

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

("Supplier")

Of the Second Part

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

WHEREAS, ISR is interested in acquiring Railbound Vehicle with Rail Surface Defects Elimination System as described in the Technical Specifications attached as **Annex A1** including Metal Removal Elements, as defined below (the "**RSDEV**"), in accordance with and subject to the terms and provisions of this Agreement; and

WHEREAS, Until Acceptance of the RSDEV, ISR is interested in acquiring on-track rail Grinding/ Milling Services, performed by a Railbound Vehicle with Rail Surface Defects Elimination System (the "**SRV**"), which includes Preventive Reprofileing, Corrective Reprofileing and New-Rail Reprofileing, to be carried out on a non-exclusive basis along various lines of the Israel Railway Network as ISR may require from time to time, all as set out in the Grinding/Milling Services Specifications attached as **Annex A2** and this Agreement ("**Grinding/Milling Services**"); and

WHEREAS, ISR initiated a tender (ISR Tender No. _____) for receiving proposals for the RSDEV and the Grinding/Milling Services in accordance with the terms and the conditions of this Agreement (the "**Tender**"), and Supplier submitted a proposal in response in the Tender appended hereto as **Annex A3** to this Agreement, which was selected by ISR to be the winning proposal; and

WHEREAS, Supplier declares and certifies that it has the know-how, ability, expertise, facilities, resources, financial resources, licenses, permits and all that is required and necessary in order to

design, manufacture, supply and warranty the RSDEV and provide the Grinding/Milling Services, as well as to fulfill all of the obligations set forth in this Agreement, including the Technical Specifications and Grinding/Milling Services Specifications; and

WHEREAS, 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 regards to partial offset procurement which is to be carried out in connection with the manufacture and supply of the RSDEV; and

WHEREAS, the Parties desire to set forth a contractual framework to determine the Parties’ relationship and obligations with regards to the Grinding/Milling Services and the design, manufacture, supply, calibration, testing, training of ISR railway staff and warranty of the RSDEV 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 This 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 A1 – Technical Specifications for RSDEV;
- 1.2.2. Annex A2 – Grinding/Milling Services Specifications;
- 1.2.3. Annex A3 – Supplier's Proposal in response to the Tender;
- 1.2.4. Annex B – Consideration Annex;
- 1.2.5. Annex C – Supplier's Bank Account Information Form;
- 1.2.6. Annex D – Certificate of Completion of Foreign Tests;
- 1.2.7. Annex E – Form of Final Acceptance Certificate;
- 1.2.8. Annex F – Spare Parts for Preventive Maintenance and Calibration;
- ~~1.2.8.~~1.2.9. Annex F2- Spare Parts List and Work Consumables and Prices
- ~~1.2.9.~~1.2.10. Annex G1 – Form of Down Payment / Payment Guarantee;
- ~~1.2.10.~~1.2.11. Annex G2 – Form of Performance and Warranty Guarantee;
- ~~1.2.11.~~1.2.12. Annex H – Change Order Form;
- ~~1.2.12.~~1.2.13. Annex I – Training Plan;
- ~~1.2.13.~~1.2.14. Annex J – DDP;
- ~~1.2.14.~~1.2.15. Annex K – QAP;
- 1.2.15 Annex L – ITP;
- 1.2.16 Annex M – Safety and Security Regulations
- 1.2.17 Annex N – Names of Manufacturers of Sub-Systems in the RSDEV and its Service Representatives Maintenance Facilities in Israel.
- ~~1.2.15.~~1.2.16. Annex O1 – Supplier's Track Section Termination Notice
- ~~1.2.16.~~1.2.17. Annex O2 – Form of Track Section Final Acceptance Certificate
- ~~1.2.17.~~1.2.18. Annex P – Permit Certificate.

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 shall apply:

- This Agreement, including the Consideration Annex, but excluding the other attachments hereto;
- The other annexes to this Agreement including the Technical Specifications and the Grinding/Milling Services Specifications;
- The other Tender documents (excluding Attachment 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 determine at its sole discretion, 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**" or "**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 the RSDEV to the ISR's Site in accordance with the Delivery Terms, the performance of all tasks required to bring the RSDEV to full operational condition and the successful performance of the Acceptance Tests in accordance with the ITP, the completion of the Training as well as the fulfillment of all required obligations pursuant to this Agreement;
- 2.2 "**Agreement Period**" – as defined in Section 33;
- 2.3 "**Applicable Law**" – shall mean any Israeli statute, law, ordinance, rule, regulation, order, writ, injunction, judgment, decree, and all other requirements of any governmental entity existing as of the date hereof or at any time during the term of this Agreement and applicable to ISR and/or Supplier (including its SubContractors);
- 2.4 "**Business Days**" - any day of the week other than Saturday, and excluding official holidays and bank holidays in Israel;
- 2.5 "**Consumables**" – Works Consumables and Maintenance Consumables;
- 2.6 "**Consumables Delivered with the RSDEV**" - Metal Removal Elements for 1 [mm] metal removal depth along the entire rail head through 300 [km] of track (both rails) and Maintenance Consumables for 2000 [hours] to be delivered with the RSDEV and is an integral part of such delivery.
- 2.7 "**DAP**" – the terms of delivery for the RSDEV shall be "Delivered At Place" (DAP) at

ISR's Site and/or on railway track at Port Site in accordance with ISR's absolute discretion and according to "INCOTERMS 2010" - International Rules for the Interpretation of Trade Terms (ICC Pub. No. 715), subject to the Delivery Terms;

- 2.8 "**DDP**" – Detailed Design Plan - as defined in Section [5.145.14](#);
- 2.9 "**Delivery Terms**" – as defined in Section [13.143.1](#);
- 2.10 "**Delivery Time**" – as defined in Section [13.243.2](#);
- 2.11 "**Foreign Acceptance Tests**" – successful completion of all procedures detailed in Section [1414](#);
- 2.12 "**Grinding/Milling Services**" or "**Services**" – the services detailed under the Services Specifications and this Agreement including the delivery of SRV, performance and maintenance of all works, measurements, manpower, provision of labor, components, materials, use of software, machinery, tools, etc., directly or indirectly, required for the execution of the Grinding/Milling Services pursuant to this Agreement including during the Service Warranty Period;
- 2.13 "**Grinding/Milling Services Specifications**" – the Grinding/ Milling Services Specifications attached hereto as [Annex A2](#);
- 2.14 "**Intellectual Property Rights**" – as defined in Section 22.2;
- 2.15 "**IPM**" – ISR's project manager for this Agreement, as set forth in Section [7.77.6](#) and as may be changed from time to time at ISR's sole discretion by notification in writing to Supplier;
- 2.16 "**ISR's Site**" – ISR's site at Lod Station and/or Kishon Station and/or Kfar Vitkin Station and/or Ashdod Miun Station and/or Ashdod Hayovel Station all in accordance with ISR's absolute discretion;
- 2.17 "**ITP**" – the inspection and test plan as specified in Section [14.114.1](#) below;
- 2.18 "**Liquidated Damages**" – as described in Section 18 below;
- 2.19 "**Maintenance Consumables**" – filters; lubricant and grease;
- 2.20 "**Metal Removal Elements**" –grinding stones/milling tools;
- 2.21 "**POD**" – Purchase Order Date;
- 2.22 "**Port Site**" – On-railway track in Ashdod port and/or Haifa port all in accordance with ISR's absolute discretion;
- 2.23 "**QAP**" – as defined in Section [5.155.15](#);

- 2.24 "**RSDEV Price**" – as defined in Section 9.1;
- 2.25 "**Resolution Time**" – the time that elapses from the report of a malfunction and until it is rectified;
- 2.26 "**Response Time**" - the time within which Supplier begins to handle a reported malfunction;
- 2.27 "**SRV**" – the Grinding/Milling Railbound Vehicle that shall provide the Grinding/Milling Services under the Grinding/Milling Services Specification and this Agreement;
- 2.28 "**Service Support Visit** " – as defined in Section ~~15.515.5~~;
- 2.29 "**Service Period**" – a term that shall begin upon the issuance of the Initial Services Order and shall end upon issuance of the Final Acceptance of the RSDEV during such period Supplier shall provide the Grinding/Milling Services;
- 2.30 "**Service Team**" – as defined in Section 5.11.2 below;
- 2.31 "**Severe Malfunction**" – an event whereby (i) the RSDEV and/or the SRV is not operable; or (ii) any system in the RSDEV and/or the SRV does not work properly for more than 2 weeks;
- 2.32 "**Software**" – means any software provided by Supplier in connection with the RSDEV, the SRV, the Works and/or the Grinding/Milling Services;
- 2.33 "**Spare Parts for Preventive Maintenance and Calibration**" – all Consumables, software, materials, equipment, machinery, tools, spare parts, accessories, components and other elements of every kind required to perform all preventive maintenance and calibration during the Warranty Period, except for filters, grease, lubricant and other consumable parts and all as detailed in Annex F to this Agreement;
- 2.34 "**SPM**" - Supplier's project manager for this Agreement, as set forth in Section ~~7.77.6~~ and as may be changed from time to time at ISR's sole discretion by notification in writing to the Supplier;
- 2.35 "**SubContractor**" – as defined in Section ~~2525~~;
- 2.36 "**Technical Specifications**" – the technical specifications attached hereto as Annex A1;
- 2.37 "**Training**" – the training to be provided by Supplier pursuant to the Training Plan and as described in Section ~~05.8~~;
- 2.38 "**Warranty**" – as defined in Section ~~1515~~;

- 2.39 "**Warranty Period**" – as defined in Section ~~1515~~;
- 2.40 "**Work Consumables**" - Metal Removal Elements;
- 2.41 "**Works**" – shall mean all works, components, materials, hardware, software and equipment to be executed or supplied by Supplier, directly or indirectly, in connection with the design, manufacture, supply, assembling, tests, trial running, commissioning, training, warranty of the RSDEV and the Grinding/Milling Services (including the delivery and operation of the SRV and its maintenance) pursuant to this Agreement, including supply of all Spare Parts for Preventive Maintenance and Calibration. 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 hardware, 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, the Grinding/Milling Services Specifications and this Agreement.

3. **AGREEMENT PERIOD**

This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of five (5) years and/or until the end of the Warranty Period, whichever is longer (the "**Agreement Period**"). ISR shall have the option, upon its sole discretion to extend the Agreement for an additional two (2) years by providing Supplier with 30 days prior written notice before the end of the Agreement Period (the "**Optional Period**"). All terms and conditions of this Agreement shall apply during the Optional Period, mutatis mutandis.

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

Supplier hereby represents and warrants to ISR as follows:

- 4.1 **Authority Relative to this Agreement.** Supplier has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action of Supplier, and no other corporate proceedings on the part of Supplier are necessary to authorize this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Supplier and constitutes a valid, legal and binding agreement of Supplier, enforceable against Supplier in accordance with its terms.
- 4.2 **No Conflict.** No actual or potential conflict of interest or unfair competitive advantage exists with respect to Supplier's acting hereunder, and Supplier shall not engage in any contractual relationship that may cause such conflict of interest or unfair competitive advantage to exist.
- 4.3 **No Litigation or Impediment.** There is no (i) litigation that is currently in effect or threatened, against Supplier, which would challenge the authority of Supplier to enter

into this Agreement or to carry out its obligations under this Agreement, or (ii) impediment, whether legal or stemming from a prior or simultaneous commitment made by Supplier, or any other impediment of whatever nature, which might prevent Supplier from entering into this Agreement or hinder the performance of any or all of its obligations hereunder.

4.4 **Supplier Examination and Evaluation.**

Supplier hereby represents and warrants to ISR that:

4.4.1. Supplier has examined all documents pertaining to the Tender, this Agreement, in particular the Technical Specifications and the Grinding/Milling Services 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 RSDEV shall be designed, manufactured, assembled, integrated, tested, supplied and delivered to ISR, and the execution of the Works required for the provision of the RSDEV and the Grinding/Milling Services as well for the fulfillment of any and all obligations under this Agreement;

4.4.2. 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;

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

4.4.4. 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 RSDEV and/or provider of Grinding/Milling Services 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 RSDEV and/or provider of Grinding/Milling Services, 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.** Supplier is aware and has knowledge of all legal requirements prevailing in the State of Israel that must be followed for the execution of the Works. Supplier shall abide by any Applicable Law, as shall be in effect from time to time, and shall perform and execute the Works in strict compliance therewith (including but without limitation in compliance with regulations and orders relating to the employment of its employees).

4.6 **Discrepancies and Omissions**

4.6.1. Supplier represents that wherever there is a discrepancy between the Technical

Specifications (Annex A1) and/or the Grinding/Milling Services Specification (Annex A2), Supplier's proposal to the Tender (Annex A3), 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 (Annex A1) and/or the Grinding/Milling Services Specifications (Annex A2) and Supplier's proposal to the Tender (Annex A3). 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 Supplier from time to time, shall constitute grounds for stoppage of the Works, for relieving or releasing Supplier of any of its responsibilities, duties, obligations or liabilities pursuant to this Agreement, for cancellation or termination of this Agreement by 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 Supplier to that effect or on its own initiative – give necessary explanations and instructions and decide what works, matters or things are to be done by Supplier and in what manner and order. Supplier shall thereupon be bound to do such works, matters and things as instructed. In case any such instruction with regard to an omission involves matters of price or terms of payment or timetable, such matters shall be settled by mutual agreement in writing in accordance with the provisions of Section ~~1919~~ herein (prices shall be based upon the prices specified in the Consideration Annex or pursuant thereto) – without derogating from Supplier's obligation to execute such Works as instructed by the IPM.

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

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 consent, shall not derogate in any way from 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, 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.** Supplier is an independent contractor acting at its own risk and account and solely responsible for its own financial obligations, and nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or principal and agent relationship between the Parties, nor will it be construed as creating any relationship whatsoever between ISR and any employees, SubContractors, representatives or agents of Supplier. Supplier will not have the authority 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.** Supplier hereby agrees to execute any and all Works required for the provision of the RSDEV and/or the Grinding/Milling Services in accordance with the terms and the conditions of this Agreement, including, *inter alia*, the design, manufacture, integration, testing, supply, commissioning, Training, Warranty as well as the fulfillment of Supplier's obligations in accordance with the Technical Specifications and/or Grinding/Milling Services Specifications and 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/or Grinding/Milling Services Specifications and Supplier's proposal to the Tender, the terms and conditions more favorable to ISR shall take priority. In case of controversy, ISR shall have the final decision as to what is most favorable to ISR.
- 5.2 **"Turn Key Basis".** The RSDEV and the Grinding/Milling Services shall be supplied on a "turn key" basis such that Supplier shall perform at its own expense and risk any and all Works in accordance with the provisions of this Agreement. Without limiting the generality of the foregoing, Supplier shall be solely responsible, at its own expense and risk, to carry out any and all Works, import and supply of any and all components, equipment and materials, perform any and all activities and pay and bear all costs and expenses pertaining to the performance of the Works and supply of the RSDEV and the Grinding/Milling Services; this shall include, without limitation, the training, testing, running in, demonstration and commissioning of the RSDEV and any other tasks or duties relating to the above – all as shall be required in order to timely deliver operable, safe, efficient and reliable RSDEV, 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 RSDEV and/or the Grinding/Milling Services.** The provision of the RSDEV and the execution of the Works (including the Grinding/Milling Services) 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 RSDEV and its capabilities and any part thereof shall meet EN14033-1;2;3 and EN13231-3;4 and prEN13231-5 standards and any other standards set forth by ISR in this Agreement including the Technical Specifications and Grinding/Milling Services Specifications, and if no standard is expressly mentioned, Supplier shall comply with the standards which shall ensure the highest quality of workmanship, material and equipment required by the Applicable Law and/or as instructed by ISR in accordance with ISR's sole discretion. All calculations, designs, integration and drawings related to the RSDEV or any part thereof shall assure the reliability, efficiency, competency as well as the functionality of the RSDEV to ISR's full satisfaction.

The Grinding/Milling Services and/or any part thereof shall meet the standards as defined in the Grinding/Milling Services Specifications.

- 5.5 **No Lock.** The RSDEV 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 RSDEV; (ii) prevent ISR from fully utilizing all or any part or software of the RSDEV; or (iii) require action or intervention by Supplier or any other person or entity, to allow ISR to utilize all or any part of the RSDEV.
- 5.6 **Permits.** Supplier shall, at its sole expense, obtain, maintain, comply with and keep in effect all approvals, certificates, test reports, permits and licenses required for the execution of this Agreement, the supply of the RSDEV and/or the Grinding/Milling Services and the provision of all ancillary services, pursuant to this Agreement.
- 5.7 **RSDEV and/or SRV Permits.** Without derogating from the above, Supplier shall not make any use of the RSDEV before receiving a written permission from ISR to use the RSDEV on ISR railways tracks and shall not make any use of the SRV before receiving a written permission from ISR to use the SRV on ISR railways tracks. Prior to granting the RSDEV and the SRV permits. ISR shall validate, inter alia, the following:
- Towing abilities in regards with ISR regulations (based on EN and UIC norms);
 - Braking abilities in regards with ISR regulations (based on EN and UIC norms);
 - Proper operating near axle counters;
 - Installation of telecommunications systems and antennas and their proper operation;
 - Capability of the SRV to produce at least 1 km of Corrective Reprofileing or Wear Reducing Profiles or ISR Target Profiles with spark time of 4 [hours] on track, (as defined in the Grinding/Milling Services Specifications) (for the SRV permit only);
 - Capability of the RSDEV to produce at least 2 km of Corrective Reprofileing or Wear Reducing Profiles or ISR Target Profiles with spark time of 4 [hours] on track (as defined in the Grinding/Milling Services Specifications), all in accordance with ISR's discretion (for the RSDEV permit only);
 - Capability of the RSDEV to produce at least 6 km of preventive cycle reprofileing with spark time of 4 [hours] on track, (as defined in the Technical Specifications) (for the RSDEV permit only).

Upon the completion of the RSDEV and/or SRV permits procedure detailed above to ISR's full satisfaction, ISR shall sign a Permit Certificate, in the form attached hereto as **Annex P** (a "**Permit Certificate**").

- 5.8 **Training.** No later than 60 days after POD, the Supplier shall provide ISR a proposed training plan in accordance with this Section, which after approval by ISR (including ISR's Training department) shall be annexed to this Agreement as **Annex I** ("**Training Plan**"). The Training Plan shall ensure the highest level of operation and maintenance of the RSDEV and/or any part thereof by ISR.
- 5.8.1. 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:

- general characteristics of the RSDEV and any part thereof;
- power source and power transmissions;
- electric system;
- hydraulic system;
- pneumatic system;
- brake system;
- rail defects elimination system;
- measurement systems;
- metal waste collector system;
- all measurement data: operating all measurement and information systems, maintenance of all measurement systems and information systems, fault diagnostics, data base administration;
- electronic system (digital and analogue controls);
- board computer, monitoring;
- machine general: assemblies and components;
- operation, maintenance, calibration and safety training and advice;
- hardware and software;
- logic program;
- warning system;
- summary of training subjects.

- 5.8.2. The Training shall be performed by at least 2 experienced instructors that hold appropriate skills and knowledge in the field of vehicle operation and driving at ISR's Site; rail defect elimination procedure, measurement, recording and inspection systems operation; vehicle maintenance; measurement, recording and inspection systems maintenance; RSDEV systems calibration.

Time for operators training course: minimum 100 Business Days;

Time for maintenance training course: minimum 60 Business Days;

Operators training course and maintenance training course, as detailed above, may run in parallel (i.e., concurrently) unless instructed otherwise by ISR at its sole discretion.

At least 30% of Training (operators training) relating to the use of the RSDEV shall be performed during the Service Period, as much as practicably possible in accordance with the Training Plan.

- 5.8.3. Without derogating from the generality of the above, three (3) months before the Training will begin, Supplier shall provide ISR with the following Training Materials in the English or Hebrew language:

- Training schedule;
- Theoretical lessons;
- Practical lessons;
- Job aids;
- Evaluation package;

- Training aids.

The Training Materials shall be provided in the following format:

- User Handbook / Operator's Manual, Maintenance Manuals will be supplied as:
 - PowerPoint files for Theoretical Lessons.
 - WORD files for Practical Lessons.
 - PDF files (unlocked and data-copy-enabled).

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

5.8.5. 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.

5.9 **Safety**. All Works of 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. Supplier shall immediately report to the IPM the occurrence of any accident in connection with the execution of the Works. Supplier shall also report any such accident to the relevant competent authority whenever such report is required, and in any case, register same in the Works log.

5.10 **Cooperation**. Supplier undertakes to reasonably cooperate with any other supplier and/or consultant engaged by ISR and to furnish ISR with all relevant information reasonably required for the interface between the RSDEV and/or SRV used to carry out the Grinding/Milling Services and any other equipment and/or infrastructure of ISR.

5.11 **Personnel**. Supplier shall employ trained skilled employees, consultants and SubContractor's personnel and consultants as shall be necessary or appropriate to enable Supplier to supply all the Works and Services.

5.11.1. Supplier's personnel, employees and consultants and any SubContractor's personnel, employees and consultants (the "**Supplier Personnel**" and "**SubContractor's Personnel**", and together, the "**Personnel**") shall not be deemed under any circumstances whatsoever, to be the employees of ISR, and Supplier shall indemnify and defend ISR from and against all claims made by the Personnel against ISR. The foregoing indemnity shall survive the expiration or termination of this Agreement. All matters pertaining to the employment, training, conduct, supervision, compensation, promotion and discharge of the Personnel shall be the sole and exclusive responsibility of Supplier and Supplier shall comply with all applicable laws and regulations relating to worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions and safety and similar matters with

respect to such Personnel. Supplier acknowledges and agrees that Supplier is obligated to report as income all compensation received by Supplier pursuant to this Agreement, and Supplier agrees to and acknowledges the obligation to pay all self-employment and other taxes thereon. Supplier agrees to indemnify and hold harmless ISR and its directors, officers, and employees from and against all taxes, losses, damages, liabilities, costs and expenses, including attorney's fees and other legal expenses, arising directly or indirectly from (i) any negligent, reckless or intentionally wrongful act of Personnel, (ii) a determination by a court or agency that Supplier and/or any of the Personnel is not an independent Supplier, or (iii) any breach by the personnel of any of the covenants contained in this Agreement.

The Supplier shall procure that all of the Personnel shall follow all safety and security regulations detailed in Annex M as shall be updated by ISR from time to time.

5.11.2. Without derogating from the above, during the Service Period, the Supplier shall nominate at least the following to provide the Services:

- Supervisor - an integral employee of Supplier or a SubContractor who: (1) meets all requirements detailed in the Grinding/Milling Services Specifications, (2) is able to communicate in English (or Hebrew), and (3) was approved by ISR in writing and in advance no more than 60 days following any Service Order.
- SRV Driver - an integral employee of Supplier or an approved SubContractor who: (1) meets all requirements detailed in Grinding/Milling Services Specifications, (2) is able to communicate in English, and (3) was approved by ISR in writing and in advance no more than 60 days following any Services Order, (the foregoing are referred to together as "**Service Team**")

5.11.3. For the removal of any doubt, the SRV shall only be driven by the SRV Driver. The SRV Driver shall be duly qualified for this purpose by a competent Railway Authority in Supplier's country of registration or in Supplier's main country of activity.

5.11.4. Without derogating from the above, Service Team will be available for the Grinding/Milling Services at any time, whenever it is necessary. Absence of any of the Service Team shall be coordinated with and approved by ISR in advance and ISR may refuse to approve such absence for any reason. Without derogating from the above, in the event that one or more of Service Team shall not be available, Supplier undertakes to take immediate actions to ensure that a temporary replacement with the same qualification shall start providing the relevant services to ISR within 48-96 hours from the time Supplier's previous team member stopped providing the Services.

Without derogating from the above and in addition thereto, in the event that Supplier fails to meet the timetable detailed in this Section, ISR shall be entitled to charge Supplier liquidated damages amounting to 1,000,700 € for each day during which the SRV is not fully available for operation during first

seven days and 1000€ thereafter.

- 5.11.5. Without derogating from the above, Supplier shall be solely responsible to obtain any permits and authorizations required under Applicable Law with respect to Supplier 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 Work and Rest Law, 5711–1951.

For the removal of doubt, in the event that such permits or any of them shall not be obtained: (i) Supplier shall not be entitled to any delay in the provision of the Services, and (ii) Supplier shall not be released from any of its obligations and shall employ for this purpose, subject to Applicable Law, Works and/or Services for which such permits are not required. 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.

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

- 5.11.7. In any case in which ISR shall reasonably demand ~~in its sole discretion~~, the replacement of any of Personnel, the Supplier undertakes to take immediate action to replace such member (as applicable) with any other person holding a position whose identity is approved by ISR, ~~and for such purposes, the Supplier undertakes to present ISR with at least two options for members (as applicable)~~. Such replacement of any of the Personnel shall take no longer than 7 days. Replacement as aforesaid shall not constitute grounds for changes in the Works timetable to which the Supplier is committed. Without derogating from the above, such replacement will meet all requirements in the Technical Specifications and/or the Grinding/Milling Services Specifications and/or this Agreement.

- 5.11.8. Supplier will not replace any of Personnel that were personally approved by ISR under this Agreement, unless the identity of the substitute has been approved by ISR upon prior written notice. In any event, such replacement shall not constitute grounds for a change in the timetable of the Works to which the Supplier is committed and/or for additional payment. To remove any doubt, the replacement proposed by the Supplier shall have the same (or better) qualifications from the replaced member of the Supplier Personnel and in no event less than as described in the Technical Specifications and/or Grinding/Milling Services Specifications. It is clarified that any replacement without ISR's written approval and/or nomination of unqualified Supplier Personnel members shall constitute a breach of this Agreement.

- 5.11.9. Without derogating from the above and in addition thereto, Supplier shall

ensure that any additional personnel shall be available at any time as required by ISR, in order to provide the Services and provide ongoing response to malfunctions, bugs, defects and /or discrepancies.

5.11.10. Supplier shall at all times retain full responsibility for the due performance of its obligations by the Personnel and for the satisfactory completion of the Works and shall be liable for any act and/or omission of any of the Personnel not in accordance with the terms of this Agreement.

5.11.11. Supplier shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of any of the Personnel.

5.11.12. ISR's security procedures attached in **Annex M** shall apply to Supplier's Service Team, SubContractors and any and all personnel of Supplier, SubContractors and others acting on their behalf. Any Personnel that have not complied with all of the requirements specified in **Annex M** applicable to them shall not be allowed to be engaged in any performance of the Works.

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

5.13. **Quality Management System**. Supplier hereby undertakes, warrants and confirms to remain certified in accordance with ISO 9001:2008 or ISO 9001:2015 standards or equivalent, and Supplier shall at any time during the term of this Agreement be willing to prove such certification. In any event, Supplier must notify ISR, in writing, if the said qualification is suspended and/or canceled and/or not continued. For the avoidance of doubt, the aforementioned in this Section shall apply to Supplier and/or any of its SubContractors.

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

Without derogating from the Technical Specifications, within ~~30~~⁶⁰ (~~thirty~~^{sixty}) days from the POD, 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. The DDP shall consist of such activities as development and design, manufacture, assembly, integration, inspection, testing, acceptance of the RSDEV, detailed design and any other obligation in accordance with the terms and the conditions of this Agreement and the Technical Specifications. Without derogating from the above, the DDP shall be based on the requirements of the Technical Specifications and the relevant obligations set forth in this Agreement.

In order to have the DDP approved by ISR, the SPM and his relevant deputies shall meet with the IPM within 14 days after Supplier submitted the DDP to ISR for approval. Such meeting/s shall be held in Israel and/or at Supplier's Site all in accordance with ISR's discretion.

Supplier shall bear all expenses related to such visit in Israel (including travel expense and lodging) and in the event meetings shall be held outside of Israel, then ISR shall bear the travel and lodging expenses of its representatives.

The time of the visit shall 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.

5.15. Without derogating from the Technical Specifications, within ~~30-60~~ (thirtysixty) days from the POD, Supplier shall prepare and submit to ISR for approval a Quality Assurance Plan ("QAP") covering all quality assurance activities to be performed under this Agreement and/or the Technical Specifications, including a time schedule for each activity. The QAP shall be based on the requirements of the Technical Specifications. Such list after approval by ISR shall be annexed as Annex K to this Agreement.

5.16. **Reports & Documentation**. Without derogating from the Technical Specifications, Supplier shall submit to the IPM, in accordance with the DDP, milestones and progress reports for the planning, construction, assembly, final adjustments and testing of the RSDEV, as specifically set out in this Agreement and shall detail at least the following:

5.16.1. An updated schedule detailing the specific deviations from the initial planned schedule as set out in the DDP and an explanation for such deviation. The report shall include the anticipated impact of any delay and a plan for returning to the initial schedule. All changes to the schedule since the last report shall be identified;

5.16.2. A summary of the activities performed by Supplier and/or its SubContractors since the previous report;

5.16.3. An updated list of Supplier and ISR action items and open issues, with their status;

5.16.4. A description of current and anticipated project problems and the steps that have to be taken in order to resolve such problems;

5.16.5. Copies of quality assurance documents, test results and certificates of materials and the RSDEV systems, answers to deviation reports, intended to form or forming part of the Works;

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

5.16.7. Supplier shall provide all applicable assembly and other drawings, technical documentation and catalogues necessary to perform proper maintenance operations;

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

- 5.16.9. Supplier shall submit all documentation, reports, design, drawings and other documents specified in the Technical Specifications for ISR's approval. In addition, ISR shall be entitled to require from Supplier to submit to ISR any other drawings including all dimensions in softcopy 3D files or AutoCAD files and/or documents and/or design in connection with the Works reasonably required by ISR; Such documents and drawings shall be for ISR's internal use only and shall be kept confidential;
- 5.16.10. For the removal of doubt, Supplier shall not be entitled to any compensation or payment from ISR and/or from any third party with respect to any documentation and/or drawings and/or reports to be provided to ISR under this Agreement;
- 5.16.11. In the event of any discrepancy, conflict, ambiguity, uncertainty and/or inconsistency between any of the above documentation and the provisions of this Agreement including its Annexes, the provisions of this Agreement shall prevail. Supplier hereby undertakes to specifically notify the ISR in writing in the event of such uncertainty;
- 5.16.12. ISR, at its sole discretion, may record or copy any information, provided by Supplier under this Agreement, regardless of form or media but shall use it only for its internal purposes.

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 RSDEV and/or Grinding/Milling Services and/or Warranty, by itself or through any third party in Israel and/or abroad, and Supplier undertakes to cooperate as required with respect thereto including submitting all information reasonably required by ISR and/or any third party on its behalf. Such supervision, if applicable, shall not derogate from any provision of this Agreement and/or from Supplier's liability and responsibility to perform the Works in accordance with the provisions of this Agreement and to supply the RSDEV and/or the Grinding/Milling Services and/or to 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 or completed, either in Israel or abroad. Such right to free access shall include, without limitation, the right to inspect the Works (including any material or component being part of the Works) at any stage of design, production, assembly, testing and commissioning. In the event of a request to inspect the Works at times other than normal working hours, the Parties shall mutually agree as to the time(s) at which such inspection shall be carried out and shall be granted free access to any information related to Supplier's performance under this Agreement 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. **Places of Production and Tests.** Supplier hereby undertakes that the place of production (manufacture, assembly and integration plant) of the RSDEV shall be _____ [Note: to be approved by ISR] ("**Supplier's Factory**"). Any change in Supplier's Factory is subject to the prior written approval of ISR at its sole discretion. Supplier alone shall bear and pay any and all costs and expenses incurred by ISR in connection with the review of a new place of production proposed by Supplier and ISR shall be entitled to approve or to reject any such proposed place of production and tests at its sole discretion. Without derogating from the generality of the above, the standards in any new place of production and tests proposed by Supplier shall not be inferior to the standards in the place of production and tests previously approved by ISR and shall comply with any and all requirements of the Technical Specifications. For the removal of doubt, a request by Supplier to change a place of production and tests and review by ISR as per the above shall not give grounds to any delay or extension in the timetables set forth in the Delivery Time.
- 6.4. **Assistance by Supplier.** Without derogating from the above, Supplier shall afford free of charge any assistance and access reasonably requested by ISR's inspectors and duly authorized representatives in order to enable them to carry out inspection, checking and tests in connection with this Agreement and provide them with any information reasonably requested.
- 6.5. **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, 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.
- 6.6. **Rejection of the Works, Hardware, Software, Materials and Components.** If any of the Works, hardware, software, materials or components, whether completed or in Tender, is rejected on inspection, the same shall be marked in a manner satisfactory to the IPM, so as to ensure its subsequent identification as a rejected article. If no other solution is provided by Supplier that is acceptable by ISR, Supplier shall within seven (7) days or within such other reasonable time, pull down, take out, separate and sort out any such marked Works, hardware, software, materials or components so rejected. Materials hardware, software, or components of the Works or the entire Works rejected under this Section shall not be considered as having been delivered under this Agreement and Supplier shall, without delay, replace and deliver satisfactory materials, hardware, software, components or Works at Supplier's sole cost and expense. No such rejection shall give grounds to any delay or extension in the Delivery Time.
- 6.7. **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, hardware, software or components shall neither relieve nor derogate from Supplier's obligation to execute and complete the Works in strict accordance with the requirements of this Agreement, or impose any liability or responsibility on ISR.

- 6.8. Supplier undertakes to comply with and fulfill 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, 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 fulfillment of the aforesaid obligations.

7. ORDER PROCEDURE

- 7.1. Within 60 (sixty) days of the Effective Date, ISR shall issue a Purchase Order for the RSDEV and forward such Purchase Order to Supplier by email to the contact person of Supplier, a copy of which shall be sent via air mail. ISR shall have the option not to issue a Purchase Order and Supplier hereby waives any claim and/or demand against ISR.
- 7.2. Supplier hereby grants ISR an option, during the Agreement Period and/or the Optional Period to purchase an unlimited number of additional RSDEV, similar to the RSDEV (the "**Optional RSDEV**"). The terms and conditions of this Agreement will apply, mutatis mutandis, to the Option RSDEV subject to Section ~~9.99.9~~. For the prevention of any doubt, it is hereby expressly emphasized that ISR is under no obligation whatsoever to order certain or any amount of Optional RSDEV from Supplier.
- 7.3. Within 60 (sixty) days of the Effective Date, ISR shall issue an Initial Services Order for the Grinding/Milling Services and forward such Initial Service Order to Supplier by email to the contact person of Supplier, a copy of which shall be sent via air mail, as detailed below. During the Service Period, ISR shall have the option to issue Subsequent Services Order as detailed in Section 8.6 below. ISR shall have the option not to issue a Services Order (including Initial Services Order), and the Supplier hereby waives any claim and/or demand against ISR.
- 7.4. ISR upon its sole and exclusive discretion shall issue from time to time a Purchase Order for the purchase and supply of Work Consumables ("**Purchase Order for Work Consumables** "). Each Purchase Order for Work Consumables shall be for at least Work Consumables for 1 [mm] metal removal depth along the entire rail head through 50[km].
- 7.5. ISR upon its sole and exclusive discretion shall have the option to purchase Extra

Defects Elimination Unit(s); as such term is the Technical Specifications. For the prevention of any doubt, it is hereby expressly emphasized that ISR is under no obligation whatsoever to order certain or any amount Extra Defects Elimination Unit(s) from Supplier and may purchase such elements, if any, from a third party. In the event that ISR shall decide to purchase Extra Defects Elimination Unit(s) the price shall be negotiated in good faith between Parties based on the RSDEV Price and terms and conditions of this Agreement shall pally mutatis mutandis, to the extent possible.

- 7.6. Upon receipt of a Purchase Order and/or Service Order by email, Supplier shall confirm via email receipt of the Purchase Order and/or Service Order to ISR's contact person. An original document of such confirmation shall be sent to ISR via air mail.
- 7.7. 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, telephone or email, if any.

- 7.8. 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.
- 7.9. The following original documents will be supplied by Supplier to ISR:
 - 7.9.1. Commercial invoices. The invoice/s shall include a clear reference to this Agreement, the amount, part number (inclusive of serial number), if any, quantity, delivery note number, shipping date, Supplier's company registration number and ISR's order number for the goods;

- 7.9.2. Original Certificate of Origin and Non-Manipulation Certificate, if required;
 - 7.9.3. Bill of Lading - issued in ISR's name;
 - 7.9.4. Packing Lists;
 - 7.9.5. Any and all other documentation necessary to release the RSDEV 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 RSDEV and/or any part thereof through customs and which will enable ISR to make payment in foreign currency in accordance with the Applicable Law.
- 7.10. 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 RSDEV 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. GRINDING/MILLING SERVICES

- 8.1. Supplier shall, at its sole risk and expense, execute the Grinding/Milling Services in accordance with any Services Order.
- 8.2. The terms of supply and delivery of the SRV shall be DAP on railway track at Port Site, and subject to the expressed terms and conditions defined herein in this Agreement (the "**RSV Delivery Terms**"). It shall be ISR's responsibility to deliver the RSDEV from Port Site to ISR's Site. Supplier shall ensure that the RSDEV is ready for towing.
- 8.3. Supplier shall take all measures to ensure that Supplier shall be able to commence performing all Grinding/Milling Services within 120 days from issuing Initial Services Order. Without derogating from the above, the RSV Delivery DAP at Port Site shall be within 90 days from issuing an Initial Services Order.
- 8.4. Upon arrival of the SRV or any part thereof to the ISR's Site, Supplier shall perform all Works required to bring the SRV to a full operational condition in accordance with the applicable terms and conditions defined herein in this Agreement and the Grinding/Milling Services Specifications including without limitation all Works detailed in Section 5.7 above.
- 8.5. Subject to receipt of all required approvals as aforesaid and the above, ISR shall issue an Initial Services Order which shall cover Grinding/Milling Services with respect to 200 Kilometers of railway track to be performed within a total of 12 months (gross – "brutto") (the "**Initial Services Order**"). The Initial Services Order shall be executed in accordance with the Grinding/Milling Services Specifications and the Task Timetable. Subsequent Services Orders, may be issued at ISR's sole and absolute discretion. The Initial Task Order shall consist of Preventive Cycle

Reprofiling of 50 Kilometers, Initial Reprofiling of 100 Kilometers and Corrective Reprofiling of 50 Kilometers. In the event that ISR shall not provide Supplier with the minimum Track Time detailed in Section 8.13 that shall enable Supplier to meet the above targets (despite Supplier's best efforts), ISR shall extend upon its discretion the 12 months period detailed above.

- 8.6. Services Orders issued following the Initial Services Order ("**Subsequent Services Orders**") may be issued at ISR's sole and absolute discretion. Subsequent Services Orders shall cover at least 170 Km. The Services shall be performed according to as shall be directed by ISR from time to time. ISR shall make reasonable efforts that Subsequent Services shall be performed consequently following the end of the Initial Services Order.
- 8.7. **Preparations for Performance of the Grinding/Milling Services.** Within ten (10) days from receipt of any Services Order, Supplier will confirm receipt thereof. Within four (4) months from the issuance of the Initial Services Order, Supplier shall make all preparations required in order to commence the provision of the Grinding/Milling Services. For Subsequent Services Orders, Supplier shall have 1 month to make such preparations and commence performance of the Grinding/Milling Services. Supplier shall carry out and complete such Grinding/Milling Services in accordance with the provisions of this Agreement, the Grinding/Milling Services Specifications and the relevant Services Order. Preparations shall include all acts and works necessary to perform the Services (including but not limited to, the transport of the SRV to ISR's Site and the complete organization of Supplier at the relevant ISR Site) so at the end of the preparation the Grinding/Milling Services shall immediately commence.
- 8.8. **No Minimum Scope Undertaking.** For the removal of doubt, ISR does not undertake or make any representation or warranty that a certain number of Services Orders will be issued to Supplier (if at all) nor as to the scope of any Services Order (to the extent issued) and the issuance and scope of the Services Orders shall be subject to ISR's sole and absolute discretion. Accordingly, Supplier shall not be entitled to claim any direct or indirect or consequential damages, including loss of profit, loss of revenue, loss of goodwill, etc. if Supplier is dissatisfied with the number or scope of the issued Services Orders (if any).
- 8.9. **No Undertaking for Continuity.** For the removal of doubt, ISR does not guarantee continuity between Services Orders and there may be intervals, based on ISR's needs and requirements (including its timetable, operational needs and budgetary requirements and approvals), as ISR shall determine in its sole and absolute discretion.
- 8.10. In performing the Grinding/Milling Services, Supplier will comply with the following general guidelines and procedures, in addition to those contained in the Grinding/Milling Services Specifications and any other specific guidelines and instructions which ISR may add from time to time. Conformity by Supplier with each of the terms and conditions contained in this Section is a fundamental condition of this Agreement, the breach of which shall give rise to all remedies available to ISR under any Applicable Law and/or pursuant to this Agreement.

- 8.11. **Service Work Plan.** During the execution of the Grinding/Milling Services, ISR shall furnish to Supplier a weekly Grinding/Milling Service Work Plan ("**Service Work Plan**"). Each Service Work Plan shall be based on the available periods of time during which there will be no operation of traffic and trains on the relevant tracks. Each Service Work Plan shall be divided into Track Sections as detailed in the table below. The Service Work Plan shall include the following information:

Date	Scheduled Track Time	Track Section Name	Line No.	From KM/Meters	To KM/Meters	Existence of Axle counters/level crossing	Remarks

- 8.12. ISR shall make reasonable efforts to coordinate the Services with Supplier and/or to enable Supplier to provide the Services contiguity. Notwithstanding the above, Supplier understands and agrees that: (i) ISR is under no obligation whatsoever to the contiguity (whether in time or in location) of the Track Sections; (ii) ISR may suspend any Services Order and/or continuity of the Services in general and of any assignment in particular due to operational reasons; (iii) Scheduled Track Time may be changed, due to operational reasons; and (iv) ISR may require Supplier to provide the Grinding/Milling Services not during Business Days and outside the scope of ISR's regular working hours. Accordingly, Supplier shall not be entitled to claim any direct or indirect or consequential damages, including loss of profit, loss of revenue, loss of goodwill, etc. if the above shall occur.

8.13. **Track Time Shifts**

Supplier shall provide the Grinding/Milling Services during at least 4 (four) shifts per week, including on Fridays and Saturdays ("**Weekends**") ("**Track Time Shifts**"). ISR may increase the number of shifts up to 6 per week upon its sole discretion. The Grinding/Milling Services shall be provided by Supplier during daily shifts of approximately six (6) hours of Track Time each (generally between the hours of 23:00 to 05:00 of the following morning), of which at least four (4) hours shall be Spark Time (meaning a minimum of 16 hours Spark Time).

In addition, Grinding/Milling Services shall be provided during up to two (2) Weekends (Friday and Saturday only) per-month until the completion of any Services Order. The Weekend shifts shall consist of approximately eleven (11) hours of Track Time (gross – "brutto") (generally between the hours of 18:00 to 05:00 of the following morning), of which at least nine (9) hours of such service time are Spark Time.

For the avoidance of doubt, ISR has no obligation to provide Supplier with track time during Weekends and national holidays. Nevertheless, ISR shall approach the relevant authorities in Israel in order to receive legal permission for the performance of services

during Weekends and religious and national holidays.

- 8.14. Supplier declares that it will take all measures necessary to ensure that it will not have any limitation – legally and/or otherwise - to perform the Grinding/Milling Services on Weekends and/or during national holidays as agreed and mentioned above in order to ensure the completion of the Services as soon as possible.
- 8.15. Supplier will make no claim against ISR for any additional payment or any other compensation with respect to any matter concerning this Agreement and/or the requirement to provide services during Weekends and/or national holidays and/or otherwise in light of the updated schedule and this Agreement.
- 8.16. Without derogating from the above, in the event that Supplier shall for any reason (including malfunctions in the SRV) cancel a Track Time Shift 24-12 (~~twenty-four~~ ~~twelve~~) hours or less before commencement of such shift, ISR shall be entitled (without derogating from any of its rights under this Agreement and/or any other law) to set off or deduct a sum of 2,000 (two thousand) Euro per each day of cancelation from any payment due to Supplier.
- 8.17. **No Interference or Obstructions**. Supplier acknowledges that the Grinding/ Milling Services will be carried out on or nearby tracks regularly used by ISR in its day-to-day operations, and that except if ISR specifically agrees otherwise, based on a specific request by Supplier, no special arrangements with respect to train traffic will be made in order to allow the performance of the Services. Accordingly, Supplier shall in no way during the execution of the Services interfere or obstruct, or cause any interference or obstruction to, ISR's activities and operations, and shall at all times coordinate its activities with ISR. Supplier shall carry out the Services mainly during the night hours and if required on Weekends ("Shabbat" - between Friday evening and Saturday night) and, if necessary, on National and Jewish religious holidays in accordance with any Applicable Law. It is hereby clarified that Supplier shall not be entitled to any additional payment above the prices set forth in **Annex G** in the event Services are performed at the times specified in this Section.
- 8.18. Supplier shall provide ISR with daily/monthly production reports as detailed in the Grinding/Milling Services Specifications.
- 8.19. Supplier shall notify ISR in writing upon the termination of the Grinding/Milling Services on Track Sections by issuing a written Supplier's Track Section termination notice, for each previous month, based on the daily/monthly production reports in the Form attached hereto as **Annex P1** ("**Supplier's Track Section Termination Notice**"). No later than 14 days from Supplier's Track Section Termination Notice, ISR shall have to perform Acceptance Tests as detailed in the Services Specifications and in this Agreement on the relevant Track Section. Upon the completion of the testing to ISR's full satisfaction, ISR shall issue a signed Track Sections Acceptance Certificate, in the form attached hereto as **Annex P2**, declaring that the Services on the specific Track Sections are suitable and conform with the quality of the Grinding/Milling Services as required in the Services Specifications and in accordance with the terms of this Agreement (the "**Track Sections Final**

Acceptance Certificate"). Without derogating from ISR's rights under this Agreement and/or any Applicable Law, in the event that, for any reason, ISR shall not grant Track Section Final Acceptance Certificate then Supplier shall repeat the performance of the Services on such track without additional consideration in the timetable directed by ISR, until such Track Section shall receive a Track Section Final Acceptance Certificate.

- 8.20. For a period of one (1) year commencing on the date that ISR signs each and every Track Section Final Acceptance Certificate with respect to the completion of each Track Section (the "**Service Warranty Period**"), Supplier shall be responsible for, and shall take any action necessary to remedy, at its sole cost and expense, any defect in the Services relating to such Track Section (the "**Services Warranty**"). For clarification, the Services Warranty Period shall run separately for each section or line, commencing, with respect to each such section or line, on the date that ISR signs the Track Section Final Acceptance Certificate with respect thereto.

9. CONSIDERATION

- 9.1. The consideration payable for the Works including design, integration, manufacture, supply, Training, Warranty, support, testing and examination of the RSDEV as well as for all ancillary services and materials, equipment, licenses to software, hardware, Consumables Delivered with the RSDEV and all undertakings of Supplier under this Agreement 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 **but excluding the Grinding/ Milling Services**, to be paid by ISR to Supplier, shall be the consideration set forth in **Annex B** (the "**RSDEV Price**").
- 9.2. ISR shall pay Supplier each month the total Actual Track Kilometers for which a Track Section Final Acceptance Certificate has been granted during the previous month multiplied by the Price Per Kilometer per Grinding/Milling type as defined in **Annex B** ("**Monthly Track Payment**").
- 9.3. Subject to Supplier's fulfillment of all its obligations with regards to the delivery of each Purchase Order for Work Consumables, ISR shall pay Supplier for each Purchase Order for Work Consumables, the Work Consumables Price as defined in **Annex B** ("**Work Consumables 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 Supplier, as applicable, prior to the date of such payment, and any amount so deducted shall be deemed for any and all purpose to have been paid in full by ISR under this Agreement. The Supplier shall be responsible to obtain any appropriate exemption.
- 9.5. The prices and fees specified in **Annex B** include any sum which the Israeli Tax Authorities require to be withheld at source. The amounts required by the Applicable

Law to be withheld at source by the Israeli Tax Authorities shall be paid by ISR directly to the Israeli Tax Authorities and shall be deducted from all sums set out in **Annex B** pursuant to this Agreement.

- 9.6. The RSDEV Price shall be the final, complete and inclusive price for the manufacture, supply and delivery of the RSDEV and for the performance of the Works and ancillary services related thereto excluding the Monthly Track Payment. The Monthly Track Payment shall be the final, complete and inclusive price for all Works relating to the Grinding/ Milling Services and performance of the Works and ancillary services related thereto including the Service Warranty Period. There will be no adjustment whatsoever for the RSDEV Price and/or Monthly Track Payment specified in the Consideration Annex (**Annex B**), and shall only be linked to the index as detailed in **Annex B**.
- 9.7. 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 delivery of the RSDEV and/or the SRV, including but not limited to all types of importation and custom duties and services, such as transportation costs, customs agents' fees, purchase tax (in Hebrew "Mas Kniya" or "מס קנייה"), wharfage fees (in Hebrew "Dmei Ratzif" or "דמי רציף"), cleaning of the containers, unstuffing and unloading at the Port 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 RSDEV and/or the SRV at port, supervision while discharging at port, discharging terms at port, etc. shall be considered as part of the RSDEV Price and/or the Monthly Track Payment and shall be borne solely by Supplier.
- 9.8. 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 RSDEV and/or the Grinding/ Milling Services.
- 9.9. In the event that ISR shall exercise its option under Section 7.2 above and without derogating from Section 7.2 above, the Optional RSDEV Price shall be the RSDEV Price for one (1) RSDEV as specified in the table in Section 3 of **Annex B**. Except for the linkage mechanism, that shall apply on Optional RSDEV Price as detailed in Section 8 of **Annex B** this Section shall apply mutatis mutandis on the Optional RSDEV Price.

10. TERMS OF PAYMENT FOR THE RSDEV

Payment by ISR to Supplier shall be made as follows:

- 10.1. A down payment of twenty percent (20%) of the RSDEV Price ("**Down Payment**") shall be paid to Supplier within sixty (60) calendar days following POD, provided that Supplier has provided ISR at least forty five (45) calendar days prior to the payment with all the following:

10.1.1. an invoice in the amount of the Down Payment; and

- 10.1.2. a Down Payment Guarantee issued in accordance with the terms and condition set out in Section 20 below;
 - 10.1.3. the Performance and Warranty Guarantee as defined in Section ~~2020~~ below.
 - 10.1.4. The DDP, ITP, QAP and Training Plan and all other documents detailed under the Technical Specifications.
- 10.2. A second payment of ~~twenty-fifty~~ percent (~~2050~~%) of the RSDEV Price shall be paid to Supplier within sixty (60) calendar days following the provision of the Certification of Completion of Foreign Acceptance Tests (the "**Second Payment**"), provided however that Supplier has provided ISR at least forty five (45) calendar days prior to the payment with all the following:
- 10.2.1. an invoice in the amount of the Second Payment; and
 - 10.2.2. a Payment Guarantee issued in accordance with the terms and conditions set out in Section ~~2020~~ below, in the amount of the Second Payment (the "**Second Payment Guarantee**").
 - 10.2.3. The Notified Body Test Report and Certificate;
 - 10.2.4. a Form of Certificate of Completion of Foreign Acceptance Tests, issued and signed by Supplier in the form attached hereto as **Annex D** and countersigned by IPM to be sent to Supplier within 14 days after receipt of said Certificate.
- 10.3. The remaining balance of ~~sixty-thirty~~ percent (~~6030~~%) of the RSDEV Price shall be paid within sixty (60) days following the issuance of the Final Acceptance Certificate (the "**Balance Payment**"), provided that Supplier has provided ISR with all of the following at least forty five (45) calendar days prior to the payment:
- 10.3.1. an invoice in the amount of the Balance Payment; and
 - 10.3.2. the Final Acceptance Certificate, in the form attached hereto as **Annex E**, signed by ISR, and sent to Supplier within 14 days after signing.
- 10.4. Payments under this Section shall be made to Supplier by means of bank transfer to Supplier's bank account as specified in the form attached hereto as **Annex C**.

11. TERMS OF PAYMENT FOR GRINDING/MILLING SERVICES

- 11.1. Supplier will submit to ISR, once in every month, one original invoice with respect to the Monthly Track Payment. The invoice amount will be paid as follows:
- 11.1.1. if the invoice has been submitted on or before the 15th day of the month, payment will be made to Supplier sixty (60) days after the month during which the invoice has been submitted, on or before the 15th day of that month (and by way of example, if an invoice has been submitted on February 11, payment thereof will be made on or before April 15).
 - 11.1.2. if the invoice has been submitted after the 15th day of the month, payment will be made to Supplier sixty (60) days after the month during which the invoice has been submitted, on or before the last day of that month (and by way of example, if an invoice has been submitted on February 18, payment thereof will be made on or before April 30).

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

12. TERMS OF PAYMENT FOR WORK CONSUMABLES

Work Consumables Price shall be paid within sixty (60) days following the delivery and acceptance of the Work Consumables in each Purchase Order for Work Consumables, provided that Supplier has provided ISR at least forty five (45) calendar days prior to the payment with an invoice in the amount of the Work Consumables Price of the relevant Purchase Order for Work Consumables. Payments under this Section shall be made to Supplier by means of bank transfer to Supplier's bank account as specified in the form attached hereto as Annex C.

13. DELIVERY TERMS AND DELIVERY TIME

- 13.1. The terms of supply and delivery of the RSDEV shall be DAP on railway track at Port Site, and subject to the express terms and conditions defined in this Agreement (the "**Delivery Terms**"). It shall be ISR's responsibility to deliver the RSDEV from Port Site to ISR's Site. Supplier shall ensure that the RSDEV is ready for towing.
- 13.2. The time for delivery of the RSDEV shall not exceed eighteen (18) months following the issuance of a Purchase Order ("**Delivery Time**"). Any unjustifiable delay of ISR in providing the Down Payment (Section 10.1) and/or Second Payment (Section ~~10.2~~~~10.2~~) shall extend the Delivery Time accordingly.
- 13.3. As an integral part of the delivery of the RSDEV and concurrently with the supply of the RSDEV, Supplier shall supply to ISR on DAP terms to ISR Site (1) all Consumables Delivered with the RSDEV, and (2) the complete and full set of all Spare Parts for Preventive Maintenance and Calibration for the RSDEV to ensure carrying out safe and full operation during the entire Warranty Period.
- 13.4. As an integral part of the delivery of the RSDEV and concurrently with the supply of the RSDEV, Supplier shall supply to ISR, the following documents for ISR's approval:
- 13.4.1 Risk management plan that shall include risk assessment matrix.
- 13.4.2 The most updated accuracy check result test of the measurement systems of the SRV carried out by a Laboratory (as defined below) that has one the following certificates ("Accuracy Report"):
- A laboratory certified in accordance with ISO/IEC17025 in the field of calibration checks, and/or
 - A laboratory accredited by the national laboratory accreditation authority in the field of calibration checks,
- (each of the aforesaid may be referred to as a "**Laboratory**").

- 13.5. At least 60 days prior to Delivery Time, Supplier shall submit to ISR the documentation detailed in the Technical Specifications.
- 13.6. The terms of supply and delivery of the Work Consumables shall be DAP at Site, and subject to the express terms and conditions defined in this Agreement. The time for delivery of the Work Consumables shall not exceed ninety (90) days following the issuance of a Purchase Order for Work Consumables.
- 13.7. It is hereby stated by Supplier and mutually understood by the Parties, that notwithstanding the Delivery Time, Supplier shall make its best efforts to shorten the Delivery Time as much as possible.
- 13.8. **Passage of Title**
- 13.8.1. The ownership and title to the RSDEV and any part thereof shall fully pass to ISR free and clear of all security interests, liens, attachments, encumbrances and any other rights or claims of any kind of any third party, upon the date of issuance by ISR of the Final Acceptance Certificate. 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.
- 13.8.2. ISR shall bear no responsibility for any Works performed or materials, components or equipment used by Supplier or deposited with any SubContractor, including such materials, equipment or Works being stored or that have been placed at any site and which are lost, stolen, damaged, destroyed or otherwise fail prior to Final Acceptance. Supplier shall be solely responsible to protect completely and preserve entirely the RSDEV and any related Works, components, material and equipment until the Final Acceptance thereof.

14. TESTING, FOREIGN TESTING AND ACCEPTANCE TESTS

- 14.1. Within thirty (30) days following the POD, Supplier shall submit to ISR, for its approval, an Inspection and Test Plan for the RSDEV (the "ITP"). The ITP shall include a description of all inspections and tests to be carried out during the production and assembly of the RSDEV or parts thereof and all inspections and tests to be carried out prior to and during the actual acceptance tests and their respective minimum acceptance criteria. ITP shall further include all tests, inspections, checks, examinations, etc., required by pertinent and internationally accepted standards, rules or codes.
- 14.2. The approved ITP shall be attached to this Agreement as **Annex L. Parties may amend the ITP by prior written approval in the event that such change is deemed to be necessary by both parties.**
- 14.3. ISR's engineer team shall be entitled to participate in all such tests including but not limited to Notified Body tests and foreign tests and shall be given advance notice of at least 60 days. Supplier shall be responsible for all equipment and resources and

expenses with regards to the tests, excluding flights, room and board for ISR's engineer team.

- 14.4. Upon the completion of the manufacture the RSDEV, Supplier shall: (1) conduct all the relevant tests and inspections of the RSDEV in accordance with the ITP and the Technical Specifications. ISR shall be notified of completion of manufacture of the RSDEV prior to commencement of the tests; without derogating from the above such tests shall include all the relevant test in according to EN14033-1;2;3 and EN13231-3; EN13231-4; prEN13231-5 and all other standards required in the technical specifications of the RSDEV, its systems and measurements abilities; (2) submit to ISR the Notified Body Test Report and Certificate issued by a Notified Body (as defined below) assuring that the RSDEV have been approved by such Notified Body for operational use in accordance with EN14033-1; 2; 3 ("**Notified Body Test Report and Certificate**"). Such Notified Body Test Report and Certificate (in the English Language or a certified translation into English) shall detail all standards according to which the approvals were made. All costs and expenses required in order to receive the Notified Body Test Report and Certificate shall be solely borne by Supplier. The Notified Body Test Report and Certificate can relate to only one RSDEV.

For the purpose of this Section "**Notified Body**" means a body accredited by a national railway authority/regulator or an international railway authority authorized to provide the applicable accreditation, as approved by ISR in writing and in advance prior to the Effective Date. Supplier shall furnish ISR upon request with information regarding the experience and accreditation of a Notified Body including documents relating to its accreditation. All documents produced by Notified Body as a result of the inspection of the RSDEV shall be provided by Supplier to ISR for inspection.

- 14.5. Upon completion of said Notified Body tests and the receiving of a Notified Body Certificate by ISR, to the full satisfaction of ISR, Supplier shall prepare for ISR's Foreign Tests Acceptance Certificate in the form attached as **Annex D** attesting that the RSDEV is (1) in full compliance with all of the terms and requirements of this Agreement including the Technical Specifications and the ITP; and (2) the RSDEV is without any discoverable damage, fault or defect.
- 14.6. Without derogating from Section 14.3, following Notified Body test, ISR shall have the option to condition the signing of **Annex D** on the ISR's representative visiting Supplier's site to ensure the accuracy of the Foreign Tests and in such event **Annex D** shall not be signed unless such visit takes place and ISR's representative shall confirm the accuracy of the Foreign Tests.
- 14.7. The RSDEV or any part thereof, shall not be sent to any port for shipment to Israel and shall not be shipped to Israel prior to ISR issuance of the signed Foreign Tests Acceptance Certificate which shall not be unreasonably withheld or delayed.
- 14.8. Upon arrival of the RSDEV or any part thereof to the ISR's Site, Supplier shall perform all Works required to bring the RSDEV to a full operational condition in accordance with the applicable terms and conditions defined herein in this Agreement and the Technical Specifications.

- Upon the completion of the Works, including the testing, commissioning, ITP, Training, and the tests specified in the ITP on ISR's Site to ISR's full satisfaction, Supplier shall complete and sign a Final Acceptance Certificate, in the form Attached hereto as **Annex E** (a "**Final Acceptance Certificate**"), declaring that Supplier has fulfilled any and all of its obligations in accordance with the Agreement and that the RSDEV and/or any part thereof conforms to the standards, requirements and specifications set out in this Agreement. Without derogating from the above Acceptance Tests shall include running the RSDEV on track, and:
 - Capability of the RSDEV to produce up to 2 km of Wear Reducing Profiles or ISR Target Profiles with spark time of 4 [hour] on track, (as defined in the Grinding/Milling Services Specifications).
 - Capability of the RSDEV to produce up to 6 km of preventive cycle reprofiling with spark time of 4 [hour] on track, (as defined in the Grinding/Milling Services Specifications), as well as tests of the measurements ability and full operation of all systems of the RSDEV.

For the avoidance of any doubt, unless Training is completed to the full satisfaction of ISR and ISR received all Spare Parts for Preventive Maintenance and Calibration Consumables Delivered with the RSEV, a Final Acceptance Certificate shall not be issued.

Without derogating from the above, in order to receive a Final Acceptance Certificate, the SPM or a qualified technical representative shall be present in Israel during the final acceptance tests and procedures detailed in the ITP and this Section. Supplier shall bear all expenses related to such visit.

- 14.9. Supplier shall be responsible for the supply of any equipment, resources, ancillary services and expenses with regards to the ITP, and all costs related to the testing and acceptance procedures specified in this Agreement shall be included in the RSDEV Price and Grinding/Milling Services Price. Supplier shall not be entitled to any additional consideration for the provision of the testing and acceptance procedures specified herein. Notwithstanding the above, ISR shall bear all flights, room and board expenses of ISR's personal and/or ISR's representative present in the testing, the foreign tests and acceptance tests.

15. WARRANTY

- 15.1. Supplier confirms and warrants to ISR that commencing on the issuance date of the Final Acceptance Certificate and for a period of thirty six (36) months thereafter (the "**Warranty Period**"), the RSDEV, and any part thereof (including software and hardware components as well as any materials, embedded in the RSDEV), shall operate and perform and measure to the maximum extent of its capabilities and in all respects in strict accordance with the terms and the conditions of this Agreement, including the Technical Specifications, and be free of any faults, defects and/or deficiencies, including but not limited to any faults, defects and/or deficiencies in design, material, workmanship, dismantling for sea and land conveyance, assembly, materials, components, software, hardware, etc.) (the "**Warranty**").

- 15.2. 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 training corrective maintenance, replacement of spare parts resulting from the corrective maintenance, and troubleshooting.
- 15.3. For the avoidance of any doubt, ISR shall perform at its own cost and expense all preventive maintenance and calibration using the Spare Parts for Preventive Maintenance and Calibration supplied by Supplier as part of the Delivery of the RSDEV. Supplier shall be responsible to correct at its own cost and expense any defect and/or deficiencies in the preventive maintenance and calibration ~~is-if~~ such defect and/or deficiencies are a result of lack of equipment and/or spare parts and/or materials in the Spare Parts for Preventive Maintenance and Calibration supplied by Supplier and/or insufficient Training to ISR.
- 15.4. As an integral part of the Warranty during the Warranty Period, Supplier shall supply and install updates of all Software and of changes (including Minor releases and New Editions) for applications and RSDEV components to what is available in the market. Installing any New Edition or Minor Release shall be subject to prior written approval of ISR. 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 any. 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. 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 RSDEV at any given time.

"Minor Release"— update to the latest release of the Software, released by Supplier and/or a 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 Supplier and/or third party relating to the Software from time to time in order to improve functionality vis-a-vis the previous edition.

- 15.5. The Warranty Period shall also include, as an inseparable part thereof, without any additional charge or cost support visit in Israel for at least five (5) business days every six months ("**Service Support Visit**"). The Service Support Visit shall be conducted by an adequately staffed qualified and expert hands-on team. Without derogating from the above, Supplier shall bear all flights, room and board for expenses of Personnel. The schedule of the Service Support Visit shall be coordinated with ISR in advance. Personnel shall be determined in accordance with the needs of such Support Visit as shall be determined by ISR, from time to time according to its needs.
- 15.6. ISR shall promptly inform the Supplier of a Work defect it is aware of after discovery of such defect. Supplier shall not bear responsibility for defects if such

defect is a result of (1) gross negligence and/or (2) vandalism on the part of ISR to the RSDEV and/or (3) material violation by ISR and/or third party on its behalf of operating and/or maintenance and/or installation or written instructions Supplier delivers in advance to ISR and/or (4) accidents that could not have been prevented by Supplier including third parties on its behalf and/or cannot be attributed to Supplier's acts and/or omissions including third parties on its behalf.

- 15.7. Without derogating from any rights or remedies available to ISR according to this Agreement and/or under Applicable Law, upon receipt by Supplier of a written notice from ISR claiming that the Warranty has been breached, in any way whatsoever, 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: (i) promptly investigate and examine the RSDEV or any part thereof; and (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 Supplier or of any and all of the SubContractors or any third party acting on Supplier's behalf.
- 15.8. Without derogating from its other obligations in this Section, Supplier further certifies and confirms that during the Warranty it shall provide ISR without any additional charge or cost:
- 15.8.1. Malfunction report whether through human staffed stations or through automatic recording.
- 15.8.2. In case of a Severe Malfunction, the Response Time shall not exceed ~~48-96~~ (forty-eight) ~~ninety six~~ hours and the Resolution Time shall not exceed ~~10-20~~ (ten) ~~twenty~~ Business Days from the report of the problem. In such time, ISR may demand upon its sole discretion the personal and uninterrupted presence of professional representatives of the Supplier on ISR's Site, having the appropriate skills and in the relevant number as the case may be, at no additional charge ("**Presence on Site**"), and Supplier shall immediately comply with such demand.
- 15.8.3. In case of any other malfunctions, the Response Time shall not exceed ~~48-96~~ (ninety six) ~~forty eight~~ hours and the Resolution Time shall not exceed ~~22-44~~ (twenty two) ~~forty four~~ Business Days from the report of the problem. In such time ISR may demand Presence on Site and Supplier shall immediately comply with such demand.
- 15.8.4. Without derogating from the above and in addition thereto, in the event that Supplier fails to remedy a Severe Malfunction within the timeframe specified therein, ISR shall be entitled to charge the Supplier with liquidated damages amounting to ~~17,000~~ € for each day during which the malfunction was not resolved (from the ~~fourth-sixth~~ day and onwards until the fourteen day) and

1000€ thereafter .

- 15.8.5. Without derogating from the above and in addition thereto, in the event that Supplier fails to remedy a malfunction which is not a Severe Malfunction within the timeframe specified therein, ISR shall be entitled to charge Supplier with liquidated damages amounting to 500 € for each day from the sixth day during which the RSDEV is not fully available for operation.
- 15.8.6. If Resolution Time has elapsed, Supplier shall supply to ISR a substitute RSDEV with the same or higher operation capability no later than ~~90~~150 days from ISR's written demand, without any additional cost.
- 15.8.7. 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. The report by ISR's representative as to the malfunction shall include the categorization of the malfunction (whether severe or not) according to his discretion. 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.
- 15.8.8. For the removal of doubt, the liquidated damages as herein provided shall not derogate from any other rights or remedies available to ISR under any Applicable Law or under this Agreement.
- 15.8.9. For the removal of doubt, ISR may recover any sums due to ISR with regard to such liquidated damages from the guarantee provided by Supplier or by set off from any consideration due under this Agreement.
- 15.9. 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.
- 15.10. For the avoidance of doubt, it is hereby clarified that 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 RSDEV 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.

16. OPTIONAL SERVICE SUPPORT

- 16.1. ISR shall have an option, exercisable at its sole discretion, to require Supplier to provide Service Support Visits for the RSDEV commencing upon the completion of the Warranty Period (the "**Optional Service Support Visit**"). ISR may decide, at its sole discretion, whether to purchase from Supplier the Optional Service Support Visit. ISR shall notify Supplier in writing of its election to exercise its rights pursuant to this Section no fewer than 30 days prior to the end of the Warranty Period and/or at the end of each year it has purchased the Optional Service Support

Visit, as applicable. The maximum number of years in which ISR may purchase Service Support Visits shall not exceed 10 years starting from the end of the Warranty Period.

- 16.2. All Supplier's undertakings during the Warranty Period regarding the Service Support Visits shall apply mutatis mutandis during the Optional Service Support Visits which shall include also calibration, if required. Subject to Supplier's successful completion of the Optional Service Support Visit, the Optional Service Support Visit Price (including calibration) shall be paid 60 days after an invoice in the amount of the Optional Service Support Visit Price for the relevant year has been issued to ISR. The Optional Service Support Visit Price shall be linked in accordance with the linkage mechanism set forth in the Consideration Annex.

17. SPARE PARTS AND CONSUMABLES

- 17.1. Without derogating from Supplier's undertaking to provide the Warranty, Supplier undertakes that during a period of twenty (20) years commencing on the date of issuance of the Final Acceptance Certificate, it will supply ISR with all Consumables 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 RSDEV or any part thereof, while assuring that the RSDEV and all systems therein shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and the conditions of this Agreement, including the Technical Specifications (the "**Spare Parts**").
- 17.2. Without derogating from the generality of Section 17.1, Supplier shall furnish a detailed Spare Parts List and **Work Consumables** and maintenance consumables of all necessary and recommended Spare Parts and Work Consumables and maintenance consumables and their prices, in the form attached hereto as **Annex A F2** by the Effective Date (the "**Spare Parts List and Work Consumables and Prices**") no later than 60 days prior to Delivery time of the RSDEV. The Spare Parts List and Work Consumables 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 Consumables, and subject to the terms specified in Section ~~11.14.1~~. The Spare Parts List and Prices shall be linked in accordance with the linkage mechanism set forth in the Consideration Annex.

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

- 17.3. Notwithstanding the undertaking of Supplier to sell ISR the necessary Spare Parts for a period specified in Section 17.1 above, ISR shall be under no obligation whatsoever to acquire any Spare Parts from Supplier. ISR, in its sole discretion, shall

decide if, and when, it will acquire the Spare Parts from Supplier during the relevant time period. Supplier shall reasonably support ISR in acquiring the Spare Parts even if ISR shall decide not to purchase the Spare Parts from Supplier.

18. LIQUIDATED DAMAGES

- 18.1. Without prejudice to any other relief or remedy available to ISR under this Agreement or under Applicable Law, in the event that the delivery of the RSDEV and/or any part thereof is delayed beyond the specified Delivery Time, Supplier shall pay ISR liquidated damages in the sum equal to one ~~and half pp~~ percent (~~1.5~~%) of the value of the RSDEV Price for each calendar week of delay, or any part thereof. The liquidated damages shall not exceed a total of seven and half percent (~~7.55~~%) of the value of the consideration specified in this Agreement.
- 18.2. Without prejudice to any other relief or remedy available to ISR under this Agreement or under Applicable Law, in the event that the delivery of the Purchase Order for Work Consumables or any part thereof is delayed beyond the specified Delivery Time of the Purchase Order for Work Consumables, Supplier shall pay ISR liquidated damages in the sum equal to ~~five-three~~ percent (~~53~~%) of the value of the Work Consumables Price for each calendar week of delay, or any part thereof. The liquidated damages shall not exceed a total of ~~twenty-fiveten~~ (~~2510~~%) of the value of the consideration specified in this Agreement. Liquidated damages under this Section shall not be paid for late delivery for the first 5 Business Days.
- 18.3. Without derogating to its rights under Applicable Law and/or this Agreement, ISR shall be entitled to charge Supplier with liquidated damages amounting to ~~1000-700~~ € for each day during which the SRV and/or one (or more) of the Service team personal is not available for service operation, for any reason during the first 7 days and 1000€ thereafter.
- 18.4. The liquidated damages in this Agreement have been determined after due consideration of the damages the Parties anticipate that ISR will suffer under the specific circumstances to which each specific type of liquidated damage apply, and therefore they shall not be regarded as a penalty. Payment of the Liquidated Damages shall not be conditioned on ISR having to present evidence of any loss.

19. ALTERATION OF TECHNICAL SPECIFICATIONS

- 19.1. ISR reserves the right to alter the Technical Specifications ("**Changes**"). Supplier shall be notified of the alterations in writing by the IPM ("**Change Order**") in a Change Order Form (attached hereto as **Annex H**). Any Change Order shall specify a date following which the RSDEV and/or any part thereof shall be designed, manufactured and supplied in accordance with the amended specifications.
- 19.2. Within ten (10) Business Days following the receipt of a Change Order, Supplier shall provide ISR with a written confirmation and if applicable, shall state on the Change Order Form requested changes to the RSDEV and/or any part thereof, RSDEV Price, Delivery Time, and any other terms relevant to the provision thereof.

- 19.3. The price for any Changes included in the Change Order which is a supplement or addition of parts of RSDEV used elsewhere in the RSDEV and/or any part thereof or which are included in the Spare Parts List, shall be no higher than the price applied to such RSDEV or parts therein unless the price reflects additional substantial services on behalf of Supplier.
- 19.4. Following receipt of Supplier's request for changes as detailed above, the Parties shall, in good faith, review the changes and any changes to the RSDEV Price and Delivery Time requested by Supplier.
- 19.5. The Changes will be incorporated in the RSDEV, only after and to the extent that the Parties are agreed as to their impact on the RSDEV Price and Delivery Time. Such agreement shall be set out in writing in the Change Order Form and shall be signed by both Parties. For the avoidance of doubt, ISR maintains sole discretion regarding the Changes themselves.
- In the event that Supplier objects to any Change Order or any part thereof, on the grounds that it may affect safety or structural soundness of the RSDEV, 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 Changes.
- 19.6. Should Supplier find at any time during the design or manufacture of the RSDEV 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.

20. GUARANTEES

- 20.1. To secure the punctual, complete and entire performance of all of Supplier's obligations under this Agreement, including any Works (including the Grinding/Milling Services) to be performed by any SubContractor, Supplier will furnish Performance and Warranty Guarantee, Down Payment Guarantee and 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.
- 20.2. **Performance and Warranty Guarantee.** No later than seven (7) Business Days following the Effective Date, the Supplier shall furnish ISR with an irrevocable autonomous bank guarantee, approved in advance by ISR and issued in the form attached hereto as Annex G2 in the amount equal to ten percent (10%) of the RSDEV Price, valid until two (2) months following the end of the Warranty Period (the "**Performance and Warranty Guarantee**").
- 20.3. **Down Payment Guarantee.** Before payment by ISR of the Down Payment specified in Section ~~10+0~~ above, 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**").
- 20.4. **Payment Guarantee.** Before ISR effects the Second Payment (as defined in the

payment schedule in Section 9 above), and as a condition thereto, the Supplier shall furnish ISR with a bank guarantee in the full amount of the payment then due in the form attached hereto as **Annex G1** (the "**Payment Guarantee**").

- 20.5. The Down Payment Guarantee and the Payment Guarantee (to the extent not collected) will be in force until, and will be returned to Supplier within sixty (60) days after, and subject to, the Final Acceptance of the RSDEV.
- 20.6. 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.
- 20.7. Each Guarantee shall be in the relevant form for such Guarantee attached hereto as **Annex G1- G2** and shall be denominated in Euros or USD 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.
- 20.8. 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.
- 20.9. 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 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.
- 20.10. Collection on a Guarantee or any part thereof by ISR shall not derogate from the right of ISR to terminate this Agreement, nor from its right to any remedy that may be available to it under any Applicable Law and/or agreement or relieve Supplier of any of its liabilities and undertakings under this Agreement, including its liability to indemnify ISR.

21. INSURANCE

- 21.1. Without derogating from any of the Supplier's responsibilities and liabilities under this Agreement and/or under the Applicable Law, the Supplier shall maintain, at its own expense with an authorized insurance company, the inception of manufacturing of the RSDEV and until its Final Acceptance, insurance policies from reputable insurers, as following:
 - 21.1.1. **Property Insurance** covering any loss or damage arising out of, or caused by any risk in respect of the manufacturing and/or supply of the RSDEV. The sum

insured under the said policy shall reflect the full replacement value of the completed manufactured RSDEV. The policy shall include a waiver of subrogation towards ISR and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf, provided that the waiver of subrogation does not apply in favor of a person who has maliciously caused the damage. The Supplier undertake, that in respect of loss or damage to the RSDEV, the policy shall contain a clause stating that all recoveries payable by way of claims or otherwise under the policy shall be paid in full to ISR exclusively, whom shall be added as an additional insured under the policy.

21.1.2. **Marine "All Risk"** Insurance against any loss or damage to the RSDEV, arising out of, in course of, or caused by any risk in respect of the transport of RSDEV. The policy shall apply from the time of moving the RSDEV and the Spare Parts from the Supplier' warehouses / premises until arrival within the Site 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) irrespective to the terms of sale.

Settlement of claims will be made at 110% of the RSDEV DAP value. The Supplier undertake, that in respect of loss or damage to the RSDEV, the policy shall contain a clause stating that all recoveries payable by way of claims or otherwise under the policy shall be paid in full to ISR exclusively, whom 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.

21.2. As a precedent condition precedent to the second payment FOR THE RSDEV, Supplier shall furnish a certificate from its insurers stating:

"The insurance policies required by Agreement No _____ between ISR and Supplier are in full force and effect".

21.3. Without derogating from the Supplier's liability pursuant to this Agreement or at law, the Supplier undertakes to arrange and maintain insurance policies, at its own expense, with an authorized insurance company, during the Service Period, as well as for any additional periods during which the Supplier is held liable in connection with the Grinding/Milling Services and/or the supply of the RSDEV (whether at law or under this Agreement) as set forth in **Appendix Q** ("the **Certificate of Insurance**").

21.4. In addition to the insurances noted in the Certificate of Insurance, the Supplier shall procure and maintain all compulsory insurances covering liability which it is required to maintain under the requirements of Applicable Law. The Supplier will arrange Comprehensive Automobile/Motor Liability Insurance, covering motor vehicles employed in any manner having to do with the Grinding/Milling Services,

for bodily injury and property damage at a limit of no less than \$ 250,000 per event and for the duration of the Agreement, or as required by the local law (including compulsory insurance, if applicable).

- 21.5. The Supplier represents and warrants that it shall not have any claims, demands and actions against ISR and/or anyone on its behalf including the Israeli Government, concerning damage with respect to its property of any type and/or property under its responsibility, including systems, machines, stock and equipment of any kind that the Supplier and/or Subcontractors or anyone acting on their behalf use in connection with this Agreement and/or concerning any damage for which it is entitled to receive indemnification under its insurance policies; and Supplier hereby relieves ISR and/or anyone on its behalf including the State of Israel of any liability for such damage. The foregoing shall not apply for the benefit of anyone who caused damage with malicious intent.
- 21.6. For avoidance of doubt, it is agreed that the limits of indemnity noted under the liability insurance policies mentioned in the Certificate of Insurance represent a minimum requirement. The Supplier undertakes to assess the relevant exposure to liability and determine the limits of liability accordingly. The Supplier declares and confirms that it will be prevented from raising any contention and/or demand against ISR and/or anyone on its behalf, regarding such liability limits. In this regard, it is hereby clarified that the taking out of the abovementioned insurances by the Supplier will not limit or derogate in any way from the Supplier's undertakings according to this Agreement, and effecting these insurance policies will not release it from its obligation to indemnify ISR and/or any person whatsoever for any damage for which the Supplier is liable, in accordance with this Agreement and/or by any law.
- 21.7. The Supplier undertakes to provide ISR, no later than seven (7) days from the date of this Agreement and in any case before the date of commencement of the Grinding/Milling Services, with the Certificate of Insurance, signed by the Supplier's insurers.
- 21.8. At least thirty (30) days prior to the end of the insurance period, the Supplier undertakes to submit to ISR an updated Certificate of Insurance, in respect of the renewal of the policies for an additional period, and to do so at least thirty (30) days prior to the end of each insurance period and as long as required in clause 21.3 above. If at any time ISR is notified by the Supplier's insurers that any of the Supplier's Insurances are about to be cancelled and/or narrowed, the Supplier shall forthwith re-procure such insurance in accordance with all the requirements herein and in the Certificate of Insurance, prior to the date of such cancellation/narrowing.
- 21.9. ISR may review the Certificate of Insurance, which the Supplier is committed to furnish as set out above, and the Supplier undertakes to make any change or amendment that will be required in order to make it conform to the Supplier's undertakings. The Supplier declares that ISR's right to examine the Certificate of Insurance and its right to demand amendments to the Certificate of Insurance, as set out above, does not impose on ISR or any party on its behalf any obligation or

responsibility in relation to such Certificate of Insurance, or in connection with the nature, extent and validity of the Supplier's insurance coverage or with respect to the absence thereof, nor does it derogate from any liability whatsoever imposed on Supplier under this Agreement.

- 21.10. The Supplier undertakes to fulfil the conditions of the insurance policies placed by it in full, and punctually pay the insurance premiums, arrange for and ensure that the Supplier's insurance coverage shall be in full force and effect according to the Supplier's undertakings under this Agreement, at all times during the entire period required under this Section 21 above and/or under the Certificate of Insurance.

22. INTELLECTUAL PROPERTY RIGHTS

- 22.1. **Intellectual Property Rights Warranty.** Supplier represents and warrants that it is the owner of all rights and title (including but without limitation Intellectual Property Rights, as defined below) in and to the RSDEV and/or the SRV, as well as in any Works and any component thereof (including, without limitation, RSDEV and/or the SRV, parts, software incorporated in the RSDEV or integrated with them), and documentation provided to ISR under this Agreement and the Technical Specification and/or Software, and/or that it has obtained sufficient rights and is authorized to give rights to ISR in any such RSDEV and/or the SRV, 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 RSDEV and/or the SRV, Works and documentation and/or Software in accordance with the terms and conditions of this Agreement, including the operation and maintenance of the RSDEV and/or the SRV And for the purpose of interface with other ISR's equipment (whether existing now or in the future).
- 22.2. **Non Infringement Warranty.** Supplier warrants that the RSDEV and/or the SRV, Works and/or Software and documentation, and their use by ISR in accordance with this Agreement (i) do not and will not infringe any patents, copyrights, whether or not registered, trade names, registered and unregistered trademarks, service marks, trade dress, domain name registrations and other source indicators; computer software, including databases; trade secrets, commercial secrets, inventions (whether or not patentable and whether or not reduced to practice), know-how, methodologies, or other intellectual property right of any person ("**Intellectual Property Rights**"), and (ii) no claim, action or suit for the misappropriation or infringement of any Intellectual Property Right has been brought or is pending or, to the best of its knowledge, threatened against Supplier and/or any third party from which Supplier has obtained such Intellectual Property Rights in connection with the RSDEV and/or the SRV, Works or documentation provided under this Agreement.
- 22.3. **Responsibility of Supplier.** Supplier shall be solely and fully liable and responsible for the use of, and shall fully and timely pay all royalties, fees and other payments

with respect to, all Intellectual Property Rights, licenses and rights of whatever type, manufactured, used, implemented or employed in the design, production, completion, use or operation of the RSDEV and/or the SRV and Works and/or Software by Supplier or ISR.

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

22.4.1. The title in and to the designs, drawings, documentation and other technical documents that may and/or shall be submitted by 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 drawings, documentation and other documents to the extent necessary for the use and maintenance of the RSDEV and/or the SRV according to this Agreement.

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

22.5. **Grant of License.** Supplier hereby grants to ISR a perpetual, royalty-free license and right to install, use, have used, reproduce and have reproduced and copy (including for backup archival purposes) all software provided in connection with this Agreement, and all supporting documentation, as necessary solely to support the use of such software on any hardware for the purpose of operation of the RSDEV.

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

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

22.6.1. 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 Supplier to secure the removal of any injunction or other relief that was granted; or

22.6.2. 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.

23. TERMINATION

- 23.1. This Agreement may be terminated by ISR at its sole and absolute discretion at any time, whether before or after commencement of the Works, by giving Supplier prior written notice of at least fourteen (14) Business Delays, if any of the following occurs:
- 23.1.1. Supplier transfers the whole or any part of its undertakings pursuant to this Agreement or substantial properties or assets, by a single transaction or by a number of transactions, without obtaining prior written approval of ISR.
 - 23.1.2. Supplier becomes bankrupt, insolvent, or does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes any assignment for the benefit of creditors, or liquidation, receiverships, or reorganization proceedings (whether temporary or not) have been commenced against Supplier and have not been removed within twenty one (21) days.
 - 23.1.3. An attachment order has been imposed and/or any other execution procedure has been taken with respect to all or a material part of Supplier's assets, or a part thereof which is material for the performance of any of its obligations hereunder and has not been removed within thirty (30) days.
 - 23.1.4. Supplier has stopped managing its business (or substantial portion thereof) or execution of the Works, for a consecutive period of thirty (30) days.
 - 23.1.5. Any representation or warranty made by Supplier in this Agreement and/or any certificate, schedule or other document delivered by Supplier pursuant to this Agreement has been false or materially misleading when made.
 - 23.1.6. Supplier breaches any material provision of this Agreement (such as, and not limited to, a breach of Sections 44,5-5, 66, 11.111.1, 1414, 1515, 1717, 18, 2020, 2121, 2222, 23, 2424, 2525 or 2828, and fails to cure such breach within twenty-thirty (230) days from the date of ISR's notice.
 - 23.1.7. Supplier breaches any provision of this Agreement that is not material and fails to cure such breach within thirty-forty five (3045) days from the date of ISR's notice.
- 23.2. **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 23.1, 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, Supplier shall return to ISR all payments it has received from ISR in respect of all-terminated-Works except for already incurred expenses that were authorized by ISR in writing and in the advance and in the amounts authorized by ISR in writing and in the advance.
- 23.3. **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, until 120 (one hundred and twenty) days after issuance of the Purchase Order at the latest by giving the Supplier a 45 (forty five) days prior written notice.

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

23.5. **Effect of Termination**

23.5.1. Subject to Sections ~~23.5.4~~23.5.4 and ~~23.5.5~~23.5.5 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.

23.5.2. 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 Rights and Liability) shall survive the expiration or termination of this Agreement.

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

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

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

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

or any other causes.

24. RISKS AND LIABILITIES

- 24.1. **General.** Supplier shall be solely responsible for, and shall defend, indemnify, and hold **ISR, including its shareholders, officers, directors, employees and consultants harmless** from and against any and all claims, liabilities, demands, suits, proceedings (whether civil or criminal, other than criminal acts of ISR), orders, judgments, penalties, settlements, fines and all associated costs, losses and expenses (including reasonable attorneys' and other professionals' fees) or any other direct damages (collectively, "**Damages**"), which ISR and/or any of the above persons and entities may incur arising out of, incidental to, or connected with any of the following (all without derogating from any other remedy that ISR and/or any of the above persons and entities may be entitled to under the circumstances, pursuant to this Agreement or under any Applicable Law):
- 24.1.1. the Works, including but without limitation, their design, assembly, integration, adjustment, tests and trials of the RSDEV (and/or any part thereof), as well as the Warranty and/or all Works related to the Grinding/Milling Services;
 - 24.1.2. the use of the RSDEV and/or the SRV and/or any part thereof, when the Damages arise from faulty design (including errors and omissions in design) or workmanship;
 - 24.1.3. any damage to property, death or injury to persons, arising out of, or in connection with, the RSDEV and/or the SRV or the Works including the Grinding/Milling Services;
 - 24.1.4. Supplier's breach of any term or provision of this Agreement or any Applicable Law;
 - 24.1.5. 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;
 - 24.1.6. any negligent or willful act, error or omission by Supplier, its employees, agents, representatives and SubContractors, in the performance of this Agreement (including, for the removal of doubt, the execution of the Works);
 - 24.1.7. any actual or alleged infringement of Intellectual Property Rights of whatever type arising out of, in connection with, or otherwise resulting from the use of the Works by Supplier, its SubContractors or ISR.
- 24.2. **Payment of Indemnification Amounts.** Any amount for which ISR **is entitled under this Agreement and/or Applicable Law** ~~claims~~ for indemnification hereunder shall be paid to it within the time specified in the notice requiring indemnification.

- 24.3. **Defense against Proceedings.** If any legal action or any other proceeding (collectively "**Proceedings**") are commenced against ISR, in respect of which Supplier may be liable to indemnify ISR under this Section, then the following provisions shall apply:
- 24.3.1. Notice of such Proceedings shall be promptly given to Supplier.
- 24.3.2. Supplier shall, at its sole cost and expense, defend any litigation that may arise from such Proceedings and conduct all negotiations for the settlement of same, provided that any settlement of such Proceedings will be subject to ISR's prior written consent and provided further that Supplier shall not, in connection with such defense and/or settlement (i) injure ISR's reputation; (ii) purport to take any action expressly or implicitly on behalf of ISR; or (iii) purport to make any representation and/or admission regarding and/or concerning ISR or ISR's activities. ISR's written consent shall not be unreasonably withheld.
- 24.3.3. At the request and expense of Supplier, ISR shall afford reasonable assistance to Supplier in the defense of such Proceedings.
- 24.3.4. So long as Supplier timely takes over and properly conducts the negotiations or litigation, Supplier shall not be required to reimburse ISR the fees for services of attorneys retained by ISR (if and to the extent so retained). If ISR finds, however, that Supplier is not coordinating its defense with ISR in a proper manner or fails to defend ISR diligently or if ISR determines, at its sole and absolute discretion, that representation should be by ISR, then ISR may retain the services of attorneys on its behalf and at Supplier's expense, which attorneys will represent ISR in the said Proceedings and may settle such Proceedings, provided that Supplier gives its consent to such settlement in advance and in writing (which consent shall not be unreasonably withheld). For the removal of doubt, the settling of such Proceedings by ISR shall not relieve Supplier of the obligation to indemnify ISR as provided in this Agreement (including without limitation, for reasonable legal fees and expenses incurred by ISR in connection with the enforcement of Supplier's indemnification obligations hereunder).
- 24.3.5. 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.
- 24.4. **Exclusions.** Subject to the provisions of Section 24.5 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.
- 24.5. **Exceptions.** The provisions of Section ~~24.4~~24.4 above shall not apply with respect to:

- 24.5.1. Any Damages to ISR incurred in connection with endemic failures, including but without limitation such damages to ISR as: replacement of components, publication of advertisements and/or manpower specifically assigned to rectification of such faults and damages;
 - 24.5.2. Alleged or actual infringement of Intellectual Property Rights by the Works or any part thereof;
 - 24.5.3. Death or injury;
 - 24.5.4. Claim for payment by any SubContractor.
- 24.6. **Withholding of Payments and Collection on Guarantees**. Without derogating from any other rights of ISR under any applicable law and/or agreement, in the event that any claim is made against ISR, or any lien or attachment is affixed against any of its properties, which claim, lien or attachment relates to or is based on circumstances and/or events which fall within the responsibilities and/or indemnification obligations of Supplier as per Section 21.1 above, then unless Supplier provides adequate security, to ISR's satisfaction, that the claim will be covered, ISR may (i) withhold all payments then due or thereafter becoming due to Supplier, until such claim is satisfied and such liens or attachments released, and (ii) settle the matter by paying any such claim or removing such lien or attachment, and recover any amounts required in order to do so by collecting upon any of the applicable Guarantees.

25. SUBCONTRACTORS

- 25.1 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 following terms and conditions:
- 25.1.1. The SubContractor of RSDEV must meet the terms and the conditions set out in the Technical Specifications.
 - 25.1.2. The SubContractor of SRV must meet the terms and the conditions set out in the Grinding/Milling Services Specifications.
 - 25.1.3. 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, 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 Rights, Spare Parts, Warranty, Optional Service Support, Risks and Liabilities, Delivery Terms, Termination, etc.
 - 25.1.4. 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 SubContractor) and/or or to instruct Supplier to perform the relevant Works by itself or through

another approved SubContractor, whereupon Supplier shall immediately stop employing the non-complying SubContractor, in accordance with the separation plan, approved in advance by ISR.

25.1.5. 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 Supplier of its responsibility to ISR in connection with the execution of the Works, the supply of the RSDEV and/or the SRV and the fulfillment of the obligations under this Agreement or from any liability assumed by or imposed upon Supplier under this Agreement and under Applicable Law, nor shall it impose any liability or responsibility upon ISR in connection with the SubContractor, including but without limitation for any acts and omissions done and/or works executed by SubContractors, and Supplier shall be fully responsible towards ISR for the acts and omissions of the SubContractors.

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

- (I) 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 equipments and/or components and/or materials to be supplied under such SubContractor agreement and undertakes to comply with such provisions.
- (II) 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 Rights (as defined below) 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.
- (III) SubContractors shall abide by any order of ISR regarding the removal of any specific employee, at ISR's sole discretion.
- (IV) SubContractor shall agree to any purchases of Spare Parts and/or services by ISR directly from SubContractor or its subcontractors or suppliers.

25.2 For the avoidance of any doubt the above Section shall not apply to sub-suppliers, i.e. suppliers that supply materials and/or other components to Supplier for the manufacturing of the RSDEV.

26. FORCE MAJEURE

26.1 Neither Party shall be liable for any delay in the performance of this 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 affected, 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

RSDEV and/or the Grinding/ Milling Services and/or the Works ("**Force Majeure**").

- 26.2 A Party affected by an event of Force Majeure shall (a) promptly notify the other party in writing of any such event, the expected duration thereof, and its anticipated effect on the party affected in terms of the performance required hereunder; and (b) make reasonable efforts to promptly remedy any such event of Force Majeure. Any Works or supply delayed due to an event of Force Majeure shall be extended for such time as the event shall continue.

27. 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.

28. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- 28.1 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.
- 28.2 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.
- 28.3 Any dispute in connection with this Agreement including its validity or interpretation shall be settled between the Parties. This also applies to other legal matters arising out of or in connection with this Agreement. The negotiations shall be conducted by at least two persons chosen by each Party for this purpose. The timeframe for the settlements of disputes between the Parties shall not exceed a period of three (3) months.
- 28.4 All matters in dispute, following failure of negotiations as outlined above, shall be 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.
- 28.5 **Dispute not Effecting Delivery.** Supplier agrees and undertakes that no Dispute shall entitle Supplier to delay or withhold (i) the continuation of the Works so as to meet the Delivery Schedule or any other schedules agreed between the Parties, and/or (ii) the performance of the Warranty, subject to ISR paying to Supplier any undisputed amounts, and the dispute shall be resolved pursuant to the dispute resolution procedure specified in Section ~~28.3~~^{28.3} above.

29. MISCELLANEOUS

- 29.1 **Waiver of Lien by Supplier.** Supplier hereby waives from the moment of Final Acceptance any possessory lien, mechanic's lien or similar possessory or retention right (in Hebrew: "זכות עיכבון") and preservation of ownership (in Hebrew: "שימור בעלות")

(collectively, "**Retention Rights**") against ISR with regard to the RSDEV and/or the SRV and the Works, including, but not limited to, the items of the Works that are in the possession of Supplier in Supplier's workshops or which are in the possession of SubContractors. Supplier represents and warrants that the consideration to be paid by ISR under this Agreement includes ample financial provisions concerning the waiver by Supplier of all Retention Rights with regard to the Works, and the payments to be made by Supplier to its SubContractors contain ample financial provisions for the insertion of a clause requiring a similar waiver by said SubContractor in connection with the Works.

- 29.2 **ISR's Set-Off Right.** Without derogating from any right of set-off conferred upon ISR elsewhere in this Agreement or under Applicable Law, ISR shall have the right to set-off against any amounts that may be owed to Supplier (or to any SubContractor, as the case may be) pursuant to this Agreement and/or to any other Agreement between ISR and Supplier, any amount, debt or payment owed by Supplier (or by any SubContractor) to ISR pursuant to this Agreement (including but without limitation in the form of indemnification or compensation for damages, regardless if their sum is liquidated or not).
- 29.3 **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.
- 29.4 **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.
- 29.5 **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).
- 29.6 **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 to 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 reassignment and/or retransfer shall be binding and the Supplier may not object to 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.

29.7 **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.

29.8 **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: **Deputy General Manager
Economics and Finance**

Printed Name:

Signature:

Title:

Printed Name:

Annex A1

Technical Specifications

Annex A2

Grinding/Milling Services Specifications

Annex A3

Supplier's proposal in response to the Tender

Annex B
Consideration Annex

Annex C
Supplier's Bank Account Information Form

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 D

Certificate of Completion of Foreign Tests

To:

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

From:

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

Agreement No. _____ (hereafter: "the Agreement")

We hereby certify that all Foreign Tests regarding the RSDEV, as defined in the Agreement have been successfully completed at the Supplier's facilities at _____ in compliance with the Technical Specifications and in accordance with the ITP.

We hereby warrant that the RSDEV shall not be sent to any port of loading for shipment to Israel and shall not be shipped to Israel before ISR countersigns this signed Certificate of Completion of Foreign Tests.

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

Supplier:

Date: _____

Acknowledged and agreed by ISR:

Date: _____

Annex E

Form of Final Acceptance Certificate

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

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

We hereby certify that the RSDEV, as defined in the Agreement No. _____, which was ordered by Israel Railways Ltd. ("**ISR**") according to the Agreement have been accepted and taken over by ISR after the performance of all the tests successfully completed, and trials and training required under the Agreement, Technical specification and ITP were completed.

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

Signed: _____ Israel Railways Ltd.

Name

Date

Confirmed:

Signed: _____ for [*Name Of The Supplier*]

Name

Date

Annex F

Spare Parts for Preventive Maintenance and Calibration

|

Annex F2
Spare Parts List and Work Consumables and Prices

Annex G1

Form of Down Payment/Payment Guarantee

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

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

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

Now, we Bank _____ hereby irrevocably 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

Form of Performance and Warranty Guarantee

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

Performance and Warranty Guarantee

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

Now, we Bank hereby irrevocably 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 and Grinding/Milling 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 RSDEV 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 RSDEV AND/OR ANY PART THEREOF, RSDEV PRICE, DELIVERY TIME, AND ANY OTHER TERMS RELEVANT TO THE PROVISION THEREOF. SUCH REQUESTED CHANGES, IF ANY, SHALL BE TREATED IN ACCORDANCE WITH THE AGREEMENT.

(attach additional documentation if necessary)

Description of Alteration to Technical Specifications: _____

Signature: _____

IPM, on behalf of ISR

Date:

Part 2

Supplier's requests for changes

Signature: _____

SPM, on behalf of the Supplier

Date:

Part 3

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

Signature: _____

IPM, on behalf of ISR

Date:

Signature: _____

SPM, on behalf of the Supplier

Date:

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

Annex N

**Names of Manufacturers of Sub-Systems in the RSDEV and its Service Representatives
Maintenance Facilities in Israel**

Sub System	Name of Manufacturer	Name of Israeli services Rep of Manufacturer
Diesel engine		
Diesel generator		
brake system		
transmission system		
air condition system		
measurement systems		
cooling system		
engine cooling system		
Hydraulic		
Electric		
Controllers		
Pneumatic		

Annex O1

Supplier's Track Section Termination Notice

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

From:

We hereby certify that we have completed all Service with regards to the following (fill in as appropriate):

Line _____.
Section _____.
as defined in Task Order No. _____ issued under Agreement _____, which was issued by Israel Railways Ltd. ("ISR") according to the Agreement.

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

Signed: _____ Supplier

Name _____
Date

Confirmed:

Signed: _____ for [Name Of The ISR]

Name _____
Date

Annex O2

Form of Track Section Final Acceptance Certificate

To:

From:

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

We hereby certify that (fill in as appropriate):

Line _____.

Section _____.

Complete Task Order for the following lines/section _____

_____ as defined in Task Order No. _____ issued under Agreement _____, which was issued by Israel Railways Ltd. ("ISR") according to the Agreement have/has been accepted and taken over by ISR after the performance of all the tests and trials required under the Agreement.

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

Signed: _____ Israel Railways Ltd.

Name

Date

Confirmed:

Signed: _____ for [Name Of The Supplier]

Name

Date

Annex P
Permit Certificate

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

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

We hereby certify that to according to the Information provided by Supplier. Supplier have completed all of its undertakings under Section 5.7 in the Agreement No. _____ with regards to the RSV/RSDEV.

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

Signed: _____ Israel Railways Ltd.

Name

Date

Confirmed:

Signed: _____ for *[Name Of The Supplier]*

Name

Date

Certificate of Insurance

Date: _____

To: **Israel Railways Ltd.** (hereinafter: "ISR")
From Darkei Moshe 3 Lod, Israel

Re: We hereby confirm that we have arranged the following insurance covers in the name of _____ (hereinafter: "the Supplier") in connection with the supply of Railbound Vehicle with Rail Surface Defects Elimination System and with the provision of on-track rail Grinding/ Milling Services, performed by a Railbound Vehicle with Rail Surface Defects Elimination System, which includes Preventive Reprofilng and any other additional services pursuant to the agreement between ISR and the Supplier (hereinafter, collectively and respectively : "the RSDEV" and "the Services") and this effective from _____ until _____ (hereinafter: "the Period of Insurance"):

1. **Employer's Liability Insurance** (policy) covering the Supplier's liability under the applicable law toward all its employees employed in the provision of the Services with a limit of liability of US\$ 5,000,000 per any one injured person, event and in the aggregate for the Period of Insurance. The insurance is extended to indemnify ISR or any one on its behalf in the event that they are deemed to be the employer of any of the Supplier's employees or are found to bear vicarious liability in respect of the Supplier's liability toward its employees.
2. **Third Party Liability Insurance** (policy) covering the Supplier's liability under the applicable law towards any third party in respect of any loss or damage caused during the period of the provision of the Services, with a limit of liability of US\$ 2,000,000 for any occurrence and in the aggregate for the Period of Insurance. The policy is extended to include ISR, subject to a "cross-liability" clause according to which the insurance will be construed to have been arranged separately for each of the insured parties. ISR's property is regarded as third party's property. The policy is not subject to any exclusion regarding liability in respect of contractors, subcontractors and their employees and subrogation claims by the National Insurance Institute.
3. **Professional Liability Insurance (policy)** Covering Supplier's legal liability deriving from a professional act and/or omission and/or breach of a professional obligation and/or an error that originated in negligence, an omission or oversight on the part of the Supplier and/or anyone acting on its behalf, that occurred during and/or as a result of the Services to a limit of liability of \$ 2,000,000 per occurrence and in the aggregate for an annual insurance period.

This insurance does not include exclusions regarding dishonesty, fraud, deliberate act of Supplier's employees and/or anyone acting on its behalf, loss of use, and consequential loss or damage. Retroactive date is not later than the commencement date of the Services. Policy includes discovery period of at least 12 months. The insurance is extended to indemnify ISR and those acting on its behalf in respect of their liability for the acts and/or omissions of the Supplier or anyone acting on its behalf, subject to a "Cross Liability" clause, but without covering the professional liability of ISR and those acting on its behalf towards the Supplier.

4. **Products Liability Insurance** (policy) Covering the legal liability of the Supplier in respect of bodily injury and/or damage to property including consequential loss thereof, which is caused as a consequence of and/or in connection with the Services executed by the Supplier and/or anyone acting on its behalf and/or the the RSDEV to a limit of liability of \$5,000,000 per occurrence and in the aggregate for an annual insurance period. Retroactive date is not later than the commencement date of the Services. The policy includes a discovery period of at least 12 months. The policy is extended to include ISR and those acting on its behalf as additional insureds in respect of their liability in connection with the Services, subject to a "Cross Liability" clause.

General Conditions (apply to all the above policies):

- a. The said policies have preference over any other insurance procured by ISR, and the insurer hereby waives any claim or demand, which it may have with respect to the participation of ISR insurances.
- b. The said policies include a clause concerning the waiver of the right of subrogation against ISR and/or anyone acting on its behalf, excluding a person who caused damage with malicious intent.
- c. The said policies shall not be reduced or cancelled, without 30 days prior written notification thereof, sent to ISR via registered mail.
- d. We are aware that the Supplier alone is liable for payment of all insurance premiums and deductibles.
- e. The breach of the terms of the said policies by the Supplier and/or anyone acting on its behalf shall not prejudice ISR's rights under the policies.
- f. "ISR" for the purpose of the Certificate of Insurance shall include its subsidiaries and/or affiliated companies as well as the Israeli Government.

Yours faithfully,

Insurance Co. Ltd

Signatory's name and position