

**AGREEMENT No. \_\_\_\_\_**

entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 in Tel Aviv, Israel  
(hereinafter the “**Effective Date**”)

Between,

**Israel Railways Authority, Ltd.**

Company No. 52-004361-3

P.O. Box 18085

Tel Aviv 61180, Israel

(hereinafter “**ISR**”)

**of the first part**

and

\_\_\_\_\_  
\_\_\_\_\_

(hereinafter “**Supplier**”)

**of the second part**

ISR and Supplier each referred to hereinafter as a “**Party**” and collectively as the “**Parties.**”

**WHEREAS** ISR wishes to purchase Two (2) Turntables for locomotives as further specified in the is Agreement and its Appendixes (including without limitation the Technical Specifications) (the “**Turntables**”); and

**WHEREAS** ISR has published Tender No. 41702 requesting proposals for the supply of the Turntables (the “**Tender**”); and

**WHEREAS** the proposal submitted by Supplier in the Tender was selected as the winning proposal; and

**WHEREAS** Supplier represents and warrants that it has the know-how, ability, expertise, facilities, financial and all other resources, experience, Intellectual Property Rights, and all rights and permits necessary to undertake the obligations set forth in the Tender and as described in this Agreement herein; and

**WHEREAS** the Parties desire to set forth a contractual framework to determine the Parties’ relationship and obligations with regards to the supply of the Turntables as aforesaid.

**NOW THEREFORE, IT IS DECLARED, COVENANTED AND AGREED BETWEEN THE PARTIES AS FOLLOWS:**

**1. Preamble, Appendices and Headings**

- 1.1 The preamble to this Agreement constitutes an inseparable part hereof.
- 1.2 The following appendices, which are attached to this Agreement, constitute inseparable parts hereof:
  - a) Appendix A – Technical Specification;
  - b) Appendix B - Consideration
  - c) Appendix C - Supplier's Bank Account Form
  - d) Appendix D - Acceptance Certificate
  - e) Appendix E - Change Order
  - f) Appendix F - General Spare Parts List and Prices
  - g) Appendix G- QAP.
  - h) Appendix H- Training Plan
  - i) Appendix I- ITP.
- 1.3 The headings in this Agreement are for reference purposes only, and are not a material part hereof and shall not be used for purposes of interpretation.

**2. PRIORITY OF DOCUMENTS**

- 2.1 Unless otherwise provided in this Agreement, the several documents forming this Agreement, are to be taken as mutually explanatory of one another and shall be deemed to form one agreement, and should, therefore, be read and construed together.
- 2.2 In the event of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty between the provisions of the following documents (including any instructions or data contained therein), the following order of precedence will apply:
  - This Agreement, including the Consideration Appendix, but excluding the other attachments hereto;
  - The other Appendixes to this Agreement including the Repair Work Plan;
  - The other Tender documents (excluding **Appendix B** to the Tender);
  - Supplier's Proposal to the Tender.
- 2.3 In case of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty as to the interpretation of any provision contained in the documents set forth in Section 2.2 above and/or the order of precedence between the various provisions contained in these documents, which discrepancy, ambiguity, conflict, inconsistency or uncertainty is not resolved by applying the above order of precedence, those provisions that provide ISR with the

maximum rights and which best serve the interest of ISR under the circumstances, as ISR shall determine at its sole and absolute discretion, shall apply.

- 2.4 Except as otherwise specifically indicated, all references to Sections refer to Sections of this Agreement, and all references to Appendixes refer to Appendixes to this Agreement. Appendixes to be attached hereto after the Effective Date shall be deemed an integral part of this Agreement. The words "herein," "hereof," "hereinafter," and similar words and phrases, shall refer to this Agreement as a whole and not to any particular Section. The word "days" shall mean a calendar day and the term "Business Days" shall have the meaning ascribed to it in Section 3. Whenever required by the context of this Agreement, the singular shall include the plural, the masculine shall include the feminine and vice versa.

### 3. Definitions

The following definitions shall apply to this Agreement:

- 3.1 "**Applicable Law**" – shall mean any Israeli statute, law, ordinance, rule, regulation, order, writ, injunction, judgment, decree, and all other requirement of any governmental entity existing as of the date hereof or at any time during the term of this Agreement and applicable to ISR and/or Supplier.
- 3.2 "**Acceptance**" or "**Acceptance Certificate**" – shall mean ISR's issuance of a signed Acceptance Certificate in the form attached hereto as **Appendix D**.
- 3.3 "**Agreement**" – shall mean this agreement including all appendices attached hereto.
- 3.4 "**Agreement Period**" – shall have the meaning ascribed to it in Section 6.
- 3.5 "**Business Day**" – means any day of the week other than Saturday or Sunday, and excluding official holidays and bank holidays in Israel.
- 3.6 "**DAP**" –Delivery at Place" DAP (as that term is defined in Incoterms 2010, International Rules for the Interpretation of Trade, ICC Publication No. 715) at Delivery Place.
- 3.7 "**Effective Date**" – shall have the meaning ascribed to it in the Preamble to this Agreement.
- 3.8 "**Purchase Order**" – An order issued by ISR to the Supplier for the purchase of the Turntables as described in Section 9.
- 3.9 "**QAP**" – as detailed in Section 4.13

- 3.10 "**Site**" – ISR's site at Kishon, Israel and/or any other ISR's site nominated by ISR upon its own discretion.
- 3.11 "**Technical Manuals**" – as detailed in Section 10.3 below.
- 3.12 "**Technical Specifications**" – the technical specifications for the Turntables , are as detailed in Appendix A.
- 3.13 "**Training Plan**" – as detailed in Section 4.13
- 3.14 "**Warranty**" or "**Warranty Period**" – shall have the meaning ascribed to it in Section 12.
- 3.15 "**Works**" – shall mean all works, components, materials and equipment to be executed or supplied by Supplier, directly or indirectly, in connection with the supply, installation, Training, commissioning, warranty of the Turntables pursuant to this Agreement. Works shall include but shall not be limited to, works to be implied therefrom or incidental thereto and including all temporary works of every kind required in or for carrying out and completion of the Works, provision of all labor, provision and use of software, materials, equipment, machinery, tools, spare parts, accessories, components loading, unloading, stuffing, emptying and cleaning of containers and other elements of every kind and description (including Intellectual Property Rights) including as detailed in the Technical Specifications and this Agreement.

#### **4. GENERAL OBLIGATIONS**

- 4.1 **Purchase and Sale**. Supplier hereby agrees to execute any and all Works required for the provision of the Turntables in accordance with the terms and the conditions of this Agreement, including, *inter alia*, the design, manufacture, integration, testing, supply, commissioning, installation, Training, Warranty as well as the fulfillment of Supplier's obligations in accordance with the Technical Specifications and Supplier's proposal to the Tender and in compliance with the guidelines and procedures set out in this Agreement. In any conflict or inconsistency between the instructions or any data contained in the Technical Specifications and Supplier's proposal to the Tender the terms and conditions more favorable to ISR shall take priority. In case of controversy, ISR shall have the final decision what is favorable to ISR.
- 4.2 "**Turn Key Basis**". The Turntables shall be supplied on a "turn key" basis such that Supplier shall perform at its own expense and risk any and all Works in accordance with the provisions of this Agreement. Without limiting the generality of the foregoing, Supplier shall be solely responsible, at its own expense and risk, to carry out any and all Works, import and supply of any and all components, equipment and materials, perform any and all activities and pay and bear all costs and expenses pertaining to the performance of the

Works and supply of the Turntables ; this shall include, without limitation, the training, installation testing, running in, demonstration and commissioning of the Turntables and any other tasks or duties relating to the above – all as shall be required in order to timely deliver operable, safe, efficient and reliable Turntables , and putting same into full operation in accordance with all of the requirements of this Agreement, while applying state-of-the-art technology.

- 4.3 **Conformity of the Turntables** . The provision of the Turntables and the execution of the Works shall be made in strict conformity with the terms and conditions of this Agreement. Any deviation from the terms and the conditions of this Agreement must be approved in writing in advance by ISR.
- 4.4 **Standards**. The Works and the Turntables shall meet the standards set forth by ISR in this Agreement , and if no standard is expressly mentioned, Supplier shall comply with the standards which shall ensure the highest quality of workmanship, material and equipment required by the applicable law and/or as instructed by ISR in accordance with ISR's sole discretion. All calculations, designs, integration and drawings related to the Turntables or any part thereof shall assure the reliability, efficiency, competency as well as the functionality of the Turntables to ISR's full satisfaction.
- 4.5 **No Lock**. The Turntables and/or any part thereof shall not incorporate any lock, clock, timer, counter, copy protection feature, CPU serial number reference, or any other device which is intended to (i) disable or erase all or any part or software of the Turntables ; (ii) prevent ISR from fully utilizing all or any part or software of the Turntables ; or (iii) require action or intervention by Supplier or any other person or entity, to allow ISR to utilize all or any part of the Turntables .
- 4.6 **Permits**. Supplier shall, at its sole expense, obtain, maintain, comply with and keep in effect all approvals, permits and licenses required for the execution of this Agreement, the supply of the Turntables and the provision of all ancillary services, pursuant to this Agreement.
- 4.7 **Training**. No later than 14 days after Purchase Order Date the Supplier shall provide ISR with a proposed training plan in that after its approval by ISR (including ISR's Training department) it shall be attached to this Agreement as **Appendix H ("Training Plan")**. Supplier shall provide ISR with Training in accordance with the Training Plan ("Training") The Training Plan shall ensure the highest level of operation and maintenance of the Turntables and/or any part thereof by ISR. Training shall be conducted at ISR's Site and shall be for at least Three (3) Business Days.

4.7.1

W

ithout derogating from the generality of the above, the Training Plan for the Turntables shall combine, comprehensive theoretical and practical aspects, and shall include, at least the following fields:

- Operators Course
- Maintenance Course

The training shall be performed by at least one (1) experienced instructors that hold appropriate skills and knowledge in the above areas of practice.

4.7.2 W  
ithout derogating from the generality of the above, the Training Plan for the Turntables shall combine, comprehensive theoretical and practical aspects.

4.7.3 Al  
l costs related to the training according to the Training Plan are included in the Turntables Price (including but not limited to travelling, accommodation and lodging expenses), and Supplier shall not be entitled to any additional consideration for the provision of any Training specified herein. Notwithstanding the above, ISR shall bear the price of travelling and lodging of ISR's employees participating in the Training to be held at Supplier's Factory.

4.7.4 W  
ithout derogating from any other right conferred to ISR, ISR shall be entitled to copy and/or record (including by video camera or other digital means) the Training sessions and/or any part of the Training program and to use such recordings for ISR's study, operation and maintenance purposes.

4.8 **Safety**. All Works of Supplier and any Subcontractor shall be performed in strict compliance with ISR's safety regulations and any other applicable law pertaining to safety at work, as may be in force from time to time. Supplier shall immediately report to the IPM the occurrence of any accident in connection with the execution of the Works. Supplier shall also report any such accident to the relevant competent authority whenever such report is required, and in any case, register same in the Works log.

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

4.10 **Personnel.** Supplier shall employ trained skilled employees and consultants as shall be necessary or appropriate to enable Supplier to supply the Turntables and the Warranty including the execution of the Works.

4.10.1 Supplier's personnel, employees and consultants and any Subcontractor's personnel, employees and consultants (the "**Supplier Personnel**" and "**Subcontractor Personnel**", and together, the "**Personnel**") shall not be deemed under any circumstances whatsoever, to be the employees of ISR, and Supplier shall indemnify and defend ISR from and against all claims made by the Personnel against ISR. The foregoing indemnity shall survive the expiration or termination of this Agreement. All matters pertaining to the employment, training, conduct, supervision, compensation, promotion and discharge of the Personnel shall be the sole and exclusive responsibility of Supplier and Supplier shall comply with all applicable laws and regulations relating to worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions and safety and similar matters with respect to such Personnel. Supplier acknowledges and agrees that Supplier is obligated to report as income all compensation received by Supplier pursuant to this Agreement, and Supplier agrees to and acknowledges the obligation to pay all self-employment and other taxes thereon. Supplier agrees to indemnify and hold harmless ISR and its directors, officers, and employees from and against all taxes, losses, damages, liabilities, costs and expenses, including attorney's fees and other legal expenses, arising directly or indirectly from (i) any negligent, reckless or intentionally wrongful act of Personnel, (ii) a determination by a court or agency that Supplier and/or any of the Personnel is not an independent contractor, or (iii) any breach by the personnel of any of the covenants contained in this Agreement.

4.10.2 Without derogating from the above, Supplier shall bear any cost and/or expense relating to the Personnel (including but not limited to travelling, accommodation and lodging expenses). Supplier shall be responsible and bear all expenses associated to visas, work permits etc. associated to any service to be provided by Supplier through personnel in Israel.

4.10.3 No later than 60 days before the arrival of Personnel to any of ISR's sites, Supplier shall provide ISR with a list of such Personnel, including ID/Passport numbers and such other details as shall be reasonably requested by ISR, prior to any involvement of such Personnel in the implementation of the Turntables .

- 4.11 **Environmental Standards.** The Turntables and/or the Works shall meet the applicable environmental standards in accordance with Israeli law and regulations and in the absence of an applicable Israeli law the relevant EU standard shall apply. However, in any event of discrepancy between the provisions of Israeli law and any E.U. standard, the provisions of the Israeli law shall prevail.
- 4.12 **Quality Management System.** Supplier hereby undertakes, warrants and confirms to remain Notified in accordance with ISO 9001:2008 standards or equivalent, and Supplier shall at any time during the term of Agreement be willing to prove such claim to be true. In any event, Supplier must notify ISR, in writing, if the said qualification is suspended and/or canceled and/or not continued. For the avoidance of doubt, the aforementioned in this Section shall apply to Supplier and/or any of its Subcontractors.
- 4.13 Without derogating from the Technical Specifications, within 30 (thirty) days from the POD, Supplier shall prepare and submit to ISR for approval a Quality Assurance Plan ("**QAP**") covering all quality assurance activities to be performed under this Agreement and/or the Technical Specifications, including a time schedule for each activity. The QAP shall be based on the requirements of the Technical Specifications. Such list after approved by ISR shall be attached as Appendix to this Agreement.

## **5. SUPERVISION; ACCESS TO PLACES OF PRODUCTION; INSPECTIONS**

- 5.1 **Supervision by ISR.** ISR shall be entitled (but not obligated) to monitor and supervise the performance of the Works with regards to the provision of the Turntables and Warranty, by itself or through any third party in Israel and/or abroad, and Supplier undertakes to cooperate as required with respect thereto including submitting all information required by ISR and/or any third party on its behalf. Such supervision, if applicable, shall not derogate from any provision of this Agreement and/or from Supplier's liability and responsibility to perform the Works in accordance with the provisions of this Agreement and to supply the Turntables and/or fulfill the obligations set out in this Agreement, nor shall it impose any responsibility on ISR which is not otherwise expressly set forth in this Agreement.
- 5.2 **ISR's Access.** Without derogating from the generality of Section 5.1, ISR, by means of any person acting for or on its behalf, shall at all times, have free access to all places of production, including but without limitation the factories, sites, offices, workshops, and other places where the Works (including any material or component being part of the Works) are being produced, assembled or completed, either in Israel or abroad. Such right to free access shall include, without limitation, the right to inspect the Works (including any material or component being part of the Works) at any stage of design, production, assembly, testing and commissioning. In the event of a



request to inspect the Works at times other than normal working hours, the Parties shall mutually agree as to the time(s) at which such inspection shall be carried out and shall be granted free access to any information required by ISR and/or any third party on its behalf. Nothing herein shall be construed as restricting or limiting in any manner ISR's access to the Supplier sites where the Works are being performed, and ISR shall at all times have free and unrestricted access to such sites.

- 5.3 **Places of Production and Tests.** Supplier hereby undertakes that the place of production (assembly and integration plant) of the Turntables shall be \_\_\_\_\_ [Note: to be approved by ISR] ("**Supplier's Factory**"). Any change in Supplier's Factory is subject to the prior written approval of ISR at its sole discretion. Supplier alone shall bear and pay any and all costs and expenses incurred by ISR in connection with the review of a new place of production proposed by Supplier and ISR and shall be entitled to approve or to reject any such proposed place of production and tests at its sole discretion. Without derogating from the generality of the above, the standards in any new place of production and tests proposed by Supplier shall not be inferior to the standards in the place of production and tests previously approved by ISR and shall comply with any and all requirements of the Technical Specifications. For the removal of doubt, request by Supplier to change a place of production and tests and review by ISR as per the above shall not give grounds to any delay or extension in the timetables set forth in the Delivery Time.
- 5.4 **Assistance by Supplier.** Without derogating from the above, Supplier shall afford free of charge any assistance and access reasonably requested by ISR's inspectors and duly authorized representatives in order to enable them to carry out inspection, checking and tests in connection with this Agreement and provide them with any information requested. Without derogating from the above, Supplier shall provide ISR with all information and shall cooperate fully with ISR so that ISR shall be able to provide the services detailed in Section 5A3 below.
- 5.5 **Rejection of the Works, Materials and Components.** If any of the Works, materials or components, whether completed or in process, is rejected on inspection, the same shall be marked in a manner satisfactory to the IPM, so as to ensure its subsequent identification as a rejected article. If no other solution is provided by Supplier that is acceptable by ISR, Supplier shall within seven (7) days or within such other reasonable time, pull down, take out, separate and sort out any such marked Works, materials or components so rejected. Materials or components of the Works or the entire Works rejected under this Section shall not be considered as having been delivered under this Agreement and Supplier shall, without delay, replace and deliver satisfactory materials, components or Works at Supplier's sole cost and expense. No such rejection shall give grounds to any delay or extension in the Delivery Time.

- 5.6 **Inspection not to Relieve Supplier's Obligations.** Inspection, examination, rejection or approval with no objections by ISR of finished or unfinished Works or of materials or components shall neither relieve nor derogate from Supplier's obligation to execute and complete the Works in strict accordance with the requirements of this Agreement, or impose any liability or responsibility on ISR.

## 5A. **ISR'S UNDERTAKINGS**

ISR's undertakes and warrants as follows:

- 5A1. There is no impediment under law and/or agreement to execute this Agreement on the part of ISR.
- 5A2. Subject to Supplier's fulfillment of all its undertakings and warranties under this Agreement, ISR shall pay the consideration as detailed in this Agreement.
- 5A3. Upon receiving Supplier's full measurements of the Turntables and all additional information required by ISR, ISR shall provide Supplier the information required for the installation of the Turntables by Supplier.

## 6. **Term of Agreement**

- 6.1 The term of this Agreement shall be for three (3) years from the Effective Date (the "**Agreement Period**").
- 6.2 ISR shall have the option, to be exercised at its sole discretion, to extend the Agreement Period by additional periods (or part) of up to three (3) years in total, and in such case, the terms and the conditions of the Agreement shall remain unchanged (the "**Option Period(s)**").

## 7. **Purchase Requirement**

- 7.1 Subject to the Supplier's fulfillment of all of its obligations pursuant to this Agreement, ISR intends to issue a Purchase Order for Two (2) Turntables ("Initial Purchase Order"):
- 7.2 Initial Purchase Order shall be issued subject to ISR's sole discretion within two (2) months from the effective date of the Agreement (the "Effective Date") subject to the terms and conditions set forth herein. Supplier hereby waives any claim and/or demand against ISR in the event that ISR shall not issue the Initial Purchase Order and/or minimize the quantities of the Initial Purchase Order.
- 7.3 Additionally, during the Agreement Period, ISR, in its sole discretion, shall have the option (but shall not be obligated) to purchase from the Supplier additional Turntables ("Optional Turntables"). The relevant terms and

conditions detailed in this Agreement, including its Appendices, shall apply, mutatis mutandis, to the Optional Turntables

## **8. Supplier's Obligations**

- 8.1 Without derogating from any of the Supplier's obligations in accordance with this Agreement, the Supplier hereby undertakes to supply, during the Agreement Periods all Turntables necessary for the full operation and maintenance with the Technical Specifications, common railway practices and any applicable standards, so as to enable ISR to correct any malfunction of the Units as promptly as possible so as to minimize the effect thereof on ISR's train traffic, in accordance with the terms and conditions detailed herein.
- 8.2 The Supplier shall supply the Turntables in accordance with the standards set forth by ISR in the Technical Specifications and/or this Agreement. All Turntables shall be new, of high standard and quality, free of, and not reported by third parties to suffer from, defects in design, material or workmanship, and shall perform in accordance with all of the requirements of this Agreement. All calculations, designs, integration and drawings related to the Turntables shall assure the reliability, efficiency, competency as well as the functionality of the Turntables (once installed) to ISR's fullest satisfaction.
- 8.3 This Agreement is non-exclusive and ISR, in its sole discretion, may acquire similar or identical Turntables from any third party at any time, in addition to or in place of, the Turntables it acquires from Supplier. Without derogating from the Supplier's obligations hereunder, ISR shall be entitled at any time to purchase Turntables either directly from Supplier or from any third party.
- 8.4 Nothing in this Agreement shall derogate from any of the rights, options or remedies of ISR under any law.

## **9. Purchase and Order of Turntables**

- 9.1 ISR may, from time to time, in its sole discretion and pursuant to the terms and conditions herein, issue Orders, to the Supplier for the supply of Turntables , all on a non-exclusive basis.
- 9.2 Each Order for Turntables shall be sent by email to the Supplier Representative and shall include the following information:
  - a) ISR's Order number;
  - b) The quantity and description of the Turntables ordered; and
  - c) The place of delivery of the Turntables (which shall be at the Site unless specified otherwise in the Order).

- 9.3 Upon receipt of an Order placed by ISR, the Supplier shall acknowledge receipt of such Order by e- mail to ISR, through the ISR Turntables Representative, within three (3) Business Days.
- 9.4 ISR's Order number shall be noted on all correspondence between the parties regarding such Order.

**10. Terms of Delivery and Delivery Time of Turntables**

- 10.1 The terms of supply and delivery of the Turntables shall be DAP at Site, and subject to the expressed terms and conditions defined herein in this Agreement (the "**Delivery Terms**").
- 10.2 The time of delivery for the supply of the Turntables shall not exceed twelve (12) months DAP at Site from the issuance of a Purchase Order ("**Delivery Time**").
- 10.3 **Operation and Installation Manuals.** Further, Supplier shall provide upon Delivery the operation, installation and maintenance manuals, drawings and schedules in English or Hebrew (four (4) sets in hard copy and two (2) sets in magnetic media) (hereinafter: "**Technical Manuals**"). The cost of the Technical Manuals shall be borne and paid solely by Supplier, and be considered as part of the Turntables Price (as defined below).
- 10.4 Upon receipt of a Purchase Order by email, Supplier shall confirm via email receipt of the Purchase Order to ISR's contact person. An original document of such confirmation shall be sent to ISR via air mail.
- 10.5 The Parties' contact persons are as follows, or any replacement contact persons as notified in writing by one Party to the other:

For ISR:                    Mr. \_\_\_\_\_  
                                   Israel Railways Ltd.  
                                   Address:  
                                   Telephone:  
                                   E-mail:  
                                   ("**IPM**")

For the Supplier: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

---

("SPM")

Each Party shall, in writing without undue delay, notify the other Party of changes in contact persons, addresses, if any.

- 10.6 The Supplier will endeavor to furnish a secured electronic mail service or other equivalent means, in accordance with ISR safety requirements, which will be used by both Parties for the purpose of ordering procedure, requests, queries, reports etc.
- 10.7 The following original documents will be supplied by Supplier to ISR:
- 10.7.1 Commercial invoices. The invoice/s shall include a clear reference to this Agreement, the amount, part number (inclusive of serial number), if any, quantity, delivery note number, shipping date, Supplier's company registration number and ISR's order number for the goods; Co
- 10.7.2 Original Certificate of Origin and Non-Manipulation Certificate, if required; Or
- 10.7.3 Bill of Lading - issued in ISR's name; Bi
- 10.7.4 Packing Lists; Pa
- 10.7.5 Any and all other documentation necessary to release the WORKS and/or any part thereof from customs in an expeditious manner and to facilitate payment, e.g. the documents that will enable ISR to clear the WORKS and/or any part thereof through customs and which will enable ISR to make payment in foreign currency in accordance with the applicable Israeli law. A
- 10.8 Original copies of all of the above mentioned documents **must arrive** at ISR's Rolling Stock Division at least **five (5) calendar days before** the arrival of the ship delivering the WORKS or any part thereof to Israel. In addition, copies of all of the above mentioned documents shall be sent to ISR by E-mail simultaneously with the delivery of the originals. The above mentioned documents **must** be forwarded solely in ISR's name and shall state ISR's exact name.
- 10.9 Passage of Title

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

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

## **11. Inspection and Acceptance of the Turntables**

- 11.1 Within thirty (30) days following the Pilot purchase Order the Supplier shall submit to ISR, for its approval, an Inspection and Test Plan for the Turntables (the "ITP"). The ITP shall be based, inter alia, on the requirements of the Technical Specifications. The ITP shall include a description of all inspections and tests to be carried out during the production, assembly and installation of the Turntables or parts thereof and all inspections and tests to be carried out prior to and during the actual acceptance tests (both foreign acceptance tests and on Sites) and their respective minimum acceptance criteria. ITP shall further include all tests, inspections, checks, examinations, etc. as required in the Technical Specifications. ITP shall be annexed to this Agreement as **Annex I**.
- 11.2 Upon delivery DAP of the Turntables or any part thereof to the Site, the Supplier shall perform all Works required to bring the Turntables to a full operational condition in accordance with the applicable terms and conditions defined herein in this Agreement and the Technical Specifications including installation of the Turntables at Sites.
- 11.3 Upon the completion of the Works on all of the Turntables (including the installation and commissioning of the Turntables at Sites) by Supplier to ISR's full satisfaction, ISR shall execute commission tests on Turntables.
- 11.4 If ISR finds the inspected Turntables to be satisfactory and in compliance with the relevant Technical Specifications, ISR shall accept such Turntables and notify Supplier of the same in the form detailed in **Appendix D** ("**Acceptance Certificate**"). Acceptance Test shall include at least test run of at least 50 hours without fault.

11.5 For the removal of any doubt Acceptance Certificate shall not be granted in the event that not the following have been completed:

- Each Turntable has been tested and have passed the test successfully according to ISR's discretion.
- Supplier has successfully provided the Training in accordance with the terms of this Agreement according to ISR's discretion.
- Supplier has supplied ISR with all documents including the QAP, Technical Manuals, General Spare Parts List and Prices.

11.6 If ISR, in its sole discretion, has elected to inspect any order of Turntables or part thereof, such Turntables shall only be considered delivered once ISR has accepted them.

## **12. Warranty**

12.1 Supplier confirms and warrants to ISR that commencing on the issuance date of the Acceptance Certificate and for a period of Twenty Four (24) months thereof all Turntables and any part thereof (as well as any materials, system embedded in the Turntables), shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and the conditions of this Agreement, including the Technical Specifications, and be free of any faults, defects and/or deficiencies, including but not limited to any faults, defects and/or deficiencies in design, material, workmanship, assembly, materials, components etc.).

(the warranty under this Section shall be referred to as the "**Warranty Period**" or "**Warranty**")

12.2 Warranty shall include, among others, any and all equipment, parts, hardware, software (including software updates and upgrades), and maintenance tools required for the maintenance and operation of the Turntables. Warranty shall also include updates to the Technical Manuals, if required.

12.3 Without derogating from its other obligations in this Section, Supplier further certifies and confirms that during the Warranty it shall provide ISR without any additional charge or cost:

12.3.1 Malfunction report service 24 hours a day 7 days per week whether through human staffed stations or through automatic recording.

12.3.2 Without derogating from the aforesaid, the Supplier is obliged to remedy the fault and/or defect and/or damage to the Turntables within five (5) Business Days from the day the damage report was communicated to it by ISR, repair and replace with a new Turntables under Delivery Terms (the "Time of Repair"). Delay in Time of Repair

shall entitle ISR for liquidated damages of 100 Euro per day, without derogating from its other rights under law and Section 16 shall apply, mutatis mutandis, on such late delivery.

- 12.4 The Supplier shall do its best efforts whatsoever, in order to shorten the delivery time of the replaced Turntables.
- 12.5 The Supplier shall keep complete records of all repairs and replacements made to each Turntables, its parts, components and systems, and shall provide them to ISR upon request.

### **13. Consideration**

- 13.1 The consideration payable for the manufacture and supply of the Turntables including all ancillary Works, warranty, installation of the Turntables at Sites, Training and equipment as required for the delivery, loading, unloading, stuffing or as otherwise required for fulfillment of the Supplier's obligations under this Agreement in accordance with the terms and conditions thereof, to be paid by ISR to Supplier, shall be as set forth in **Appendix B** (collectively hereinafter referred to as: the "**Turntables Price**")
- 13.2 Without derogating from Section 13.1, it is hereby clarified that Supplier shall bear and pay (by way of reimbursement to ISR where applicable) all taxes, fees, customs, duties, levies, charges (including bank charges and commissions), and all other expenses relating to, or in connection with the manufacture, exportation, supply, delivery of the Turntables , including but not limited to all types of importation and custom duties and Works, such as transportation costs, customs agents' fees, purchase tax (in Hebrew "Mas Kniya" or "מס קנייה" ), Israeli customs duties, port handling fees (in Hebrew "Dmei Nitul" or "דמי ניטול" ), port infrastructure fees (in Hebrew "Dmei Tashtit" or "דמי תשחית" ), cleaning of the containers, unstuffing and unloading of the containers, etc. Any portage and local forwarding agent fees and Israeli customs duties, if applicable, shall be considered as part of the Turntables Prices and shall be borne solely by Supplier.
- 13.3 Notwithstanding any other provision herein, Israeli Value Added Tax, if applicable to the provision of any Turntables , shall be borne by ISR.
- 13.4 In the event that ISR shall be required to pay any of the payments related to import and release from customs, ISR shall charge the Supplier accordingly (excluding Israeli Value Added Tax).
- 13.5 The Turntables Prices include any sum which the Israeli Tax Authorities require to be withheld at source. The amounts required by the applicable law to be withheld at source by the Israeli Tax Authorities shall be deducted from the Turntables Prices, and shall be paid directly to the Israeli Tax Authorities.



## **14. Terms of Payment**

- 14.1 Ninety Percent (90%) percent of the Turntables Price ("**Turntables Price First Payment**") shall be paid to Supplier within sixty (60) calendar days following the issuance of an Acceptance Certificate for all Turntables under Initial Purchase Order, provided that Supplier has provided ISR at least forty five (45) calendar days prior to the payment with all the following:
- 14.1.1 an invoice in the amount of the above Turntables Price Payment; and
  - 14.1.2 an Acceptance Certificate dully signed by ISR for all Turntables under Initial Purchase Order.
- 14.2 Ten Percent (10%) percent of the Turntables Price ("**Turntables Price Final Payment**") shall be paid to Supplier within sixty (60) calendar days following the end of the Warranty Period under Section 12 above, provided that Supplier has provided ISR at least forty five (45) calendar days prior to the payment with an invoice in the amount of the above Turntables Price Payment.
- 14.3 Payments under this Agreement shall be made to the Supplier by means of a bank transfer to the Supplier's bank account as specified in the Supplier's Bank Account Form attached hereto as Appendix C.

## **15. SPARE PARTS**

- 15.1 Without derogating from Supplier's undertaking to provide the Warranty, Supplier undertakes that during a period of Ten (10) years commencing on the date of issuance of the Final Acceptance Certificate, it will supply ISR with all spare parts and tools and updates necessary and recommended pursuant to (i) the Technical Specifications, (ii) the applicable manufacturer specifications, and (iii) the best professional practice, required for maintenance and for the repair of the Turntables or any part thereof, while assuring that the Turntables and all systems therein shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and the conditions of this Agreement, including the Technical Specifications (the "**General Spare Parts**").
- 15.2 Without derogating from the generality of Section 15.1, Supplier shall furnish a detailed Spare Parts List of all necessary and recommended Spare Parts and their prices, in the form attached hereto as **Appendix F** within the Effective Date (the "**General Spare Parts List and Prices**"). The Spare Parts List and Prices shall be in English or Hebrew and shall quote the delivery time, description, original manufacturer's name, part number of original manufacturer and the prices DAP ISR's Site for each Spare Part, and subject to

the terms specified in Section 10. The Spare Parts List and Prices shall be linked in accordance with the linkage mechanism set forth in the Consideration Appendix.

If Supplier foresees that it will be unable to manufacture and/or supply any or all Spare Parts, for any reason whatsoever, it shall notify ISR in writing six (6) months in advance, so that ISR can make any arrangements necessary to obtain alternate spare parts and Supplier shall support ISR in making all arrangements.

- 15.3 Notwithstanding the undertaking of Supplier to sell ISR the necessary Spare Parts for a period specified in Section 15.1 above, ISR shall be under no obligation whatsoever to acquire any Spare Parts from Supplier. ISR, in its sole discretion, shall decide if, and when, it will acquire the Spare Parts from Supplier during the relevant time period. Supplier shall support ISR in acquiring the Spare Parts even if ISR shall decide not to purchase the Spare Parts from Supplier.

## **16. LIQUIDATED DAMAGES**

- 16.1 Without prejudice to any other relief or remedy available to ISR under this Agreement or under law, in the event that the delivery of the Turntables or any part thereof is delayed beyond the specified Delivery Time, Supplier shall pay ISR liquidated damages in the sum equal to one-half percent (0.5%) of the value of the Turntables Price for each calendar week of delay, or any part thereof. The liquidated damages shall not exceed a total of seven and half percent (7.5%) of the value of the consideration specified in this Agreement (the "**Liquidated Damages**").
- 16.2 The liquidated damages in this Agreement have been determined after due consideration of the damages the Parties anticipate that ISR will suffer under the specific circumstances to which each specific type of liquidated damage apply, and therefore they shall not be regarded as a penalty. Payment of the Liquidated Damages shall not be conditioned on ISR having to present evidence of any loss.

## **17. ALTERATION OF Technical SPECIFICATIONS**

- 17.1 ISR reserves the right to alter the Technical Specifications ("**Changes**"). Supplier shall be notified of the alterations in writing by the IPM ("**Change Order**") in a Change Order Form (attached hereto as **Appendix E**). Any Change Order shall specify a date following which the Turntables and/or any part thereof shall be designed, manufactured and supplied in accordance with the amended specifications.
- 17.2 Within ten (10) Business Days following the receipt of a Change Order, Supplier shall provide ISR with a written confirmation and if applicable, shall

state on the Change Order Form requested changes to the Turntables and/or any part thereof, Turntables Price, Delivery Time, and any other terms relevant to the provision thereof.

- 17.3 The price for any Changes included in the Change Order which is a supplement or addition of parts or systems used elsewhere in the Turntables and/or any part thereof or which are included in the Spare Parts List, shall be no higher than the price applied to such systems or parts therein.
- 17.4 Following receipt of Supplier's request for changes as detailed above, the Parties shall, in good faith, review the changes and any changes to the Turntables Price and Delivery Time requested by Supplier.
- 17.5 The Changes will be incorporated in the Turntables , only after and to the extent that the Parties are agreed as to their impact on the Turntables Price and Delivery Time. Such agreement shall be set out in writing in the Change Order Form and shall be signed by both parties. For the avoidance of doubt, ISR maintains sole discretion regarding the Changes themselves.

In the event that Supplier objects to any Change Order or any part thereof, on the grounds that it may affect safety or structural soundness of the Turntables , Supplier shall have a right not to proceed with the Change Order and the parties shall discuss said objections and shall seek a solution to ISR's request for change.

- 17.6 Should Supplier find at any time during the design or manufacture of the Turntables that, in its judgment, existing conditions demand or make desirable or beneficial a modification in the requirements covering any particular item, it shall promptly report in writing, any such matter to ISR for its' decision and instruction.

## **18. INSURANCE**

- 18.1 Without derogating from any of Supplier's responsibilities and liabilities under this Agreement and/or under any applicable law, Supplier shall maintain, at its own expense, at all times for as long as any liability under this Agreement may exist, insurance policies from reputable insurers, which shall include at least the following:

### 18.1.1

**Property Insurance** covering any loss or damage arising out of, or caused by any risk in respect of the manufacture and/or supply of the Turntables , the Spare Parts, and any related tools and any other equipment. The insurance policy shall cover the complete manufacture and replacement value of the Turntables as well as any other equipment abovementioned brought. The policy shall include a

waiver of subrogation towards ISR, and/or the Israeli Government and/or the IPM and/or the SPM and/or anyone acting on the behalf of all the abovementioned, provided that the waiver of subrogation does not apply in favor of a person who has maliciously caused the damage. In respect of loss or damage to the Turntables , the insurance benefits shall be paid to the ISR exclusively.

18.1.2 Marine "All Risk" Insurance for the Turntables at their full replacement value, including an at 110% (one hundred and ten percent) of its DAP value during transport thereof, the Spare Parts, and any related tools and any other equipment brought to ISR's Site, in the joint names of ISR and Supplier, against any loss or damage to the Turntables arising out of, in course of, or caused by any risk in respect of the Turntables . The policy shall include a waiver of subrogation towards ISR, and/or the Israeli Government and/or the IPM and/or anyone acting on the behalf of all the abovementioned, provided that the waiver of subrogation does not apply in favor of a person who has maliciously caused the damage. In respect of loss or damage to the Turntables , The insurance benefits shall be paid to the ISR exclusively.

18.1.3 **Worldwide Third Party Liability Insurance**, in the joint names of ISR and Supplier subject to a "Cross Liability" clause, covering any liability (including Product and Professional Liability) of Supplier and/or whoever act on its behalf, for any loss or damage derived from the execution of this Agreement and/or from any act or omission of Supplier and/or whoever act on his behalf.

18.2 Supplier's insurances required under this section are primary and precedent to any of ISR and/or the Israeli Government's insurances, and Supplier's insurers shall waive their right to contribution from any of ISR and/or the Israeli Government's insurers with respect to any damage covered by Supplier's insurance policies.

18.3 Supplier shall refrain from canceling the insurance policies and/or from decreasing their scope. Supplier further undertakes to notify ISR of any situation of cancellation and/or expiration of any of the insurance policies specified in this section, sixty (60) days before the date of occurrence of such situation

18.4 Supplier represents and warrants that it shall not have any claims, demands and/or actions against ISR and/or anyone on its behalf and/or the Israeli Government, concerning damage to its property or other property used in connection with this Agreement including the Turntables , spare parts, and any

related tools and any other equipment. The foregoing shall not apply for the benefit of any one who caused damage with malicious intent.

- 18.5 Supplier waives and shall have no claims or demands of any kind against ISR and/or anyone on its behalf, with respect to the content and/or extent and/or coverage of the insurance policies required to be purchased by it under this Section, and Supplier hereby confirms that it shall be prevented from raising any such claim or demand. For the avoidance of doubt, it is agreed that the insurance policies required to be purchased under this Section, including the limits specified herein, are stated as a minimal demand from Supplier. Supplier is encouraged to further scrutinize its exposure to liability and to add and/or increase the types and scope of insurance coverage.
- 18.6 Supplier undertakes to indemnify ISR for any amount incurred by ISR as a result of a violation by Supplier (and/or any person or entity acting on its behalf) of any of the conditions of its insurance policies.
- 18.7 It is hereby clarified and agreed that all the insurance policies required in accordance with this Agreement shall be procured at Supplier's expense and that under no circumstances shall the duty to procure such incur expenses and/or any duty for payment on ISR. It is also clarified and agreed that the liability for the payment of the insurance deductible applies to Supplier only and under no circumstances to ISR.
- 18.8 It is clarified and agreed that insurance payments shall not derogate from Supplier's liability under the Agreement and/or under any law, and should the insurance payments not be sufficient in order to cover the extent of the loss and/or the damage actually caused, Supplier shall be responsible for completing such.
- 18.9 As a condition precedent to the first payment under this Agreement, Supplier shall furnish a certificate from its insurers stating:
- "The insurance required by Agreement No \_\_\_\_\_ between ISR and Supplier is in full force and effect".*
- 18.10 Without derogating from the duty to provide the insurance certificates as detailed above, Supplier undertakes to provide ISR with a copy of all of its insurance policies, within fourteen (14) days of ISR's first request.

## **19. INTELLECTUAL PROPERTY RIGHTS**

- 19.1 **Intellectual Property Rights Warranty.** Supplier represents and warrants that it is the owner of all rights and title (including but without limitation Intellectual Property Rights, as defined below) in and to the Turntables , as

well as in any Works and any component thereof (including, without limitation, systems, parts, software incorporated in the Turntables or integrated with them), and documentation provided to ISR under this Agreement and the Technical Specification and/or Software, and/or that it has obtained sufficient rights and is authorized to give rights to ISR any such Turntables, Works or documentation and/or any part thereof and/or Software, by the relevant third parties who developed and/or own and/or hold the Intellectual Property Rights thereof, and that ISR may use any part of said Turntables, Works and documentation and/or Software in accordance with the terms and conditions of this Agreement, including the operation and maintenance of the Turntables and for the purpose of interface with other ISR's equipment (whether existing now or in the future).

- 19.2 **Non Infringement Warranty.** Supplier warrants that the Turntables, Works and/or Software and documentation, and their use by ISR in accordance with this Agreement (i) do not and will not infringe any patents, copyrights, whether or not registered, trade names, registered and unregistered trademarks, service marks, trade dress, domain name registrations and other source indicators; computer software, including databases; trade secrets, commercial secrets, inventions (whether or not patentable and whether or not reduced to practice), know-how, methodologies, or other intellectual property right of any person ("**Intellectual Property Rights**"), and (ii) no claim, action or suit for the misappropriation or infringement of any Intellectual Property Right has been brought or is pending or, to the best of its knowledge, threatened against Supplier and/or any third party from which Supplier has obtained such Intellectual Property Rights in connection with the Turntables, Works or documentation provided under this Agreement.
- 19.3 **Responsibility of Supplier.** Supplier shall be solely and fully liable and responsible for the use of, and shall fully and timely pay all royalties, fees and other payments with respect to, all Intellectual Property Rights, licenses and rights of whatever type, manufactured, used, implemented or employed in the design, production, completion, use or operation of the Turntables and Works and/or Software by Supplier or ISR.
- 19.4 **Grant of License.** Supplier hereby grants to ISR a perpetual, royalty-free license and right to install, use, have used, reproduce and have reproduced and copy (including for backup archival purposes) all software provided in connection with this Agreement, and all supporting documentation, as necessary solely to support the use of such software on any hardware for the purpose of operation of the Turntables.

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

## **20. TERMINATION**

20.1 This Agreement may be terminated by ISR at its sole and absolute discretion at any time, whether before or after commencement of the Works, by giving Supplier prior written notice of at least fourteen (14) days, if any of the following occurs:

20.1.1 Supplier transfers the whole or any part of its undertakings pursuant to this Agreement or substantial properties or assets, by a single transaction or by a number of transactions, without obtaining prior written approval of ISR.

20.1.2 Supplier becomes bankrupt, insolvent, or does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes assignment for the benefit of creditors, or liquidation, receiverships, or reorganization proceedings (whether temporary or not) have been commenced against Supplier and have not been removed within twenty one (21) days.

20.1.3 An attachment order has been imposed and/or any other execution process has been taken with respect to all or a material part of Supplier's assets, or a part thereof which is material for the performance of any of its obligations hereunder and has not been removed within thirty (30) days.

20.1.4 Supplier has stopped managing its business (or substantial portion thereof) or execution of the Works, for a consecutive period of thirty (30) days.

20.1.5 Any representation or warranty made by Supplier in this Agreement and/or any certificate, schedule or other document delivered by Supplier pursuant to this Agreement has been false or materially misleading when made.

20.1.6 Supplier

Supplier breaches any material provision of this Agreement (such as, and not limited to, a breach of Sections 4,5,7,8,9,10,11,12,15,18,19,21,26 and fails to cure such breach within twenty (20) days from the date of ISR's notice.

20.1.7 Supplier breaches any provision of this Agreement and fails to cure such breach within thirty (30) days from the date of ISR's notice.

20.2 **Termination for Convenience**. In addition to, and without derogating from any other right that ISR may have to terminate this Agreement, including but without limitation pursuant to any other provision of this Section and/or to any applicable law, ISR shall have the right to terminate this Agreement at will, without cause and at ISR's sole and absolute discretion, until 120 (one hundred and twenty) days months after issuance of the Purchase Order.

20.3 Supplier hereby waives the right to termination under this Agreement and/or under law, for any reason. The sole and only remedy available to Supplier under this Agreement is compensation for breach subject to the terms of this Agreement.

20.4 **Effect of Termination**

20.4.1 Subject to Sections 20.4.4 and 20.4.5 below, termination of this Agreement will not limit either Party from pursuing any other remedies available to it under any agreement and/or applicable law, and termination or expiration of this Agreement, from whatever cause arising, shall be without prejudice to the rights of the Parties accrued under this Agreement up to the time of termination.

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

20.4.3 Upon receipt of any termination notice, Supplier shall, take all required steps and actions to:

- (i) Cease all Works according to the IPM's instructions; and
- (ii) Transfer to ISR all its rights under all warranties extended by its suppliers.



20.4.4 Payment to Supplier (if and to the extent that Supplier shall be entitled thereto) shall constitute the sole and exclusive remedy (monetary or otherwise) to Supplier in connection with the Agreement and/or the cancellation and/or the termination thereof, and Supplier shall not be entitled to any other payment or recourse for loss of profits or to any other remedy that might be available to it under applicable law and/or agreement (including but without limitation specific performance and/or injunctive relief) in the event of termination of this Agreement pursuant to this Section.

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

## **21. RISKS AND LIABILITIES**

21.1 **General.** Supplier shall be solely responsible for, and shall defend, indemnify, and hold ISR, including its shareholders, officers, directors, employees and consultants harmless from and against any and all claims, liabilities, demands, suits, proceedings (whether civil or criminal, other than criminal acts of ISR), orders, judgments, penalties, settlements, fines and all associated costs, losses and expenses (including reasonable attorneys' and other professionals' fees) or any other direct damages (collectively, "**Damages**"), which ISR and/or any of the above persons and entities may incur arising out of, incidental to, or connected with any of the following (all without derogating from any other remedy that ISR and/or any of the above persons and entities may be entitled to under the circumstances, pursuant to this Agreement or under any applicable law):

21.1.1 the Works, including but without limitation, their design, assembly, integration, adjustment, tests and trials of the Turntables (and/or any part thereof), as well as the Warranty;

21.1.2 the use of the Turntables and/or any part thereof, when the Damages arise from faulty design (including errors and omissions in design) or workmanship;

21.1.3 any damage to property, death or injury to persons, arising out of, or in connection with, the Turntables or the Works;

21.1.4 Supplier's breach of any term or provision of this Agreement or any applicable law;

21.1.5 any claims against ISR made by any Subcontractor arising from, or in connection with, the Works to be performed by the Subcontractor, including but without limitation any payments related to the Works or any part thereof to any Subcontractor;

21.1.6 any negligent or willful act, error or omission by Supplier, its employees, agents, representatives and Subcontractors, in the performance of this Agreement (including, for the removal of doubt, the execution of the Works);

21.1.7 any actual or alleged infringement of Intellectual Property Rights of whatever type arising out of, in connection with, or otherwise resulting from the use of the Works by Supplier, its Subcontractors or ISR.

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

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

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

21.3.2 Supplier shall, at its sole cost and expense, defend any litigation that may arise from such Proceedings and conduct all negotiations for the settlement of same, provided that any settlement of such Proceedings will be subject to ISR's prior written consent and provided further that Supplier shall not, in connection with such defense and/or settlement (i) injure ISR's reputation; (ii) purport to take any action expressly or implicitly on behalf of ISR; or (iii) purport to make any

representation and/or admission regarding and/or concerning ISR or ISR's activities. ISR's written consent shall not be unreasonably withheld.

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

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

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

21.4 **Exclusions**. Subject to the provisions of Section 21.5 below, in no event shall either Party be liable towards the other for any and all indirect or consequential Damages, including but not limited to loss of profit, loss of revenue, loss of goodwill, etc. with respect to this Agreement (including the Works to be performed hereunder), whether in an action based on contract, tort (including negligence) or any other cause of action.

21.5 **Exceptions**. The provisions of Section 21.4 above shall not apply with respect to:

21.5.1 A ny Damages to ISR incurred in connection with endemic failures, including but without limitation such damages to ISR as: replacement of components, publication of advertisements and/or manpower specifically assigned to rectification of such faults and damages;

- 21.5.2 Al  
leged or actual infringement of Intellectual Property Rights by the  
Works or any part thereof;
- 21.5.3 De  
ath or injury;
- 21.5.4 Cl  
aim for payment by any Subcontractor.

21.6 **Withholding of Payments and Collection on Guarantees.** Without derogating from any other rights of ISR under any applicable law and/or agreement, in the event that any claim is made against ISR, or any lien or attachment is affixed against any of its properties, which claim, lien or attachment relates to or is based on circumstances and/or events which fall within the responsibilities and/or indemnification obligations of Supplier as per Section 21.1 above, then unless Supplier provides adequate security, to ISR's satisfaction, that the claim will be covered, ISR may (i) withhold all payments then due or thereafter becoming due to Supplier, until such claim is satisfied and such liens or attachments released, and (ii) settle the matter by paying any such claim or removing such lien or attachment, and recover any amounts required in order to do so by collecting upon any of the applicable Guarantees.

## **22. SUBCONTRACTORS**

- 22.1 Supplier may nominate the Subcontractors as detailed in this Section and shall inform ISR on the identity of such Subcontractors in writing and in advance.
- 22.2 Suppliers hereby warrant that all Subcontractors meet and continue to meet all conditions detailed in the Technical Specifications.
- 22.3 Suppliers hereby warrant that it shall monitor and supervise the Subcontractors and shall be fully responsible towards ISR and/or any third part to any act and/or omission of such Subcontractors and/or any third party on their behalf.
- 22.4 Without derogating from the above, the approval, non-rejection, recommendation, instructions, directives or determinations made by ISR with regard to the employment of, and/or to the placement any Subcontractors, shall not relieve Supplier of its responsibility to ISR in connection with the execution of the Works, the supply of the Turnouts and the fulfillment of the obligations under this Agreement or from any liability assumed by or imposed upon Supplier under this Agreement and under applicable law, nor shall it impose any liability or responsibility upon ISR in connection with the Subcontractor, including but without limitation for any acts and omissions done and/or works executed by Subcontractors, and Supplier shall be fully responsible towards ISR for the acts and omissions of the Subcontractors.

## **23. FORCE MAJEURE**

- 23.1 Neither Party shall be liable for any delay in the performance of the Agreement, if such delay is, directly or indirectly, caused by, or arises from, an impediment beyond the control and without fault or negligence of the party effected, including the following occurrences fires, floods, accidents, civil unrest, acts of God, war, governmental interference or embargoes, strikes, labor difficulties or transportation delays of the Turntables ("**Force Majeure**"). The above does not extend for any contingencies stated above happening to Supplier's Subcontractors except for the Turntables engine and bogie.
- 23.2 A Party affected by an event of Force Majeure shall (a) promptly notify the other party in writing of any such event, the expected duration thereof, and its anticipated effect on the party affected in terms of the performance required hereunder; and (b) make reasonable efforts to promptly remedy any such event of Force Majeure. Any Works or supply delayed due to an event of Force Majeure shall be extended for such time as the event shall continue.

## **24. LANGUAGE**

This Agreement and any correspondence with regard to this Agreement shall be in English. All correspondence, orders, documentation, drawings, specifications, instructions, manuals etc. made by the Parties in performance of this Agreement will be in English or Hebrew.

## **25. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- 25.1 This Agreement shall, in all respects, be governed by and construed in accordance with the laws in force from time to time in the State of Israel.
- 25.2 The Uniform Law on International Sales (1964) and the United Nations (Vienna) Convention Contracts for the International Sale of Goods of April 11, 1980 shall not be applicable to this agreement.
- 25.3 Any dispute in connection with the Agreement including its validity or interpretation shall be exclusively referred to the competent court located in Tel Aviv in Israel and the competent Tel Aviv courts shall have exclusive jurisdiction in all matters arising therefrom.
- 25.4 **Dispute not Effecting Delivery**. Supplier agrees and undertakes that no Dispute shall entitle Supplier to delay or withhold the continuation of the Works.

## **26. MISCELLANEOUS**

- 26.1 **Waiver of Lien Supplier.** Supplier hereby waives from the moment of Final Acceptance any possessory lien, mechanic's lien or similar possessory or retention right (in Hebrew: "זכות עיכבון") and preservation of ownership (in Hebrew: "שימור בעלות") (collectively, "**Retention Rights**") against ISR with regard to the Turntables and the Works, including, but not limited to, the items of the Works that are in the possession of Supplier in Supplier's workshops or which are in the possession of Subcontractors. Supplier represents and warrants that the consideration to be paid by ISR under this Agreement includes ample financial provisions concerning the waiver by Supplier of all Retention Rights with regard to the Works, and the payments to be made by Supplier to its Subcontractors contain ample financial provisions for the insertion of a clause requiring a similar waiver by said Subcontractor in connection with the Works.
- 26.2 **ISR's Set-Off Right.** Without derogating from any right of set-off conferred upon ISR elsewhere in this Agreement or under applicable law, ISR shall have the right to set-off against any amounts that may be owed to Supplier (or to any Subcontractor, as the case may be) pursuant to this Agreement and/or to any other Agreement between ISR and Supplier, any amount, debt or payment owed by Supplier (or by any Subcontractor) to ISR pursuant to this Agreement (including but without limitation in the form of indemnification or compensation for damages, regardless if their sum is liquidated or not).
- 26.3 **Exercise or non exercise of rights by the Parties.** Consent by a party to deviate from any of the provisions of this Agreement in a particular case shall not constitute a precedent, and no inference by analogy shall be drawn from it in respect of any other case. If a party does not exercise any of the rights conferred upon it by this Agreement or any Guarantee arising hereunder in a particular instance, such fact shall not be regarded as a waiver of those rights in any other instance and shall not be considered as implying or indicating a waiver of any right under this Agreement.
- 26.4 **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, superseding all prior and contemporaneous drafts (including drafts of the Agreement that formed part of the Tender), proposals, negotiations, communications, documents, understandings and agreements, written or oral, with respect to the subject matter of this Agreement, unless specifically incorporated herein by reference. Any such superseded documents shall not be used in any manner for the interpretation of this Agreement and shall not constitute admissible evidence in any proceedings between the parties. This Agreement may only be amended by a written document signed by both parties.
- 26.5 **No third party beneficiaries.** All rights and obligations of the parties hereunder are personal to them. This Agreement is not intended to benefit, nor

shall it be deemed to give rise to, any rights to any third party (including, without limitation any Subcontractor).

- 26.6 **Assignment.** This Agreement, including the rights and obligations herein, may not be transferred by the Supplier to any third Party without receiving ISR's prior written consent, which shall not be unreasonably withheld. ISR may at any time, upon its absolute discretion, assign and/or transfer any and/or all of its rights and/or obligations under this Agreement to the State of Israel and/or any other entity controlled and/or affiliated to the State of Israel ("State of Israel") by providing written notice to Supplier ("Notice of Assignment"). Upon receipt of Notice of Assignment by the Supplier, the assignment and/or the transfer shall be binding and the Supplier may not object such assignment and/or transfer and shall fulfill any and all obligations resulting from such assignment and/or the transfer as directed by ISR and/or the State of Israel. Without derogating from the above, the State of Israel may reassign and/or retransfer, upon its absolute discretion and at any time, all of its rights and obligations back to ISR by providing written notice to the Supplier and such reassign and/or retransfer shall be binding and the Supplier may not object such reassignment and/or the retransfer and shall fulfill all obligations resulting from such reassignment and/or the retransfer as directed by ISR and/or the State of Israel. The Supplier hereby waives any and all claims and/or demand against ISR and/or State of Israel resulting from the implementation of this Section by ISR and/or the State of Israel.
- 26.7 **Severability.** If any provision of this Agreement is held or made invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the remainder of this Agreement, and the invalid or unenforceable provisions shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the original intentions of the parties hereto and has like economic effect.
- 26.8 **Notices.** All notices, unless otherwise expressly provided in this Agreement, shall be in writing and shall be sent by either of the parties to the other party by registered mail, or personal delivery to the addresses set forth at the head of this Agreement, and shall be deemed to have been given seven (7) Business Days after the date on which the notice was posted, or in the case of notice by fax, twenty four (24) hours after dispatch by fax, or in the case of personal delivery, at the time of delivery.

**IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT BY THEIR DULY AUTHORIZED REPRESENTATIVES AS OF THE EFFECTIVE DATE.**

**ISRAEL RAILWAYS LTD.**

---

*Signature:*

---

*Title:* **CEO**

*Printed Name:*

*Signature:*

---

*Title:*

---

*Printed Name:*

---

*Signature:*

---

*Title:* **CFO**

*Printed Name:*

*Signature:*

---

*Title:*

---

*Printed Name:*

---



**Appendix A**  
**Technical Specification**

**Appendix B**  
**Consideration**

**Appendix C**  
**Supplier's Bank Account Form**

**PART A – Supplier's Bank Details**

*[to be completed by the Supplier's authorized signatories]:*

On behalf of the Supplier, we the undersigned,  
\_\_\_\_\_ [authorized signatories on behalf of the  
Supplier], hereby request that all payments to be paid to the Supplier by Israel Railways Ltd.  
under this Agreement shall be made by means of bank transfer to the Supplier's bank account  
according to the following details:

**Bank Account No.:** \_\_\_\_\_

**Swift Code:** \_\_\_\_\_

**IBAN Code:** \_\_\_\_\_

**Branch Number:** \_\_\_\_\_

**Bank Name:** \_\_\_\_\_

**Bank Address:** \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

-----  
**PART B - Certificate of Authorization**

*[to be completed by an ADVOCATE / C.P.A.]:*

I, \_\_\_\_\_ [*Advocate/C.P.A.*] of \_\_\_\_\_, hereby certify that \_\_\_\_\_ and \_\_\_\_\_ are fully empowered by \_\_\_\_\_ [*Supplier*] to sign the Bank Account Form, and hereby certify that their signatures upon the Supplier's Bank Account Form are fully binding upon the Supplier in accordance with the Supplier's articles of association.

Signature and stamp: \_\_\_\_\_

\_\_\_\_\_

**PART B - Certificate of Authorization**

*[alternative authorization: to be completed by the SUPPLIER'S BANK]:*

We, the undersigned \_\_\_\_\_ [*Bank*] hereby declare that as of \_\_\_\_\_ [*date of Supplier's signature on Part A above*] the \_\_\_\_\_ [*Supplier*] is the registered owner of the above mentioned account and certify that Part A above has been signed by the Supplier's authorized signatories. We undertake to promptly inform Israel Railways Ltd. regarding any change in the ownership of the account or the authorized signatories.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

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

Stamp: \_\_\_\_\_

-----

**Appendix D**  
**Acceptance Certificate**

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

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

We hereby certify that the Turntables as defined in Agreement No. \_\_\_\_\_ (the "**Agreement**"), which were ordered by Israel Railways Ltd. ("**ISR**") pursuant to the Agreement, have been received by ISR after the successful performance of all the tests and trials required under the Agreement.

It is hereby confirmed between the Parties that the granting of this certificate shall not (i) derogate from the Supplier's liability under the Agreement; (ii) create any liability on the part of ISR; or (iii) constitute a waiver of any of ISR's rights under the Agreement.

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

Signed: \_\_\_\_\_ Israel Railways Ltd.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

Confirmed:

Signed: \_\_\_\_\_ for *[Name Of The Supplier]*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

**Appendix E**  
**Change Order Form**

**Part 1**

**FROM:** \_\_\_\_\_

**CHANGE ORDER NUMBER:** \_\_\_\_\_

**ISR Project Manager**

**DATE OF CHANGE ORDER:** \_\_\_\_\_

**TO:** \_\_\_\_\_

**Supplier**

---

IN ACCORDANCE WITH OUR AGREEMENT MADE EFFECTIVE AS OF \_\_\_\_\_, 20\_\_, YOU ARE HEREBY NOTIFIED OF THE FOLLOWING ALTERATIONS TO THE TECHNICAL SPECIFICATIONS, DETAILED BELOW. AS OF \_\_\_\_\_, 20\_\_, THE CRANES SHALL EFFECTIVELY BE CONSTRUCTED IN ACCORDANCE WITH THE AMENDED TECHNICAL SPECIFICATIONS.

WITHIN TEN (10) BUSINESS DAYS FROM YOUR RECEIPT OF THIS CHANGE ORDER, YOU SHALL PROVIDE US WITH A WRITTEN CONFIRMATION AND, IF APPLICABLE, SHALL STATE REQUESTED CHANGES TO THE CRANES AND/OR ANY PART THEREOF, CRANES PRICE, DELIVERY TIME, AND ANY OTHER TERMS RELEVANT TO THE PROVISION THEREOF. SUCH REQUESTED CHANGES, IF ANY, SHALL BE TREATED IN ACCORDANCE WITH THE AGREEMENT.

*(attach additional documentation if necessary)*

Description of Alteration to Technical Specifications: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

---

Signature: \_\_\_\_\_

IPM, on behalf of ISR

Date:

**Part 2**

Supplier's requests for changes

---

---

---

---

---

---

---

---

---

---

Signature: \_\_\_\_\_

SPM, on behalf of the Supplier

Date:

**Part 3**

Final decision regarding the Changes, and agreements between the Parties regarding impact of the Changes on the Cranes Price and Delivery Time

---

---

---

---

---

---

---

---

---

---

---

Signature: \_\_\_\_\_

IPM, on behalf of ISR

Date:

Signature: \_\_\_\_\_

SPM, on behalf of the Supplier

Date:



**Appendix F**

**General Spare Parts List and Prices**

**Appendix G**

**QAP**

**Appendix H**  
**Training Plan**