ISR within thirty six (36) months from the Effective Date as follows:
 - 7.2.3.1 ISR shall notify Supplier in writing at least thirty (30) days in advance that ISR intends to issue IPO2, and the number of Long Units and of Short Units included in IPO2.

- 7.2.3.2 The Final Acceptance date of the first Unit ordered until IPO2 shall be within eighteen (18) months from the date of issuance of IPO2 by ISR.
- 7.2.3.3 Supplier shall submit to ISR's approval, within ten (10) days from ISR's notice, the proposed Final Acceptance date of all Units included in IPO2, subject to Section 7.1 above.
- 7.2.3.4 The agreed timetable for Final Acceptance of each Unit under IPO2 shall be attached to IPO2 as will be issued by ISR.
- 7.2.4 IPO3 shall be issued by ISR within seventy two (72) months from the Effective Date, as follows:
- 7.2.4.1 IPO3 shall include the balance between (i) the aggregated number of Units included in IPO1 and IPO2; and (ii) the number of Units in the Initial Purchase (i.e. sixty (60) Units).
- 7.2.4.2 ISR shall notify Supplier in writing at least thirty (30) days in advance that ISR intends to issue IPO3, and the number of Long Units and of Short Units included in IPO3.
- 7.2.4.3 The Final Acceptance date of the first Unit ordered until IPO3 shall be within eighteen (18) months from the date of issuance of IPO3 by ISR.
- 7.2.4.4 Supplier shall submit to ISR's approval, within ten (10) days from ISR's notice, the proposed Final Acceptance date of each such Unit included in IPO3, subject to Section 7.1 above.
- 7.2.4.5 The agreed timetable for Final Acceptance of each Unit under IPO3 shall be attached to IPO3 as will be issued by ISR.
- 7.3 **Purchase of Additional Units.** During the Order Period, ISR may, from time to time, issue to Supplier Purchase Order(s) for Additional Units according to the operational needs of ISR (provided that each Additional Purchase Order shall include at least four (4) Additional Units). Each such Additional Purchase Order shall specify the quantity of Additional Units, the price of the Additional Units in accordance with the Payment Schedule, and the applicable time for delivery (subject to Section 7.1 above), taking however into account that the maximal period for delivery of each Additional Units shall not exceed eighteen (18) months after the date of issuance of the applicable Additional Purchase Order.
- 7.4 **Purchase of Units with Different Configurations.** ISR shall be entitled to purchase Units with different configurations (i.e. not Short Unit or Long Unit), or to request Supplier to adapt existing Units to different configurations, on terms and conditions to be agreed between the parties on the basis of the terms and conditions of this Agreement.

- 7.5 **No Obligation by ISR.** For the removal of doubt, it is hereby expressly emphasized that ISR is under no obligation whatsoever to issue any Purchase Order for any quantity of Units, except the Initial Purchase, as set forth in Section 7.1 above, and that the first three (3) Purchase Orders to be issued by ISR shall be IPO1, IPO2 and IPO3.

8. CHANGE ORDERS

8.1 **Change Orders.**

ISR reserves the right to alter the Technical Specifications. The following provisions shall apply to such alterations:

- 8.1.1 ISR will issue a request for changes specifying the alterations required to the Technical Specifications.
- 8.1.2 Within ten (10) Business Days from the date of issuance by ISR of such request for changes, Supplier shall provide ISR with a written notice specifying requested changes to the price of the Units, to the Delivery Schedule, and to any other terms relevant to the supply of the Units, all in accordance with Section 8.2 below.
- 8.1.3 If Supplier has determined in good faith and after due inquiry, that the alterations requested by ISR are not technically feasible, Supplier shall specify in detail the reasons for its determination in the notice. To the extent that the parties mutually agree that such changes are not technically feasible, the parties shall attempt to find an alternative change which will be technically feasible.
- 8.1.4 In the event that Supplier objects to any alteration requested by ISR or any part thereof, on the grounds that it may affect safety or structural soundness of the Units, Supplier shall so advise ISR in the notice and specify in detail the reasons for its determination. If notwithstanding said objection, the IPM requires Supplier to proceed with the requested alterations, Supplier shall proceed to amend the Works as required, and in any event shall not be relieved of any obligation or liability arising from poor or faulty workmanship, negligence, errors, omissions, etc.
- 8.1.5 The alterations to the Technical Specifications and any other change required in connection therewith as determined in accordance with the provisions of Section 8.1 above shall be recorded by ISR in a change order in the form set out in **Attachment N** and shall be signed by both parties (the "**Change Order**").
- 8.1.6 The foregoing notwithstanding, in case of urgent changes, ISR shall be entitled to instruct Supplier to implement any change prior to agreement between the parties as to the requested changes to the consideration and to the timetable of the implementation of such change, and Supplier shall comply with such instructions.

8.2 **Changes in the Unit Price.**

- 8.2.1 Should any Change Order involve an increase in the scope of the

Works, as shall be demonstrated by Supplier to ISR with appropriate documents, the increase in the Unit Price shall be agreed on a time and material basis as follows:

- a) The cost of labor shall be determined in accordance with the Daily Rates set forth in the Payment Schedule.
- b) The price of Spare Parts shall be as specified in the Payment Schedule, or if not specified, determined in accordance with the provisions of Section 20.4 below.
- c) Any additional payment due to Supplier as a result of the increase of the Unit Price agreed to between the parties as per the above, as recorded in the Change Order, will be paid *pro-rata* in accordance with the remaining applicable Milestones for payment specified in Section 2 of Chapter 4 of the Payment Schedule.

8.2.2 If any Change Order results in a decrease in the scope of the Works, the Unit Price shall be reduced appropriately.

8.3 **Change Proposals at Supplier's Initiation.**

8.3.1 Should Supplier find at any time during the progress of the Works that, in its judgment, existing conditions demand or make desirable or beneficial (to ISR) a change, Supplier shall submit a change proposal to the IPM for its review and decision as per Section 8.1.2 above.

8.3.2 In addition to the benefits, Supplier shall detail in its proposal all adverse effects expected as a result of the proposed change.

8.3.3 ISR shall have the sole discretion to determine if to accept or reject any change proposed by Supplier, irrelevant if the benefits exceed the adverse effects or not.

8.3.4 In the event that such change is accepted by ISR and the commercial benefits value of such change exceeds the resulting loss of value, ISR and Supplier shall equally enjoy the difference between the commercial benefits value and the loss of value (as shall be determined by ISR), all as shall be further detailed in the applicable Change Order.

8.4 **Errors.** For the removal of doubt, and without derogating from any other right or remedy available to ISR under Applicable Law and/or agreement, in the event that any changes in the Works are required as a result of any faulty or erroneous design, malfunction, fault in material and/or labor and/or workmanship, due to a deviation from the Technical Specifications and/or any other requirement imposed on Supplier under this Agreement, or other errors which are under Supplier's responsibilities pursuant to this Agreement, the costs and expenses related to such changes will be borne and paid exclusively by Supplier, and ISR shall not bear any additional cost, expense and responsibility in connection therewith.

8.5 The provisions of this Section 8 above shall apply *mutatis mutandis* to

changes in Maintenance (including for the removal of doubt Section 8.3 above with respect to changes in Overhauls).

9. COMPLIANCE WITH THE TECHNICAL SPECIFICATIONS AND OTHER DOCUMENTS

- 9.1 The Works shall be designed, manufactured, constructed, integrated, erected, completed, tested and delivered to ISR such that the Units are fully operational, completed and maintained (where applicable) in every respect in strict conformity with the Technical Specifications, the Maintenance Depot Contract, the Maintenance Chapter (all as applicable) and all of the terms and provisions of this Agreement.
- 9.2 The description of the Works herein contained, or mention of the particular components or names of suppliers and/or Subcontractors or mention of any specific brand or product names shall not in any way derogate from, diminish or impair any of the obligations or liabilities of Supplier. Supplier warrants that the Works shall function as required and that the furnishing of any particular item, product, component, software module, etc., or the furnishing of all such items by Supplier shall not constitute fulfillment or partial fulfillment of Supplier's responsibilities under the Agreement to supply complete Units functioning in accordance with all of the requirements of the Agreement.
- 9.3 Notwithstanding anything to the contrary herein contained or implied, Supplier is and shall remain at all times solely responsible and liable for all the Works performed and services rendered hereunder, including, but without limitation, any part of the Works carried out by any and all Subcontractors and/or employees and/or independent contractors and/or any vendors of components employed by it during the course of the Works, including for the removal of doubt the Affiliate specified in Section 4.3.4 above (if applicable), the Israeli Affiliate, and such work shall be deemed, for all intents and purposes, as if performed by Supplier itself.

10. THE PARTIES' REPRESENTATIVES (SPM, IPM AND IPR)

10.1 Supplier Project Manager (SPM).

10.1.1 ISR hereby agrees to the appointment by Supplier of , who shall serve as Supplier's Project Manager ("SPM").

10.1.2 The details of the SPM are as follows:

Name: _____
Title: _____
Department: _____
Company: _____
Address: _____
Telephone: _____
Facsimile: _____

E-mail: _____

10.1.3 Any change in the identity of the SPM shall be subject to the prior written approval of ISR, which shall not be unreasonably withheld.

10.1.4 From the day of its appointment, the SPM shall solely represent and act for and on behalf of Supplier in its dealings with ISR related to the Works, at all times during the term of this Agreement. Without limiting the foregoing, the SPM shall be empowered and authorized to sign, on behalf of Supplier, any Change Order or other document which Supplier is required to sign in connection with the Works.

10.1.5 Any notice served upon the SPM shall be deemed to have been duly and properly served to Supplier.

10.2 ISR Project Manager (IPM).

10.2.1 ISR shall appoint Mr. _____ who shall serve as ISR's Project Manager ("IPM"). The details of the IPM are as follows:

Name: _____
Title: _____
Address: _____
Telephone: _____
Facsimile: _____
E-mail: _____

10.2.2 The IPM shall be authorized to represent and act for and on behalf of ISR in its dealings with Supplier related to the Works, at all times during the term of this Agreement. Supplier shall direct all communications concerning the Works only to the IPM or, if so instructed by the IPM, to the IPR.

10.2.3 The IPM shall carry out such duties in issuing decisions, certificates and orders as are specified in this Agreement. Any decision made by the IPM shall bind the parties, as well as any other person acting for or on behalf of the parties.

10.2.4 In the absence of any reference in this Agreement on a matter requiring a decision or if there is a dispute on the interpretation of the contents of this Agreement, the IPM shall make its decision in accordance with the accepted guidelines and professional principles and standards in the relevant field in question, as the IPM may decide at its best judgment. For the avoidance of doubt it is hereby emphasized that Supplier will be obligated to carry out any decision or instruction of the IPM without delay, provided however, that nothing herein shall be deemed to relieve Supplier from its duty to raise with the IPM, in writing, any concern it might have regarding any such decision or instruction by the IPM.

10.2.5 For the removal of doubt, the rights and authorities granted to the IPM as per the above shall not derogate from the provisions of Section 32.1 below.

10.3 IPM Representative (IPR).

10.3.1 The IPM may appoint a person or persons to act as the IPM's representative (“**IPR**”). The IPM may replace from time to time the IPR, as the IPM shall notify Supplier in writing.

10.3.2 The IPR shall be subordinated to the IPM and the IPM may, from time to time, delegate to the IPR in writing any of the powers, discretion, functions and authorities vested in the IPM (the “**Delegation**”) and it may at any time revoke any such Delegation. The IPM shall furnish to Supplier a copy of any such written Delegation or revocation thereof. No such Delegation or revocation shall be effective until a copy thereof has been delivered to Supplier.

10.3.3 Any written decision, instruction or approval given by the IPR to Supplier in accordance with any Delegation shall bind Supplier as though it had been given by the IPM provided always that: (i) any action or omission of the IPR in the performance of its duties shall not prejudice the power of the IPM thereafter to disapprove the Works or any part thereof, and to instruct Supplier to rectify same in accordance with the Technical Specifications; and (ii) if Supplier shall be dissatisfied with any decision of the IPR, it shall be entitled to refer the matter to the IPM, who will thereupon confirm, reverse or vary such decision, and such confirmation, reversing or variation shall be conclusive and final, and shall bind the parties.

10.3.4 Any provision in the Delegation to the contrary notwithstanding, only the IPM, and not the IPR, has the authority (i) to relieve Supplier of any of its obligations under this Agreement; (ii) to order any work involving delay in completion and/or additional payment to Supplier by ISR; (iii) to agree with Supplier on any variation to the Works; and (iv) to sign any Change Order. No such action by the IPR will be binding upon ISR.

10.4 **Project Managers Communications.** Subject to any other provision in this Agreement, the IPM and the IPR on the one hand, and the SPM on the other hand, shall each respond in writing to any written communication from the other within fourteen (14) days of receipt of said communication; *provided however* that if the party initiating the communication requests, because of the relevant circumstances, a more prompt response, then the other party will use commercially reasonable efforts to respond within the time frame requested by the party initiating the communication. All written communications shall refer to one subject matter at a time, and shall include specific means of identification, such as a reference number or sequence number.

10.5 **IPM and IPR not Arbitrators.** In making or giving any measurement, valuation, decision, opinion, order, instruction, direction, requisition or certificate, the IPM and IPR are not acting as arbitrators, but as experts relying on their professional knowledge and skill.

11. PROJECT MANAGEMENT**11.1 Meetings**

11.1.1 During the course of the Works, the IPM and the SPM, or their respective deputies, shall meet in Israel, whether on site or at ISR offices, every two (2) months and/or if required by a party hereto. The purpose of such meetings shall be to follow up, discuss and review the progress of the Works, and to record any understandings made between them in furtherance of this Agreement. Sufficient time before each such meeting, the SPM shall provide to the IPM any due progress report, on which the IPM may submit comments to Supplier, to which comments Supplier shall respond at the meeting.

11.1.2 During the Warranty Period (including, for the removal of doubt, any extension of any of them), the IPM and the SPM shall meet, in Israel, on a regular basis, as shall be mutually agreed upon between the parties, to discuss questions that may have arisen as to Warranty and/or Maintenance and ISR's operation during the Warranty and/or Maintenance Period.

11.1.3 In addition to the meetings noted above, the parties, upon a request of one of them, shall meet at a location chosen by the IPM to discuss technical and other matters related to the Works, the Warranty and/or the Maintenance.

11.1.4 Minutes of the meetings specified in this Section 11.1 shall be prepared by Supplier, shall be numbered consecutively, and shall be delivered to the IPM within seven (7) days from the date of the meeting. The minutes will be reviewed and approved by the parties (subject to any corrections and other modifications as the IPM may request). Meeting schedules covering the forthcoming three (3) months shall be part of the minutes. The submission, acceptance and approval (with or without revisions) of the minutes, shall not prejudice any of the rights of ISR under this Agreement.

Any agreements between the parties with regard to matters discussed at the meetings shall be prepared and consecutively numbered by Supplier and shall be forwarded to ISR, approved and signed along with the minutes. Each agreement reached during a meeting shall be set out in a separate document and shall contain a specific heading in the following words: "THE MATTER DESCRIBED HEREIN HAS BEEN SPECIFICALLY AGREED BETWEEN THE PARTIES".

11.1.5 Each of the parties shall bear its own costs and expenses in connection with the above meetings (including but not limited to those relating to participation in the meetings and preparation of the minutes), and neither party will be entitled to any additional payments (including reimbursement of expenses) in connection therewith.

11.2 Project Control Plan

11.2.1 Without derogating from the Technical Specifications, within thirty (30) days from the Effective Date Supplier shall prepare and submit to ISR for approval a project control plan ("**PCP**") defining the main activities to take place during the performance of the Agreement. The PCP shall consist of such activities as development and design, manufacture, assembly, inspection, testing and acceptance of the Units. The PCP will incorporate the time schedule for supply, decisions and other relevant information to be submitted to ISR. The PCP shall be based on the requirements of the Technical Specifications.

11.2.2 Within ninety (90) days from the date of issuance by ISR of IPO1, Supplier shall prepare and submit to ISR for approval a quality assurance plan ("**QAP**") covering all quality assurance activities to be performed under this Agreement, including a time schedule for each activity. The QAP shall be based on the requirements of the Technical Specifications relating to system assurance plan.

11.2.3 The PCP and the QAP shall not include activities relating to Maintenance, which shall be detailed in separate Maintenance plans to be submitted by Supplier as described in the Maintenance Chapter.

11.3 Reports & Documentation

11.3.1 Without derogating from the Technical Specifications, Supplier shall submit to the IPM monthly (or more frequently, if so instructed by the IPM) progress reports, for the planning, construction, assembly, final adjustments, and testing of the Works, or as specifically set out in this Agreement and shall detail at least the following:

- a) An updated schedule detailing the specific deviations from the initial planned schedule as set out in the PCP and an explanation for such deviation. The report shall include the anticipated impact of any delay and a plan for returning to the initial schedule. All changes to the schedule since the last report shall be identified;
- b) A summary of the activities performed by Supplier and/or its Subcontractors since the previous report;
- c) An updated list of Supplier and ISR action items and open issues, with their status;
- d) A summary of pending and upcoming Supplier and ISR activities during the next two (2) reports periods, along with the required completion dates;
- e) A description of current and anticipated project problems and the steps that have to be taken in order to resolve such problems;
- f) A list of correspondence that was submitted by one

party to the other since the last meeting, and of any correspondence that has not yet received a reply;

- g) With respect to items intended to form or forming part of the Works, the name of the manufacturer, Supplier's inspections, tests (including FAI – first article inspection) and shipment and arrival dates; and
- h) Copies of quality assurance documents, test results and certificates of materials, answers to deviation reports, intended to form or forming part of the Works;

11.3.2 Supplier shall provide two (2) copies of all reports.

11.3.3 Supplier shall submit to the IPM's review existing drawings, summaries, special studies and reports as may be requested by the IPM from time to time, as well as access to detailed drawings and calculations, all without any additional charge.

11.3.4 Supplier shall provide all assembly and other drawings, technical documentation and catalogues necessary to perform proper maintenance operations, as further described in the Technical Specifications.

11.3.5 Supplier shall timely provide any and all documents required in the Technical Specifications and as specified therein.

11.3.6 Supplier shall submit all documentation, report, design, drawings and other documents specified in the Technical Specifications for ISR's approval. In addition, ISR shall be entitled to require from Supplier to submit to ISR any other drawings and/or documents and/or design in connection with the Works.

11.3.7 For the removal of doubt, Supplier shall not be entitled to any compensation or payment from ISR and/or from any third party with respect to any documentation and/or drawings and/or report to be provided to ISR under this Agreement.

11.3.8 Without derogating from this Section 11.3 above, additional reports and documentation regarding (i) the design-build and warranty of the Maintenance Depot; and (ii) Maintenance, shall be submitted by Supplier to ISR in accordance with the provisions of the Maintenance Depot Contract and/or the Maintenance Chapter, as applicable.

12. SUBCONTRACTORS

12.1 **Subcontractors and Subsuppliers**. Supplier will inform ISR a reasonable time in advance if any portion of the Works will be performed by subcontractors and/or subsuppliers (each a "**Subcontractor**"). Appointment of Subcontractors by Supplier shall be subject to compliance by the Subcontractors with all applicable terms and conditions of this Agreement.

- 12.2 **Major Subcontractors.** The retaining by Supplier of major Subcontractors for the supply of main components, equipment and/or materials and/or labor for the purpose of the Works, shall be subject to ISR's prior written approval, which shall not be unreasonably withheld. Without derogating from the above, the list of certain major Subcontractors approved by ISR as of the Effective Date is attached in **Attachment C.**
- 12.3 **Certification.** All Subcontractors must be certified (independently of the ISO certification of Supplier) for quality control system in accordance with ISO. Notwithstanding the above, ISR may approve, at its sole discretion, subcontractors which do not hold ISO certification (such approval must be obtained in advance and in writing).
- 12.4 **Removal of Subcontractors.** If any Subcontractor shall fail to comply with this Agreement, ISR shall have the right to rescind its approval (with respect to major Subcontractors) and/or or to instruct Supplier to perform the relevant Works through other approved Subcontractors, for reasonable reasons that shall be notified by ISR in writing, whereupon Supplier shall immediately stop employing the non-complying Subcontractor.
- 12.5 **Supplier's Obligations and Liabilities.** Supplier shall be fully responsible and liable towards ISR for all acts and/or omissions of all Subcontractors and for all Works performed by them. The approval, non-rejection, recommendation, instructions, directives or determinations made by ISR with regard to the employment of, and/or to the placement of orders for components and/or equipment with, any and all Subcontractors, shall not relieve Supplier of its responsibility to ISR in connection with the execution of the Works in accordance with this Agreement or from any liability assumed by or imposed upon Supplier under this Agreement and under Applicable Law, nor shall it impose any liability or responsibility upon ISR in connection with the Subcontractors, including but without limitation for any acts and omissions done and/or works executed by any and all Subcontractors, and Supplier shall remain fully responsible towards ISR for all acts and omissions of Subcontractors and for all Works performed by them.
- 12.6 **General Principles of a Subcontractor Agreement.** Each agreement entered into between Supplier and any of its Subcontractors which relates to the performance of Supplier's obligations under this Agreement (including for the removal of doubt the attachments thereto) shall include all of the following provisions:
- 12.6.1 Subcontractor is aware of and agrees to all provisions of this Agreement and their consequences as they relate or apply (expressly or implicitly) to such Subcontractor agreement and/or to the works to be performed and/or to the equipment and/or components and/or materials to be supplied under such Subcontractor agreement and undertakes to comply with such provisions, as may be changed by the Parties from time to time.
- 12.6.2 Subcontractor shall have no legal recourse against ISR in any matter arising out of or connected with the Works and/or this

Agreement. Without derogating from the generality of the above, Subcontractor shall waive any Retention Right against Supplier and ISR, and will confirm that the payments to be made by Supplier to Subcontractors contain ample financial provisions concerning such waiver by Subcontractor of all Retention Rights.

12.6.3 Subcontractors shall abide by any order of ISR regarding the removal of any specific employee, at ISR's sole discretion.

12.6.4 Subcontractor shall agree to any purchases of Spare Parts and/or services by ISR directly from Subcontractor or its subcontractors or suppliers.

12.6.5 Without derogating from the generality of Section 12.6.4 above, at the request of ISR, Subcontractor shall negotiate in good faith agreements with ISR for the supply to ISR of Spare Parts in accordance with the prices offered to rolling stock manufacturers, with ISR being an express third party beneficiary for that purpose.

12.6.6 Provisions as specified in Sections 15.6, 19.10, 34 and 38 below.

For the removal of doubt, the provisions of this Section 12.6 above shall apply to the agreements between Supplier and (i) the Affiliate; and (ii) Supplier's main subcontractor for the performance of the Maintenance Depot Contract, which names are specified in Section 4.3 above

12.7 **No Changes in Identity of Subcontractor.** Following the approval of any Subcontractor by ISR, no changes in the identity of such Subcontractor shall be made absent ISR's prior written approval, which shall not be unreasonably withheld.

12.8 **Assistance to ISR.** At ISR's request, Supplier shall assist ISR to enter into direct agreements with Subcontractors.

13. DESIGNING AND PERFORMING THE WORKS

For clarification, this Section 13 below shall apply to the Units and, *mutatis mutandis*, to all Works under the Agreement, including but without limitation the Maintenance Depot, Warranty and Maintenance.

Supplier hereby undertakes and warrants that:

13.1 The Works shall be so designed, manufactured, assembled and maintained (where applicable) by Supplier such that the Units will operate, perform and function in accordance with the requirements of this Agreement and in particular shall comply with the Technical Specifications.

13.2 The design of the Works and all ancillary facilities and systems are in accordance with accepted engineering practices and are appropriate and suitable for proper operation of the Units.

13.3 All Units shall be designed and performed such that future changes and/or upgrades to European Train Control System (ETCS) and/or to Global System for Mobile Communications – Railway (GSM-R), as further described in the Technical Specifications, can be easily performed at a minimal cost.

- 13.4 All calculations, designs and drawings relating to the Works shall be correct and assure consistency of design.
- 13.5 All design documents shall be appropriately signed and sealed by registered and licensed professional engineers in the technical disciplines depicted in the specific documents, in accordance with the requirements of any Applicable Law.
- 13.6 In performing the Works, Supplier shall comply with the standards herein referred to and if no standard in respect of any part of the Works is expressly mentioned, Supplier shall comply with standards ensuring best quality of workmanship, material, components and equipment.
- 13.7 Without derogating from any other requirement under this Agreement, the Works shall fulfill the requirements of all standards, Israeli or otherwise, which have been referred to in Section 1.4 of the Technical Specifications regarding safety in work, product standards and product liability and any other Applicable Law and may be operated without any reservations.
- 13.8 Supplier undertakes to obtain the written "permission for operation" for the Units, to be granted by the regulatory authorities on behalf of the Israeli Ministry of Transports. Such "permission for operation" shall apply to all the Units to be supplied under this Agreement, and shall be obtained and submitted by Supplier to ISR in accordance with the provisions of the Technical Specifications, as a condition for the payment of the Fourth Payment by ISR to Supplier with respect to any Unit.
- 13.9 Supplier shall timely perform all of its obligations under this Agreement such as to enable ISR to timely comply with any and all obligations imposed on ISR under Applicable Law.
- 13.10 Supplier is certified in accordance with ISO 9001 standard and shall, at all times throughout the term of this Agreement, be able to provide proof to that effect. Supplier shall immediately notify ISR in writing if any certification is suspended and/or canceled and/or expired.
- 13.11 The workmanship and all equipment, components and materials used in the manufacture, integration, assembly and maintenance (where applicable) of the Units shall be new, of the highest standard and quality available, free of any defects in design, material or workmanship (including but without limitation major defects reported by purchasers of Supplier's electric multiple units), and shall perform in accordance with all of the requirements of this Agreement.
- 13.12 Supplier will, at its own expense and risk, duly design, manufacture, commission, supply, complete, test, install and deliver the Units to ISR for Final Acceptance, and will provide Warranty and Maintenance (where applicable), in accordance with this Agreement, including the Delivery Schedule.
- 13.13 All software to be provided by Supplier or on its behalf shall meet state-of-the-art standards.
- 13.14 Supplier warrants that upon delivery to ISR, the Units shall be fully operational and in full compliance with the Technical Specifications.

- 13.15 Supplier represents that all parts, components and systems that will be incorporated into the Units, including but without limitation parts, components and systems contributed by the Subcontractors, are free of any security interest, lien, attachment, encumbrance or other third party claims or rights of any kind.
- 13.16 Supplier shall execute the Works in strict compliance with any Applicable Law, including but without limitation with respect to (i) emissions; (ii) environment and nature protection; and (iii) pollution, noise-disturbance and vibrations.
- 13.17 Supplier shall in no way during the execution of the Works interfere or obstruct, or cause any interference or obstruction to, ISR's activities and operations, and shall at all times coordinate its activities with ISR.
- 13.18 At all times during the term of this Agreement, Supplier shall perform its obligations under this Agreement in a diligent manner and without delay, and shall comply with all applicable provisions of this Agreement.

14. GENERAL WORK GUIDELINES AND PROCEDURES

In performing the Works Supplier will comply with the following general guidelines and procedures, in addition to those contained in the Technical Specifications, in the Maintenance Depot Contract, in the Maintenance Chapter and any other specific guidelines and instructions which ISR may add from time to time.

- 14.1 **"Turnkey" Basis.** The Units shall be supplied on a "turnkey" basis such that Supplier shall perform at its own expense and risk any and all works in accordance with the provisions of this Agreement. Without limiting the generality of the foregoing, Supplier shall be solely responsible, at its own expense and risk, to carry out any and all works, import and supply of any and all components, equipment and materials, perform any and all activities and pay and bear all costs and expenses pertaining to the performance of the Works; this shall include, but shall not be limited to, Training, testing, running in, demonstration and commissioning of the Units, Warranty, Maintenance (where applicable) and any other tasks or duties relating to the above – all as shall be required in order to deliver timely operable, safe, efficient and reliable Units, putting same into full operation and operate all the Units in accordance with all of the requirement of this Agreement, while applying state-of-the-art technology.

14.2 **Discrepancies and Omissions.**

- 14.2.1 Supplier shall be deemed to have included in its prices, wherever a discrepancy between the Technical Specifications, drawings or other documents constituting a part of this Agreement occurs, the best suited (to ISR) type of materials, construction, works or other relevant element, item or unit consistent with the Technical Specifications. No inaccuracies, errors, misstatements, omissions, discrepancies, defective or incomplete descriptions, contradictions or ambiguities in or between any of the provisions of this

Agreement, or between any of the provisions of this Agreement and any information or instructions communicated or given by ISR to Supplier from time to time, shall be a ground for stoppage of the Works, for relieving or releasing Supplier of any of its responsibilities, duties, obligations or liabilities, for cancellation or termination of this Agreement by Supplier or withdrawal from the Works.

- 14.2.2 Should any works, matters or things required for the proper execution and completion of the Works be omitted from this Agreement by ISR, the IPM shall – upon notice from Supplier to that effect or on its own initiative – give necessary explanations and instructions and decide what works, matters or things are to be done by Supplier and in what manner and order. Supplier shall thereupon be bound to do such works, matters and things as instructed. In case any such instruction with regard to an omission involves matters of price or terms of payment or timetable, such matters shall be settled by mutual agreement in writing (which shall be based upon the prices specified in the Payment Schedule or pursuant thereto) – without derogating from Supplier’s obligation to execute such Works as instructed by the IPM.
- 14.2.3 Supplier shall advise ISR in writing, immediately and in any case within no more than five (5) days, upon becoming aware of any suspected or actual contradiction or discrepancies between the provisions of, or any omission in, any of the various documents forming this Agreement.
- 14.3 **Review and Approval.** For the removal of doubt, ISR shall bear no responsibility or liability whatsoever in connection with the review (with or without objections) and/or with any approval given to, or denied from, Supplier, with respect to any document, including but without limitation drawings, design, plan, tests, or otherwise.
- 14.4 **Training.** Supplier shall provide training to ISR’s personnel as stipulated in the Technical Specifications (“**Training**”). Without derogating from the generality of the above, Supplier shall timely train the instructors of ISRs' drivers prior to the scheduled date for the Final Acceptance Tests of the first Unit to be supplied under this Agreement. For the removal of doubt, Supplier shall not be entitled to any compensation or payment from ISR and/or from any third party with respect to Training to be provided to ISR under this Agreement.
- 14.5 **Safety at Work.** All Works of Supplier and any Subcontractor shall be performed in strict compliance with ISR's safety regulations and any other Applicable Law pertaining to safety at work, as may be in force from time to time.

Supplier shall immediately report to the IPM of an occurrence of any accident in connection with the execution of the Works (including for the removal of doubt any Unit). Supplier shall also report any such accident to the relevant competent authority whenever such report is required, and in any case, register same in the Works log.

Without derogating from the generality of the above, the following provisions shall apply with respect to Maintenance of Supplier Maintained Fleet and with respect to Warranty of ISR Maintained Fleet:

- 14.5.1 The SPM shall be responsible for safety at work in connection with the personnel of Supplier and of its Subcontractors.
- 14.5.2 Prior to the scheduled date in **Attachment B** for the Final Acceptance of the first Unit, Supplier shall prepare a safety survey with respect to the Locations, the means of access thereto and all the terms, conditions and circumstances relating to the performance of the Warranty and Maintenance, including the nature thereof and the risks involved therein.
- 14.5.3 Based on such survey, Supplier shall prepare a safety plan for the performance of Warranty and Maintenance, in accordance with the instructions of ISR and any Applicable Law. The plan shall include *inter alia* provisions for the correction of the safety failures specified in the survey, and shall be subject to the prior written approval of ISR. Supplier shall be responsible to correct at its sole expense any safety failure prior to the commencement of the Maintenance Period. The safety plan may be updated from time to time.
- 14.5.4 All Warranty and Maintenance obligations shall be performed in strict compliance with ISR's Safety Regulations, any other Applicable Law pertaining to safety at work as may be in force from time to time, and the instructions of ISR's safety supervisors. Supplier warrants that it is aware of and familiar with all the legal provisions relating to work safety in general and safety in executing Warranty and Maintenance, that it has read and understood ISR's Safety Regulations, and undertakes to fully comply with such ISR's Safety Regulations.
- 14.5.5 Upon the Effective Date, Supplier shall appoint a safety supervisor on its behalf. The SPM and the safety supervisor shall undergo safety training by ISR's safety supervisor prior to the commencement of the Maintenance Period.
- 14.5.6 Supplier undertakes that all its personnel will undergo safety training by the Supplier's safety supervisor prior to the commencement of the Maintenance Period (usually the training has to be undergone on an annual basis).
- 14.5.7 Supplier shall maintain at all times an updated list of all personnel employed in the performance of Warranty and/or Maintenance, including *inter alia* name, personal detail, profession and qualification of all employees, and proper documentation evidencing such qualification.
- 14.5.8 Supplier's safety supervisor shall inspect and control at least twice a week all Locations where Supplier is performing the Warranty and/or Maintenance, including but without limitation inspection of the safety conditions in which Warranty and/or Maintenance is being performed by the

personnel, locating of safety hazards, and checking that any previous safety failure has been properly fixed. Supplier's safety supervisor shall prepare a written report detailing its findings, and will submit a copy to ISR's safety supervisor. The SPM shall be responsible to ensure that any safety failures are forthwith corrected.

- 14.5.9 Supplier's personnel shall only be entitled to work in Locations expressly approved in advance and in writing by ISR in each specific case, and shall not enter or have access to any other Locations.
- 14.5.10 Supplier shall immediately report to ISR's safety supervisor the occurrence of any accident in connection with the execution of the Warranty and/or Maintenance. Supplier shall also report any such accident to the relevant competent authority whenever such report is required, and in any case, register same in the Warranty and/or Maintenance log (as applicable).
- 14.5.11 Supplier agrees that ISR's safety supervisor shall be entitled to amend the provisions of this Section above and/or ISR's Safety Regulations from time to time (including but without limitation by setting stricter requirements), and Supplier undertakes to abide with any such amended provisions.
- 14.5.12 Additional provisions regarding the design-build and warranty of the Maintenance Depot are included in the Maintenance Depot Contract.
- 14.5.13 For the removal of doubt, the requirements set forth in this Section above and in ISR's Safety Regulations shall be construed to add to (and not to derogate from) any other requirement imposed under Applicable Law.

14.6 **Supplier's Materials**

- 14.6.1 Supplier shall provide at its own cost, expense and responsibility any and all materials, equipment, parts, fluids, tools, special tools, diagnostic tools, equipment, test benches, infrastructures, vehicles, forklifts, resources, Depot Equipment, software, etc, as required for the performance of its obligations under this Agreement (including for the removal of doubt the Maintenance Chapter and the Maintenance Depot Contract) ("**Supplier's Materials**").
- 14.6.2 Upon expiration and/or cancellation and/or termination of this Agreement for any reason whatsoever, ISR shall have the right (but not the obligation) to purchase any and all Supplier's Materials for a reasonable consideration to be agreed between the Parties. *However*, the provisions of the Maintenance Depot Contract shall apply regarding transfer to ISR free of charge of the Depot Equipment at the end of the Maintenance Period.

14.7 Locations

Without derogating from any provision of the LUL Agreement, the following provisions shall apply to the Locations and the use of the Locations by Supplier.

- 14.7.1 Access to Locations. ISR will grant access to Supplier to the Locations to the extent reasonably required for the provision of its obligations under the Agreement. The LUL Agreement shall apply to access granted by ISR to Supplier to all the specific Locations specified in the LUL Agreement (including the Maintenance Depot).
- 14.7.2 License. Any rights of access to the Locations made available to Supplier in connection with this Agreement shall be subject to all terms and conditions of the license granted by ISR to Supplier under the LUL Agreement.
- 14.7.3 Other Suppliers. Supplier has been informed that ISR's personnel and/or other contractors of ISR may work in the Locations from time to time. The Parties will endeavor to avoid interferences between Supplier's activities and such ISR's personnel and/or other contractors of ISR's activities.
- 14.7.4 Supplier's Materials. Supplier shall not be entitled to leave and/or store any Supplier's Materials on any Location other than the Maintenance Depot, without the prior written consent of ISR in each specific case. It is hereby clarified that notwithstanding any permission granted as per the above, ISR shall bear no liability or responsibility for any Supplier's Materials stored and/or used on the Locations which are lost, stolen, damaged, destroyed or otherwise fails (including but without limitation in the Maintenance Depot).
- 14.7.5 Report of Incidents. Any incident, injury, disease or dangerous occurrence involving any employee or Subcontractor of Supplier or any equipment belonging to Supplier which must be reported under Applicable Law shall be reported by Supplier to ISR in addition to any report which is the responsibility of Supplier to make under any Applicable Law.
- 14.7.6 Locations Conditions. Supplier shall perform its obligations under the Agreement in a clean, tidy, safe and orderly manner appropriate to the avoidance of damage to property and shall not by its actions cause the Locations to which it has access to be in an untidy or unsafe condition. Supplier undertakes to keep the Locations and any adjacent and additional areas used in connection with performance of its obligations under the Agreement in a clean and orderly state to the satisfaction of ISR.
- 14.7.7 No Further Obligation of ISR. For clarification, and without derogating from the LUL Agreement, nothing contained

herein shall be construed as imposing any obligation on ISR to maintain and/or enlarge and/or enhance any Location.

14.7.8 Damages in connection with Units, Locations and Supplier's Materials. Supplier shall be solely responsible for all damages (such as, but not limited to, loss, vandalism or any other damage) to, by or with respect to (i) a Unit or any part thereof, that has occurred while Supplier is providing Maintenance and/or Warranty to such Unit; and (ii) a Location (including but without limitation any equipment, materials and tools of ISR), that were caused directly or indirectly by Supplier, as well as for damages to, by or with respect to Supplier's Materials. The provisions of this Section above shall be construed as adding to (and in no event as derogating from) ISR's rights and Supplier's obligations, responsibilities and liability under the Agreement, the LUL Agreement and any Applicable Law.

14.8 **Security and Data Protection**

14.8.1 ISR's security procedures attached in **Attachment T** shall apply to Supplier, Subcontractors and any and all personnel of Supplier, Subcontractors and on their behalf. Personnel that have not complied with all of the requirements specified in **Attachment T** and applicable to them shall not be allowed to be engaged in any Works for the performance of Warranty and/or Maintenance.

14.8.2 Supplier acknowledges that the ISR's electrification system and all related equipment is a "critical" system of ISR and accordingly Supplier undertakes to carry out Warranty, Maintenance and all its obligations under the Agreement in strict compliance with Applicable Law, including for the removal of doubt any regulations and instructions of competent authorities applying to ISR and/or anyone on its behalf.

14.8.3 For this purpose, and without derogating from the provisions of Section 14.8.1 above, any and all employees of Supplier and of all of its Subcontractors which perform Warranty and/or Maintenance will be required to undergo investigation by ISR's security department.

14.8.4 Supplier confirms that it has been informed that Supplier will not be allowed to perform any of its obligations under the Agreement by "remote access".

14.8.5 Supplier shall act and shall ensure that all of its employees, Subcontractors, Subcontractors' employees and/or any third parties on its behalf will act according to all of the requirements of ISR with respect to data protection, according to ISR's policy as specified in the Agreement and as may be instructed by ISR from time to time, including but without limitation full cooperation with any third party on behalf of

ISR.

14.9 **Removal of Employees.** Supplier shall abide by, and shall cause its Subcontractors to abide by, any order by ISR (at its sole discretion) regarding the removal of any specific employee employed by Supplier or by any Subcontractor, for reasonable reasons that shall be notified by ISR in writing. Supplier and its Subcontractors shall not be entitled to employ, directly or indirectly, any such removed employee in connection with the Works.

14.10 **Cooperation.** Supplier undertakes to reasonably cooperate with any other supplier and/or contractor and/or consultant engaged by ISR and to furnish ISR with all relevant information reasonably required for the interface between the Units and any other equipment and/or infrastructure of ISR.

15. **SUPERVISION; ACCESS TO PLACES OF PRODUCTION; INSPECTIONS**

15.1 **Supervision by ISR.** ISR shall be entitled (but not obligated) to monitor and supervise the performance of the Works, by itself or through any third party in Israel and/or abroad, and Supplier undertakes to cooperate as required with respect thereto. For the removal of doubt, nothing contained herein shall be construed as derogating from any provision of this Agreement and/or from Supplier's responsibility to perform the Works in accordance with the provisions of this Agreement and/or as imposing any responsibility on ISR which is not otherwise expressly specified in this Agreement. In addition, Supplier hereby undertakes to fully cooperate with any audit procedure that may be conducted by ISR and/or by any third party acting on ISR's behalf or controlling ISR with respect to the Works, all as may be reasonably required for the purposes of such audit.

15.2 **Notified Body.** Without derogating from the generality of Section 15.1 above, Supplier acknowledges that where applicable, the Works will be supervised and subject to approvals and validation by a notified body (including but without limitation as specified in the Technical Specifications) and an independent safety assessor, to be appointed by Supplier at its own cost and expense, subject to the approval of the Israeli Ministry of Transport to such appointment, and subject to Sections 12.2 and 12.7 above which shall apply *mutatis mutandis* to such appointment. For the removal of doubt, ISR shall have full access to all correspondence, reports, and documents exchanged and/or submitted with and/or in connection with the notified body and/or the safety assessor, and shall also be entitled to appoint additional third parties in connection with the works and services rendered by the notified body and/or safety assessor.

15.3 **ISR's Access.** Without derogating from the generality of Section 15.1 above, ISR, by means of any person acting for or on its behalf, shall at all times, have free access to all places of production, including but without limitation the factories, sites, offices, workshops, and other places where the Works (including any material or component being part of the Works) are being produced, assembled or completed, either in Israel or abroad.

Such right to free access shall include, without limitation, the right to inspect the Works (including but without limitation any drawings, material or component) at any stage of design, production, assembly, testing and commissioning. In the event of a request to inspect the Works at times other than normal working hours, the parties shall mutually agree as to the time(s) at which such inspection shall be carried out. For the removal of doubt, nothing herein shall be construed as restricting or limiting in any manner ISR's access to the ISR sites where the Works are being installed, and ISR shall at all times have free and unrestricted access to such sites.

- 15.4 **Places of Production.** Supplier hereby undertakes that the place of production (assembly plant) of the Units shall be [Note: to be approved by ISR and completed prior to the date of signature of this Agreement. Such place of production should be the main place of production of Supplier.] Any change in the place of production specified above is subject to the prior written approval of ISR at its sole discretion. Supplier alone shall bear and pay any and all costs and expenses incurred by ISR in connection with the review of a new place of production proposed by Supplier and ISR and shall be entitled to approve or to reject any such proposed place of production at its sole discretion.

Without derogating from the generality of the above, the standards in any new place of production proposed by Supplier shall not be inferior to the standards in the place of production previously approved by ISR and shall comply with any and all requirements of the Technical Specifications.

For the removal of doubt, request by Supplier to change a place of production and review by ISR as per the above shall not give grounds to any delay or extension in the timetables set forth in the Delivery Schedule.

- 15.5 **Assistance by Supplier.** Supplier shall afford free of charge any assistance and access reasonably requested by ISR's inspectors and duly authorized representatives in order to enable them to carry out inspection, checking, test and measurements in connection with this Agreement.
- 15.6 **Access to Subcontractors Locations.** If work for or in connection with the Works is being carried out at a Subcontractor's premises, Supplier shall, by a term in the Subcontractor agreement, secure similar rights of access by ISR as set out in this Section 15 above, and shall take all action necessary to make such rights effective.
- 15.7 **Rejection of the Works, Materials and Components.** If any of the Works, materials or components, whether completed or in process, is rejected on inspection, the same shall be marked in a manner satisfactory to the IPM, so as to ensure its subsequent identification as a rejected article. Supplier shall within seven (7) days, pull down, take out, separate and sort out any such marked Works, materials or components so rejected. Materials or components of the Works or the entire Works rejected under this Section 15.7 shall not be considered as having been delivered under this Agreement and Supplier shall, without delay, replace and deliver satisfactory materials, components or Works at Supplier's sole cost and expense. For the removal of doubt, no such rejection shall give grounds to

any delay or extension in the timetables set forth in the Delivery Schedule.

- 15.8 **Inspection not to Relieve Supplier's Obligations.** Supervision, inspection, examination, rejection or approval with no objections by ISR or on its behalf of finished or unfinished Works or of materials or components, including but without limitation pursuant to this Section 15 above, shall neither relieve nor derogate from Supplier's obligations and/or liability under this Agreement or under Applicable Law, nor impose any liability or responsibility on ISR or on any third party on its behalf (including but without limitation the notified body and/or safety assessor).

16. TESTS

16.1 **Inspection and Tests Plans of the Units**

- 16.1.1 Within ninety (90) days after the date of issuance by ISR of IPO1, Supplier shall prepare and submit to ISR for review a preliminary inspection and test plan ("**Preliminary ITP**") covering any and all tests and inspection or acceptance procedure to be performed by Supplier with respect to the Units and/or any component thereof, in accordance with the provisions of this Agreement and as further detailed in the Technical Specifications (the "**Tests**").
- 16.1.2 ISR may provide Supplier with any comments and revisions to the Preliminary ITP, and Supplier shall promptly revise the Preliminary ITP accordingly until ISR has no objections. It is being clarified that the review of the Preliminary ITP by the IPM and any comments and revisions provided to Supplier shall neither relieve Supplier from any of its responsibilities under this Agreement nor impose any liability or responsibility on ISR.
- 16.1.3 Within one hundred eighty (180) days after the date of issuance by ISR of IPO1, Supplier shall provide to ISR a complete Final Inspection and Test Plan ("**Final ITP**"). Any differences between the Preliminary ITP and the Final ITP shall be specifically noted in the Final ITP.
- 16.1.4 The Final ITP shall contain a description of the test procedures which are to be carried out and the minimum acceptance criteria.
- 16.1.5 During the execution of the Works ISR may require, at its sole discretion, to add additional tests to the Final ITP and Supplier shall incorporate such tests in the Final ITP. Without derogating from the generality of the above, ISR shall have the right to introduce simulated failures into the tests which are being carried out as further described in the Technical Specifications if such simulated failures are not set out in the Final ITP.

The provisions of Section 8 above shall apply *mutatis mutandis* to such changes to the Final ITP initiated by ISR. However, Supplier shall not be entitled to any additional payment and/or to any change in the applicable timetables with respect to such changes in the Final ITP, in the event that such changes are requested by ISR

following (i) any failure of Supplier in the performance of its obligations under this Agreement; and/or (ii) any failure in any previous test regarding any Unit.

16.1.6 The Final ITP shall replace the Preliminary ITP and shall form part of the Agreement. In the absence of an approved Final ITP, inspections and Tests shall be carried out as described in the Preliminary ITP.

16.2 General Test Procedures

In addition to the provisions of the Technical Specifications, the following provisions shall apply to procedures of Tests of the Units:

16.2.1 Supplier shall, at its own expense and risk, complete, adjust and test the Units, including all materials and components used for the manufacturing of the Units, both within Israel or abroad, in strict adherence to this Agreement and to ensure that each of the Units supplied shall be fully operational and ready for use by ISR.

16.2.2 All Works of Supplier and any Subcontractor shall be performed in accordance with either ISR's work safety rules and/or the regulations of the respective locations, as applicable.

16.2.3 ISR will provide at its own cost access to ISR's test sections, locomotives for towing, and up to two (2) electrified tracks and one (1) non-electrified track in the Maintenance Depot (or in any other Location designated by ISR), all subject to prior written coordination by Supplier with ISR. Supplier shall provide its own drivers for the performance of the Tests, and ISR will be entitled to provide pilot drivers. For the removal of doubt it is hereby clarified that ISR shall NOT provide any of the above for the performance of any Tests outside the Site, and that Supplier alone shall bear and pay any and all costs and expenses in connection therewith.

16.2.4 If necessary, haulage of the Units to the Sites where Tests are conducted shall be performed by ISR for no charge, at Supplier's sole responsibility (i.e. for the purpose of this Section 16.2.4, ISR shall be deemed to be a Subcontractor of Supplier). Supplier shall coordinate time and place of haulage with ISR sufficiently in advance, such as to be able to timely perform all of its obligations under this Agreement.

16.2.5 The times of Tests shall be coordinated between the IPM and the SPM. The timetable for unscheduled Tests will be determined by ISR according to operational circumstances. Supplier shall not be entitled to claim damages, expenses or losses due to the changes in the timetable of the Tests by ISR.

16.2.6 ISR's representatives shall be entitled to attend any and/or all Tests performed by Supplier. For that purpose Supplier shall give ISR reasonable notice prior to the date of performance of the relevant Test. Should ISR not exercise its right as per the above, Supplier shall perform the Tests without ISR's representatives. It is hereby

clarified that ISR shall be entitled to have a third party attend the Tests on its behalf, and Supplier shall fully cooperate with such third party.

- 16.2.7 For the removal of doubt, the presence of an ISR representative or any third-party inspector on its behalf during Tests or other inspections, and the approval by them of finished or unfinished Works and/or components and/or equipment or materials, shall not relieve nor derogate from Supplier's obligations to execute and complete the Works in strict accordance with the requirements of this Agreement.
- 16.2.8 For the removal of doubt, Supplier shall be solely and fully responsible to implement ISR's safety regulations and any other safety or security measure required in connection with the execution of any Tests.
- 16.2.9 If on any Test the Works, or any part or component thereof (including any material or equipment used in connection therewith), is proven to be faulty, defective or not in accordance with the Technical Specifications, Supplier shall promptly, without derogating from any other right of ISR under this Agreement or any Applicable Law, either repair the defect or replace the faulty item at ISR's sole discretion, and ensure its compliance with this Agreement. Thereafter the relevant Test shall be repeated. No extension for completion of the Works will be granted to Supplier by reason of failed Tests. For the removal of doubt, ISR shall at its sole discretion determine whether or not any Test is correctly performed and successfully completed.
- 16.2.10 No set of Tests may be carried out until the previous set of Tests has been successfully carried out in accordance with this Agreement, including the Final ITP.
- 16.2.11 Supplier shall keep full and accurate written reports with regard to Tests performed by Supplier, including but without limitation as described in the Technical Specifications. Upon completion of the Tests, Supplier shall provide ISR with a complete and organized volume of all Tests reports.
- 16.2.12 Supplier shall prepare the Test procedures and shall carry out the Tests specified in the Final ITP as further described in the Technical Specifications at Supplier's premises (including its Subcontractors' premises) at all stages of design, production and assembly.

All Test procedures of the Units shall be submitted in advance and in writing to ISR for its approval.

16.3 Testing prior to Shipment of the Units

- 16.3.1 Prior to shipment of any Unit, Supplier shall conduct tests in accordance with the Final ITP.
- 16.3.2 Upon successful completion of the body shell tests regarding each Unit at Supplier's facilities and in accordance with the Final ITP

(the "**Body Shell Tests**"), the SPM shall prepare and sign a certificate of completion of Body Shell Tests in the form attached in **Attachment D1** (the "**Certificate of Completion of Body Shell Tests**").

16.3.3 Upon successful completion of the factory tests regarding each Unit at Supplier's facilities and in accordance with the Final ITP (the "**Factory Tests**"), the SPM shall prepare and sign a certificate of completion of Factory Tests in the form attached in **Attachment D2** (the "**Certificate of Completion of Factory Tests**").

16.3.4 No Unit shall be sent to any port of loading for shipment to Israel and shall not be shipped to Israel before the IPM countersigns (i) the relevant signed Certificate of Completion of Factory Tests received from the SPM; and (ii) the Shipping Certificate in the form attached in **Attachment D3**, unless ISR has decided at its sole discretion not to issue the Shipping Certificate.

16.4 **Final Acceptance Tests**

16.4.1 Supplier shall timely perform all Tests for Final Acceptance in accordance with the Final ITP and the Technical Specifications, including any Tests required after completion of all necessary repairs, works, correction of errors, etc., discovered during any prior Tests ("**Final Acceptance Tests**").

16.4.2 In the event that corrections are required to prepare the Units for Final Acceptance Tests, Supplier shall timely complete such corrections such that the scheduled date for Final Acceptance will not be delayed. Supplier shall not be entitled to an extension or delay in the Delivery Schedule which may be attributable to the time spent for completion of such corrections.

16.4.3 The Final Acceptance Tests shall be conducted separately on each and every Unit. Supplier shall be required to fulfill the Final Acceptance Tests in due time and in accordance with the Final ITP.

16.4.4 The Final Acceptance Tests shall be performed by Supplier in the Maintenance Depot, or in any other Site as instructed by ISR to Supplier at ISR's sole discretion. Supplier shall notify ISR at least seven (7) days in advance of the exact time of commencement of the Final Acceptance Tests to be conducted on each and every Unit.

16.4.5 Following submission by Supplier to ISR of Supplier's full written Tests report, Final Acceptance Tests with respect to each Unit shall only be deemed to have been successfully completed if valid written approvals by each of the notified body and safety assessor referred to in Section 15.2 above are in force with respect to each specific Unit, and Section 16.4.2 above shall apply *mutatis mutandis*.

16.4.6 Within seven (7) Business Days from successful completion of the

Final Acceptance Tests for the relevant Unit, ISR shall issue and sign the final acceptance certificate for such Unit, in the form attached hereto as **Attachment E1** (“**Final Acceptance Certificate**”).

However, the issuance by ISR of the Final Acceptance Certificate with respect to the first Unit in ISR Maintained Fleet shall be subject to Supplier having supplied to ISR all Spare Parts as required in Section 20.2 below.

In addition, prior to issuance of the Final Acceptance Certificate regarding each Unit, Supplier shall perform all actions required to prepare all of the Units for commercial use by ISR, including *inter alia* dismantling, disconnecting and removing any testing equipment, sealing any open hatches or compartments, removal of any packing material, rechecking and restocking any liquids, lubricants and perishable items, etc.

- 16.4.7 The IPM may affix to the Final Acceptance Certificate a punch list of items remaining to be completed by Supplier if said items do not have an impact on the safety, performance and operational requirements of the Units, all at the IPM's sole discretion. As a condition for the issuance of a Final Acceptance Certificate with a punch list as per the above, the IPM shall be entitled to request Supplier to furnish a bank guarantee to secure the completion by Supplier of the items listed in the punch list. The amount of such guarantee shall be agreed by the parties and all the provisions of Section 25.6 below shall apply.
- 16.4.8 The punch list shall be accompanied by a mutually-agreed upon timetable specifying dates by which the items described thereon shall be completed by Supplier in accordance with the Technical Specifications.
- 16.4.9 The punch list may be accompanied by a specific agreement as to the consequences of Supplier's failure to comply with the requirements set out in the punch list by the dates noted thereon. Said consequences shall not derogate from Supplier's obligation to supply the Units in accordance with the Technical Specifications and the Delivery Schedule, or from ISR's right to indemnification or any other remedy according to this Agreement or by law.
- 16.4.10 ISR's signature on the Final Acceptance Certificate with respect to any Unit shall constitute Final Acceptance of such Unit.
- 16.4.11 Any request by Supplier to change the agreed scheduled date for Final Acceptance of a Unit (whether to an earlier or later date) shall be subject to ISR's prior written consent, at ISR's sole discretion.

16.5 **Fault Free Service Running Certificate**

- 16.5.1 ISR shall issue with respect to each Unit a certificate of fault free service running in the form attached as **Attachment E2** hereto (the "**Fault Free Service Running Certificate**"), subject to all the

following conditions:

- a) the 'permission for operation' for each Unit has been duly submitted to ISR by Supplier as per Section 13.8 above; and
- b) such Unit has travelled continuously five thousand (5,000) kilometers for commercial service without any fault or malfunction resulting in delay in operation and/or need for repair in order to recover the full functionalities of such Unit.

16.5.2 In the event of any fault or malfunction resulting in delay in operation and/or need for repair in order to recover the full functionalities of such Unit prior to the issuance by ISR of the Fault Free Service Running Certificate, Supplier shall fully repair such fault or malfunction at its own cost, expenses and responsibility.

16.5.3 All such repairs shall be performed by Supplier as follows:

16.5.3.1 With respect to Supplier Maintained Fleet: in the Maintenance Depot (unless expressly specified otherwise in the Maintenance Chapter with respect to Supplier Maintained Fleet). Notwithstanding the above, in the event of a delay in Completion of the Maintenance Depot for any reason whatsoever, ISR may instruct Supplier to perform such repairs from any other Location, if so required in order not to delay operation by ISR of the Units.

16.5.3.2 With respect to ISR Maintained Fleet: as specified in Section 18.10 below.

16.5.4 For clarification, the counting of the five thousand (5,000) kilometers as per Section 16.5.1 above shall begin again after full repair by Supplier of all such fault or malfunction, i.e. the kilometers travelled by the Unit prior to the occurrence of such fault or malfunction shall not be taken into account for the purpose of issuance of the Fault Free Service Running Certificate.

16.6 For the removal of doubt, nothing contained in this Section 16 above (including but without limitation approval of the Final ITP and/or approval of test procedures and/or attendance or not to the Tests and/or issuance of any certificate as per the above by ISR) shall be construed as (i) imposing any responsibility on ISR with respect to the Tests and the results thereof; (ii) derogating from any of Supplier's obligations under this Agreement; and (iii) derogating from any claims that ISR may have at any time (including after Final Acceptance and/or after issuance of a Fault Free Service Running Certificate) against Supplier, including but without limitation with respect to non-compliance of any Unit with the Technical Specifications.

17. DELIVERY AND PASSAGE OF TITLE OF THE UNITS**17.1 Delivery of the Units.**

17.1.1 Supplier undertakes to deliver each Unit to the Site in accordance with the Delivery Terms and to fulfil all of the requirements set forth in Section 16 above in accordance with the Delivery Schedule.

17.1.2 Without derogating from the provisions of Section 16 above, all operating parts of the Units shall be adjusted, inspected and tested by Supplier before delivery to ISR for the purpose of the Final Acceptance Tests and each Unit shall be checked by Supplier to assure its compatibility with ISR's equipment, installations and requirements as specified in the Technical Specifications.

17.1.3 Supplier shall be responsible at its own cost and expense for the proper and professional execution of the loading, shipment, unloading and assembly of the Works and for the delivery thereof to ISR at the Site, and shall make all necessary arrangements in connection therewith, subject to Section 16.2.4 above.

17.2 Passage of Title.

17.2.1 The ownership and title to any Unit shall fully pass to ISR free and clear of all security interests, liens, attachment, encumbrances and any other rights or claims of any kind of any third party, upon the date of issuance by ISR of the applicable Final Acceptance Certificate. The passing of title to, and vesting of ownership rights with, ISR shall be without prejudice to any right that may accrue to ISR under this Agreement.

17.2.2 ISR shall bear no responsibility for any Works performed or materials, components or equipment used by Supplier or deposited with any Subcontractor, including such materials, equipment or Works being stored or that have been placed at any Site and which are lost, stolen, damaged, destroyed or otherwise fail prior to Final Acceptance. Supplier shall be solely responsible to protect completely and preserve entirely the Units and any related Works, components, material and equipment until the Final Acceptance thereof.

18. WARRANTY

18.1 Without derogating from any of the provisions of this Agreement, Supplier shall bear full responsibility for any and all failure and/or defects and/or deficiencies and/or malfunction in the Units and any part thereof supplied by Supplier (each a "**Fault**"), for the entire Warranty Period as defined herein below. For the removal of doubt, the Warranty shall apply to all Units, whether in Supplier Maintained Fleet or in ISR Maintained Fleet.

18.2 The extent of the Warranty is such, that Supplier shall take, at its sole and own expense, any action necessary, including repair or replacement of any

defective or deficient component or system, as required to ensure consistent and uninterrupted use of the Units to the full extent of their capabilities and in accordance with the Technical Specifications. In addition to the aforesaid, Supplier shall bear full responsibility and undertakes to remedy at its own expense any and all loss or deficiency to the Units due to faults such as, but not limited to, faulty design, faulty workmanship, faulty dismantling for sea and land conveyance, faulty materials or components, faulty assembly, faulty paint and other faults in the Unit(s) and any part thereof whether made by Supplier or any of Supplier's Subcontractors ("**Warranty**").

- 18.3 The Warranty shall be inclusive of but not limited to all Spare Parts, parts, components and equipment of the Units or any part thereof which are to be repaired, replaced, or applied in connection with an event or a circumstance covered by Warranty, subject to the terms and conditions of the Agreement.
- 18.4 Commencing on the date of issuance by ISR of the Fault Free Service Running Certificate for each Unit, Supplier shall provide ISR with Warranty for such Unit for the periods specified in Chapter 12 of the Technical Specifications, including but without limitation the following respective periods as may be extended pursuant to the provisions of Chapter 12 of the Technical Specifications (the "**Warranty Period**"):
- 18.4.1 With respect to any default or malfunction other than those specified in Sections 18.4.2, 18.4.3, 18.4.4 and 18.4.5 below: the Warranty Period shall be three (3) years.
- 18.4.2 With respect to Endemic Failures: the Warranty Period shall be ten (10) years.
- 18.4.3 With respect to painting and labels: the Warranty Period shall be six (6) years.
- 18.4.4 With respect to corrosion protection: the Warranty Period shall be ten (10) years.
- 18.4.5 With respect to vehicle body and bogie frames: the Warranty Period shall be the entire lifetime required in Section 16 of the Technical Specifications.

However, it is agreed between the parties that the Warranty Period (i.e. each of the applicable periods above) of the first nine (9) Units ordered under IPO2 and regarding which the Fault Free Service Running Certificate has been issued by ISR shall be extended until the end of the Warranty Period of the tenth (10th) Unit ordered under IPO2 and regarding which the Fault Free Service Running Certificate was issued by ISR, such that for each such nine (9) Units the Warranty Period shall begin on the date of issuance by ISR of the Fault Free Service Running Certificate for such Unit and end on the end of the Warranty Period of the tenth (10th) Unit.

In addition, the Warranty Period of each Unit shall be further extended as specified in this Agreement and/or in the Technical Specifications.

- 18.5 The foregoing notwithstanding, if Supplier uses products of others

carrying a warranty that covers a period longer than the Warranty Period, then at the expiration of the Warranty Period, Supplier will assign its rights to each such manufacturer's warranty to ISR. In addition, should any Works or part thereof be replaced or repaired by virtue of this Section 18, the Warranty Period of that replaced or repaired Works or part shall be superseded by a new Warranty Period that will continue until the later of three (3) years from the date the defect is corrected or the end of the respective Warranty Period.

18.6 *Omitted*

18.7 Subject to Section 18.21 below, the Warranty Period as per Section 18.4.1 above with respect to each Unit shall end upon issuance by ISR of an end of Warranty certificate for such Unit, in the form attached hereto as **Attachment O** (the "**End of 3 Years Warranty Certificate**").

18.8 Without derogating from any other provisions of this Agreement, Supplier shall be fully responsible, at its sole cost and expense, to constantly stock and maintain in Israel the Spare Parts required for immediate repair in order to fulfill Supplier's Warranty obligations. Upon completion of the Warranty Period, ISR may (but shall not be obligated to) purchase the remainder of such Spare Parts from Supplier.

18.9 Each party will inform the other party of any fault and/or defect in the Unit within the Warranty Period promptly after discovery thereof. Within thirty (30) days from the Effective Date, the IPM and the SPM shall agree on the format of such notification of faults and defects.

18.10 The Warranty Works to be conducted by Supplier on any Unit of ISR Maintained Fleet shall take place at any of ISR's tracks or depots and/or as shall be instructed by ISR to Supplier upon report of the relevant malfunction, and all in accordance with ISR's safety regulations. For clarification, the use of such Locations by Supplier for the purpose of Warranty shall be subject to all the terms and conditions of Section 14.7.2 above and of the LUL Agreement.

With respect to Warranty Works to be conducted on Units in Supplier Maintained Fleet, such Works shall be performed in the Maintenance Depot or in other Locations where Maintenance Works are to be conducted, as applicable.

18.11 Any and all actions which Supplier must perform under this Section 18 shall be carried out without delay and at Supplier's expense, including but not limited to, all costs (for the removal of doubt, in Israel and abroad) related to any required repair or replacement, transportation, dismounting and mounting costs, and manpower costs.

18.12 During the Warranty Period Supplier will maintain a log detailing all faults and/or defects to Units and the measures taken by Supplier to remedy them, including a detailed list of all Spare Parts used. Supplier will inform ISR, in a written report, of any modifications and/or adjustments and/or changes and/or corrections made by it within that process, no later than five (5) days from the day the modification was made.

- 18.13 Without derogating from the generality of the provisions of this Section 18, it is hereby clarified that any deviation from a characteristic contained in the Technical Specifications and/or failure to meet the functions as set out in the Technical Specifications shall constitute a defect which must be remedied by Supplier as part of the Warranty during the Warranty Period.
- 18.14 Supplier's obligations under this Section 18 are irrespective of whether the deviation from the Agreement or the Technical Specifications was already present before the issuance of the Final Acceptance Certificate regarding any Unit.
- 18.15 Supplier shall notify ISR of any major defects found in electric multiple units manufactured and/or supplied to any third party by Supplier.
- 18.16 Without derogating from any provisions of this Agreement, Supplier shall perform any and all actions to be done during the Warranty Period under the Technical Specifications.

18.17 Liquidated Damages for Repairs during the Warranty Period

This Section 18.17 below shall only apply to Units in the ISR Maintained Fleet and shall not apply to the Units in the Supplier Maintained Fleet, regarding which Maintenance Liquidated Damages shall apply in accordance with the terms and conditions of the Maintenance Chapter.

- 18.17.1 During the Warranty Period, regarding any fault or malfunction defined as critical or significant in Section 5.4.1 (Table 1) of the Technical Specifications, Supplier shall commence repair works within six (6) hours from the time the malfunction report was communicated to it.

In the event that Supplier has failed to remedy such fault or malfunction within twenty four (24) hours from the time the Unit with the fault or malfunction was made available to Supplier, ISR shall be entitled to charge Supplier with liquidated damages amounting to five thousand (5,000) EURO for every additional twenty four (24) hours during which the Unit is not available for revenue service (and a pro-rata portion of such amount for less than a part of twenty four (24) hours).

The aggregate amount of the liquidated damages for repairs to be paid by Supplier under this Section 18.17.1 above shall not exceed a total of five percent (5%) of the aggregated consideration for all Purchase Orders placed by ISR under this Agreement as of the date of payment by Supplier of such liquidated damages.

- 18.17.2 During the Warranty Period, regarding any fault or malfunction that is not critical or significant as defined above, Supplier shall commence repair works as soon as possible but in any event by no later than within one (1) days from the time the malfunction report was communicated to it.
- 18.17.3 For the removal of doubt, this Section 18.17 shall not derogate from any other rights or remedies available to ISR under any

Applicable Law or under this Agreement, including but without limitation pursuant to Section 26.3 below.

18.17.4 For the removal of doubt, ISR may recover any sums due to ISR with regard to such liquidated damages from the Performance and Warranty Guarantees.

18.17.5 The provisions of Section 26.4 below shall apply *mutatis mutandis* to the liquidated damages under this Section 18.17 above.

18.18 **Warranty Team**

Throughout the Warranty Period or the extended Warranty Period, as applicable, Supplier shall maintain a team stationed in Israel dedicated to providing ISR with all services required under the Warranty (the "**Warranty Team**"), as follows:

18.18.1 The Warranty Team shall be composed of qualified personnel as required in order to be able to correct at any time any malfunction in the Units and/or in the engines of the Units, as applicable. Without derogating from the above, the Warranty Team shall consist of at least four (4) members: two (2) electricity technicians, two (2) mechanics technicians and a site manager (one of the above mentioned technicians may serve as the site manager). If Supplier or ISR deems the Warranty Team not being sufficient to provide all services included in the Warranty, Supplier shall increase the number of members in the Warranty Team appropriately.

18.18.2 A prerequisite to the serving on the Warranty Team is that the member has been involved in the Works in relevant positions at least eight (8) months prior to joining the Warranty Team.

18.18.3 At least one Warranty Team shall be (i) available on-call at all times (twenty-four (24) hours a day seven (7) days a week, including weekends and holidays); and (ii) on duty during all traffic operation hours of ISR.

18.18.4 Supplier shall replace any of the Warranty Team personnel within ten (10) days from ISR's demand, for reasonable reasons that shall be notified by ISR in writing. Supplier shall be responsible for any costs arising in connection with the replacement of any of its personnel.

18.19 **Events excluded from the Warranty**

18.19.1 Excluded from the Warranty are items for which repair or replacement are necessary because of:

- a) vandalism;
- b) accidents;
- c) natural disasters; or
- d) normal wear and tear (with respect to ISR Maintained Fleet only; with respect to Supplier Maintained Fleet,

repairs resulting from normal wear and tear are included in the Maintenance scope).

(the "**Excluded Warranty Works**")

For the removal of doubt, during the Warranty Period, only repair or replacement which is required solely because of any of the above events will constitute Excluded Warranty Works, and all other repairs and/or replacements shall be deemed to be included in, and covered by, the Warranty and shall not entitle Supplier to any payment (including but without limitation in the form of reimbursement of costs for parts, labor, materials, etc.).

18.19.2 All of the provisions of this Section 18 shall apply to Excluded Warranty Works, except that ISR shall pay the cost of such repairs, which shall be determined by one of the following mechanisms at ISR's choice, and subject always to ISR's prior written approval regarding each specific repair:

18.19.2.1 on a time and material basis as follows:

- (a) Labor cost shall be determined in accordance with the Daily Rates in the Payment Schedule.
- (b) The price of the Spare Parts shall be the price approved by ISR under Section 20.1 below.

For the removal of doubt, with respect to ISR Maintained Fleet, and if ISR's stock of Spare Parts is not managed by Supplier as per Section 20.3 below, ISR shall have the right (but not the obligation) to supply (by itself or from third party including Subcontractors and Supplier's sub-suppliers) any materials and/or parts (including Spare Parts) required for the performance of the repairs, and in such case Supplier shall only be entitled to compensation for labor costs as per the above.

Or;

18.19.2.2 The cost of other repairs shall be determined in accordance with the Cost-Plus Mechanism.

18.19.3 For clarification, in the event that ISR elects that any Excluded Warranty Work on a Unit in ISR Maintained Fleet will be performed by ISR and/or by any other third party on ISR's behalf, Supplier shall still remain responsible for Warranty of such Unit (except that any Fault resulting from such repair by ISR and/or a third party shall constitute Excluded Warranty Works).

18.20 Extension of the Warranty Period

18.20.1 Without derogating from any of the aforementioned in this Section 18 and in Section 30.4 below, if a Unit is unavailable

for revenue service due to the necessity of carrying out Warranty repairs, the Warranty Period shall be extended as follows:

Accumulated unavailability days (per each Unit)	No. of	Extension of the Warranty Period
0-10 days		No extension
11-60 days		Number of days unavailable multiplied by two (2).
Over 60 days		Number of days unavailable multiplied by four (4).

18.20.2 In the event that the Warranty Period is extended as detailed above, Supplier shall immediately extend the relevant Performance and Warranty Guarantee period accordingly.

18.20.3 For the removal of doubt, such extension of the Warranty Period shall be cumulative to any extension of the Warranty Period pursuant to Section 18.5 and pursuant to Chapter 12 of the Technical Specifications.

18.21 End of Warranty

18.21.1 Upon the end of the Warranty Period specified in Section 18.4.1 above (as may have been extended pursuant to the provisions of this Agreement), the IPM shall issue a signed End of 3 Years Warranty Certificate per each Unit in the form attached in Attachment O, provided that the Warranty Committee (for ISR Maintained Fleet) or the Supervisory Board as defined in the Maintenance Chapter (for Supplier Maintained Fleet) has confirmed in writing that any and all faults and/or deficiencies in the Units and any part thereof which are covered by the Warranty Period specified in Section 18.4.1 above have been fully repaired to ISR's satisfaction.

18.21.2 It is hereby clarified that only the signed End of 3 Years Warranty Certificate shall constitute the expiration of the 3 (three) years Warranty Period for each Unit. For clarification, such certificate shall not constitute expiration of the Warranty Period pursuant to subsections (b), (c) and (d) of Section 18.4 above.

18.21.3 The provisions of this Section 18.21 above shall apply *mutatis mutandis* to the end of the Warranty Period under subsections (b), (c) and (d) of Section 18.4 above.

18.22 Warranty Committee

18.22.1 The provisions below regarding the Warranty Committee shall apply only with respect to ISR Maintained Fleet. The authority and competences granted to the Warranty

Committee shall not apply to the Supplier Maintained Fleet, regarding which such authority and competences are granted to the Supervisory Board (as defined in the Maintenance Chapter).

- 18.22.2 The parties will jointly set up a warranty committee (the “**Warranty Committee**”), by no later than the commencement of the Warranty Period with respect to the first Unit of the first Additional Purchase Order under this Agreement, for the purpose of discussing defects and deficiencies relevant to the Warranty, including, but not limited to, reliability and availability. To the extent that the parties disagree as to whether a repair constitutes a Warranty repair and are incapable of resolving the disagreement within fourteen (14) days from the date the issue was first submitted to the Warranty Committee, the provisions of Section 32 below shall apply. For the avoidance of doubt, no such disagreement shall entitle Supplier to delay or withhold any Works whatsoever.
- 18.22.3 The Warranty Committee shall be composed of at least two (2) representatives of each ISR and Supplier, and it shall meet at least once in every calendar quarter (including by means of telephone, video or similar means of communication), unless otherwise agreed or sooner if required by either party.
- 18.22.4 Supplier will prepare the written minutes of each meeting of the Warranty Committee and shall send them to ISR for review within four (4) Business Days from the date of such meeting. The minutes will be reviewed and approved by the parties (subject to any corrections and other modifications in them, as the IPM may request).

18.23 **Technical Support**

For a period of twelve (12) months from the date of Final Acceptance of the first Unit of (i) IPO1; and (ii) IPO2, Supplier shall provide ISR with technical support as follows:

- 18.23.1 An electrical engineer, a software engineer and a mechanical engineer, experts with hands on familiarity with the Units and members of the Units design or development team (“**Technical Support Team**”) shall be present in Israel to provide ISR with technical support as provided herein.
- 18.23.2 The Technical Support Team shall perform as follows:
- 18.23.2.1 Coach and instruct ISR personnel in all aspects of carrying out maintenance service for the Units, including troubleshooting activities. Such coaching and guidance shall be in addition to the training services detailed in the Technical Specifications.
- 18.23.2.2 Supplement the Warranty Team in resolving faults

and malfunctions which are beyond the respective team's knowledge or capabilities or such faults and malfunctions which the respective Warranty Team is having difficulties resolving.

- 18.23.3 It is hereby clarified, that the activities of the Technical Support Team shall not in any way derogate from Supplier's obligations regarding the Warranty Team and/or the Maintenance team.

18.24 Endemic Failures

- 18.24.1 Commencing with the Warranty Period of the first Unit under this Agreement, and until the end of the Warranty Period in Section 18.4.2 above, Supplier shall replace, at its own cost, expense and responsibility:

- (a) all the components and/or systems and/or parts and/or functionalities and/or software that are affected by an Endemic Failure, and
- (b) all the components and/or systems and/or parts and/or functionalities and/or software of the same kind in all Units in the applicable Purchase Order, whether affected or not by such Endemic Failure.

- 18.24.2 Supplier shall submit to ISR an engineering report analyzing the failure and action plan to correct any Endemic Failure to which Supplier becomes aware and/or that may be notified to Supplier by ISR, within a period not to exceed thirty (30) days from the earlier between (i) the date Supplier became aware of the Endemic Failures; or (ii) of ISR's notice. This action plan shall be implemented within a reasonable period, to be defined mutually between the Parties in relation to the nature of the Endemic Failure, and which shall not exceed six (6) months from the earlier date stated above, for all Units in the applicable Purchase Order.

For clarification:

- 18.24.2.1 Nothing in this Section 18.24 shall be construed to derogate from any other obligations of Supplier under this Agreement and/or any Applicable Law.
- 18.24.2.2 The provisions regarding Endemic Failures shall apply during the applicable Warranty Period of all Units supplied by Supplier under this Agreement, whether included in the Supplier Maintained Fleet or in the ISR Maintained Fleet.

19. MAINTENANCE FOR SUPPLIER MAINTAINED FLEET

Supplier shall provide Maintenance to certain Units in accordance with the provisions below.

19.1 Supplier Maintained Fleet

The specific Units for which Maintenance shall be provided by Supplier shall be determined by ISR as detailed below (the "**Supplier Maintained Fleet**").

19.1.1 The initial Supplier Maintained Fleet shall include all Units ordered under IPO1 and regarding which a Final Acceptance Certificate has been issued by ISR.

19.1.2 ISR shall have the right (but not the obligation) to add Unit(s) to Supplier Maintained Fleet from time to time, subject to written notice to Supplier at least thirty (30) days in advance, and *provided that* the number of Units included in Supplier Maintained Fleet will not exceed forty six (46) Units. Provisions regarding the consideration to be paid by ISR for Maintenance of Supplier Maintained Fleet in accordance with its size are included in the Payment Schedule.

19.1.3 ISR shall be entitled to add Units to Supplier Maintained Fleet such that the number of Units in Supplier Maintained Fleet will exceed forty six (46) Units, by written notice to Supplier at least thirty (30) days prior to the commencement of Maintenance for such Units, and in this case the parties shall discuss in good faith the implications on the terms and conditions relating to Maintenance.

19.1.4 ISR shall be entitled to remove Units from Supplier's Maintained Fleet by prior notice to Supplier, and in this case the parties shall discuss in good faith the implications of such removal, based *inter alia* on the provisions of the Payment Schedule where applicable.

19.2 Maintenance Period

19.2.1 **Initial Maintenance Period.** The initial Maintenance period shall commence upon the date of issuance by ISR of the Final Acceptance Certificate for the first Unit ordered under the Initial Purchase (provided that Supplier effectively provides Maintenance commencing on such date), and shall end upon the lapse of fifteen (15) Maintenance Years from such date, or earlier as otherwise provided in this Agreement.

“**Maintenance Year**” – Shall mean a period of twelve (12) consecutive months commencing on the commencement of the Maintenance Period or any anniversary thereof.

19.2.2 **Extended Periods.** ISR has the right (but not the obligation) to extend the initial Maintenance period in Section 19.2 above by one or several continuous additional period(s) of up to seven (7) years each, by giving Supplier a written notice at

least six (6) months prior to the expiration of the initial Maintenance Period or of any extended period (the initial Maintenance period and any extended period, together - the "**Maintenance Period**"). The aggregate Maintenance Period shall not exceed twenty nine (29) Maintenance Years.

19.3 **Maintenance Services**

19.3.1 During the Maintenance Period, Supplier shall provide Maintenance to all Units in the Supplier Maintained Fleet in accordance with all the provisions of this Agreement (including for the removal of doubt the Maintenance Chapter).

19.3.2 It is hereby clarified that all Warranty obligations of Supplier under this Agreement with respect to the Units included in the Supplier Maintained Fleet are included in the scope of Maintenance for the entire Maintenance Period (including for the removal of doubt after the end of the Warranty Period). In the event of any contradiction, omission or ambiguity between provisions applying to Warranty and provisions applying to Maintenance, the provisions most beneficial to ISR shall apply.

19.4 **Consideration for Maintenance**

19.4.1 In consideration for the fulfillment of all its obligations in connection with Maintenance, commencing on the Final Acceptance date of each Unit, Supplier shall be entitled to payment of the Maintenance Price, as defined and further specified in Chapter 3 of the Payment Schedule, and subject to all the provisions of this Agreement.

19.4.2 It is being clarified that the Maintenance Price (as specified in the Payment Schedule) shall be deemed to include payment for any and all Works (including man-hour), materials, Spare Parts, etc. required in connection with the provision of Maintenance, and excluding only (i) consideration for Excluded Maintenance Works; and (ii) consideration for the Maintenance Depot and initial Depot Equipment, which is included in the Maintenance Depot Price (as defined in the Payment Schedule).

19.5 **Maintenance Depot**

19.5.1 Maintenance will be performed by Supplier in the Maintenance Depot, except if expressly specified otherwise in the Maintenance Chapter.

Notwithstanding the above, in the event of a delay in Completion of the Maintenance Depot for any reason whatsoever, ISR may instruct Supplier to provide Maintenance from any other Location.

19.5.2 Supplier shall be responsible to fully clean, maintain and guard the Depot Site and the Maintenance Depot at its own cost, expense and responsibility, including but without

limitation (i) timely purchase, repair and/or replacement of any equipment, software and licenses, materials, instruments and parts related to the Maintenance Depot and required for the Maintenance of the Units in the Maintenance Depot and on the Depot Site (collectively – "**Depot Equipment**"), including for the removal of doubt the Depot Equipment supplied by Supplier under the Maintenance Depot Contract); and (ii) maintenance of the Maintenance Depot, all in order for the Depot Site, the Maintenance Depot and the Depot Equipment to comply with Applicable Law and with ISR's safety regulations, and to enable Supplier to provide Maintenance in accordance with all the provisions of this Agreement and of the Maintenance Chapter ("**Depot Maintenance**").

For clarification (i) title in the Depot Equipment shall remain vested with Supplier during the Maintenance Period, and shall be transferred free of charge to ISR upon termination and/or cancellation and/or expiration of the Maintenance Period for any reason whatsoever, as further specified in the Maintenance Depot Contract; and (ii) Depot Maintenance shall include without limitation maintenance, repair and replacement of all equipment, materials, instruments and parts and of the building, such that upon return of the Maintenance Depot and transfer of the Depot Equipment to ISR at the end of the Maintenance Period, the Maintenance Depot (including the Depot Equipment) will be ready for immediate commencement of maintenance of the Units by ISR or by any third party on its behalf without need for any further action.

19.5.3 In consideration for the fulfillment of all its obligations in connection with Depot Maintenance, commencing on the date of Completion of the Maintenance Depot, and as long as Maintenance is provided by Supplier in the Maintenance Depot in accordance with the provisions of this Agreement, Supplier shall be entitled to the payment by ISR of the Depot Maintenance Fees, as further specified in the Payment Schedule, and subject to all the provisions of this Agreement.

19.5.4 For the removal of doubt, nothing contained herein shall be construed to derogate from Supplier's warranty obligations under the Maintenance Depot Contract.

19.5.5 It is further clarified that Supplier shall not be entitled to the allocation by ISR of any additional area in addition to the Maintenance Site, that the Maintenance Depot to be erected by Supplier on the Maintenance Site pursuant to the Maintenance Depot Contract shall be sufficient for Maintenance of up to forty six (46) Units, and that in the event that Supplier needs additional areas for Maintenance, Supplier shall locate, secure rights, build and maintain such areas at its sole cost, expense and responsibility, subject to ISR's prior

written approval in each specific case. For the removal of doubt, Supplier shall not be entitled to any payment by ISR in connection with such additional areas for Maintenance.

19.6 **ISR's Right to authorize Services by Others.**

- 19.6.1 If Supplier fails to perform any of its obligations in accordance with, or fails to carry out any Warranty and/or Maintenance activity required under the Agreement and/or maintenance of the Maintenance Depot or refuses to comply with any proper requirement of the IPM under the Agreement within the specified period (or, if no period is specified, within a reasonable time), ISR shall be entitled (but not obligated), to give Supplier a notice in writing requiring Supplier to remedy that failure, carry out that activity, or comply with such requirement of the IPM within the period specified in the notice.
- 19.6.2 If the Supplier fails to comply with the requirements of the IPM in relation to a obligations specified in any notice given pursuant to Section 19.5 above, and ISR expects that such failure may have major implications, ISR shall be entitled (but not obligated) to carry out those obligations (including any Maintenance services) or any part of them or any such activity or requirement using its own or third party personnel and resources.
- 19.6.3 If, by reason of any accident or failure or other event affecting safety occurring to, on, in, or in connection with the Units or the performance of Supplier's obligations under the Agreement, any remedial or other work shall be urgently necessary in the opinion of the IPM, and following consultation with Supplier (where practicable), Supplier is unable or unwilling to do such remedial or other work immediately, then the IPM may authorize the carrying out of that remedial or other work by a person other than Supplier.
- 19.6.4 All reasonable expenditure, costs and expenses incurred by ISR in having any of Supplier's obligations (including any Works, activity or requirement) carried out as per this Section above shall be recoverable as a debt by ISR from Supplier and ISR may deduct such amounts from any amount due or to become due to Supplier under the Agreement and/or any other agreement between the Parties.
- 19.6.5 Supplier shall not be entitled to any relief of the performance of its obligations under the Agreement as a result of the fact that any work has been carried out by ISR and/or ISR's nominated third party under this Section above.
- 19.6.6 Nothing contained in this Section above shall be construed to derogate from any rights and/or remedies that may be available to ISR under the circumstances pursuant to the Agreement and/or any Applicable Law.

- 19.6.7 For clarification, in the event that ISR elects, in accordance with the provisions of this Agreement, that any work or repair on a Unit will be performed by ISR and/or by any other third party on ISR's behalf, Supplier shall still remain responsible for Warranty and/or Maintenance (as applicable) of such Unit (except that any Fault resulting from work or repair by ISR and/or a third party shall constitute Excluded Warranty Works or Excluded Maintenance Works).
- 19.6.8 This Section 19.6 above shall apply *mutatis mutandis* to all Works under the Agreement.

19.7 **Access, Supervision and Inspections.**

- 19.7.1 Without derogating from any other provision of the Agreement, ISR, by means of any person or entity acting for or on its behalf, shall at all times have (i) free and unrestricted access to any Location and/or other facility used by Supplier; and (ii) the right to inspect, monitor and supervise the performance of Maintenance by Supplier. ISR may inspect and/or take copies of, verify and audit any information produced by the Supplier under the Agreement from time to time. Supplier shall provide free of charge to ISR's inspectors and duly authorized representatives any assistance and cooperation in order to enable them to carry out monitoring, supervision and inspection in connection with the Agreement.
- 19.7.2 If ISR determines that Supplier is carrying out its obligations under the Agreement in a manner which is unsafe or which does not comply with ISR's standards and/or regulations and/or with the provisions of the Agreement, ISR shall be entitled to instruct Supplier (and/or the personnel of Supplier directly, through the manager in charge where applicable), to immediately cure such failure, and Supplier and/or such personnel of Supplier shall comply with any instruction by ISR. In addition, ISR may suspend the performance of certain or all obligations of Supplier under the Agreement (including the provision of Maintenance) until such failures are cured by Supplier.
- 19.7.3 In the event that ISR determines that Maintenance is provided in a manner which may endanger the safety of any Unit, ISR shall be entitled to instruct Supplier to immediately cure such failure, and Supplier shall comply with any instruction by ISR. Without derogating from the above, to the extent that Unit's safety matters are involved, ISR shall be entitled to (i) give any instruction directly to any relevant personnel of Supplier during the performance of Maintenance and such personnel shall comply with ISR's instructions; (ii) decide that any Unit after Handover by Supplier to ISR is not fit to run; (iii) withdraw forthwith any Unit from revenue service; and/or (iv) suspend the performance of certain or all obligations of Supplier under the Agreement (including the provision of Maintenance).
- 19.7.4 Supplier alone shall bear and pay any additional costs and

expenses caused to ISR as a result of the circumstances described in Sections 19.7.2 and/or 19.7.3 above.

19.7.5 Without derogating from Supplier's obligations to comply immediately with any instruction and/or determination by ISR as per this Section above, Section 19.12 below shall apply to the resolution of any disagreement and/or dispute in connection with Sections 19.7.2 and/or 19.7.3 above.

19.8 **Audit**. ISR shall be entitled to audit the performance of Maintenance and of any related or incidental obligation by Supplier. Supplier hereby undertakes to fully cooperate with any audit procedure that may be conducted by ISR and/or by any third party acting on ISR's behalf or controller of ISR and/or by any competent authority, all as may be reasonably required for the purposes of such audit. Without derogating from the generality of the above, Supplier undertakes to fully cooperate and to disclose any relevant data, information and documents as required in connection with the investigation of any safety events.

19.9 **Inspection of the Units by a Third Party on ISR's Behalf**. Without derogating from the generality of the above, ISR shall have the right (but not the obligation) to appoint any other third party reasonably acceptable by Supplier to inspect the Units from time to time, and Supplier shall, at its sole cost and expense, make good any Fault discovered in the course of such inspection and implement any recommendation of such third party with respect to any aspect of the conduction of the Works which have been found defective and/or missing and/or inappropriate.

19.10 **Subcontractors**. Without derogating from any other provision of the Agreement, Supplier shall procure that all Subcontractors will comply with the provisions of Sections 19.7 until 19.9 above .

19.11 **No Liability on ISR**. For clarification, nothing contained in Sections 19.5 until 19.9 above shall be construed as imposing any liability and/or responsibility on ISR and/or as derogating from any Supplier's obligations under the Agreement, including but without limitation Supplier's obligations to perform Maintenance in accordance with the provisions of the Agreement. It is further clarified that nothing in this Section above shall derogate from any other right and/or remedy available to ISR under the Agreement, including but without limitation Liquidated Damages and/or indemnification by Supplier, if applicable.

19.12 **Fast Track for Technical Dispute**

The following provisions shall apply to any Dispute relating to the exercise by ISR of its rights under Sections 19.7.2 and/or 19.7.3 above (respectively the "**Technical Dispute**" and the "**Fast Track for Technical Dispute**"):

The Technical Dispute shall be brought immediately, by the personnel of Supplier qualified to deal with the technical issues involved in the Technical Dispute, to the SPM and the IPM , who shall attempt to resolve the Technical Dispute by mutual agreement.

19.12.1 If (i) the IPM and the SPM are not able to resolve the

Technical Dispute as soon as possible but in any event such as not to delay the availability of the Unit; and/or (ii) the IPM and the SPM do not agree on a material safety issue involved in the Technical Dispute, which according to one of them should prevent the availability of the Unit for revenue service; and/or (iii) the IPM and the SPM disagree whether a Dispute is a Technical Dispute; and/or (iv) the SPM is not available, then the Technical Dispute shall be decided by the IPM.

19.12.2 Supplier shall execute the decision of the IPM and SPM, or just the IPM, as applicable, immediately such as not to delay the availability of a Unit for revenue services, if applicable.

19.12.3 The IPM shall not be considered as an arbitrator and the Arbitration Law, 5728-1968 shall not apply to the Fast Track for Technical Dispute.

20. SPARE PARTS

20.1 Supplier hereby undertakes to supply, for a period of at least thirty (30) years from the date ISR has issued the Final Acceptance Certificate for the last Unit ordered under this Agreement, all spare parts, materials, consumables and appropriate tools and test benches ("**Spare Parts**") necessary for the full operation and maintenance of the Units in accordance with the Technical Specifications, the Maintenance Chapter (if applicable), common railway practices and any applicable standards, so as to enable ISR (or Supplier, as the case may be) to correct any malfunction as promptly as possible so as to minimize the effect thereof on ISR's train traffic. For the removal of doubt, Section 13.11 above shall apply to any Spare Parts supplied by Supplier under this Agreement.

Within nine (9) months from the date of issuance by ISR of IPO1, Supplier shall submit to ISR an illustrated Spare Parts catalogue including any and all Spare Parts, in three (3) hard copies and in electronic format (as further specified in Section 9.8.12 of the Technical Specifications). In addition to all the information specified in Sections 9.8.9, 9.8.10 and 9.8.11 of the Technical Specifications, such catalogue shall include the following details with respect to each Spare Part:

- (i) picture and/or drawing;
- (ii) name of the original manufacturer; and
- (iii) delivery time (lead time).

After reviewing such catalogue, ISR will issue to Supplier a request for prices of certain Spare Parts included in the catalogue. After approval by ISR, such prices shall be added to the list of prices of Certain Spare Parts in Section 2 of Chapter 3 of the Payment Schedule.

20.2 Prior to Final Acceptance of the first Unit in ISR Maintained Fleet , Supplier shall supply to ISR for no additional consideration the following Spare Parts, equipment and tools (which consideration is included for the removal of doubt in the Unit Price of the Units in ISR Maintained Fleet):

- 20.2.1 all the Spare Parts referred to in Attachment K.
- 20.2.2 all special equipment and special tools required for the maintenance of all Units in ISR Maintained Fleet. A comprehensive list of such special equipment and tools (including quantities) shall be submitted by Supplier to ISR's review and comments within nine (9) months from the date of issuance by ISR of IPO1.
- 20.3 If ISR will elect to maintain a stock of Spare Parts for the purposes of ISR Maintained Fleet, ISR shall have the right (but not the obligation) to request from Supplier to manage such stock of Spare Parts on behalf of ISR, upon terms to be reasonably agreed between the parties on the basis of the prices for Spare Parts in the Payment Schedule. Such management by Supplier shall include *inter alia* order by Supplier of Spare Parts on a current basis, in sufficient quantities for preventive and corrective maintenance by ISR of ISR Maintained Fleet, storage of such Spare Parts by Supplier, computerized interface with ISR warehouse, and other actions as shall be agreed between the parties. All Spare Parts in ISR stock managed by Supplier shall be imported by Supplier on Supplier's name and shall remain Supplier's property until use and payment thereof by ISR. ISR shall be entitled to instruct Supplier at any time at its sole discretion and for no cause to cease managing ISR's stock of Spare Parts as per the above by written notice to Supplier at least thirty (30) days in advance, and such notice may include instructions for the transfer of such stock to ISR.
- For clarification, nothing contained in this Section 20.3 shall be construed as derogating from Section 20.6 below.
- 20.4 The prices for Spare Parts which are specified in the Payment Schedule shall apply to purchase by ISR of Spare Parts for any and all purpose, except as specified in Section 20.3 above. The prices of Spare Parts which are not specified in the Payment Schedule shall be agreed between the parties, based on the prices of the Spare Parts in the Payment Schedule and on the prices of such materials and parts offered by Supplier or by Supplier's Subcontractors or sub-suppliers to rolling stock manufacturers, *provided however* that ISR shall be entitled to supply (by itself or from third party including for the removal of doubt Subcontractors and Supplier's sub-suppliers) any materials and/or parts (including for the removal of doubt Spare Parts).
- 20.5 The Spare Parts shall be imported as specified in Section 24.1 below.
- 20.6 Notwithstanding any provision to the contrary in this Agreement, ISR shall not be required to maintain any stock of Spare Parts and Supplier alone shall be responsible to the timely supply of Spare Parts so as to comply with any and all of its obligations under this Agreement, including but without limitation provisions relating to Warranty, Maintenance, and this Section 20.
- 20.7 For the removal of doubt, ISR shall be entitled at any times to purchase Spare Parts either directly from Supplier or from any third party, including but without limitation Subcontractors and/or suppliers of the

Subcontractors and Supplier hereby declares that it agrees to any such purchases of Spare Parts directly by ISR. For the removal of doubt, Supplier shall not be entitled to any payment from ISR for direct purchase by ISR of Spare Parts as per the above.

However, this Section 20.7 above shall not apply to Spare Parts in ISR's stock managed by Supplier as per Section 20.3 above (if applicable).

20.8 Without derogating from any other obligations of Supplier under this Agreement, the warranty on any Spare Parts purchased by ISR from Supplier shall continue until the earlier of (i) three (3) years after received in ISR's warehouse; or (ii) two (2) years after being installed on a Unit. The foregoing notwithstanding, if Supplier uses products of others carrying a warranty that covers a period longer than the period specified above, Supplier will assign its rights to each such manufacturer's warranty to ISR.

20.9 Supplier shall notify ISR at least six (6) months prior to the date of termination of manufacturing (whether by third parties or by Supplier) of any Spare Parts, and shall secure supply to ISR and to Supplier of such Spare Part or of a comparable item of at least the same quality and functionality for the entire period referred to in Section 20.1 above, at its sole cost and responsibility. Supplier shall endeavor, by all available means, to avoid the need for any changes and/or adjustments to the Units as a result of the use of any alternative item as per the above. In the event that such change and/or adjustment cannot be avoided, Supplier shall submit to ISR's written approval and provide for no additional consideration the relevant technical documentation following the rules of configuration change management approach.

Subject to ISR's written approval, Supplier shall perform such changes and/or adjustments to the Units under its own responsibility, and the costs and expenses for such changes and/or adjustments shall be borne and paid as follows:

(i) during the period ending twenty (20) years after the date ISR has issued the Final Acceptance Certificate for the last Unit ordered under this Agreement: by Supplier; and

(ii) during a period of ten (10) years thereafter: by ISR, and the provisions of Section 8 above shall apply *mutatis mutandis*.

For the removal of doubt, the obligations of Supplier under this Section 20.9 shall remain in full force and effect during the entire period referred to in Section 20.1 above.

21. RECALL

21.1 Should the manufacturer of any Unit parts and/or systems and/or components and/or materials and/or equipment and/or instruments and/or consumables of the Units and/or of the Depot Equipment (the "**Equipment**") or any competent authority announce that the Equipment is defective, Supplier shall notify ISR immediately in writing, recall all defective Equipment, and promptly replace it with Equipment fully

meeting the Technical Specifications and/or the requirements in the Maintenance Depot Contract, all at Supplier's sole cost and responsibility. For the removal of doubt, nothing contained in this Section above shall be construed as derogating from Supplier's obligations under the Delivery Schedule.

- 21.2 Supplier shall immediately provide ISR upon the recall with a viable alternative solution for the interim period, at no cost to ISR, subject to ISR's prior written approval, which shall not be unreasonably withheld.
- 21.3 All costs caused by any recall of Equipment as detailed above shall be borne by Supplier.
- 21.4 For the removal of doubt, this Section 21 shall not derogate from any other rights of ISR under this Agreement, including but without limitation Sections 25, 28 and 31 below, and shall apply to both Supplier Maintained Fleet and ISR Maintained Fleet.

22. INTELLECTUAL PROPERTY RIGHTS

- 22.1 **Intellectual Property Rights Warranty.** Supplier represents and warrants that it is the owner of all rights and title (including but without limitation Intellectual Property Rights, as defined below) in and to the Units as well as in all Works and any component thereof (including, for the removal of doubt and without limitation, systems, parts, software incorporated in the Units and/or the Depot Equipment or integrated with them), and documentation provided to ISR under this Agreement, and/or that it has obtained sufficient rights and is authorized to offer, sub-license and/or sell to ISR any such Unit, Works or documentation and/or any part thereof, by the relevant third parties who developed and/or own and/or hold the Intellectual Property Rights thereof, and that ISR may use any part of said Units, Works and documentation in accordance with the terms and conditions of this Agreement, for the purposes of (i) operation, refurbishment, upgrade, enhancement and/or maintenance of the Units; (ii) operation of the Maintenance Depot after termination of the Maintenance Period; and/or (iii) for the purpose of interface with other ISR's equipment (whether existing now or in the future) and/or installation of interfacing systems, all by itself and/or by a third party on ISR's behalf (provided that such third party shall be bound by confidentiality obligations) and/or, for the removal of doubt, for the purpose of any audit, investigation or inquiry conducted by ISR and/or any competent authority, such as in the event of malfunctions of the Unit, accident, etc.
- 22.2 **Non Infringement Warranty.** Supplier warrants that the Units, Works and documentation, and their use by ISR in accordance with this Agreement (i) do not and will not infringe any patent, copyright, trade secret, trademark or other intellectual property right of any person ("**Intellectual Property Rights**"), and (ii) no claim, action or suit for the misappropriation or infringement of any Intellectual Property Right has been brought or is pending or, to the best of its knowledge, threatened against Supplier and/or any third party from which Supplier has obtained such Intellectual Property Rights in connection with the Units, Works or

documentation provided under this Agreement.

22.3 **Responsibility of Supplier.** For the removal of doubt, Supplier shall be solely and fully liable and responsible for the use of, and shall fully and timely pay all royalties, fees and other payments with respect to, all Intellectual Property Rights, licenses and rights of whatever type, manufactured, used, implemented or employed in the design, production, completion, use or operation of the Units and Works by Supplier or ISR.

22.4 **Ownership of Designs, Drawings, etc.**

22.4.1 Supplier hereby grants to ISR a royalty-free, perpetual, non-exclusive, non-transferable (except as provided under Section 27.2 below) and irrevocable license to use, copy, combine, translate, duplicate, digitize and alter all designs, drawings, documentation and other technical documents that may be submitted by Supplier to ISR or created by or on behalf of Supplier in connection with or as a result of the Works, including but not limited to all derivative works based thereon, and ISR may use any part of said designs, drawings, documentation and other technical documents in accordance with the terms and conditions of this Agreement, for the purposes of (i) operation, refurbishment, upgrading, enhancement and/or maintenance of the Units; (ii) operation of the Maintenance Depot after termination of the Maintenance Period; and/or (iii) for the purpose of interface with other ISR's equipment (whether existing now or in the future) and/or installation of interfacing systems, all by itself and/or by a third party on ISR's behalf (provided that such third party shall be bound by confidentiality obligations) and/or, for the removal of doubt, for the purpose of any audit, investigation or inquiry conducted by ISR and/or any competent authority, such as in the event of malfunctions of the Unit, accident, etc.

However, this Section 22.4 shall not apply to all designs, drawings, documentation and other technical documents that may be submitted by Supplier to ISR or created by or on behalf of Supplier in connection with or as a result of the Works under the Maintenance Depot Contract, that shall be the sole and exclusive property of ISR.

22.4.2 All right and title in and to the designs, drawings and other technical documents and information provided by ISR or on its behalf to Supplier as well as all of the documents comprising this Agreement and the contents thereof, shall be the sole and exclusive property of ISR.

22.5 **Grant of License.** Supplier hereby grants to ISR a perpetual, royalty-free, non-exclusive, non-transferable (except as provided under Section 27.2 below) and irrevocable license and right to install, use, have used, reproduce and have reproduced and copy (including for backup archival purposes) all software provided in connection with this Agreement (including for the removal of doubt the Maintenance Depot Contract), and all supporting documentation, as necessary to support the use of such

software on any hardware, and ISR may use any part of said software and supporting documentation in accordance with the terms and conditions of this Agreement, for the purposes of (i) operation, refurbishment, upgrade, enhancement and/or maintenance of the Units; (ii) operation of the Maintenance Depot after termination of the Maintenance Period; and/or (iii) for the purpose of interface with other ISR's equipment (whether existing now or in the future) and/or installation of interfacing systems, all by itself and/or by a third party on ISR's behalf (provided that such third party shall be bound by confidentiality obligations) and/or, for the removal of doubt, for the purpose of any audit, investigation or inquiry conducted by ISR and/or any competent authority, such as in the event of malfunctions of the Unit, accident, etc.

For the removal of doubt, the foregoing license and right is provided at no extra charge to ISR and shall remain in full force and effect after the termination and/or cancellation and/or expiration of this Agreement for any reason whatsoever.

22.6 **Deposit of Source Code in Escrow.**

22.6.1 Supplier shall deposit and periodically update, as is required by software changes, with an escrow agent in Israel acceptable to ISR (the "**Escrow Agent**"), the source codes and related documentation of all software programs of Supplier which form part of the Works and of all other software programs, if available, together with all enhancements thereto (the "**Source Codes**"). Such deposition shall be made by Supplier prior to Final Acceptance of the first Unit, and thereafter within ninety (90) days from the date of each change, upgrade, or introduction of new software, and shall continue for the entire period that ISR uses same. ISR shall be solely responsible for the payment of all fees to the Escrow Agent.

22.6.2 ISR shall be entitled to request the release of, and to utilize, the Source Codes (i) if Supplier is unable or unwilling to carry out Warranty and/or Maintenance; and/or (ii) in case of termination of this Agreement due to a breach thereof by Supplier (including for the removal of doubt any breach explicitly referred to in Section 31.1 below), for the purposes of (i) operation, refurbishment, upgrade, enhancement and/or maintenance of the Units; (ii) operation of the Maintenance Depot after termination of the Maintenance Period; and/or (iii) for the purpose of interface with other ISR's equipment (whether existing now or in the future), and/or installation of interfacing systems, all by itself and/or by a third party on ISR's behalf (provided that such third party shall be bound by confidentiality obligations) and/or, for the removal of doubt, for the purpose of any audit, investigation or inquiry conducted by ISR and/or any competent authority, such as in the event of malfunctions of the Unit, accident, etc., and *provided that* ISR gives Supplier not less than fourteen (14) days prior written notice of its intention to request the release of the Source Codes.

22.6.3 The Escrow Agent shall promptly release the Source Codes to ISR

upon receipt of an affidavit signed by ISR's General Manager or his designee stating that (i) one or more of the events or circumstances referred to in Section 22.6.2 above has occurred, and (ii) more than fourteen (14) days have passed since ISR has given Supplier written notice of its intention to request the release of the Source Codes.

22.6.4 The escrow agreement to be entered into between Supplier, ISR and the Escrow Agent shall be subject to the prior written approval by ISR.

22.7 **Rights to Use upon Enjoinment.**

In case any part of the Works is held to constitute an infringement of any Intellectual Property Right of any third party or its use is enjoined, Supplier shall, within a reasonable time and at its sole cost and expense, and without derogating from any other right or remedy available to ISR under such circumstances, either:

22.7.1 Secure for ISR the perpetual right to continue the use of such part of the Works by procuring for ISR a royalty-free license or such other free permission as will enable Supplier to secure the removal of any injunction or other relief that was granted; or

22.7.2 Replace such part of the Works with an adequate non-infringing part or modify it so that it becomes non-infringing, without affecting the performance and other qualities of the part in question, all to the IPM's satisfaction.

23. **PAYMENTS**

23.1 **Payment by ISR.**

23.1.1 For and in consideration of Supplier completely, timely and faithfully executing all of its undertakings, obligations, liabilities and responsibilities under this Agreement, ISR shall pay Supplier the consideration set forth in the Payment Schedule, in the sum, manner and at such times and on such terms as described in this Section 23 and in the Payment Schedule. For the removal of doubt, all of the amounts specified in the Payment Schedule are exclusive of Israeli value added tax ("VAT").

23.1.2 The consideration to which Supplier is entitled under this Agreement shall be paid in EURO or in NIS, as specified in this Section 23 below. *However*, and notwithstanding any provisions to the contrary in this Agreement, in the event of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty regarding the currency of any payment under this Agreement, ISR shall determine under its sole discretion if such payment will be made in EURO or in NIS.

23.2 **Payments in EURO**

23.2.1 All following payments under the Agreement shall be made by ISR in Euro:

23.2.1.1 Portion A of the Unit Price; and

23.2.1.2 All Spare Parts under the Agreement.

23.2.2 All payments in EURO shall be made by ISR only to Supplier.

23.3 **Payments in NIS**

23.3.1 All following payments under the Agreement shall be made by ISR in NIS:

23.3.1.1 Portion B of the Unit Price, for the performance of local works and/or services in Israel relating to the supply of the Units (the "**Local Services**"). The respective percentage of Portion B out of the Unit Price shall be as specified in **Attachment L**.

23.3.1.2 Payments for Excluded Warranty Works (excluding for the removal of doubt Spare Parts);

23.3.1.3 The Maintenance Depot Price;

23.3.1.4 The Maintenance Price (excluding only Spare Parts for Excluded Maintenance Works); and

23.3.1.5 The Daily Rates.

23.3.2 All payments in NIS shall be made by ISR to only one (1) Israeli entity which shall be either (**the "Israeli Entity"**):

23.3.2.1 Supplier, to the extent Supplier will be duly registered as 'foreign company' with the Israeli Registrar of Companies (for the removal of doubt, the registered 'foreign company' and Supplier constitute one same entity referred to as "Supplier" in this Agreement); or

23.3.2.2 The Israeli Affiliate, as defined in Section 23.4 below, and subject to all the terms and conditions of such Section 23.4 below and of this Agreement.

For clarification (i) all payments in NIS under the Agreement shall be made by ISR to the same Israeli Entity; and (ii) all payments made pursuant to this Agreement directly to the Israeli Entity shall be deemed for any and all purposes to have been paid in full by ISR under this Agreement and Supplier hereby irrevocably waives any and all claims against ISR with respect to the sums paid directly to the Israeli Entity.

23.3.3 For the removal of doubt, any and payments in NIS shall only be made to the Israeli bank account of the Israeli Entity specified in the Payment Schedule, subject to this Agreement and in accordance with the Payment Schedule

23.4 **The Israeli Affiliate**

Supplier shall be entitled to appoint an Israeli affiliate for the purpose of Section 23.3 above, subject to all the terms and conditions below (the "**Israeli Affiliate**"):

23.4.1 The Israeli Affiliate is 'controlled' by, or under common 'control'

with, Supplier.

'control' (including, with correlative meanings, the terms 'controlled' and under common 'control' with) shall mean, for the purposes of this Section 23.4 only, all the following rights cumulatively: (i) the right to appoint more than half of the directors (or similar officers); and (ii) the right to direct and control the operations of the Controlled entity.

23.4.2 The Israeli Affiliate is an Israeli company duly registered in the Registrar of Companies.

23.4.3 Without derogating from Supplier's responsibility and liability under this Agreement, the Israeli Affiliate shall also be responsible for the performance of the following Works:

23.4.3.1 the Local Services;

23.4.3.2 Supplier's obligations under the Maintenance Depot Contract; and

23.4.3.3 Maintenance (jointly and severally with the Affiliate specified in Section 4.3.4 above, if applicable).

23.4.3.4 Management of ISR's stock of Spare Parts under Section 20.3 above, if applicable

(collectively – the "**Israeli Affiliate Duties**")

Attachment P4, executed by Supplier and the Israeli Affiliate and evidencing the appointment of the Israeli Affiliate for the execution of the Works specified in this Section 23.4.3 above, is attached hereto.

23.4.4 The Israeli Affiliate shall be deemed to be a Subcontractor of Supplier for any and all purposes, except for the purpose of payments as per Section 23.3 above. For the removal of doubt, Section 12.6 above shall apply to the Israeli Affiliate.

23.4.5 If the Israeli Affiliate fails to perform any of the Israeli Affiliate Duties (in whole or in part), ISR may require Supplier to perform same.

23.4.6 In the event of repeated failures by the Israeli Affiliate to perform the Israeli Affiliate Duties to the full satisfaction of ISR, ISR shall be entitled to withdraw its consent to the appointment of the Israeli Affiliate as per the above, including but without limitation for the purpose of payment in NIS.

23.4.7 For the removal of doubt, it is hereby clarified that notwithstanding the appointment of the Israeli Affiliate:

23.4.7.1 Supplier shall remain fully liable and responsible for the performance of all Works under this Agreement, including but without limitation the Israeli Affiliate Duties; and

23.4.7.2 Supplier shall be fully liable and responsible for

any act and/or omission of the Israeli Affiliate.

23.4.8 For clarification, in the event that Supplier does not appoint an Israeli Affiliate, all Israeli Affiliate Duties as defined above shall be performed directly by Supplier.

23.5 **Payments to the Israeli Entity**

As a condition to any payment by ISR to the Israeli Entity, all the following requirements must be complied with:

23.5.1 The Israeli Entity must be duly registered with the Israeli Tax Authorities as 'authorized dealer' (in Hebrew: "עוסק מורשה");

23.5.2 The Israeli Entity shall submit to ISR all necessary approvals and registrations as required by the Israeli Tax Authorities and under the Public Entity Transaction (Enforcement of accounting management and payment of taxation debts) Law, 5736-1976 (in Hebrew: חוק עסקאות גופים ציבוריים (אכיפת ניהול חשבונות ותשלום חובות 1976-ו"תשל" (מס); and

23.5.3 All payments by ISR hereunder to the Israeli Entity shall only be made against, and shall be contingent upon, the issuance by the Israeli Entity to ISR of a tax invoice which entitles, by law, the deduction of 'input tax' (in Hebrew "Mas Tsumot" or "מס תשומות") with respect to the VAT relating to such payment by ISR.

23.6 **Portions.**

23.6.1 Supplier, for tax purposes, attests that Supplier has made its best efforts to reflect correctly in Portions A and B (as defined in the Payment Schedule) the portion of the Works (for the supply of the Units until issuance of the Fault Free Service Running Certificate) to be delivered directly to ISR from outside of the State of Israel, and the portion of the Works carried out in Israel.

23.6.2 It is hereby clarified that the total sum of all Commercial Invoices upon completion of any Unit must be equal to Portion A of the consideration to be paid for such Unit and to the aggregated amounts quoted in the importation documents issued on ISR's name for such Unit. In case this condition is not fulfilled, then without derogating from any other right of ISR, ISR shall be entitled to delay the Fourth Payment until clarification thereof.

23.7 **Withholdings.**

23.7.1 ISR shall deduct from any and all sums payable pursuant to this Agreement the amounts ISR is legally required to withhold at source, unless an appropriate exemption has been provided by Supplier or the Israeli Entity, as applicable, prior to the date of such payment, and any amount so deducted shall be deemed for any and all purpose to have been paid in full by ISR under this Agreement. For the removal of doubt it is hereby clarified that Supplier and/or the Israeli Entity alone shall be responsible to obtain any appropriate exemption.

23.7.2 At the written request of Supplier or the Israeli Entity, as

applicable, ISR shall delay any payment due to Supplier or to the Israeli Entity, respectively, if such delay is required by them in order for Supplier or the Israeli Entity to obtain an appropriate exemption from the Israeli tax authorities. A request for such delay of payment must be submitted to ISR at least fifteen (15) Business Days prior to the scheduled date for the relevant payment. Neither interest nor any adjustment will accrue with respect to payment delayed at the request of Supplier or the Israeli Entity as per the above, and any amounts the payment of which is so delayed shall be considered to have been paid timely by ISR.

23.7.3 In the event that ISR shall be required to pay retroactively to the Israeli tax authorities and/or to any competent authority any amount that should have been withheld at source and/or deducted by ISR from any payment to Supplier under this Agreement, and ISR did not withhold and/or deduct such amount from the payment made to Supplier, such amount shall be borne and paid by Supplier only or, if paid by ISR to the competent authorities, reimbursed by Supplier to ISR within seven (7) days from ISR's written request. For the removal of doubt, ISR shall be entitled to set-off this amount from any payment due to Supplier by ISR and/or to recover such amount from any of the Guarantees furnished by Supplier to ISR under this Agreement.

23.8 **Indexation.** The prices specified in the Payment Schedule shall be adjusted in accordance with the Indexation Linkage Mechanisms and the provisions therein. For the removal of doubt, it is hereby clarified that the amounts specified in the Payment Schedule will not be linked to any index whatsoever, nor shall they be adjusted for any period, except as expressly specified in the Payment Schedule.

23.9 **No Additional Payments.** The relevant amounts specified in the Payment Schedule (including any adjustment thereof) are the final, complete and inclusive price that will be paid for the performance of the Works (including for the removal of doubt Works by the Affiliate specified in Section 4.3.4 above, if applicable) and all of Supplier's and/or Israeli Affiliate's obligations pursuant to this Agreement, and Supplier and/or the Israeli Affiliate shall not be entitled to any additional payment, fee, reimbursement of expenses or compensation whatsoever from ISR, except as (and to the extent) explicitly specified otherwise in this Agreement. Where Supplier or the Israeli Affiliate, as applicable, is required to supply, provide, furnish, perform, deliver, install, etc., any part of the Works (whether or not expressly defined in this Agreement), it shall mean that Supplier and the Israeli Affiliate are required to do so within the consideration set forth in the Payment Schedule at no additional cost to ISR.

23.10 **Payments by Supplier to ISR.**

The following provisions shall govern all payments by Supplier (and/or the Israeli Affiliate, if applicable) to ISR under this Agreement:

23.10.1 Any sum due from Supplier (and/or the Israeli Affiliate, if

applicable) to ISR shall be paid in NIS within thirty (30) days from the end of the month during which ISR became entitled to such payment.

23.10.2 Supplier (and/or the Israeli Affiliate, if applicable) shall not be entitled to deduct, withhold and/or set off any amounts from the amounts due by Supplier to ISR.

23.10.3 The amounts to be paid by Supplier (and/or the Israeli Affiliate, if applicable) to ISR and quoted in this Agreement shall be adjusted to the Israeli General Consumer Price Index ("CPI") as published by the Israeli Central Bureau of Statistics. The base CPI shall be the CPI known on the Effective Date and the updated CPI shall be the CPI known on the date of each payment by Supplier.

23.10.4 For the removal of doubt, all such amounts are exclusive of VAT which shall be borne and paid by Supplier alone.

23.11 **Cost-Plus Mechanism**

The consideration to which Supplier shall be entitled for Works regarding which (i) no price is available in the Payment Schedule; and (ii) no other mechanism specified in the Agreement and/or the Payment Schedule for the determination of a price is applicable (collectively – the "**Cost-Plus Works**"), shall be determined in accordance with the following mechanism (the "**Cost-Plus Mechanism**"):

23.11.1 With respect to Spare Parts required for the performance of the Cost-Plus Works and regarding which no price is specified in the Payment Schedule, Supplier shall obtain at least three (3) original price offers by third parties (or two (2) original price offers if Supplier was able to demonstrate to ISR's satisfaction that three (3) price offers could not be obtained). All price offers shall be addressed to Supplier and shall remain in force for orders placed within three (3) months after the date of their submittal. The prices included in such price offers shall be fixed and final prices, shall be denominated in NIS and shall not be subject to any adjustment or indexation.

23.11.2 Supplier shall submit to ISR, within seven (7) days from ISR's request, its binding proposal for the performance of the Cost-Plus Works as follows:

- a) the cost of the Spare Parts:
 - (i) for such Spare parts which price is specified in the Payment Schedule: as specified in the Payment Schedule; or
 - (ii) for such Spare Parts regarding which no price is specified in the Payment Schedule: as specified in the offers received by Supplier as per the above (which shall be attached to the proposal), plus twelve percent (12%). ISR shall be entitled to select the offer most suitable to ISR.

- b) The cost of labor, to be calculated on the basis of the quantity of labor hour required, and the Daily Rate in the Payment Schedule.
- c) If applicable, other direct out-of-pocket costs necessary for the performance of the Cost-Plus Works and relating solely to such Cost-Plus Works.

For clarification, in the event that ISR elects, at ISR's sole discretion, to accept Supplier's proposal and to order the Cost-Plus Works from Supplier, the total amount quoted in Supplier's proposal shall constitute the final, sole and exclusive consideration to which Supplier shall be entitled in connection with the Cost-Plus Works, and Supplier shall not be entitled to any other payment and/or reimbursement of expense, including but without limitation overhead expenses.

23.11.3 ISR shall be entitled to participate in the negotiations with the suppliers of the Spare Parts.

23.11.4 At ISR's request, Supplier shall request price offers from specific authorized suppliers of ISR in Israel or abroad (unless Supplier can demonstrate to ISR's satisfaction why the Spare Parts needed should not be purchased from any specific authorized suppliers of ISR).

23.11.5 The performance of any Cost-Plus Work by Supplier shall be subject to the prior written consent of ISR.

23.11.6 The application of the Cost-Plus Mechanism in all circumstances is subject to the right of ISR to issue tenders and/or to request offers for the performance of the Cost-Plus Works or for the supply of Spare Parts for the Cost-Plus Works from Subcontractors and/or from any third parties, whether or not a proposal for the performance of the Cost-Plus Works was submitted by Supplier, and the following provisions shall apply:

- a) ISR shall not have any obligation whatsoever to accept Supplier's proposal and/or to order Cost-Plus Works from Supplier.
- b) ISR shall be entitled to publish tenders regarding the Cost-Plus Works and/or to order Cost-Plus Works from any Subcontractors and/or third parties.
- c) ISR shall be entitled to limit its order from Subcontractors and/or third parties only to the Spare Parts required for the performance of the Cost-Plus Works, and in such case Supplier shall provide labor for the Cost-Plus Works and shall only be entitled to compensation for labor costs as per Section 23.11.2(b) above.
- d) Order by ISR of Cost-Plus Works and/or Spare Parts from a Subcontractor and/or a third party shall not derogate from Supplier's obligations, liability and

responsibility under the Agreement. After examination and acceptance of such Cost-Plus Works and/or Spare Parts by Supplier, such Cost-Plus Works and/or Spare Parts shall be deemed to have been performed or supplied by Supplier for any and all purposes, Supplier shall be fully liable and responsible for any Cost-Plus Works performed, and Spare Parts supplied, by others as if performed and/or supplied by Supplier itself, and all the provisions of the Agreement (except payment by ISR) shall apply thereto.

- e) Supplier shall fully cooperate with such Subcontractor and/or third party.
- f) For the removal of doubt, Supplier shall not be entitled to any compensation with regard to the Cost-Plus Works performed by Subcontractors and/or third parties directly vis-à-vis ISR.

23.11.7 For the removal of doubt, it is hereby clarified that:

- a) the Cost-Plus Mechanism shall only apply in the event that the consideration for Works requested by ISR cannot be determined under the other terms and conditions of the Agreement. Without derogating from the generality of the above, the Cost-Plus Mechanism shall not apply in the event that the consideration to be paid by ISR to Supplier for a certain Work can be determined on a time and material basis (i.e. Daily Rates and prices of Spare Parts in the Payment Schedule).
- b) Supplier, for tax purposes, attests that Supplier shall make its best efforts to reflect correctly in its offer the portion of the Cost-Plus Works to be delivered directly to ISR from outside of the State of Israel, and the portion of the Cost-Plus Works carried out in Israel.

24. TAXATION, DUTIES AND CHARGES

24.1 Importation

24.1.1 The following goods solely shall be imported and delivered to ISR by Supplier under the Delivery Terms, with all importation documents being established under ISR's name (the "**Imported Goods**"):

- 24.1.1.1 The Units;
- 24.1.1.2 the Spare Parts to be supplied for no additional consideration to ISR by Supplier under Section 20.2 above; and
- 24.1.1.3 the Spare Parts ordered by ISR for its stock, in the event that such stock is managed by ISR.

24.1.2 Except with respect to the Imported Goods as expressly specified above, all equipment, components, materials, parts and Spare Parts as required for the fulfillment of all of Supplier's (and/or the Israeli Affiliate and/or the Affiliate specified in Section 4.3.4 above, if applicable) obligations under this Agreement shall be imported by Supplier under their name, at Supplier's sole cost and responsibility, including for the removal of doubt (i) Spare Parts in ISR's stock managed by Supplier as per Section 20.3 above; (ii) Spare Parts for Warranty; (iii) Spare Parts for Maintenance; and (iv) Spare Parts for Excluded Warranty Works and for Excluded Maintenance Works.

24.2 **Supplier to Pay all Taxes, Duties and Charges.** Supplier shall bear and pay (by way of reimbursement to ISR where applicable) all taxes, fees, customs, duties, levies, charges (including bank charges and commissions), and all other expenses relating to, or in connection with, the Works, including but not limited to design, engineering, manufacturing, exportation, importation to Israel of the Imported Goods as specified in Section 24.1 above, construction, installation, supply of all equipment and components including accessories, parts, raw materials, instruments and special tools, testing, managing, commissioning, Maintenance Depot Contract, Warranty, Maintenance, or in any other way related to or connected with this Agreement and/or the Works, whether in Israel or abroad, and including but not limited to all types of importation and custom duties and services, such as transportation costs, customs agents' fees, purchase tax (in Hebrew "Mas Kniya" or "מס קנייה") wharfage fees (in Hebrew "Dmei Ratzif" or "דמי רציף"), Israeli customs duties, etc.

24.3 **Israeli VAT**

24.3.1 Notwithstanding Section 24.2 above, ISR shall be required to pay, if applicable, the VAT (and only the VAT) imposed by the Israeli Tax Authorities on the Units, provided that any Imported Goods which comprise the Works are imported to Israel under ISR's name.

24.3.2 Subject to Section 24.3.1, ISR shall pay the VAT applicable to payments to which the Israeli Entity is entitled hereunder.

24.3.3 For the removal of doubt, it is hereby clarified as follows:

24.3.3.1 ISR shall not bear the VAT applicable to any of the equipment, components, materials, parts and Spare Parts specified in Section 24.1.2 above, all of which shall be borne and paid by Supplier only.

24.3.3.2 Notwithstanding any provision to the contrary in this Agreement, Supplier shall solely bear and pay any and all VAT charges relating to substitute parts or components supplied by Supplier and/or the Israeli Affiliate because of faulty design, material, components or workmanship of the original item.

24.3.3.3 ISR will pay VAT (where applicable in

accordance with the provisions of this Agreement) only against tax invoices issued according to Applicable Law.

- 24.4 **Income Tax**. For the removal of doubt, income taxes, if any, and all other taxes, charges and obligatory payments imposed on Supplier and/or the Israeli Affiliate and/or any of its employees or Subcontractors in connection with this Agreement shall be borne and payable solely by Supplier, its employees or Subcontractors, as applicable.

25. GUARANTEES

To secure the punctual, complete and entire performance of all of Supplier's obligations under this Agreement, including any Works to be performed by the Israeli Affiliate and the Affiliate specified in Section 4.3.4 above (if applicable), Supplier will furnish to ISR Basic Performance Guarantee, Down Payment Guarantee, Payment Guarantee, Performance and Warranty Guarantee, Maintenance Guarantee, Maintenance Depot Guarantee and End of Maintenance Warranty Guarantee, and the guarantees specified in the Maintenance Depot Contract (collectively, the "**Guarantees**"), all as specified in this Section 25 below.

25.1 **Types of Guarantees**

Each type of Guarantee shall serve to secure certain or all of Supplier's obligations under this Agreement, as further detailed below, including for the removal of doubt indemnification of ISR by Supplier in respect thereof (if and to the extent ISR shall be entitled thereto) and payment of any liquidated damages that may become due to ISR in connection therewith.

25.1.1 The Basic Performance Guarantee shall serve to secure any and all of the obligations undertaken by Supplier pursuant to this Agreement.

25.1.2 Each of the Performance and Warranty Guarantees shall serve to secure any and all of the obligations undertaken by Supplier pursuant to this Agreement, including for the removal of doubt Warranty and payment of any liquidated damages and any other amounts that may become due to ISR by Supplier (or by the Israeli Affiliate, as the case may be) in accordance with the provisions of this Agreement, with respect to any and all Units of the Purchase Order regarding which such Performance and Warranty Guarantee was furnished.

25.1.3 Each of the Down Payment Guarantees and Payment Guarantees shall serve to secure the restitution of any payment made by ISR to Supplier (or to the Israeli Affiliate, as the case may be), if and to the extent ISR shall be entitled thereto. Without derogating from the generality of the above, ISR shall be entitled to collect on such Payment Guarantees provided with respect to the Units in any case a Unit is not supplied to ISR and/or if Supplier does not pay timely to ISR any amount due to ISR under Section 26 below.

For the removal of doubt, ISR shall be entitled to collect on Guaranties of different types with respect to the same event, if and to the extent applicable in accordance with the obligations secured by such Guarantees as per the above.

- 25.1.4 The Guarantees referred to in the Maintenance Depot Contract shall serve to secure any and all obligations of Supplier under the Maintenance Depot Contract.
- 25.1.5 The Maintenance Guarantee shall serve to secure any and all obligations undertaken by Supplier pursuant to this Agreement in connection with (i) Maintenance; and (ii) Depot Maintenance.
- 25.1.6 The Maintenance Depot Guarantee shall serve to secure any and all of the obligations undertaken by Supplier pursuant to this Agreement in connection with (i) the use and return to ISR by Supplier of the Maintenance Depot and/or the Locations (including for the removal of doubt under the LUL Agreement and the lease agreement that may be entered into by Supplier with ISR with respect to the Maintenance Depot as per the LUL Agreement); and (ii) Depot Maintenance.
- 25.1.7 The End of Maintenance Warranty Guarantee shall serve to secure any and all (i) End of Maintenance Warranty obligations undertaken by Supplier pursuant to this Agreement; and (ii) transfer to ISR free of charge of the Depot Equipment.

25.2 **Basic Performance Guarantee**

- 25.2.1 Within fourteen (14) days from the Effective Date, Supplier shall furnish to ISR a basic performance bank guarantee in an amount of one million (1,000,000) EURO (the “**Basic Performance Guarantee**”). Until Supplier shall have issued the Basic Performance Guarantee as per the above, the Bid Guarantee shall serve as Basic Performance Guarantee for any and all purposes.
- 25.2.2 The Basic Performance Guarantee (to the extent not collected) shall be in force until the end of the Order Period.

25.3 **Down Payment Guarantee**

- 25.3.1 Before payment by ISR of the Down Payment for each Purchase Order, and as a condition thereto, Supplier shall furnish to ISR a bank guarantee in the full amount of such Down Payment (the “**Down Payment Guarantee**”).
- 25.3.2 The Down Payment Guarantee (to the extent not collected) will be in force until, and will be returned to Supplier within sixty (60) days after, and subject to, the date of Final Acceptance of the last Unit ordered under the relevant Purchase Order; *however*, since the Final Acceptance of each Unit may occur at different dates, any uncollected Down Payment Guarantee shall be reduced pro rata within sixty (60) days from, and subject to, Final Acceptance of each Unit secured thereby.

25.4 **Payment Guarantee**

- 25.4.1 Before ISR effects (i) the Second Payment and the Third Payment (as defined in the Payment Schedule) for each Unit under this Agreement, and (ii) the payment of the two (2) first installments of the Mobilization Payment (as defined in Chapter 3 of the Payment Schedule), and (iii) any payment under the Maintenance Depot Contract (except the last payment), and as a condition thereto, Supplier shall furnish to ISR a bank guarantee in the full amount of the payment then due (the "**Payment Guarantee**").
- 25.4.2 Each Payment Guarantee (to the extent not collected) will be in force until, and will be returned to Supplier within sixty (60) days from, and subject to respectively (i) the Final Acceptance of the Unit with respect to which the Payment Guarantee has been issued; (ii) the commencement of the Maintenance Period, or (iii) the last payment under the Maintenance Depot Contract, as applicable.

25.5 **Performance and Warranty Guarantee**

- 25.5.1 Within twenty (20) days from the issuance of IPO1 by ISR, and thereafter within twenty (20) days after the issuance of any other Purchase Order, Supplier shall furnish to ISR a performance and warranty bank guarantee with respect to such Purchase Order (the "**Performance and Warranty Guarantee**").
- 25.5.2 The Performance and Warranty Guarantee shall amount to ten percent (10%) of the aggregate Unit Price of all the Units to be supplied under the applicable Purchase Order with respect to which such Performance and Warranty Guarantee has been issued.
- 25.5.3 In addition, upon the issuance of each Change Order (if and to the extent any Change Order will be issued by ISR), the Performance and Warranty Guarantee shall be increased or decreased, as the case may be, to reflect the change in the consideration resulting from such Change Order, whether by replacing the relevant Performance and Warranty Guarantee or by issuing an additional Performance and Warranty Guarantee, in each case within thirty (30) days from the date of issuance of any Change Order.
- 25.5.4 Upon issuance of the Fault Free Service Running Certificate with respect to any Unit supplied under any Purchase Order, Supplier may request that the Performance and Warranty Guarantee with respect to such Purchase Order will be reduced by five percent (5%) of the Unit Price of such Unit. For clarification, after issuance of the Fault Free Service Running Certificate with respect to all Units in such Purchase Order, the Performance and Warranty Guarantee shall amount to five percent (5%) of the aggregate Unit Price of all the Units supplied under the applicable Purchase Order with respect to which such Performance and Warranty Guarantee has been issued.
- 25.5.5 The Performance and Warranty Guarantee (to the extent not collected) for each Purchase Order will be in force until, and will

be returned to Supplier within sixty (60) days after the date of issuance by ISR of an End of 3 Years Warranty Certificate for the last Unit ordered under the relevant Purchase Order (as applicable); however, since the End of 3 Years Warranty Certificate of each Unit may be issued by ISR at different dates, the Performance and Warranty Guarantee shall be reduced pro rata within sixty (60) days from, and subject to, the issuance of an End of 3 Years Warranty Certificate for each relevant Unit secured thereby.

25.6 **Maintenance Guarantee**

25.6.1 Supplier shall furnish to ISR a Maintenance bank guarantee twelve (12) months prior to the date scheduled in **Attachment B** for the Final Acceptance of the first Unit in IPO1 (the " **Maintenance Guarantee**").

25.6.2 The amount of the Maintenance Guarantee shall be as follows:

- a) Initially, the Maintenance Guarantee shall amount to fifty percent (50%) of the Minimum Annual PPK Payment (as defined in Chapter 3 of the Payment Schedule) applicable in the first year of Maintenance of the entire Supplier Maintained Fleet (i.e. 24 Units) by Supplier;

The base amount of the Maintenance Guarantee will be calculated with the Price per Kilometer in base price prior to indexation, and adjusted as per Section 25.6.3 below.

- b) If and to the extent the size of the Supplier Maintained Fleet will be increased by ISR as per Section 19.1 above, the amount of the Maintenance Guarantee shall be increased pro-rata such that the ratio of the amount of the Maintenance Guarantee to the number of Units in Supplier Maintained Fleet will remain unchanged.

25.6.3 The amount in Section 25.6.2 above shall be adjusted upon issuance of the Maintenance Guarantee in accordance with the General Consumer Price Index, as published by the Israeli Central Bureau of Statistics. The base index shall be the latest published index known upon the Effective Date. The updated index shall be the last index known on the date of issuance of the Maintenance Guarantee as per the above. For clarification, this Section above shall not derogate from the indexation provisions in the Maintenance Guarantee itself as per the form of Maintenance Guarantee attached in **Attachment G**.

25.6.4 The Maintenance Guarantee (to the extent not collected) will be in force until, and will be returned to Supplier within sixty (60) days from the end of the Maintenance Period.

25.7 **Maintenance Depot Guarantees**

- (a) Supplier shall furnish to ISR a Maintenance Depot guarantee,

upon Completion of the Maintenance Depot (the "**Maintenance Depot Guarantee**"). The amount of the Maintenance Depot Guarantee shall be five millions (5,000,000) NIS and the provisions of Section 25.6.3 above shall apply *mutatis mutandis*.

- (b) The Maintenance Depot Guarantee (to the extent not collected) will be in force until, and will be returned to Supplier within, sixty (60) days after the date of termination of the Maintenance Period, *provided* that Supplier has fulfilled any and all of its obligations pursuant to this Agreement (including for the removal of doubt the LUL Agreement and the lease agreement that may be entered into by Supplier with ISR with respect to the Maintenance Depot as per the LUL Agreement).
- (c) In addition, Supplier shall furnish all Guarantees referred to in the Maintenance Depot Contract in accordance with the provisions therein, that shall also govern the amount, the validity period and the return of such Guarantees.

25.8 **End of Maintenance Warranty Guarantee.**

- (a) Upon the execution of the End of Maintenance Certificate for the first Unit under Maintenance, and as a condition to such execution, Supplier shall furnish to ISR an End of Maintenance Warranty guarantee (the "**End of Maintenance Warranty Guarantee**"). The End of Maintenance Warranty Guarantee shall amount to twenty five millions (25,000,000) NIS and the provisions of Section 25.6.3 above shall apply *mutatis mutandis*.
- (b) The End of Maintenance Warranty Guarantee (to the extent not collected) shall be in force until, and will be returned to the Supplier within, sixty (60) days from the end of the End of Maintenance Warranty Period, *provided* that Supplier has fulfilled any and all of its End of Maintenance Warranty obligations pursuant to this Agreement.

25.9 **Furnishing and Maintaining of Guarantees.**

25.9.1 Supplier shall produce and furnish to ISR all Guarantees under this Agreement at the relevant time for furnishing such Guarantees as stipulated in this Section 25.

25.9.2 Each Guarantee shall be in the relevant form for such Guarantee attached hereto as **Attachment G** or in the Maintenance Depot Contract and shall be denominated in the currency indicated therein. All such Guarantees shall be unconditional and irrevocable bank guarantees, issued by a first-class bank acceptable to ISR at its sole discretion (which acceptance must be recorded in advance and in writing), to be paid upon first written demand without the need to prove or substantiate the demand.

25.9.3 All Guarantees shall be issued by either:

- a) a licensed Israeli bank or a licensed Israeli insurance company (provided that a Guarantee issued by a licensed Israeli insurance company shall be signed by the Israeli insurer itself and not by its agent).

Such bank or insurance company shall have at all times a credit rating (issued in the previous twelve (12) months) by one of the following local rating firms, of at least:

- i. (ilAA-) in the rating scale published by S&P Maalot; or
- ii. (Aa3) in the rating scale published by Midroog.

Or by:

- b) a foreign bank which:
- i. is licensed in accordance with the banking licensing laws in a country which has diplomatic relations with the State of Israel; and
 - ii. shall have at all times a credit rating (issued in the last twelve (12) months) by one of the following international rating firms, of at least:
 - (x) (Baa2) in the rating scale published by Moody's Investor Service.
 - (y) (BBB) in the rating scale published by Standard & Poor's Corporation.
 - (z) (BBB) in the rating scale published by Fitch Investor Service.

25.9.4 Except as otherwise specified in this Agreement, the timely submission of any and all Guarantees to be furnished by Supplier to ISR under this Agreement is considered prerequisite for ISR's execution of any payment due to Supplier under this Agreement.

25.9.5 Supplier shall maintain the Guarantees valid through their respective times as stipulated in this Section 25. If sixty (60) days prior to the expiration of any Guarantee Supplier has not completed all of the respective obligations to be performed during the time period secured by such Guarantee, or if such period has been extended, Supplier shall provide, at its own expense, a substitute Guarantee meeting the requirements of this Section 25, or extend the term of the relevant Guarantee and notify ISR of such extension, failing which ISR shall be entitled, without derogating from any other remedy that may be available to it under the circumstances, to collect from any of the Guarantees the amount of that Guarantee.

25.10 **Rights Cumulative**. Collection on a Guarantee or any part thereof by ISR shall not derogate from the right of ISR to terminate this Agreement, nor from its right to any remedy that may be available to it under any

Applicable Law and/or agreement or relieve Supplier of any of its liabilities and undertakings under this Agreement, including its liability to indemnify ISR.

26. DELAYS AND POOR PERFORMANCE

26.1 Liquidated Damages For Late Delivery

26.1.1 In the event that the Final Acceptance of any Unit shall be delayed beyond the time specified thereto in the Delivery Schedule (except for the reasons expressly specified in Section 26.1.2 below), Supplier shall pay to ISR agreed liquidated damages at the rate of one-half percent (0.5%) of the delayed Unit Price for each week (or part of a week) of delay in Final Acceptance (the "**Liquidated Damages for Late Delivery**").

The aggregate amount of Liquidated Damages for Late Delivery to be paid by Supplier (if applicable) for each delayed Unit shall not exceed a total of ten percent (10%) of the Unit Price of such Unit (the "**Late Delivery Cap**").

26.1.2 Notwithstanding Section 26.1.1 above, Liquidated Damages for Late Delivery with respect to a Unit shall not be due by Supplier for the period regarding which Supplier can demonstrate to ISR that Final Acceptance of such Unit is delayed beyond the time specified in the Delivery Schedule as the result of one of the following reasons:

- a) an event of *force majeure* as specified in Section 30.2 below (provided that Supplier has complied with all the provisions of Section 30 below);
- b) bombings and/or acts of terrorism (subject to written notice by Supplier to ISR within fourteen (14) days from the first occurrence and provided that Supplier uses all reasonable efforts to reduce the effect of such bombings and/or acts of terrorism)), but only for a period not exceeding four (4) weeks in the aggregate during the entire term of this Agreement; and/or
- c) Reasons attributable to ISR, only with respect to the portion of the delay attributable solely to ISR, and provided always that such delay is not attributable to Supplier.

26.1.3 Until exhaustion of the Late Delivery Cap, the Liquidated Damages for Late Delivery shall be the sole and exclusive remedy available to ISR for such late delivery. Thereafter, ISR shall be entitled to any other relief or remedy available under this Agreement or by law, in addition to the total sum of Liquidated Damages for Late Delivery due as per the above, including but without limitation with respect to the period during which Liquidated Damages for Late Delivery have applied.

26.1.4 For the removal of doubt, ISR may recover any sums due to ISR with regard to Liquidated Damages for Late Delivery from the Performance and Warranty Guarantee.

26.2 **Rejection for Excessive Delay.** In the event of exhaustion of the Late Delivery Cap, then ISR shall be entitled (but not obligated) to cancel the relevant Purchase Order with regard to any delayed Unit. In such case, Supplier shall, within thirty (30) days of notification by ISR that ISR has cancelled the relevant Purchase Order with regard to such delayed Unit, return all payments it has received from ISR in respect of said Unit. For the removal of doubt, ISR shall be entitled to recover all costs and expenses from the Performance and Warranty Guarantee and/or from the Down Payment Guarantee and/or from the Payment Guarantee and/or from Supplier directly, as compensation for said non-performance. Subject to the full restitution of all payments to ISR as per the above, the cancelled Unit or any part thereof which is in the possession of ISR shall pass on to Supplier as full and final settlement of all claims with regard to the supply of such Unit.

26.3 **Liquidated Damages for Poor Performance Levels during the Monitoring Period (for ISR Maintained Fleet)**

This Section 26.3 below shall only apply to Units in the ISR Maintained Fleet and shall not apply to the Units in the Supplier Maintained Fleet, which shall be subject to liquidated damages in accordance with the provisions of the Maintenance Chapter.

26.3.1 In the event that at any time during the Monitoring Period (as defined in **Attachment M**), any Unit does not meet the reliability and/or availability levels as stated in Chapter 5 of the Technical Specifications, Supplier shall pay to ISR Poor Performance Liquidated Damages as set out in **Attachment M**.

The aggregate amount of Poor Performance Liquidated Damages for each and all Units in a Batch (as defined in **Attachment M**) shall not exceed the cap specified in **Attachment M**.

For clarification, the above cap shall only apply to the payment by Supplier to ISR of Poor Performance Liquidated Damages under **Attachment M** and shall not apply to any other payment and/or liquidated damages under the Agreement .

26.3.2 For the removal of doubt, ISR may recover any sums due to ISR with regard to such liquidated damages from the Performance and Warranty Guarantee.

26.4 **General Provisions Applying to Liquidated Damages** Without derogating from any other provisions of this Agreement and/or from any right and/or remedy available to ISR under the relevant circumstances, the following provisions shall apply to any liquidated damages to be paid by Supplier under this Agreement:

26.4.1 The liquidated damages in this Agreement have been determined after due consideration of the damages the parties anticipate that ISR will suffer under the specific circumstances to which each

specific type of liquidated damage apply, and therefore they shall not be regarded as a penalty and shall not be conditioned on ISR having to present evidence of any loss.

26.4.2 Liquidated damages shall be paid by Supplier to ISR within sixty (60) days from the date they become due.

26.4.3 For the removal of doubt, all liquidated damages under this Agreement are cumulative, unless expressly specified otherwise, such that the same event or circumstances may give rise to payment by Supplier of different types of liquidated damages.

26.5 **Remedies Cumulative**. For the removal of doubt, it is hereby clarified that the remedies specified in this Section 26 above and in the Agreement are cumulative unless explicitly specified otherwise, and shall not derogate from any other rights and/or remedies available to ISR by law and/or under this Agreement.

27. TRANSFER OF RIGHTS

27.1 **No Transfer by Supplier**. Neither this Agreement nor any right, remedy, obligation, liability or responsibility arising hereunder or by reason hereof, nor any of the documents executed in connection herewith, may be assigned (whether by operation of law or otherwise), transferred, pledged or otherwise be disposed of (collectively “**Transfer**”) by Supplier, absent ISR’s prior written approval, and any attempted Transfer shall be null and void and of no force and effect. In the event ISR has rendered an approval to a Transfer, such Transfer shall in no way whatsoever relieve Supplier from its undertakings and obligations under this Agreement and Supplier shall be fully responsible towards ISR and/or any other third party for the successful completion of the Works. It is being clarified that nothing in this Section 27.1 shall be construed as prohibiting Supplier from entering into Subcontractor agreements and/or appointing the Israeli Affiliate and/or the Affiliate specified in Section 4.3.4 above (if applicable) in accordance with all of the provisions of this Agreement.

27.2 **ISR Right to Transfer**. ISR shall be entitled, at any time, to Transfer any of its rights and any of its obligations under this Agreement, as it shall deem fit, to any other person or entity, without having to obtain Supplier’s approval, *provided that* Supplier’s rights hereunder shall not be prejudiced by such Transfer. For the removal of doubt, the mere change of ISR with any third party shall not be deemed as prejudicing the rights of Supplier hereunder.

28. LIABILITY; INDEMNIFICATION

28.1 **General**. Supplier shall be solely responsible for, and shall defend, indemnify, and hold ISR, including its shareholders, officers, directors, employees and consultants harmless from and against any and all claims, liabilities, demands, suits, proceedings (whether civil or criminal, other than criminal acts of ISR), orders, judgments, penalties, settlements, fines and all associated costs, losses and expenses (including reasonable

attorneys' and other professionals' fees) or any other direct damages (collectively, "**Damages**"), which ISR and/or any of the above persons and entities may incur arising out of, incidental to, or connected with any of the following (all without derogating from any other remedy that ISR and/or any of the above persons and entities may be entitled to under the circumstances, pursuant to this Agreement or under any Applicable Law):

- (i) the Works, including but without limitation, their manufacturing, design, assembly, integration, adjustment, tests and trials, repairs until issuance of the Fault Free Service Running Certificate, all Works under the Maintenance Depot Contract, Warranty and/or Maintenance;
- (ii) the use of the Units, when the Damages arise from faulty design (including errors and omissions in design) or workmanship;
- (iii) any damage to property, death or injury to persons, arising out of, or in connection with, the Works;
- (iv) breach by Supplier's and/or the Israeli Affiliate and/or any of the entities specified in Section 4.3 above (if applicable) and/or any Subcontractor of any term or provision of this Agreement or any Applicable Law;
- (v) any claims against ISR made by the Israeli Affiliate and/or any of the entities specified in Section 4.3 above (if applicable) and/or any Subcontractor arising from, or in connection with, the Works to be performed by such entity, including but without limitation any payments related to the Works or any part thereof to any such entity;
- (vi) any negligent or willful act, error or omission by Supplier, its employees, agents, representatives and Subcontractors, in the performance of this Agreement (including, for the removal of doubt, the execution of the Works);
- (vii) any actual or alleged infringement of Intellectual Property Rights of whatever type arising out of, in connection with, or otherwise resulting from the use of the Works by Supplier, its Subcontractors or ISR.

28.2 **Payment of Indemnification Amounts.** Any amount for which ISR claims for indemnification hereunder shall be paid by Supplier to ISR within the time specified in the notice requiring indemnification.

28.3 **Defense against Proceedings.** If any legal action or any other proceeding (collectively "**Proceedings**") are commenced against ISR, in respect of which Supplier may be liable to indemnify ISR under this Section 28, then the following provisions shall apply:

28.3.1 Notice of such Proceedings shall be promptly given to Supplier.

28.3.2 Supplier shall, at its sole cost and expense, defend any litigation that may arise from such Proceedings and conduct all negotiations for the settlement of same, provided that any settlement of such Proceedings will be subject to ISR's prior written consent and

provided further that Supplier shall not, in connection with such defense and/or settlement (i) injure ISR's reputation; (ii) purport to take any action expressly or implicitly on behalf of ISR; or (iii) purport to make any representation and/or admission regarding and/or concerning ISR or ISR's activities.

28.3.3 At the request and expense of Supplier, ISR shall afford reasonable assistance to Supplier in the defense of such Proceedings.

28.3.4 As long as Supplier timely takes over and properly conducts the negotiations or litigation, Supplier shall not be required to reimburse ISR the fees for services of attorneys retained by ISR (if and to the extent so retained). If ISR finds, however, that Supplier is not coordinating its defense with ISR in a proper manner or fails to defend ISR diligently or if ISR determines, at its sole discretion, that representation should be by ISR, then ISR may retain the services of attorneys on its behalf and at Supplier's expense, which attorneys will represent ISR in the said Proceedings and may settle such Proceedings, provided that Supplier gives its consent to such settlement in advance and in writing (which consent shall not be unreasonably withheld). For the removal of doubt, the settling of such Proceedings by ISR shall not relieve Supplier of the obligation to indemnify ISR as provided in this Agreement (including without limitation, for reasonable legal fees and expenses incurred by ISR in connection with the enforcement of Supplier's indemnification obligations hereunder).

28.3.5 In addition to the above, if ISR is a defendant in any Proceedings, ISR may at its sole discretion participate and retain the services of attorneys on its behalf at its own expense.

28.4 **Exclusions**

28.4.1 Subject to the provisions of Section 28.5 below, in no event shall either party be liable towards the other for any and all indirect or consequential Damages, including but not limited to loss of profit, loss of revenue, loss of goodwill, etc. with respect to this Agreement (including the Works to be performed hereunder), whether in an action based on contract, tort (including negligence) or any other cause of action.

28.4.2 In addition, the total, aggregate monetary liability of a party to this Agreement towards the other party from whatever cause and for whatever reason (except as specified in Section 28.4.3 below) under this Agreement or in relation thereto shall be limited to the higher between: (i) thirty percent (30%) of the aggregate Unit Price of all the Units of the Initial Purchase; or (ii) thirty percent (30%) of the aggregate Unit Price of all the Units of all pending/outstanding Purchase Orders issued by ISR prior to the date that the demand for indemnification is made by ISR.

Where applicable to Supplier, the above cap includes Liquidated Damages for Late Delivery and Poor Performance Liquidated Damages paid to ISR under the Agreement and excludes

- Maintenance Liquidated Damages and liquidated damages under the Maintenance Depot Contract.
- 28.4.3 *However*, for claims the cause of which stems solely and directly from acts or omissions relating to Maintenance (as defined in the Maintenance Chapter) of Supplier Maintained Fleet, the total, aggregate monetary liability of a party to this Agreement towards the other party shall be limited to fifteen percent (15%) of the aggregate Unit Price of all the Units in Supplier Maintained Fleet as of the time of the event regarding which the relevant Proceeding arises. Where applicable to Supplier, the above cap includes Maintenance Liquidated Damages paid to ISR under the Maintenance Chapter and excludes liquidated damages under the Maintenance Depot Contract.
- 28.4.4 In the event that the Supplier's total liability sum as per Section 28.4.2 and/or 28.4.3 above has been fully recovered (whether in one or several events), ISR, at its sole discretion, shall have the right (in addition to and without derogating from its rights pursuant to the provisions of Section 31 below) to terminate this Agreement subject to a fourteen (14) days advance written notice to Supplier.
- 28.5 **Exceptions**. The provisions of Section 28.4 above shall not apply with respect to Supplier's liability in connection with any of the following:
- 28.5.1 Alleged or actual infringement of Intellectual Property Rights by the Works or any part thereof;
- 28.5.2 Death or injury;
- 28.5.3 Damages of any kind and amount with relation to any willful act or willful omission by Supplier, its employees, agents, representatives and/or Subcontractors; and/or
- 28.5.4 Claim for payment by any Subcontractor.
- 28.5.5 the Maintenance Depot Contract.
- 28.6 **Withholding of Payments and Collection on Guarantees**. Without derogating from any other rights of ISR under any Applicable Law and/or agreement, in the event that any claim is made against ISR, or any lien or attachment is affixed against any of its properties, which claim, lien or attachment relates to or is based on circumstances and/or events which fall within the responsibilities and/or indemnification obligations of Supplier as per Section 28.1 above, then unless Supplier provides adequate security, to ISR's satisfaction, that the claim will be covered, ISR may (i) withhold all payments then due or thereafter becoming due to Supplier, until such claim is satisfied and such liens or attachments released, and (ii) settle the matter by paying any such claim or removing such lien or attachment, and recover any amounts required in order to do so by collecting upon any of the applicable Guarantees.
- 28.7 **Damage or Loss to the Works**. In the event of damage or loss caused to the Works or any part thereof or any malfunctions thereof, whether caused by the fault of Supplier or by the fault of anyone else, Supplier shall, at all

times prior to Final Acceptance, proceed promptly with the execution of the Works and shall notify ISR forthwith of any such damage, loss or malfunction.

The existence of any such damage, loss or malfunction shall not constitute grounds for ceasing performance of the Works, or for delaying the completion date thereof.

Moreover:

28.7.1 any loss or damage to any portion of the Works regarding which a Final Acceptance Certificate (or the Completion Certificate under the Maintenance Depot Contract, as applicable) has been issued by ISR, which arises from or is occasioned by any act or omission of Supplier or any Subcontractor failing to comply with any obligation imposed on it under this Agreement, shall be made good by, and at the sole expense of, Supplier;

28.7.2 should any loss, damage or injury to any property or person occur while Supplier is repairing a fault or defect in any portion of the Works pursuant to this Section 28, Supplier shall be liable to the same extent as if said portions had not been accepted by ISR.

29. INSURANCE

29.1 Conditions regarding Manufacture and Supply of the Units

Without derogating from any of the Supplier's responsibilities and liabilities under this Agreement and/or under any applicable law, the Supplier shall maintain, during the Agreement, at its own expense with an authorized insurance company, insurance policies as following:

29.1.1 **Property Insurance** covering any loss or damage arising out of, or caused by any risk in respect of the manufacture and/or supply of the Unit and the Spare Parts. The insurance policy shall cover the complete manufacture and replacement value of the Unit and the Spare Parts. The policy shall include a waiver of subrogation towards ISR and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf, provided that the waiver of subrogation does not apply in favor of a person who has maliciously caused the damage. The supplier undertake, that a clause stating that in respect of loss or damage to the Unit, the insurance benefits shall be paid to the ISR exclusively, which shall be added as an additional insured under the policy.

29.1.2 **Marine "All Risk"** Insurance against any loss or damage to the Unit and the Spare Parts, arising out of, in course of, or caused by any risk in respect of the transport of Unit and the Spare Parts.

The policy shall apply from the time of moving the Unit and the Spare Parts from the Supplier' warehouses/premises until arrival within the ISR' warehouse/premises at the final destination and vice versa, including loading and unloading, temporary and extended storage and all domestic inland and/or intermediate transits anywhere in the world (including

within Israel).

Settlement of claims will be made at 110% of the Unit and the Spare Parts DAP value, irrespective of the term of sale or purchase. The insurance benefits in respect of loss or damage to the Unit shall be paid to the ISR exclusively, which shall be added as an additional insured under the policy.

The policy shall include a waiver of subrogation towards ISR and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf, provided that the waiver of subrogation does not apply in favor of a person who has maliciously caused the damage.

29.2 **Conditions regarding Maintenance**

29.2.1 Without derogating from the Supplier's responsibilities and liabilities under the Agreement and/or any applicable law, Supplier shall arrange and maintain insurance policies, at its own expense, with an authorized insurance company, during the term of the Maintenance Period, as well as for any additional periods during which the Supplier is held liable (whether at law or under this Agreement) as set forth in **Attachment Q** (hereinafter: "**the Insurance Certificate**").

29.2.2 Additional provisions regarding the Maintenance Depot are included in the Maintenance Depot Contract.

29.3 **General Conditions**

29.3.1 Supplier shall procure and maintain during all the period of the Agreement the following insurance policies:

- 29.3.1.1 **All Risks Property Insurance** on a new replacement value basis covering loss or damage including theft and burglary of any property, equipment and tools of any type, which are brought by the Supplier or anyone acting on its behalf to the ISR premises. The policy shall include a waiver of subrogation towards ISR, and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf, provided that the waiver of subrogation does not apply in favor of a person who has maliciously caused the damage.
- 29.3.1.2 **Motor Insurance** including Compulsory Insurance as required by the Israeli law, including comprehensive insurance and Liability Insurance as a result of use of vehicles (excluding bodily injury covered under Compulsory Insurance).
- 29.3.1.3 **Workers Compensation Insurance** covering the liability of the Supplier as required by any applicable law towards non-Israeli employees for bodily injury, death or disease during the period of the Agreement, while executing the Works and as a result of them with limits of liability as required by the law in the foreign employees country of origin.

- 29.3.2 ISR shall purchase a property insurance to insure ISR premises which will be used by the Supplier and those acting on its behalf for rendering the Maintenance services. The property insurance shall include a clause regarding a waiver of the right of subrogation in favor of the Supplier and its employees; However, such waiver shall not apply in favor of any person who maliciously caused the damage. To avoid doubt, it is hereby specifically agreed that the property insurance shall not include any coverage for the Supplier's property or equipment or for any property brought by the Supplier or anyone acting on its behalf to the ISR premises.
- 29.3.3 Without derogating from Sections 29.3.1.1 and 29.3.1.2 abovementioned, the Supplier represents and warrants that it shall not have any claims, demands and actions against ISR and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf, concerning damage with respect to its property of any type and/or property under its responsibility, including the Supplier's improvement and additions to the premises, systems, machines, stock and equipment of any kind that the Supplier or anyone acting on its behalf use in connection with the agreement and/or brought to ISR premises and/or concerning any damage for which the Supplier is entitled to receive indemnification under its insurance policies; and Supplier hereby relieves ISR and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf of any liability for such damage. The foregoing shall not apply for the benefit of any one who caused damage with malicious intent.
- 29.3.4 For avoidance of doubt, it is agreed that the limits of indemnity noted under the liability Insurances mentioned in the Insurance Certificate represent a minimum requirement. The Supplier undertakes to assess the relevant exposure to liability and determine the limits of liability accordingly. The Supplier declares and confirms that it will be prevented from raising any contention and/or demand against ISR and/or anyone on its behalf, regarding such liability limit. In this regard, it is hereby clarified that the taking out of the above mentioned insurance policies by the Supplier will not limit or derogate in any way from the Supplier's undertakings according to this Agreement, and effecting these insurance policies will not release it from its obligation to indemnify ISR and/or any person whatsoever for any damage for which the Supplier is liable, in accordance with this Agreement and/or by law.
- 29.3.5 The Supplier undertakes to provide ISR, no later than seven (7) days before the commencement of the Maintenance services, with the attached Insurance Certificate signed, by the Supplier's insurers.
- 29.3.6 At the end of the insurance period under the Insurance Certificate, the Supplier undertakes to present ISR with an updated Insurance Certificate, in respect of the renewal of the policies for an additional period, and to do so each insurance period and as long

as required under Section 29.2 abovementioned. If at any time ISR is notified by the Supplier's insurers that any of the Supplier's insurances are about to be cancelled and/or narrowed, the Supplier shall re-procure such insurance, prior to the date of such cancellation/narrowing.

29.3.7 ISR may examine the Insurance Certificate, which the Supplier is committed to furnish as set out under Section 29.3.6 abovementioned, and the Supplier undertakes to make any change or amendment that will be required in order to make it conform to the Supplier's undertakings. The Supplier declares that ISR's right to examine the Insurance Certificate and its right to demand changes or amendments to the Insurance Certificate, as set out above, does not impose on ISR or any party on its behalf any obligation or responsibility in relation to such Insurance Certificate, or as regards the nature, extent and validity of the Supplier's insurance coverage or with respect to the absence thereof, nor does it detract from any liability whatsoever imposed on Supplier under this Agreement.

29.3.8 The Supplier undertakes to fulfill the conditions of the insurance policies affected by it in full, and punctually pay the insurance premiums, arrange for and ensure that the Supplier's insurance coverage is in effect according to the Supplier's undertakings.

30. FORCE MAJEURE

30.1 **Events of Force Majeure.** An event of *force majeure* shall mean any unavoidable event beyond the reasonable control and contemplation of the party invoking the existence of such event, including, but not limited to, act of God, epidemic, earthquake, seaquake, alluvium, shipwreck, or war; *provided, however* that the absence of shipping or other means of transportation, and disturbances in the territories of Gaza, Yehuda and Shomron, including disruptions in the supply of labor therefrom, shall not be deemed an event of *force majeure*.

30.2 **Effect of Force Majeure.** Subject to the party invoking *force majeure* using all reasonable efforts to reduce the effect of such a delay or failure, such party shall not be responsible or liable for any delay or failure to perform its obligations under this Agreement if the delay or failure is attributable to an event of *force majeure*, *provided however* that if an event of *force majeure* continues over one hundred eighty (180) days with respect to any Works, ISR shall have the right to terminate this Agreement, as the case may be, by delivering written notice to Supplier.

For the removal of doubt, nothing contained herein shall be construed to derogate from Section 3.5.3 in Chapter 3 of the Payment Schedule.

30.3 **Notice of Force Majeure.** Neither party shall be entitled to avail itself of the provisions of this Section 30, unless it so notifies the other within fourteen (14) days from the first occurrence, and cessation, of an event of *force majeure*.

30.4 Emergency during the Warranty and/or Maintenance Period

During the entire Warranty Period and during the entire Maintenance Period, Supplier shall provide at all times Warranty and/or Maintenance (as applicable) to the fullest extent in accordance with the provisions of the Agreement. Supplier shall not be excused for failure to perform its Warranty and Maintenance obligations pursuant to *force majeure* events, in emergency times or for any other reason whatsoever, and Supplier shall be ready to face any such situation at all times, all except if ISR has stopped its operations due to an event of *force majeure* or armed hostilities or other similar events.

Without derogating from the generality of the above, the following provisions shall apply:

- 30.4.1 At least fifty percent (50%) of the personnel in each position in the Warranty team and the Maintenance team shall be Israeli permanent residents (in Hebrew "Toshav Keva" or "תושב קבע", as defined in the Emergency Work Service Law, 5727-1967) and notwithstanding any requisition of persons, equipment or material by competent authorities (including but without limitation military reserve period), Supplier shall ensure that a fully operational Warranty team and Maintenance team with all required equipment will be present in Israel and able to provide Maintenance during emergency times.
- 30.4.2 Supplier shall provide to the Warranty team and to the Maintenance team, immediately and continuously, all necessary equipment as required under emergency, including but without limitation personal and collective protection equipment.
- 30.4.3 ISR shall be entitled to instruct Supplier to complete and submit forms and to take any other action as required for Supplier to be declared as an "essential enterprise" (in Hebrew "Mifaal Hiouni" or "מפעל חיוני" as defined in the Emergency Work Service Law, 5727-1967) by the competent authorities.
- 30.4.4 For the removal of doubt: (i) Supplier shall not be entitled to any additional consideration for providing full Warranty and/or full Maintenance (as applicable) during emergency times (such consideration being included in the consideration to which Supplier shall be entitled to under the Agreement); and (ii) breach of the provisions of this Section 30.3 shall constitute a material breach of the Agreement by Supplier.
- 30.4.5 'Emergency' for the purpose of this Section shall include without limitation declaration of war by a competent authority, special situation in the military rear, mass disaster, preparation for civil defence, alert situation, operation of the "Meshek Leshahat Herum" ("משק לשעת חירום") or any other alertness situation.

31. TERMINATION

- 31.1 **Termination by ISR.** This Agreement may be terminated by ISR at its sole discretion at any time, whether before or after commencement of the Works, by giving Supplier prior written notice of at least fourteen (14) days, if any of the following occurs:
- 31.1.1 Supplier Transfers the whole or any part of its undertakings pursuant to this Agreement, by a single transaction or by a number of transactions, without obtaining prior written approval of ISR.
- 31.1.2 Supplier becomes bankrupt, insolvent, or does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes assignment for the benefit of creditors, or liquidation, receiverships, or reorganization proceedings (whether temporary or not) have been commenced against Supplier and have not been removed within twenty-one (21) days.
- 31.1.3 An attachment order has been imposed and/or any other execution process has been taken with respect to all or a material part of Supplier's assets, or a part thereof which is material for the performance of any of its obligations hereunder and has not been removed within thirty (30) days.
- 31.1.4 Supplier has stopped managing its business (or substantial portion thereof) or execution of the Works or any part thereof for a consecutive period of thirty (30) days.
- 31.1.5 Any representation or warranty made by Supplier in this Agreement and/or any certificate, schedule or other document delivered by Supplier pursuant to this Agreement has been false or materially misleading when made.
- 31.1.6 Supplier and/or the Israeli Affiliate and/or any of the entities specified in Section 4.3 above (if applicable) breaches any provision of this Agreement (including for the removal of doubt the Maintenance Depot Contract and the Maintenance Chapter) and fails to cure such breach (A) within fourteen (14) days from the date of ISR's notice, in the event of a material breach, or (B) within forty five (45) days from the date of ISR's notice, in the event of a non-material breach.
- 31.1.7 A change occurs in any place of production in breach of the provisions of Section 15.4 above.
- 31.1.8 Supplier failed three (3) times to successfully complete any Final Acceptance Test for any Unit pursuant to this Agreement.
- 31.1.9 ISR has collected all Guarantees exercisable with respect to certain obligations of Supplier.
- 31.1.10 The amount of Liquidated Damages for Late Delivery which has become due by Supplier to ISR under this Agreement has reached the Late Delivery Cap.

31.1.11 The amount of Liquidated Damages for Poor Performance which has become due by Supplier to ISR under Section 26.3 above has reached the cap specified in **Attachment M** hereto.

31.1.12 The amount of Maintenance Liquidated Damages which has become due by Supplier to ISR under this Agreement has reached the applicable annual cap specified in the Maintenance Chapter during two consecutive Maintenance Years.

31.1.13 The Maintenance Depot Contract has been terminated prior to full performance by Supplier of all of its obligations thereunder.

31.2 **Restitution of Payments**

31.2.1 In the event that ISR exercises its right to terminate this Agreement for any of the reasons set forth in Section 31.1 above, Supplier shall, within ninety (90) days from notification by ISR that it has rescinded or terminated this Agreement, return to ISR all payments received by Supplier and the Israeli Entity from ISR in respect of all terminated Works without prejudice to any other remedies and/or compensation and/or indemnification and/or form of action available to ISR in such circumstances under any agreement and/or under any Applicable Law.

31.2.2 Section 31.2.1 notwithstanding, ISR will not request restitution of payments relating to (i) Units with respect to which ISR has signed a Final Acceptance Certificate, if and only if ISR has already issued Final Acceptance Certificates for at least ten (10) Units; or (ii) outstanding Purchase Orders that ISR has elected to pursue; and (iii) with respect to the Maintenance Depot Contract, Payments Milestones regarding which a completion certificate has been issued by ISR.

31.2.3 Section 31.2.2 notwithstanding, in the event that ISR has elected to (i) terminate this Agreement for any of the reasons set forth in Section 31.1 above; and (ii) to request from Supplier to continue to provide Maintenance as per Section 31.4.3 below, and the number of Units included in ISR Maintained Fleet is lower than ten (10), ISR shall be entitled to restitution for all such Units in ISR Maintained Fleet.

31.3 **Termination for Convenience**

31.3.1 In addition to, and without derogating from any right that ISR may have to terminate this Agreement, including but without limitation pursuant to any other provision of this Section 31 and/or to any Applicable Law, ISR shall have the right to terminate this Agreement (including for the removal of doubt any outstanding Purchase Order, Maintenance and/or the Maintenance Depot Contract) at will, without cause and at ISR's sole discretion, by giving Supplier a ninety (90) days prior written notice.

31.3.2 In such event ISR shall pay to Supplier certain amounts to be determined as follows:

31.3.2.1 Purchase Orders:

- (a) ISR shall pay to Supplier the Unit Price for any Units regarding which a Final Acceptance Certificate has been issued prior to such termination's effective date;
- (b) ISR shall reimburse Supplier for all direct costs and expenses which are directly related to the termination of any outstanding Purchase Orders which Supplier has accrued prior to the termination's effective date. For the removal of doubt, any amount already paid by ISR to Supplier prior to such termination date on the account of such outstanding Purchase Order shall be deducted from the amounts payable to Supplier by ISR as per the above; and
- (c) Supplier shall be entitled to the payment by ISR of a breakup fee in an amount representing four percent (4%) of the consideration for the portion of the Works of the then outstanding Purchase Order(s) which are not to be performed due to termination under this Section 31.3.

31.3.2.2 Maintenance:

If the termination notice is issued by ISR during the initial Maintenance Period, ISR shall pay to Supplier a break-up fee, the amount of which shall be calculated as a certain percentage of the Minimum Annual PPK Payment (as defined in Section 3 of Chapter 3 of the Payment Schedule), for the Maintenance Year that should have immediately followed the Maintenance Year during which the termination notice is served by ISR, adjusted as of the date of effective termination. Such percentages are specified in the table below:

Initial Maintenance Period (Maintenance Year during which the termination notice was served)	Break-up fee (as a percentage of the Minimum Annual PPK Payment)
Years 1-2	90%
Years 3-4	80%
Year 5	70%
Year 6	60%
Year 7	50%
Year 8	40%
Year 9 and until Year 14	10%

For the removal of doubt, no break up fee shall be due if the termination notice is issued in Maintenance Year 15.

31.3.2.3 Maintenance Depot Contract: as specified in the Maintenance Depot Contract.

31.3.3 In addition, ISR may, at its sole discretion, require Supplier to perform any part of the Works not completed at the date of termination as per the above.

31.4 **Partial Termination by ISR.** Notwithstanding any provision to the contrary in this Agreement, and without derogating from any right of ISR to terminate this Agreement under any Applicable Law and/or under this Agreement, ISR shall be entitled at its sole discretion to:

31.4.1 partially terminate this Agreement by terminating the Maintenance Depot Contract only;

31.4.2 partially terminate this Agreement with respect to Maintenance only;

31.4.3 request Supplier to continue the performance of its obligations under the Maintenance Depot Contract after the effective date of termination; and/or

31.4.4 request Supplier to continue to provide Maintenance after the effective date of termination, and all the relevant provisions of this Agreement shall continue to apply during the entire Maintenance Period (as may be extended by ISR pursuant to the provisions of this Agreement), unless terminated before by ISR in accordance with the provisions of this Section 31 above.

31.5 **Effect of Termination**

31.5.1 Except as otherwise specified in Section 31.6 below, termination

of this Agreement will not limit either party from pursuing any other remedies available to it under any agreement and/or Applicable Law, and termination or expiration of this Agreement, from whatever cause arising, shall be without prejudice to the rights of the parties accrued under this Agreement up to the time of termination.

31.5.2 The provisions of this Agreement which expressly or by their nature are required to survive termination of this Agreement (including but without limitation provisions regarding Warranty and liability) shall survive the expiration or termination of this Agreement.

31.5.3 In the event that this Agreement is terminated for any reason whatsoever, Supplier shall be obligated to take all required steps and actions to:

- a) Cease all Works according to the IPM's instructions;
- b) Upon ISR's written instructions to do so, transfer to ISR all its rights and obligations towards the Subcontractors, all as instructed by ISR;
- c) Transfer to ISR all its rights under all warranties extended by its suppliers;
- d) Vacate the Sites;
- e) Transfer to ISR the Depot Site and the Maintenance Depot (including for the removal of doubt the Depot Equipment) in accordance with the provisions of the Maintenance Depot Contract;
- f) In the event that certain Units will remain with ISR after termination of the Agreement: Supplier shall transfer to ISR any and all know-how, data and information as required for the performance by ISR or by any third party on its behalf of the maintenance of the Units;
- g) Transfer to ISR the Maintenance Log and all technical documentation (all as defined and/or specified in the Maintenance Chapter), if applicable; and
- h) Transfer to ISR all plans, documentation and report under the Maintenance Depot Contract.

31.6 **Waiver**

31.6.1 Payment to Supplier as per this Section 31 above (if and to the extent that Supplier shall be entitled thereto) shall constitute the sole and exclusive remedy (monetary or otherwise) to Supplier in connection with the Agreement and/or the cancellation and/or the termination thereof, and Supplier shall not be entitled to any other payment or recourse of whatever kind and nature (including but without limitation in the form of reimbursement of expenses and/or compensation for loss of profits) or to any other remedy

that might be available to it under Applicable Law and/or agreement (including but without limitation specific performance and/or injunctive relief) in the event of termination of this Agreement pursuant to this Section 31 above.

31.6.2 No damages or other recourses whatsoever (including but without limitation enforcement of this Agreement) shall be due to Supplier, by reason of any termination of this Agreement in accordance with its terms. In particular, but without limitation, Supplier shall not be entitled to any compensation, reimbursement or damage of any kind for any unjust enrichment or tort claim, if any, resulting from the termination of this Agreement as aforesaid and/or on account of loss of prospective profits or investments and/or loss of goodwill or any other causes.

32. SETTLEMENT OF DISPUTES; GOVERNING LAW

32.1 **Dispute Resolution Process.** Subject to Sections 18.22 and 19.12 above, and to Section 11.1.2 of the Maintenance Chapter regarding the Supervisory Board, the parties shall attempt to resolve any dispute, argument, disagreement or controversy between them (“**Dispute**”) in accordance with the following escalation procedure:

32.1.1 The Dispute shall be brought before the SPM and IPM, who shall attempt to resolve the Dispute by mutual agreement.

32.1.2 In case the SPM and IPM fail to come to an agreement on the Dispute within twenty one (21) days from written notification by a party to the other party that there is a Dispute, the Dispute will be brought before ISR’s Deputy General Manager of Rolling Stock and Supplier’s Deputy Manager, who shall attempt to resolve the Dispute by mutual agreement.

32.1.3 In case ISR’s Deputy General Manager of Rolling Stock and Supplier’s Deputy Manager fail to come to an agreement on the Dispute within fourteen (14) days from the day the Dispute has been referred to them, the Dispute will be brought before the parties’ respective General Managers.

32.1.4 In case the parties’ General Managers fail to come to an agreement on the Dispute within fourteen (14) days from the day the Dispute has been referred to them, each party shall be entitled to commence legal proceedings in order to resolve the Dispute.

32.2 **ISR Rights.** Notwithstanding the provisions of this Section 32 above, nothing herein shall limit ISR's termination rights pursuant to Section 31 above, or prevent ISR from seeking remedies at law or in equity, including, without limitation, injunctive relief, through courts of competent jurisdiction, in order to protect its rights.

32.3 **Governing Law and Jurisdiction.** This Agreement will be governed by and construed solely in accordance with the substantive laws of the State of Israel, irrespective of its choice of law principles; the competent courts in Tel-Aviv-Jaffa, Israel, shall have sole and exclusive jurisdiction over

every Dispute arising from, or in connection with this Agreement that the parties were not able to resolve pursuant to the Dispute resolution process specified in Section 32 above. The parties agree that the Sale (International Sale of Goods) Law, 5760-1999, the Uniform Law on International Sales of Goods (1964) and the United Nations Convention on Contracts for the International Sale of Goods will not govern this Agreement, the rights and obligations of the parties hereunder, nor any agreement or other instrument that may be executed to implement this Agreement.

32.4 **Service of Process.** Supplier hereby irrevocably appoints [REDACTED] C.P.A/Advocate, of [REDACTED] St., [REDACTED] Israel [Note: to be completed upon signing of the Agreement], as its agent and representative to receive service of process or any other legal summons and court documents served by or on behalf of ISR, and the service by ISR or anyone else on its behalf of any process of law or any other legal summons and court documents on the above agent and representative shall be considered, for any and all purposes, as service to Supplier. For the removal of doubt, the above shall not derogate from any other means of service that may be available to ISR under any Applicable Law and/or agreement. In connection with such appointment Supplier shall execute **Attachment I** hereto.

32.5 **Dispute not Effecting Delivery.** Supplier agrees and undertakes that no Dispute shall entitle Supplier to delay or withhold (i) the continuation of the Works so as to meet the Delivery Schedule or any other schedules agreed between the parties, (ii) the performance of Warranty, (iii) the performance of all its obligations under the Maintenance Depot Contract; and (iv) the performance of Maintenance, subject to ISR paying to Supplier any undisputed amounts, and the Dispute shall be resolved pursuant to the Dispute resolution process specified in this Section 32 above.

33. CHANGES IN LEGISLATION

33.1 **ISR's Responsibility.**

In the event that the performance of the Agreement requires alterations or revisions due to a change specified in this Section 33.1 which was legislated after the date of submission of the last Supplier's Proposal, the following provisions shall apply:

33.1.1 Binding change in (i) applicable Israeli law (including regulations) and/or (ii) in applicable foreign norms, directives, orders, etc. (excluding applicable foreign law and regulations): ISR shall bear all direct costs and/or expenses resulting therefrom and the provisions of Section 8 above shall apply *mutatis mutandis*.

33.1.2 Non-binding change in any applicable law, regulation, norm, directives, orders, etc. (in Israel or abroad): ISR, at ISR's sole discretion, may issue a Change Order to implement such change.

- 33.2 **Supplier's Responsibility.** In the event that the performance of the Agreement requires alterations or revisions due to a binding change in applicable foreign law (including regulations) which was legislated after the date of submission of the last Supplier's Proposal, Supplier shall bear all costs and expenses related thereto and shall not be entitled to any payment from ISR.

34. CONFIDENTIALITY

34.1 **Confidentiality and non-use obligations.**

34.1.1 Supplier's confidentiality and non-use obligations are specified in the Supplier's Confidentiality and Non-Use Undertaking executed by Supplier and attached as **Attachment R** hereto, which is hereby incorporated into this Agreement.

34.1.2 Supplier shall ensure that all of its (i) employees, (ii) consultants, (iii) the Israeli Affiliate, (iv) all the entities specified in Section 4.3 above (if applicable), (v) Subcontractors, and (vi) the employees of all the foregoing involved in the Works will execute the applicable form of Confidentiality and Non-Use Undertaking attached as **Attachment S** hereto. Supplier will submit copies of such signed undertakings to ISR as a condition for any employees, consultants and Subcontractors and the employees of the foregoing working on any Site. With regards to other employees, consultants, Subcontractors and the employees of the foregoing, Supplier will submit copies of such signed declarations to ISR upon ISR's first request.

- 34.2 **Duration of Obligations.** For clarification, the obligations under the Confidentiality and Non-Use Undertakings of Supplier and of its employees, consultants, Subcontractors and the employees of the foregoing are not limited in time, and they shall obligate them during the term of this Agreement and at any time thereafter.

35. WAIVER OF LIEN

35.1 **Waiver by Supplier.** Supplier hereby waives any possessory lien, mechanic's lien or similar possessory or retention right (in Hebrew: "זכות עיכבון") and preservation of ownership (in Hebrew: "שימור בעלות") (collectively, "**Retention Rights**") against ISR with regard to the Units, Works' parts, Works' assemblies, and the Works themselves, including, but not limited to, the Depot Equipment and the items of the Works that are in the possession of Supplier in Supplier's workshops or which are in the possession of Subcontractors.

35.2 **Sufficient Compensation.** Supplier represents and warrants that the consideration to be paid by ISR under this Agreement includes ample financial provisions concerning the waiver by Supplier of all Retention Rights with regard to the Works, and the payments to be made by Supplier

to its Subcontractors contain ample financial provisions for the insertion of a clause requiring a similar waiver by said Subcontractor in connection with the Works.

36. ISR SET-OFF RIGHT

Without derogating from any right of set-off conferred upon ISR elsewhere in this Agreement or under Applicable Law, ISR shall have the right to set-off against any amounts that may be owed to Supplier (or to the Israeli Affiliate, as the case may be) pursuant to this Agreement and/or to any other agreement between ISR and Supplier, any amount, debt or payment owed by Supplier (or by the Israeli Affiliate) to ISR pursuant to this Agreement (including but without limitation in the form of indemnification or compensation for damages, regardless if their sum is liquidated or not).

37. NON-EXCLUSIVITY

Without derogating from ISR's obligations with respect to the order of the Units in the Initial Purchase and Maintenance of the Units ordered under IPO1), it is hereby clarified that Supplier is not granted any exclusivity with respect to the performance of the Works or any portion thereof and/or the supply to ISR and/or maintenance of electric multiple units. Accordingly, ISR shall be entitled to order Units, and shall further be entitled to publish other tenders or otherwise select other suppliers for the performance of the Works or any of them, all as ISR shall determine at its sole discretion. Supplier hereby waives any and all claims or demands against ISR and any third party with regard to the Works performed by other suppliers. For the removal of doubt, Supplier shall not be entitled to any compensation in relation to the Works performed by third parties.

38. INDEPENDENT CONTRACTOR STATUS

38.1 Independent Supplier. Supplier is an independent contractor acting on its own risk and account and solely responsible for its own financial obligations, and nothing contained in this Agreement will be construed as creating a joint venture, partnership, or principal and agent relationship between the parties nor will it be construed as creating any relationship whatsoever between ISR and any employees, Subcontractors, representatives or agents of Supplier. Supplier will not have the authority or will represent that it has the authority to assume or create any obligation, express or implied, on behalf of ISR.

38.2 Non Employer-Employee Relationships.

38.2.1 Nothing in the provisions of the Agreement or in the performance or implementation thereof shall be construed as if it imposes any employer's responsibility and/or obligation on the part of ISR and/or as creating an employer-employee relationship between ISR and the Supplier's personnel and/or the Subcontractors' personnel and such relationship shall exist solely between the Supplier's personnel and Supplier and/or

- between the Subcontractors' personnel and the Subcontractors, as applicable.
- 38.2.2 Supplier shall inform the relevant Supplier's and Subcontractor's personnel that the performance of the Works does not derogate from the employer–employee relationship existing between the Supplier's personnel and Supplier (or between the Subcontractors' personnel and the Subcontractors, as applicable).
- 38.2.3 Supplier shall procure the signature by every employee of the Supplier's personnel and of the Subcontractors' personnel, which is involved in the Works, on the applicable Employee Representation and Undertaking Form attached as **Attachment V**, and shall submit a copy of said signed form to ISR prior to the commencement of the works by such employee.
- 38.2.4 Each of Supplier and Subcontractor, as applicable, is the sole employer of its personnel. Supplier (or Subcontractor, as applicable) shall be solely responsible and shall bear and pay all payments required from an employer under any Applicable Law, collective bargaining agreement and extension orders, including but without limitation, payment of all salaries (which shall not be less than the minimum salary required under law), vacation payment, sick leave payment, recuperation payment, severance, social security, fringe benefits, and all payments which Supplier (or Subcontractor, as applicable) is obligated to pay as an employer with respect to such Supplier's (or Subcontractor's, as applicable) personnel, and Supplier (or Subcontractor, as applicable) will issue a pay slip to such personnel every month. As between ISR and Supplier, Supplier shall be responsible for all such payments above to all its employees and to all employees of all Subcontractors.
- 38.2.5 For the removal of doubt, Supplier, Subcontractor and any of their employees and anyone on its or their behalf shall be prevented from asserting any claim at any time in the future which may result in the imposition on ISR of any of Supplier's (or Subcontractor's, as applicable) obligations under this Section 38.2, and ISR shall under no circumstances be liable for any payment to which the Supplier's (or Subcontractor's, as applicable) personnel may be entitled as a result of employee–employer relations.
- 38.2.6 If despite the foregoing, any tribunal and/or any other competent authority will determine that the Agreement and/or the performance of the Agreement creates an employer–employee relationship between ISR and any of the Supplier's (or Subcontractor's, as applicable) personnel and/or that any of the Supplier's (or Subcontractor's, as applicable) personnel are entitled to any rights and/or payments as a result thereof, then

(i) Supplier shall indemnify and defend ISR from and against all such liabilities, including any expenses incurred by ISR with respect to such claims; and (ii) without derogating from the generality of subsection (i) above, it is hereby agreed that all payments made to Supplier according to this Agreement, will be reduced by 40%, retroactively as of their payment or grant, and in that case, Supplier will repay ISR any overpayments made by ISR as a consequence of such reduction, adjusted to reflect the change in the CPI from that known when the overpayment was made to that known when the repayment is made.

38.2.7 Without derogating from the above and in addition thereto, in the event that a claim as aforementioned is filed by any of the Supplier's (or Subcontractor's, as applicable) personnel against ISR, Supplier shall inform the relevant tribunal and/or any other competent authority that Supplier is the correct defendant in such claim and shall file a petition or shall agree to the dismissal of such claim against ISR. Nothing herein shall derogate from the right of ISR to file a "third party notification" ("הודעת צד ג") against Supplier and/or Subcontractors.

38.2.8 For the removal of doubt it is hereby clarified that the obligations of Supplier under this Section 38.2 above shall survive the termination and/or expiration of the Agreement for any reason whatsoever.

38.2.9 For the removal of doubt, the provisions of this Section 38.2 above shall apply *mutatis mutandis* to all the entities specified in Section 4.3 above (if applicable) and to their personnel, including but without limitation execution of **Attachment V** hereto.

38.3 **Non Solicitation**. It is expressly specified and agreed that Supplier shall not retain, engage or hire any employee of ISR until the end of the Maintenance Period and for a period of five (5) years thereafter, without the prior written approval of ISR, at ISR's sole discretion. For clarification, any breach by Supplier of this Section 38.3 shall constitute a material breach of the Agreement. Without derogating from any other right of remedy of ISR under such circumstances, ISR shall be entitled to the payment of liquidated damages amounting to fifty thousand (50,000) NIS per breach. The provisions of Section 26.4 above shall apply to such liquidated damages.

39. EXERCISE OR NON-EXERCISE OF RIGHTS BY THE PARTIES

Consent by a party to deviate from any of the provisions of this Agreement in a particular case shall not constitute a precedent, and no inference by analogy shall be drawn from it in respect of any other case. If a party does not exercise any of the rights conferred upon it by this Agreement or any Guarantee arising hereunder in a particular instance, such fact shall not be regarded as a waiver of

those rights in any other instance and shall not be considered as implying or indicating a waiver of any right under this Agreement.

40. ENTIRE AGREEMENT; AMENDMENTS

40.1 This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, superseding all prior and contemporaneous drafts (including drafts of the Agreement that formed part of the Tender), proposals, negotiations, communications, documents, understandings and agreements, written or oral, with respect to the subject matter of this Agreement, unless specifically incorporated herein by reference. Any such superseded documents shall not be used in any manner for the interpretation of this Agreement and shall not constitute admissible evidence in any proceedings between the parties.

40.2 This Agreement may only be amended by a written document signed by both parties.

41. NO THIRD PARTY BENEFICIARIES

All rights and obligations of the parties hereunder are personal to them. This Agreement is not intended to benefit, nor shall it be deemed to give rise to, any rights to any third party (including but without limitation, the Israeli Affiliate, all entities specified in Section 4.3 above (if applicable) and all Subcontractors).

42. SEVERABILITY

If any provision of this Agreement is held or made invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the remainder of this Agreement, and the invalid or unenforceable provisions shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the original intentions of the parties hereto and has like economic effect.

43. NOTICES

All notices, requests, claims, demands, waivers, consents, certificates, statements, accounts, orders, directions, instructions and other communications (collectively, "**Communications**") required or permitted to be made or given under this Agreement or in connection therewith shall be made in English, unless expressly specified otherwise in this Agreement and/or any attachment thereto. All Communications shall be (and shall only be effective if) in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by facsimile or by registered or certified mail (postage prepaid, return receipt requested) to the other party to the address specified below and in accordance herewith. Any such Communication shall be deemed to have been delivered and received (i) in the case of personal delivery, on the date of such delivery, (ii) in the case of facsimile, on the date sent if such date is a business day for the recipient (and if not, on recipient's first following

business day) and confirmation of receipt is received and such notice is also promptly mailed by registered or certified mail (return receipt requested), (iii) in the case of a nationally-recognized overnight courier in circumstances under which such courier guarantees next business day delivery, on the next business day after the date when sent, and (iv) in the case of registered or certified mail (return receipt requested), on the fifth business day following that on which the piece of mail containing such Communication is posted.

If to ISR: Israel Railways Ltd.
Tel Aviv Central Train Station
P.O.B 18085
Tel-Aviv 61180
ISRAEL
Telecopier: 972 (3) []
Attention: []

if to Supplier: []
[]
[]
Telecopier: [] () []
Attention: []

or to such other address as the party to whom notice is given may have previously furnished to the other in writing in the manner set forth above.

[THE SIGNATURE PAGE IS THE FOLLOWING PAGE]

In witness whereof, the parties hereto have caused this Agreement to be executed in accordance with the laws of the State of Israel, all as further set out in detail herein.

ISRAEL RAILWAYS LTD.

SUPPLIER

By: Boaz ZAFRIR

By: _____

Its CEO

Its: _____

By: Keren ASLAN

By: _____

Its CFO

Its: _____

Attachment A

Technical Specifications (Volume B)

[Note: attached separately]

Attachment B

Delivery Schedule for IPO1

[Note: Attachment G1 to the Instruction to Bidders, as submitted by Supplier in its Bid, to be attached here]

Attachment C

Certain Major Subcontractors

[Note: to be completed prior to signature of the Agreement]

- Carbody shell: _____
- Main transformer: _____
- Pantograph: _____
- Main circuit breaker: _____
- Traction converter: _____
- Auxiliary Converter: _____
- Brake system components: _____
- Bogie frame: _____
- Drive system (Traction motor, Gear): _____
- Wheel set assembly _____
- Air conditioning unit: _____
- Main air compressor and dryer: _____
- Ventilation equipment: _____
- Train Protection System (Signalling System): _____
- Train Communication System (Train radio): _____
- External Door System: _____
- Automatic Front/End Coupler/Intermediate Coach Coupler System: _____
- Train set Battery: _____
- Passenger seat assembly: _____
- Toilet systems: _____

Attachment D1

Certificate of Completion of Body Shell Tests

To: Israel Railways Ltd. ("ISR")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

From: [Supplier]
[Street]
[City]
[Country of origin]

Agreement No. _____

Purchase Order No. _____

We hereby certify that all Body Shell Tests regarding Unit No. _____ have been successfully completed at the Supplier's facilities at _____ in compliance with the Technical Specifications and in accordance with the Final ITP.

THIS CERTIFICATE IS ISSUED WITHOUT PREJUDICE TO THE RIGHTS AND POWERS OF ISR UNDER THE AFORESAID AGREEMENT.

Supplier:

Date: _____

Acknowledged by ISR:

Date: _____

Signed on behalf of Israel Railways Ltd.:

Israel Railways Ltd.

Attachment D2

Certificate of Completion of Factory Tests

To: Israel Railways Ltd. ("ISR")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

From: [Supplier]
[Street]
[City]
[Country of origin]

Agreement No. _____

Purchase Order No. _____

We hereby certify that all Factory Tests regarding Unit No. _____ have been successfully completed at the Supplier's facilities at _____ in compliance with the Technical Specifications and in accordance with the Final ITP.

We hereby warrant that such Unit shall not be sent to any port of loading for shipment to Israel and shall not be shipped to Israel before ISR countersigns this signed Certificate of Completion of Factory Tests and the Shipping Certificate relating thereto.

THIS CERTIFICATE IS ISSUED WITHOUT PREJUDICE TO THE RIGHTS AND POWERS OF ISR UNDER THE AFORESAID AGREEMENT.

Supplier:

Date: _____

Acknowledged by ISR:

Date: _____

Signed on behalf of Israel Railways Ltd.:

Israel Railways Ltd.

Attachment D3

Shipping Certificate

To: [Supplier]
[Street]
[City]
[Country of origin]

From: Israel Railways Ltd. ("**ISR**")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

Agreement No.

Purchase Order No.

We hereby authorize Supplier to send Unit No. _____ to the port of loading of _____ for shipment to Israel in accordance with the attached Certificate of Completion of Factory Tests.

Attachment: Certificate of Completion of Factory Tests for Unit No. _____.

THIS CERTIFICATE IS ISSUED WITHOUT PREJUDICE TO THE RIGHTS AND POWERS OF ISR UNDER THE AFORESAID AGREEMENT.

Date: _____

Signed on behalf of Israel Railways Ltd.:

Israel Railways Ltd.

Acknowledged by Supplier:

Date: _____

Attachment E1

Final Acceptance Certificate

To:

[Name of the Company]

[Street]

[City]

[Country of origin]

From:

Israel Railways Ltd. ("ISR")

Tel Aviv Central Train Station (Arlozorov)

P.O.B. 18085

Tel Aviv 61180

Israel

Agreement No. _____

Purchase Order No. _____

We hereby certify that Unit No. _____ has been accepted and taken over by ISR after successfully carrying out of all Tests as required under the Agreement.

[If and to the extent relevant: Said Unit is accepted and taken-over by ISR with the attached outstanding items remaining to be completed. The Supplier hereby certifies that the said items do not have an impact on the safety, performance and operational requirements of the Unit. The Supplier warrants that the outstanding items will be completed by the Supplier in accordance with the dates set out in the attached punch-list.]

THIS CERTIFICATE IS ISSUED WITHOUT PREJUDICE TO THE RIGHTS AND POWERS OF ISR UNDER THE AFORESAID AGREEMENT.

Date: _____

Signed on behalf of Israel Railways Ltd.:

Israel Railways Ltd.

Acknowledged by Supplier:

Date: _____

(Attachments (if and to the extent relevant):

1. *Punch list dated _____*
2. *Timetable for completion of punch list Items.*
3. *Consequences for Supplier of failure to complete punch-listed items as per the timetable.*
4. *Bank guarantee.*

Attachment E2

Fault Free Service Running Certificate

To:

[Name of the Company]

[Street]

[City]

[Country of origin]

From:

Israel Railways Ltd. ("ISR")

Tel Aviv Central Train Station (Arlozorov)

P.O.B. 18085

Tel Aviv 61180

Israel

Agreement No. _____

Purchase Order No. _____

We hereby certify that Unit No. _____ has travelled continuously five thousand (5,000) kilometers for commercial service without any fault or malfunction resulting in delay in operation and/or need for repair in order to recover the full functionalities of such Unit.

THIS CERTIFICATE IS ISSUED WITHOUT PREJUDICE TO THE RIGHTS AND POWERS OF ISR UNDER THE AFORESAID AGREEMENT.

Date: _____

Signed on behalf of Israel Railways Ltd.:

Israel Railways Ltd.

Acknowledged by Supplier:

Date: _____

Attachment F1

Maintenance Depot Contract

[Note: to be published later]

Attachment F2

Maintenance Chapter for Supplier Maintained Fleet

[Note: attached separately]

Attachment G

Guarantees

Form of Basic Performance Guarantee

To: Israel Railways Ltd. ("ISR")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

Basic Performance Guarantee

Whereas, ISR and _____ ("Supplier") entered into Agreement No. _____ on _____ (the "Agreement");

Now, we Bank hereby irrevocably and unconditionally guarantee to ISR due, punctual, true, faithful and full performance by Supplier of all of the obligations on its part contained in said Agreement (including for the removal of doubt the Maintenance Depot Contract and the Maintenance Chapter) as may be amended by the parties, and undertake to be responsible and liable and pay and indemnify ISR for payment by Supplier of all sums of money, losses, damages, costs, charges and expenses that may become due or payable to ISR, by or from Supplier by reason or in consequence of the default of Supplier (and/or of any of its Affiliate(s), Subcontractor(s) and/or the Israeli Affiliate, if applicable) in performance, execution or perseverance of its said obligations, all in accordance with the provisions therein (the "Guarantee").

Nevertheless, the total amount to be collected by ISR from us under this Guarantee shall not exceed the sum of 1,000,000 € (one million EURO). This Guarantee may be collected in partial payments, and any partial collection made hereunder shall reduce the total amount of the Guarantee, up to such total amount.

The total amount of this Guarantee (and any partial amount collected as per the above, as applicable) shall be linked to the HICP (Euro area (changing composition) - HICP - Overall index, Monthly Index, Eurostat, Neither seasonally nor working day adjusted', series key: ICP.M.U2.N.000000.4.INX, as published by the European Central Bank at the website: <http://sdw.ecb.europa.eu>.) from the date hereof and until the date of collection by ISR of this Guarantee (or of any partial amount as per the above, as applicable).

This autonomous Guarantee is irrevocable and unconditional and shall not be revocable by notice or otherwise and our undertaking and liability hereunder shall not be impaired or discharged by any extensions of time or variation or alterations made, given, conceded or agreed (with or without our knowledge or consent) under the said Agreement.

This Guarantee shall remain in full force and effect until and including the [day] of [month] [year] and after such date it shall expire. Consequently any demand for payment under this Guarantee must be received by us at our offices in _____ (please indicate the address) on or before such date.

In order to collect any amount under this Guarantee, ISR shall not have to refer to Supplier, shall not have to demand any payment from Supplier prior to collecting on this Guarantee as specified below, shall not have to produce any judgment or other judicial document or decision, and shall not have to prove any breach, failure or non-compliance on the part of Supplier or on the part of any person acting for it, or on its behalf, or in its name, nor shall ISR have to substantiate its demand, and a written demand by the Deputy General Manager, Commerce, Economics & Finance of Israel Railways Ltd. or by a person designated in writing by him, substantially in the following form, shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sums under this Guarantee from us, and we shall pay such amounts immediately upon such first demand by ISR:

"Pursuant to the Guarantee issued by you on _____, you are hereby instructed to pay immediately to Israel Railways Ltd. the sum of _____ to _____ Account Number _____ at _____ (Name of Bank) _____

Deputy General Manager
Commerce, Finance & Economics
of Israel Railways Ltd."

This Guarantee, and our obligations hereunder, shall be governed by and constructed solely in accordance with the substantive laws of the State of Israel (irrespective of its choice of law principles) and the competent courts in Tel Aviv, Israel, shall have sole and exclusive jurisdiction over every dispute arising from, or in connection with, this Guarantee.

Date _____

Form of Down Payment/ Payment Guarantee

To: Israel Railways Ltd. ("ISR")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

Down Payment/Payment [delete as applicable] Guarantee

Whereas, ISR and _____ ("Supplier") entered into Agreement No. _____ on _____ (the "Agreement");

Now, we Bank _____ hereby irrevocably and unconditionally guarantee to ISR to be responsible and liable and pay and indemnify ISR for repayment by Supplier to ISR of the sum of _____ €/NIS [note: please delete as applicable] (in words) _____ EURO/NIS [note: please delete as applicable], all in accordance with the provisions therein (the "Guarantee").

This Guarantee may be collected in partial payments, and any partial collection made hereunder shall reduce the total amount of the Guarantee, up to such total amount.

The total amount of this Guarantee (and any partial amount collected as per the above, as applicable) shall be linked to the HICP (Euro area (changing composition) - HICP - Overall index, Monthly Index, Eurostat, Neither seasonally nor working day adjusted', series key: ICP.M.U2.N.000000.4.INX, as published by the European Central Bank at the website: <http://sdw.ecb.europa.eu>.) from the date hereof and until the date of collection by ISR of this Guarantee (or of any partial amount as per the above, as applicable).

This autonomous Guarantee is irrevocable and unconditional and shall not be revocable by notice or otherwise and our undertaking and liability hereunder shall not be impaired or discharged by any extensions of time or variation or alterations made, given, conceded or agreed (with or without our knowledge or consent) under the said Agreement.

This Guarantee shall remain in force and effect until and including the [day] of [month] [year] and after such date it shall expire. Consequently any demand for payment under this Guarantee must be received by us at our offices in _____ (please indicate the address) on or before such date.

In order to collect any amount under this Guarantee, ISR shall not have to refer first to Supplier, shall not have to demand any payment from Supplier prior to collecting on this Guarantee as specified below, nor shall it have to produce any judgment or any other judicial document or decision, nor shall it have to prove any breach, failure or non-compliance on the part of Supplier or on the part of any person acting for it or on its behalf or in its name or any other person, nor shall ISR have to substantiate its

demand, and a written demand or fax by the Deputy General Manager, Economics & Finance of ISR or by a person nominated in writing by him, substantially in the following form, shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sums under this Guarantee from us, and we shall pay such amounts immediately upon such first demand by ISR:

"Pursuant to the Guarantee issued by you on _____, you are hereby instructed to pay immediately to Israel Railways Ltd. the sum of _____ to Account Number _____ at _____ (Name of Bank)_____

Deputy General Manager
Commerce, Finance & Economics
of Israel Railways Ltd."

This Guarantee, and our obligations hereunder, shall be governed by and constructed solely in accordance with the substantive laws of the State of Israel (irrespective of its choice of law principles) and the competent courts in Tel Aviv, Israel, shall have sole and exclusive jurisdiction over every dispute arising from, or in connection with, this Guarantee.

Date _____

Form of Performance and Warranty Guarantee

To: Israel Railways Ltd. ("ISR")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

Performance and Warranty Guarantee

Whereas, ISR and _____ ("Supplier") entered into Agreement No. _____ on _____ (the "Agreement");

Now, we Bank hereby irrevocably and unconditionally guarantee to ISR due, punctual, true, faithful and satisfactory performance by Supplier (and all its Affiliate(s), Subcontractor(s) and the Israeli Affiliate, if applicable) of all of the obligations on its part contained in said Agreement as may be amended by the parties, with respect to:

Purchase Order No. _____

[Note: please complete as applicable]

as may be modified by any Change Order issued by ISR, including for the removal of doubt Warranty, and undertake to be responsible and liable and pay and indemnify ISR for payment by Supplier of all sums of money, losses, damages, costs, charges and expenses that may become due or payable to ISR, by or from Supplier by reason or in consequence of the default of Supplier in performance, execution or perseverance of its said obligations, all in accordance with the provisions therein (the "Guarantee").

Nevertheless, the total amount to be collected by ISR from us under this Guarantee, shall not exceed the sum of _____ € (in words: _____ EURO). This Guarantee may be collected in partial payments, and any partial collection made hereunder shall reduce the total amount of the Guarantee, up to such total amount.

The total amount of this Guarantee (and any partial amount collected as per the above, as applicable) shall be linked to the HICP (Euro area (changing composition) - HICP - Overall index, Monthly Index, Eurostat, Neither seasonally nor working day adjusted', series key: ICP.M.U2.N.000000.4.INX, as published by the European Central Bank at the website: <http://sdw.ecb.europa.eu>.) from the date hereof and until the date of collection by ISR of this Guarantee (or of any partial amount as per the above, as applicable).

This autonomous Guarantee is irrevocable and unconditional and shall not be revocable by notice or otherwise and our undertaking and liability hereunder shall not be impaired or discharged by any extensions of time or variation or alterations made, given, conceded or agreed (with or without our knowledge or consent) under the said

Agreement.

This Guarantee shall remain in full force and effect until and including the [day] of [month] [year] and after such date it shall expire. Consequently any demand for payment under this Guarantee must be received by us at our offices in _____ (please indicate the address) on or before such date.

In order to collect any amount under this Guarantee, ISR shall not have to refer to Supplier, shall not have to demand any payment from Supplier prior to collecting on this Guarantee as specified below, shall not have to produce any judgment or other judicial document or decision, and shall not have to prove any breach, failure or non-compliance on the part of Supplier or on the part of any person acting for it, or on its behalf, or in its name, nor shall ISR have to substantiate its demand, and a written demand by the Deputy General Manager, Commerce, Economics & Finance of Israel Railways Ltd. or by a person designated in writing by him, substantially in the following form, shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sums under this Guarantee from us, and we shall pay such amounts immediately upon such first demand by ISR:

"Pursuant to the Guarantee issued by you on _____, you are hereby instructed to pay immediately to Israel Railways Ltd. the sum of _____ to Account Number _____ at _____ (Name of Bank) _____

Deputy General Manager
Commerce, Finance & Economics
of Israel Railways Ltd."

This Guarantee, and our obligations hereunder, shall be governed by and constructed solely in accordance with the substantive laws of the State of Israel (irrespective of its choice of law principles) and the competent courts in Tel Aviv, Israel, shall have sole and exclusive jurisdiction over every dispute arising from, or in connection with, this Guarantee.

Date

Form of Maintenance Guarantee

To: Israel Railways Ltd. ("ISR")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

Maintenance Guarantee

Whereas, ISR and _____ ("Supplier") entered into Agreement No. _____ on _____ (the "Agreement");

Now, we Bank hereby irrevocably and unconditionally guarantee to ISR due, punctual, true, faithful and satisfactory performance by Supplier (and all of its Affiliate(s), Subcontractor(s) and the Israeli Affiliate, if applicable) of all of the Maintenance and Depot Maintenance obligations on its part contained in said Agreement as may be modified by any Change Order issued by ISR and/or amended by the parties, and undertake to be responsible and liable and pay and indemnify ISR for payment by Supplier of all sums of money, losses, damages, costs, charges and expenses that may become due or payable to ISR, by or from Supplier by reason or in consequence of the default of Supplier in performance, execution or perseverance of its said obligations, all in accordance with the provisions therein (the "Guarantee").

Nevertheless, the total amount to be collected by ISR from us under this Guarantee, shall not exceed the sum of _____ NIS (in words: _____ NIS). This Guarantee may be collected in partial payments, and any partial collection made hereunder shall reduce the total amount of the Guarantee, up to such total amount.

The total amount of this Guarantee (and any partial amount collected as per the above, as applicable) shall be linked to the General Consumer Price Index, as published by the Israeli Central Bureau of Statistics, from the date hereof and until the date of collection by ISR of this Guarantee (or of any partial amount as per the above, as applicable).

This autonomous Guarantee is irrevocable and unconditional and shall not be revocable by notice or otherwise and our undertaking and liability hereunder shall not be impaired or discharged by any extensions of time or variation or alterations made, given, conceded or agreed (with or without our knowledge or consent) under the said Agreement.

This Guarantee shall remain in full force and effect until and including the [day] of [month] [year] and after such date it shall expire. Consequently any demand for payment under this Guarantee must be received by us at our offices in _____ (please indicate the address) on or before such date.

In order to collect any amount under this Guarantee, ISR shall not have to refer to Supplier, shall not have to demand any payment from Supplier prior to collecting on this Guarantee as specified below, shall not have to produce any judgment or other judicial document or decision, and shall not have to prove any breach, failure or non-compliance on the part of Supplier or on the part of any person acting for it, or on its behalf, or in its name, nor shall ISR have to substantiate its demand, and a written demand by the Deputy General Manager, Commerce, Economics & Finance of Israel Railways Ltd. or by a person designated in writing by him, substantially in the following form, shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sums under this Guarantee from us, and we shall pay such amounts immediately upon such first demand by ISR:

"Pursuant to the Guarantee issued by you on _____, you are hereby instructed to pay immediately to Israel Railways Ltd. the sum of _____ to Account Number _____ at _____ (Name of Bank) _____

Deputy General Manager
Commerce, Finance & Economics
of Israel Railways Ltd."

This Guarantee, and our obligations hereunder, shall be governed by and constructed solely in accordance with the substantive laws of the State of Israel (irrespective of its choice of law principles) and the competent courts in Tel Aviv, Israel, shall have sole and exclusive jurisdiction over every dispute arising from, or in connection with, this Guarantee.

Date _____

Form of Maintenance Depot Guarantee

To: Israel Railways Ltd. ("ISR")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

Maintenance Depot Guarantee

Whereas, ISR and _____ ("Supplier") entered into Agreement No. _____ on _____ (the "Agreement");

Now, we Bank hereby irrevocably and unconditionally guarantee to ISR due, punctual, true, faithful and satisfactory performance by Supplier (and all of its Affiliate(s), Subcontractor(s) and the Israeli Affiliate, if applicable) of all of the obligations on its part contained in said Agreement relating to the Locations and/or the Maintenance Depot (including but without limitation the Depot Equipment) and/or the LUL Agreement (as these terms are defined in the Agreement), as may be modified by any Change Order issued by ISR and/or amended by the parties, and undertake to be responsible and liable and pay and indemnify ISR for payment by Supplier of all sums of money, losses, damages, costs, charges and expenses that may become due or payable to ISR, by or from Supplier by reason or in consequence of the default of Supplier in performance, execution or perseverance of its said obligations, all in accordance with the provisions therein (the "Guarantee").

Nevertheless, the total amount to be collected by ISR from us under this Guarantee, shall not exceed the sum of 5,000,000 NIS (in words: five million NIS). This Guarantee may be collected in partial payments, and any partial collection made hereunder shall reduce the total amount of the Guarantee, up to such total amount.

The total amount of this Guarantee (and any partial amount collected as per the above, as applicable) shall be linked to the General Consumer Price Index, as published by the Israeli Central Bureau of Statistics, from the date hereof and until the date of collection by ISR of this Guarantee (or of any partial amount as per the above, as applicable).

This autonomous Guarantee is irrevocable and unconditional and shall not be revocable by notice or otherwise and our undertaking and liability hereunder shall not be impaired or discharged by any extensions of time or variation or alterations made, given, conceded or agreed (with or without our knowledge or consent) under the said Agreement.

This Guarantee shall remain in full force and effect until and including the [day] of [month] [year] and after such date it shall expire. Consequently any demand for payment under this Guarantee must be received by us at our offices in _____ (please indicate the address) on or before such date.

In order to collect any amount under this Guarantee, ISR shall not have to refer to Supplier, shall not have to demand any payment from Supplier prior to collecting on this Guarantee as specified below, shall not have to produce any judgment or other judicial document or decision, and shall not have to prove any breach, failure or non-compliance on the part of Supplier or on the part of any person acting for it, or on its behalf, or in its name, nor shall ISR have to substantiate its demand, and a written demand by the Deputy General Manager, Commerce, Economics & Finance of Israel Railways Ltd. or by a person designated in writing by him, substantially in the following form, shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sums under this Guarantee from us, and we shall pay such amounts immediately upon such first demand by ISR:

"Pursuant to the Guarantee issued by you on _____, you are hereby instructed to pay immediately to Israel Railways Ltd. the sum of _____ to Account Number _____ at _____ (Name of Bank) _____

Deputy General Manager
Commerce, Finance & Economics
of Israel Railways Ltd."

This Guarantee, and our obligations hereunder, shall be governed by and constructed solely in accordance with the substantive laws of the State of Israel (irrespective of its choice of law principles) and the competent courts in Tel Aviv, Israel, shall have sole and exclusive jurisdiction over every dispute arising from, or in connection with, this Guarantee.

Date _____

Form of End of Maintenance Warranty Guarantee

To: Israel Railways Ltd. ("ISR")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

End of Maintenance Warranty Guarantee

Whereas, ISR and _____ ("Supplier") entered into Agreement No. _____ on _____ (the "Agreement");

Now, we Bank hereby irrevocably and unconditionally guarantee to ISR due, punctual, true, faithful and satisfactory performance by Supplier (and all of its Affiliate(s), Subcontractor(s) and the Israeli Affiliate, if applicable) of all of the obligations on its part contained in said Agreement relating to (i) End of Maintenance Warranty (as defined in the Agreement); and (ii) transfer to ISR of all Maintenance Equipment free of charge, all as may be modified by any Change Order issued by ISR and/or amended by the parties, and undertake to be responsible and liable and pay and indemnify ISR for payment by Supplier of all sums of money, losses, damages, costs, charges and expenses that may become due or payable to ISR, by or from Supplier by reason or in consequence of the default of Supplier in performance, execution or perseverance of its said obligations, all in accordance with the provisions therein (the "Guarantee").

Nevertheless, the total amount to be collected by ISR from us under this Guarantee, shall not exceed the sum of _____ NIS (in words: _____ NIS). This Guarantee may be collected in partial payments, and any partial collection made hereunder shall reduce the total amount of the Guarantee, up to such total amount.

The total amount of this Guarantee (and any partial amount collected as per the above, as applicable) shall be linked to the General Consumer Price Index, as published by the Israeli Central Bureau of Statistics, from the date hereof and until the date of collection by ISR of this Guarantee (or of any partial amount as per the above, as applicable).

This autonomous Guarantee is irrevocable and unconditional and shall not be revocable by notice or otherwise and our undertaking and liability hereunder shall not be impaired or discharged by any extensions of time or variation or alterations made, given, conceded or agreed (with or without our knowledge or consent) under the said Agreement.

This Guarantee shall remain in full force and effect until and including the [day] of [month] [year] and after such date it shall expire. Consequently any demand for payment under this Guarantee must be received by us at our offices in _____ (please indicate the address) on or before such date.

In order to collect any amount under this Guarantee, ISR shall not have to refer to Supplier, shall not have to demand any payment from Supplier prior to collecting on this Guarantee as specified below, shall not have to produce any judgment or other judicial document or decision, and shall not have to prove any breach, failure or non-compliance on the part of Supplier or on the part of any person acting for it, or on its behalf, or in its name, nor shall ISR have to substantiate its demand, and a written demand by the Deputy General Manager, Commerce, Economics & Finance of Israel Railways Ltd. or by a person designated in writing by him, substantially in the following form, shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sums under this Guarantee from us, and we shall pay such amounts immediately upon such first demand by ISR:

"Pursuant to the Guarantee issued by you on _____, you are hereby instructed to pay immediately to Israel Railways Ltd. the sum of _____ to Account Number _____ at _____ (Name of Bank)

Deputy General Manager
Commerce, Finance & Economics
of Israel Railways Ltd."

This Guarantee, and our obligations hereunder, shall be governed by and constructed solely in accordance with the substantive laws of the State of Israel (irrespective of its choice of law principles) and the competent courts in Tel Aviv, Israel, shall have sole and exclusive jurisdiction over every dispute arising from, or in connection with, this Guarantee.

Date _____

Attachment H

Payment Schedule

**[Note: to be completed prior to signature of the Agreement,
based on Attachment H1 attached to the Instructions to Bidders]**

Attachment I**Supplier's Representative in Israel for Service of Process**

The undersigned, being the Supplier under Agreement No. _____ dated _____ (the "**Agreement**"), hereby irrevocably appoints _____ C.P.A/Advocate, of _____ St., _____ Israel, as its agent and representative to receive service of process or any other legal summons and court documents as the same may be served on the Supplier by or on behalf of ISR, and the service by ISR or anyone else on its behalf of any process of law or any other legal summons and court documents on the above agent and representative shall be considered, for any and all purposes, as service to the Supplier.

This Power of Attorney may not be cancelled or otherwise terminated unless a new representative in Israel is appointed by the Supplier concurrently with such cancellation or termination and a new and duly signed Power of Attorney, in the form hereof, is filed with ISR.

	Name of Supplier	Signature of Supplier's authorized representative	Name and title of signatory

Legal Representative Consent

I the undersigned, C.P.A/Advocate [*delete as applicable*], hereby give my consent to serve as agent and representative of the Supplier for the purpose of service of process and any other legal summons and court documents as per the above.

Signature: _____

Name: _____

Date: _____

I the undersigned, Attorney, hereby certify that _____, C.P.A/Advocate has signed above in my presence.

Signature: _____

Name: _____

License Number: _____

Date: _____

Attachment J

Purchase Order

PURCHASE ORDER

To: [Supplier]
[Street]
[City]
[Country of origin]

From: Israel Railways Ltd. ("**ISR**")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

We hereby issue this Purchase Order No. _____ for _____ (___) Short Units and _____ (___) Long Units in accordance with all the terms and conditions of the annexes thereto and of Agreement No. _____.

1. Annex 1: Delivery Schedule
2. Annex 2: Consideration

THIS PURCHASE ORDER IS ISSUED WITHOUT PREJUDICE TO THE RIGHTS AND POWERS OF ISR UNDER THE AFORESAID AGREEMENT.

Date: _____

Signed on behalf of Israel Railways Ltd.:

Israel Railways Ltd.

Acknowledged and accepted

Supplier

Attachment K**Spare Parts to be supplied by Supplier prior to
Final Acceptance of the first Unit in ISR Maintained Fleet**

All Spare Parts as required for preventive maintenance of all Units included in the first Purchase Order to be included in ISR Maintained Fleet, for the first period of six (6) months of commercial operation thereof by ISR.

'preventive maintenance' for the purpose of this Attachment K shall mean any action in order to prevent any Fault and to ensure consistent and uninterrupted use of the Units, including but without limitation any overhaul and other preventive maintenance activities required pursuant to the maintenance instructions of the manufacturer of the Units (as submitted by Supplier to ISR in writing in accordance with the provisions of the Technical Specifications).

Attachment LDirect Payment of Portion B to the Israeli Entity

To: Israel Railways Ltd. ("ISR")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

From: [Supplier]
[Street]
[City]
[Country of origin]

Re: Agreement No. _____ - Payment in NIS to the Israeli Entity

Pursuant to Section 23 of the Agreement, we hereby advise you as follows:

1. The Israeli Entity is _____ [*Note: to be completed prior to the Effective Date*].
2. The portion of the consideration for any Purchase Order to be paid to the Israeli Entity (Portion B as defined in the Payment Schedule) shall be ____ percent (___%). [*Note: to be completed prior to the Effective Date in accordance with the percentage specified by Bidder in Chapter 6 of the Payment Schedule*]
3. Any payment by ISR to the Israeli Entity as per the above shall be considered as a payment of consideration under the Agreement for any and all purposes.
4. The above allocation of payments of the Unit Price between Supplier and the Israeli Entity is a true and faithful representation of the scope of the Works which are the subject matter of the Unit Price to be performed respectively abroad and in Israel.

Supplier

Date: _____

Acknowledged by ISR:

Date: _____

Signed on behalf of Israel Railways Ltd.:

Israel Railways Ltd.

Attachment M

Poor Performance Liquidated Damages

With respect to ISR Maintained Fleet, ISR shall be entitled to the payment by Supplier of Poor Performance Liquidated Damages (comprised of Warranty Reliability Liquidated Damages and/or of Warranty Availability Liquidated Damages) for deviation from certain performance levels, in accordance with the provisions below. For the removal of doubt, the provisions of the Agreement applying to adjustment of amounts due to ISR shall apply to the adjustment of all amounts in this Attachment M.

For the removal of doubt, nothing contained herein shall be construed as a representation or undertaking by ISR that the proportion between Short Units and Long Units in ISR Maintained Fleet will be 25/75 at any time, *however* change in such proportion for any reason whatsoever shall not affect the provisions of this Attachment M.

1. Monitoring Period, Monitoring Year and Monitoring Anniversary

- 1.1 With respect to each Batch, reliability and availability (as further detailed in Chapter 5 of the Technical Specifications) shall be monitored during the period commencing on the beginning of the three (3) years Warranty Period (as per Section 18.4.1 of the Agreement) of the first Unit in this Batch regarding which a Fault Free Service Running Certificate was issued by ISR, and ending upon the latest date of expiry of such three (3) years Warranty Period of any Unit in such Batch (the "**Monitoring Period**").

"**Batch**" shall mean, with respect to ISR Maintained Fleet, all Units delivered under the same Purchase Order.

- 1.1 Monitoring shall be performed on an annual basis during the Monitoring Period (each such year - a "**Monitoring Year**") and data shall be collected with respect to Faults and unavailability during such Monitoring Year and since the commencement of the Monitoring Period.
- 1.2 In the event that ISR believes, at any time during any Monitoring Year, that Supplier will not be able to reach the Reliability Targets and/or the Availability Target (as these terms are defined below) for any reason whatsoever, the parties shall discuss the reasons for such expected failure, and Supplier shall submit to ISR, within fourteen (14) days from ISR's first request, a written report detailing the measures to be taken by Supplier in order to reach such Reliability and Availability Targets.
- 1.3 Upon each anniversary of the commencement of the Monitoring Period (the "**Monitoring Anniversary**"), Warranty Reliability Liquidated Damages and Warranty Availability Liquidated Damages (as these terms are defined below) shall be calculated for the previous Monitoring Year

(i.e. for the twelve (12) months period preceding such Monitoring Anniversary), and paid (if and to the extent due) by Supplier to ISR in accordance with the provisions of the Agreement.

2. Warranty Reliability Liquidated Damages

- 2.1 For the purpose of Warranty, Faults shall be divided into three (3) categories (significant, critical or uncritical), as further specified in Section 5.4.1 (Table 1) of the Technical Specifications (each a "**Type of Faults**").
- 2.2 With respect to each Type of Fault, the total number of Faults encountered in a Batch during the previous Monitoring Year shall be calculated on each Monitoring Anniversary as per Section 1.1 above (the "**Recorded Faults**"). For this purpose, and without derogating from Supplier's Warranty obligations with respect to any Fault detected otherwise, the data generated by ISR's computerized system shall constitute conclusive evidence of the occurrence of any Fault.
- 2.3 Upon each Monitoring Anniversary, and for each Type of Fault in a certain Batch, the reliability targets applicable to such Batch in the previous Monitoring Year shall be determined in accordance with the formula below (the "**Reliability Targets**" or "**RT**"):

$$RT = (KT/1,000,000)*Y$$

Where:

RT – With respect to each Batch and each Type of Fault, the reliability target applying to the aggregated number of such Faults in such Batch during the previous Monitoring Year.

KT – the aggregate number of kilometers travelled by all Short and Long Units in such Batch during the previous Monitoring Year, calculated in accordance with the following formula:

$$KT = KT_S + KT_L$$

Where:

KT_S - the aggregated number of kilometers travelled by all Short Units in such Batch.

KT_L - the aggregated number of kilometers travelled by all Long Units in such Batch.

For clarification, KT includes only kilometers travelled by a Unit after issuance by ISR of the Fault Free Service Running Certificate with respect to such Unit).

Y – Maximum Fault threshold per 1,000,000 km - with respect to each Batch and each Type of Fault, shall be as specified in Table 1 below:

Table 1

Type of Fault	Y
Significant	5
Critical	20
Uncritical	30

[Note to Bidders: Bidder is requested to propose in its Technical Proposal values for Y regarding Short Units and values for Y regarding Long Units, which both must be equal or lower than the values of Y in Table 1 above. The value of Y proposed by Bidder and applicable to the entire Batch will be calculated as follows:

$$Y = 0.25 Y_S + 0.75 Y_L$$

Where:

Y – the value proposed by Bidder and applicable to the entire Batch

Y_S – the value Y proposed by Bidder applicable to Short Units in the Batch

Y_L – the value Y proposed by Bidder applicable to Long Units in the Batch

In the event that Bidder will propose in its Technical Proposal values for Y which are lower than the values in Table 1 above for any Type of Fault (i.e. values that are more favorable to ISR), Table 1 above and Section 5.4.1 of the Technical Specifications shall be amended in accordance with the values proposed by Bidder, and the Warranty Reliability Liquidated Damages shall be calculated based on such values proposed by Bidder.]

- 2.4 Upon each Monitoring Anniversary, with respect to each Batch, Supplier shall pay liquidated damages for each Recorded Fault exceeding the applicable Reliability Target, as specified in Table 2 below (the "**Warranty Reliability Liquidated Damages**"):

Table 2

	Warranty Reliability Liquidated Damages per one (1) Recorded Fault exceeding the applicable Reliability Target (NIS, excluding VAT) (and pro-rata if RT is not a whole number)
Significant Fault	35,000
Critical Fault	15,000
Uncritical Fault	8,000

3. Warranty Availability Liquidated Damages

During each Monitoring Year, the annual rate of availability (as defined in Section 5.5.1 of the Technical Specifications), calculated with respect to each Batch separately, shall be at least 96.5% (the "**Availability Target**").

[Note to Bidders: Bidder is requested to propose in its Technical Proposal an availability target regarding Short Units and an availability target regarding Long Units, which both must be equal or higher than 96.5%. The availability target proposed by Bidder and applicable to the entire Batch will be calculated as follows:

$$AT = 0.25 AT_S + 0.75 AT_L$$

Where:

AT – availability target proposed by Bidder and applicable to the entire Batch

AT_S – availability target proposed by Bidder applicable to Short Units in the Batch

AT_L – availability target proposed by Bidder applicable to Long Units in the Batch

In the event that Bidder will propose in its Technical Proposal a higher Availability Target (i.e. a value more favorable to ISR), the Availability Target shall be amended in accordance with the value proposed by Bidder, and the Warranty Availability Liquidated Damages shall be calculated based on such value proposed by Bidder.]

- 3.1 On each Monitoring Anniversary, the annual rate of availability (as defined in Section 5.5.1 of the Technical Specifications) of each Batch during the previous Monitoring Year shall be measured. ISR shall be entitled to the payment by Supplier of liquidated damages in the event that such measured rate of availability is lower than the Availability Target (the "**Warranty Availability Liquidated Damages**").

The Warranty Availability Liquidated Damages shall amount to 200,000 NIS (excluding VAT) per each percent below the Availability Target (and pro-rata for a portion of a percent).

4. Poor Performance Liquidated Damages Cap

The maximum amount of Poor Performance Liquidated Damages to which ISR may be entitled, per each Batch, under this **Attachment M** shall not exceed five percent (5%) of the aggregated Unit Price of all Units in such Batch (adjusted as of the date of payment of the Poor Performance Liquidated Damages by Supplier).

Attachment N

Change Order

To: [Supplier]
[Street]
[City]
[Country of origin]

From: Israel Railways Ltd. ("**ISR**")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

Agreement No. _____

Purchase Order No. _____

We hereby issue this Change Order No. _____ in accordance with all of the terms and conditions of the attachments thereto and of the Agreement.

- Attachments:
1. Technical description of the change required to the Technical Specifications.
 2. Detailed Price Proposal.
 3. Timetable.

THIS CHANGE ORDER IS ISSUED WITHOUT PREJUDICE TO THE RIGHTS AND POWERS OF ISR UNDER THE AFORESAID AGREEMENT.

Date: _____

Signed on behalf of Israel Railways Ltd.:

Israel Railways Ltd.

Acknowledged and accepted

Supplier

Attachment O

End of 3 Years Warranty Certificate

To: Israel Railways Ltd. ("**ISR**")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

From: [Supplier]
[Street]
[City]
[Country of origin]

Agreement No. _____

Purchase Order No. _____

1. The Final Acceptance Certificate with respect to Unit no. _____ has been issued by ISR on _____.
2. We hereby certify that in accordance with the confirmation issued by the Warranty Committee (or the Supervisory Board, as applicable) and attached hereto, the three (3) years Warranty Period for such Unit as per Section 18.4.1 of the Agreement expires on _____.

THIS CERTIFICATE IS ISSUED WITHOUT PREJUDICE TO THE RIGHTS AND POWERS OF ISR UNDER THE AFORESAID AGREEMENT.

Supplier:

Date: _____

Acknowledged by ISR:

Date: _____

Signed on behalf of Israel Railways Ltd.:

Israel Railways Ltd.

Attachment P1

Parent Company's Declaration, Warranty and Undertaking

[Note: to be attached, if applicable - the original document signed by the Parent Company and submitted with Supplier's Proposal to the Tender]

Attachment P2

Affiliate Undertaking

[Note: to be attached, if applicable - the original document signed by the Affiliate and submitted with Supplier's Proposal to the Tender]

Attachment P3

Appointment of the Affiliate for Maintenance

[Note: to be attached, if applicable - the original document signed by the Affiliate and Supplier and submitted with Supplier's Proposal to the Tender]

Attachment P4

Appointment of the Israeli Affiliate

[Note: to be attached, if applicable - the document signed by the Affiliate and Supplier]

Attachment QInsurance Certificate

Date: _____

To: **ISR Israel Railways** and/or the its subsidiaries and or integrated and/or affiliated companies (hereinafter: **“ISR”**)

Re: Insurance Certificate in the name of _____ (hereinafter: the **“Supplier”**) in connection with the provision of Maintenance services and any other additional services pursuant to the agreement between ISR and the Supplier (hereinafter : "the Services") for the period from _____ to _____
:

1. Employer’s Liability Insurance (policy) covering the Supplier's liability under the applicable law toward all its employees employed in the provision of the Services with a limit of liability of US\$ 5,000,000 (Five million U.S. dollars) per any one injured person, event and in the aggregate period of insurance. The insurance is extended to indemnify ISR and/or the Israeli Government and/or IPM and/or anyone acting on their behalf in the event that they are deemed to be the employer of any of the Supplier’s employees or are found to bear vicarious liability in respect of the insured’s liability toward its employees.
2. Third Party Liability Insurance (policy) covering the Supplier’s liability under the applicable law towards any third party in respect of any loss or damage caused during the period of the provision of the Services, with a limit of liability of US\$ 5,000,000 (Five million U.S. dollars) for any occurrence and in the aggregate period of insurance.

This policy is extended to include ISR and/or the Israeli Government and/or IPM, subject to a “cross-liability” clause according to which the insurance will be construed to have been arranged separately for each of the insured parties.

3. Professional Liability Insurance (policy) covering the Supplier’s liability under the applicable law for any loss and/or damage to any person and/or entity whatsoever including (but without limiting) ISR and/or anyone on its behalf, as a result for any act, negligence, error or omission committed by the Supplier and/or those acting on its behalf with a limit of liability of US\$ 12,500,000 (Twelve million and five hundred thousand U.S. dollars) for any occurrence and in the aggregate period of insurance.

The insurance does not include any exclusion regarding loss of use or delay due to an insurance incident, unintentional acts of *ultra vires*, unintentional breach of confidentiality and dishonesty of employees.

This policy is extended to indemnify ISR and/or the Israeli Government and/or IPM and/or anyone acting on their behalf for their liability due to any professional act or omission in connection with the Services, subject to a “cross-liability” clause according to which the insurance will be construed to have been arranged separately for each of the insured parties.

The Retroactive Date will be not later than the date of commencement of the Services.

The policy includes an extended reporting period clause of at least 12 months, pursuant to which, in the event that the insured party does not renew the said policy, the policy shall cover damage which originated during the insurance period, with respect to which notification was sent to us during the notification period.

- 4. Products Liability Insurance (policy) Covering the Supplier’s liability under the applicable law in respect of any loss or damage which is caused in connection with and/or due to the Services with a limit of liability of US\$ 12,500,000 (Twelve million and five hundred thousand U.S. dollars) per occurrence and in the aggregate for the period of insurance.**

The insurance is extended to cover ISR and/or the Israeli Government and/or IPM and/or anyone acting on their behalf for liability which may be imposed upon it due to the Services, subject to a “cross liability” clause, according to which the insurance will be construed to have been arranged separately for each of the insured parties.

The policy includes an extended reporting period clause of at least 12 months, pursuant to which, in the event that the insured party does not renew the said policy, the policy shall cover damage which originated during the insurance period, with respect to which notification was sent to us during the notification period.

5. The following provisions apply to the above policies:
- a. The said policies have preference over any other insurance procured by ISR and/or the Israeli Government, and the insurer hereby waives any claim or demand, which it may have with respect to the participation of ISR insurances.
 - b. The said policies include a clause concerning the waiver of the right of subrogation against ISR and/or the Israeli Government and/or IPM and/or anyone acting on their behalf, excluding a person who caused damage with malicious intent.
 - c. The policies described above shall not be reduced or cancelled, without 30 days prior written notification thereof, sent to the ISR via registered mail.
 - d. We are aware that the Supplier alone is liable for payment of the insurance premiums and deductibles.
 - e. The breach in good faith of the terms of the said policies by the Supplier

and/or anyone acting on its behalf shall not prejudice the ISR and/or the Israeli Government and/or IPM rights under the policies.

Yours faithfully,

Insurance Co. Ltd

Signatory's name and position

Attachment R

Confidentiality and Non-Use Undertaking (Supplier)

Date: _____

To:
Israel Railways Ltd.
Tel Aviv Central Train Station
P.O. Box 18085
Tel Aviv 61180
Israel

Confidentiality And Non-Use Undertaking

Whereas Israel Railways Ltd. ("**ISR**") and _____ ("**Supplier**") have entered into agreement no. _____ (the "**Agreement**") for the supply of a fleet of electric multiple units, the design-build and warranty of a maintenance depot and the maintenance by Supplier of a part of such fleet (the "**Project**"); and

Whereas, in connection with the Agreement, Supplier will have access and/or be exposed to, sensitive information relating *inter alia* to ISR, a state-owned entity responsible for national mass transportation, and to a major national infrastructure project with strategic and security implications;

Therefore, as a condition to the disclosure of any information by ISR, Supplier hereby undertakes and agrees as follows:

1. For the purpose of this Undertaking, "**Confidential Information**" shall mean any information of, or in connection with, ISR and/or any third party, disclosed by ISR to Supplier or that Supplier has access to or becomes aware of, in whatever form or media, whether in writing, orally, in graphic, electronic, or electromagnetic form or otherwise, prior or after the execution of this Undertaking, in connection with ISR and/or the Project and/or ISR's sites and premises and/or other contractors and/or projects of ISR, including but without limitation administrative, technical, professional, financial and commercial information, track diagrams, locations of facilities, addresses, operational data and information, information regarding the content of the works and/or the services performed under the Agreement, technical descriptions, know-how, discoveries, processes, research, developments, designs, specifications, characteristics, studies, computer programs and formulae, books, software, product concepts, plans, methods, reports, recommendations, correspondence, data and information regarding quantities and/or quality and/or prices and/or pricing of raw materials, products and/or other materials and/or equipment in use by ISR, information about employees, officers, suppliers, licensors, licensees, customers, contractors and other persons and entities with whom ISR

- does business or has cooperative relationships or other business relationships, and any of their products or services, and all other such data and information that is otherwise disclosed or become known to me and/or is developed or produced by me in connection with ISR and/or the Project.
2. Supplier undertakes not to use the Confidential Information for any purposes whatsoever except the performance of its obligations under the Agreement (the "**Purpose**") and not to sell, grant, make available to, or otherwise allow the use, directly or indirectly, of the Confidential Information by any third party.
 3. Supplier will not disclose, publish, or disseminate Confidential Information to any third party, directly or indirectly, unless expressly authorized in writing by ISR's CEO, and Supplier agrees to take all necessary precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the Confidential Information. Supplier will limit disclosure, access to and awareness, of the Confidential Information only to its employees, consultants and subcontractors who (i) have a need to know such Confidential Information for the Purpose; (ii) have been advised of Supplier's obligations hereunder; and (iii) have signed a confidentiality undertaking towards ISR in a form satisfactory to ISR (such employees, consultants and subcontractors, collectively - "**Authorized Representatives**"). Supplier shall provide ISR with a copy of such undertakings signed by the Authorized Representatives upon ISR's first request. In any event, Supplier shall remain fully responsible and liable for any act or omission by any of its Authorized Representatives in connection with the Confidential Information.
 4. Supplier undertakes to immediately report to ISR any unauthorized disclosure (or suspected disclosure) of Confidential Information, and to fully cooperate with ISR in any action that will be taken by ISR in connection therewith.
 5. Supplier undertakes to participate and to fully cooperate with ISR in any investigation, enquiry and proceedings conducted by ISR or on its behalf in connection with unauthorized use and/or disclosure of Confidential Information, at any time and at any place as may be requested by ISR.
 6. If Supplier is required to disclose the Confidential Information or any part thereof to a tribunal or to a governmental or regulatory agency, Supplier will immediately notify ISR in writing, prior to such disclosure, in order to allow ISR to obtain protective orders maintaining the confidentiality of such Confidential Information. To the extent that ISR shall not be able to prevent such disclosure, Supplier shall only disclose such part of the Confidential Information which disclosure is expressly required as per the above.
 7. At the first request of ISR, Supplier shall promptly return to ISR any document or other material in any form in its possession relating to the Confidential Information and all copies thereof (or, at ISR's request, destroy them), and certify such return and/or destruction in writing to ISR.
 8. ISR exclusively reserves and retains all rights it may have under copyright, patent, trade secret and other laws protecting intellectual property and proprietary rights with respect to the Confidential Information, whether these rights are or may be registered or not, and no license, assignment, transfer or similar right is granted under this Undertaking.

9. Supplier acknowledges that a breach of this Undertaking will cause ISR extensive and irreparable harm and damage, and agrees that ISR shall be entitled to injunctive relief to prevent use or disclosure of the Confidential Information, in addition to any other remedy available to ISR under applicable law.
10. Supplier acknowledges that Section 118 of the Israeli Penal Law 5737 – 1977 applies to the provisions of this Undertaking.
11. Supplier's obligations under this Undertaking shall apply indefinitely. Supplier shall be responsible towards ISR for all losses, damages, or harm of any kind caused to ISR or to any third party whatsoever, regardless if any such losses, damages or harm are characterized as arising from breach of contract, breach of warranty, tort, strict liability, criminal law or otherwise by Supplier and/or any Authorized Representative, and regardless if such losses, damages or harm are foreseeable or not.
12. This Undertaking shall be governed by and construed in accordance with the laws of the State of Israel, excluding its choice of law and conflicts of law rules, and the competent courts in Tel-Aviv, Israel, shall have sole and exclusive jurisdiction over every dispute arising from, or in connection with this Undertaking. However, ISR shall be entitled to seek remedies through the competent courts of any jurisdiction in order to protect its rights under this Undertaking. If any provision of this Undertaking is invalid or unenforceable, the remainder of this Undertaking shall remain in full force and effect.

IN WITNESS WHEREOF, Supplier has signed and executed this Undertaking as of the date first written above.

SUPPLIER:

By: _____

Title: _____

Attachment SConfidentiality and Non-Use Undertaking (the Israeli Affiliate,
Affiliate(s), Subcontractors and employees)

Date: _____

To:
Israel Railways Ltd.
Tel Aviv Central Train Station
P.O. Box 18085
Tel Aviv 61180
Israel

Confidentiality And Non-Use Undertaking

Whereas Israel Railways Ltd. (“**ISR**”) and _____ (“**Supplier**”) have entered into agreement no. _____ (the “**Agreement**”) for the supply of a fleet of electric multiple units, the design-build and warranty of a maintenance depot and the maintenance by Supplier of a part of such fleet (the “**Project**”); and

Whereas, in connection with the Agreement, Supplier will have access and/or be exposed to, sensitive information relating *inter alia* to ISR, a state-owned entity responsible for national mass transportation, and to a major national infrastructure project with strategic and security implications; and

Whereas I, _____, ID _____, am employed/appointed by Supplier or any of its affiliated companies or subcontractors, or providing consulting services to any of the foregoing, and as such I may have access and/or be exposed to the Confidential Information (as defined below);

Therefore, as a condition to the disclosure of any information by ISR, I hereby undertake and agree as follows:

1. For the purpose of this Undertaking, “**Confidential Information**” shall mean any information of, or in connection with, ISR and/or any third party, disclosed by ISR to me or that I have access to or becomes aware of, in whatever form or media, whether in writing, orally, in graphic, electronic, or electromagnetic form or otherwise, prior or after the execution of this Undertaking, in connection with ISR and/or the Project and/or ISR's sites and premises, and/or other contractors and/or projects of ISR, including but without limitation administrative, technical, professional, financial and commercial information, track diagrams, locations of facilities, addresses, operational data and information, information regarding the content of the works and/or the services performed under the Agreement, technical descriptions, know-how, discoveries, processes, research, developments, designs, specifications, characteristics,

studies, computer programs and formulae, books, software, product concepts, plans, methods, reports, recommendations, correspondence, data and information regarding quantities and/or quality and/or prices and/or pricing of raw materials, products and/or other materials and/or equipment in use by ISR, information about employees, officers, suppliers, licensors, licensees, customers, contractors and other persons and entities with whom ISR does business or has cooperative relationships or other business relationships, and any of their products or services, and all other such data and information that is otherwise disclosed or become known to me and/or is developed or produced by me in connection with ISR and/or the Project.

2. I undertake not to use the Confidential Information for any purposes whatsoever except the performance of Supplier's obligations under the Agreement (the "**Purpose**") and not to sell, grant, make available to, or otherwise allow the use, directly or indirectly, of the Confidential Information by any third party.
3. I will not disclose, publish, or disseminate Confidential Information to any third party, directly or indirectly, unless expressly authorized in writing by ISR's CEO, and I agree to take all necessary precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the Confidential Information.
4. *[Note: this clause 4 applies only if the signatory is not an employee]* I will limit disclosure, access to and awareness, of the Confidential Information only to my employees who (i) have a need to know such Confidential Information for the Purpose; (ii) have been advised of my obligations hereunder; and (iii) have signed a confidentiality undertaking towards ISR in a form satisfactory to ISR (such employees, collectively - "**Authorized Employees**"). I shall provide ISR with a copy of such undertakings signed by the Authorized Employees upon ISR's first request. In any event, I shall remain fully responsible and liable for any act or omission by any of my Authorized Employees in connection with the Confidential Information.
5. I undertake to immediately report to ISR any unauthorized disclosure (or suspected disclosure) of Confidential Information, and to fully cooperate with ISR in any action that will be taken by ISR in connection therewith.
6. I undertake to participate and to fully cooperate with ISR in any investigation, enquiry and proceedings conducted by ISR or on its behalf in connection with unauthorized use and/or disclosure of Confidential Information, at any time and at any place as may be requested by ISR.
7. If I am required to disclose the Confidential Information or any part thereof to a tribunal or to a governmental or regulatory agency, I will immediately notify ISR in writing, prior to such disclosure, in order to allow ISR to obtain protective orders maintaining the confidentiality of such Confidential Information. To the extent that ISR shall not be able to prevent such disclosure, I shall only disclose such part of the Confidential Information which disclosure is expressly required as per the above.
8. At the first request of ISR, I shall promptly return to ISR any document or other material in any form in its possession relating to the Confidential Information and all copies thereof (or, at ISR's request, destroy them), and certify such return and/or destruction in writing to ISR.
9. ISR exclusively reserves and retains all rights it may have under copyright,

patent, trade secret and other laws protecting intellectual property and proprietary rights with respect to the Confidential Information, whether these rights are or may be registered or not, and no license, assignment, transfer or similar right is granted under this Undertaking.

10. I acknowledge that a breach of this Undertaking will cause ISR extensive and irreparable harm and damage, and agrees that ISR shall be entitled to injunctive relief to prevent use or disclosure of the Confidential Information, in addition to any other remedy available to ISR under applicable law.
11. I acknowledge that Section 118 of the Israeli Penal Law 5737 – 1977 applies to the provisions of this Undertaking.
12. My obligations under this Undertaking shall apply indefinitely. I shall be responsible towards ISR for all losses, damages, or harm of any kind caused to ISR or to any third party whatsoever, regardless if any such losses, damages or harm are characterized as arising from breach of contract, breach of warranty, tort, strict liability, criminal law or otherwise by me and/or any Authorized Employee (if applicable), and regardless if such losses, damages or harm are foreseeable or not.
13. This Undertaking shall be governed by and construed in accordance with the laws of the State of Israel, excluding its choice of law and conflicts of law rules, and the competent courts in Tel-Aviv, Israel, shall have sole and exclusive jurisdiction over every dispute arising from, or in connection with this Undertaking. However, ISR shall be entitled to seek remedies through the competent courts of any jurisdiction in order to protect its rights under this Undertaking. If any provision of this Undertaking is invalid or unenforceable, the remainder of this Undertaking shall remain in full force and effect.

IN WITNESS WHEREOF, I have signed and executed this Undertaking as of the date first written above.

By: _____

Title: _____

Attachment T

Security

1. The commencement of the Works under the Maintenance Depot Contract, of Warranty and of Maintenance under the Agreement is subject to the prior written approval of the security supervisor of ISR (hereinafter: the "**Security Supervisor**"), in accordance with the following requirements.
2. For purpose of receiving such approval, Supplier undertakes to submit to the Security Supervisor **no later than 14 days prior to the respective date of commencement of the Works** under the Maintenance Depot Contract, of the Warranty and of the Maintenance (as these terms are defined in the Agreement) **or as otherwise instructed by ISR**, a detailed list of those persons who shall act on the behalf of Supplier and/or for Supplier on ISR's projects and/or on the Locations, including employees of Supplier, the Israeli Affiliate, the Affiliate(s) and Subcontractors.

The list shall include all details required in the **Details of Candidates for Security Approvals** form attached hereto and shall also include, for each candidate, an **Approval of Consent for Transferring Criminal Information**, signed by the candidate in the form attached hereto.

3. All employees to be involved in the performance of the Maintenance Depot Contract, of Warranty and/or of Maintenance (as defined in the Agreement) shall have the level of security classification required according to the directives of the National Authority for Information Security (in Hebrew: "הרשות הממלכתית לאבטחה מידע"). Supplier undertakes that non-classified employees shall not be involved in the Works. Supplier shall act according to the instructions of ISR in order to classify all of its employees to the required level. It is made clear that this Section applies both to Israeli and to foreign employees.
4. The Security Supervisor shall be entitled to require from Supplier additional details and/or documents, with respect to any of those employees nominated in the list and Supplier undertakes to provide to the Security Supervisor any such detail and/or document as aforementioned without delay.
5. Without derogating from the aforementioned in Sections 3 and 4 above, it is agreed that ISR is entitled to require that those employees nominated in the list or some of them undergo security examinations and/or security inquiries and Supplier undertakes, at its own expense, to make those persons nominated in the list available to ISR for the purpose of such examinations and/or enquiries.
6. In the event that Supplier requests to add an employee to the list, Supplier shall submit an application on the matter together with all documents mentioned in Section 2 above to the Security Supervisor at least seven (7) days prior to the planned date of commencement of the Works.
7. Supplier undertakes that no person shall act on its behalf on ISR's site or for ISR without having received the approval of the Security Supervisor as set forth above.
8. Any information and/or document provided to ISR by Supplier in accordance with

the provisions of this **Attachment T** shall serve ISR only for the purposes therein, and shall be kept confidential.

9. Approval by the Security Supervisor of engaging residents of the Palestinian territories who are not Israeli citizens is subject, in addition to the aforementioned, to presenting a valid employment certificate, signed by the Civil Administration and/or any approval required according to any instruction of the competent authorities.
10. Approval of engaging foreign employees is subject, in addition to the aforementioned, to presenting valid work and stay permits signed by the Ministry of the Interior and/or any approval required according to any instruction of the competent authorities.
11. In the event that any person is found employed by Supplier on ISR projects and/or on ISR sites, without having received the approval of the Security Supervisor as set forth above, Supplier shall be obligated to pay to ISR liquidated damages in the amount of five hundred (500) NIS for each employee per each day of breach, without ISR having to prove damages.

Such liquidated damages shall be paid without derogating from any other remedy available to ISR under any agreement and/or Applicable Law, including but without limitation termination of Supplier's Works for breach of the undertakings set forth in this **Attachment T**.

Name of signatory and position

Signature and stamp

Date _____

To

Israel Railway Ltd. \ Security Department

Via Fax: 03-6937493

Details of Candidates for Security Approvals

Agreement no.: _____

Description of work: _____

Name of Supplier: _____



Contact details: Name: _____

Telephone: _____ *Fax:* _____

ID number	Family Name	First Name	Father's Name	Date of Birth	Complete Address	Notes

Note: For each employee, a **Consent for Transferring Criminal Information** form signed by the employee himself must be attached.

Request for Personal Security Clearance (PSC)

	1		
Directorate of Security of the Defense Establishment		Ministry of Defense State of Israel	
[REDACTED]			
[REDACTED]			
First Name	Middle Name	Last Name	ID No.
Nationality	Passport No.	Place of Issue	Date of Issue
Place of Birth	Date of Birth	Home Address	
Father's Name		Job Title	
[REDACTED]			
Company's Name		Company's Address	
Country	City	Telephone Number	
[REDACTED]			
[REDACTED]			
[REDACTED]			
Name		Job Title	
Date	Signature & Stamp		

Attachment ULocation Use License Agreement

This License Agreement is made and entered into in Tel Aviv, Israel
this __ day of _____, 2016 (the "Effective License Date")

BETWEEN

ISRAEL RAILWAYS LTD.

Company No. 52-004361-3
of Tel Aviv Central Train Station, P.O.B 18085
Tel-Aviv 61180, Israel
("ISR")

of the first part

AND

("Supplier")

of the second part

Preamble

WHEREAS ISR and Supplier have entered on _____, 2016 into Agreement No. _____ (the "**Supply and Maintenance Agreement**", including for the removal of doubt all attachments thereto, whether or not expressly referred to in this License Agreement), relating *inter alia* to the supply and warranty of a fleet of electric multiple units, design-build and warranty of a maintenance depot and maintenance of a certain part of the fleet (collectively - the "**Supplier's Obligations**"), and this License Agreement is attached as **Attachment U** to the Supply and Maintenance Agreement; and

WHEREAS Supplier wishes to have limited access and to use the Locations for the sole purpose of performing the Supplier's Obligations, under all the terms and conditions of this License Agreement; and

WHEREAS ISR agrees to grant Supplier a non-exclusive, non-transferable and limited license (in time and in scope) to have access and to use the Locations for the License Purpose (as defined below), subject to all of the provisions of the Supply and Maintenance Agreement and of this License Agreement;

NOW THEREFORE, INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO AGREE AS FOLLOWS:

3. **Interpretation**

- 3.1 The Preamble to this License Agreement and all the appendices hereto constitute an integral part hereof.
- 3.2 The Sections headings contained in this License Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this License Agreement.
- 3.3 Unless expressly specified otherwise, all capitalized terms herein shall have the same meaning ascribed to them in the Supply and Maintenance Agreement.
- 3.4 This License Agreement and the Supply and Maintenance Agreement (including for the removal of doubt the Maintenance Depot Contract and the Maintenance Chapter) ,constitute the entire agreement between the Parties relating to the Supplier's Obligations and to the Locations. This License Agreement shall be construed as adding (and not as derogating) from any obligation imposed on Supplier under the Supply and Maintenance Agreement. In the event of any discrepancy, conflict, inconsistency, omission, ambiguity and/or uncertainty between the provisions of the Supply and Maintenance Agreement and the provisions of this License Agreement, , those provisions that best serve the interest of ISR under the circumstances will apply.

4. **Undertakings, Representations and Warranties of Supplier**

Supplier hereby undertakes, represents and warrants to ISR as follows:

4.1 Supplier has:

- 4.1.1 examined this License Agreement (including for the removal of doubt any Appendices thereto) and all other documents compiling this License Agreement, and is satisfied with regard to the data, specifications, terms and conditions under which the License is granted hereunder;
- 4.1.2 examined and been fully content with all of the information provided to it by ISR, including ISR's rules and procedures, the Safety Regulations and the other safety requirements in the Supply and Maintenance Agreement;
- 4.1.3 satisfied itself as to the nature of the climatic and general conditions of any Location (including its ground conditions), the arrangements for the provision of utilities, pipes and cables in, on or over the ground, the form and nature of any such Location, and the risk of injury or damage to property adjacent to any such Location and to occupiers of that property;
- 4.1.4 satisfied itself as to the means of communication with, and access to and through, any and all Location and the surrounds of any such Location, the accommodation it may require, the possibility of interference by any third party who will also have access to or use of any Location and the surrounds of any such Location, the precautions and the times and methods

- of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third party;
- 4.1.5 visited and thoroughly examined the Locations and its surroundings and satisfied itself as to their state and condition (including any equipment therein); accordingly Supplier hereby agrees to be granted the License with respect to the Locations "AS IS" (subject to Section 4.2.3 below), and agrees that such state and condition shall not give rise to any claim by Supplier against ISR for any costs or expenses relating thereto.
- 4.2 Supplier acknowledges that ISR does not give any representation and/or warranty of any kind, express or implied, with respect to the Locations, including but without limitation the following:
- 4.2.1 any implied warranties of fitness for a particular purpose, including the performance of the Supplier's Obligations. Without derogating from the generality of the foregoing, ISR does not represent and/or warrant that the Locations comply with any or all requirements specified in Section 7.4 (Compliance with Laws, Regulations and Standards) of the Maintenance Chapter.
- 4.2.2 ISR does not warrant to Supplier uninterrupted access to, and/or uninterrupted use of, the Locations, which shall be subject *inter alia* to ISR's operational constraints and to any other disposition by ISR.
- 4.2.3 ISR does not warrant that the Locations will stay in the same condition as of the Effective License Date, and ISR shall not bear any responsibility and/or liability to Supplier in connection therewith, including but without limitation any obligation to maintain, enlarge or enhance the Locations.

Supplier hereby irrevocably waives any claim in connection with the use of the Locations and/or any defect in, or failure of, the Locations, including but without limitation any claim that the Supplier's Obligations were not performed in accordance with the requirements of the Supply and Maintenance Agreement as a result of any defect in, or failure of, or insufficient access to, the Locations.

- 4.3 During the entire term of this License Agreement, Supplier's status with respect to the Locations is, and shall at all times be, of a licensee (in Hebrew "Bar Reshut" or "בר רשות") pursuant to the License. Supplier shall not be a protected tenant in accordance with the provisions of the Tenants Protection Law (Consolidated Version), 5732-1972 and/or the provisions of any and all other laws relating to tenant - protection currently in force or which may in the future come into force. Supplier did not and will not pay key money relating to the Locations, and shall not be entitled to receive any payment whatsoever for and as against vacating the Locations, and Supplier does not have any right whatsoever with respect to the Locations and the holding thereof except as expressly specified in this License Agreement.

5. License

- 5.1 ISR hereby grants to Supplier a non-exclusive, non-transferable and limited (in scope and in time) license to:
- 5.1.1 Have access to the Depot Site for performance of its obligations under the Maintenance Depot Contract;
 - 5.1.2 have access to, and use the Maintenance Depot for Maintenance; and
 - 5.1.3 to have access and to use other Locations, subject to ISR's prior written consent in each specific case and only in accordance with the scope of such consent;
- for the sole purpose of, and only to the extent required for, performing the Supplier's Obligations , subject to all of the provisions of the Supply and Maintenance Agreement, of the Maintenance Depot Contract and of this License Agreement (the "**License**" and the "**License Purpose**").
- 5.2 Supplier undertakes, on its behalf and on the behalf of the Supplier's Authorized Employees (as defined below), to use the Locations for the License Purpose only, and for no other purpose whatsoever.
- 5.3 It is clarified that the exercise of the License by Supplier shall be subject to the limitations in the Maintenance Depot Contract and in the Maintenance Chapter (as applicable), and to any instructions by ISR with respect to data protection.
- 5.4 Supplier shall not be required to pay rent for the use of the Maintenance Depot, *however* Supplier shall bear all costs and expenses in connection with the use of the Maintenance Depot (including but without limitation electricity, water, security, communications, etc., and excluding only municipal taxes (in Hebrew - '*arnona*') that will be borne and paid by ISR). If requested by ISR, the provisions applying to the Maintenance Depot and to the use thereof by Supplier shall be further detailed in a lease agreement for the use of the Maintenance Depot, to be entered into by Supplier in a form customary at ISR or as otherwise agreeable to ISR at its sole discretion, by no later than thirty (30) days prior to the scheduled date of Completion of the Maintenance Depot or as otherwise instructed by ISR.
- 5.5 For clarification, the License does not include parking in the Locations and communication infrastructure (telephone, internet, etc.).
- 5.6 Without imposing on ISR any obligations to provide Supplier with any Supplier's Materials, Supplier shall pay to ISR the cost (to ISR) of oil, spendables and consumables supplied to Supplier by ISR, if and to the extent supplied by ISR.
- 5.7 Supplier shall not be entitled to erect any temporary or permanent building of any kind in the Locations (including for the removal of doubt the Maintenance Depot).
- 5.8 Supplier acknowledges that it has been informed that the Maintenance Site is part of a larger area where ISR's facilities will be erected for ISR's activities, and ISR's employees and/or consultants and/or contractors

and/or other third parties on behalf of ISR may use the yard of the Maintenance Depot for passage on a current basis at any time during the term of this License, of the Supply and Maintenance Agreement and/or of the Maintenance Depot Contract, and Supplier shall not have any claim and/or demand towards ISR in connection therewith.

6. **Certain Obligations of Supplier with respect to the Locations**

The provisions in this Section 6 below shall apply to all Locations (including but without limitation the Maintenance Depot).

- 6.1 Supplier shall use the Locations in a normal and reasonable manner, without disrupting the work by ISR or on its behalf at the Locations, and to preserve their wholeness, cleanliness and orderliness.
- 6.2 Supplier will obtain and maintain during the term of this License Agreement any permit, license, authorization and consent of any competent authority as required for the performance of the Supplier's Obligations and of any other obligation in the Locations under this License Agreement and/or under the Supply and Maintenance Agreement.
- 6.3 Supplier shall perform the Supplier's Obligations and use the Locations in a clean, tidy, safe and orderly manner appropriate to the avoidance of damage to property and in accordance with all Applicable Laws, and shall not by its actions cause the Locations to be in an untidy or unsafe condition. Supplier undertakes to keep the Locations used by Supplier and/or to which Supplier had access in a clean and orderly state to the satisfaction of ISR, and in accordance with the requirements of any Applicable Law.
- 6.4 Subject to Section 6.10 below, during the entire applicable License period as specified in Section 13.1 below, Supplier shall be responsible to fully clean, maintain and guard the Depot Site and the Maintenance Depot at its own cost and responsibility (including repair and/or replacement of any equipment), including but without limitation as further detailed in the Supply and Maintenance Agreement.
- 6.5 ISR shall be entitled to enter the Locations at any time in order to check the condition of the Locations, and whether the terms and conditions of this License Agreement are being observed. Supplier hereby undertakes not to deny ISR such free access to the Locations.
- 6.6 For the removal of doubt, nothing herein shall be construed as restricting or limiting in any manner ISR's rights to access, use or make any disposition with respect to the Locations, at ISR's sole discretion. Without derogating from the generality of the foregoing, ISR shall be entitled to perform any works on the Locations and all such works shall be owned solely by ISR. Further, Supplier undertakes to abide to any instruction by ISR in the Locations.
- 6.7 Supplier undertakes to comply with ISR's Safety Regulations as shall be in force from time to time, including but without limitation with respect to Railway Track Overseers and Railway Track Observers (as further detailed in ISR's Safety Regulations).
- 6.8 Supplier undertakes not to create and/or cause and/or allow the existence

of noise, nuisances, fire, and/or hazards and/or damage of any type whatsoever, and shall not use the Locations in any way which deviates from this License Agreement and/or the Service Agreement and/or the provisions of any Applicable Law.

- 6.9 Supplier shall be solely responsible for the use and for all damages (such as, but not limited to, loss, vandalism or any other damage) to, by or with respect to any Location (including but without limitation any equipment, materials and tools of ISR), that were caused directly or indirectly by Supplier as well as damages to, by or with respect to Supplier's Materials (as defined in the Supply and Maintenance Agreement).
- 6.10 Supplier shall promptly report to ISR in writing any damage and/or fault and/or malfunction in the Locations. Without derogating from any other right and/or remedy available to ISR under Applicable Law and/or agreement, ISR shall have the right (but not the obligation) to repair and/or remedy any damage and/or fault and/or malfunction caused by Supplier in any Location, at Supplier's sole cost and expense.
- 6.11 Supplier shall not hang any sign and/or use any advertising media in the Locations, except if and to the extent previously approved in advance and in writing by ISR, at ISR's sole discretion. Such ISR's approval may be subject to conditions, including payment to ISR. Any cost and expenses in connection with such signs and/or advertizing shall be borne and paid solely by Supplier, including but without limitation any fees and/or taxes to local authorities.
- 6.12 Supplier acknowledges that the Locations constitute strategic and key infrastructure of ISR and of the State of Israel and that the use thereof is subject to special security provisions under Applicable Law and under ISR's regulations. Without derogating from the generality of the foregoing and from any confidentiality obligation imposed on Supplier, Supplier undertakes to refrain from photographing the Locations and/or from presenting the Locations to potential customers or in international conventions and exhibitions, professional publications and other similar means of publicity, except with the prior written consent of ISR in each specific case, under ISR's sole discretion.
- 6.13 Except as expressly specified in the Supply and Maintenance Agreement, or as otherwise reasonably required for the performance of the Supplier's Obligations (subject to ISR's regulations and instructions from time to time), and subject always to Section 6.14 below, Supplier shall not be entitled to leave and/or store any Supplier's Materials on the Locations without the prior written consent of ISR in each specific case. It is hereby clarified that ISR shall bear no liability or responsibility for any Supplier's Materials stored and/or used on the Locations which are lost, stolen, damaged, destroyed or otherwise fail.
- 6.14 Supplier shall abide by any instructions of ISR and/or of the Israel Fire and Rescue Services and/or any other competent authority with respect to the prevention, detection and extinction of fire, and Supplier shall purchase at its own responsibility, cost and expense fire extinguishers and any other equipment as required in connection therewith.

- 6.15 Supplier shall not store and/or hold and/or use in the Locations and their surroundings hazardous substances (as defined in the Israeli Hazardous Substances Law 5753 -1993) without ISR's prior written approval at ISR's sole discretion.
- 6.16 Supplier shall not submit any request to any competent authority with respect to the Locations without the prior written consent of ISR at ISR's sole discretion, including but without limitation any application to be registered as the holder (in Hebrew: *מחזיק*) of any Locations and/or any application for an exempt applying to empty premises (in Hebrew: *פטור* "לנכס ריק").
- 6.17 Without derogating from any other right and/or remedy available to ISR under Applicable Law and/or agreement, ISR shall have the right (but is not obligated) to perform any obligation not timely performed by Supplier under this License Agreement, at Supplier's sole cost and expense, subject to a prior written notice to Supplier, and provided that Supplier did not cure such failure until the date specified in such notice.
- 6.18 For the removal of doubt, the provisions of this Section 6 above shall be construed as adding to (and in no event as derogating from) ISR's rights and Supplier's obligations, responsibilities and liability under this License Agreement, the Supply and Maintenance Agreement and any Applicable Law.

7. **Supplier's Authorized Employees**

- 7.1 Supplier shall provide to ISR a list of all personnel of Supplier, the Israeli Affiliate, the Affiliate(s) and all Subcontractors that will work on the Locations (the "**Supplier's Authorized Employees**").
- 7.2 Subject *inter alia* to ISR's security regulations, ISR will provide Supplier's Authorized Employees with entrance badges, and no employee on the behalf of Supplier shall be authorized to enter or stay at any of the Locations without a personnel badge.
- 7.3 Supplier undertakes that the Supplier's Authorized Employees shall be bound by the confidentiality obligations referred to in the Supply and Maintenance Agreement, and shall further act according to all ISR's rules and regulations relating to the Locations, included but not limited to security regulations and ISR's Safety Regulations.
- 7.4 Without derogating from ISR's right to request removal of any Supplier's Authorized Employees under the Supply and Maintenance Agreement, ISR shall be entitled to refuse the entrance to the Locations to any of the Supplier's Authorized Employees not acting according to the aforesaid regulations and/or disrupting ISR's work at the Locations, at ISR's sole discretion.
- 7.5 For clarification, Supplier shall be fully responsible and liable towards ISR for any acts and omissions of the Israeli Affiliate, the Affiliate(s) and all Subcontractors and of all Supplier's Authorized Employees and shall cause them to abide with any applicable provisions in this License Agreement.

8. Payments

- 8.1 Supplier shall pay any amounts that may become due to ISR under this License Agreement upon ISR's first request.
- 8.2 ISR shall be entitled to set-off any amount due by Supplier to ISR from any amount due to Supplier by ISR. Supplier shall not be entitled to set-off any amount due to Supplier by ISR from any amount due by Supplier to ISR.

9. Maintenance Depot Guarantee

The applicable provisions of Section 25 of the Supply and Maintenance Agreement shall apply to the Maintenance Depot Guarantee.

10. Liability and Indemnification

- 10.1 Supplier shall bear the full responsibility and liability for any damage and/or loss and/or compensation which is caused to Supplier and/or Supplier's Authorized Employees and/or the Locations and/or ISR and/or ISR's employees and/or any third parties, as a result of (i) Supplier's use of the Locations; and/or (ii) Supplier's breach of any term or provision of this License Agreement or any Applicable Law; (iii) any act and/or omission of Supplier and/or of Supplier's Authorized Employees. Any amount for which ISR claims for indemnification hereunder shall be paid to it within the time specified in the notice requiring indemnification.
- 10.2 It is agreed between the parties that to the maximum extent permitted under Applicable Law, ISR shall not bear any responsibility and nothing mentioned in this License Agreement and/or the Supply and Maintenance Agreement and/or the lease agreement (if entered into by the parties) shall impose any responsibility of any type or kind on ISR, including responsibility for injury and/or death and/or damage caused to any property, of Supplier, Supplier's visitors, employees or to any third parties whatsoever, when such death and/or injury and/or damage is caused on the Locations, on their surroundings, on the way to the Locations, and/or in connection with maintenance or use of the Locations by Supplier. Supplier undertakes to indemnify ISR for any payment, expense or loss, including legal costs and lawyers' fees incurred by ISR as the result of any damage as aforementioned in this Section 10 above.
- 10.3 Without derogating from any other rights of ISR under any Applicable Law and/or agreement, in the event that any claim is made against ISR, or any lien or attachment is affixed against any of its properties, which claim, lien or attachment relates to or is based on circumstances and/or events which fall within the responsibilities and/or indemnification obligations of Supplier as per Section 10 above, then unless Supplier provides adequate security, to ISR's satisfaction, that the claim will be covered, ISR may settle the matter by paying any such claim or removing such lien or attachment, and recover any amounts required in order to do so by collecting upon the Guarantee.
- 10.4 For clarification, Section 10 above shall be construed to add to, and not to derogate from, any responsibility, liability and/or indemnification obligations imposed on Supplier under the Supply and Maintenance

Agreement.

11. **Insurance**

The insurance provisions in Section 29 of the Supply and Maintenance Agreement shall apply.

12. **Transfer of Rights**

12.1 Section 27 of the Supply and Maintenance Agreement shall apply *mutatis mutandis* to this License Agreement.

12.2 Supplier shall not Transfer (as this term is defined in the Supply and Maintenance Agreement) its rights to use any Locations under this License Agreement to any third party, not authorize any third party to use any Locations, absent ISR's prior written approval in each specific case at ISR's sole discretion, and any attempted Transfer or authorization shall be null and void and of no force and effect.

13. **Term and Termination**

13.1 The term of the License shall be as follows (unless terminated otherwise in accordance with the provisions of the Agreement and/or this License Agreement):

13.1.1 With respect to the Depot Site: as specified in the Maintenance Depot Contract, and until the end of the Maintenance Period.

13.1.2 With respect to the Maintenance Depot: commencing on the date of Completion of the Maintenance Depot, and ending upon the end of the Maintenance Period.

13.1.3 With respect to all other Locations: commencing on the License Effective Date, and ending upon the later between (i) the end of the Warranty Period; or (ii) the end of the Maintenance Period.

13.2 ISR shall not be entitled to cancel or suspend this License other than upon termination of Maintenance and/or the Supply and Maintenance Agreement (in which case the provisions of Section 13.3 below shall apply), *provided however* that in the event that ISR is required to vacate Supplier from the Maintenance Depot, ISR shall provide Supplier with alternative comparable facilities and the Parties shall agree on the implications and reasonable costs applying to the transfer to such alternative facilities.

13.3 In the event that the Supply and Maintenance Agreement is terminated or cancelled or expires, for any reason whatsoever, this License Agreement shall be deemed to have been terminated automatically and simultaneously without a need for any further notice by any party. In the event of partial termination of the Agreement, the provisions of this License Agreement shall be deemed amended accordingly such that the portion of the License required for the performance of the obligations of Supplier under the terminated part of the Agreement shall be deemed automatically and simultaneously terminated without a need for any further notice by any party.

14. Vacation of the Locations

- 14.1 Upon termination of the License for any reason whatsoever, Supplier shall vacate the Locations within thirty (30) days and deliver same to ISR free of all persons, Supplier's Materials or any other object, and in good, clean, orderly and proper condition. This Section shall apply *mutatis mutandis* in the event of partial termination of the License.
- 14.2 Should Supplier fail to vacate the Locations (or any of the Locations) at the time set forth above, then without derogating from any other right and/or remedy available to ISR under Applicable Law and/or under this License Agreement and/or the Supply and Maintenance Agreement, the following provisions shall apply:
- 14.2.1 ISR shall be entitled to remove Supplier's Materials and/or to return the Locations to their previous condition, all at Supplier's sole cost and expense and Supplier hereby waives any claim towards ISR in this matter.
- 14.2.2 ISR shall be entitled to the payment of liquidated damages by Supplier in the amount of twelve thousand (12,000) NIS for each day of delay in vacating the Locations (or any of the Locations) (adjusted as per the provisions of Section 23.7 of the Supply and Maintenance Agreement) and Section 26.4 of the Supply and Maintenance Agreement shall apply to such liquidated damages.
- 14.3 The provisions of this Section above shall apply to the vacation by Supplier of the Maintenance Depot under the provisions of Section 13.2 above and/or upon the end of the Maintenance Period from any reason whatsoever, as applicable.

15. Archaeological Matters, Hazardous Substances and other Discoveries on the Locations

- 15.1 Any antiquity, as such term is defined in the Antiquities Law, 5738-1978, or in any other relevant Applicable Law, dealing with antiquities as the same may be from time to time in effect, whether discovered in a site declared an archaeological site (as defined in the Antiquities Law or in another site which is not an archaeological site and including for the avoidance of doubt burial grounds which is discovered on or under any of the Locations) is property of the Government of the State of Israel and Supplier shall take all necessary precautions to avoid damaging, moving or displacing such finding.
- 15.2 Any dump site, munitions site or any other site containing hazardous substances (including chemicals, toxic and radioactive substances) which is discovered on or under the Locations is the property of the Government of the State of Israel, and Supplier shall take all necessary precautions to avoid damaging, moving or displacing such site.
- 15.3 Immediately upon the discovery of antiquities and/or hazardous substances as specified in Sections 15.1 or 15.2 above, Supplier shall notify ISR of the discovery thereof, and will act according to the instructions of ISR.

- 15.4 Supplier acknowledges that the finding of an antiquity, or any discovery, and rescue operations undertaken by ISR or any other relevant authority shall not in itself justify any delays in the due date for the completion of the Supplier's Obligations, unless such rescue operations shall materially interfere with the Supplier's Obligations, in which event the due date for the completion of the related Supplier's Obligations shall be correspondingly extended.
- 15.5 Other than as expressly stated in this Section 15, Supplier shall not be entitled to any extension of time, compensation or other relief in connection with the occurrence of an event as set forth in this Section 15.
- 15.6 For the removal of doubt, the provisions of this Section 15 do not derogate from the provisions of any Applicable Law, including those concerning mines, natural recourses, archaeological sites, and artifacts and other discoveries.

16. **Compliance with Laws and Regulations**

- 16.1 The exercise of any right and/or the performance of any obligation by Supplier under this License Agreement shall be subject to, and the Supplier shall be responsible for, compliance with Applicable Law and ISR's norms, standards and regulations.
- 16.2 Any incident, injury, disease or dangerous occurrence involving any employee of Supplier, the Israeli Affiliate, the Affiliate(s) and/or any Subcontractor or any equipment belonging to Supplier which requires to be reported under Applicable Law shall be reported by Supplier to ISR in addition to any report to be submitted by Supplier under any Applicable Law.

17. **Miscellaneous**

Section 7.4 (Compliance with Laws, Regulations and Standards) of the Maintenance Chapter, and Sections 14.5 (Safety at Work), 14.8 (Security and Data Protection), 28.3 (Defense against Proceedings), 32 (Settlement of Disputes; Governing Law), 33 (Changes in Legislation), 34 (Confidentiality), 35 (Waiver of Lien), 38 (Independent Contractor Status), 39 (Exercise or non-exercise of rights by the parties), 40 (Entire Agreement; Amendments), 41 (No Third Parties Beneficiaries), 42 (Severability) and 43 (Notices) of the Supply and Maintenance Agreement shall apply *mutatis mutandis* to this License Agreement.

[THE SIGNATURE PAGE IS THE FOLLOWING PAGE]

In witness whereof, the Parties hereto have caused this License Agreement to be executed in accordance with the laws of the State of Israel, all as further set out in detail herein.

ISRAEL RAILWAYS LTD.

SUPPLIER

By: Boaz ZAFRIR

By: _____

Its: CEO

Its: _____

By: Keren ASLAN

By: _____

Its: CFO

Its: _____

Attachment V

Employee Representation and Undertaking Form

(for Supplier's employees)

To: Israel Railways Ltd. ("ISR")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

Undertaking

Whereas: _____ Ltd. ("**Supplier**") performs certain works and/or renders certain services as specified in an agreement signed or to be signed between ISR and Supplier; and

Whereas: I, _____, ID _____, am employed by Supplier and am aware that within the framework of my employment with Supplier I will be performing works for ISR and/or in ISR's premises and/or in ISR's facilities, pursuant to the said agreement;

Therefore, I hereby declare and undertake the following towards ISR:

1. I am aware and agree that Supplier is my sole and exclusive employer, and that Supplier alone is obligated to pay my salary and to provide all other work benefits to which I may be entitled.
2. I do not have, nor shall I have, any claims or demands towards ISR in connection with my employment. ISR shall not be responsible towards me for anything, including but without limitation any damage that may be caused to me, or by me to any third party, as a result of the works and/or services that I will provide to ISR directly or indirectly.
3. I am aware that this document vests rights with ISR.
4. I confirm that I have signed this document after I have read and understood its contents.
5. This document will be governed by the laws of Israel on all substantive aspects, and I hereby consent to the jurisdiction of the courts in Tel Aviv, Israel.

The Employee's Signature

Employee Representation and Undertaking Form**(for employees of the Israeli Affiliate, the Affiliate(s) and Subcontractors)**

To: Israel Railways Ltd. ("ISR")
Tel Aviv Central Train Station (Arlozorov)
P.O.B. 18085
Tel Aviv 61180
Israel

Undertaking

Whereas: _____ Ltd. ("**Supplier**") performs certain works and/or renders certain services as specified in an agreement signed or to be signed between ISR and Supplier; and

Whereas: _____ Ltd. (the "**Employer**") performs certain works and/or renders certain services to Supplier in connection with the agreement between ISR and Supplier; and

Whereas: I, _____, ID _____, am employed by the Employer and am aware that within the framework of my employment with the Employer I will be performing works for ISR and/or in ISR's premises and/or in ISR's facilities, pursuant to the said agreement;

Therefore, I hereby declare and undertake the following towards ISR:

1. I am aware and agree that the Employer is my sole and exclusive employer, and that the Employer alone is obligated to pay my salary and to provide all other work benefits to which I may be entitled.
2. I do not have, nor shall I have, any claims or demands towards ISR in connection with my employment. ISR shall not be responsible towards me for anything, including but without limitation any damage that may be caused to me, or by me to any third party, as a result of the works and/or services that I will provide to ISR directly or indirectly.
3. I am aware that this document vests rights with ISR.
4. I confirm that I have signed this document after I have read and understood its contents.
5. This document will be governed by the laws of Israel on all substantive aspects, and I hereby consent to the jurisdiction of the courts in Tel Aviv, Israel.

The Employee's Signature

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