

AGREEMENT No. _____

entered into this _____ day of _____, 2019 in Tel Aviv, Israel
(hereinafter the "Effective Date")

Between,

Israel Railways Ltd.
Company No. 52-004361-3
1 Yoseftal St., Lod, Israel
(hereinafter "ISR")

of the first part

and

(hereinafter "Supplier")

of the second part

ISR and Supplier each referred to hereinafter as a "Party" and collectively as the "Parties."

WHEREAS ISR wishes to purchase various types of Railway Rails, Heat Treated Rails, Transition Rails (the "Rails"), and also Fishplate Joints Sets, Transition Fishplates Joints Sets (all together the "**Goods**") as further specified in this Agreement and its Appendixes (including without limitation the Technical Specifications); and

WHEREAS ISR has published Tender No. 41902 requesting proposals for the supply of the Goods (the "**Tender**"); and

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

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

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

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

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

1. Preamble, Appendices and Headings

- 1.1 The preamble to this Agreement constitutes an inseparable part hereof.
- 1.2 The following appendices, which are attached to this Agreement, constitute inseparable parts hereof:
 - a) Appendix A – Technical Specifications;
 - b) Appendix B - Consideration
 - c) Appendix C - Supplier's Bank Account Form
 - d) Appendix D - Acceptance Certificate
 - e) Appendix E - Form of Performance and Warranty Guarantee
- 1.3 The headings in this Agreement are for reference purposes only, and are not a material part hereof and shall not be used for purposes of interpretation.

2. Priority of Documents

- 2.1 Unless otherwise provided in this Agreement, the several documents forming this Agreement, are to be taken as mutually explanatory of one another and shall be deemed to form one agreement, and should, therefore, be read and construed together.
- 2.2 In the event of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty between the provisions of the following documents (including any instructions or data contained therein), the following order of precedence will apply:
 - This Agreement, including the Consideration Annex, but excluding the other attachments hereto;
 - The other annexes to this Agreement including the Technical Specifications;
 - The other Tender documents (excluding **Annex B** to the Tender);
 - Contractor's Proposal to the Tender.

- 2.3 In case of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty as to the interpretation of any provision contained in the documents set forth in Section 2.2 above and/or the order of precedence between the various provisions contained in these documents, which discrepancy, ambiguity, conflict, inconsistency or uncertainty is not resolved by applying the above order of precedence, those provisions that provide ISR with the maximum rights and which best serve the interest of ISR under the circumstances, as ISR shall determine at its sole and absolute discretion, shall apply.
- 2.4 Except as otherwise specifically indicated, all references to Sections refer to Sections of this Agreement, and all references to 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 3.5. **שגיאה! מקור ההפניה לא נמצא.** Whenever required by the context of this Agreement, the singular shall include the plural, the masculine shall include the feminine and vice versa.

3. Definitions

The following definitions shall apply to this Agreement:

- 3.1 **"Applicable Law"** – shall mean any Israeli statute, law, ordinance, rule, regulation, order, writ, injunction, judgment, decree, and all other requirement of any governmental entity existing as of the date hereof or at any time during the term of this Agreement and applicable to ISR and/or Supplier.
- 3.2 **"Acceptance"** or **"Acceptance Certificate"** or **"Final Acceptance Certificate"** – shall mean ISR's issuance of a signed Final Acceptance Certificate in the form attached hereto as **Appendix D.**
- 3.3 **"Agreement"** – shall mean this agreement including all appendices attached hereto.
- 3.4 **"Agreement Period"** – shall have the meaning ascribed to it in Section 5.
- 3.5 **"Business Day"** – means any day of the week other than Saturday or Sunday, and excluding official holidays and bank holidays in Israel.
- 3.6 **"DAP"** –.

The terms of delivery for the Goods shall be "Delivered at Place" at ISR's Site (DAP) according to "INCOTERMS 2010" - International Rules for the Interpretation of Trade Terms (ICC Pub. No. 715), subject to the terms and conditions set forth in Sections 6, 8, 9, 13 below.

- 3.7 **"Effective Date"** – shall have the meaning ascribed to it in the Preamble to this Agreement.
- 3.8 **"Goods"** - shall mean each and any of the following, as applicable, and which complies with the Technical Specifications, attached herein as **Annex A**. *{Prior to signing the Agreement, this Section shall be amended to reflect the Goods the Supplier is required to supply in accordance with the outcome of the Tender }*
- 3.9 **"Purchase Order"** – as defined in Section 6 below.
- 3.10 **"Site"** – one of the followings (in accordance with the type of the Goods):
- 3.10.1 **"Site – for Goods excluding Rails"** – ISR's facilities located at the Kishon warehouse, Hutsot HaMifrats station and/or Kfar Vitikin station and/or Hadera Merkaz station.
- 3.10.2 **"Site - for Rails"** –Haifa/Ashdod Port, Israel
- 3.11 **"Technical Specifications"** – the technical specifications for the Goods, are as detailed in **Appendix A**.
- 3.12 **"Warranty" or "Warranty Period"** – shall have the meaning ascribed to it in Section 12.
- 3.13 **"Works"** – shall mean all works, components, materials and equipment to be executed or supplied by Supplier, directly or indirectly, in connection with the manufacture, supply, warranty of the Goods pursuant to this Agreement. Works shall include but shall not be limited to, works to be implied therefrom or incidental thereto and including all temporary works of every kind required in or for carrying out and completion of the Works, provision of all labor, provision and use of software, materials, equipment, machinery, tools, spare parts, accessories, components loading, unloading, stuffing, emptying and cleaning of containers and other elements of every kind and description (including Intellectual Property Rights) including as detailed in the Technical Specifications and this Agreement.

4. Declarations, Representations and Warranties of the Supplier

- 4.1 Supplier specifically declares, represents and warrants that it has the know-how, ability, expertise, facilities, resources, financial resources, licenses, permits and all that is required and necessary to undertake the obligations set forth in this Agreement, including, *inter alia*, the provision of the Goods in accordance with the terms set forth herein.

- 4.2 Supplier has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action of Supplier, and no other corporate proceedings on the part of Supplier are necessary to authorize this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Supplier and constitutes a valid, legal and binding agreement of Supplier, enforceable against Supplier in accordance with its terms.
- 4.3 No Conflict - No actual or potential conflict of interest or unfair competitive advantage as to ISR exists with respect to Supplier's acting hereunder, and Supplier shall not engage in any contractual relationship that may cause such conflict of interest or unfair competitive advantage to exist.
- 4.4 No Litigation or Impediment. There are no (i) litigation that is currently in effect or threatened, against Supplier, which would challenge the authority of Supplier to enter into this Agreement or to carry out its obligations under this Agreement, or (ii) impediment, whether legal or stemming from a prior or simultaneous commitment made by Supplier, or any other impediment of whatever nature, which might prevent Supplier from entering into this Agreement or hinder the performance of any or all of its obligations hereunder.
- 4.5 Supplier's Examination and Evaluation:
- 4.5.1 Supplier has examined all documents pertaining to the Tender, this Agreement, in particular the Technical Specifications, as well as all other documents comprising the Agreement, and is satisfied with regard to the data, specifications, terms and conditions under which the Works shall be designed, manufactured, assembled, integrated, tested, supplied and delivered to ISR, the execution of the Works required for the provision of the Works as well for the fulfillment for any and all obligations under this Agreement;
- 4.5.2 Supplier has evaluated (independent of, and without relying on, any information or data provided by ISR) any and all other factors that may be deemed to affect the carrying out of its obligations under this Agreement, including but without limitation technical risks and environmental influences, and any other risk involved therewith, and such other conditions that may be expected to affect the progress or completion of the Works in accordance with this Agreement, and has reasonable grounds to believe and does believe that such performance is feasible and practicable under the terms and conditions stated herein;
- 4.5.3 Supplier has examined and is fully satisfied with all of the information provided to it by ISR, including ISR's rules and procedures;
- 4.5.4 Supplier shall not be entitled to any payment or compensation other than

as set forth herein and shall not make any claim for additional payment from ISR on the grounds of any misunderstanding or misapprehension in respect of any matter which a reasonable and expert supplier of a Works 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 Works, 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.

- 4.6 Supplier accepts that it bears the risk in relation to any information provided (or not provided) by ISR or on its behalf to Supplier (notwithstanding that Supplier was unable to verify the accuracy of such information). Supplier confirms that any attachments to this Agreement and any documents provided to it by ISR are provided strictly on an "AS IS" basis.
- 4.7 Compliance with Applicable Law - Supplier is aware and has knowledge of all legal requirements prevailing in the State of Israel that are to be followed for the execution of the Works. Without derogating from any provision herein, 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).
- 4.8 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 Supplier. Supplier will not have the authority nor will it represent that it has the authority to assume or create any obligation, expressed or implied, on behalf of ISR.
- 4.9 All Works of Supplier shall be performed in strict compliance with ISR's safety regulations and any other applicable law pertaining to safety at work, as may be in force from time to time. Supplier shall immediately report to the IPM the occurrence of any accident in connection with the execution of the Works. Supplier shall also report any such accident to the relevant competent authority whenever such report is required, and in any case, register same in the Works log.
- 4.10 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 Works and any other equipment and/or infrastructure of ISR.

- 4.11 The Works shall meet the applicable environmental standards in accordance with Israeli law.
- 4.12 Inspection, examination, rejection or approval with no objections by ISR of finished or unfinished Works or of materials or components shall neither relieve nor derogate from Supplier's obligation to execute and complete the Works in strict accordance with the requirements of this Agreement, or impose any liability or responsibility on ISR.
- 4.13 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, which ISR and/or any of the above persons and entities may incur arising out of, incidental to, or connected with any defects and/or faults in the Goods and/or the Works (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.
- 4.14 Waiver of Lien Supplier. Supplier hereby waives for the moment of Final Acceptance any possessory lien, mechanic's lien or similar possessory or retention right (in Hebrew: "זכות עיכבון") and preservation of ownership (in Hebrew: "שימור בעלות") (collectively, "Retention Rights") against ISR with regard to the Goods, Works, including, but not limited to, the items of the Works that are in the possession of Supplier in Supplier's facilities or which are in the possession of Subcontractors. Supplier represents and warrants that the consideration to be paid by ISR under this Agreement includes ample financial provisions concerning the waiver by Supplier of all Retention Rights with regard to the Works, and the payments to be made by Supplier to its Subcontractors contain ample financial provisions for the insertion of a clause requiring a similar waiver by said Subcontractor in connection with the Works.

5. Term of Agreement

- 5.1 The term of this Agreement shall be for five (5) years from the Effective Date and/or the end of the Warranty Period. Whichever is longer (the "**Agreement Period**").
- 5.2 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 five (5) years and/or the end of the Agreement Period, whichever is longer (the "**Option Period**").

- 5.3 The terms and conditions of this Agreement shall continue to apply *mutatis mutandis* to the Option Period. In the event that ISR wishes to exercise this option, it shall notify Supplier in writing at least sixty (60) days prior to the end of the Agreement Period.

6. Purchase Requirement

- 6.1 Subject to the Supplier's fulfillment of all of its obligations pursuant to this Agreement, ISR intends to purchase from time to time the Goods by issuing a written Purchase Order duly signed by ISR all on a non-exclusive basis ("**Purchase Order**"):
- 6.2 The time of issuance of Purchase Orders, the number of Purchase Orders issued and the quantity and type of the Goods in each Purchase Order shall be subject to ISR's discretion and Supplier hereby waives any claim and/or demand against ISR including for loss of income and/or profits.
- 6.3 Additionally, during the Agreement Period, ISR, in its sole discretion, shall have the option (but shall not be obligated) to purchase from the Supplier similar goods not specified in the Technical Specifications ("**Additional Goods**"). The relevant terms and conditions detailed in this Agreement, including its Appendices, shall apply, *mutatis mutandis*, to the Additional Goods. Price of the Additional Goods shall be negotiated in good faith between the Parties based on the Goods Price.

7. Supplier's Obligations

- 7.1 Without derogating from any of the Supplier's obligations in accordance with this Agreement, the Supplier hereby undertakes to manufacture and supply, during the Agreement Periods, all Goods according to the Technical Specifications, common railway practices and any applicable standards, in accordance with the terms and conditions detailed herein.
- 7.2 The Supplier shall supply the Goods in accordance with the standards set forth by ISR in the Technical Specifications and/or this Agreement. All Goods shall be new, of high standard and quality, free of, and not reported by third parties to suffer from, defects in design, material or workmanship, and shall perform in accordance with all of the requirements of this Agreement. All calculations, designs, integration and drawings related to the Goods shall assure the reliability, efficiency, competency as well as the functionality of the Goods (once installed) to ISR's fullest satisfaction.
- 7.3 This Agreement is non-exclusive and ISR, in its sole discretion, may acquire similar or identical Goods from any third party at any time, in addition to or in place of, the Goods it acquires from Supplier. Without derogating from the

Supplier's obligations hereunder, ISR shall be entitled at any time to purchase the Goods either directly from Supplier or from any third party.

- 7.4 Nothing in this Agreement shall derogate from any of the rights, options or remedies of ISR under any law.

8. Purchase and Order of the Goods

- 8.1 Each Order for the Goods shall be sent by email to the Supplier Representative and shall include the following information:
- a) ISR's Order number;
 - b) The quantity and description of the Goods ordered;
 - c) The place of delivery of the Goods (which shall be at the Site unless specified otherwise in the Order).
- 8.2 Upon receipt of an Order placed by ISR, the Supplier shall acknowledge receipt of such Order by e-mail to ISR, to the IPM, within three (3) Business Days.
- 8.3 ISR's Order number shall be noted on all correspondence between the parties regarding such Order.

9. Terms of Delivery and Delivery Time of the Goods

- 9.1 Delivery of Rails
- 9.1.1 Delivery of the Rails shall be DAP at Site – for Rail, provided however that the Supplier shall extend its DAP responsibilities to include the unloading of the Rails on top of ISR's flat wagons, including without derogating from the generality of the aforementioned the following:
 - 9.1.1.1 The Supplier shall provide the equipment required for the unloading of the Rails, including, without derogating from the generality of the aforementioned, cam-locks in good condition which have successfully completed safety inspection;
 - 9.1.1.2 The Supplier shall provide the manpower required for the unloading of the Rails and for the supervision of the unloading process.
 - 9.1.1.3 The Supplier shall supply the Rails arranged on wooden blocks (sections 10 [cm] X 10 [cm] and length of minimum 250 [cm]). At least 1000 wooden blocks per shipment. The wooden blocks shall be provided to ISR for the storage of the Goods at ISR's facilities.
 - 9.1.1.4 The Supplier shall be responsible to supervise the unloading of the Rails until completion of the unloading;
 - 9.1.1.5 The estimated unloading time is up to five (5) discharging terms;
 - 9.1.1.6 It is hereby clarified that the Acceptance of the Rails is conditioned upon the unloading of the Rails at Site – for Rails placed on top of ISR's flat wagons, provided that the Rails are ready for full operational use by ISR.

9.2 Delivery of Goods, excluding the Rails

9.2.1 The terms of supply and delivery of the Goods, excluding Rails shall be DAP at Site – for Good excluding Rails, and subject to the expressed terms and conditions defined herein in this Agreement (the "**Delivery Terms**").

9.3 The time of delivery for the supply of the Goods shall not exceed three (3) months DAP at the Site from the issuance of the purchase order issued under this Agreement ("**Delivery Time**").

9.4 Upon receipt of a Purchase Order by email, Supplier shall confirm via email receipt of the Purchase Order to ISR's contact person. An original document of such confirmation shall be sent to ISR via air mail.

9.5 The Parties' contact persons are as follows, or any replacement contact persons as notified in writing by one Party to the other:

For ISR:

_____ Israel Railways Ltd.

Address:

Telephone:

E-mail:

("IPM")

For the Supplier: _____

("SPM")

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

9.6 The Supplier will endeavor to furnish a secured electronic mail service or other equivalent means, in accordance with ISR safety requirements, which will be used by both Parties for the purpose of ordering procedure, requests, queries, reports etc.

9.7 The following original documents will be supplied by Supplier to ISR:

- 9.7.1 Commercial invoices. The invoice/s shall include a clear reference to this Agreement, the amount, part number (inclusive of serial number), if any, quantity, delivery note number, shipping date, Supplier's company registration number, HS classification number of the goods and ISR's order number for the goods;
 - 9.7.2 Original Certificate of Origin and Non-Manipulation Certificate, if required;
 - 9.7.3 Bill of Lading - issued in ISR's name;
 - 9.7.4 Packing Lists;
 - 9.7.5 Any and all other documentation necessary to release the WORKS and/or any part thereof from customs in an expeditious manner and to facilitate payment, e.g. the documents that will enable ISR to clear the WORKS and/or any part thereof through customs and which will enable ISR to make payment in foreign currency in accordance with the applicable Israeli law.
- 9.8 Original copies of all of the above mentioned documents **must arrive** at ISR's Rolling Stock Division at least **five (5) calendar days before** the arrival of the ship delivering the WORKS or any part thereof to Israel. In addition, copies of all of the above mentioned documents shall be sent to ISR by E-mail simultaneously with the delivery of the originals. The above mentioned documents **must** be forwarded solely in ISR's name and shall state ISR's exact name.
- 9.9 Passage of Title
- 9.9.1 The ownership and title to the Goods and any part thereof shall fully pass to ISR free and clear of all security interests, liens, attachment, encumbrances and any other rights or claims of any kind of any third party, upon the date of issuance by ISR of the Site Final Acceptance Certificate for each of the Goods at ISR Sites. The passing of title to ISR and the vesting of ownership rights shall be without prejudice to any right that may accrue to ISR under this Agreement.
 - 9.9.2 ISR shall bear no responsibility for any Works performed or materials, components or equipment used by Supplier or deposited with any Subcontractor, including such materials, equipment or Works being stored or that have been placed at any Site and which are lost, stolen, damaged, destroyed or otherwise fail prior to Acceptance Certificate. Supplier shall be solely responsible to protect completely and preserve entirely the Goods and any related Works, components, material and equipment until the Acceptance.

10. Inspection and Acceptance of the Goods

- 10.1 ISR, in its sole discretion, shall have the right (but not the obligation) to have any or all of the Goods inspected in order to ensure that such Goods are satisfactory and in compliance with the Technical Specifications and the terms of this Agreement.
- 10.2 ISR, in its sole discretion, may elect to have such inspections carried out by ISR's engineering inspectors or by any third party including but not limited to on Supplier's facilities and/or any of its Subcontractors' manufacturing plant and/or Supplier and Subcontractors' Laboratories and/or at Site, provided however that the costs related to such inspections will be borne by ISR.
- 10.3 If an inspection reveals that any item of Goods does not comply with the Technical Specifications or if any of the materials or components is discovered to be defective or inferior in quality, ISR may reject the said Goods.
- 10.4 If ISR finds the inspected supplied Goods to be satisfactory and in compliance with the requirements in the relevant Technical Specifications, ISR shall accept such Goods and notify Supplier of the same in the form detailed in **Appendix D** ("**Acceptance Certificate**").

For avoidance of any doubt and without derogating from the above Acceptance Certificate shall not be granted unless Supplier has provided ISR with respect to each Purchase Order all documents and certificates detailed in the Technical Specifications.

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

11. Liquidated Damages

- 11.1 Without prejudice to any other relief or remedy available to ISR under this Agreement or under law, in the event that the delivery of the Goods or any part thereof is delayed beyond the specified Delivery Time and/or in the event of any other delay in fulfilling any undertaking of the Supplier pursuant to this Agreement, the Supplier shall pay ISR Liquidated Damages in the sum equal to one-half percent (0.5%) of the value of the Goods 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 relevant Purchase Order.
- 11.2 The Liquidated Damages in this Agreement have been determined after due consideration of the damages the parties anticipate that ISR will suffer under the specific circumstances to which each specific type of liquidated damage apply, and therefore they shall not be regarded as a penalty. Payment of the Liquidated Damages shall not be conditioned on ISR having to present evidence of any loss.

12. Warranty

- 12.1 The Goods shall be fully warranted by the Supplier for a period of five (5) years starting on the day that ISR has indicated the Acceptance of the Goods in writing (the “**Warranty Period**”).
- 12.2 During the Warranty Period, the Supplier shall bear full responsibility and undertakes to remedy and fully compensate ISR, at its own expense for any and all damage or loss to the Goods due to faults such as, but not limited to, faulty design, faulty workmanship, faulty dismantling for sea and land conveyance, faulty materials or components, and other faults in the accepted Goods whether made by the Supplier or any of the Supplier’s sub-contractors, and whether arising or negligent production.
- 12.3 For any fault or defect attributed to the Goods within the Warranty Period, the Supplier shall, at his own expense and without delay, immediately replace the damaged Goods to the satisfaction of ISR, and all costs related to such replacement, including, but not limited to, costs related to transportation, dismounting and mounting, etc. shall be borne by Supplier.
- 12.4 Without derogating from the aforesaid, the Supplier is obliged to remedy the fault and/or defect and/or damage to the Goods within thirty (30) Business Days from the day the damage report was communicated to it.
- 12.5 The Supplier shall do its best efforts whatsoever, in order to shorten the delivery time of the replaced Goods.
Without derogating from the aforesaid, the Supplier is obliged to remedy the fault and/or defect and/or damage to the Goods within sixty (60) Days from the day the damage report was communicated to it, repair and replace with new Goods under Delivery Terms (the “**Time of Repair**”). Delay in Time of Repair shall entitle ISR for liquidated damages of 450 Euro per day, without derogating from its other rights under law and Section 10 above shall apply, *mutatis mutandis*, on such late delivery.

13. Consideration

- 13.1 The consideration payable for the manufacture and supply of the Goods including all ancillary works, warranty and equipment as required for the delivery, loading, unloading, stuffing or as otherwise required for fulfillment of the Supplier's obligations under this Agreement in accordance with the terms and conditions thereof, to be paid by ISR to Supplier, shall be as set forth in **Appendix B** (collectively hereinafter referred to as: the “**Goods Price**”). {*Prior to signing the Agreement, this Section shall be amended to reflect the Goods the Supplier is required to supply in accordance with the outcome of the Tender*}
- 13.2 Without derogating from Section 13.1, it is hereby clarified that Supplier shall bear and pay (by way of reimbursement to ISR where applicable) all taxes, fees, customs, duties, levies, charges (including bank charges and commissions), and all other expenses relating to, or in connection with the manufacture, exportation, supply, delivery of the Goods, including but not limited to all types of importation and custom duties and Works, such as transportation costs, customs agents’ fees, purchase tax (in Hebrew "Mas Kniya" or "מס קנייה"), Israeli customs duties, port handling fees (in Hebrew "Dmei Nitul" or "דמי ניטול"), port infrastructure fees (in Hebrew "Dmei Tashtit" or "דמי תשתית"), cleaning of the containers, unstuffing and unloading of the containers, etc. Any portage and

local forwarding agent fees and Israeli customs duties, if applicable, shall be considered as part of the Goods Prices and shall be borne solely by Supplier.

- 13.3 Notwithstanding any other provision herein, Israeli Value Added Tax, if applicable to the provision of any of the Goods, shall be borne by ISR.
- 13.4 In the event that ISR shall be required to pay any of the payments related to import and release from customs, ISR shall charge the Supplier accordingly (excluding Israeli Value Added Tax).
- 13.5 The Goods Prices include any sum which the Israeli Tax Authorities require to be withheld at source. The amounts required by the applicable law to be withheld at source by the Israeli Tax Authorities shall be deducted from the Goods Prices, and shall be paid directly to the Israeli Tax Authorities.

14. Terms of Payment

- 14.1 One Hundred Percent (100%) of the Goods Price shall be paid to Supplier within sixty (60) calendar days following the issuance of an Acceptance Certificate for the Goods under a Purchase Order, provided that Supplier has provided ISR at least thirty (30) calendar days prior to the payment with all the following:
 - 14.1.1 an invoice in the amount of the Goods Price Payment; and
 - 14.1.2 an Acceptance Certificate dully signed by ISR for the Goods.
 - 14.1.3 the Warranty Guarantee as defined in Section 17 below.
- 14.2 Payments under this Agreement shall be made to the Supplier by means of a bank transfer to the Supplier's bank account as specified in the Supplier's Bank Account Form attached hereto as **Appendix C**.

15. Quality Management System

During the Agreement Period, Supplier must remain certified in accordance with ISO 9001 as may be updated from time to time and/or equivalent standards and shall provide ISR with evidence thereof. In any event, Supplier shall immediately notify ISR if the said certification is suspended and/or canceled and/or not continued as soon as practicable and in any event within no more than seven days from such event.

16. Insurance

- 16.1 Without derogating from any of the Supplier's responsibilities and liabilities under this Agreement and/or under the Applicable Law, the Supplier shall maintain, at its own expense through a reputable and legally licensed Israeli insurer or a non-Israeli insurance company whose rating is at least “-A” according to the S&P and/or AM Best rating, at all times for as long as any

liability under this Agreement may exist, insurance policies as following (hereinafter: “**Supplier's Insurance Policies**”):

16.1.1 **Property Insurance** covering any loss or damage arising out of, or caused by any risk in respect of the manufacturing and/or supply of the Goods. The sum insured under the said policy shall reflect the full replacement value of the completed manufactured Goods. 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 shall not apply in favor of a person who has maliciously caused the damage. The Supplier undertakes that in respect of loss or damage to the Goods, the policy shall contain a clause stating that the right to receive indemnity payments is reserved solely to ISR and this by irrevocable designation. The policy contains a “Loss Payee” clause on behalf of ISR (other than if ISR instructs otherwise).

16.1.2 **Marine "All Risk" Insurance** against any loss or damage to the Goods, arising out of, in course of, or caused by any risk in respect of the transport of the Goods.

The policy shall apply from the time of moving the Goods from the Supplier' warehouses / premises until arrival within the Site and vice versa, including loading and unloading, temporary and extended storage and all domestic inland and/or intermediate transits everywhere in the world (including within Israel) irrespective of the terms of sale. Settlement of claims will be made at 110% of the Goods DAP value. The Supplier undertakes that in respect of loss or damage to the Goods, the policy shall contain a clause stating that the right to receive indemnity payments is reserved solely to ISR and this by irrevocable designation. The policy contains a “Loss Payee” clause on behalf of ISR (other than if ISR instructs otherwise).

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 shall not apply in favor of a person who has maliciously caused the damage.

16.1.3 **A worldwide Third Party Liability Insurance**, in the joint names of ISR and the Supplier subject to a "Cross Liability" clause, with a limit of liability not less than €5,000,000 per occurrence and in the aggregate for an annual period of insurance, covering any liability (including Product Liability) of the Supplier for any loss or damage derived from the execution of this Agreement and/or from any act or omission of Supplier and/or whoever act on its behalf.

16.2 The Supplier's Insurance Policies shall be primary and precedent to any of ISR and/or the Israeli Government’s insurances and/or the IPM, and the

Supplier's insurers shall waive their rights of contribution from any of ISR and/or the Israeli Government and/or the IPM's insurers with respect to any damage covered under the Supplier's Insurance Policies.

- 16.3 The Supplier shall refrain from canceling the Supplier's Insurance Policies and/or from reducing their scope. The Supplier further undertakes to notify ISR of any situation of cancellation and/or reducing the scope of any of the Supplier's Insurance Policies, sixty (60) days before the date of occurrence of such situation.
- 16.4 The Supplier represents and warrants that it shall not have any claims, demands and/or actions against ISR and/or the Israeli Government and/or the IPM and/or anyone acting on their behalf, concerning damage to its property or other property used by the Supplier and/or those acting on its behalf in connection with this Agreement. The foregoing shall not apply for the benefit of anyone who caused damage with malicious intent.
- 16.5 The Supplier waives and shall have no claims or demands of any kind against ISR and/or anyone on its behalf, with respect to the content and/or extent and/or coverage of the Supplier's Insurance Policies, and the Supplier hereby confirms that it shall be prevented from raising any such claim or demand in this regard. For the avoidance of doubt, it is agreed that the Supplier's Insurance Policies, including the limits specified herein, are stated as a minimal demand imposed on the Supplier which does not exempt the Supplier from any liability in accordance with this agreement and/or the Applicable Law. The Supplier is encouraged to further scrutinize its exposure to liability and to add and/or increase the types and scope of insurance coverage.
- 16.6 The Supplier undertakes to indemnify ISR and/or the Israeli Government for any amount incurred by ISR and/or the Israeli Government 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 the Supplier's Insurance Policies.
- 16.7 The Supplier alone is responsible for payment of premiums and deductibles stated in the Supplier's Insurance Policies. These amounts can be offset by ISR from any amount due to the Supplier in accordance with this Agreement.
- 16.8 The Supplier is required to notify ISR immediately of any event which is likely to give rise to a claim under the Supplier's Insurance Policies, as well as to cooperate with ISR as required in order to obtain settlement of any insurance claim under the Supplier's Insurance Policies.
- 16.9 It is clarified and agreed that insurance payments shall not derogate from the Supplier's liability under the Agreement and/or under the 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.

16.10 If, during the Supplier's Insurance Policies period, any changes occur to the value of the Goods, for any reason, the Contractor is required to immediately update the sum insured under the Property Insurance Marine "All Risk" Insurance as stated in clauses 16.1.1 and 16.1.2 above.

16.11 As a precedent condition precedent to the first payment under this Agreement, Supplier shall furnish a signed certificate from its insurers stating:

"The insurance policies required by Agreement No_____ between ISR and the Supplier are in full force and effect. We hereby confirm that the right to receive indemnity payments under the Property and Marine "All Risk" insurances stated in clauses 16.1.1 and 16.1.2 of the Agreement is reserved solely to ISR and this by irrevocable designation. Additionally, the policy contains a "Loss Payee" clause on behalf of ISR".

16.12 Without derogating from the duty to provide the insurance certificate as detailed in section 1.11 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.

17. Performance and Warranty Guarantee

17.1 To secure the punctual, complete and entire performance of all of Supplier's obligations under this Agreement, Supplier will furnish the Warranty Guarantee (collectively, the "**Guarantee**"), all as specified in this Section below. Guarantee shall be issued by a first class bank approved in advance by ISR.

17.2 No later than fourteen (14) Business Days following the date of the Purchase Order, Supplier shall furnish ISR with an irrevocable autonomous Guarantee, approved in advance by ISR and issued in the form attached hereto as **Appendix E** in the amount equal to 1,000,000 Euro valid until two (2) months following the end of the Warranty Period for the last Goods supplied under this Agreement. Until Supplier shall have issued the Guarantee as per the above, the Bid Guarantee shall serve as the Guarantee for any and all purposes.

17.3 Guarantee shall be in the relevant form for such Guarantee attached as **Appendix E** and shall be denominated in Euros only. Guarantee 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.

- 17.4 Except as otherwise specified in this Agreement, the timely submission of Guarantee to be furnished by Supplier to ISR under this Agreement is considered pre-requisites for ISR's execution of any payment due to Supplier under this Agreement.
- 17.5 Supplier shall maintain the Guarantee valid through their respective times as stipulated in this Section. If sixty (60) days prior to the expiration of Guarantee, Supplier has not completed all of the respective obligations to be performed during the time period secured by such Guarantee, or if such period has been extended, 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.
- 17.6 Collection on a Guarantee or any part thereof by ISR shall not derogate from the right of ISR to terminate this Agreement, nor from its right to any remedy that may be available to it under any applicable law and/or agreement or relieve Supplier of any of its liabilities and undertakings under this Agreement, including its liability to indemnify ISR.

18. Termination

- 18.1 ISR, in its sole discretion, may terminate this Agreement upon the provision of two (2) months written notice to Supplier for any reason including for contenance.
- 18.2 ISR, in its sole discretion, may immediately terminate this Agreement if Supplier commits a fundamental breach hereof and fails to remedy such breach within thirty days of receipt of written notice of such breach.
- 18.3 This Agreement may be immediately terminated by ISR by written notice upon the occurrence of any of the following events to or in connection with Supplier:
- 18.3.1 Voluntary or involuntary bankruptcy (liquidation or reorganization), or receivership or commencement of a similar insolvency proceedings;
 - 18.3.2 Cessation of business operations;
 - 18.3.3 Election to dissolve or wind-up business;
 - 18.3.4 Sale of all or substantially all of its assets as would cause Supplier to be unable to fulfill its obligations under this Agreement;
 - 18.3.5 Supplier no longer has ISO 9001 and/or equivalent certification.

19. Rights and Obligations Upon Termination, Cancellation or Expiration

19.1 Upon the termination, cancellation or expiration of this Agreement for any reason:

19.1.1 ISR shall not be liable to Supplier for any claim, suit, demand or cause of action that has arisen or may arise, for any indemnification, compensation or any other payment for any reason, including by way of example only, consequential or incidental damages of any kind, alleged lost profits or commissions, lost income, damage to reputation, expenditures, investments, costs of arranging alternative lines of business, unjust enrichment, commitments, built-up goodwill or on account of any reason or cause whatsoever, arising out of or in relation to the termination, cancellation or expiration of this Agreement.

19.1.2 ISR shall be entitled to direct, consequential and/or incidental damages in the event of a fundamental breach of this Agreement by Supplier.

19.1.3 Should ISR, in its sole discretion, so demand, Supplier shall complete any outstanding Orders for the provision of any of the Goods.

20. Force Majeure

20.1 Neither Party shall be liable for any delay in the performance of this Agreement, if such delay is, directly or indirectly, caused by, or arises from, an impediment beyond the control and without fault or negligence of the party 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 Leg Lights ("**Force Majeure**"). The above does not extend to any contingencies stated above affecting Supplier's Subcontractors.

20.2 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.

21. Language

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

22. Applicable Law and Settlement of Disputes

22.1 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.

22.2 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.

22.3 Any dispute in connection with this Agreement including its validity or interpretation shall be exclusively referred to the competent court located in Tel Aviv in 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.

23. Miscellaneous

23.1 **Waiver of Lien**. Supplier hereby waives any possessory lien, mechanic's lien or similar possessory or retention right (in Hebrew: "זכות עיכבון") and preservation of ownership (in Hebrew: "שימור בעלות") (collectively, "**Retention Rights**") against ISR with regard to the Goods, Works including, but not limited to, the items of the Works that are in the possession of Supplier in Supplier's workshops or which are in the possession of Subcontractors. Supplier represents and warrants that the consideration to be paid by ISR under this Agreement includes ample financial provisions concerning the waiver by Supplier of all Retention Rights with regard to the Works, and the payments to be made by Supplier to its Subcontractors contain ample financial provisions for the insertion of a clause requiring a similar waiver by said Subcontractor in connection with the Works.

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

23.3 **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.

23.4 **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.

- 23.5 **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).
- 23.6 **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.
- 23.7 **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.
- 23.8 **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 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: **CFO**

Printed Name:

Signature:

Title:

Printed Name:

Signature:

Title:

Printed Name:

Appendix A
Technical Specifications

Appendix B
Consideration

Appendix C
Supplier's Bank Account Form

PART A – Supplier's Bank Details

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

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

Bank Account No.: _____

Swift Code: _____

IBAN Code: _____

Branch Number: _____

Bank Name: _____

Bank Address: _____

Signature: _____

Name: _____

Title: _____

Date: _____

Signature: _____

Name: _____

Title: _____

Date: _____

PART B - Certificate of Authorization

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

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

Signature and stamp: _____

PART B - Certificate of Authorization

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

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

Signature: _____

Name: _____

Title: _____

Stamp: _____

Appendix D
Acceptance Certificate

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

From:
Israel Railways Ltd.
Yoseftal 1, Lod,
7136801, Israel

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

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

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

Signed: _____ Israel Railways Ltd.

Name

Date

Confirmed:

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

Name

Date

Appendix E

Form of Performance and Warranty Guarantee

Israel Railways
Haifa East Station
1 Hativat Golani Street
P.O. Box 1481
Haifa, Israel

Re: Guarantee No. _____ (“Performance and Warranty Guarantee”)

Whereas _____ (“**Supplier**”) and Israel Railways Ltd. (“**ISR**”) entered into an Agreement No. _____ on _____ (the “**Agreement**”) for the supply of Rails (the “**Goods**”):

Now, we _____ (“**Guarantor**”) hereby irrevocably Guarantee the immediate payment, on first demand, to ISR of the sum of _____ Euro in the event that Supplier has not fully complied with all of its obligations under the Agreement, including its warranty obligations.

This Guarantee shall be valid and remain in force for a period of sixty (60) days after the end of the Agreement Period as those terms are defined in the Agreement, or as otherwise extended in writing by ISR, Supplier and Guarantor, and may be drawn down by ISR on one or more occasions up to the aggregate amount referred to above. This Guarantee shall not be revocable by Guarantor or Supplier by notice or otherwise.

For collecting 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 Supplier or on its behalf or in its name, and a written demand or facsimile notice to Guarantor from an authorized representative of ISR in the following form shall suffice:

Pursuant to Guarantee No. _____ issued by you on _____ [date] on behalf of _____, you are hereby instructed to immediately pay Israel Railways Ltd. the sum of _____ into account no. _____ in Bank _____ (branch _____ in _____, Israel).

Said written notice shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sum(s) under this Guarantee from the Guarantor immediately upon the demand of ISR.

This Guarantee shall be interpreted in accordance with the laws of the Israel, and any proceedings for enforcement shall be brought exclusively before the competent Court of Tel Aviv.

Guarantor