

Agreement No. _____
(this "Agreement")

Entered and signed this ____ day of _____ 2017
in Tel Aviv, Israel (the "**Effective Date**")

between

Israel Railways Ltd.
Company No. 52-004361-3
Of P.O.B. 18085
Tel Aviv 61180, ISRAEL

("ISR")

Of the First Part

and

(the "**Supplier**")

Of the Second Part

Each of ISR and the Supplier shall be referred to herein as a "**Party**" and collectively they shall be referred to as the "**Parties**."

WHEREAS, ISR is interested in purchasing Point Condition Monitoring Systems as described in the Technical Specifications (the "**PCM**"), in accordance with and subject to the terms and provisions of this Agreement; and

WHEREAS, ISR published Tender No. 41733 for the PCM in accordance with the terms and conditions of this Agreement (the "**Tender**"), and the Supplier submitted a proposal in response to the Tender appended hereto as **Annex A1** to this Agreement, which was selected by ISR to be the winning proposal; and

WHEREAS, the Supplier declares and certifies that it has the know-how, ability, expertise, facilities, financial and other resources, licenses, permits and all that is required and necessary in order to design, install, supply and warrant the PCM, as well as to fulfill all of the obligations set forth in this Agreement, including the Technical Specifications; and

WHEREAS, the Supplier represents that on _____, it entered into an agreement with the Israeli Ministry of Industry and Trade, represented by the Industrial Cooperation Authority ("**ICA**"), with regard to partial offset procurement which is to be carried out in connection with the manufacture, design, supply and installation of the PCM; and

WHEREAS, the Parties desire to set forth a contractual framework to determine the Parties'

relationship and obligations with regard to the manufacture, design, supply and installation of the PCM, and training of ISR railway staff and warranty of the PCM all as detailed below.

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

1. PREAMBLE, APPENDICES AND HEADINGS

- 1.1 The headings in this Agreement are for reference purposes only, are not a material part of and shall not be used in interpreting this Agreement.
- 1.2 The Agreement shall consist of the following documents each of which is attached hereto and is an integral and inseparable part hereof:
 - 1.2.1. Annex A – Technical Specifications
 - 1.2.2. Annex A1 – Supplier's proposal in response to the Tender
 - 1.2.3. Annex B – Consideration Annex
 - 1.2.4. Annex C – Supplier's Bank Account Form
 - 1.2.5. Annex D1 – Pilot Final Acceptance Certificate
 - 1.2.6. Annex D2 – Initial Purchase Order Final Acceptance Certificate
 - 1.2.7. Annex E – Additional PCM Final Acceptance Certificate
 - 1.2.8. Annex F – Spare Parts
 - 1.2.9. Annex G1 – Down Payment / Payment Guarantee
 - 1.2.10. Annex G2 – Performance and Warranty Guarantee
 - 1.2.11. Annex H – Change Order Form
 - 1.2.12. Annex I – Training plan
 - 1.2.13. Annex J – DDP
 - 1.2.14. Annex K – QAP
 - 1.2.15. Annex L – ITP
 - 1.2.17. Annex M – Safety and Security Regulations.

PRIORITY OF DOCUMENTS

1.3 Order of Precedence.

In the event of any contradiction, discrepancy, conflict, inconsistency, ambiguity and/or uncertainty between the provisions of this Agreement, the attachments hereto and/or the Tender, the following order of precedence will apply:

- This Agreement, including the Consideration Annex, but excluding the other attachments hereto;
- The other annexes to this Agreement, including the Technical Specifications;
- The other Tender documents (excluding **Appendix B** to the Tender);
- Supplier's Proposal to the Tender.

- 1.4 In case of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty as to the interpretation of any provision contained in this Agreement and/or the order of precedence between the various provisions contained in this Agreement, which discrepancy, ambiguity, conflict, inconsistency or uncertainty is not resolved by applying the above order of precedence, those provisions that provide ISR with the maximum rights and which best serve the interest of ISR under the circumstances, as ISR shall reasonably determine after consultation with Supplier, shall apply.
- 1.5 Except as otherwise specifically indicated, all references to Sections refer to Sections of this Agreement, and all references to Annexes refer to Annexes to this Agreement. Annexes 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 2. Whenever required by the context of this Agreement, the singular shall include the plural, the masculine shall include the feminine and vice versa.

2. DEFINITIONS

The following terms used in this Agreement shall have the meaning set forth below:

- 2.1. "**Acceptance Certificate**" – Pilot Acceptance Certificate and/or Initial Purchase Order Final Certificate and/or Additional PCM Final Certificate, as applicable.
- 2.2. "**Additional PCM**" – as defined in Section 8;
- 2.3. "**Additional PCM Final Acceptance Certificate**" - shall mean ISR's issuance of a signed Final Acceptance Certificate in the form attached hereto as **Annex E**, following delivery of Additional PCM to each of the Sites in accordance with the Delivery Terms, the performance of all operations required to bring the PCM to full operational condition and the successful performance of the acceptance tests in accordance with the ITP, as well as the fulfillment of all required obligations pursuant to this Agreement;
- 2.4. "**Agreement Period**" – as defined in Section 3;
- 2.5. "**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 the Supplier;
- 2.6. "**Business Days**" - any day of the week other than Saturday, and excluding official holidays and bank holidays in Israel;
- 2.7. "**CIR**" – Connections to ISR's Existing Interlocking Rooms all as described in the Technical Specifications.
- 2.8. "**CPM**" - Connections to ISR's Existing Point Machines all as described in the

Technical Specifications.

- 2.9 "DAP" – the terms of delivery for the PCM shall be "Delivered At Place" (DAP) at ISR's Site, according to "INCOTERMS 2010" - International Rules for the Interpretation of Trade Terms (ICC Pub. No. 715), subject to the Delivery Terms;
- 2.10. "**Delivery Terms**" – as defined in Section 11;
- 2.11. "**Existing Interlocking Rooms**" – The various Interlocking Rooms located at various ISR's Sites.
- 2.12. "**Existing Point Machines**" - The various Point Machines located at various ISR's Sites.
- 2.13. "**Guarantees**" – as detailed in Section 19 below;
- 2.14. "**Initial Purchase Order**" – as defined in Section 7.2 below;
- 2.15. "**Initial Purchase Order Sites**" –the Sites where the PCM purchased under Initial Purchase Order shall be delivered and installed. Initial Purchase Order Sites and the number of CPM and CIR in each Site shall be chosen by ISR upon its sole discretion.
- 2.16. "**Initial Purchase Order Acceptance Certificate**" - shall mean ISR's issuance of a signed Initial Purchase Order Final Acceptance Certificate in the form attached hereto as Annex D2, following complete delivery of all PCMs purchased under Initial Purchase Order to all the Initial Purchase Order Sites all in accordance with the Delivery Terms, the performance of all operations required to bring the all systems of all PCMs purchased under Initial Purchase Order to full operational condition and the successful performance of the acceptance tests in accordance with the ITP, the commissioning by ISR as well as the fulfillment of all required obligations pursuant to this Agreement; For the avoidance of any doubt, Initial Purchase Order Acceptance Certificate shall not be signed by ISR unless all tests and commissioning of all PCMs in all Initial Purchase Order Sites were completed to the satisfaction of ISR as detailed below.
- 2.17. "**Initial Purchase Order Sites**" - the Sites where the PCMs purchased under Initial Purchase Order shall be delivered and installed. PCMs purchased under Initial Purchase Order Sites and the number of CPM and CIR in each Site shall be chosen by ISR upon its sole discretion.
- 2.18. "**IPM**" – ISR's project manager for the Agreement, as set forth in Section 7.5 and as may be changed from time to time at ISR's sole discretion by notification in writing to the Supplier;
- 2.19. "**ITP**" – the inspection and test plan as specified in Section 12.1 below;
- 2.20. "**Maintenance Center**" – the place in which ISR shall decide that the Supplier shall install the Server.

- 2.21. **"Optional Maintenance Period"** – as detailed in Section 14 below;
- 2.22. **"PCM"** – Sever, CIRs and CPM and all other components of the system as described in the Technical Specification, purchased under the Pilot and/or Initial Purchase Order.
- 2.23. **"Pilot"** – the supply and installation of One (1) Server in the Maintenance Center, Five (5) CIR and 30 CPM in the Pilot Stations.
- 2.24. **"Pilot Acceptance Certificate"** - shall mean ISR's issuance of a signed Pilot Final Acceptance Certificate in the form attached hereto as **Annex D1**, following complete delivery of Pilot to all the Pilot Sites and the delivery of the Server to the Maintenance Center all in accordance with the Delivery Terms, the performance of all operations required to bring the all systems of the Pilot to full operational condition and the successful performance of the acceptance tests in accordance with the ITP, the completion of the Training, commissioning by ISR as well as the fulfillment of all required obligations pursuant to this Agreement; For the avoidance of any doubt, Pilot Acceptance Certificate shall not be signed by ISR unless all tests and commissioning of all PCMs in all Pilot Sites and the Server were completed to the satisfaction as detailed below.
- 2.25. **"Pilot Order"** – a purchase order issued and signed by ISR for the Pilot as defined in Section 7.1 below.
- 2.26. **"Pilot Sites"** –the Sites where the Pilot shall be delivered and installed during the Pilot. Pilot Sites and the number of CPM and CIR in each Site shall be chosen by ISR upon its sole discretion.
- 2.27. **"POD"** – Pilot Order Date and/or Initial Purchase Order Date and/or Additional PCM Purchase Order Date;
- 2.28. **"Purchase Order"** – Pilot Order and/or Initial Purchase Order and/or Additional PCM Purchase Order.
- 2.29. **"QAP"** – as defined in Section 5.13.2;
- 2.30. **"Resolution Time"** - the time from the report of a malfunction and until it was rectified;
- 2.31. **"Response Time"** - the time within which the Supplier begins to handle a reported malfunction;
- 2.32. **"Server"** – as detailed in the Technical Specification.
- 2.33. **"Sites"** – the Sites designated by ISR at which the PCM shall be installed; ISR may change the Sites upon its absolute discretion;
- 2.34. **"SPM"** - Supplier's Project Manager for the Agreement, as set forth in Section 7.5;

- 2.35. "**Subcontractor**" – as defined in Section 24;
- 2.36. "**Training**" – as set forth in Section 5.7;
- 2.37. "**Warranty Period**" – as defined in Section 13;
- 2.38. "**Works**" – shall mean all works, components, materials and equipment to be executed or supplied by the Supplier, directly or indirectly, in connection with the design, supply, installation, assembling, tests, trial running, commissioning, Training, Optional On Site Support warranty of the PCM pursuant to this Agreement including supply of all Spare Parts and Works on Sites. 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 and other elements of every kind and description (including Intellectual Property Rights), all in accordance with the Technical Specifications and this Agreement.

3. **AGREEMENT PERIOD**

- 3.1. This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of three (3) years and/or the end of the Initial Maintenance Period for the PCM and/or the Additional PCM, whichever is longer (the "**Agreement Period**").
- 3.2. The Supplier hereby grants ISR an option, to be executed upon ISR's sole discretion, to extend the term of this Agreement for an additional period of up to three (3) years and/or the end of the Optional Maintenance Period for the PCM and/or the Additional PCM, whichever is longer (the "**Option Period**").
- 3.3. The terms and conditions of this Agreement shall continue to apply *mutatis mutandis* to the Option Period. In the event that ISR wishes to exercise this option, it shall notify Supplier in writing at least sixty (60) days prior to the end of the Agreement Period.

4. **THE SUPPLIER'S DECLARATIONS AND REPRESENTATIONS**

The Supplier hereby declares, represents and warrants to ISR as follows:

- 4.1. **Authority Relative to this Agreement.** The Supplier has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action of the Supplier, and no other corporate proceedings on the part of the Supplier are necessary to authorize this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Supplier and constitutes a valid, legal and binding agreement of the Supplier, enforceable against the Supplier in accordance with its terms.

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

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

4.4. **Supplier Examination and Evaluation.**

The Supplier hereby represents and warrants to ISR that:

4.4.1. The Supplier has examined ISR's Maintenance Center, Existing Interlocking Rooms, Existing point Machines and the Sites and found them suitable and fit for the PCM, the execution of the Works required for the provision of the PCM as well for the fulfillment for any and all obligations under this Agreement;

4.4.2. The Supplier has examined all documents pertaining to the Tender, this Agreement, in particular the Technical Specifications, as well as all other documents comprising this Agreement, and is satisfied with regard to the data, specifications, terms and conditions under which the PCM shall be designed, manufactured, assembled, integrated, tested, supplied and delivered to ISR, the execution of the Works required for the provision of the PCM as well for the fulfillment for any and all obligations under this Agreement;

4.4.3. The Supplier has evaluated (independent of, and without relying on, any information or data provided by ISR) any and all other factors that may be deemed to affect the carrying out of its obligations under this Agreement, including but without limitation, technical risks and environmental influences, and any other risk involved therewith, and such other conditions that may be expected to affect the progress or completion of the Works in accordance with this Agreement, and has reasonable grounds to believe and does believe that such performance is feasible and practicable under the terms and conditions stated herein;

4.4.4. The Supplier has examined and is fully satisfied with all of the information provided to it by ISR, including ISR's rules and procedures;

4.4.5. The Supplier shall not be entitled to any payment or compensation other than as set forth herein and shall not make any claim for additional payment from ISR on the grounds of any misunderstanding or misapprehension in respect of any matter which a reasonable and expert supplier of a PCM knew or should have known or on the grounds of any allegation or fact that incorrect information was given to Supplier by any person (subcontractors included), firm or any legal entity which it knew or should have known to be incorrect as a reasonable and expert supplier of a PCM, whether the person, firm or legal entity was employed by ISR or not, or on the grounds of the failure on its part

to obtain correct information with regard to the Works.

4.5. **Compliance with Applicable Law.** The Supplier is aware and has knowledge of all relevant applicable legal requirements prevailing in the State of Israel that must be followed for the execution of the Works. The Supplier shall abide by any relevant applicable law, as shall be in effect from time to time, and shall perform and execute the Works in strict compliance therewith (including but without limitation in compliance with regulations and orders relating to the employment of its employees).

4.6. **Discrepancies and Omissions**

4.6.1. The Supplier represents that wherever there is a discrepancy between the Technical Specifications, the Supplier's proposal to the Tender (**Annex AI**), drawings or other documents constituting a part of this Agreement, its prices reflect the type of materials, construction, works or other relevant element, item or unit best suited (to ISR) and consistent with the Technical Specifications and the Supplier's proposal to the Tender (**Annex AI**). No inaccuracies, errors, misstatements, omissions, discrepancies, defective or incomplete descriptions, contradictions or ambiguities in or between any of the provisions of this Agreement, or any information or instructions communicated or given by ISR to the Supplier from time to time, shall constitute grounds for stoppage of the Works, for relieving or releasing the Supplier of any of its responsibilities, duties, obligations or liabilities pursuant to this Agreement, for cancellation or termination of this Agreement by the Supplier or for withdrawal from the Works.

4.6.2. Should any works, matters or things required for the proper execution and completion of the Works be omitted from this Agreement by ISR, the IPM shall – upon notice from the 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 the Supplier and in what manner and order. The Supplier shall thereupon be bound to do such works, matters and things as instructed by ISR after consultation with Supplier. 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 in accordance with the provisions of Section 18 herein (prices shall be based upon the prices specified in the Consideration Annex or pursuant thereto) – without derogating from the Supplier's obligation to execute such Works as instructed by the IPM.

4.6.3. The Supplier shall advise ISR in writing, immediately and in any case within no more than five (5) days, upon becoming aware of any suspected or actual contradiction or discrepancies between the provisions of, or any omission in, any of the various documents forming this Agreement.

4.7. **Review and Approval.** The Supplier confirms and agrees that it shall apply to receive ISR's written consent, wherever ISR's consent, explicitly or implied, is required according to this Agreement. This requirement and the provision of ISR's consent, shall

not derogate in any way from the Supplier's responsibilities and liabilities under this Agreement, and ISR shall bear no responsibility or liability whatsoever in connection with the review (whether or not there are objections) and/or with any approval given to, or denied from, the Supplier, with respect to any matter and/or document, including but without limitation, drawings, designs (at all phases), plans, tests, or otherwise.

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

5. GENERAL OBLIGATIONS

- 5.1. **Purchase and Sale**. The Supplier hereby agrees to execute any and all Works required for the provision of the PCM in accordance with the terms and the conditions of this Agreement, including, *inter alia*, the design, supply, installation, commissioning, Training, Optional On Site Support, Warranty as well as the fulfillment of Supplier's obligations in accordance with the Technical Specifications and the Supplier's proposal to the Tender and in compliance with the guidelines and procedures set out in this Agreement. In the event of any conflict or inconsistency between the instructions or any data contained in the Technical Specifications and the Supplier's proposal to the Tender, the terms and conditions more favorable to ISR shall take priority. In case of disagreement between the Parties in this regard, ISR shall have the final decision what is favorable to ISR.
- 5.2. **"Turn Key Basis"**. The PCM shall be supplied on a "turn-key" basis such that the 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, the Supplier shall be solely responsible, at its own expense and risk, to carry out any and all Works, import and design, supply and installation 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 and installation of the PCM; this shall include, without limitation, the Training, Optional On Site Support, testing, running in, demonstration and commissioning of the PCM and any other tasks or duties relating to the above – all as shall be required in order to timely deliver an operable, safe, efficient and reliable PCM, and putting same into full operation in accordance with all of the requirements of this Agreement, while applying state-of-the-art technology.
- 5.3. **Conformity of the PCM**. The provision of the PCM 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.
- 5.4. **Standards**. The Works and the PCM shall meet the standards set forth by ISR in this Agreement, and if no standard is expressly mentioned, the 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 PCM or any part thereof shall assure the reliability, efficiency, competency as well as the functionality of the PCM to ISR's full satisfaction.

5.5. **No Lock.** The PCM 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 PCM; (ii) prevent ISR from fully utilizing all or any part or software of the PCM; or (iii) require action or intervention by the Supplier or any other person or entity, to allow ISR to utilize all or any part of the PCM.

5.6. **Permits.** The 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 and installation of the PCM and the provision of all ancillary services, pursuant to this Agreement.

5.7. **Training.** No later than 30 days after Pilot Order Date, the Supplier shall provide ISR with a detailed proposed training plan for approval to ISR (including ISR's Training department) which shall be annexed to this Agreement as **Annex I** (the "**Training Plan**"). The Training Plan shall ensure the highest level of operation and maintenance of the PCM and/or any part thereof by ISR. The Training Plan should include all aids, technical documents, instructions and manuals etc. to be delivered by the Supplier to ISR.

5.7.1. Without derogating from the generality of the above, the Training Plan shall combine comprehensive theoretical and practical aspects, and shall include, at least the following fields:

- Routine maintenance performed by the user.
- Troubleshooting techniques and procedures – basic (e.g re-starting) and advanced (complex faults).
- Software Parameter's Update;
- Maintenance of the PCM

The Training shall be performed by certified instructors, fluent in English, with at least 2 years of training experience of similar monitoring safety of railway systems, possessing appropriate skills and knowledge in the above areas of practice.

The Training will be set in accordance with ISR requests, where dedicated sessions will be formulized for each professional unit in ISR using the PCM.

Training should meet the following requirements:

- Training will be conducted both "on-site" (practical) and in classroom (theoretical)

- of trainees: ___ technicians and ___ trainers. Number
- n of training: as shall be determined in the Training Plan approved by ISR but at least ___ Business Days. Duratio

The Training will include both theoretical and practical aspects.

Practical Training shall be done after installation of First Installation. For the avoidance of any doubt, the Supplier shall not be entitled to receive First Installation Acceptance Certificate unless the Training shall be completed to the full satisfaction of ISR.

5.7.2. Without derogating from the generality of the above, three (3) months before the Training, the Supplier shall provide ISR with the following Training Materials:

- Training schedule.
- Technical Manuals, trouble-shooting instructions.
- Training Aids if necessary

The Training Materials shall be provided in the following format:

- User Handbook / Operator's Manual, Maintenance Manuals will be supplied as:
- IETM – all technical documents
- PDF files (unlocked and data-copy-enabled).

5.7.3. All costs related to the training according to the Training Plan are included in the PCM Price (including but not limited to traveling, accommodation and lodging expenses), and the Supplier shall not be entitled to any additional consideration for the provision of any Training specified herein.

5.7.4. Without 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.

5.8. **Safety**. All Works of the Supplier and any Subcontractor shall be performed in strict compliance with ISR's safety regulations as detailed in **Annex M** (as shall be updated from time to time upon ISR's sole discretion) and any other applicable law pertaining to safety at work, as may be in force from time to time. The Supplier shall immediately report to the IPM the occurrence of any accident in connection with the execution of the Works. The 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.

5.9. **Cooperation**. The 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 PCM and any other equipment and/or infrastructure of ISR.

- 5.10. **Personnel.** The Supplier shall employ trained skilled employees and consultants as shall be necessary or appropriate to enable the Supplier to supply the PCM and the Warranty including the execution of the Works ("**Supplier's Personnel**").
- 5.10.1. The Supplier shall provide sufficient personnel appropriate to the size, nature and type of Works to be carried out under this Agreement. If at any time the Supplier or ISR reasonably deems the personnel not being sufficient for the timely performance of the Works, the Supplier shall forthwith reasonably increase the number of competent employees appropriately.
- 5.10.2. The Supplier shall be solely responsible to obtain any permits and authorizations required under Applicable Law with respect to the Supplier's Personnel including but without limitation work permits for foreign personnel (including but without limitation permits by the immigration authorities) and security clearances as may be required by ISR. The above shall apply to permits to work on Shabbat and Jewish and Israeli national holidays pursuant to the Hours of Services and Rest Law, 5711–1951.
- 5.10.3. For the removal of doubt, in the event that such permits or any of them shall not be obtained: (i) the Supplier shall not be entitled to any delay in the Works, and (ii) the Supplier shall not be released from any of its obligations, and shall employ for this purpose, subject to Applicable Law and Works for which such permits are not required. The Supplier is aware that receiving such permits may take some time and shall perform all activities in order to ensure that such permits shall be granted on time.
- 5.10.4. Without derogating from the above and in addition thereto, the Supplier's Personnel shall ensure that any additional personnel shall be available at any time as required by the ISR to fulfill Supplier's obligations under this Agreement, in order to provide the Works and provide ongoing response to malfunctions, bugs, defects and/or discrepancies.
- 5.10.5. The Supplier shall at all times retain full responsibility for the due performance of its obligations by the Supplier's Personnel and for the satisfactory completion of the Works and shall be liable for any act and/or omission of any of the Supplier's Personnel not in accordance with the terms of this Agreement (whether such Supplier's Personnel are employees of the Supplier and/or are otherwise engaged by the Supplier).
- 5.10.6. The Supplier shall procure that all of the Supplier's Personnel shall follow all safety and security regulations detailed in **Annex M**, as shall be updated by ISR from time to time.
- 5.10.7. The Supplier shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of any of the Supplier's Personnel.

- 5.10.8. No later than 14 days after Pilot Order Date, the Supplier shall submit to ISR a list of all of the Supplier's Personnel that shall be working at ISR Sites, including ID/Passport numbers and such other details as shall be reasonably requested by ISR, prior to any involvement of such personnel in the supply of the PCM.
- 5.10.9. Without derogating from the above, the Supplier shall nominate a SPM to manage the Works on its behalf. The SPM shall have a degree in engineering or at least, first degree in science from a recognized institute and at least 5 (five) years of experience in the supply and installation of PCM to railway companies. The identity of the SPM shall be subject to ISR's approval and discretion. Without derogating from the above, the SPM will be available for the Works at any time, whenever it is necessary.
- 5.10.10. The Supplier's Personnel shall not be deemed under any circumstances whatsoever, to be the employees of ISR, and the Supplier shall indemnify and defend ISR from and against all claims made by the Supplier's 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 Supplier's Personnel shall be the sole and exclusive responsibility of the Supplier and the 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 Supplier's Personnel. The Supplier acknowledges and agrees that the Supplier is obligated to report as income all compensation received by the Supplier pursuant to this Agreement, and the Supplier agrees to and acknowledges the obligation to pay all self-employment and other taxes thereon. The 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 the Supplier's Personnel (ii) a determination by a court or agency that the Supplier and/or any of the Supplier's Personnel is not an independent contractor, or (iii) any breach by the personnel of any of the covenants contained in this Agreement.
- 5.10.11. Without derogating from the above, the Supplier shall bear any cost and/or expense relating to the Supplier's Personnel (including but not limited to travelling, accommodation and lodging expenses). The Supplier shall be responsible and bear all expenses associated to visas, work permits etc. associated to any service to be provided by the Supplier through personnel in Israel.
- 5.10.12. ISR shall be entitled to request the replacement of any of the Supplier's Personnel in Israel at any time, and the Supplier undertakes to appoint or to instruct any Subcontractors to appoint, as the case may be, a skilled

employee in its stead within thirty (30) days of ISR's request. For the avoidance of doubt, and without anything herein to the contrary, the Supplier shall be responsible for any labor costs arising in connection with the replacement of any of its personnel pursuant to this Agreement.

5.11. **Environmental Standards.** The PCM and/or the Works shall meet the applicable environmental standards in accordance with Israeli law and regulation and in the absence of an applicable Israeli law the relevant EU standard shall apply. However, in any event of any discrepancy between the provisions of the Israeli law and any EU standard, the provisions of the Israeli law shall prevail.

5.12. **Quality Management System.** The Supplier hereby undertakes, warrants and confirms to remain certified in accordance with ISO 9001:2008 standards or equivalent, and the Supplier shall at all times during the term of this Agreement be willing and able to prove such certification. In any event, the 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 the Supplier and/or any of its Subcontractors.

5.13. **Detailed Design and Quality Assurance Plan**

15.3.1 Without derogating from the Technical Specifications, within 30 (thirty) days from the Pilot Order Date, Supplier shall prepare and submit to ISR for approval a Detailed Design Plan ("**DDP**") defining the main activities to take place during the performance of this Agreement including a detailed design. The DDP shall consist of such activities as development and design, manufacture, assembly, integration, inspection, testing, acceptance of the PCM, detailed design and any other obligation in accordance with the terms and the conditions of this Agreement and/or the Technical Specifications. Without derogating from the above, the DDP shall include Ready for Operation Plan defining the operation of PCM following DDP onwards. The DDP shall be based on the requirements of the Technical Specifications and the relevant obligations set forth in this Agreement. In order to approve the DDP by ISR, the SPM and his relevant deputies shall meet at Supplier's Factory after Supplier submitted the DDP to ISR for approval at a time to be coordinated between the Parties. After the DDP shall be approved in writing by ISR it shall be annexed as **Annex J** to this Agreement.

15.3.2 Without derogating from the Technical Specifications, within 30 (thirty) days from the Pilot Order Date, 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 annexed as Annex K to this Agreement.

15.3.3 Without derogating from the Technical Specifications, within 30 (thirty) days from the Pilot Order Date, 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 K** to this Agreement.

6. SUPERVISION; ACCESS TO PLACES OF PRODUCTION; INSPECTIONS

- 6.1 **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 PCM and Warranty, by itself or by any third party in Israel and/or abroad on ISR's behalf, and the 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 the Supplier's liability and responsibility to perform the Works in accordance with the provisions of this Agreement and to supply and install the PCM 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.
- 6.2 **ISR's Access.** Without derogating from the generality of Section 6.1, 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 completed or inspected, 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.
- 6.3 **Assistance by the Supplier.** Without derogating from the above, the 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.
- 6.4 **Access to Subcontractors Locations.** Without derogating from the above, if work for or in connection with the Works is being carried out at a Subcontractor's premises, the Supplier shall, by a term in the Subcontractor agreement, secure similar rights of access by ISR or by means of any person acting for or on its behalf as set out in this Section, and shall take all action necessary to make such rights effective.
- 6.5 **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 the Supplier that is

acceptable by ISR, the 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 the Supplier shall, without delay, replace and deliver satisfactory materials, components or Works at the Supplier's sole cost and expense. No such rejection shall give grounds to any delay or extension in the timetables set forth in the Delivery Schedule.

6.6 **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 the 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.

6.7 The Supplier undertakes to comply with and fulfil the obligations specified in the Foreign Supplier's Industrial Cooperation Undertaking with regard to offset procurement which is to be carried out in connection with the execution of this Agreement. Without derogating from the generality of the above, the Supplier warrants that it has fulfilled the aforesaid obligations in accordance with the Mandatory Tenders Regulations (Mandatory Industrial Cooperation) 5767-2007, including submitting a plan for the execution of industrial cooperation in Israel, all in accordance with the Israeli Mandatory Tenders Regulations (Mandatory Industrial Cooperation) 5767 – 2007, and without limitation Section 8 of such regulations with respect to the period for fulfilment of the aforesaid obligations.

7. ORDER PROCEDURE

7.1. Within 60 (sixty) days of the Effective Date, ISR shall issue a Pilot Order for the supply and installation of One (1) Server in the Maintenance Center, Five (5) CIR and 30 CPM ("Pilot Order") in the Pilot Sites.

7.2. In the event Pilot shall be successful and Supplier shall receive a Pilot Final Acceptance Certificate, ISR shall issue an Initial purchase Order for Seven (7) CIR and Seventy (70) CPM in the Sites ("Initial Purchase Order"). ISR shall have the right to decide not to issue an Initial Purchase Order even if Pilot Final Acceptance Certificate was received due to administrative and/or financial reasons and/or if ISR believes the results of the Pilot were not satisfactory and/or to minimize the quantity purchased and/or delay the issuance of the Initial Purchase Order and Supplier hereby waives and claim and/or demand against ISR and shall not be entitled to any consideration and/or compensation.

7.3. ISR shall forward Purchase Order to the Supplier via email to the contact person of the Supplier, a copy of which shall be sent via air mail.

7.4. Upon receipt of a Purchase Order by email, the 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.

7.5. 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 and/or e-mail, if any.

7.6. 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.

7.7. The following original documents will be supplied by the Supplier to ISR:

7.7.1. 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, the Supplier's company registration number and ISR's order number for the goods;

7.7.2. Original Certificate of Origin and Non-Manipulation Certificate, if required;

7.7.3. Bill of Lading - issued in ISR's name;

7.7.4. Packing Lists;

7.7.5. Any and all other documentation necessary to release the PCM 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 PCM 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.

7.8. Original copies of all of the above mentioned documents **must arrive** at ISR's designated Site at least **five (5) calendar days before** the arrival of the ship delivering the PCM 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.

8. Additional PCM

8.1. During Agreement Period, ISR shall have the right, upon its sole discretion, to purchase additional CIRs and/or CPMs and/or Severs (hereinafter: the "**Additional PCM**") by issuing Additional PCM Purchase Orders. All terms and conditions of this Agreement shall apply, *mutatis mutandis*, to the Additional PCM expect as detailed herein:

8.1.1. Delivery Time of the Additional PCM shall be no later than One (1) month from the relevant POD. All terms and conditions relevant to the installation and testing of the PCM shall apply to installation and testing of the Additional PCM, *mutatis mutandis*.

8.1.2. Section 13 shall apply, *mutatis mutandis*, on Additional PCM subject to the following provisions:

8.1.3.1 Warranty Period for each Additional PCM shall be for Twenty Four (24) months commencing from the issuance of a Site Acceptance Certificate from ISR for such Additional PCM.

8.1.3.2 Unless decided otherwise by ISR, upon its sole discretion, the Supplier shall not perform any Training and/or provide On Site Support with respect to Additional PCM.

8.1.5 Section 14 shall apply, *mutatis mutandis*, for each Additional PCM. Optional Maintenance Period for each Additional PCM shall commence at the end of the Initial Maintenance Period for the relevant Additional PCM. ISR shall have the option to terminate the Optional Maintenance Period for any Additional PCM for any reason by 30 days prior written notice.

8.1.6 The Additional PCM Price shall be as detailed in ***Annex B*** and the provisions of Section 9 below shall apply, *mutatis mutandis*.

8.1.7 Terms of payment for the Additional PCM Price shall be as detailed in Section 10 below.

8.1.8 The Initial Maintenance Price for each Additional PCM and/or Optional Maintenance Price for each Additional PCM shall be as detailed in Appendix B.

8.1.9 Terms of payment for Initial Maintenance Price for the PCM shall apply, *mutatis mutandis*, for the terms of payment for each Additional PCM.

8.1.10 Terms of payment for Optional Maintenance Price for the PCM shall apply, *mutatis mutandis*, for the terms for of payment for each Additional PCM.

9. CONSIDERATION

9.1. **Pilot Price**

The consideration payable for the Works including design, supply, installation, Training, Warranty, support, testing and examination of the Pilot as well as for all ancillary services and materials, equipment, licenses to software, hardware, spare parts and all undertakings of the Supplier required for the execution and completion of the Works and for the fulfillment of all of the Supplier's obligations in accordance with the terms and conditions of this Agreement during Pilot, to be paid by ISR to the Supplier, shall be the consideration set forth in **Annex B** (the "**Pilot Price**").

9.2. **Initial Purchase Order**

The consideration payable for the Works including design, supply, installation, Warranty, support, testing and examination of the PCM ordered under Initial Purchase Order as well as for all ancillary services and materials, equipment, licenses to software, hardware, spare parts and all undertakings of the Supplier required for the execution and completion of the Works and for the fulfillment of all of the Supplier's obligations in accordance with the terms and conditions of this Agreement with regards to the initial Purchase Order to be paid by ISR to the Supplier, shall be the consideration set forth in **Annex B** (the "**Initial Purchase Order Price**"). In the event that ISR shall issue part of the Initial Purchase Order, the Initial Purchase Order Price for the partly Initial Purchase Order shall be reduced pro rata from the price detailed in Annex B to reflect the quantities actually purchased.

9.3. **Additional PCM Price**

The consideration payable for the Additional PCM (including all Works relating to the Additional PCM and including design, supply, installation, Warranty, support, testing and examination of the Additional PCM as well as for all ancillary services and materials, equipment, licenses to software, hardware, spare parts and all undertakings of the Supplier required for the execution and completion of the Works and for the fulfillment of all of the Supplier's obligations in accordance with the terms and conditions of this Agreement, to be paid by ISR to the Supplier, shall be the consideration set forth in **Annex B** (the "**Additional PCM Price**").

9.4. ISR shall be entitled to deduct from any and all sums payable pursuant to this Agreement the amounts ISR is legally required to withhold at source, unless an appropriate exemption has been provided by the Supplier prior to the date of such payment, and any amount so deducted shall be deemed for any and all purpose to have been paid in full by ISR under this Agreement. The Supplier shall be responsible to obtain any appropriate exemption.

9.5. The Pilot Price shall be the final, complete and inclusive price for the supply and installation of the Pilot and for the performance of the Works and ancillary services related thereto including Training. There will be no adjustment whatsoever for the Pilot Price specified in the Consideration Annex (**Annex B**), and shall only be linked to the index as detailed in **Annex B**.

9.6. The Initial Purchase Order Price shall be the final, complete and inclusive price for the supply and installation of the PCM under Initial Purchase Order and for the performance of the Works and ancillary services related thereto. There will be no

adjustment whatsoever for the Initial Purchase Order Price specified in the Consideration Annex (**Annex B**), and shall only be linked to the index as detailed in **Annex B**.

9.7. The Additional PCM Price shall be the final, complete and inclusive price for the design, supply and installation of the Additional PCM and for the performance of the Works and ancillary services related thereto. There will be no adjustment whatsoever for the Additional PCM Price specified in the Consideration Annex (**Annex B**), and shall only be linked to the index as detailed in **Annex B**.

9.8. To preclude any doubt, it is hereby clarified that all taxes, fees, duties, licenses, costs or other payments that are to be paid in connection with the exportation, supply and installation of the PCM, including but not limited to all types of importation and custom duties and services, such as transportation costs, customs agents' fees, purchase tax (in Hebrew "Mas Kniya" or "מס קניה"), wharfage fees (in Hebrew "Dmei Ratzif" or "דמי רציף"), cleaning of the containers, unstuffing and unloading at the Site, Israeli customs duties, port handling fees (in Hebrew "Dmei Nitul" or "דמי ניטול"), port infrastructure fees (in Hebrew "Dmei Tashtit" or "דמי תשתית"), cam locks for discharging the PCM at port, supervision while discharging at port, discharging terms at port, etc. shall be considered as part of the PCM Price and shall be borne solely by the Supplier.

9.9. Notwithstanding the above, ISR shall be required to pay, if applicable, the VAT (and only the VAT) imposed by the Israeli Tax Authorities on the PCM.

10. TERMS OF PAYMENT

10.1. Payment by ISR to Supplier of the **Pilot Price** shall be made as follows:

10.1.1. A down payment of Thirty (30%) of the Pilot Price ("**Pilot Down Payment**") shall be paid to the Supplier within sixty (60) calendar days following Pilot Order, provided that the Supplier has provided ISR at least forty five (45) calendar days prior to the payment with all the following:

10.1.1.1 an invoice in the amount of the Down Payment;

10.1.1.2 a Pilot Down Payment Guarantee issued in accordance with the terms and condition set out in Section 19 below;

10.1.1.3 the Pilot Performance and Warranty Guarantee as defined in Section 19 below; and

10.1.1.4 The Detailed Design Plan, ITP, QAP and Training Plan and all other documents Supplier has to provide under the terms of this Agreement.

10.1.2. A final payment of Seventy (70%) of the Pilot Price shall be paid to the Supplier within sixty (60) calendar days following the provision of the Pilot Acceptance Certificate (the "**Pilot Final Payment**"), provided however that the Supplier has provided ISR at least forty five (45) calendar days prior to the payment with all of the following:

10.1.2.1. an invoice in the amount of the Pilot Final Payment;

10.1.2.2.a Form of Pilot Acceptance Certificate signed by ISR, and sent to

the Supplier within fourteen (14) calendar days after signing, as set forth in Section 12 below.

10.2. Payment by ISR to Supplier of the **Initial Purchase Order Price** shall be made as follows:

10.2.1. A down payment of Thirty (30%) of the Pilot Price ("**Initial Purchase Order Down Payment**") shall be paid to the Supplier within sixty (60) calendar days following Initial Purchase Order Date, provided that the Supplier has provided ISR at least forty five (45) calendar days prior to the payment with all the following:

10.2.1.1 an invoice in the amount of the Initial Purchase Order Down Payment;

10.2.1.2 an Initial Purchase Order Down Payment Guarantee issued in accordance with the terms and condition set out in Section 19 below;

10.2.1.3 the Initial Purchase Order Performance and Warranty Guarantee as defined in Section 19 below; and

10.2.2. A final payment of Seventy (70%) of the Initial Purchase Order Price shall be paid to the Supplier within sixty (60) calendar days following the provision of the Initial Purchase Order Acceptance Certificate (the "**Pilot Final Payment**"), provided however that the Supplier has provided ISR at least forty five (45) calendar days prior to the payment with all of the following:

10.2.2.1. an invoice in the amount of the Pilot Final Payment;

10.2.2.2.a Form of Initial Purchase Order Acceptance Certificate signed by ISR, and sent to the Supplier within fourteen (14) calendar days after signing, as set forth in Section 12 below.

10.3. Payment by ISR to Supplier of the **Additional PCM** shall be made as follows:

10.3.1. A down payment of Thirty (30%) of the Additional PCM Price ("**Additional PCM Down Payment**") shall be paid to the Supplier within sixty (60) calendar days following POD, provided that the Supplier has provided ISR at least forty five (45) calendar days prior to the payment with all of the following:

10.3.1.1.an invoice in the amount of the Additional PCM Down Payment;

10.3.1.2.an Down Payment Guarantee issued in accordance with the terms and conditions set out in Section 19 below; and

10.3.1.3.the Performance and Warranty Guarantee as defined in Section 19 below.

10.3.2. The remaining balance of Seventy (70%) of the Additional PCM Price shall be paid within sixty (60) days following the issuance of the Final Acceptance Certificate for the last Additional PCM installed under the relevant POD, provided that the Supplier has provided ISR at least forty five (45) calendar days prior to the payment with all of the following:

10.3.2.1.an invoice in the amount of the balance amount; and

10.3.2.2.the Site Final Acceptance Certificate for the Additional PCM in the form attached hereto as Annex E, signed by ISR, and sent to the Supplier within fourteen (14) calendar days after signing, as set forth in Section 12 below.

10.4. Payments under this Agreement shall be made to the Supplier by means of bank transfer to the Supplier's bank account as specified in the form attached hereto as Annex C.

11.

DELIV

ERY TERMS AND DELIVERY TIME

11.1. The terms of supply and delivery of the PCM shall be DAP to Sites, and subject to the terms and conditions defined herein in this Agreement (the "**Delivery Terms**").

The delivery time of the Pilot shall not exceed One (1) month following the issuance of a the Pilot Purchase Order. Installation in all Pilot Sites shall be terminated within Thirty (30) Days from the beginning of installation in the first Pilot Site.

In the event that the Supplier shall receive a Pilot Installation Acceptance Certificate, the delivery time of the Initial Purchase Order shall be during a term of One (1) month from Initial Purchase Order. Installation in each Site for the shall start One (1) Business Days from ISR's written notice to install the PCM in the relevant Site and shall be terminated within Fourteen (14) Days from the beginning of installation in such Site.

In the event that ISR shall decide to purchase Additional PCM, then the delivery time of the Optional PCM shall be during a term of One (1) month from Relevant Purchase Order. Installation in each Site for the shall start One (1) Business Days from ISR's written notice to install the PCM in the relevant Site and shall be terminated within Fourteen (14) Days from the beginning of installation in such Site.

(all the above shall be referred as the "**Delivery Time**")

11.2. **Passage of Title**

11.2.1. The ownership and title to the PCM 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 PCM 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.

11.2.2. ISR shall bear no responsibility for any Works performed or materials, components or equipment used by the 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 Site Final Acceptance. The Supplier shall be solely responsible to protect completely and preserve entirely the PCM and any related Works, components, material and equipment until the Site Final

Acceptance thereof.

12.

TESTI

NG AND ACCEPTANCE TESTS

12.1. 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 PCM (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 PCM 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

The approved ITP shall be attached to the Agreement as Annex L.

12.2. ISR shall be entitled to participate in all such acceptance tests and shall be given advance notice of at least 30 Business Days prior to each such acceptance test. The Supplier shall be responsible for all equipment and resources and expenses with regards to the acceptance tests, excluding flights, room and board for ISR's representative, which shall be at ISR's expense.

12.3. Upon delivery DAP of the PCM or any part thereof to the Site, the Supplier shall perform all Works required to bring the PCM to a full operational condition in accordance with the applicable terms and conditions defined herein in this Agreement and the Technical Specifications.

12.4. Pilot

12.4.1 Upon the completion of the Works on all of the Pilot Sites (including the commissioning) by Supplier to ISR's full satisfaction, ISR shall execute commission tests on all Pilot PCM. In the event that all Pilot PCM shall run Sixty (60) consecutive days without any defect and/or faults, ISR shall that sign within Fourteen (14) Days a Form of Pilot Acceptance Certificate.

12.4.2 In the event that within 90 days from beginning of the commission tests on Pilot PCM, all Pilot PCM shall not run for a period of 60 consecutive days without any fault and/or defect, then such a failure shall constitute a breach by the Supplier of the obligation to deliver the Pilot as required under this Agreement, and ISR shall be entitled (without derogating from any of its other rights under any agreement and/or law) to: (1) terminate this Agreement and/or (2) demand that the Supplier immediately repay any payment received from ISR and immediately collect all PCM from Pilot Sites and/or (3) collect any and/or all Guarantees provided by the Supplier under this Agreement and/or (4) charge compensation from the Supplier for any damage caused to ISR due to the failure of the Supplier to deliver the Pilot as required under this Agreement.

12.4.3 Without derogating from the above and/or any of ISR's rights under any agreement and/or Applicable Law, ISR shall be entitled to charge the Supplier with liquidated damages amounting to 300 € for each day the Pilot does not

receive a Pilot Acceptance Certificate.

For the removal of doubt, the liquidated damages detailed above shall not derogate from any other rights or remedies available to ISR under any Applicable Law or under this Agreement.

For the removal of doubt, ISR may recover any sums due to ISR with regard to such liquidated damages from the Guarantees provided by the Supplier or by set off from any consideration under this Agreement.

12.5. **Initial Purchase Order**

12.5.1 Upon the completion of the Works on all of the Initial Order Sites, (including the commissioning) by Supplier to ISR's full satisfaction, ISR shall execute commission tests on all Pilot PCM. In the event that all Pilot PCM shall run sixty (60) consecutive days without any defect and/or faults, ISR shall that sign within Fourteen (14) Days a Form of Initial Order Purchase Acceptance Certificate.

12.5.2 Without derogating from the above and/or any of ISR's rights under any agreement and/or Applicable Law, ISR shall be entitled to charge the Supplier with liquidated damages amounting to 300 € for each day the Initial Order Purchase does not receive a Initial Order Purchase Acceptance Certificate.

For the removal of doubt, the liquidated damages detailed above shall not derogate from any other rights or remedies available to ISR under any Applicable Law or under this Agreement.

For the removal of doubt, ISR may recover any sums due to ISR with regard to such liquidated damages from the Guarantees provided by the Supplier or by set off from any consideration under this Agreement.

13. **WARRANTY**

13.1. The Supplier confirms and warrants to ISR that commencing on the issuance date of the each Final Acceptance Certificate (whether Pilot Acceptance Certificate and/or Initial Purchase Order Acceptance Certificate and/or Site Final Acceptance Certificate) and for a period of twenty four (24) months from the issuance date of the Final Acceptance Certificate for relevant PCM (the "**Warranty Period**"), all PCM and any part thereof (including software but excluding hardware) 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 shall be free of any faults, defects and/or deficiencies, including but not limited to any faults, defects and/or deficiencies in design, workmanship, dismantling for sea and land conveyance, assembly, software etc.

13.2. The Supplier further confirms and warrants that, as an integral part of the Warranty Period, the Supplier shall provide ISR, without any additional charge or cost, with preventive and corrective maintenance, replacement of spare parts resulting from the corrective maintenance, and troubleshooting.

13.3. As an integral part of the Warranty during the Warranty Period, the Supplier shall supply and install updates and upgrades of all Software and of changes (including Minor Releases and New Editions) for applications and system components to what is available in the market. Installing any New Edition or Minor Release shall be subject to prior written approval of the ISR. The Supplier shall notify ISR of the existence of any update or new version release, and will detail the implications of the installation and hardware and software requirements associated with it, if at all. For the avoidance of doubt, it is hereby clarified that the aforesaid shall not require ISR to order from the Supplier the updates, New Editions and Minor Releases mentioned above, and ISR shall have the sole discretion whether to install the same. The Supplier will provide the full documentation and training required and acceptable for the changes and for the updated editions and versions, so that ISR is in possession of documentation compatible with the latest updates made to the system at any given time. The Supplier shall be responsible for any fault and/or defect associated and/or resulting from any updates and/or upgrades of all Software and of the changes detailed above.

"Minor release"— update to the latest release of the Software, released by the Supplier and/or third party relating to the Software from time to time, with the repair as the main purpose.

"New Edition" -A Major Release, a new and updated version of the Software, released by the Supplier and/or third party relating to the Software from time to time in order to improve functionality vis-a-vis the previous edition.

13.4. ISR shall promptly inform the Supplier of a Work defect it is aware of after discovery of such defect. The Supplier shall not bear responsibility for defects if such defect is a result of gross negligence of ISR including its gross negligence in the storage of the PCM, unauthorized modifications and/or maintenance of the PCM and/or vandalism on the part of ISR to the PCM.

13.5. Without derogating from any rights or remedies available to ISR according to this Agreement and/or under Applicable Law, upon receipt by the Supplier of a written notice from ISR claiming that the Warranty has been breached, in any way whatsoever, the Supplier shall, at its sole cost and expense and within the time set out in the Technical Specifications and in accordance with the severity of such breach, shall: (i) promptly investigate and examine the PCM or any part thereof; (ii) remedy, cure, repair, replace (including the supply and installation of the new components), fix and take any action necessary to remedy any defect, deficiency, damage or loss, due to any failure, fault, shortcoming or non-conformity, such as faulty or negligent design (including errors and omissions in design), workmanship, materials or components, assembly or software, of the Supplier or of any and all of the Subcontractors or any third party acting on the Supplier's behalf.

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

13.6.1. Malfunction report service 24 hours a day 7 days per week whether through

human staffed Sites or through automatic recording.

- 13.6.2. In case of a malfunction in the PCM, the Supplier shall arrive to relevant Site within 4 (four) hours from ISR's report on such malfunction. In the event that, to the best of the Supplier's knowledge and expertise, the malfunction can be cured within 1 (one) hour, then the Supplier shall immediately start to repair the malfunction, but in the event that to the best of the Supplier's knowledge and expertise, the malfunction cannot be cured within 1 (one) hour, then the Supplier shall start repairing such malfunction from 10 PM that night and finish not later than 6AM the following morning. As all repairs shall be conducted on rails and/or near rails, all repair works shall be done in complete coordination with ISR and subject to ISR's consent for such repairs.
- 13.6.3. In the event that over 48 hours have elapsed from ISR's notice of a malfunction without a solution having been found, ISR shall be entitled to charge the Supplier with liquidated damages amounting to 300 € for each day during which the malfunction was not resolved.
- 13.6.4. Treatment of any malfunction shall be continuous until the solution is found, i.e. until the malfunction is repaired or until a reasonable way is found to circumvent it. A solution which is circumvented shall not absolve the Supplier of its duty to repair the malfunction or be considered a solution to the malfunction in any respect.
- 13.6.5. For the removal of doubt, the liquidated damages detailed above shall not derogate from any other rights or remedies available to ISR under any Applicable Law or under this Agreement.
- 13.6.6. For the removal of doubt, ISR may recover any sums due to ISR with regard to such liquidated damages from the Guarantees provided by the Supplier or by set off from any consideration under this Agreement.
- 13.7. For the avoidance of doubt, the Warranty requirements specified herein are irrespective of whether the defect, deficiency or deviation from this Agreement was already present upon the issuance by ISR of any Acceptance Certificate.
- 13.8. For the avoidance of doubt it is hereby clarified that the Supplier shall not be entitled, directly or indirectly, to receive any additional reimbursement, consideration, cost, fee and/or payment for the provision of the Warranty and/or Service Support Visit and the PCM Price is deemed as the final, complete and inclusive price for the provision of the Warranty and all obligations and undertakings pertaining thereto as well as for all ancillary services and Works required for the provision of the Warranty, including the Service Support Visit.
- 13.9. Nothing herein shall be construed as if ISR grants the Supplier exclusivity in providing the Warranty. ISR may elect, at its sole and absolute discretion, to receive Warranty, or any part thereof, from any third party, in which case the Supplier shall provide ISR and such third party with all the necessary assistance (including but not limited to providing all maintenance related documentation, such as reports, drawings and so forth), so that the Warranty shall be transferred to such third party uninterruptedly and in the most efficient manner. Such retention of Warranty from a

third party shall not relieve the Supplier from any of its obligations under this Agreement, including with respect to the Warranty during the Warranty Period.

14.

OPTIO

NAL MAINTENANCE PERIOD

- 14.1. As of the end of the Warranty Period, ISR shall have an option, exercisable at its sole discretion, to require the Supplier to provide Maintenance Services for the PCM for a period of up to sixty (60) months and Supplier shall provide ISR with Maintenance Services for the PCM (the "**Optional Maintenance Period**"). ISR shall notify the Supplier in writing of its intention to exercise its rights pursuant to this Section no later than thirty (30) calendar days prior to the end of the Warranty Period. ISR may terminate the Optional Maintenance Period for any reason, including without any cause, during such Optional Maintenance Period by providing Suppliers with a written notice thirty (30) days in advance.
- 14.2. During the Optional Maintenance Period, the Supplier shall provide ISR all services required so that the PCM and any part thereof shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and 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, workmanship, dismantling for sea and land conveyance, assembly, software etc.
- 14.3. All of the Supplier's undertakings under Section 13 above shall apply during the Optional Maintenance Period. Optional Maintenance Service shall not include On Site Support.
- 14.4. In consideration for the provision of the Optional Maintenance services, as detailed in this Section, during the Optional Maintenance Period, the Supplier shall be entitled to receive the consideration for the Optional Maintenance Services set forth in the Consideration Annex ("**Optional Maintenance Services Price**"). The Optional Maintenance Services Price shall be linked in accordance with the linkage mechanism set forth in the Consideration Annex.
- 14.5. For the avoidance of doubt, the Parties hereby expressly confirm and warrant that the Optional Maintenance Services Price shall be the final, complete and inclusive price that will be paid to the Supplier by ISR for the provision of the Maintenance Services, as detailed in this Section.
- 14.6. The Optional Maintenance Services Price shall be paid in quarterly installments, at the end of each quarter, for the Optional Maintenance Services provided by the Supplier during the previous quarter. The Supplier shall submit, no later than thirty (30) days from the end of each quarter, an original invoice for the coming quarter. Terms of payment shall be within 60 days from issuance of a tax invoice provided such tax invoice was issued at the end of each quarter.

15. WORKS ON SITES

Without derogating from the Supplier's obligations pursuant to this Agreement, the Supplier declares and undertakes as follows with regards to any of the Works performed by the Supplier in the ISR's Sites (including installation of the PCM In ISR's Sites and/or any of the Warranty and/or Maintenance Works) (the "**Works on Sites**"):

- 15.1. The Supplier shall be responsible for the performance of all of the Works on Sites.
- 15.2. The Supplier declares that the performance of the Works on Sites shall be executed in accordance with ISR Safety Regulations (Annex M) to this Agreement, as shall be updated from time to time.
- 15.3. The Supplier declares that it received all of the information related to the performance of the Works on Sites and that there is no impediment and/or limitation to its performance of the infrastructure Works on the dates as specified in this Agreement, and of excellent quality.
- 15.4. The Supplier declares that it shall perform the Works on Sites that are the subject of this Agreement at a high level, and of excellent and the best quality and in strict compliance with the provisions of all Applicable Laws, including, but without derogating from the provisions regarding work safety, including certification for the performance of works at heights. The Supplier hereby declares and confirms that it is aware that the level, quality and nature of the Works pursuant to this Agreement are the essence, basis and foundation of this Agreement, and that ISR would not have entered into this Agreement with the Supplier if it were not for the Supplier's undertakings set forth above.
- 15.5. The Supplier shall issue to ISR all of the approvals of any kind whatsoever relating to the performance of the Works on Sites in accordance with the requirements under any Applicable Law.
- 15.6. The Supplier declares and undertakes that it will perform the Works on Sites in a complete manner, in coordination with subcontractors working on its behalf at the Sites, if any.

16. SPARE PARTS

- 16.1. Without derogating from the Supplier's undertaking to provide the Warranty and/or Initial Maintenance Period (under which Supplier shall provide without any cost all spare parts required to fulfill its commitments under Warranty and Initial Maintenance Service) , the Supplier undertakes that during a period of fifteen (15) 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 PCM or any part thereof, while assuring that the PCM and all systems of the PCM 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**"). The "General Spare Parts" list should include all part numbers, names of original manufacturers, technical

specifications and all remaining required details necessary for the purchase of the Spare Parts by ISR and/or on its behalf.

- 16.2. Without derogating from the generality of Section 16.1, the Supplier shall furnish a detailed Spare Parts List of all necessary and recommended Spare Parts and their prices, in the form attached hereto as **Annex F** within the Effective Date (the "**General Spare Parts List and Prices**"). The General 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 11. The General Spare Parts List and Prices shall be linked in accordance with the linkage mechanism set forth in the Consideration Annex.
- 16.3. If the 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 and shall procure all actions, at its cost and expense under its responsibility so that ISR shall be fully able to make any arrangements necessary to obtain alternate spare parts.
- 16.4. Notwithstanding the undertaking of the Supplier to sell ISR the necessary Spare Parts for the period specified in Section 16.1 above, ISR shall be under no obligation whatsoever to acquire any Spare Parts from the Supplier. ISR, in its sole discretion, shall decide if, and when, it will acquire the Spare Parts from the Supplier during the relevant time period. The Supplier shall support ISR in acquiring the Spare Parts even if ISR shall decide not to purchase the Spare Parts from the Supplier, to the extent where ISR will be fully able to acquire the Spare Parts from other suppliers.

17. LIQUIDATED DAMAGES

- 17.1. Without prejudice to any other relief or remedy available to ISR under this Agreement or under law, in the event that the delivery of any of the PCM or any part thereof is delayed beyond the specified Delivery Time, the Supplier shall pay ISR liquidated damages in the sum equal to one-half percent (0.5%) of the value of the PCM 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**").
- 17.2. 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 damages 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.
- 17.3. For the removal of doubt, the Liquidated Damages detailed above shall not derogate from any other rights or remedies available to ISR under any Applicable Law or under this Agreement.
- 17.4. For the removal of doubt, ISR may recover any sums due to ISR with regard to

such Liquidated Damages from the Guarantees provided by the Supplier or by set off from any consideration under this Agreement.

18. ALTERATION OF TECHNICAL SPECIFICATIONS

- 18.1. ISR reserves the right to alter the Technical Specifications ("**Changes**"). The Supplier shall be notified of the alterations in writing by the IPM ("**Change Order**") in a Change Order Form (attached hereto as **Annex H**). Any Change Order shall specify a date following which the PCM and/or any part thereof shall be designed, manufactured and supplied in accordance with the amended specifications.
- 18.2. Within ten (10) Business Days following the receipt of a Change Order, the Supplier shall provide ISR with a written confirmation and if applicable, shall state on the Change Order Form requested changes to the PCM and/or any part thereof, PCM Price, Delivery Time, and any other terms relevant to the provision thereof.
- 18.3. The price for any Changes included in the Change Order which is a supplement or addition of parts or systems used elsewhere in the PCM 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.
- 18.4. Following receipt of the Supplier's request for changes as detailed above, the Parties shall, in good faith, review the changes and any changes to the PCM Price and Delivery Time requested by the Supplier.
- 18.5. The Changes will be incorporated in the PCM, only after and to the extent that the Parties are agreed as to their impact on the PCM 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.
- 18.6. In the event that the Supplier objects to any Change Order or any part thereof, on the grounds that it may affect safety or structural soundness of the PCM, the 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 the Changes.
- 18.7. Should the Supplier find at any time during the design or manufacture of the PCM 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.

19. GUARANTEES

- 19.1. To secure the punctual, complete and entire performance of all of the Supplier's obligations under this Agreement, including any Works to be performed by any Subcontractor, the Supplier will furnish the Pilot Performance and Warranty Guarantee, Pilot Down Payment Guarantee and Initial Purchase Order Performance and Warranty Guarantee, Initial Purchase Order Down Payment Guarantee (collectively, the "**Guarantees**"), all as specified in this Section below. All Guarantees shall be issued by a first class bank approved in advance by ISR.

19.2. Performance and Warranty Guarantee.

No later than seven (7) Business Days following the Effective Date, the Supplier shall furnish ISR with an irrevocable autonomous Pilot Performance and Warranty Guarantee, approved in advance by ISR and issued in the form attached hereto as **Annex G-2-1** in the amount equal to ten percent (10%) of the Pilot Price, valid until two (2) months following the end of the Warranty Period and amount equal to five percent (5%) of the Pilot Price, valid until two (2) months following the end of the Optional Maintenance Period, if purchased by Supplier.

No later than seven (7) Business Days following Pilot Acceptance Certificate, the Supplier shall furnish ISR with an irrevocable autonomous Initial Purchase Order Performance and Warranty Guarantee, approved in advance by ISR and issued in the form attached hereto as Annex G-2-1 in the amount equal to ten percent (10%) of the Initial Purchase Order Price, valid until two (2) months following the end of the Warranty Period and amount equal to five percent (5%) of the Initial Purchase Order Price, valid until two (2) months following the end of the Optional Maintenance Period, if purchased by Supplier.

19.3. Down Payment Guarantee.

Before payment by ISR of the Down Payment specified in Section 10 above (either for the Pilot Order, the Initial Purchase Price Order, the Additional PCM Purchase Order), and as a condition thereto, the Supplier shall furnish ISR with an irrevocable autonomous bank guarantee in the full amount of such Down Payment in the form attached hereto as Annex G1 (the "**Down Payment Guarantee**").

19.4. The Down Payment Guarantee will be in force until, and will be returned to the Supplier within sixty (60) days after, and subject to, the relevant Final Acceptance Certificate.

19.5. The Supplier shall produce and furnish ISR with all Guarantees under this Agreement at the relevant time for furnishing such Guarantees as stipulated in this Section.

19.6. Each Guarantee shall be in the relevant form for such Guarantee attached hereto as Annex G1- G2 and shall be denominated in Euros only. All such Guarantees shall be unconditional and irrevocable bank guarantees, issued by a first-class bank acceptable to ISR at its sole and absolute discretion (which acceptance must be recorded in advance and in writing), to be paid upon first written demand without the need to prove or substantiate the demand.

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

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

19.9. Collection on a Guarantee or any part thereof by ISR shall not derogate from the right of ISR to terminate this Agreement, nor from its right to any remedy that may

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

20.

INSUR

ANCE

20.1. Without derogating from any of the Supplier's responsibilities and liabilities under this Agreement and/or under any Applicable Law, the Supplier shall maintain, at its own expense with an authorized insurance company, at all times for as long as any liability under this Agreement may exist, insurance policies from reputable insurers, as following:

20.1.1. 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 PCM, the Spare Parts and any related tools and equipment in connection with this Agreement. The insurance policy shall cover the complete manufacture and replacement value of the PCM as well as any other equipment brought by the Supplier to the Sites. The policy shall include a waiver of subrogation towards ISR and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf, provided that the waiver of subrogation does not apply in favor of a person who has maliciously caused the damage. The Supplier undertakes, that a clause stating that in respect of loss or damage to the PCM, the insurance benefits shall be paid to ISR exclusively, which shall be added as an additional insured under the policy.

20.1.2. Marine "All Risk" Insurance against any loss or damage to the PCM and the Spare Parts, arising out of, in course of, or caused by any risk in respect of the transport of the PCM and the Spare Parts pursuant to the institute Cargo clauses. The policy shall apply from the time of moving the PCM and the Spare Parts from the Supplier's warehouses /premises until arrival within ISR's warehouse/premises at the final destination and vice versa, including loading and unloading, temporary and extended storage and all domestic inland and/or intermediate transits anywhere in the world (including within Israel). Settlement of claims will be made at 110% of the PCM and the Spare Parts DDP value, irrespective of the term of sale or purchase. The insurance benefits in respect of loss or damage to the PCM shall be paid to ISR exclusively, which shall be added as an additional insured under the policy. The policy shall include a waiver of subrogation towards ISR and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf, provided that the waiver of subrogation does not apply in favor of a person who has maliciously caused the damage.

20.1.3. A worldwide Third Party Liability Insurance, in the joint names of ISR and the Supplier subject to a "Cross Liability" clause, with a limit of liability not less than €7,500,000 per occurrence and in the aggregate for an annual period of insurance, covering any liability (including Product and Professional Liability) of the Supplier for any loss or damage derived from the execution of this Agreement and/or from any act or omission of the Supplier and/or whoever acts on its behalf.

- 20.2. The Supplier's insurances required under this Section 20 are primary and precedent to any of ISR and/or the Israeli Government's insurances, and the 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 the Supplier's insurance policies.
- 20.3. The Supplier shall refrain from canceling the insurance policies and/or from decreasing their scope. The Supplier further undertakes to notify ISR of any situation of cancellation and/or expiration of any of the insurance policies specified in this Section 20, sixty (60) days before the date of occurrence of such situation.
- 20.4. The 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 PCM, the Spare Parts, and any related tools and equipment. The foregoing shall not apply for the benefit of anyone who caused damage with malicious intent.
- 20.5. The 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 20, and the 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 20, including the limits specified herein, are stated as a minimal demand from the Supplier. The Supplier is encouraged to further scrutinize its exposure to liability and to add and/or increase the types and scope of insurance coverage.
- 20.6. The Supplier undertakes to indemnify ISR for any amount incurred by ISR as a result of a violation by the Supplier (and/or any person or entity acting on its behalf) of any of the conditions of its insurance policies.
- 20.7. It is hereby clarified and agreed that all the insurance policies required in accordance with this Agreement shall be procured at the Supplier's expense and that under no circumstances shall the duty to incur such expenses and/or make any payment in connection therewith apply to ISR. It is also clarified and agreed that the liability for the payment of the insurance deductible applies to the Supplier only and under no circumstances to ISR.
- 20.8. It is clarified and agreed that insurance payments shall not derogate from the Supplier's liability under this Agreement and/or under any Applicable Law, and should the insurance payments not be sufficient in order to cover the extent of the loss and/or the damage actually caused, the Supplier shall be responsible for completing such.
- 20.9. As a condition precedent to the first payment under this Agreement, the 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".

- 20.10. Without derogating from the duty to provide the insurance certificate as detailed above, the Supplier undertakes to provide ISR with a copy of all of its insurance policies, within fourteen (14) days of ISR's first request.

21. INTELLECTUAL PROPERTY RIGHTS

- 21.1. Intellectual Property Rights Warranty. The 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 PCM as well as in any Works and any component thereof (including, without limitation, systems, parts, software incorporated in the PCM or integrated with them), and documentation provided to ISR under this Agreement and the Technical Specifications and/or Software, and/or that it has obtained sufficient rights and is authorized to give rights to ISR as contemplated under this Agreement in any such PCM, 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 PCM, Works and documentation and/or Software in accordance with the terms and conditions of this Agreement, including the operation and maintenance of the PCM and for the purpose of interface with other ISR equipment (whether existing now or in the future).
- 21.2. Non Infringement Warranty. The Supplier warrants that the PCM, 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 the Supplier and/or any third party from which the Supplier has obtained such Intellectual Property Rights in connection with the PCM, Works or documentation provided under this Agreement.
- 21.3. Responsibility of the Supplier. The 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 PCM and Works and/or Software by the Supplier or ISR.
- 21.4. Ownership of Designs, Drawings etc.
- 21.4.1. The title in and to the designs, drawings, documentation and other technical documents that may and/or shall be submitted by the Supplier to ISR according to this Agreement shall pass to ISR. The Intellectual Property rights shall be deemed to be the sole and exclusive property of the Supplier. ISR has the royalty free, non-exclusive right to use these drawing, documentation and other documents to the extent necessary for the use and maintenance of the PCM according to this Agreement.

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

21.5. Grant of License. The Supplier hereby grants to ISR a perpetual, royalty-free license and right to install, use for the purposes described in this Agreement 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 PCM (including maintenance thereof). ISR may make one (1) copy of the software and the documentation for backup archival purposes and/or maintenance of the PCM for its own purposes but shall not copy and/or reproduce the software and/or the documentation.

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

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

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

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

22.

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22.1. 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 the Supplier prior written notice of at least fourteen (14) days, if any of the following occurs:

22.1.1. The 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.

22.1.2. The 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 the Supplier and have not been removed within twenty one (21) days.

- 22.1.3. An attachment order has been imposed and/or any other execution process has been taken with respect to all or a material part of the 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.
 - 22.1.4. The Supplier has stopped managing its business (or substantial portion thereof) or execution of the Works, for a consecutive period of thirty (30) days.
 - 22.1.5. Any representation or warranty made by the Supplier in this Agreement and/or any certificate, schedule or other document delivered by the Supplier pursuant to this Agreement has been false or materially misleading when made.
 - 22.1.6. The Supplier breaches any material provision of this Agreement, and fails to cure such breach within twenty (20) days from the date of ISR's notice.
 - 22.1.7. The Supplier breaches any provision of this Agreement and fails to cure such breach within thirty (30) days from the date of ISR's notice.
- 22.2. Restitution of Payments. Without prejudice to any other remedies available to ISR under any agreement and/or under any Applicable Law, in the event that ISR exercises its right to terminate this Agreement for any of the reasons set forth in Section 22.1, then within thirty (30) days from notification by ISR that it has rescinded or terminated this Agreement, prior to the issuance of Final Acceptance Certificate, the Supplier shall return to ISR all payments it has received from ISR in respect of all terminated Works.
- 22.3. 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 by providing Supplier with a Forty Five (45) days prior written notice.
- 22.4. The Supplier hereby waives the right to termination under this Agreement and/or under Applicable Law, for any reason. The sole and only remedy available to the Supplier under this Agreement is compensation for breach subject to the terms of this Agreement.
- 22.5. Effect of Termination
- 22.5.1. Subject to Sections 22.5.4 and 22.5.5 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.

- 22.5.2. The provisions of this Agreement which expressly or by their nature are required to survive termination of this Agreement (including but without limitation provisions regarding Warranty, Intellectual Property and Liability) shall survive the expiration or termination of this Agreement.
- 22.5.3. Upon receipt of any termination notice, the Supplier shall take all required steps and actions to:
 - 22.5.3.1. Cease all Works according to the IPM's instructions; and
 - 22.5.3.2. Transfer to ISR all its rights under all warranties extended by its supplier.
- 22.5.4. Payment to the Supplier (if and to the extent that the Supplier shall be entitled thereto) shall constitute the sole and exclusive remedy (monetary or otherwise) to the Supplier in connection with this Agreement and/or the cancellation and/or the termination thereof, and the 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.
- 22.5.5. No damages or other recourses whatsoever (including but without limitation enforcement of this Agreement) shall be due to the Supplier, by reason of any termination of this Agreement in accordance with its terms. In particular, but without limitation, the 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.

23. RISKS AND LIABILITIES

- 23.1. General. The 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):
 - 23.1.1. the Works, including but without limitation, their design, assembly,

- integration, adjustment, tests and trials of the PCM (and/or any part thereof), as well as the Warranty;
- 23.1.2. the use of the PCM and/or any part thereof, when the Damages arise from faulty design (including errors and omissions in design) or workmanship;
 - 23.1.3. any damage to property, death or injury to persons, arising out of, or in connection with, the PCM or the Works;
 - 23.1.4. the Supplier's breach of any term or provision of this Agreement or any Applicable Law;
 - 23.1.5. 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;
 - 23.1.6. any negligent or willful act, error or omission by the Supplier, its employees, agents, representatives and Subcontractors, in the performance of this Agreement (including, for the removal of doubt, the execution of the Works);
 - 23.1.7. 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 the Supplier, its Subcontractors or ISR.
- 23.2. 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.
- 23.3. Defense against Proceedings. If any legal action or any other proceeding (collectively "**Proceedings**") are commenced against ISR, in respect of which the Supplier may be liable to indemnify ISR under this Section, then the following provisions shall apply:
- 23.3.1. Notice of such Proceedings shall be promptly given to the Supplier.
 - 23.3.2. The 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 the 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.
 - 23.3.3. At the request and expense of the Supplier, ISR shall afford reasonable assistance to the Supplier in the defense of such Proceedings.
 - 23.3.4. So long as the Supplier timely takes over and properly conducts the

negotiations or litigation, the 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 the 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 led by ISR, then ISR may retain the services of attorneys on its behalf and at the Supplier's expense, which attorneys will represent ISR in the said Proceedings and may settle such Proceedings, provided that the 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 the 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 the Supplier's indemnification obligations hereunder).

23.3.5. 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.

23.4. Exclusions. Subject to the provisions of Section 23.5 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.

23.5. Exceptions. The provisions of Section 23.4 above shall not apply with respect to:

23.5.1. Alleged or actual infringement of Intellectual Property Rights by the Works or any part thereof;

23.5.2. Death or injury;

23.5.3. Claim for payment by any Subcontractor.

23.6. 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 the Supplier as per Section 23.1 above, then unless the 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 the 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.

24. SUBCONTRACTORS

24.1. The Supplier shall not engage any subcontractor ("**Subcontractor**") for the performance of any of its obligations under this Agreement without ISR's prior written approval. Any such retention, if approved, shall be subject to the terms and conditions set forth herein below:

24.1.1. The Subcontractor has read the terms and the conditions of this Agreement and confirms, and warrants that the terms and the conditions of this Agreement, including its Annexes are reasonable and agreeable to it. Furthermore, the Subcontractor shall abide by all applicable obligations under this Agreement which are required by it for the fulfillment of this Agreement, such as, but not limited to, obligations with regards to the Declarations and Representations, General Obligations, Intellectual Property, Spare Parts, Warranty Period, Optional Warranty, Risks and Liabilities, Delivery Terms, Termination, etc.

24.1.2. In the event that the Subcontractor shall fail to comply with this Agreement, ISR shall have the right to rescind its approval (with respect to the Subcontractor) and/or or to instruct the Supplier to perform the relevant Works by itself or through another approved Subcontractor, whereupon the Supplier shall immediately stop employing the non-complying Subcontractor, in accordance with the separation plan, approved in advance by ISR.

24.1.3. The approval, non-rejection, recommendation, instructions, directives or determinations made by ISR with regard to the employment of, and/or to the placement of orders for components and/or equipment with the Subcontractors, shall not relieve the Supplier of its responsibility to ISR in connection with the execution of the Works, the supply of the PCM and the fulfillment of the obligations under this Agreement or from any liability assumed by or imposed upon the 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 the Supplier shall be fully responsible towards ISR for the acts and omissions of the Subcontractors.

24.1.4. The agreement entered into between the Supplier and the Subcontractors which relates to the performance of the Supplier's obligations under this Agreement shall include all of the following provisions:

24.1.4.1. Subcontractor is aware of and agrees to all provisions of this Agreement and their consequences as they relate or apply (expressly or implicitly) to such Subcontractor agreement and/or to the Works to be performed and/or to the equipment and/or components and/or materials to be supplied under such Subcontractor agreement and undertakes to comply with such provisions.

24.1.4.2. Subcontractor shall have no legal recourse against ISR in any matter arising out of or connected with the Works. Without derogating from the generality of the above, Subcontractor shall

waive any Retention Right against Supplier and ISR, and will confirm that the payments to be made by Supplier to Subcontractors contain ample financial provisions concerning such waiver by Subcontractor of all Retention Rights.

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

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

25. FORCE MAJEURE

25.1. 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 PCM (collectively, "**Force Majeure**").

25.2. 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 supply delayed due to an event of Force Majeure shall be extended for such time as the event shall continue.

26. 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.

27. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

27.1. 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.

27.2. 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.

27.3. Any dispute in connection with this Agreement including its validity or interpretation shall be settled referred to the competent court located in Tel Aviv, Israel, and the competent Israeli courts shall have exclusive jurisdiction in all matters arising therefrom unless otherwise mutually and expressly agreed, in writing, by the Parties.

27.4. Dispute not Affecting Delivery. The Supplier agrees and undertakes that no Dispute shall entitle the Supplier to delay or withhold (i) the continuation of the Works so as

to meet the Delivery Schedule or any other schedules agreed between the Parties, and/or (ii) the performance of the Warranty, subject to ISR paying to the Supplier any undisputed amounts, and the Dispute shall be resolved pursuant to the Dispute resolution process specified in Section 27.3 above.

28. MISCELLANEOUS

- 28.1. Waiver of Lien by the Supplier. The Supplier hereby waives from the moment of Final Acceptance any possessory lien, mechanic's lien or similar possessory or retention right (in Hebrew: "זכות עיכובן") and preservation of ownership (in Hebrew: "שימור בעלות") (collectively, "**Retention Rights**") against ISR with regard to the PCM, including, but not limited to, the items of the PCM that are in the possession of the Supplier in the Supplier's workshops or which are in the possession of Subcontractors. The Supplier represents and warrants that the consideration to be paid by ISR under this Agreement includes ample financial provisions concerning the waiver by the Supplier of all Retention Rights with regard to the Works, and the payments to be made by the 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.
- 28.2. 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 the Supplier (or to any Subcontractor, as the case may be) pursuant to this Agreement and/or to any other agreement between ISR and the Supplier, any amount, debt or payment owed by the 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).
- 28.3. 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.
- 28.4. 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.
- 28.5. 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).

28.6. 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.

28.7. 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.

28.8. 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:

Annex A

Technical Specifications

Annex A1

Supplier's proposal to the Tender

Annex B

Consideration Annex

As detailed in Appendix B of the Tender – Bidder's Proposal Form

Annex C
Supplier's Bank Account Information

PART A – Supplier's Bank Details

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

On behalf of the Supplier, _____-[Supplier name], 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: _____

EBAN Code (applicable to European Accounts): _____

Branch Number: _____

Bank Name: _____

Bank Address: _____

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] (the "Supplier") to sign the Bank Account Form, and hereby certify that their signatures upon the Bank Account Form are fully binding upon the Supplier in accordance with the Supplier's articles of association.

Signature and stamp: _____

Bank Account Form

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: _____

Annex F

General Spare Parts Price List and Delivery Terms

Annex G1
Form of Down Payment/Payment Guarantee

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

Down Payment/Payment [*delete as applicable*] Guarantee

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

Now, we Bank _____ hereby irrevocably guarantee to ISR to be responsible and indemnify ISR for repayment by Supplier to ISR of the sum of _____ € (in words) _____ EURO, all in accordance with the provisions therein (the "Guarantee").

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

This Guarantee shall remain in force and effect until and including the [day] of [month] [year] and after such date it shall expire.

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

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

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

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

Date

Annex G2-1

Form of Pilot Performance and Warranty Guarantee

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

Performance and Warranty Guarantee

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

Now, we Bank hereby irrevocably guarantee to ISR due, punctual, true, faithful and satisfactory performance by Supplier of all of the obligations on its part contained in said Agreement, including for the removal of doubt Warranty and ancillary services (as set out in the Agreement), and undertake to be responsible and indemnify ISR for payment by Supplier of all sums of money, losses, damages, costs, charges and expenses that may become due or payable to ISR, by or from Supplier by reason or in consequence of the default of Supplier in performance, execution or perseverance of its said obligations, all in accordance with the provisions therein (the "Guarantee").

Nevertheless, the total amount to be collected by ISR from us under this Guarantee, shall not exceed the sum of _____ € (in words) _____ EURO.

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

This Guarantee shall remain in full force and effect until and including the [day] of [month] [year] and after such date it shall expire.

In order to collect any amount under this Guarantee, ISR shall not have to refer to Supplier, shall not have to produce any judgment or other judicial document, and shall not have to prove any breach, failure or non-compliance on the part of Supplier or on the part of any person acting for it, or on its behalf, or in its name, and a written demand by the Deputy General Manager, Commerce, Economics & Finance of Israel Railways Ltd. or by a person designated in writing by him, substantially in the following form, shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sums under this Guarantee from us, and we shall pay such sums immediately upon such first demand by ISR:

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

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

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

Date

Annex G2-1

Form of Initial Purchase Order Performance and Warranty Guarantee

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

Performance and Warranty Guarantee

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

Now, we Bank hereby irrevocably guarantee to ISR due, punctual, true, faithful and satisfactory performance by Supplier of all of the obligations on its part contained in said Agreement, including for the removal of doubt Warranty and ancillary services (as set out in the Agreement), and undertake to be responsible and indemnify ISR for payment by Supplier of all sums of money, losses, damages, costs, charges and expenses that may become due or payable to ISR, by or from Supplier by reason or in consequence of the default of Supplier in performance, execution or perseverance of its said obligations, all in accordance with the provisions therein (the "**Guarantee**").

Nevertheless, the total amount to be collected by ISR from us under this Guarantee, shall not exceed the sum of _____ € (in words) _____ EURO.

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

This Guarantee shall remain in full force and effect until and including the [day] of [month] [year] and after such date it shall expire.

In order to collect any amount under this Guarantee, ISR shall not have to refer to Supplier, shall not have to produce any judgment or other judicial document, and shall not have to prove any breach, failure or non-compliance on the part of Supplier or on the part of any person acting for it, or on its behalf, or in its name, and a written demand by the Deputy General Manager, Commerce, Economics & Finance of Israel Railways Ltd. or by a person designated in writing by him, substantially in the following form, shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sums under this Guarantee from us, and we shall pay such sums immediately upon such first demand by ISR:

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

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

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

Date

Annex H
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 PCM 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 PCM AND/OR ANY PART THEREOF, PCM 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

Annex I

Training plan

Annex J

Detailed Design Plan ("DDP")

Annex K

Quality Assurance Plan ("QAP")

Annex L
ITP

Annex M

Safety and Security Regulations