

Attachment F2

[Note to Participants: for the convenience of the Participants, below are revision marks reflecting changes from the version of this document published by ISR on March 16th, 2016. However, as stated above, this document is provided to the Participants for their convenience only and is not binding upon ISR; without derogating from the above, ISR does not guarantee that all revisions are indeed marked in this document, nor that all revisions marks appearing herein reflect changes actually introduced to this document.]

MAINTENANCE CHAPTER

FOR SUPPLIER MAINTAINED FLEET

Table of Contents

| | | |
|-----|---|----|
| 1. | DEFINITIONS | 4 |
| 2. | MAINTENANCE MANAGEMENT | 5 |
| 3. | MAINTENANCE PLANS | 6 |
| 4. | MOBILIZATION | 7 |
| 5. | MAINTENANCE SERVICES | 7 |
| 6. | EXCLUDED MAINTENANCE WORKS | 12 |
| 7. | PERFORMANCE OF MAINTENANCE | 14 |
| 8. | COORDINATION WITH ISR | 18 |
| 9. | MAINTENANCE DEPOT | 19 |
| 10. | MAINTENANCE TEAM | 19 |
| 11. | SUPERVISORY BOARD | 19 |
| 12. | RECORDS AND DOCUMENTATION | 20 |
| 13. | MAINTENANCE REGIME | 23 |
| 14. | RETURN OF THE UNITS TO ISR AND FINAL TESTS | 24 |
| 15. | END OF SERVICES WARRANTY | 27 |

Annexes

List of Annexes

The following annexes are attached to this Maintenance Chapter and constitute an integral part thereof:

| | |
|-----------------|--|
| <u>Annex 1</u> | Supplier's Maintenance Instructions |
| <u>Annex 2</u> | Key Employees |
| <u>Annex 3</u> | Omitted |
| <u>Annex 4</u> | Form of Certificate of Handover/Return Ready for Operation |
| <u>Annex 5</u> | Maintenance Forms |
| <u>Annex 6</u> | Important Process Workflows |
| <u>Annex 7</u> | Maintenance Reporting Interface |
| <u>Annex 8</u> | Form of Fault Report |
| <u>Annex 9</u> | Quality Assurance |
| <u>Annex 10</u> | Maintenance Regime |
| <u>Annex 11</u> | Form of End of Maintenance Certificate |

Preamble

Maintenance shall be provided by Supplier with respect to the Supplier Maintained Fleet, in accordance with all the provisions of the Agreement (including for the removal of doubt this Maintenance Chapter).

For clarification:

- (i) the provisions of this Maintenance Chapter shall be construed as to add, and not as to derogate, from ISR's rights and from Supplier's obligations, liability and responsibility under the Agreement and/or Applicable Law; and
- (ii) general provisions of this Maintenance Chapter adding to ISR's rights shall not be construed to have been omitted from the Agreement and to apply to Maintenance only, if they add to ISR's rights under the Agreement.

1. DEFINITIONS

Unless otherwise defined herein, all capitalized terms in this Maintenance Chapter shall have the meaning attributed to them in the Agreement. Capitalized terms not defined in the Agreement shall have the meaning ascribed to them below, as specified opposite each of them.

- 1.1 "**Comfort Element Repairs**" - Shall have the meaning indicated in Section 5.5 below
- 1.2 "**Corrective Maintenance**" – Shall have the meaning indicated in Section 5.3 below.
- 1.3 "**Daily Rates**" – Shall have the meaning indicated in Section 1 of Chapter 2 of the Payment Schedule.
- 1.4 "**Depot Equipment**" – Shall have the meaning indicated in the Agreement.
- 1.5 "**Depot Maintenance**" – Shall have the meaning indicated in the Agreement.
- 1.6 "**Escort**" shall have the meaning indicated in Section 5.9.1 below.
- 1.7 "**Excluded Maintenance Works**" shall have the meaning indicated in Section 6.1 below.
- 1.8 "**Fault**" – Shall have the meaning indicated in the Agreement.
- 1.9 "**Fault Report**" – Shall have the meaning indicated in Section 5.1 below.
- 1.10 "**Maintenance**" – Shall have the meaning indicated in Section 5 below.
- 1.11 "**Maintenance Plans**" – Shall have the meaning indicated in Section 5 below.
- 1.12 "**Maintenance Site Manager**" – Shall have the meaning indicated in Section 2.2.2 below.
- 1.13 "**Minimum Annual PPK Payment**" – Shall have the meaning indicated in Chapter 3 of the Payment Schedule".
- 1.14 "**Mobilization**" – Shall have the meaning indicated in Section 4.1 below.
- 1.15 "**Mobilization Payment**" – Shall have the meaning indicated in Chapter 3 of the Payment Schedule.
- 1.16 "**Overhaul**" shall have the meaning indicated in Section 5.2.2 below.
- 1.17 "**Preventive Maintenance**" – Shall have the meaning indicated in Section 5.2 below.

- 1.18 "**Price per Kilometer**" shall have the meaning indicated in the Payment Schedule.
- 1.19 "**Supplier's Maintenance Instructions**" shall mean Supplier's instructions for the Maintenance of the Units, as attached in Annex 1 hereto.
- 1.20 "**Supplier Representative**" – Shall have the meaning indicated in Section 8.1.1 below.

2. MAINTENANCE MANAGEMENT

2.1 Maintenance Representative

- 2.1.1 Supplier hereby appoints to be the Supplier's representative with regards to any and all issues in connection with Maintenance (the "**Maintenance Representative**").
- 2.1.2 The details of the Maintenance Representative are as follows:
- Name: _____
- Title: _____
- Department: _____
- Company: _____
- Address: _____
- Telephone: _____
- Facsimile: _____
- E-mail: _____

2.2 Maintenance Site Manager

- 2.2.1 At least twelve (12) months prior to the scheduled date for the Final Acceptance of the first Unit of the Initial Purchase as specified in **Attachment B** to the Agreement, ~~Supplier's first Maintenance Site Manager shall be appointed and stationed in Israel.~~ Supplier shall, ~~prior to such appointment,~~ provide ISR with a list of the candidates proposed by Supplier for the all the documentation and certificates showing compliance of position of the first Maintenance Site Manager, as well as with all the documentation and certificates showing compliance of such candidates with the requirements in Section 2.2.2 below.
- 2.2.2 The minimum qualifications and experience of the Maintenance Site Manager shall be as follows (the "**Maintenance Site Manager**"):
 - (a) certified electrical or mechanical engineer in the field of rolling stock
 - (b) Seven (7) years of experience in maintenance of rolling stock.
- 2.2.3 The tasks attributed to the Maintenance Site Manager in the course of Maintenance shall include *inter alia* management, coordination and supervision of the following:
 - 2.2.3.1 Hiring of key personnel and other Supplier's employees for Maintenance.
 - 2.2.3.2 SAP implementation.
 - 2.2.3.3 Procurement of Supplier's Material for Maintenance.
 - 2.2.3.4 Overall supervision of the performance of the

Maintenance Depot Contract as the future user of the Maintenance Depot; and

- 2.2.3.5 Procurement of Supplier's Spare Parts stock for the purpose of Maintenance.
- 2.2.4 ISR will have the right (but not the obligation) to meet all candidates presented by Supplier, and to reject or approve any or all of them at ISR's sole discretion. For the removal of doubt, such approval or reject by ISR shall not impose any responsibility or liability on ISR nor derogate from any of Supplier's obligation under the Agreement.
- 2.2.5 Supplier shall appoint the Maintenance Site Manager (after written approval thereof by ISR) by no later than nine (9) months prior to the scheduled date for the Final Acceptance of the first Unit of the Initial Purchase as specified in **Attachment B** to the Agreement. Such appointment shall constitute a condition for the payment by ISR of the first installment of the Mobilization Payment, as further specified in the Payment Schedule.

2.3 **Key employees**

Supplier shall provide key employees which will be dedicated solely to Maintenance of the Supplier Maintained Fleet, as specified in **Annex 2** attached hereto. [*Note to Bidders: Annex 2 will be completed prior to signature of the Agreement, based on the organizational team structure submitted by Bidder to ISR as part of the Technical Proposal, and subject to approval by ISR*]. The terms and conditions of Section 2.2.4 above shall apply with respect to the key employees.

3. **MAINTENANCE PLANS**

- 3.1 Supplier shall submit to ISR for review detailed plans for Maintenance as further specified in Section 9.4 of the Technical Specifications, by no later than six (6) months after issuance by ISR of IPO1, and subject to the provisions of this Section 3 below (the "**Maintenance Plans**").
- 3.2 The Maintenance Plans will be designed by Supplier such as to achieve maximal availability of the Units and of any of their parts and components, and shall demonstrate how Maintenance will be performed by Supplier in the specific Maintenance Depot to be erected by Supplier pursuant to the Maintenance Depot Contract, including but without limitation logistics and compliance with Maintenance timetables.
- 3.3 The Maintenance Plans will include schedules for Maintenance, in accordance with ISR's train timetable and operational work plan.
- 3.4 The Maintenance Plan for Preventive Maintenance will include the technical specifications, instructions and recommendations (i) of Supplier in its capacity as the manufacturer of the Units); (ii) of the suppliers of the various components of the Units (OEM), regarding Maintenance (including for the removal of doubt Overhauls), and will be reviewed by the parties from time to time, based *inter alia* on the analysis of the past malfunctions in the Units.
- 3.5 ISR shall be entitled at any time, after consultation with Supplier, to request modifications to the Maintenance Plans, including but without limitation in the

event that Maintenance is not efficient (to ISR) and/or if the Supplier Maintained Fleet does not comply with any availability and/or reliability and/or punctuality and/or redundancy requirement under the Agreement.

- 3.6 For the removal of doubt, review and/or comment and/or approval of the Maintenance Plans and of any other documents under the Agreement by ISR shall not impose any responsibility or liability on ISR nor derogate from any of Supplier's obligations under the Agreement.

4. MOBILIZATION

4.1 Mobilization Period

4.1.1 Supplier undertakes to complete, by no later than ninety (90) days prior to the scheduled date for the Final Acceptance of the first Unit of the Initial Purchase as specified in **Attachment B** to the Agreement, all actions and preparations necessary to be fully operational and ready to provide Maintenance with respect to all Units in the Supplier Maintained Fleet upon the commencement of the Maintenance Period (as such term is defined in the Agreement) (the "**Mobilization**").

4.1.2 Without derogating from the generality of the above, Mobilization by Supplier shall include *inter alia* recruitment of personnel and completion of all security check procedures with ISR with respect to such personnel, purchase of all Supplier's Materials, purchase of Spare Parts for the provision of Maintenance, organization for the provision of Maintenance, organization in the Maintenance Depot and preparation of procedures for the performance of Maintenance with ISR.

4.1.3 In the event of delay for any reason whatsoever in the performance of Supplier's obligations under the Maintenance Depot Contract, ISR shall be entitled to modify the timetable for Mobilization by written notice to Supplier.

4.1.4 Any and all terms and conditions of the Agreement applying to obligations of Supplier with respect to Maintenance during the Maintenance Period shall apply *mutatis mutandis* to the Mobilization.

4.2 Payment for Mobilization.

4.2.1 Supplier shall be entitled to the Mobilization Payment in accordance with the terms and provisions of the Payment Schedule. For the removal of doubt, the Mobilization Payment shall be paid once and only once and shall not be paid again during the entire term of the Agreement under any circumstances (including but without limitation if ISR exercises at its sole discretion any option granted under the Agreement).

4.2.2 In the event of delay in Mobilization as specified in Section 4.1.3 above or for any reason whatsoever, ISR shall be entitled to delay the payment of the Mobilization Payment accordingly.

5. MAINTENANCE SERVICES

Without derogating from the terms and conditions of the Agreement, Maintenance shall include *inter alia* the services described in this Section 5 below with respect to the Supplier Maintained Fleet ("**Maintenance**"). Unless expressly specified otherwise in this Section 5 below, the consideration for all such services is included in the Price per Kilometer, and include any and all actions which Supplier must perform in connection with such services and all costs (for the removal of doubt, in Israel and abroad) related to any required repair or replacement, transportation, dismounting, mounting and manpower.

5.1 **General**

- 5.1.1 Supplier shall bear full responsibility and liability for any and all Faults in a Unit in the Supplier Maintained Fleet for the entire Maintenance Period, in order to ensure that all such Units shall be at all times operational, reliable and in a condition that follows all legal applicable requirements. Without derogating from the generality of the above, it is hereby clarified that any failure to meet the functions as set out in the Technical Specifications and/or in the Supplier's Maintenance Instructions shall constitute a Fault which must be remedied by Supplier as part of Maintenance.
- 5.1.2 It is hereby clarified that all Warranty obligations of Supplier under the Agreement with respect to the Units 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, discrepancy, omission or ambiguity between provisions applying to Warranty and provisions applying to Maintenance, the provisions most beneficial to ISR shall apply. For clarification, the provisions regarding Excluded Warranty Repairs are not applicable to Supplier Maintained Fleet, regarding which Excluded Maintenance Repairs shall be subject to the payment of additional consideration by ISR.
- 5.1.3 Each Party will inform the other Party of any Fault in any Unit in the Supplier Maintained Fleet promptly after discovery thereof, by submitting a Fault report in the form attached as **Annex 8** (the "**Fault Report**"), with a copy to ISR's Maintenance Control Center, all as further detailed in **Annex 8**. However, wherever the circumstances so require, the Fault shall be reported immediately to the other Party and the Fault Report shall be submitted as soon as reasonably practicable thereafter. In addition, with respect to each Fault, Supplier shall report to ISR the actions undertaken to repair same and the estimated time for final repair thereof.

5.2 **Preventive Maintenance**

- 5.2.1 The extent of Preventive Maintenance is such that during the Maintenance Period, Supplier shall take, at its sole and own expense, any and all actions necessary (including but without limitation overhauls and other preventive maintenance activities required pursuant to Section 7.5 below) in order to prevent any Fault and to ensure consistent and uninterrupted use of the Units in the Supplier Maintained Fleet to the full extent of the Units capabilities, and in accordance with the Technical Specifications, the Supplier's Maintenance Instructions and all other requirements under the

Agreement, and subject always to Applicable Law ("**Preventive Maintenance**").

5.2.2 Preventive Maintenance includes *inter alia* certain overhaul events that, in accordance with the Supplier's Maintenance Instructions and/or in accordance with the OEM maintenance instructions, must be performed on a Unit (i) for the first time after travel by such Unit of at least 750,000 km, and (ii) afterwards at intervals of not less than 750,000 km, all as specified in the Payment Schedule, and as will be further detailed in the Maintenance Plans (each an "**Overhaul**").

5.2.3 For the removal of doubt: (i) Overhauls constitute an integral part of Preventive Maintenance, irrespective of the fact that the consideration for such Overhauls is not included in the Price for Kilometer; (ii) Overhauls are not subject to order by ISR and shall be performed by Supplier in accordance with the schedule specified in the Payment Schedule, and as will be further detailed in the Maintenance Plans.

5.3 **Corrective Maintenance**

5.3.1 The extent of Corrective Maintenance is such that during the Maintenance Period, Supplier shall take, at its sole and own cost and expense (subject to Section 6 below), any action necessary, including repair or replacement of any defective or deficient component or system and correction of any deficient workmanship, as required to repair any Fault and to ensure consistent and uninterrupted use of the Units in the Supplier Maintained Fleet to the full extent of the Units' capabilities ("**Corrective Maintenance**").

5.3.2 The Maintenance team will initiate Works to verify and correct promptly all Faults, and diligently pursue the correction until the same is corrected, such as to minimize the effect thereof on ISR's train traffic, all within the applicable times specified in the Maintenance Regime.

5.3.3 All Spare Parts required for the correction of all Faults shall be available at the Maintenance Depot.

5.3.4 For the removal of doubt, all Fault discovered in the course of servicing by ISR shall be repaired by Supplier under Corrective Maintenance.

5.4 **Handover and Return of the Units**

5.4.1 Subject to Section 7.6 below, ISR shall handover the Units to Supplier in compliance with the coordinated planning (maintenance windows) agreed with Supplier and ISR's Maintenance Control Center. ISR shall use commercial reasonable efforts to timely handover the Units (i) to the Maintenance Depot, or (ii) to another location in ISR's Ashkelon Site, as shall be instructed by ISR, and in this case driving and shunting shall be done by Supplier in accordance with Applicable Law, and ISR's safety and other regulations, or by ISR, as shall be instructed by ISR from time to time.

5.4.2 Supplier shall sign and submit to ISR the Handover/Return Certificate in the form attached as **Annex 4** hereto, after completing Maintenance for a Unit and when such Unit is ready for operation. Return of the

Units to ISR shall be done at the Maintenance Depot or in another location in ISR's Ashkelon Site, as shall be instructed by ISR. For the removal of doubt, Supplier shall be fully responsible and liable for the Unit between handover of the Units by ISR to Supplier and return of the Units by Supplier to ISR.

5.4.3 For clarification, return of Units to ISR shall only be done with respect to entire Units.

5.5 **Comfort Elements Repairs.**

For the purpose of this Section 5.5, "**Comfort Elements Repairs**" shall mean repair and/or replacement of (i) passenger seat; (ii) cushion of passenger seat; and/or (iii) armset of passenger seat. Comfort Element Repairs constitute part of Maintenance for any and all purposes, except as expressly specified in this Section 5.5. below.

5.5.1 The consideration for Comfort Element Repairs is not included in the Maintenance Price (as defined in the Payment Schedule) and the Cost-Plus Mechanism (as defined in the Agreement) shall apply. For the removal of doubt, replacement of upholstery does not constitute Comfort Element Repair and consideration for such replacement is included in the Maintenance Price.

5.5.2 Prior to the performance of any Comfort Element Repair that has been requested by ISR or that, in Supplier's opinion, should be considered by ISR, Supplier shall submit to ISR's approval the list of Comfort Element Repairs proposed, its offer under the Cost-Plus Mechanism and the timetable for the performance of such Comfort Element Repairs (including the number of days the relevant Unit(s) will not be available for revenue service).

5.5.3 The performance of any and all Comfort Element Repairs shall be subject to ISR's prior written approval. All Comfort Element Repairs that ISR has authorized in writing as per the above shall be performed by Supplier as part of the Maintenance and in accordance with its offer above.

5.5.4 For the removal of doubt:

5.5.4.1 ISR shall not have any obligation whatsoever to accept Supplier's proposal under the Cost-Plus Mechanism for the performance of the Comfort Element Repairs and/or to order Comfort Element Repairs from Supplier.

5.5.4.2 ISR shall be entitled to publish tenders regarding any or all Comfort Element Repairs and/or to order Comfort Element Repairs from any Subcontractors and/or third parties.

5.5.4.3 ISR's consent to the performance of any Comfort Element Repairs shall be granted at ISR's sole discretion and ISR shall not have any obligation to approve the performance of any Comfort Element Repair whatsoever, whether by Supplier or by third parties.

5.6 **Servicing.** Upon release of a Unit from the Maintenance Depot such Unit shall have undergone servicing by Supplier, which servicing shall include interior

cleaning, toilet emptying, etc., as further detailed in Section 16.5 of the Technical Specifications.

5.7 **Hot Line**. Supplier shall maintain during the entire Maintenance Period a hotline (by phone, e-mail and SMS) during all ISR's activity hours, in order to provide immediate assistance to drivers of the Units in the Supplier Maintained Fleet or to other ISR's personnel as required, for real time problem prevention and resolution. The hotline service shall be provided in Hebrew by highly qualified and experienced personnel of Supplier who must be able to guide the drivers of the Units or other ISR's personnel how to solve safely every Fault that may arise and which can be resolved during operation, such as to avoid disruption of the operation of such Unit, until repair of such Fault by Supplier after end of operation.

5.8 **On The Road Technical Assistance**

The following provisions shall apply to on road technical assistance by Supplier:

5.8.1 Supplier shall provide during all ISR's activity hours an on-track mobile maintenance unit capable of reaching any point (on lines to which the Units are allocated) within one hundred and twenty (120) minutes following ISR's notification.

5.8.2 The mobile maintenance unit must be able to resolve safely any Fault that the driver of the Unit was not able to resolve with the assistance of the hotline and which can be resolved on the road, as shall be determined by ISR's Maintenance Control Center at its sole discretion, in order to minimize disruption of the operation of such Unit until repair of such Fault by Supplier after end of operation.

5.8.3 The mobile maintenance unit shall include a mobile workshop fully equipped with tools, test equipment and Spares Parts.

5.8.4 In the event that the Fault is not to be repaired on tracks by the mobile maintenance unit, as will be determined by ISR's Maintenance Control Center, then ISR shall tow the Unit. ISR will provide up to 6 (six) towings per Maintenance Year for no charge, and for each additional towing in the same Maintenance Year Supplier shall pay to ISR the amount of five thousand (5,000) NIS (excluding VAT) (such amount to be paid and adjusted in accordance with Section 23.7 of the Agreement). It is however clarified that in the event that towing is required for Excluded Maintenance Works, such towing shall not be counted for the purpose of determining the number of towing free of charge and shall not be subject to payment by Supplier.

5.8.5 For the removal of doubt, Supplier shall maintain sufficient personnel such that 'on the road technical assistance' shall be performed without impairing Supplier ability to timely perform all other Maintenance.

5.9 **Escort**

5.9.1 Supplier shall provide services of escort of Units by senior technicians of Supplier, as may be requested by ISR ("**Escort**"). Such senior technicians shall have an experience of at least five (5) years in maintenance of trainsets similar to the Units, and shall reasonably be able to resolve any Fault during the operation of the Units such as to enable such Unit to travel to the Maintenance Depot for further

maintenance.

5.9.2 The consideration for up to forty (40) workdays of one (1) senior technician in each Maintenance Year during the Maintenance Period is included in the Price Per Kilometer, in any configuration that may be required by ISR (for example two teams of two technicians during ten working days). Additional Escort services shall be subject to payment of the applicable Daily Rates by ISR to Supplier, as further specified in the Payment Schedule.

5.10 **Depot Maintenance.** Supplier shall be responsible for Depot Maintenance as further specified in the Agreement, against payment by ISR of the Depot Maintenance Fees. For the removal of doubt, Depot Maintenance includes maintenance, repair and replacement of the Depot Equipment.

5.11 **Investigation.** Supplier shall forthwith investigate, search for and report to ISR in writing the cause of any Fault or any fault in the facilities and equipment provided by Supplier in the performance of its obligations under the Agreement, as well as failures related to the interfaces between the Units and other infrastructure equipment of ISR (including but without limitation signalling system and/or electrification system). Supplier shall, in cooperation with ISR, identify the causes of such failures and carry out remedial actions on the Units where necessary to eliminate such failures.

5.12 **Warranty on Maintenance Works During the Maintenance Period.**

Any and all works performed by Supplier under Maintenance shall be considered for any and all purposes as part of the Units regarding which the Maintenance are provided, and ISR shall not bear any responsibility or liability with respect to any further Fault in connection with a Fault made good by Supplier, and any such further Fault shall be made good by Supplier at its own cost and expenses in accordance with the provisions of the Agreement.

5.13 **Third Party Warranty.** Without derogating from the provisions of Section 15 below, if Supplier uses products of others carrying a warranty that covers a period longer than the Maintenance Period, then at the expiration of the Maintenance Period (or of the End of Maintenance Warranty Period, as applicable), Supplier will assign its rights towards each such manufacturer's warranty to ISR for no consideration.

6. EXCLUDED MAINTENANCE WORKS

6.1 Excluded from Maintenance are items for which repair or replacement are necessary as a result of damages caused by any of the following:

- (a) vandalism;
- (b) accidents; ~~or~~
- (c) natural disasters; or
- ~~(e)~~(d) war or terrorism.

provided always that such replacement or repair is not required as a result from an act or omission of Supplier and/or any other circumstance attributable to Supplier (the "**Excluded Maintenance Works**").

For the removal of doubt (i) during the Maintenance Period, only repair or

replacement which is required solely as a result of any of the above events will be excluded from the Maintenance; (ii) all repairs and/or replacements which are not required solely as a result of any of the above events shall be deemed to be included in, and covered by, the Maintenance and shall not entitle Supplier to any additional payment (including but without limitation in the form of reimbursement of costs for parts, labor, materials, etc.), which payment is included in the Price Per Kilometer; and (iii) repairs relating to normal wear and tear are included in the scope of Maintenance and such repairs do not constitute Excluded Maintenance Works.

6.2 Notwithstanding Section 6.1 above, at ISR's written request, Supplier shall perform Excluded Maintenance Works, and all the provisions applying to Maintenance shall apply to performance by Supplier of such Excluded Maintenance Works during the Maintenance Period, except that:

6.2.1 ISR shall pay to Supplier additional consideration for such Excluded Maintenance Works, as shall be determined in accordance with Section 6.3 below.

~~6.1.1~~6.2.2 the timetable for the performance of Excluded Maintenance Works shall be agreed between the parties in advance and in writing, and the applicable Maintenance Liquidated Damages as per Annex 10 attached hereto shall apply mutatis mutandis in the event of delays in completion by Supplier of such Excluded Maintenance Works.

~~6.2~~6.3 ISR shall pay the cost of Excluded Maintenance Works, 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 Excluded Maintenance Work:

~~6.2.1~~6.3.1 _____ on a time and material basis as follows:

- (a) Labor cost, to be determined in accordance with the Daily Rates in the Payment Schedule; and
- (b) The price of the Spare Parts as approved by ISR under Section 20.1 of the Agreement.

Or;

~~6.2.2~~6.3.2 _____ The cost of other repairs shall be determined in accordance with the Cost-Plus Mechanism.

~~6.3~~6.4 Any and all works performed by Supplier under Excluded Maintenance Works shall be considered for any and all purposes as part of the Units regarding which the Maintenance is provided, and after completion of any Excluded Maintenance Works, ISR shall not bear any responsibility or liability with respect to any further Fault in connection with such Excluded Maintenance Works, and any such further Fault shall be made good by Supplier at its own cost and expense in accordance with the provisions of the Agreement (including for the removal of doubt this Maintenance Chapter).

~~6.4~~6.5 Supplier shall promptly check Excluded Maintenance Work carried out by another party and notify ISR in writing of all Faults. Subject to the above, For clarification, in the event that ISR elects that any Excluded Maintenance Work on a Unit in Supplier Maintained Fleet will be performed by ISR and/or by any other third party on ISR's behalf, Supplier shall still remain responsible for Maintenance

of such Unit (except that any Fault resulting from repair by ISR and/or a third party shall constitute Excluded Maintenance Works).

7. PERFORMANCE OF MAINTENANCE

7.1 Certain Supplier's Responsibilities under Maintenance

7.1.1 Maintenance shall be performed by Supplier, such that the Units are fully operational, safe and ready for revenue service, at least in accordance with the availability, reliability and other requirements of Annex 10 ("Maintenance Regime"). For clarification, any deviation by Supplier from such requirements shall constitute a material breach by Supplier and without derogating from any other right and remedy of ISR under the Agreement or any Applicable Law, ISR shall be entitled to delay any payment under the Agreement until Supplier fully rectifies such deviation (unless such deviation is solely attributable to ISR).

7.1.2 For the removal of doubt, and without derogating from any provision of the Agreement, Supplier shall be fully responsible towards ISR and towards any third party for any safety issue in relation to any Unit regarding which Maintenance are provided hereunder.

7.1.3 Supplier shall perform at its own expense and risk any and all works and services in accordance with the provisions of the Agreement, including but without limitation any works, supply (including import if applicable) of any and all Spare Parts, Supplier's Materials, components, equipment and materials, performance of any and all activities, and payment of any and all costs and expenses pertaining to the performance of Maintenance.

7.1.4 The description of Maintenance 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.

7.1.5 Notwithstanding anything to the contrary herein contained or implied, Supplier is and shall remain at all times solely responsible and liable for all Maintenance performed and services rendered hereunder, and for any part of the Maintenance carried out by any and all Subcontractors and/or employees and/or independent contractors and/or any vendors of components employed by Supplier during the course of Maintenance.

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

7.1.6 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 Maintenance obligations. Upon completion of the Maintenance Period, ISR may (but shall not be obligated to) purchase the remainder of such Spare Parts from Supplier.

7.1.7 ISR shall not be obligated to order any service not included in the Price

Per Kilometer (including for the removal of doubt services the consideration with respect to which is to be determined under the Cost-Plus Mechanism), and order or non-order of any such services by ISR shall not derogate from Supplier's full responsibility and liability under the Agreement, including but without limitation in connection with the Maintenance Regime.

For clarification,- (i) Overhauls are not subject to order by ISR and shall be performed by Supplier in accordance with the schedule specified in the Payment Schedule and further detailed in the Maintenance Plans, against the consideration specified in the Payment Schedule; and (ii) Depot Maintenance is not subject to order by ISR and shall be performed by Supplier against payment by ISR of the Maintenance Depot Fees.

7.1.8 Supplier undertakes to inform ISR without any delay of any material safety issue relating to the provision of services similar to Maintenance and/or to trainsets similar to the Units, which has occurred in Israel or abroad, of which Supplier becomes aware (even if Supplier was not involved in such safety issue). In addition, Supplier shall notify ISR of any major defects found in electric multiple units manufactured and/or supplied to any third party by Supplier.

7.2 **Discrepancies and Omissions**

7.2.1 Supplier shall be deemed to have included in its prices, wherever a discrepancy between the Supplier's Maintenance Instructions and other documents constituting a part of the Agreement occurs, the best suited (to ISR) type of materials, construction, works or other relevant element, item or unit. No inaccuracies, errors, misstatements, omissions, discrepancies, defective or incomplete descriptions, contradictions or ambiguities in or between any of the provisions of the Agreement, or between any of the provisions of the 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 Maintenance, for relieving or releasing Supplier of any of its responsibilities, duties, obligations or liabilities, for cancellation or termination of the Agreement by Supplier or withdrawal from the Maintenance.

7.2.2 Should any works, matters or things required for the proper execution and completion of the Maintenance be found to have been omitted from the Agreement, ISR 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), all without derogating from Supplier's obligation to execute such Maintenance as instructed by the IPM.

7.2.3 Supplier shall advise ISR in writing, immediately and in any case within no more than five (5) days (or less if necessary under the

circumstances), upon becoming aware of any suspected or actual contradiction, ambiguity, omissions or discrepancies between the provisions of, or any omission in, any of the various documents forming the Agreement.

7.3 **Review and Approval.**

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 and/or the acceptance of any works, under the Agreement.

7.4 **Compliance with Laws, Regulations and Standards.** Supplier shall comply with all the following laws, regulations, norms and standards, as and to the extent applicable to its activities under the Agreement, and in the event of any contradiction, ambiguity, discrepancy or omission between them, the order of precedence shall be as specified below the order of precedence shall be as specified below:

7.4.1 Applicable Law, including but without limitation with respect to (i) emissions; (ii) environment and nature protection; (iii) hazardous substances; and (iv) pollution, noise-disturbance and vibrations.

7.4.2 Israel technical rules, norms and standards

7.4.3 ISR's safety regulations, guidelines, standards, conditions and regulations.

7.4.4 EN/IEC Norms and Standards

7.4.5 UIC leaflets and ISO 9001:2008

7.4.6 Manufacturer's Maintenance Instructions.

7.4.7 Other applicable norms and standards

~~7.4.1 UIC and ISO 9001:2008~~

~~7.4.2 EN standards~~

~~7.4.3 Applicable Law, including but without limitation with respect to (i) emissions; (ii) environment and nature protection; (iii) hazardous substances; and (iv) pollution, noise-disturbance and vibrations.~~

~~7.4.4 ISR's Safety Regulations, guidelines and conditions.~~

~~7.4.5 ISR norms, standards and regulations.~~

~~7.4.6 Generally accepted rules of practice.~~

~~7.4.7 Manufacturer's Maintenance Instructions.~~

7.5 **Maintenance Policy.** Maintenance shall be performed by Supplier in accordance with Supplier's manuals (in its capacity as manufacturer of the Units) and the instructions of the suppliers of the various components of the Units (OEM). Any deviation from the above shall be subject to ISR's prior written approval at its sole discretion, pursuant to Section 8 of the Agreement (and subject always for the removal of doubt to Section 7.6 below).

7.6 **Operational Constraints.** Supplier acknowledges that due to operational constraints of ISR, the operational plan of ISR may deviate from time to time from the maintenance windows required for the full and timely implementation of the manufacturer's instructions. Supplier shall exert best efforts in order to

accommodate such deviations, so that the timely implementation of the manufacturer's instructions is minimally impaired.

- 7.7 **Importation**. Supplier shall be solely responsible to import any Spare Parts, Supplier's Materials and any other materials, tools, parts and equipment required for the performance of Maintenance under the Agreement at its sole cost and responsibility, under Supplier's name. For clarification ISR shall not be required to import, or to provide to Supplier any assistance in connection with the import action of, any Spare Parts, Supplier's Materials or other materials, tools, parts and equipment.
- 7.8 **Cooperation**. Supplier undertakes to reasonably cooperate with any other services provider and/or supplier and/or contractor and/or consultant engaged by ISR, and to furnish ISR with all relevant information reasonably required in connection with Maintenance.
- 7.9 **Timely Performance**. Supplier shall perform Maintenance in accordance with the time schedules in the Agreement and in any attachment hereto, or as otherwise agreed between the Parties. Supplier shall immediately notify ISR (in writing, or orally followed by writing thereafter if the circumstances so require) of any delay in the provision of Maintenance that comes to its knowledge, however it is being clarified that such notice shall not derogate from any obligation of Supplier's hereunder.
- 7.10 **Transparency**. Supplier shall ensure full transparency to ISR in the provision of all Maintenance and in the performance of all its obligations under the Agreement, including but without limitation full access to works, documentation, warehouses, stock management, Faults, repair works and replacement of Spare Parts, etc.
- 7.11 **Certain Other Obligations of Supplier**.

Supplier hereby undertakes and warrants that:

- 7.11.1 In carrying out its obligations under the Agreement, Supplier shall act with due efficiency and economy and in a timely manner, and with at least that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced maintainer of trains.
- 7.11.2 Maintenance shall be performed in a safe manner and free from any risk to the health and well-being of persons using, operating or maintaining the Units and/or involved in their management and free from any risk of pollution, nuisance, interference or hazard.
- 7.11.3 In performing Maintenance, Supplier shall comply with the standards herein referred to and if no standard in respect of any part of the Maintenance is expressly mentioned, Supplier shall comply with standards ensuring best quality of workmanship, material, components and equipment.
- 7.11.4 Supplier shall implement quality assurance procedures as shall be elaborated in a quality assurance plan to be presented by Supplier at least twelve (12) months prior to the scheduled date for the Final Acceptance of the first Unit of the Initial Purchase as specified in **Attachment B** and approved by ISR (whereupon such plan will be appended hereto as **Annex 9** ("Quality Assurance")).
- 7.11.5 Supplier shall in no way during the execution of Maintenance 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.

- 7.11.6 All operations necessary for the execution of Supplier's duties and obligations under the Agreement shall be carried out without unreasonable noise and disturbance and so as not to interfere unnecessarily or improperly with traffic or the convenience of the public or the access to, use and occupation of, buildings, public or private roads or footpaths.
- 7.11.7 Supplier shall participate in any emergency training operations relevant to Supplier in relation to its obligations under the Agreement as reasonably required by ISR, free of charge to ISR.
- 7.11.8 Supplier shall notify ISR as soon as Supplier becomes aware or ought to have become aware that Supplier is, or is expected to be, in breach of the Agreement. For clarification, such notice shall not derogate from Supplier's obligation to timely fulfill all of its obligations under the Agreement nor from any right or remedy available to ISR under the Agreement and/or under any Applicable Law in connection with such breach and/or expected breach.

8. COORDINATION WITH ISR

Supplier shall coordinate the performance of Maintenance with ISR, as further detailed below.

8.1 **Coordination with ISR's Maintenance Control Center**

- 8.1.1 At least one (1) member of the Maintenance Team shall be available at the Maintenance Depot for coordination with ISR's Maintenance Control Center during all ISR's activity hours (the "**Supplier Representative**"). The Supplier Representative will have access to certain information available at ISR's Maintenance Control Center as reasonably required for the performance of the Maintenance by Supplier, such as Faults Reports and changes in the operational plan of ISR.
- 8.1.2 The Supplier Representative will produce data on the Maintenance Regime as further detailed in this Maintenance Chapter, and as may be requested by ISR from time to time.

8.2 **Operational Plan.** ISR shall provide Supplier with a train timetable and an operational work plan. Supplier acknowledges that changes in the train timetable and operational work plan of ISR are expected from time to time, and ISR will make reasonable commercial efforts to inform Supplier of changes involving the Supplier Maintained Fleet two (2) months in advance. The Maintenance Plans shall be reviewed and discussed by the Parties with respect to the train timetable, the operational plan and changes thereof.

8.3 **Daily Coordination.** Supplier shall daily coordinate its activities with ISR, including but without limitation with respect to ISR's daily operational plan.

8.4 **Travel and Stabling in Depots.** Supplier shall coordinate any travel and stabling of Units in the Maintenance Depot with the Depot Operational Manager of ISR and abide to his instructions.

8.5 **Other Coordination.** Supplier shall further coordinate the performance of Maintenance with ISR as required for the performance of Maintenance in accordance with all provisions of the Agreement, and as further detailed in **Annex 6** ("Important Process Workflows").

9. MAINTENANCE DEPOT

- 9.1 ~~Supplier~~ Supplier shall design, build and warrant the Maintenance Depot in accordance with all the terms and conditions of the Maintenance Depot Contract.
- 9.2 The use of the Maintenance Depot by Supplier shall be subject to all of the terms and conditions of the LUL Agreement.
- 9.3 Supplier shall be responsible for shunting within the Maintenance Site.
- 9.4 Supplier acknowledges that the Maintenance Depot may be located in sites simultaneously used by ISR.
- 9.5 Without derogating from the provisions of the Agreement, in the event that Supplier wishes to erect additional Maintenance depots and/or storage areas (at its sole cost, expense and responsibility), Supplier shall locate land owned by third parties for this purpose. Supplier shall request ISR's approval in advance and in writing prior to the erection of any such additional depot or warehouse.
- 9.6 Supplier shall bear full risk in connection with the use of the Maintenance Depot by Supplier or by any third party on Supplier's behalf.

10. MAINTENANCE TEAM

- 10.1 At least one Supplier's Maintenance team shall be at all times (twenty-four hours a day seven days a week, including weekends and Jewish and Israeli national holidays) on duty and ready for departure in the Maintenance Depot. The Maintenance team may be engaged in Maintenance Works at the Maintenance Depot but only if such Works can be terminated immediately at any time (such Works shall exclude, for the removal of doubt, Works necessitating interruption of the electric supply and/or dismantling of any facility).
- 10.2 The Maintenance team shall be composed of qualified personnel as required in order to be able to identify and correct at any time any malfunction in the Units. Such personnel shall be authorized by Supplier to take decisions on site regarding the best way to cope with malfunctions. If ISR deems the Maintenance team not being sufficient to provide all services included in Maintenance, Supplier shall increase the number of members in the Maintenance team appropriately.
- 10.3 The Maintenance team shall be provided by Supplier such communication devices as used by ISR in order to be able to maintain contact with the IPM.

11. SUPERVISORY BOARD

- 11.1 A supervisory board shall be formed by no later than nine (9) months prior to the scheduled date for the Final Acceptance of the first Unit of the Initial Purchase as specified in **Attachment B** to the Agreement (the "**Supervisory Board**") and shall consist of a Deputy Manager of ISR (or any other person appointed by ISR), the Maintenance Site Manager (or any other person appointed by Supplier which is vested with at least similar authority). Any member of the Supervisory Board

shall be entitled to request the IPM and/or the SPM to attend the meetings of the Supervisory Board. The SPM shall provide to the Supervisory Board assistance as reasonably required.

11.2 The Supervisory Board shall be responsible for the overall monitoring and supervision of the performance of the Maintenance, including but not limited to:

11.2.1 Evaluation of the economic and organizational efficiency of the Maintenance and proposals for improvements.

11.2.2 Discussing issues with respect to the application of the Cost-Plus Mechanism.

11.2.3 Discussing Excluded Maintenance Works, including, but not limited to, consideration, reliability and availability. To the extent that the parties disagree as to whether a repair constitutes an Excluded Maintenance Work and are incapable of resolving the disagreement within fourteen (14) days from the date the issue was first submitted to the Supervisory Board, the provisions of Section 32 of the Agreement shall apply. For the avoidance of doubt, no such disagreement shall entitle Supplier to delay or withhold any Works whatsoever.

11.3 Meetings of the Supervisory Board shall be held at ISR's offices or at any other location agreed between the Parties, at least once every calendar month, commencing on the Effective Date, as well as at other times coordinated at either Party's reasonable request at least fourteen (14) days in advance.

11.4 Minutes of all meetings of the Supervisory Board shall be prepared by Supplier and the provisions of Section 11.1.4 of the Agreement shall apply *mutatis mutandis*.

11.5 The resolutions of the Supervisory Board shall be decided by unanimity of ISR and Supplier, and shall bind the Parties for any and all purposes, subject to any ISR's internal approval which may be required for such resolutions to be binding on ISR, and always subject to Section 40.2 of the Agreement.

11.6 For clarification, nothing in this Section 11 shall be construed to derogate from any power, right or authority granted to ISR and/or to any of its representatives under the Agreement and/or under Applicable Law, nor to entitle Supplier to delay or withhold the performance of any of its obligations hereunder.

12. RECORDS AND DOCUMENTATION

12.1 Maintenance Management System.

12.1.1 Supplier shall install and maintain a SAP compatible maintenance management hardware and software system which must be accessible through ISR's SAP system, such as to record and control all activities undertaken in connection with Maintenance. Such system shall be fully operational until the completion of Mobilization and prior to the date of commencement of the Maintenance Period, with all the data and information stored and/or generated by such maintenance management system. In addition, the provisions of Annex 7 ("Maintenance Reporting Interface") shall apply. For clarification, SAP compatible system of Supplier shall be capable to fully interface with ISR's SAP system, however the interfaces from ISR's SAP system shall be developed and

installed by ISR, and Supplier shall provide all required information and fully cooperate in connection with the development and installation of such interfaces.

12.1.2 Without derogating from the generality of the foregoing, Supplier's maintenance management system shall control *inter alia* the following elements:

- a) Configuration
- b) Fault Reports
- c) Preventive maintenance
- d) Corrective maintenance
- e) Modifications and fleet checks
- f) Materials management
- g) Quality assurance

12.2 **Maintenance Log.**

Without derogating from Supplier's obligations under Section 7.10 above, Supplier shall monitor and keep records of the performance of its Maintenance obligations under the Agreement in accordance with the Agreement, all Applicable Laws and in accordance with format and procedures to be agreed with ISR (the "**Maintenance Log**"), and make them available to ISR or submit them to ISR as will be instructed by ISR from time to time, and the following provisions shall apply:

12.2.1 Without prejudice to any of Supplier's obligations under the Agreement, Supplier shall, and shall procure that Subcontractors shall maintain, an accurate, complete, up-to-date and orderly form the following:

- a) a true and correct set of records of personnel and all activities relating to the performance of Maintenance and all related transactions, in such detail and format as may be required by the IPM, including information in respect of Supplier's internal programs and the performance of all Maintenance and its related obligations under the Agreement, and the personnel available to Supplier.
- b) a complete, up to date and orderly documentary record of all transactions entered into by Supplier for the purposes of the Maintenance, in accordance with and as described in more detail in Section 12.1 above.
- c) a log detailing, per each Unit and at the aggregate over the entire Supplier Maintained Fleet, all Faults and the measures taken by Supplier to remedy them, including a detailed list of all Spare Parts and materials used.
- d) Supplier shall be responsible for the correct, up to date adaption of all relevant documentation (including technical, operational or otherwise) of each Unit regarding any necessary changes. 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 prior to the day the modification, adjustment, change or correction was made.

- e) Per each Unit and at the aggregate the entire Supplier Maintained Fleet, all relevant protocols and test sheets with respect to light and heavy Preventive Maintenance, periodic works, revision works, Corrective Maintenance, all of which to be updated no later than three (3) days after completion of the relevant works.
- f) all such other information required by the IPM for the purposes of Maintenance or specified in the Agreement; and
- g) any documentation required by any competent authority.
- h) Any report as required for ISR to monitor the performance of the Maintenance for the purpose of the Maintenance Regime, including but without limitation calculation of the Liquidated Damages.

12.2.2 The Maintenance Log shall be in English, unless and to the extent requested by ISR to be in Hebrew, in which case it shall be translated into Hebrew by a professional translator reasonably acceptable to ISR, at Supplier's sole cost and expense. Translation shall not be a ground for any delay in the submission by Supplier of any Maintenance Log.

12.2.3 All Maintenance Log (including but without limitation any report, record, items of clarification or substantiation as may be required by the IPM), shall be available at all reasonable times for inspection by the IPM, and delivered to the IPM free of charge at least once a month or upon the IPM's first request.

12.2.4 Notwithstanding any other provision of the Agreement, Supplier shall be fully responsible for, and bear the cost of any mistake, inaccuracy, discrepancy or omission in the Maintenance Log, whether or not such Maintenance Log has been approved by the IPM, and Supplier shall correct the same without delay.

12.2.5 Maintenance Log shall be the sole property of ISR.

12.3 Certain Other Reports and Documentation included in the Maintenance Log.

In addition to Section 12.1 above, Supplier shall provide ISR with Maintenance Log as follows:

12.3.1 Daily maintenance forms (in Hebrew) in the format attached in **Annex 5** ("Maintenance Forms").

12.3.2 Monthly (or more frequently, if so instructed by the IPM or as specifically set out in the Agreement or any attachments thereto) reports regarding the performance of the Maintenance, all such reports shall be in Hebrew, and shall detail at least the following:

- a) An updated schedule detailing the specific deviations from any time schedule specified in the Agreement or pursuant thereto and/or otherwise agreed between the Parties. 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 (including number of shifts of Supplier in each Location, the number of actions performed by Supplier in end stations, and other actions performed by Supplier in the course of the Maintenance).
- 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) Copies of quality assurance documents, test results and certificates of materials, and answers to deviation reports.

12.3.3 Supplier shall provide ISR free and unrestricted web access to all such reports.

12.3.4 Supplier shall provide ISR with all assembly and other drawings, technical documentation and information as required in order to perform proper maintenance operations, and updated documents upon every modification of such documents.

12.3.5 Supplier shall timely provide any and all documents required in **Annex 1** ("Supplier's Maintenance Instructions") and as specified therein.

12.3.6 Supplier shall submit all documentation, report, design, drawings and other Maintenance Log 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 Maintenance.

12.3.7 For the removal of doubt, Supplier shall not be entitled to any compensation or payment from ISR with respect to any Maintenance Log and/or drawings and/or report and/or other documents to be provided to ISR under the Agreement.

13. MAINTENANCE REGIME

13.1 **Maintenance Regime.**

13.1.1 Supplier shall be subject to the availability, reliability, safety and timely repair obligations of the Maintenance regime further detailed in **Annex 10** ("Maintenance Regime") (the "**Maintenance Regime**"), all in accordance with the applicable EN norm 50126.

13.1.2 In the event of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty between the provisions of the Maintenance Regime and the applicable EN norm 50126, the provisions of the Maintenance Regime shall prevail, to the extent not derogating from Supplier's obligations under

the EN norm 50126.

13.1.3 For clarification, the Agreement, including this Maintenance Chapter, shall be construed as adding to Supplier's obligations under the EN norm 50126.

13.2 **Liquidated Damages.** In the event that Supplier does not comply with the requirements of the Maintenance Regime, Supplier shall pay to ISR Unit Unavailability Liquidated Damages, Item Unavailability Liquidated Damages, Reliability Liquidated Damages and/or Liquidated Damages for Late Repair, as applicable, all as further detailed in **Annex 10** ("Maintenance Regime") (collectively – the "**Maintenance Liquidated Damages**").

However, it is agreed that the maximum amount of Maintenance Liquidated Damages to which ISR may be entitled under **Annex 10** ("Maintenance Regime") with respect to any Maintenance Year shall not exceed the cap specified in **Annex 10**.

For clarification, the above cap shall only apply to the payment by Supplier to ISR of Maintenance Liquidated Damages under **Annex 10** ("Maintenance Regime") and shall not apply to any other payment and/or liquidated damages under the Agreement and/or under the LUL Agreement).

13.3 **General Provisions Applying to Maintenance Liquidated Damages.**

13.3.1 The Parties acknowledges that the Maintenance Liquidated Damages has been determined after due consideration of the damages the Parties anticipate that ISR will suffer under the circumstances to which such Liquidated Damages 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.

13.3.2 Maintenance Liquidated Damages shall be calculated and paid by Supplier monthly, by no later than the end of the first calendar month subsequent to the month of calculation. The detail of the calculation shall be attached by Supplier to each payment.

13.3.3 Section 23.7 of the Agreement shall apply to the payment of any Maintenance Liquidated Damages by Supplier to ISR (including for the removal of doubt with respect to adjustment).

13.3.4 For the removal of doubt, it is hereby clarified that the different types of Maintenance Liquidated Damages are cumulative, and shall not derogate from any other rights and/or remedies available to ISR under the Agreement and/or Applicable Law (except as expressly specified in Section 15 of Annex 10 attached hereto).

14. **RETURN OF THE UNITS AND OF THE MAINTENANCE DEPOT TO ISR AND FINAL TESTS**

14.1 **Final Return of the Units.** At the end of the Maintenance Period Supplier shall return each Unit to service and maintenance by ISR or on ISR's behalf in good condition, fully operational and well maintained in accordance with the Supplier's manuals (in its capacity as manufacturer of the Units) and highest industry standards ("**Final Return**"). Upon Final Return all Units shall have been maintained in accordance with the requirements in Section 7.5 above, including performance of any overhaul then due.

14.2 **Final Tests Plan**. Six (6) months prior to the expected end of the Maintenance Period, Supplier shall submit to the IPM for approval a plan detailing the complete test procedure and timetable for final inspection and tests of the Units (the "**Final Tests**").

14.3 **General Provisions**. The following provisions shall apply to Final Tests:

- 14.3.1 Supplier shall, at its own expense and risk, complete, adjust and test the Units, to ensure that each of the Units shall be fully operational and ready for use by ISR.
- 14.3.2 The Final Tests shall be performed in accordance with ISR's Safety Regulations.
- 14.3.3 ISR will grant access to test tracks and will provide at its own cost fuel, a driver and a controller for the performance of the Final Tests, all subject to prior written coordination by Supplier with ISR.
- 14.3.4 The times of the Final Tests shall be coordinated between the IPM and the SPM. Supplier shall not be entitled to claim damages, expenses or losses due to the changes in the timetable of the Final Tests by ISR.
- 14.3.5 ISR's representatives (in addition to ISR's driver and controller) shall be entitled to attend any and/or all Final Tests performed by Supplier. For that purpose Supplier shall give ISR reasonable notice prior to the date of performance of the relevant Final Test. Should ISR not exercise its right as per the above, Supplier shall perform the Final Tests without ISR's representatives. It is hereby clarified that ISR shall be entitled to have a third party attend the Final Tests on its behalf, and Supplier shall fully cooperate with such third party.
- 14.3.6 For the removal of doubt, the presence of an ISR representative or any third-party inspector on its behalf during the Final Tests or other inspections shall not relieve nor derogate from Supplier's obligations to execute and complete the Final Tests in strict compliance with the requirements of the Agreement.
- 14.3.7 If on any Final Test a Unit, or any part or component thereof (including any material or equipment used in connection therewith), is proven to be faulty or defective and/or not in accordance with the Technical Specifications and/or Supplier's Maintenance Instructions, Supplier shall (at its own cost) promptly, without derogating from any other right of ISR under the Agreement or any Applicable Law, either repair the defect or replace the faulty item at ISR's discretion, and ensure its compliance with the Agreement. Thereafter the relevant Final Test shall be repeated. For the removal of doubt, ISR shall at its sole and absolute discretion determine whether or not any test is correctly performed and successfully completed, provided that such discretion will be exercised reasonably by ISR.
- 14.3.8 Supplier shall keep full and accurate written reports with regard to the Final Tests performed by Supplier. Upon completion of the Final Tests, Supplier shall provide ISR with a complete and organized volume of all Final Tests reports.
- 14.3.9 For the removal of doubt, the Final Tests shall be executed by Supplier at its own cost, expense and responsibility.

14.4 **End of Maintenance Certificate.** Promptly after Supplier's successful completion and passing of the Final Tests to ISR's satisfaction with respect to each Unit, the IPM shall issue a signed end of Maintenance certificate per each Unit in the form attached in **Annex 11** (the "**End of Maintenance Certificate**"). It is hereby clarified that only issuance of the signed End of Maintenance Certificate with respect to a specific Unit shall constitute the expiration of the Maintenance Period for such Unit.

14.5 **Punch List.** The IPM may at its sole and absolute discretion affix to the End of Maintenance 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, and the following provisions shall apply:

14.5.1 ~~As a condition for the issuance of an End of Maintenance Certificate with a punch list as per the above, Supplier shall, if the IPM so requests, 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 25.9 of the Agreement shall apply.~~ The Maintenance Guarantee and the End of Maintenance Warranty Guarantee shall secure the completion by Supplier of all items listed in the punch list.

14.5.2 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.

14.5.3 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 on the punch list by the dates noted thereon. Said consequences shall not derogate from ISR's right to indemnification or any other remedy according to the Agreement or under Applicable Law.

14.6 **Training.** Supplier shall provide training to managers, operational, technical and other personnel etc. of ISR or any third party on its behalf, in order to enable ISR or any such third party on its behalf to perform Maintenance after the termination of the Maintenance Period. Training shall include a process of transfer of all information, knowledge and know-how with respect to the Units in Supplier Maintained Fleet and the maintenance thereof. A plan and schedule for training shall be submitted by Supplier for ISR's comments and approval at least six (6) months prior to the end of the Maintenance Period.

14.7 **Retransfer of Technical Documentation.**

All technical documents have to be retransferred, in a complete, up-to-date and comprehensive condition, and shall contain at least the following:

- (a) The fully updated logbook for each vehicle;
- (b) If applicable, updates and changes to the Maintenance and/or maintenance instructions;
- (c) Modifications or new editions of the manuals (driver manual, maintenance manual, service manual, etc.);
- (d) Verification of all changes made on the Units, including voluntary or obligatory changes, compiled in a specific part of the logbook;

- (e) Complete and reliable proof that the respective Unit absolutely fulfills all relevant regulations and Applicable Law and that the Unit was regularly maintained over the complete Maintenance Period as prescribed, unless such proof is contained in the logbook.
- (f) The technical Unit documentation handed over by the manufacturer which might have been updated in the meantime. There, all changes on the Unit must have been incorporated completely and traceable, so that the documentation fully reflects the current Unit condition.

14.8 Maintenance Depot.

Supplier shall 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 Section 41.9 of the Maintenance Depot Contract.

15. END OF SERVICES WARRANTY

15.1 End of Maintenance Warranty Period

"**End of Maintenance Warranty Period**" shall mean the period commencing on the end of the Maintenance Period, and, with respect to any specific Spare Part installed or workmanship undertaken less than two (2) years before the end of the Maintenance Period, as the case may be, ending after the lapse of two (2) years from installation or undertaking, as the case may be (except in the case of a Spare Part the intended design life of which is less than two (2) years, in which case the End of Maintenance Warranty Period for that Spare Part shall be the intended design life of such Spare Part).

15.2 Extent of the End of Maintenance Warranty

15.2.1 Without prejudice to any of ISR's rights under the Agreement, during the End of Maintenance Warranty Period, with respect to the Spare Parts covered thereby, Supplier shall, at its own cost and expense make good any defective or deficient Spare Parts (including for the removal of doubt any workmanship in connection with the dismantling of the defective Spare Parts and the fitting of the new Spare Parts), and any deficient workmanship, supplied and/or performed by Supplier under the Agreement and/or any damages to the Units resulting therefrom (the "**End of Maintenance Warranty Defect**") during the End of Maintenance Warranty Period (the "**End of Maintenance Warranty**"). ISR shall notify Supplier in writing as soon as reasonably practicable after it becomes aware of such End of Maintenance Warranty Defect.

15.2.2 For clarification, any and all terms and conditions of the Agreement applying to the obligations of Supplier with respect to the Maintenance during the Maintenance Period shall apply *mutatis mutandis* to the End of Maintenance Warranty.

15.3 End of Maintenance Warranty Guarantee

In order to secure the performance of all of its obligations under the End of Maintenance Warranty, Supplier shall furnish to ISR an End of Maintenance Warranty Guarantee as further specified in Section 25.8 of the Agreement.

15.4 Remedial by ISR

If Supplier does not remedy any End of Maintenance Warranty Defect within seven (7) days of being notified by ISR, ISR may proceed to remedy the End of Maintenance Warranty Defect at Supplier's expense. If ISR remedies an End of Maintenance Warranty Defect, the Supplier's warranty obligations under Section 15.1 above shall not apply to such remedial works carried out by any person other than Supplier or on its behalf nor to any End of Maintenance Warranty Defect which is solely consequential upon the remedial work being carried out by any person, other than the Supplier or on its behalf, but shall otherwise not affect any other rights which ISR may have against the Supplier concerning that End of Maintenance Warranty Defect or would have had if Supplier (rather than ISR) had remedied the End of Maintenance Warranty Defect, including the Supplier's obligation to provide the Maintenance.

Annex 1

Supplier's Maintenance Instructions
(in Supplier's capacity as manufacturer of the Units)

[Note: to be provided by Supplier and attached prior to execution of the Agreement]

Annex 2

Key Employees

The employees in the following positions are defined as key employees and their employment is subject to all the conditions in Section 2.3 of the Maintenance Chapter:

[Note to Bidders: this Annex will be completed prior to signature of the Agreement, based on the organizational team structure submitted by Bidder to ISR as part of the Technical Proposal, and subject to approval by ISR]

Annex 3

Omitted

Annex 4

Form of Certificate of Handover/ Return Ready For Operation

The Certificates of Handover/ Return Ready for Operation are to be registered in a document of the same name, recorded by Supplier in ISR's Maintenance Control Center.

For this document, the following information is to be registered before any activity of Supplier on the trains is made:

| Handover by ISR to Supplier | |
|-------------------------------------|--|
| Trainset no. | |
| Location of the Unit (track-no.) | |
| Date / time (to the minute) | |
| Planned activity | |
| “Unit handover” – signed by ISR | <hr/> (by the ISR’s driver and/or other ISR's representative) |
| “Unit blocked” – signed by Supplier | <hr/> (by the Supplier’s responsible manager in ISR's Maintenance Control Center) |

(the single work orders are separate enclosed documents)

The following further information is to be registered after having finished any activity on the trainsets by the SP:

| Return by Supplier to ISR "Ready for Operation" | |
|---|---|
| Date / time (to the minute) | |
| Location of the Units | Maintenance Depot |
| Executed activities | |
| Operations restricted comments | |
| “Unit released ready for operation” – signed by Supplier | <hr/> (by the Supplier’s responsible manager in the ISR's Maintenance |

| | |
|---------------------------------|--|
| | Control Center) |
| “Unit returned” – signed by ISR | <hr/> (by the ISR’s driver and/or other ISR's representative) |

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

Annex 5

Maintenance Forms

[Note: to be prepared and attached by the Parties by no later six (6) months prior to the scheduled date for the Final Acceptance of the first Unit of the Initial Purchase as specified in Attachment B to the Agreement.]

Annex 6

Important Process Workflows

[Note: to be prepared and attached by the Parties by no later six (6) months prior to the scheduled date for the Final Acceptance of the first Unit of the Initial Purchase as specified in Attachment B to the Agreement.]

Annex 7

Maintenance Reporting Interface

[Note: to be prepared and attached by the Parties by no later six (6) months prior to the scheduled date for the Final Acceptance of the first Unit of the Initial Purchase as specified in Attachment B to the Agreement.]

Annex 8

Form of Fault Report

[Note: to be reviewed and agreed by the Parties by no later six (6) months prior to the scheduled date for the Final Acceptance of the first Unit of the Initial Purchase as specified in Attachment B to the Agreement.]]

Failure-Report of Category A and B & Serial Failures C

| | | |
|--------------------------------|------------------------------|---------------------------------|
| Vehicle No.: | | Complaint Date ISR |
| Failure category | A B | Complaint No. |
| Faulty component/part Bogie | serial C Quantity claimed | Mileage: km Date of failure: |
| Air condition unit | | Detailed time of failure |
| Traction system | | |
| Braking system | | |
| Safety systems | | |
| Door system | | |
| Equipment | | |
| Carbody | | |
| Other | | |

| | |
|---|------|
| <u>1 Team ISR and Service Provider</u> | |
| | Name |
| | Tel. |
| <u>2 Fault Description</u> | |
| | |

Annex 9

Quality Assurance

[Note: to be prepared and attached by the Parties by no later six (6) months prior to the scheduled date for the Final Acceptance of the first Unit of the Initial Purchase as specified in Attachment B to the Agreement.]

Annex 10

Maintenance Regime

Supplier shall ensure the availability and reliability of the Supplier Maintained Fleet and of each Unit therein in accordance with the requirements specified in the Technical Specifications, in the Maintenance Chapter (including for the removal of doubt Annex 1 to the Maintenance Chapter (Supplier's Maintenance Instructions)), in the Agreement and in this Annex 10 below.

For the removal of doubt, it is hereby clarified that the different types of Maintenance Liquidated Damages in this Annex 10 below are cumulative, and shall not derogate from any other rights and/or remedies available to ISR under the Agreement and/or Applicable Law.

It is further clarified that nothing contained herein shall be construed as a representation or undertaking by ISR that the proportion between Short Units and Long Units in Supplier Maintained Fleet will be 25/75 at any time during the Maintenance Period (unless expressly specified otherwise in the Agreement), *however* change in such proportion for any reason whatsoever shall not affect the provisions of this Annex 10.

All amounts stated in this Annex 10 are in NIS (excluding VAT). 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 Annex 10.

I. PERIODS

1. The terms and conditions of this Annex 10 below shall apply to all Units in Supplier Maintained Fleet commencing on the date of issuance by ISR of the Final Acceptance Certificate for at least ten (10) Units ordered under IPO1, and until the end of the Maintenance Period for any reason whatsoever.
2. *However*, for Faults occurring during the period commencing on the date of issuance by ISR of the Final Acceptance Certificate for at least ten (10) Units and until the date of issuance by ISR of the Final Acceptance Certificate for at least twenty four (24) Units in Supplier Maintained Fleet, the applicable Maintenance Liquidated Damages shall only amount to seventy five percent (75%) of the amounts specified for each type of Maintenance Liquidated Damages in this Annex 10 below.
3. Where applicable, Maintenance Liquidated Damages shall be calculated annually per Maintenance Year, and '*pro-rata*' for a part of a Maintenance Year during the following periods:
 - 3.1 the period between the date of issuance by ISR of the Final Acceptance Certificate for at least ten (10) Units and the beginning of the next Maintenance Year;
 - 3.2 the last months of the Maintenance Period, if the Maintenance Period will be terminated prior to the end of a Maintenance Year.

II. AVAILABILITY

4. Units Availability Indices

Based on the principles and values defined in Sections 4.1, 4.2 and 4.3 below, the actual availability of the Units in Supplier Maintained Fleet shall be calculated in accordance with the availability indices specified in Sections 4.4 and 4.5 below.

4.1 Counting Time

The Availability (as defined in Section 4.2 below) of all Units in Supplier Maintained Fleet shall be checked twice daily, at 6:00 AM and at ~~16~~4:00 PM, from Sunday to Friday included (and except during such Jewish holidays where there is no train traffic) (each of such 6:00 AM and 16:00 PM checks – a "**Counting Time**"). For the removal of doubt, the counting shall apply to all Units in Supplier Maintained Fleet, whether located on ISR's tracks and/or stations or in the Maintenance Depot.

4.2 Available Units - $QA(t_c)$

Availability of a Unit shall be as defined in this Section 4.2 below ("**Availability**" and "**Available**").

4.2.1 For the purposes of this Annex 10, a Unit shall only be deemed to be available for revenue service if such Unit has been returned 'ready for operation' to ISR in accordance with all the provisions of the Maintenance Chapter.

4.2.2 A Unit shall be deemed to be 'ready for operation' only if such Unit complies with all of the following requirements:

4.2.2.1 The Unit fulfils all criteria defined by the manufacturer for safe and fully performant operation, as specified in Section 5 of the Technical Specifications.

4.2.2.2 The Unit is free of any Fault of level "significant", "critical" or "uncritical" as defined in the Technical Specifications.

4.3 Total Quantity of Units in Supplier Maintained Fleet - $Q_o(t_c)$

$Q_o(t_c)$ is the number of Units in Supplier Maintained Fleet upon any Counting Time, for the sole purpose of calculating the value $A_{cs}(t_c)$ in Section 4.4 below. For this purpose, Supplier Maintained Fleet shall be deemed comprised upon any Counting Time of all Units included in Supplier Maintained Fleet, excepting only:

4.3.1 Units which are not available as a sole result of an accident, natural disaster, ~~or~~ vandalism, war or terrorism, as shall be demonstrated by Supplier to ISR at ISR's satisfaction, only for the time approved by ISR in advance and in writing for the performance of the damage repair.

4.3.2 Units which are not available for reasons attributable solely to ISR, as shall be demonstrated by Supplier to ISR at ISR's satisfaction;

4.3.3 Units which are undergoing Overhauls, only for the time approved by ISR in advance and in writing for the performance of such Overhauls.

4.4 “Single-Sample-Availability rate”- ($A_{CS}(t_c)$)

Single sample availability ($A_{CS}(t_c)$) is the rate of Availability in Supplier Maintained Fleet, checked on one (1) single Counting Time. For the removal of doubt, two (2) “Single-Sample-Availability” values will be determined for each day (one at 6:00 AM and one at 16:00).

The “Single-Sample-Availability” rate shall be calculated as follows:

$$A_{CS}(t_c) = \frac{QA(t_c)}{Q_o(t_c)}$$

Where:

A_{CS} - Single-Sample-Availability rate

t_c - A given Counting Time (as defined in Section 4.1 above)

$QA(t_c)$ - the quantity of available Units upon such given Counting Time, as defined in Section 4.2 above.

$Q_o(t_c)$ - the total quantity of Units in Supplier Maintained Fleet upon such Counting Time as defined in Section 4.3 above.

4.5 “Average Yearly-Availability”

For each Maintenance Year, the Average Yearly Availability A_{CY} shall be calculated as the arithmetic average value of all “Single-Sample-Availability” rates calculated during such Maintenance Year, as follows:

$$A_{CY} = \frac{1}{n} \sum_{C=T-n}^T A_{CS}(t_c)$$

Where:

A_{CY} – The Average Yearly Availability in a specific Maintenance Year

n – the total number of Counting Times in such specific Maintenance Year

C - the first Counting Time in such Maintenance Year

T - the last Counting Time in such Maintenance Year

5. **Units Unavailability Liquidated Damages**

5.1 Minimum Thresholds

In the event that the Single-Sample-Availability and/or the Average Yearly Availability do not reach the minimum thresholds set forth below, Supplier shall pay to ISR “Single-Sample-Availability” Liquidated Damages and/or “Average Yearly-Availability” Liquidated Damages in accordance with this Section 5 below (the “Units Unavailability Liquidated Damages”).

| Minimum Units Availability Thresholds | |
|--|--------------------------------|
| Single-Sample-Availability-Threshold $A_{min;CS}$ [Note: to be calculated in accordance with $A_{min;CY}$ in the line below and rounded to the lower integer.] | $[Q_{o(tc)} * A_{min;CY}] - 1$ |
| Average-Yearly-Availability-Threshold ($A_{min;CY}$) | 96.5%* |

**[Note to Bidders: Bidder is requested to propose in its Technical Proposal minimum average yearly availability threshold regarding Short Units and minimum average yearly availability threshold regarding Long Units, which both must be equal or higher than 96.5%. The minimum average yearly availability threshold proposed by Bidder and applicable to all Units in Supplier Maintained Fleet will be calculated as follows:*

| |
|--|
| $A_{min;CY} = 0.25 * (A_{min;CY})_S + 0.75 * (A_{min;CY})_L$ |
|--|

Where:

$A_{min;CY}$ - minimum average yearly availability threshold proposed by Bidder and applicable to all Units in Supplier Maintained Fleet.

$(A_{min;CY})_S$ - minimum average yearly availability threshold proposed by Bidder and applicable to Short Units in Supplier Maintained Fleet.

$(A_{min;CY})_L$ - minimum average yearly availability threshold proposed by Bidder and applicable to Long Units in Supplier Maintained Fleet.

It is hereby emphasized that the values proposed by Bidder hereunder with respect to minimum average yearly availability thresholds must be equal to the applicable availability values proposed by Bidder for the purpose of Attachment M of the Agreement.

In the event that Bidder will propose in its Technical Proposal a minimum average yearly availability threshold higher than 96.5%), the value $A_{min;CY}$ in the table above shall be amended accordingly, and the Maintenance Availability Liquidated Damages shall be calculated based on such value proposed by Bidder.]

5.2 “Single-Sample-Availability” Liquidated Damages

In the event that upon any Counting Time the Single Sample Availability does not reach the minimum threshold defined in Section 5.1 above, Supplier shall pay to ISR "Single-Sample-Availability" Liquidated Damages as set forth in the table below:

| Single Sample Availability Liquidated Damages | |
|--|----------------------------------|
| $Q_{A(tc)} < A_{min;CS}$ | NIS 6,000 per non-available Unit |

For the removal of doubt, if Single Sample Availability is below the minimum threshold defined in Section 5.1 above upon several consecutive Counting Times, Single Sample Availability Liquidated Damages shall apply separately for each Counting Time.

And by the way of example only, Single Sample Availability Liquidated Damages may apply twice in the same day, if the minimum threshold is not reached at 6:00 AM and at 16:00.

5.3 “Average Yearly-Availability” Liquidated Damages

In the event that in any Maintenance Year, A_{CY} (as defined in Section 4.2 above) will be lower than $A_{min;CY}$ (as defined in Section 5.1 above), the Average Yearly-Availability Liquidated Damages will be calculated such that a different amount of liquidated damages shall be applicable to different portions of the Deviation, as detailed in the table below and all as applicable depending on the extent of the Deviation.

'Deviation' shall mean the percentage equal to: $A_{min;CY}$ minus A_{CY}

| Average Yearly Availability Liquidated Damages per portion of the Deviation | |
|--|------------------------------------|
| Portion of the Deviation comprised between 94.5% and $A_{min;CY}$ | NIS 100,000 per tenth of a percent |
| Portion of the Deviation comprised between 92.5% and 94.49% (if applicable) | NIS 125,000 per tenth of a percent |
| Portion of the Deviation comprised between 0% and 92.49% (if applicable) | NIS 150,000 per tenth of a percent |

And by the way of example only:

if $A_{min;CY}$ is equal to 96.5% and A_{CY} is equal to 92%, then the Deviation is equal to 4.5%, and the Average Yearly Availability Liquidated Damages applicable to such Deviation will be calculated as follows:

96.5% - 94.5% = 2% = twenty (20) tenths of percent

94.5% - 92.5% = 2% = twenty (20) tenths of percent

92.5% - 92% = 0.5% = five (5) tenths of percent

Average Yearly Availability Liquidated Damages =

*20*NIS100,000+20*NIS125,000+5*NIS150,000 = NIS5,250,000*

- 5.4 Average Yearly Availability Liquidated Damages applicable in any Maintenance Year shall be calculated by no later than the end of the first month of the next Maintenance Year.
- 5.5 All amounts of "Single-Sample-Availability" Liquidated Damages imposed on Supplier in such Maintenance Year shall be deducted from the final amount of the Average Yearly Availability Liquidated Damages to be paid by Supplier to ISR with respect to such Maintenance Year.

6. **Item Unavailability Liquidated Damages**

- 6.1 ISR shall have the right to decide, on a case-by-case basis and at its sole discretion, that a Unit presenting no more than one (1) Fault in each category in the table below shall be deemed Available (with limitations) at any Counting Time, *however* Supplier shall pay to ISR liquidated damages for all such Fault(s) as follows ("Item Unavailability Liquidated Damages"):

| Unavailable Item | Liquidated Damages per Fault |
|---|------------------------------|
| One driven axle unpowered | NIS 3,000 |
| One door out of service | NIS 3,000 |
| One toilet out of service | NIS 2,000 |
| One of two HVAC systems per vehicle is out of service | NIS 2,000 |

For clarification:

- 6.1.1 Independent multiple Faults shall be counted independently.
- 6.1.2 If the same single Fault is detected upon several Counting Times, it shall trigger Item Unavailability Liquidated Damages upon each Counting Time.
- 6.1.3 Unit with more than a Fault in each of the above items shall not be deemed Available.
- 6.2 Item Unavailability Liquidity Damages under this Section 6 above shall not apply to a Fault resulting solely from accident, natural disaster, ~~or~~ vandalism, war or terrorism, as shall be demonstrated by Supplier to ISR at ISR's satisfaction, and only for the time approved by ISR in advance and in writing for the performance of the damage repair.

III. RELIABILITY

7. The following provisions shall apply to the measure of Reliability, and to Reliability Liquidated Damages.
- 7.1 Reliability performance is measured to identify the fault-free traveled mean distances (MDBF or mean distance between failures), by counting the number of Faults occurring in a Unit travelling for any purpose whatsoever and which was Available upon the last Counting Time preceding the occurrence of such Fault.
- 7.2 For this purpose, and without derogating from Supplier's obligations with respect to any Fault detected otherwise, the data generated by ISR's log (computerized failure detection system in the Units) shall constitute conclusive evidence of the occurrence of any Fault.
- 7.3 Faults during operation of a Unit shall be divided into the following categories: significant, critical, uncritical and negligible, as further detailed and defined in the Technical Specifications.
8. Supplier shall pay Reliability Liquidated Damages for any deviation from the Reliability targets specified in the table below (unless such deviation results solely from accident or vandalism, as shall be demonstrated by Supplier to ISR at ISR's satisfaction):

| Fault Category | Maximum Fault threshold (MFT)* (per aggregated kilometrage of the entire Supplier Maintained Fleet) | Reliability Liquidated damages |
|-----------------------|--|---------------------------------------|
| significant | Maximum 5 Faults per 1,000,000 fleet km | NIS 100,000 per Fault above MFT |
| critical | Maximum 20 Faults per 1,000,000 fleet km | NIS 45,000 per Fault above MFT |
| uncritical | Maximum 30 Faults per 1,000,000 fleet km | NIS 25,000 per Fault above MFT |
| negligible | - | - |

**[Note to Bidders: Bidder is requested to propose in its Technical Proposal maximum Fault threshold regarding Short Units and maximum Fault threshold regarding Long Units, which both must be equal or lower than the values in the table above. The maximum Fault threshold proposed by Bidder and applicable to all Units in Supplier Maintained Fleet will be calculated as follows:*

$$\mathbf{MFT = 0.25 MFT_S + 0.75 MFT_L}$$

Where:

MFT – the maximum Fault threshold proposed by Bidder and applicable to all Units in Supplier Maintained Fleet.

MFT_S – the maximum Fault threshold proposed by Bidder and applicable to Short Units in Supplier Maintained Fleet.

MFT_L – the maximum Fault threshold proposed by Bidder applicable to Long Units in in Supplier Maintained Fleet.

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

9. Reliability will be measured on an annual basis for each Maintenance Year. Reliability Liquidated Damages applicable in any Maintenance Year shall be calculated by no later than the end of the first month of the next Maintenance Year, pro-rata to the aggregated kilometrage effectively travelled by the Supplier Maintained Fleet during such Maintenance Year.

And by the way of example only:

*Supplier Maintained Fleet has travelled 1,500,000 km (i.e. 1,000,000*1.5) during the previous Maintenance Year, with 10 significant Faults.*

*The maximum significant Fault threshold applicable to such Maintenance Year shall be 7.5 (i.e. 5*1.5).*

*The Reliability Liquidated Damages shall apply to 2.5 Faults in such Maintenance Year (i.e. 10-7.5) and shall amount to NIS 250,000 (i.e. 100,000*2.5).*

IV. LIQUIDATED DAMAGES FOR LATE REPAIR

10. Faults shall be repaired by Supplier within the time period specified in the table below. Supplier shall pay liquidated damages for any Fault not timely repaired, as specified in the table below (the "**Liquidated Damages for Late Repair**"):

| | Period for Repair | Liquidated damages for Late Repair (NIS) |
|---|--|---|
| The Fault is not impairing the Availability of the Unit (Unit Available with the Fault) | Until the first time after the occurrence of such Fault that any Maintenance services are performed by Supplier on such Unit | NIS 3,000 per week (or part thereof) of delay |
| The Fault is impairing the Availability of the Unit (Unit not Available with the Fault) | As agreed in advance and in writing with ISR | NIS 24,000 per day (or part thereof) of delay |

For clarification, payment of the Liquidated Damages for Late Repair with respect to a Fault in any Unit shall not derogate from Supplier's obligation to pay any other Maintenance Liquidated Damages, if applicable.

V. MAINTENANCE LIQUIDATED DAMAGES CAP

11. The payment by Supplier to ISR of Maintenance Liquidated Damages under this Annex 10 shall be subject to caps as defined in this Chapter V below. For the purpose of determining such caps, the period during which Maintenance Liquidated Damages may be imposed on Supplier shall be divided in two (2) periods:
- 11.1 The 'first period', commencing on the date of issuance by ISR of the Final Acceptance Certificate for at least ten (10) Units, and ending on the last day of the Maintenance Year during which the Warranty Period defined in Section 18.4.1 of the Agreement will expire with respect to all Units ordered under IPO1; and
- 11.2 The 'second period', commencing upon the end of the 'first period' specified in Section 11.1 above, and ending upon termination of the Maintenance Period for any reason whatsoever.
12. During the 'first period', the maximum amount of Maintenance Liquidated Damages to which ISR may be entitled under this Annex 10 in any Maintenance Year shall be subject to an annual cap of five percent (5%) of the aggregated Unit Price of all Units ordered until IPO1 (adjusted as of the date of payment of the Maintenance Liquidated Damages by Supplier).

13. During the 'second period', the maximum amount of Maintenance Liquidated Damages to which ISR may be entitled under this **Annex 10** in any Maintenance Year shall be subject to an annual cap of ten percent (10%) of the aggregated payments of the Price per Kilometer and of the Price for Overhaul to be paid by ISR to Supplier for such Maintenance Year (excluding only the Mobilization Payment and the consideration for Excluded Maintenance Works).
14. Notwithstanding the provisions of Section 13 above, in the event that in any Maintenance Year during the 'second period', the Maintenance Liquidated Damages to be paid by Supplier to ISR shall exceed the cap specified in Section 13 above, the following provisions shall apply to the next Maintenance Years:
 - 14.1 the annual cap applying to the first next Maintenance Year shall amount to twelve percent (12%) of the Maintenance Price to be paid by ISR to Supplier for such next Maintenance Year (excluding only consideration for Excluded Maintenance Works).
 - 14.2 the cap applying to the second next Maintenance Year shall be determined as follows:
 - 14.2.1 If the annual Maintenance Liquidated Damages to which ISR is entitled for the first next Maintenance Year did not reach the cap in Section 13 above, the cap in Section 13 above shall apply to the second next Maintenance Year.
 - 14.2.2 If the annual Maintenance Liquidated Damages to which ISR is entitled for the first next Maintenance Year exceed the cap in Section 13 above, the cap in Section 14.1 above shall apply again to the second next Maintenance Year.
 - 14.3 The cap applying to the subsequent Maintenance Years (i.e. the Maintenance Years following the second next Maintenance Year) shall be determined in accordance with this Chapter V above (i.e. Section 13 shall apply as long as the Maintenance Liquidated Damages to be paid by Supplier to ISR do not exceed the cap in Section 13, and Section 14 above shall apply if the Maintenance Liquidated Damages to be paid by Supplier to ISR exceed the cap in Section 13).
15. With respect to each Maintenance Year, the Maintenance Liquidated Damages shall be the sole and exclusive remedy available to ISR until exhaustion of the applicable annual cap as specified in this Section V above. Thereafter, ISR shall be entitled to all other relief or remedy available under this Agreement or by law, in addition to the total sum of Maintenance Liquidated Damages due as per the above, including but without limitation with respect to the period during which Maintenance Liquidated Damages have applied (however, termination of the Agreement shall be subject to Section 31.1.12 of the Agreement).

Annex 11

Form of End of Maintenance Certificate

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

From: _____

Fax: _____

Agreement No. _____

Unit No. _____

We hereby certify that in accordance with Section 14 of the Maintenance Chapter attached to the Agreement, all the Final Tests with respect to this Unit have been successfully completed.

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.

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