

**Agreement No.** \_\_\_\_\_  
(this "Agreement")

Entered and signed this \_\_\_\_ day of \_\_\_\_\_ 2019  
in Tel Aviv, Israel (the "**Effective Date**")

*between*

**Israel Railways Ltd.**  
Company No. 52-004361-3  
Of 1 Yoseftal Road, 7136801  
P.O.B. 757  
Lod, Israel

("ISR")

**Of the First Part**

*and*

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

(the "**Supplier**")

**Of the Second Part**

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

**WHEREAS**, ISR is interested in purchasing a Train Traffic Simulator for ISR's Traffic Controllers including but not limited to the geographic area of twenty stations and 50 storyboards and all as further described in the Technical Specifications (the "**TTS**"), in accordance with and subject to the terms and provisions of this Agreement; and

**WHEREAS**, ISR published Tender No. 41901 for the TTS in accordance with the terms and conditions of this Agreement (the "**Tender**"), and the Supplier submitted a proposal in response to the Tender appended hereto as **Annex A1** to this Agreement, which was selected by ISR to be the winning proposal; and

**WHEREAS**, the Supplier declares and certifies that it has the know-how, ability, expertise, facilities, financial and other resources, licenses, permits and all that is required and necessary in order to develop, install, supply, train, warrant, provide maintenance services and all other services detailed in this Agreement with regards to the TTS, as well as to fulfill all of the obligations set forth in this Agreement, including the Technical Specifications; and

**WHEREAS**, the Parties desire to set forth a contractual framework to determine the Parties' relationship and obligations with regard to the development, manufacture supply and installation all other services detailed in this Agreement with regards to the TTS all as detailed below.

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

**1. PREAMBLE, APPENDICES AND HEADINGS**

- 1.1 The headings in this Agreement are for reference purposes only, are not a material part of and shall not be used in interpreting this Agreement.
- 1.2 The Agreement shall consist of the following documents each of which is attached hereto and is an integral and inseparable part hereof:
- 1.2.1. Annex A - – Technical Specifications
  - 1.2.2. Annex A1- – Supplier's proposal in response to the Tender
  - 1.2.3. Annex B- – Consideration Annex
  - 1.2.4. Annex C- – Supplier's Bank Account Form
  - 1.2.5. Annex D- – Certificate of Completion of Foreign Tests
  - 1.2.6. Annex E- –Acceptance Certificate
  - 1.2.7. Annex F- – Spare Parts
  - 1.2.8. Annex G1- – Down Payment / Payment Guarantee
  - 1.2.9. Annex G2- – Performance and Warranty Guarantee
  - 1.2.10. Annex H- – Change Order Form
  - 1.2.17 Annex I- -Safety and Security Regulations.
  - 1.2.18 Annex J- -Key Personnel.
  - 1.2.18 Annex K- Separation Plan

**PRIORITY OF DOCUMENTS**

1.3 Order of Precedence.

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

- This Agreement, including the Consideration Annex, but excluding the other attachments hereto;
- The other annexes to this Agreement, including the Technical Specifications;
- The other Tender documents (excluding 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 Certificate**" - shall mean ISR's issuance of a signed Acceptance Certificate in the form attached hereto as **Annex E**, following delivery of the TTS to the Site in accordance with the Delivery Terms, the performance of all operations required to bring the TTS to full operational condition and the successful performance of the acceptance tests in accordance with the Milestone Documents, the completion of the Qualification as well as the fulfillment of all required obligations pursuant to this Agreement;
- 2.2 "**Additional Features**" – as defined in Section ~~7.14~~14.14.1;
- 2.3 "**Additional Feature Purchase Order**" – as detailed in Section ~~14.2~~14.2;
- 2.4 "**Additional TTS**" – as defined in Section ~~7.7~~;
- 2.5 "**Agreement Period**" – as defined in Section ~~3.3~~;
- 2.6 "**Annual Support**" – as detailed in Section ~~12.10~~12.10
- 2.7 "**Applicable Law**" – shall mean any Israeli statute, law, ordinance, rule, regulation, order, writ, injunction, judgment, decree, and all other requirement of any governmental entity existing as of the date hereof or at any time during the term of this Agreement and applicable to ISR and/or the Supplier;
- 2.8 "**Business Days**" - any day of the week other than Saturday, and excluding official holidays and bank holidays in Israel;
- 2.9 "**Changes**" – as defined in Section ~~17.1~~17.1.
- 2.10 "**DAP**" – the terms of delivery for the TTS shall be "Delivered At Place" (DAP) at ISR's

Site, according to "INCOTERMS 2010" - International Rules for the Interpretation of Trade Terms (ICC Pub. No. 715), subject to the Delivery Terms;

- 2.11 "**Delivery Terms**" – as defined in Section 10.1;
- 2.12 "**Foreign Acceptance Tests**" – successful completion of all procedures detailed in Section ~~11.4~~ of the Technical Specifications to the full satisfaction of ISR;
- 2.13 "**Guarantees**" – as detailed in Section ~~18.4~~~~19.4~~ below;
- 2.14 "**IPM**" – ISR's project manager for the Agreement, as set forth in Section ~~7.47.4~~ and as may be changed from time to time at ISR's sole discretion by notification in writing to the Supplier;
- 2.15 "**Malfunction**" – Malfunction that is not a Severe Malfunction;
- 2.16 "**Place of Production**" or "**Production Place**" - as detailed in Section ~~6.46.4~~;
- 2.17 "**Resolution Time**" the time from the report of a Malfunction or Severe Malfunction and until it was rectified
- 2.18 "**Response Time**" - the time within which Supplier begins to handle a reported Malfunction or Severe Malfunction;
- 2.19 "**Separation Plan**" – as defined in Section 18.
- 2.20 "**Severe Malfunction**" - an event whereby TTS is not suitable for commercial service ~~according to ISR's sole and absolute discretion.~~
- 2.21 "**Site**" – the Site designated by ISR at which the TTS shall be installed; ISR may change the Site upon its absolute discretion;
- 2.22 "**SPM**" - Supplier's Project Manager for the Agreement, as set forth in Section ~~7.47.4~~;
- 2.23 "**Subcontractor**" – as defined in Section ~~24.24~~;
- 2.24 "**Qualification**" – as defined in Section ~~5.75.7~~;
- 2.25 "**Warranty**" – all of Supplier's undertakings under Section 12.
- 2.26 "**Warranty Period**" – as defined in Section ~~12.42~~;
- 2.27 "**Works**" – shall mean all works, components, materials and equipment to be executed or supplied by the Supplier, directly or indirectly, in connection with the development, supply, installation, assembling, tests, trial running, commissioning, Qualification–, Annual Support, Warranty, Maintenance, supply of Spare Parts and all other services detailed in this Agreement with regards to the TTS. Works shall include but shall not be limited to, works to be implied therefrom or incidental thereto and including all temporary

works of every kind required in or for carrying out and completion of the Works, provision of all labor, provision and use of software, materials, equipment, machinery, tools, spare parts, hardware, accessories, components and other elements of every kind and description (including Intellectual Property Rights), all in accordance with the Technical Specifications and this Agreement.

### 3. AGREEMENT PERIOD

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

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

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

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

The Supplier hereby represents and warrants to ISR that:

- 4.4.1. The Supplier has examined all documents pertaining to the Tender, this Agreement, in particular the Technical Specifications, as well as all other documents comprising this Agreement, and is satisfied with regard to the data, specifications, terms and conditions under which the TTS shall be designed, manufactured, assembled, integrated, tested, supplied and delivered to ISR, the execution of the Works required for the provision of the TTS as well for the fulfillment for any and all obligations under this Agreement;
- 4.4.2. The Supplier has evaluated (independent of, and without relying on, any information or data provided by ISR) any and all other factors that may be deemed to affect the carrying out of its obligations under this Agreement, including but without limitation, technical risks and environmental influences, and any other risk involved therewith, and such other conditions that may be expected to affect the progress or completion of the Works in accordance with this Agreement, and has reasonable grounds to believe and does believe that such performance is feasible and practicable under the terms and conditions stated herein;
- 4.4.3. The Supplier has examined and is fully satisfied with all of the information provided to it by ISR, including ISR's rules and procedures;
- 4.4.4. The Supplier shall not be entitled to any payment or compensation other than as set forth herein and shall not make any claim for additional payment from ISR on the grounds of any misunderstanding or misapprehension in respect of any matter which a reasonable and expert supplier of a TTS 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 TTS, whether the person, firm or legal entity was employed by ISR or not, or on the grounds of the failure on its part to obtain correct information with regard to the Works.

4.5 **Compliance with Applicable Law**. The Supplier is aware and has knowledge of all legal requirements prevailing in the State of Israel that must be followed for the execution of the Works. The 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. The Supplier represents at the point of time submitting its bid, that wherever there is a discrepancy between the Technical Specifications, the Supplier's proposal to the Tender (**Annex A1**), drawings or other documents constituting a part of this Agreement, its prices reflect the type of materials, construction, works or other relevant element, item or unit best suited (to ISR) and consistent with the Technical Specifications and the Supplier's proposal to the Tender (**Annex A1**). No inaccuracies, errors, misstatements, omissions, discrepancies, defective or incomplete descriptions, contradictions or ambiguities in or between

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

4.6.2. Should any works, matters or things required for the proper execution and completion of the Works be omitted from this Agreement by ISR, the IPM shall – upon notice from the Supplier to that effect or on its own initiative – give necessary explanations and instructions and decide what works, matters or things are to be done by the Supplier and in what manner and order. The Supplier shall thereupon be bound to do such works, matters and things as instructed. 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 ~~27~~27 herein (prices shall be based upon the prices specified in the Consideration Annex or pursuant thereto) – without derogating from the Supplier’s obligation to execute such Works as instructed by the IPM.

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

4.7 **Review and Approval**. The Supplier confirms and agrees that it shall apply to receive ISR's written consent, wherever ISR's consent, explicitly or implied, is required according to this Agreement. This requirement and the provision of ISR's consent, shall not derogate in any way from the Supplier's responsibilities and liabilities under this Agreement, and ISR shall bear no responsibility or liability whatsoever in connection with the review (whether or not there are objections) and/or with any approval given to, or denied from, the Supplier, with respect to any matter and/or document, including but without limitation, drawings, designs (at all phases), plans, tests, or otherwise.

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

## 5. GENERAL OBLIGATIONS

5.1 **Purchase and Sale**. The Supplier hereby agrees to execute any and all Works required for the provision of the TTS in accordance with the terms and the conditions of this Agreement, including, *inter alia*, the development, supply, installation, commissioning, Qualification , Annual Support, Warranty and all other services detailed in this Agreement with regards to the TTS as well as the fulfillment of Supplier's obligations in

accordance with the Technical Specifications, this Agreement and Supplier's proposal to the Tender. In the event of any conflict or inconsistency between the instructions or any data contained in the Technical Specifications and the Supplier's proposal to the Tender, the terms and conditions more favorable to ISR shall take priority. In case of disagreement between the Parties in this regard, ISR shall have the final decision what is favorable to ISR.

Without derogating from the above, the TTS is required to simulate completely ISR's signaling monitoring TTS (CMD900) in the geographic area of twenty stations and fifty storyboards. It is hereby clarified that during the milestone ESTW90IL, ISR shall decide, at its sole discretion, whether those twenty stations shall be existing stations or non-existing stations (based on typical stations) and Supplier waives and claim and/or demand against ISR with regards to such decision including demand for additional payment.

- 5.2 **"Turn Key Basis"**. The TTS shall be supplied on a "turn-key" basis such that the Supplier shall perform at its own expense and risk any and all Works in accordance with the provisions of this Agreement. Without limiting the generality of the foregoing, the Supplier shall be solely responsible, at its own expense and risk, to carry out any and all Works, import and supply and installation of any and all components, equipment and materials, perform any and all activities and pay and bear all costs and expenses pertaining to the performance of the Works and supply and installation of the TTS; this shall include, without limitation, the Qualification , Annual Support, testing, running in, demonstration and commissioning of the TTS and any other tasks or duties relating to the above and all other services detailed in this Agreement with regards to the TTS – all as shall be required in order to timely deliver an operable, ~~safe~~, efficient and reliable TTS, 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 TTS**. The provision of the TTS and the execution of the Works shall be made in strict conformity with the terms and conditions of this Agreement. Any deviation from the terms and the conditions of this Agreement must be approved in writing in advance by ISR.
- 5.4 **Standards**. The Works and the TTS shall meet the standards set forth by ISR in this Agreement, and if no standard is expressly mentioned, the Supplier shall comply with the standards which shall ensure ~~the highest~~ quality of workmanship, material and equipment required by the applicable law ~~and/or as instructed by ISR~~ in accordance with ~~the Technical Specification~~ ~~ISR's sole discretion~~. All calculations, designs, integration and drawings related to the TTS or any part thereof shall assure the reliability, efficiency, competency as well as the functionality of the TTS ~~to ISR's full satisfaction~~.
- 5.5 **No Lock**. The TTS 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 TTS; (ii) prevent ISR from fully utilizing all or any part or software of the TTS; or (iii) require action or intervention by the Supplier or any other person or entity, to allow ISR to utilize all or any part of the TTS.
- 5.6 **Permits**. The Supplier shall, at its sole expense, obtain, maintain, comply with and keep



in effect all approvals, permits and licenses required for the execution of this Agreement, the supply and installation of the TTS and the provision of all ancillary services, pursuant to this Agreement.

- 5.7 **Qualification.** Supplier shall provide Qualification in accordance with the Technical Specifications ("Qualification "). All costs related to the Qualification are included in the TTS Price (including but not limited to traveling, accommodation and lodging expenses), and the Supplier shall not be entitled to any additional consideration for the provision of any Qualification specified herein. Qualification shall be conducted in Hebrew or in English provided that if Qualification is conducted in English, Supplier shall provide during all Qualification sessions with a qualified translator to Hebrew at its cost and expense. 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 Qualification sessions and/or any part of the Qualification program and to use such recordings for ISR's study, operation and maintenance purposes.
- 5.8 **Safety.** All Works of the Supplier and any Subcontractor shall be performed in strict compliance with ISR's safety regulations as detailed in **Annex I** (as shall be updated from time to time upon ISR's sole discretion) and any other applicable law pertaining to safety at work, as may be in force from time to time. The Supplier shall immediately report to the IPM the occurrence of any accident in connection with the execution of the Works. The Supplier shall also report any such accident to the relevant competent authority whenever such report is required, and in any case, register same in the Works log.
- 5.9 **Cooperation.** The Supplier undertakes to reasonably cooperate with any other supplier and/or contractor and/or consultant engaged by ISR and to furnish ISR with all relevant information reasonably required for the interface between the TTS and any other equipment and/or infrastructure of ISR.
- 5.10 **Milestones Documentation** - Supplier shall provide to ISR in writing with all documents detailed in the Technical Specifications at the timetable detailed in the Technical Specifications. The Supplier's offer as aforesaid, shall be provided to ISR for examination and ISR shall be entitled to provide comments and/or to change it in its discretion. ~~The Supplier undertakes in advance to accept the comments and/or changes of ISR, and it waives any claim and/or demand in relation to the comments and/or changes of ISR to the detailed specification, including any demand for an additional price.~~ Once approved by ISR, the Supplier undertakes to supply TTS s in accordance with the document approved by ISR in writing (hereinafter: the "**Milestone Documentation**"). Milestone Documentation (including without limited all manuals, instructions, drawings, operations and maintenance manuals) shall be in Hebrew unless ISR shall consent otherwise in writing and in advance that the Milestone Documentation shall be English. All translation cost shall be ~~borne~~ borne by Supplier. In the event of any contradiction between the English version and the Hebrew version, the more strict version regarding Suppliers undertaking shall prevail according to ISR's discretion.
- 5.11 **Key Personnel** - No later than 14 days after Effective Date the Supplier shall submit to ISR a list of all the key employees as listed in **Annex J** to this Agreement ("**Key Personnel** "). Key Personnel shall have the qualifications listed in **Annex J**. The

nomination of any of the Key Personnel shall be subject to ISR's prior written approval that may reject the identity of any of the Key Personnel. Key Personnel approved by ISR in writing shall not be changed by Supplier without ISR prior written consent. All provisions relating to Supplier's Personnel shall apply mutatis mutandis on Key Personnel.

5.12 **Personnel.** The Supplier shall employ trained skilled employees and consultants as shall be necessary or appropriate to enable the Supplier to supply the TTS and the Warranty including the execution of the Works ("**Supplier's Personnel**").

5.12.1. The Supplier shall provide sufficient personnel appropriate to the size, nature and type of Works to be carried out under this Agreement. If at any time the Supplier or ISR deems the personnel not being sufficient for the timely performance of the Works, the Supplier shall forthwith increase the number of competent employees appropriately.

5.12.2. The Supplier shall be solely responsible to obtain any permits and authorizations required under Applicable Law with respect to the Supplier's Personnel including but without limitation work permits for foreign personnel (including but without limitation permits by the immigration authorities) and security clearances as may be required by ISR. The above shall apply to permits to work on Shabbat and Jewish and Israeli national holidays pursuant to the Hours of Services and Rest Law, 5711–1951.

5.12.3. For the removal of doubt, in the event that such permits or any of them shall not be obtained: (i) the Supplier shall not be entitled to any delay in the Works, and (ii) the Supplier shall not be released from any of its obligations, and shall employ for this purpose, subject to Applicable Law and Works for which such permits are not required. The Supplier is aware that receiving such permits may take some time and shall perform all activities in order to ensure that such permits shall be granted on time.

5.12.4. Without derogating from the above and in addition thereto, the Supplier's Personnel shall ensure that any additional personnel shall be available at any time as required by the ISR, in order to provide the Works and provide ongoing response to malfunctions, bugs, defects and/or discrepancies.

5.12.5. The Supplier shall at all times retain full responsibility for the due performance of its obligations by the Supplier's Personnel and for the satisfactory completion of the Works and shall be liable for any act and/or omission of any of the Supplier's Personnel not in accordance with the terms of this Agreement (whether such Supplier's Personnel are employees of the Supplier and/or are otherwise engaged by the Supplier).

5.12.6. The Supplier shall procure that all of the Supplier's Personnel shall follow all safety and security regulations detailed in **Annex I**, as shall be updated by ISR from time to time.

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

- 5.12.8. No later than 14 days after POD, the Supplier shall submit to ISR a list of all of the Supplier's Personnel that shall be working at ISR Site, including ID/Passport numbers and such other details as shall be reasonably requested by ISR, prior to any involvement of such personnel in the supply of the TTS.
- 5.12.9. Without derogating from the above, the Supplier shall nominate a SPM to manage the Works on its behalf that shall have the qualifications detailed in the Technical Specifications. Without derogating from the above, The Supplier undertakes that the SPM shall have the experience as detailed above and in any event shall be qualified and experienced and shall have the required capabilities in order to execute the Works. The identity of the SPM shall be subject to ISR's approval and discretion. Without derogating from the above, the SPM will be available for the Works at any time, whenever it is necessary. Subject to the above, all provisions relating to the Supplier's Personnel shall apply on the SPM.
- 5.12.10. The Supplier's Personnel shall not be deemed under any circumstances whatsoever, to be the employees of ISR, and the Supplier shall indemnify and defend ISR from and against all claims made by the Supplier's Personnel against ISR. The foregoing indemnity shall survive the expiration or termination of this Agreement. All matters pertaining to the employment, Qualification, conduct, supervision, compensation, promotion and discharge of the Supplier's Personnel shall be the sole and exclusive responsibility of the Supplier and the Supplier shall comply with all applicable laws and regulations relating to worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions and safety and similar matters with respect to such Supplier's Personnel. The Supplier acknowledges and agrees that the Supplier is obligated to report as income all compensation received by the Supplier pursuant to this Agreement, and the Supplier agrees to and acknowledges the obligation to pay all self-employment and other taxes thereon. The Supplier agrees to indemnify and hold harmless ISR and its directors, officers, and employees from and against all taxes, losses, damages, liabilities, costs and expenses, including attorney's fees and other legal expenses, arising directly or indirectly from (i) any negligent, reckless or intentionally wrongful act of the Supplier's Personnel (ii) a determination by a court or agency that the Supplier and/or any of the Supplier's Personnel is not an independent contractor, or (iii) any breach by the personnel of any of the covenants contained in this Agreement.
- 5.12.11. Without derogating from the above, the Supplier shall bear any cost and/or expense relating to the Supplier's Personnel (including but not limited to travelling, accommodation and lodging expenses). The Supplier shall be responsible and bear all expenses associated to visas, work permits etc. associated to any service to be provided by the Supplier through personnel in Israel.
- 5.12.12. ISR shall be entitled to request the replacement of any of the Supplier's Personnel in Israel ~~at any time~~ with good cause, and the Supplier undertakes to appoint or to instruct any Subcontractors to appoint, as the case may be, a skilled employee in its stead within thirty (30) days of ISR's request. For the avoidance of doubt, and without anything herein to the contrary, the Supplier shall be responsible for

any labor costs arising in connection with the replacement of any of its personnel pursuant to this Agreement.

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

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

## 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 TTS and all other services of Supplier under this Agreement, by itself or by any third party in Israel and/or abroad on ISR's behalf, and the Supplier undertakes to cooperate as required with respect thereto including submitting all information required by ISR and/or any third party on its behalf. Such supervision, if applicable, shall not derogate from any provision of this Agreement and/or from the Supplier's liability and responsibility to perform the Works in accordance with the provisions of this Agreement and to supply and install the TTS and/or fulfill the obligations set out in this Agreement, nor shall it impose any responsibility on ISR which is not otherwise expressly set forth in this Agreement.

6.2 **ISR's Access**. Without derogating from the generality of Section 6.1, ISR, by means of any person acting for or on its behalf, shall at all times have free access to all places of production, including but without limitation the factories, site, offices, workshops, and other places where the Works (including any material or component being part of the Works) are being produced, assembled completed or inspected, either in Israel or abroad. Such right to free access shall include, without limitation, the right to inspect the Works (including any material or component being part of the Works) at any stage of design, production, assembly, testing and commissioning. In the event of a request to inspect the Works at times other than normal working hours, the Parties shall mutually agree as to the time(s) at which such inspection shall be carried out and shall be granted free access to any information required by ISR and/or any third party on its behalf. Nothing herein shall be construed as restricting or limiting in any manner ISR's access to the Supplier site where the Works are being performed, and ISR shall at all times have free and unrestricted access to such site.

6.3 **Assistance by the Supplier**. Without derogating from the above, the Supplier shall afford free of charge any assistance and access reasonably requested by ISR's inspectors and duly authorized representatives in order to enable them to carry out inspection, checking and tests in

connection with this Agreement and provide them with any

- 6.4 **Places of Production** and tests. Supplier hereby undertakes that the place of production (assembly and integration plant) of the TTS shall be \_\_\_\_\_ ("Place of Production"). Any change in the Place of Production and tests specified above is subject to the prior written approval of ISR at its sole discretion. Supplier alone shall bear and pay any and all costs and expenses incurred by ISR in connection with the review of a new Place of Production proposed by Supplier and ISR and shall be entitled to approve or to reject any such proposed Place of Production and tests at its sole discretion. Without derogating from the generality of the above, the standards in any new Place of Production and tests proposed by Supplier shall not be inferior to the standards in the Place of Production and tests previously approved by ISR and shall comply with any and all requirements of the Technical Specifications. For the removal of doubt, request by Supplier to change a Place of Production and tests and review by ISR as per the above shall not give grounds to any delay or extension in the timetables set forth in the Time of Delivery.
- 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, the Supplier shall, by a term in the Subcontractor agreement, secure similar rights of access by ISR or by means of any person acting for or on its behalf as set out in this Section, and shall take all action necessary to make such rights effective.
- 6.6 **Rejection of the Works, Materials and Components.** If any of the Works, materials or components, whether completed or in process, is rejected on inspection, the same shall be marked in a manner satisfactory to the IPM, so as to ensure its subsequent identification as a rejected article. If no other solution is provided by the Supplier that is acceptable by ISR, the Supplier shall within seven (7) days or within such other reasonable time, pull down, take out, separate and sort out any such marked Works, materials or components so rejected. Materials or components of the Works or the entire Works rejected under this Section shall not be considered as having been delivered under this Agreement and the Supplier shall, without delay, replace and deliver satisfactory materials, components or Works at the Supplier's sole cost and expense. No such rejection shall give grounds to any delay or extension in the timetables set forth in the Delivery Schedule.
- 6.7 **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 or components shall neither relieve nor derogate from the Supplier's obligation to execute and complete the Works in strict accordance with the requirements of this Agreement, or impose any liability or responsibility on ISR.

## 7. **ORDER PROCEDURE**

- 7.1 Within 60 (sixty) days of the Effective Date, ISR shall issue a Purchase Order for the TTS and forward such Purchase Order to the Supplier via email to the contact person of the Supplier, a copy of which shall be sent via air mail.
- 7.2 During the Agreement Term and/or Optional Period ISR shall have the right, upon its sole discretion, to purchase additional TTS system that shall enable ISR simultaneous

Qualification with the TTS (hereinafter: the "**Additional TTS**"). All terms and conditions of this Agreement shall apply, *mutatis mutandis*, to the Additional TTS.

- 7.3 Upon receipt of a Purchase Order by email, the Supplier shall confirm via email receipt of the Purchase Order to ISR's contact person. An original document of such confirmation shall be sent to ISR via air mail.
- 7.4 The Parties' contact persons are as follows, or any replacement contact persons as notified in writing by one Party to the other:

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

For the Supplier: \_\_\_\_\_  
                          \_\_\_\_\_  
                          \_\_\_\_\_  
                          \_\_\_\_\_  
                          \_\_\_\_\_  
                          \_\_\_\_\_  
                          ("**SPM**")

Each Party shall, in writing without undue delay, notify the other Party of changes in contact persons, addresses and/or e-mail, if any.

- 7.5 The Supplier will endeavor to furnish a secured electronic mail service or other equivalent means, in accordance with ISR safety requirements, which will be used by both Parties for the purpose of ordering procedure, requests, queries, reports etc.
- 7.6 The following original documents will be supplied by the Supplier to ISR:
  - 7.6.1. Commercial invoices. The invoice/s shall include a clear reference to this Agreement, the amount, part number (inclusive of serial number), if any, quantity, delivery note number, shipping date, the Supplier's company registration number and ISR's order number for the goods;
  - 7.6.2. Original Certificate of Origin and Non-Manipulation Certificate, if required;
  - 7.6.3. Bill of Lading - issued in ISR's name;
  - 7.6.4. Packing Lists;
  - 7.6.5. Any and all other documentation necessary to release the TTS 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 TTS and/or any part thereof

through customs and which will enable ISR to make payment in foreign currency in accordance with the applicable Israeli law.

- 7.7 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 TTS 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. CONSIDERATION

- 8.1 The consideration payable for the Works including supply and installation of the TTS (including but not limited to the geographic area of twenty stations and fifty storyboards) Annual Support, Qualification, Warranty, support, testing and examination of the TTS as well as for all ancillary services and materials, equipment, licenses to software, hardware, spare parts and all undertakings of the Supplier required for the execution and completion of the Works and for the fulfillment of all of the Supplier's obligations in accordance with the terms and conditions of this Agreement, to be paid by ISR to the Supplier, shall be the consideration set forth in **Annex B** (the "**TTS Price**").
- 8.2 ISR shall be entitled to deduct from any and all sums payable pursuant to this Agreement the amounts ISR is legally required to withhold at source, unless an appropriate exemption has been provided by the Supplier prior to the date of such payment, and any amount so deducted shall be deemed for any and all purpose to have been paid in full by ISR under this Agreement. The Supplier shall be responsible to obtain any appropriate exemption.
- 8.3 The TTS Price shall be the final, complete and inclusive price for the supply and installation of the TTS and for the performance of the Works and ancillary services related thereto including Qualification and Annual Support. There will be no adjustment whatsoever for the TTS Price specified in the Consideration Annex (**Annex B**), and shall only be linked to the index as detailed in **Annex B**.
- 8.4 To preclude any doubt, it is hereby clarified that all taxes, fees, duties, licenses, costs or other payments that are to be paid in connection with the exportation, supply and installation of the TTS, 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 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 TTS at port, supervision while discharging at port, discharging terms at port, etc. shall be considered as part of the TTS Price and shall be borne solely by the Supplier.
- 8.5 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 TTS.
- 8.6 Payments under this Agreement shall be made to Supplier by means of bank transfer to Contractor's bank account as specified in the form attached herein as Annex C.

## 9. TERMS OF PAYMENT

9.1 Payment by ISR to Supplier of the TTS Price shall be made as follows:

9.1.1 A down payment of forty percent (40%) of the TTS Price ("**Down Payment**") shall be paid to the Supplier within sixty (60) calendar days following POD, provided that the Supplier has provided ISR at least forty-five (45) calendar days prior to the payment with all the following:

9.1.1.1 an invoice in the amount of the Down Payment;

9.1.1.2 a Down Payment Guarantee issued in accordance with the terms and condition set out in Section 1818 below;

9.1.1.3 the Performance and Warranty Guarantee as defined in Section 1818 below; and

9.1.2 A second payment of twenty percent (20%) of the TTS Price shall be paid to the Supplier within sixty (60) calendar days following the provision of the certification on the proper Completion of the Foreign Tests (the "**Second Payment**"), provided however that the Supplier has provided ISR at least forty-five (45) calendar days prior to the payment with all of the following:

9.1.2.1 an invoice in the amount of the Second Payment;

9.1.2.2 a Payment Guarantee issued in accordance with the terms and conditions set out in Section 1818 below, in the amount of the Second Payment (the "**Second Payment Guarantee**"); and

9.1.2.3 a Form of Completion of Foreign Acceptance Tests, issued and signed by the Supplier in the form attached hereto as **Annex D** and countersigned by IPM to be sent to the Supplier within 14 calendar days after receipt of said Certificate.

9.1.3 A third payment of forty percent (40%) of the TTS Price shall be paid to the Supplier within sixty (60) calendar days following the provision of the certification on the proper Form of Acceptance Certificate (the "**Third Payment**"), provided, however that the Supplier has provided ISR at least forty-five (45) calendar days prior to the payment with all of the following:

9.1.3.1 an invoice in the amount of the Third Payment;

~~9.1.3.2 a Payment Guarantee issued in accordance with the terms and conditions set out in Section 18 below, in the amount of the Third Payment (the "**Third Payment Guarantee**"); and~~

~~9.1.3.3~~ 9.1.3.2 a Form of Acceptance Certificate, issued and signed by the Supplier in the form attached hereto as **Annex E** and countersigned by IPM to be sent to the Supplier within 14 calendar days after receipt of said Certificate.

## 10. DELIVERY TERMS AND DELIVERY TIME

10.1 The terms of supply and delivery of the TTS shall be DAP at each of the Site, and subject to the terms and conditions defined herein in this Agreement (the "**Delivery Terms**").



10.2 The delivery time of the TTS shall not exceed ~~Ten~~ Fourteen (~~10~~14) months following the issuance of a Purchase Order ("**Delivery Time**").

10.3 Without derogating from the above, the detailed timetable for the supply, delivery, installation, commissioning and Qualification of the TTS shall be in accordance with the Technical Specification and/or the Milestone Documentation approved in writing by ISR.

10.4 It is hereby stated by the Supplier and mutually understood by the Parties, that notwithstanding the Delivery Time, the Supplier shall make its best efforts, in order to shorten the Delivery Time, as much as possible.

#### 10.5 **Passage of Title**

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

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

### 11. **TESTING AND ACCEPTANCE TESTS**

11.1 Acceptance tests shall be performed as detailed in the Technical Specifications.

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

#### 11.3 **Acceptance Tests at the Production Place**

11.3.1 Not later than 45 days prior to the date on which the Supplier is to complete the assembly of the main parts in the TTS at the Production Place, the Supplier shall deliver to ISR a notice thereof in writing and ISR shall be authorized to arrive to ensure that the TTS is to be supplied to ISR comply with the requirements of ISR according to the Technical Specifications and this Agreement.

11.3.2 The Supplier shall demonstrate before representatives of ISR the fulfilment by the TTS pursuant to the Technical Specifications and this Agreement, and if ISR determines that the TTS does not comply with the requirements, the Supplier shall repair what is required to be repaired according to the instructions of ISR at the expense of the Supplier and under the Supplier's

responsibility.

- 11.3.3 If ISR notified that it wishes to perform such inspection at Production Place the Supplier shall not send the TTS to Israel before it is checked by ISR. If the TTS is checked by ISR and found to not be compliant, the Supplier shall not send the TTS to Israel prior to receipt of approval of ISR, that all of the defects were repaired to the satisfaction of ISR.
- 11.3.4 ISR, in its discretion, shall be entitled to visit the Production Place a number of times and the Supplier undertakes to ensure that it and/or anyone on its behalf shall be given free and unlimited access to check the quality of the work and the parts of the Supplier.
- 11.3.5 It is clarified that the approval and/or lack of approval of ISR shall not in any way reduce the liability of the Supplier and the Supplier shall be absolutely responsible for the fitness of the TTS and its compliance with the requirements as detailed in the Technical Specifications and this Agreement, and it waives any claim and/or demand that any defect was not discovered by ISR and/or anyone on its behalf.
- 11.3.6 Upon completion of said acceptance tests to the full satisfaction of ISR, Supplier shall prepare for ISR's signature Foreign Tests Acceptance Certificate in the form attached as **Annex D**.

#### 11.4 Acceptance Tests at Site

- 11.4.1 Not later than 14 days prior to the date of delivery of the TTS to ISR, the Supplier shall provide to ISR a notice regarding its readiness for the conduct of final acceptance tests by ISR at the Site.
- 11.4.2 The acceptance tests shall be conducted by the Supplier with the participation of representatives on behalf of ISR.
- 11.4.3 The acceptance tests shall be conducted in accordance with the Milestone Documentation to be determined by ISR, and they will check the TTS for all of its components
- 11.4.4 The TTS shall be deemed to have successfully passed the acceptance test if it meets all of the criteria specified therefor in the Technical Specifications and/or in the Milestone Documentation and/or this Agreement, as shall be determined by ISR, on time as aforesaid.
- 11.4.5 Upon completion of such acceptance tests, ISR shall notify the Supplier if the TTS successfully passed the examinations of ISR. If it did not successfully pass – ISR shall deliver a report to the Supplier of the failures and the Supplier undertakes to repair such failures, at its expense within the framework of the schedule determined by ISR. Thereafter, the Supplier and ISR shall repeat the performance of the acceptance tests as aforesaid until receipt of the approval of ISR.
- 11.4.6 For the avoidance of doubt, it is hereby clarified that nothing provided in this Section derogates from the obligation of the Supplier to meet the schedule and

the aforesaid shall not be deemed the approval of ISR to any deviation from the schedule. The repairs that shall be performed as well as the repeated tests due to the repairs, as detailed below, are part of the Project, and therefore shall be taken into account at the time of checking whether the schedules were met.

11.4.7 If the Supplier met the acceptance tests, ISR shall sign for the Supplier the completion certificate in the form designated in **Annex E** (hereinafter: the "Acceptance Certificate").

11.4.8 It is expressed that TTS shall be in compliance ETCS L2 and TTS shall not be granted an Acceptance Certificate unless ISR shall conform such compliance.

11.4.9 It is clarified that the approval and/or lack of approval of ISR shall not reduce the liability of the Supplier whatsoever, and the Supplier shall be fully responsible for the fitness of the TTS checked, and its compliance with all of the requirements detailed in the Specifications and this Agreement, and it waives any claim and/or demand that any defect whatsoever was not discovered by ISR and/or anyone on its behalf.

11.5 It is clarified that, without derogating from the aforesaid, the Supplier shall not be entitled to the Acceptance Certificate if and to the extent that it did not complete the all Qualification and/or did not provide All Milestone Documentation to the satisfaction of ISR and/or the Supplier did not fulfil any of its obligations pursuant to this Agreement that should have been fulfilled prior to such date pursuant to this Agreement and/or according to the Specifications.

11.6 If the TTS did not receive ~~a the~~ Acceptance Certificate and/or the Supplier did not meet the schedule ~~and/or ISR determines that the progress of the Supplier is not satisfactory~~ and ISR has doubt as to whether the Supplier will meet its obligations, then, without derogating from the right of ISR pursuant to law and/or this Agreement, including its right to claim damages from the Supplier in respect of the damages caused to it, ISR shall have the sole discretion to act in one (and/or more) of the following manners, all in the sole and absolute discretion of ISR and subject to the provision of 7 days prior notice in writing to the Supplier:

11.6.1 To cancel the award of the Tender to the Supplier and to declare the next alternate offer or as the winner of the Tender;

11.6.2 To instruct the Supplier to refund all consideration that it received in respect of the TTS within 7 days, and if the Supplier shall not do so, to exercise all of the guarantees provided to it in respect of the Advance Payment.

11.6.3 To exercise 50% of the Performance Guarantee provided by the Supplier pursuant to Section ~~18+8~~ below.

## 12. WARRANTY

12.1 The Supplier confirms and warrants to ISR that commencing on the issuance date of the Acceptance Certificate and for a period of twenty four (24) months from the issuance date of Acceptance Certificate (the "**Warranty Period**"), TTS and any part thereof (including software and hardware components as well as any materials and

system embedded in the TTS), shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and the conditions of this Agreement, including the Technical Specifications, and shall be free of any blocking 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. that prevent ISR from using the TTS in the designated way.

- 12.2 The Supplier further confirms and warrants that, as an integral part of the Warranty Period, the Supplier shall provide ISR, without any additional charge or cost, with preventive and corrective maintenance, replacement of spare parts resulting from the corrective maintenance, and troubleshooting.
- 12.3 As an integral part of the Warranty during the Warranty Period, the Supplier shall supply and install updates and upgrades of all Software, as detailed in the Technical Specifications, without additional cost to ISR.
- 12.4 As an integral part of the Warranty during the Warranty Period, the Supplier shall supply and install Five (5) updates of station maps without any additional cost during the timetable directed by ISR.
- 12.5 ISR shall promptly inform the Supplier of a Work defect it is aware of after discovery of such defect. The Supplier shall not bear responsibility for defects if such defect is a result of gross negligence and/or vandalism on the part of ISR to the TTS.
- 12.6 Without derogating from its other obligations in this Section, the Supplier further certifies and confirms that during the Warranty it shall provide ISR, without any additional charge or cost all other services detailed in the Technical Specifications.
- 12.7 For the avoidance of doubt, the Warranty requirements specified herein are irrespective of whether the defect, deficiency or deviation from this Agreement was already present upon the issuance by ISR of any Acceptance Certificate.
- 12.8 For the avoidance of doubt it is hereby clarified that the Supplier shall not be entitled, directly or indirectly, to receive any additional reimbursement, consideration, cost, fee and/or payment for the provision of the Warranty and/or Service Support Visit and the TTS 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.
- 12.9 ~~To be omitted Nothing herein shall be construed as if ISR grants the Supplier exclusivity in providing the Warranty. ISR may elect, at its sole and absolute discretion, to receive Warranty, or any part thereof, from any third party, in which case the Supplier shall provide ISR and such third party with all the necessary assistance (including but not limited to providing all maintenance related documentation, such as reports, drawings and so forth), so that the Warranty shall be transferred to such third party uninterruptedly and in the most efficient manner. Such retention of Warranty from a third party shall not relieve the Supplier from any of its~~

~~obligations under this Agreement, including with respect to the Warranty during the Warranty Period.~~

12.10 The Warranty Period shall also include, as an inseparable part thereof, without any additional charge or cost annual support visit in Israel for at least Three (3) times, each visit shall be for four (4) Business Days ("**Annual Support**"). Each of the Annual Support shall include additional Qualification, and technical support. Each of the Annual Support will be conducted by an adequately staffed qualified and expert at hands team. Without derogating from the above, Supplier shall bear all flights, room and board for expenses of its personal and/or representatives for each of the Annual Support. The schedule of the Annual Support shall be coordinated with ISR in advance.

#### 12.11 SLA

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

12.11.1 Malfunction and/or Severe Malfunction report service from Sunday to Friday (except Israeli holidays) between 8:00 to 17:30 pm.

12.11.2 In case of a Severe Hardware Malfunction, Supplier shall be obligated to repair such Severe Malfunction without any additional cost or charge to be borne by ISR within ~~four one (41) hours-business day~~ following the receipt of a notice specifying the Severe Malfunction report. In case of a Severe Software-Malfunction, Supplier shall be obligated to react and provide a temporary solution (work-around) within one (1) business day, final repair of such Severe Malfunction without any additional cost or charge to be borne by ISR within five (5) business days following the receipt of a notice specifying the Severe Malfunction report.

12.11.3 In case of any Malfunction that is not a Severe Malfunction, the Response Time shall not exceed Twenty Four (24) hours and the Resolution Time shall not exceed Two (2) Business Days from the report of the problem.

12.11.4 If time has elapsed as specified above and no resolution has been found, then, upon ISR's demand Supplier shall procure that professional representatives of the Supplier shall be present on Site within twenty Four (24) hours from ISR's request in the event of a Severe Malfunction and Three (3) Business Days from ISR's request in the event of a Malfunction, all without any additional cost or charge ("Presence on Site").

12.11.5 Treatment of any Severe Malfunction and/or 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.

12.11.6 Without derogating from the above, in the event that the Supplier fails to remedy a Severe Malfunction within the timeframe specified above, ISR shall

be entitled to charge the Supplier with liquidated damages amounting to 1,500 Euro for each day during which the Severe Malfunction was not resolved.

12.11.7 In the event that the Supplier fails to remedy a Malfunction that is not a Severe Malfunction within the timeframe specified above, ISR shall be entitled to charge the Supplier with liquidated damages amounting to 750 Euro for each day during which the TTS is not fully available for operation.

12.11.8 Without derogating from the above and in addition, in the event that the Supplier fails to procure Presence on Site, ISR shall be entitled to charge the Supplier with liquidated damages amounting to 3,000 Euro for each day during which there is no Presence on Site.

12.11.9 For the removal of doubt, the liquidated damages detailed above shall not derogate from any other rights or remedies available to ISR under any applicable law or under this Agreement. For the removal of doubt, ISR may recover any sums due to ISR with regard to such liquidated damages from the Guarantee provided by the Supplier or by set off from any consideration under this Agreement.

### 13. MAINTENANCE PERIOD

13.1 As of the end of the Warranty Period and for a period of the Agreement Period, ISR shall purchase and Supplier shall provide ISR with Maintenance Services for the TTS for at least eight (8) years (the "**Maintenance Period**").

13.2 ISR alone may terminate the Maintenance Period for any reason, including without any cause, at any time during such Maintenance Period by providing Suppliers with a written notice 30 days in advance and Supplier hereby waives any claim and/or demand against ISR. Supplier may not terminate the Maintenance Period.

13.3 During the Initial Maintenance Period, the Supplier shall provide ISR all services required so that the TTS and any part thereof shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and conditions of this Agreement, including the Technical Specifications, and be free of any faults, defects and/or deficiencies, including but not limited to any faults, defects and/or deficiencies in design, material, workmanship, dismantling for sea and land conveyance, assembly, materials, components, software, hardware, etc.

13.4 All of the Supplier's undertakings under Section ~~12.12~~ above shall apply during the Initial Maintenance Period. Initial Maintenance Service shall not include Annual Support.

13.5 In consideration for the provision of the Maintenance Services, as detailed in this Section, during the Initial Maintenance Period, the Supplier shall be entitled to receive the consideration for the Maintenance Services set forth in the Consideration Annex ("**Maintenance Services Price**"). The Initial Maintenance Services Price shall be linked in accordance with the linkage mechanism set forth in the Consideration Annex.

13.6 For the avoidance of doubt, the Parties hereby expressly confirm and warrant that the Initial Maintenance Services Price shall be the final, complete and inclusive price that will be paid to the Supplier by ISR for the provision of the Maintenance Services, as

detailed in this Section.

13.7 The Maintenance Services Price shall be paid in quarterly installments, at the end of each quarter, for the Maintenance Services actually provided by the Supplier during the previous quarter. The Supplier shall submit, no later than thirty (30) days from the end of each quarter, an original invoice for the coming quarter. Terms of payment shall be current + 60 against a tax invoice.

## 14. Additional Features

- 14.1 During Agreement Period, ISR shall have the right, upon its sole discretion, to purchase additional features to the TTS as detailed in the Consideration Annex (the "**Additional Features**").
- 14.2 In the event that ISR shall decide upon its absolute discretion to purchase an Additional Feature and/or Additional Features it shall issue to Supplier a relevant purchase order ~~for~~ for such Additional Feature ("**Additional Feature Purchase Order**").
- 14.3 Supplier hereby waives any claim and/or demand against ISR should ISR decided not to issue Additional Feature Purchase Order and/or the numbers of Additional Feature Purchase Order issued.
- 14.4 All terms and conditions of this Agreement shall apply, mutatis mutandis, to the Additional Features expect as detailed herein and without derogating from the above once Additional Feature Purchase Order shall be issued it shall be part of the Works.
- 14.5 Delivery Time of the Additional Features shall be as detailed in ISR relevant Purchase Order.
- 14.6 Warranty Period for each Additional Feature shall be for Twenty Four (24) months commencing from the issuance of an Acceptance Certificate from ISR for such Additional Feature. Sections 12 and ~~13~~ shall apply, mutatis mutandis, for each Additional Feature. Maintenance Period for each Additional Feature shall commence at the end of the Warranty Period for the relevant Additional Feature. ISR shall have the option to terminate the Maintenance Period for any Additional TTS for any reason by thirty (30) days prior written notice.
- 14.7 In consideration for the provision of the Additional Feature, the Supplier shall be entitled to receive the consideration as follows detailed in the Consideration Annex. In case the requested Additional Feature is not included in the Consideration Annex, the parties shall discuss the consideration in good faith.
- 14.8 The Additional Feature Price shall be paid on a per each Additional Feature upon completion of the specific Additional Feature for which payment is being made, within sixty (60) days of the receipt of the following documents:

- (a) A signed invoice of the Supplier in the payment amount of the Additional Feature; and
- (b) A duly signed Certificate of Completion for the Additional Feature.

14.9 Maintenance Price for Additional Feature shall be included in the Maintenance Service Price and ISR shall not pay any additional consideration for such services.

14.10 The Additional Feature Price shall be paid on a per each Additional Feature upon completion of the specific Additional Feature for which payment is being made, within sixty (60) days of the receipt of an invoice in the amount of the Additional Feature Price.

14.11 For the avoidance of doubt, the Parties hereby expressly confirm and warrant that the Additional Feature Price shall be the final, complete and inclusive price that will be paid to Supplier by ISR for the provision of the Additional Feature including warranty as detailed above and all obligations and undertakings pertaining thereto as well as for all ancillary services and works required for the provision of the Additional Feature.

## 15. SPARE PARTS

15.1 Without derogating from the Supplier's undertaking to provide the Warranty and/or Maintenance Services, the Supplier undertakes that during a period of fifteen (15) years commencing on the date of issuance of the Acceptance Certificate, it will supply ISR with all spare parts and tools and updates necessary and recommended pursuant to (i) the Technical Specifications, (ii) the applicable manufacturer specifications, and (iii) the best professional practice, required for maintenance and for the repair of the TTS or any part thereof, while assuring that the TTS and all systems of the TTS therein shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and the conditions of this Agreement, including the Technical Specifications (the "General Spare Parts"). The "General Spare Parts" list should include all part numbers, names of original manufacturers, technical specifications and all remaining required details necessary for the purchase of the Spare Parts by ISR and/or on its behalf.

15.2 Without derogating from the generality of Section 15.1, the Supplier shall furnish a detailed Spare Parts List of all necessary and recommended Spare Parts and their prices, in the form attached hereto as **Annex F** within the Effective Date (the "General Spare Parts List and Prices"). The General Spare Parts List and Prices shall be in English or Hebrew and shall quote the delivery time, description, original manufacturer's name, part number of original manufacturer and the prices DAP ISR's Site for each Spare Part, and subject to the terms specified in Section ~~001010~~. The General Spare Parts List and Prices shall be linked in accordance with the linkage mechanism set forth in the Consideration Annex.

15.3 If the Supplier foresees that it will be unable to manufacture and/or supply any or all Spare Parts, for any reason whatsoever, it shall notify ISR in writing six (6) months in advance and shall procure all actions, at its cost and expense under its responsibility so that ISR shall be fully able to make any arrangements necessary to obtain alternate spare parts.



15.4 Notwithstanding the undertaking of the Supplier to sell ISR the necessary Spare Parts for the period specified in Section ~~15.145.1~~ above, ISR shall be under no obligation whatsoever to acquire any Spare Parts from the Supplier. ISR, in its sole discretion, shall decide if, and when, it will acquire the Spare Parts from the Supplier during the relevant time period. The Supplier shall support ISR in acquiring the Spare Parts even if ISR shall decide not to purchase the Spare Parts from the Supplier, to the extent where ISR will be fully able to acquire the Spare Parts from other suppliers.

## 16. LIQUIDATED DAMAGES

16.1 Without prejudice to any other relief or remedy available to ISR under this Agreement or under law, in the event that:

16.1.1. delivery of the TTS or any part thereof is delayed beyond the specified Delivery Time, the Supplier shall pay ISR liquidated damages in the sum equal to one-half percent (0.5%) of the value of the TTS Price for each calendar week of delay, or any part thereof. The liquidated damages shall not exceed a total of seven and half percent (7.5%) of the value of the consideration specified in this Agreement.

16.1.2. Supplier shall not provide the Warranty services and/or the Maintenance services in accordance with the SLA, the Supplier shall pay ISR liquidated damages as detailed in the Section 12.11 above.

~~16.1.2.~~16.1.3. The liquidated damages in sections 16.1.1 and 16.1.2 above shall not exceed altogether a total of ten (10%) of the value of the consideration specified in this Agreement.

(the "**Liquidated Damages**").

16.2 The Liquidated Damages in this Agreement have been determined after due consideration of the damages the Parties anticipate that ISR will suffer under the specific circumstances to which each specific type of Liquidated Damages apply, and therefore they shall not be regarded as a penalty. Payment of the Liquidated Damages shall not be conditioned on ISR having to present evidence of any loss.

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

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

## 17. IMPROVEMENTS AND ADDITIONAL CHANGES

17.1 The Supplier undertakes to perform during the Agreement Term, according to ISR's request, improvements, changes and additional developments that are not included

within the services detailed in the Technical Specifications and/or the Additional Features and/or this Agreement and/or deriving from them (hereinafter: the "**Changes**"). The Supplier shall not be entitled to not perform the Changes if they are ordered by ISR.

17.2 Notwithstanding the above, it is hereby clarified that the term "Changes" does not include services that are part of the Technical Specifications and/or this Agreement and/or derive from them and/or adjustments, developments, changes or repairs that the Supplier is required to perform as part of its services under the Technical Specifications and/or this Agreement and/or the Tender Documents and/or the Milestones Documentation and/or are required in order to enable the efficient and proper function of the TTS.

17.3 If ISR determines that there is a need to perform the Changes, it shall notify the Supplier in writing and the Supplier shall submit the approval of ISR an offer to perform the Changes in the Change Order Form attached as **Annex H** to this Agreement (hereinafter: the "**Change Order Form** ") that shall include a description of the Changes and their affects, detailed specifications for the Changes including test plans, affect of the Changes on the Works, the scope required, schedule, the affect of the required project on the schedule and the consideration for the Changes.

17.4 ISR shall be entitled to order the Changes according to the following possibilities:

A. If the price for the Change can be deducted from the Consideration Annex – according to the price set forth in the Consideration Annex, with no additional payment whatsoever. It is clarified that such price also includes operation services and warranty for a period of 24 months for Changes and the Supplier shall not be entitled to additional consideration in respect thereof.

B. If no price is set forth in the Consideration Annex, according to the following possibilities:

B (1) Pursuant to the actual days of work, in accordance with the price list detailed in Section 5 of the Consideration Annex ("Price for Working Days"). The number of working days in any event shall not exceed the estimated number of hours provided to ISR in the Change Offer. The price that is determined as aforesaid shall include in addition to development, a warranty for 24 months, operation and Qualification, if and to the extent required by ISR.

Notwithstanding the above, during all Agreement Period, daily board and lodging in Israel (including telephone/mobile and transportation expenses) shall not exceed - under any circumstances - 190 € Euro ("DBL"). In the event that the price indicated in the Consideration Annex shall be higher than the sum detailed in this Section shall prevail so that the DBL shall not exceed 190 €.

B (2) As a project with a price fixed in advance that is agreed in negotiations with the Supplier. The price that is determined as aforesaid shall include in addition to development, a warranty for 24 months, operation and Qualification, if and to the extent required by ISR.

B (3) In the event that the Changes include additional equipment and/or spare parts and/or hardware and/or software license and/or other components and/or replacement of equipment that is not included in the framework of the warranty and/or maintenance and there is no price for them in the Consideration Annex and/or **Annex F** the mechanism that shall apply shall be as detailed below: the price of equipment, spare parts and hardware, the license and any material of any kind, shall be the cost to the Supplier, as shall be demonstrated by it by proper written documentation, plus profit that shall not exceed 10%.

- 17.5 The price for each Change, as detailed above and as agreed by ISR in writing, shall be referred to as the "Change Price". The Change Price shall be paid on a per each Change upon completion of the specific Change for which payment is being made, within sixty (60) days of the receipt of the of an invoice in the amount of the Change Price. For the avoidance of doubt, the Parties hereby expressly confirm and warrant that the Change Price shall be the final, complete and inclusive price that will be paid to Supplier by ISR for the provision of the Change including warranty as detailed above and all obligations and undertakings pertaining thereto as well as for all ancillary services and works required for the provision of the Change.
- 17.6 The Supplier shall commence performance of the Changes, only after it receives written approval from ISR to perform the works detailed in the Change Offer and the approval regarding the consideration for the Changes. Until it receives such approval, the Supplier shall continue to perform the Services, unless otherwise agreed between the parties. At the end of the performance of the Changes, acceptance tests and examinations of the products of the Changes shall be conducted in accordance with acceptance tests that shall be agreed, and this regard the provisions of this Agreement shall apply, mutatis mutandis. In parallel, the Supplier shall deliver to ISR all of the revised and updated documentation in relation to the Changes, and the Changes shall be deemed part of the Supplier's Services for all purposes.
- 17.7 It is clarified, for the avoidance of doubt, that ISR shall be entitled to purchase the Changes and/or part of them not from the Supplier but rather from any third party (including the purchase of the Warranty Services and/or maintenance of the Changes from any third party) and the Supplier waives any claim and/or demand in relation thereto.

## 18. SEPARATION PLAN

- 18.1 No later than 90 days from Acceptance, Supplier shall submit to ISR's an offer for a separation plan. The Supplier's offer as aforesaid, shall be provided to ISR for examination and ISR shall be entitled to provide comments and/or to change it in its discretion. The Supplier undertakes in advance to accept the comments and/or changes of ISR in the detailed specification, and it waives any claim and/or demand in relation to the comments and/or changes of ISR to the detailed specification, including any demand for an additional price. Once approved by ISR, separation plan shall be annexed to this Agreement as Appendix K ("**Separation Plan**"). In the event of termination of this Agreement, for any reason (including but not limited breach by ISR) Supplier shall carry out all activities under the Separation Plan without any

additional cost to ISR.

18.2 Separation Plan (including without limited all manuals, instructions, drawings, operations and maintenance manuals) shall be in Hebrew unless ISR shall consent otherwise in writing and in advance that the Separation Plan shall be English. All translation cost shall be born by Supplier. In the event of any contradiction between the English version and the Hebrew version, the more strict version regarding Suppliers undertaking shall prevail according to ISR's discretion.

18.3 Without derogating from the above, Separation Plan shall include all the following:

18.3.1. Upon ISR's written notice ("Separation Notice") Supplier will be required to nominate a manager on his behalf for the Separation Period (hereinafter referred to as: "Manager of the Separation Period"), in full time, in order to complete the separation process, on a date to be determined by ISR.

18.3.2. The purpose of the separation plan is to transfer to Israel Railways, or anyone on its behalf, or to a combination of the two, the knowledge and ability to operate and fully maintain the simulators, including the data, in whole or in part. Transfer of knowledge in an orderly manner that will prevent any damage and/or malfunctions to Israel Railways during and after the separation, and with the full cooperation of all the parties.

18.3.3. The Supplier will transfer [in accordance Section 21.4](#) to ISR all information and data accumulated since the installation of the TTS including all the visual, vocal, textual and alphanumeric information required for the full and proper operation of the TTS.

18.3.4. Supplier undertakes to do everything in his power and to carry out any action, in order to achieve the above objective, and to refrain from carrying out any action that may impair or damage the aforesaid purpose.

18.3.5. Supplier is committed to show good will, to cooperate fully and to help realize the transition successfully and efficiently. The Supplier undertakes to act according to the Separation Plan even if it has any claims against ISR including against ISR decision to carry out the separation or in case he has financial claims. The parties agree that in any case of litigation between the parties regarding the decision of ISR to terminate the Agreement, the Supplier shall refrain from seeking relief of enforcement or injunction, and shall be satisfied with compensation.

18.3.6. The Supplier shall not impair the level of service and the service itself, or the transfer of the service until an agreement or arrangement in relation to the separation procedure is reached, as shall be determined by ISR

18.3.7. Upon the commencement of the separation process FROM Separation Notice, the Supplier will submit to ISR a list of updated compute equipment, software and shelf products. The list of equipment shall include the serial number, configuration, location, end of warranty period, and any other information requested by ISR. The software list will include, among other things, the version number, the license type and the number of copies of each software type and the end of the support agreement period, as well as the installation on all servers and

workstations.

- 18.3.8. All existing information and any information that accumulates relating to the services of the Supplier for ISR shall be under the sole ownership of ISR. The Supplier may not use and/or permit another person to use any data and/or document and/or input or output of the systems, or any other part of the systems, directly or indirectly, either for himself or for any other party, whether on his behalf or not, with or without consideration. Excluded from this is information, data and software collected and prepared by the supplier for ISR, e. g. within the detailed specification and the software development.
  - 18.3.9. The Supplier shall procure that all of its employees shall follow the Separation Plan.
  - 18.3.10. Supplier shall submit to ISR all documents, identification cards and passage permits, documentation, clarifications or any other detail, on any media (paper, magnetic or optical media, etc.) relating to the construction and operation of the TTS. The Supplier shall transfer all the components of the services (data and documents, etc.) in such a manner that the Supplier will not retain any detail or information that it had prior to the Effective Date.
  - 18.3.11. Supplier shall provide ISR with comprehensive Qualification relation to the TTS in each subject required by ISR.
  - 18.3.12. Supplier shall not be relieved of its obligations until ISR shall confirm in writing that it has fulfilled its obligation under the Separation Plan.
  - 18.3.13. It is hereby declared that all the obligations of the Supplier as specified within the framework of this Section shall be made upon its own expense and without additional consideration of ISR.
  - 18.3.14. It is expressed that in the event for any reason Separation Plan shall not be submitted and/or approved the undertakings of Supplier detailed under this Section and any instruction of ISR to Supplier shall be deemed as the Separation Plan and shall bind the Supplier.
  - 18.3.15. Supplier shall update from time to time the Separation Plan, without any additional cost.
- 18.4 If the Supplier did not fulfill its obligations as detailed in this Section to the satisfaction of ISR, then, without derogating from any remedy available to ISR under any law, ISR shall be entitled (1) to withhold payments owing to the Supplier, (2) to collect all available Guarantee including the Performance Guarantee and/or the Warranty Guarantee in full, (2) to collect from the Supplier any damages and/or expense that shall be caused to it due to the improper operation of the ~~Washing Machines~~TTS, and including to charge the Supplier for all expenses incurred by ISR, plus 20%.

## 19. GUARANTEES

- 19.1 To secure the punctual, complete and entire performance of all of the Supplier's

obligations under this Agreement, including any Works to be performed by any Subcontractor, the Supplier will furnish the 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.

19.2 Performance and Warranty Guarantee. No later than seven (7) Business Days following the Effective Date, the Supplier shall furnish ISR with an irrevocable autonomous Performance and Warranty 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 TTS Price, valid until two (2) months following the end of the Warranty Period.

19.3 Down Payment Guarantee. Before payment by ISR of the Down Payment specified in Section ~~99~~ 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**").

19.4 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**").

19.5 The Down Payment Guarantee and the Payment Guarantee (to the extent not collected) will be in force until, and will be returned to the Supplier within sixty (60) days after, and subject to, the Acceptance Certificate as set forth in Section ~~114~~ above.

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

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

19.8 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 prerequisite for ISR's execution of any payment due to the Supplier under this Agreement.

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

19.10 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 the Supplier of any of its liabilities and undertakings under this Agreement, including its liability to indemnify ISR.

## 20. INSURANCE

- 20.1 Without derogating from any of the Supplier's responsibilities and liabilities under this Agreement and/or under any Applicable Law, the Supplier shall maintain, at its own expense with an authorized insurance company, at all times for as long as any liability under this Agreement may exist, insurance policies from reputable insurers, as following:
- 20.2 Property Insurance covering any loss or damage arising out of, or caused by any risk in respect of the manufacture and/or supply of the TTS, the Spare Parts and any related tools and equipment in connection with this Agreement. The insurance policy shall cover the complete manufacture and replacement value of the TTS as well as any other equipment brought by the Supplier to the Site. The policy shall include a waiver of subrogation towards ISR and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf, provided that the waiver of subrogation does not apply in favor of a person who has maliciously caused the damage. The Supplier undertakes, that a clause stating that in respect of loss or damage to the TTS, the insurance benefits shall be paid to ISR exclusively, which shall be added as an additional insured under the policy.
- 20.2.1. Marine "All Risk" Insurance against any loss or damage to the TTS and the Spare Parts, arising out of, in course of, or caused by any risk in respect of the transport of the TTS and the Spare Parts. The policy shall apply from the time of moving the TTS and the Spare Parts from the Supplier's warehouses /premises until arrival within ISR's warehouse/premises at the final destination and vice versa, including loading and unloading, temporary and extended storage and all domestic inland and/or intermediate transits anywhere in the world (including within Israel). Settlement of claims will be made at 110% of the TTS and the Spare Parts DDP value, irrespective of the term of sale or purchase. The insurance benefits in respect of loss or damage to the TTS shall be paid to ISR exclusively, which shall be added as an additional insured under the policy. The policy shall include a waiver of subrogation towards ISR and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf, provided that the waiver of subrogation does not apply in favor of a person who has maliciously caused the damage.
- 20.2.2. A worldwide Third Party Liability Insurance, in the joint names of ISR and the Supplier subject to a "Cross Liability" clause, with a limit of liability not less than €7,500,000 per occurrence and in the aggregate for an annual period of insurance, covering any liability (including Product and Professional Liability) of the Supplier for any loss or damage derived from the execution of this Agreement and/or from any act or omission of the Supplier and/or whoever acts on its behalf.
- 20.3 The Supplier's insurances required under this Section 20 are primary and precedent to any of ISR and/or the Israeli Government's insurances, and the Supplier's insurers shall

waive their right to contribution from any of ISR and/or the Israeli Government's insurers with respect to any damage covered by the Supplier's insurance policies.

- 20.4 The Supplier shall refrain from canceling the insurance policies and/or from decreasing their scope. The Supplier further undertakes to notify ISR of any situation of cancellation and/or expiration of any of the insurance policies specified in this Section, sixty (60) days before the date of occurrence of such situation.
- 20.5 The Supplier represents and warrants that it shall not have any claims, demands and/or actions against ISR and/or anyone on its behalf and/or the Israeli Government, concerning damage to its property or other property used in connection with this Agreement including the TTS, the Spare Parts, and any related tools and equipment. The foregoing shall not apply for the benefit of anyone who caused damage with malicious intent.
- 20.6 The Supplier waives and shall have no claims or demands of any kind against ISR and/or anyone on its behalf, with respect to the content and/or extent and/or coverage of the insurance policies required to be purchased by it under this Section, and the Supplier hereby confirms that it shall be prevented from raising any such claim or demand. For the avoidance of doubt, it is agreed that the insurance policies required to be purchased under this Section, including the limits specified herein, are stated as a minimal demand from the Supplier. The Supplier is encouraged to further scrutinize its exposure to liability and to add and/or increase the types and scope of insurance coverage.
- 20.7 The Supplier undertakes to indemnify ISR for any amount incurred by ISR as a result of a violation by the Supplier (and/or any person or entity acting on its behalf) of any of the conditions of its insurance policies.
- 20.8 It is hereby clarified and agreed that all the insurance policies required in accordance with this Agreement shall be procured at the Supplier's expense and that under no circumstances shall the duty to incur such expenses and/or make any payment in connection therewith apply to ISR. It is also clarified and agreed that the liability for the payment of the insurance deductible applies to the Supplier only and under no circumstances to ISR.
- 20.9 It is clarified and agreed that insurance payments shall not derogate from the Supplier's liability under this Agreement and/or under any Applicable Law, and should the insurance payments not be sufficient in order to cover the extent of the loss and/or the damage actually caused, the Supplier shall be responsible for completing such.
- 20.10 As a condition precedent to the first payment under this Agreement, the Supplier shall furnish a certificate from its insurers stating:
- "The insurance required by Agreement No \_\_\_\_\_ between ISR and Supplier is in full force and effect".*
- 20.11 Without derogating from the duty to provide the insurance certificate as detailed above, the Supplier undertakes to provide ISR with a copy of all of its insurance policies, within fourteen (14) days of ISR's first request.



## 21. INTELLECTUAL PROPERTY RIGHTS

- 21.1 Intellectual Property Rights Warranty. The Supplier represents and warrants that it is the owner of all rights and title (including but without limitation Intellectual Property Rights, as defined below) in and to the TTS as well as in any Works and any component thereof (including, without limitation, systems, parts, software incorporated in the TTS or integrated with them), and documentation provided to ISR under this Agreement and the Technical Specifications and/or Software, and/or that it has obtained sufficient rights and is authorized to give rights to ISR as contemplated under this Agreement in any such TTS, 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 TTS, Works and documentation and/or Software in accordance with the terms and conditions of this Agreement, including the operation and maintenance of the TTS and for the purpose of interface with other ISR equipment (whether existing now or in the future). ISR has the non-exclusive right of use on the TTS.
- 21.2 Non Infringement Warranty. The Supplier warrants that the TTS, Works and/or Software and documentation, and their use by ISR in accordance with this Agreement (i) do not and will not infringe any patents, copyrights, whether or not registered, trade names, registered and unregistered trademarks, service marks, trade dress, domain name registrations and other source indicators; computer software, including databases; trade secrets, commercial secrets, inventions (whether or not patentable and whether or not reduced to practice), know-how, methodologies, or other intellectual property right of any person ("**Intellectual Property Rights**"), and (ii) no claim, action or suit for the misappropriation or infringement of any Intellectual Property Right has been brought or is pending or, to the best of its knowledge, threatened against the Supplier and/or any third party from which the Supplier has obtained such Intellectual Property Rights in connection with the TTS, Works or documentation provided under this Agreement.
- 21.3 Responsibility of the Supplier. The Supplier shall be solely and fully liable and responsible for the use of, and shall fully and timely pay all royalties, fees and other payments with respect to, all Intellectual Property Rights, licenses and rights of whatever type, manufactured, used, implemented or employed in the design, production, completion, use or operation of the TTS and Works and/or Software by the Supplier or ISR.
- 21.4 Ownership of Designs, Drawings etc.
- 21.4.1. The title in and to the designs, drawings, documentation and other technical documents that may and/or shall be submitted by the Supplier to ISR according to this Agreement shall pass to ISR. The Intellectual Property rights shall be deemed to be the sole and exclusive property of the Supplier. ISR has the royalty free, non-exclusive right to use these drawing, documentation and other documents to the extent necessary for the use and maintenance of the TTS according to this Agreement.
- 21.4.2. All right and title in and to the designs, drawings and other technical documents and information provided by ISR or on its behalf to the Supplier as well as all

of the documents comprising this Agreement and the contents thereof, shall be deemed to be the sole and exclusive property of ISR.

- 21.5 Grant of License. The Supplier hereby grants to ISR a non-exclusive 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 TTS (including maintenance thereof).

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

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

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

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

## 22. TERMINATION

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

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

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

22.1.3. An attachment order has been imposed and/or any other execution process has been taken with respect to all or a material part of the Supplier's assets, or a

part thereof which is material for the performance of any of its obligations hereunder and has not been removed within thirty (30) days.

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

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

22.1.6. The Supplier breaches any material provision of this Agreement, and fails to cure such breach within twenty (20) days from the date of ISR's notice.

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

22.2 Restitution of Payments. Without prejudice to any other remedies available to ISR under any agreement and/or under any Applicable Law, in the event that ISR exercises its right to terminate this Agreement for any of the reasons set forth in Section 22.1, then within thirty (30) days from notification by ISR that it has rescinded or terminated this Agreement, the Supplier shall return to ISR all payments it has received from ISR.

22.3 Termination for Convenience. In addition to, and without derogating from any other right that ISR may have to terminate this Agreement, including but without limitation pursuant to any other provision of this Section and/or to any Applicable Law, ISR shall have the right to terminate this Agreement at will, without cause and at ISR's sole and absolute discretion by providing Supplier with a Forty Five (45) days prior written notice. In the event of termination under such Section then ~~without~~ 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 under this Section, Supplier shall return to ISR within 30 days all payments it has received from ISR expect for Works that Supplier has already executed and completed and cannot be mitigated by Supplier as shall be proven by Supplier by written documentation. ISR shall determine after reviewing such documentation whether such Works were in fact already executed and completed and cannot be mitigated and ISR decision shall be final and binding and Supplier waives any demand.

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

22.5 Effect of Termination for any reason (including breach by ISR)

22.5.1. The provisions of this Agreement which expressly or by their nature are required to survive termination of this Agreement (including but without

limitation provisions regarding Warranty, Intellectual Property and Liability) shall survive the expiration or termination of this Agreement.

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

- Cease all Works according to the IPM's instructions; and
- Transfer to ISR all its rights under all warranties extended by its supplier.

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

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

22.5.5. Perform all activates under the Separation Plan and/or Section [1818](#).

## 23. RISKS AND LIABILITIES

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

23.1.1. the Works, including but without limitation, their design, assembly, integration, adjustment, tests and trials of the TTS (and/or any part thereof), as

well as the Warranty;

- 23.1.2. the use of the TTS and/or any part thereof, when the Damages arise from faulty design (including errors and omissions in design) or workmanship;
  - 23.1.3. any damage to property, death or injury to persons, arising out of, or in connection with, the TTS or the Works;
  - 23.1.4. the Supplier's breach of any term or provision of this Agreement or any Applicable Law;
  - 23.1.5. any claims against ISR made by any Subcontractor arising from, or in connection with, the Works to be performed by the Subcontractor, including but without limitation any payments related to the Works or any part thereof to any Subcontractor;
  - 23.1.6. any negligent or willful act, error or omission by the Supplier, its employees, agents, representatives and Subcontractors, in the performance of this Agreement (including, for the removal of doubt, the execution of the Works);
  - 23.1.7. any actual or alleged infringement of Intellectual Property Rights of whatever type arising out of, in connection with, or otherwise resulting from the use of the Works by the Supplier, its Subcontractors or ISR.
- 23.2 Payment of Indemnification Amounts. Any amount for which ISR claims for indemnification hereunder shall be paid to it within the time specified in the notice requiring indemnification.
- 23.3 Defense against Proceedings. If any legal action or any other proceeding (collectively "**Proceedings**") are commenced against ISR, in respect of which the Supplier may be liable to indemnify ISR under this Section, then the following provisions shall apply:
- 23.3.1. Notice of such Proceedings shall be promptly given to the Supplier.
  - 23.3.2. The Supplier shall, at its sole cost and expense, defend any litigation that may arise from such Proceedings and conduct all negotiations for the settlement of same, provided that any settlement of such Proceedings will be subject to ISR's prior written consent and provided further that the Supplier shall not, in connection with such defense and/or settlement (i) injure ISR's reputation; (ii) purport to take any action expressly or implicitly on behalf of ISR; or (iii) purport to make any representation and/or admission regarding and/or concerning ISR or ISR's activities. ISR's written consent shall not be unreasonably withheld.
  - 23.3.3. At the request and expense of the Supplier, ISR shall afford reasonable assistance to the Supplier in the defense of such Proceedings.
  - 23.3.4. So long as the Supplier timely takes over and properly conducts the negotiations or litigation, the Supplier shall not be required to reimburse ISR the fees for services of attorneys retained by ISR (if and to the extent so retained). If ISR finds, however, that the Supplier is not coordinating its defense with ISR in a proper manner or fails to defend ISR diligently or if ISR

determines, at its sole and absolute discretion, that representation should be led by ISR, then ISR may retain the services of attorneys on its behalf and at the Supplier's expense, which attorneys will represent ISR in the said Proceedings and may settle such Proceedings, provided that the Supplier gives its consent to such settlement in advance and in writing (which consent shall not be unreasonably withheld). For the removal of doubt, the settling of such Proceedings by ISR shall not relieve the Supplier of the obligation to indemnify ISR as provided in this Agreement (including without limitation, for reasonable legal fees and expenses incurred by ISR in connection with the enforcement of the Supplier's indemnification obligations hereunder).

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

23.4 Exclusions. Subject to the provisions of Section ~~23.5~~~~23.5~~ below, in no event shall either Party be liable towards the other for any and all indirect or consequential Damages, including but not limited to loss of profit, loss of revenue, loss of goodwill, etc. with respect to this Agreement (including the Works to be performed hereunder), whether in an action based on contract, tort (including negligence) or any other cause of action.

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

23.5.1. 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;

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

23.5.3. Death or injury;

23.5.4. Claim for payment by any Subcontractor.

23.6 Withholding of Payments and Collection on Guarantees. Without derogating from any other rights of ISR under any Applicable Law and/or agreement, in the event that any claim is made against ISR, or any lien or attachment is affixed against any of its properties, which claim, lien or attachment relates to or is based on circumstances and/or events which fall within the responsibilities and/or indemnification obligations of the Supplier as per Section 23.1 above, then unless the Supplier provides adequate security, to ISR's satisfaction, that the claim will be covered, ISR may (i) withhold all payments then due or thereafter becoming due to the Supplier, until such claim is satisfied and such liens or attachments released, and (ii) settle the matter by paying any such claim or removing such lien or attachment, and (iii) recover any amounts required in order to do so by collecting upon any of the applicable Guarantees.

## 24. SUBCONTRACTORS

- 24.1 The Supplier shall not engage any subcontractor ("**Subcontractor**") for the performance of any of its obligations under this Agreement without ISR's prior written approval. Any such retention, if approved, shall be subject to the terms and conditions set forth herein below.
- 24.1.1. Without derogating from the above, in the event the Supplier shall decide to subcontract Warranty and/or Maintenance Services, then the Subcontractor nominated by the Supplier shall meet at least the following qualifications:
- 24.1.1.1 has at least 5 (five) years of experience in maintenance of electro mechanics and/or software; and
- 24.1.1.2 has received written certification from Supplier to perform the Warranty and/or Maintenance Services.
- 24.1.2 The Subcontractor has read the terms and the conditions of this Agreement and confirms, and warrants that the terms and the conditions of this Agreement, including its Annexes are reasonable and agreeable to it. Furthermore, the Subcontractor shall abide by all applicable obligations under this Agreement which are required by it for the fulfillment of this Agreement, such as, but not limited to, obligations with regards to the Declarations and Representations, General Obligations, Intellectual Property, Spare Parts, Warranty Period, Risks and Liabilities, Delivery Terms, Termination, etc.
- 24.1.3 In the event that the Subcontractor shall fail to comply with this Agreement, ISR shall have the right to rescind its approval (with respect to the Subcontractor) and/or or to instruct the Supplier to perform the relevant Works by itself or through another approved Subcontractor, whereupon the Supplier shall immediately stop employing the non-complying Subcontractor, in accordance with the separation plan, approved in advance by ISR.
- 24.1.4 The approval, non-rejection, recommendation, instructions, directives or determinations made by ISR with regard to the employment of, and/or to the placement of orders for components and/or equipment with the Subcontractors, shall not relieve the Supplier of its responsibility to ISR in connection with the execution of the Works, the supply of the TTS and the fulfillment of the obligations under this Agreement or from any liability assumed by or imposed upon the Supplier under this Agreement and under Applicable Law, nor shall it impose any liability or responsibility upon ISR in connection with the Subcontractor, including but without limitation for any acts and omissions done and/or works executed by Subcontractors, and the Supplier shall be fully responsible towards ISR for the acts and omissions of the Subcontractors.
- 24.1.5 The agreement entered into between the Supplier and the Subcontractors which relates to the performance of the Supplier's obligations under this Agreement shall include all of the following provisions:
- 24.1.5.1 Subcontractor is aware of and agrees to all provisions of this Agreement and their consequences as they relate or apply (expressly or implicitly) to such Subcontractor agreement and/or to the Works

to be performed and/or to the equipment and/or components and/or materials to be supplied under such Subcontractor agreement and undertakes to comply with such provisions.

24.1.5.2 Subcontractor shall have no legal recourse against ISR in any matter arising out of or connected with the Works. Without derogating from the generality of the above, Subcontractor shall waive any Retention Right against Supplier and ISR, and will confirm that the payments to be made by Supplier to Subcontractors contain ample financial provisions concerning such waiver by Subcontractor of all Retention Rights.

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

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

## **25. FORCE MAJEURE**

25.1 Neither Party shall be liable for any delay in the performance of the Agreement, if such delay is, directly or indirectly, caused by, or arises from, an impediment beyond the control and without fault or negligence of the party effected, including the following occurrences fires, floods, accidents, civil unrest, acts of God, war, governmental interference or embargoes, strikes, labor difficulties or transportation delays of the TTS (collectively, "**Force Majeure**").

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

## **26. LANGUAGE**

This Agreement and any correspondence with regard to this Agreement shall be in English. All correspondence made by the Parties in performance of this Agreement will be in English or Hebrew.

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



- 27.1 This Agreement shall, in all respects, be governed by and construed in accordance with the laws in force from time to time in the State of Israel.
- 27.2 The Uniform Law on International Sales (1964) and the United Nations (Vienna) Convention Contracts for the International Sale of Goods of April 11, 1980 shall not be applicable to this Agreement.
- 27.3 Any dispute in connection with this Agreement including its validity or interpretation shall be settled 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.
- 27.4 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.
- 27.5 Dispute not Affecting Delivery. The Supplier agrees and undertakes that no Dispute shall entitle the Supplier to delay or withhold (i) the continuation of the Works so as to meet the Delivery Schedule or any other schedules agreed between the Parties, and/or (ii) the performance of the Warranty, subject to ISR paying to the Supplier any undisputed amounts, and the Dispute shall be resolved pursuant to the Dispute resolution process specified in Section ~~27.3~~ 27.3 above.

## 28. MISCELLANEOUS

- 28.1 Waiver of Lien by the Supplier. The Supplier hereby waives from the moment of Acceptance any possessory lien, mechanic's lien or similar possessory or retention right (in Hebrew: "זכות עיכובין") and preservation of ownership (in Hebrew: "שימור בעלות") (collectively, "**Retention Rights**") against ISR with regard to the TTS, including, but not limited to, the items of the TTS that are in the possession of the Supplier in the Supplier's workshops or which are in the possession of Subcontractors. The Supplier represents and warrants that the consideration to be paid by ISR under this Agreement includes ample financial provisions concerning the waiver by the Supplier of all Retention Rights with regard to the Works, and the payments to be made by the Supplier to its Subcontractors contain ample financial provisions for the insertion of a clause requiring a similar waiver by said Subcontractor in connection with the Works.
- 28.2 ISR's Set-Off Right. Without derogating from any right of set-off conferred upon ISR elsewhere in this Agreement or under Applicable Law, ISR shall have the right to set-off against any amounts that may be owed to the Supplier (or to any Subcontractor, as the case may be) pursuant to this Agreement and/or to any other agreement between ISR and the Supplier, any amount, debt or payment owed by the Supplier (or by any Subcontractor) to ISR pursuant to this Agreement (including but without limitation in the form of indemnification or compensation for damages, regardless if their sum is liquidated or not).
- 28.3 Exercise or Non-Exercise of Rights by the Parties. Consent by a Party to deviate from any of the provisions of this Agreement in a particular case shall not constitute a

precedent, and no inference by analogy shall be drawn from it in respect of any other case. If a Party does not exercise any of the rights conferred upon it by this Agreement or any Guarantee arising hereunder in a particular instance, such fact shall not be regarded as a waiver of those rights in any other instance and shall not be considered as implying or indicating a waiver of any right under this Agreement.

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

28.5 No Third Party Beneficiaries. All rights and obligations of the Parties hereunder are personal to them. This Agreement is not intended to benefit, nor shall it be deemed to give rise to, any rights to any third party (including, without limitation any Subcontractor).

28.6 Assignment. This Agreement, including the rights and obligations herein, may not be transferred by the Supplier to any third Party without receiving ISR's prior written consent, which shall not be unreasonably withheld. ISR may at any time, upon its absolute discretion, assign and/or transfer any and/or all of its rights and/or obligations under this Agreement to the State of Israel and/or any other entity controlled and/or affiliated to the State of Israel ("**State of Israel**") by providing written notice to Supplier ("**Notice of Assignment**"). Upon receipt of Notice of Assignment by the Supplier, the assignment and/or the transfer shall be binding and the Supplier may not object such assignment and/or transfer and shall fulfill any and all obligations resulting from such assignment and/or the transfer as directed by ISR and/or the State of Israel. Without derogating from the above, the State of Israel may reassign and/or retransfer, upon its absolute discretion and at any time, all of its rights and obligations back to ISR by providing written notice to the Supplier and such reassign and/or retransfer shall be binding and the Supplier may not object such reassignment and/or the retransfer and shall fulfill all obligations resulting from such reassignment and/or the retransfer as directed by ISR and/or the State of Israel. The Supplier hereby waives any and all claims and/or demand against ISR and/or State of Israel resulting from the implementation of this Section by ISR and/or the State of Israel.

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

28.8 Notices. All notices, unless otherwise expressly provided in this Agreement, shall be in writing and shall be sent by either of the Parties to the other Party by registered mail or personal delivery to the addresses set forth at the head of this Agreement, and shall be deemed to have been given seven (7) Business Days after the date on which the notice

was posted, or in the case of notice by fax, twenty four (24) hours after dispatch by fax, or in the case of personal delivery, at the time of delivery.

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

**ISRAEL RAILWAYS LTD.**

*Signature:*

\_\_\_\_\_

*Title:* **CEO**

*Printed Name:*

\_\_\_\_\_

*Signature:*

\_\_\_\_\_

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

*Printed Name:*

\_\_\_\_\_

\_\_\_\_\_

*Signature:*

\_\_\_\_\_

*Title:*

\_\_\_\_\_

*Printed Name:*

\_\_\_\_\_

*Signature:*

\_\_\_\_\_

*Title:*

\_\_\_\_\_

*Printed Name:*

\_\_\_\_\_

**Annex A**

**Technical Specifications**

**Annex A1**

**Supplier's proposal to the TENDER**

**Annex B**  
**Consideration Annex**

**Annex C**  
**Supplier's Bank Account Information**

**PART A – Supplier's Bank Details**

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

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

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

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

**EBAN Code** (applicable to European Accounts): \_\_\_\_\_

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

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

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

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

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

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

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

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**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.  
Of 1 Yoseftal Road, 7136801  
P.O.B. 757  
Lod, Israel

From:

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

**Agreement No. \_\_\_\_\_ (hereafter: "the Agreement")**

We hereby certify that all Foreign Tests regarding the TTS, 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 TTS 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 Acceptance Certificate**

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

From:  
Israel Railways Ltd.  
Of 1 Yoseftal Road, 7136801  
P.O.B. 757  
Lod, Israel  
Israel

We hereby certify that the TTS, as defined in the Agreement No. \_\_\_\_\_, installed at site: \_\_\_\_\_ 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 Qualification 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**

**General Spare Parts Price List and Delivery Terms**

**Annex G1**

**Form of Down Payment/Payment Guarantee**

To: Israel Railways Ltd. ("**ISR**")  
1 Yoseftal Road, 7136801  
P.O.B. 757  
Lod, 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**")  
1 Yoseftal Road, 7136801  
P.O.B. 757  
Lod, Israel

**Performance and Warranty Guarantee**

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

Now, we Bank ..... hereby irrevocably guarantee to ISR due, punctual, true, faithful and satisfactory performance by Supplier of all of the obligations on its part contained in said Agreement, including for the removal of doubt Warranty and ancillary services (as set out in the Agreement), and undertake to be responsible and indemnify ISR for payment by Supplier of all sums of money, losses, damages, costs, charges and expenses that may become due or payable to ISR, by or from Supplier by reason or in consequence of the default of Supplier in performance, execution or perseverance of its said obligations, all in accordance with the provisions therein (the "**Guarantee**"). Nevertheless, the total amount to be collected by ISR from us under this Guarantee, shall not exceed the sum of \_\_\_\_\_ € (in words) \_\_\_\_\_ EURO.

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

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

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

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

\_\_\_\_\_  
Deputy General Manager

Commerce, Finance & Economics  
of Israel Railways Ltd."

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

\_\_\_\_\_

**Date**

**Annex H**  
**Change Order Form**

**Part 1**

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

**ISR Project Manager**

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

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

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

**Supplier**

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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 TTS 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 TTS AND/OR ANY PART THEREOF, TTS 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: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

IPM, on behalf of ISR

Date:

**Part 2**

Supplier's requests for changes

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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 TTS Price and Delivery Time

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

IPM, on behalf of ISR

Date:

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

SPM, on behalf of the Supplier

Date:



**Annex I**

**Safety and Security Regulations**

## **Annex J**

### **Key Personnel**

Project Manager – during the last 5 years served at least two years as a project manager in a project of establishing and operating of simulators or two years as a deputy project in two projects of establishing and operating of simulators. Speaks and writes English fluently.

Quality Manager – during the last 5 years served at least two years as a quality manager in a project of establishing and operating of simulators or two years as a deputy project in two projects of establishing and operating of simulators. Speaks and writes English fluently

Maintenance Manager - during the last 5 years served at least two years as a maintenance manager in a project with equivalent and/or similar technology complexity and price value as the Works. Speaks and writes English fluently.

**Annex K**

**Separation Plan**