

CONSULTING AGREEMENT No. _____

Made and entered on ____ day of _____ 2019
(the "Effective Date")

Between

ISRAEL RAILWAYS LTD.
Company Number 52-004361-3
of
1 Yoseftal St. Lod, ISRAEL

("ISR")

and

of

("Consultant")

(the "Agreement")

WHEREAS, ISR is interested in acquiring on a non-exclusive basis, professional consulting services, assistance and support in ISR's various railways fields for ISR's _____ [*the specific division shall be completed prior to signing of the Agreement*], as set forth in this Agreement and as set out in the attached Annex A; and

WHEREAS, Consultant was awarded the winning bid in Tender No. 41905 conducted by ISR for consulting services in the field of ISR's _____ [*the specific division shall be completed prior to signing the Agreement*] (the "RFP"), which documents are attached hereto as *Annex E* of this Agreement; and

WHEREAS, the Consultant agrees to provide the Services pursuant to the terms and conditions of this Agreement, and represents that it has the necessary knowledge and experience and is capable of competently and diligently providing all of the Services under this Agreement; and

WHEREAS, the Consultant represents, warrants, confirms and undertakes that it is entitled to enter into this Agreement and to assume all the obligations pursuant hereto, and there is no contractual, legal or other impediment or conflict of interest to its entering into this Agreement and to the fulfillment of all of the Consultant's duties and obligations hereunder; and

WHEREAS, the parties desire to set forth a contractual framework to govern the relationship between the parties;

NOW THEREFORE, it is declared, covenanted and agreed between the parties as follows:

1. HEADINGS, APPENDICES AND PREAMBLE

1.1 The headings in this Agreement are for purposes or reference only and 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 forms an integral and inseparable part hereof:

1.2.1 The general terms and conditions of the Agreement

1.2.2 The following appendices:

1.2.2.1 Annex A - Scope of Services

1.2.2.2 Annex B - Remuneration

1.2.2.3 Annex C1 - Certificate of Completion of Milestone

1.2.2.4 Annex C2 - Certificate of Completion of Task Order

1.2.2.5 Annex D - Confidentiality Undertaking

1.2.2.6 Annex E - Consultant's personnel

1.2.2.7 Annex F - RFP Documents

1.3 Order of Precedence.

1.3.1 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 RFP, the following order of precedence will apply:

- This Agreement, including the Consideration Appendix, but excluding the other attachments hereto;
- The other Appendixes to this Agreement;
- The other RFP documents (excluding **Appendix B** to the RFP);
- Consultant's proposal to the RFP.

1.3.2 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 interests of ISR under the circumstances, as ISR shall determine at its sole discretion, shall apply.

1.4 The preamble and appendices attached to this Agreement and accurate representations of the parties hereto constitute an inseparable part of and are conditions for the validity of this Agreement.

2. **Definitions**

The following definitions shall apply to this Addendum:

- 2.1 "**Agreement**" – shall mean this Agreement including all appendices attached hereto.
- 2.2 "**Agreement Period**" – shall have the meaning ascribed to it in Section 3.
- 2.3 "**Applicable Law**" - means any Israeli or foreign statute, law, ordinance, rule, regulation, order, writ, injunction, judgment, decree or other requirement of any governmental entity existing as of the date hereof or at any time during the term of this Agreement applicable to ISR, Consultant and/or the Services.
- 2.4 "**Business Day**" – means any day of the week other than Saturday or Sunday, and excluding official holidays and bank holidays in Israel.
- 2.5 "**Consultant's Personnel**" – as such term is defined in Section 9 below.
- 2.6 "**Effective Date**" – shall have the meaning ascribed to it in the Preamble to this Agreement. Agreement shall not come into force unless duly signed by ISR.
- 2.7 "**Scope of Services**" – as such term is defined in Section 6 below.
- 2.8 "**Schedule**" – as such term is defined in Section 5.9 below.
- 2.9 "**Task Order**" – as such term is defined in Section 6.1 below.

3. **TERM**

- 3.1 The term of the Agreement shall be four (4) years from the **Effective Date** (the "**Agreement Period**").

- 3.2 In addition, ISR shall have the option to extend the Agreement Period for additional successive periods of up to a maximum of two (2) years commencing as from the completion of the Agreement Period (the “**Option Period**”).
- 3.3 In the event that ISR wishes to exercise this option, it shall notify the Consultant in writing at least thirty (30) days prior to the end of the Agreement Period or relevant Option Period, as applicable.
- 3.4 The provisions of this Agreement shall apply, mutatis mutandis, to the Option Period.
- 3.5 It is hereby clarified that in the event that a Task Order issued under this Agreement, as that term is defined herein below, has not been completed within the Agreement Period or the Option Period, the terms and conditions of the Agreement shall apply, *mutatis mutandis*, until completion of the relevant Task Order.

4. AUTHORIZED REPRESENTATIVES

- 4.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by ISR or by the Consultant may be taken or executed by the parties’ authorized representatives.
- 4.2 ISR’s authorized representative or any delegated representative thereof shall have the powers and authority delegated to him/her as provided in this Agreement (“**ISR’s Project Manager**” or “**IPM**”).

ISR’s Project Manager:

Mr. _____

Tel: _____

Fax: _____

Email: _____

[Note: ISR may appoint several IPMs. One for each scope of services].

- 4.3 The Consultant’s authorized representative shall have the powers and authority delegated to him/her as provided in this Agreement (“**Consultant’s Project Manager**” or “**CPM**”):

Consultant’s Project Manager:

Name: Mr. _____

Title: _____

Address: _____

Tel: _____

Fax: _____

Email: _____

5. **Consultant's Declarations and Representations**

- 5.1 **Authority Relative to this Agreement.** Consultant 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 Consultant, and no other corporate proceedings on the part of Consultant are necessary to authorize the entering into and execution of this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Consultant and constitutes a valid, legal and binding obligation of Consultant, enforceable against Consultant in accordance with its terms.
- 5.2 **No Conflict.** No actual or potential conflict of interest or unfair competitive advantage exists with respect to Consultant's acting hereunder, and Consultant shall not engage in any contractual relationship that may cause such conflict of interest or unfair competitive advantage to exist.
- 5.3 **No Litigation or Impediment.** There is no (i) litigation that is currently in effect or threatened, against Consultant, which would challenge the authority of Consultant 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 Consultant, or any other impediment of whatever nature, which might prevent Consultant from entering into this Agreement or hinder the performance of any or all of its obligations hereunder.
- 5.4 **Consultant Examination and Evaluation.**
Consultant hereby represents and warrants to ISR that:
- 5.4.1 Consultant 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;
- 5.4.2 Consultant has examined and is fully satisfied with all of the information provided to it by ISR;
- 5.4.3 Consultant 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 any grounds whatsoever, including, without limitation, on the grounds of any misunderstanding or misapprehension in respect of any matter which an expert Consultant knew or should have known or on the grounds of any allegation or fact that incorrect information was given to Consultant by any person (subcontractors included), firm or any legal entity which it knew or should have known to be incorrect as an expert Consultant of Services, whether the person, firm or legal entity was employed by ISR or not, or on the grounds of the failure on its part to obtain correct information with regard to the Services;
- 5.4.4 Consultant shall comply with all Applicable Law;

5.4.5 Consultant will fully cooperate with ISR in the implementation of this Agreement and shall, without derogating from the generality of the above, fully cooperate with and provide all necessary assistance to ISR.

5.5 **Discrepancies and Omissions**

5.5.1 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 Consultant from time to time, shall constitute grounds for ending the provision of the Services, for relieving or releasing Consultant of any of its responsibilities, duties, obligations or liabilities pursuant to this Agreement, for cancellation or termination of this Agreement by Consultant or for withdrawal from the Services.

5.5.2 Should any works, matters or things required for the proper execution and completion of the Services be omitted from this Agreement by ISR, ISR shall – upon notice from Consultant 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 Consultant and in what manner and order.

5.5.3 Consultant shall advise ISR in writing, immediately and in any case within no more than fifteen (15) 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 comprising this Agreement.

5.6 **Review and Approval.** Consultant confirms and agrees that it shall apply to receive ISR's written consent, which shall not be unreasonably withheld, 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 Consultant'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, Consultant, with respect to any matter and/or document, including but without limitation, drawings, revision (at all phases), plans, tests or otherwise.

5.7 Consultant shall not have the benefit, whether directly or indirectly, of any royalty on, or of any gratuity or commission in respect of, any patented or protected article or process used in connection with the purposes of this Agreement unless the Parties mutually agree to the contrary in writing.

5.8 While in Israel, the Consultant, its employees and subcontractors shall respect the laws and customs of the country. Consultant shall hold all necessary licenses, permits and approvals necessary for the performance of the Services both in Israel and abroad. ISR shall assist the Consultant but cannot guarantee the time frame for granting the Consultant the necessary visas, licenses and permits and unobstructed access to all sites and locations involved in carrying out the Services.

5.9 **Schedule**

- 5.9.1 Consultant acknowledges that time is of the essence for the performance of Services and hereby commits to perform the Services in the schedule detailed in each Tasks Order ("**Schedule**").
 - 5.9.2 Consultant warrants that it acknowledges the Schedule required for completing the Services under this Agreement and will perform the Services in accordance with said Schedule.
 - 5.9.3 Consultant is obliged to constantly monitor the Schedule and must maintain a schedule deadline. Consultant is obliged to ensure conscientiously that these dates are met. This schedule deadline must be passed on to ISR without delay, and on request. With no need for any specific request, Consultant will provide to ISR a quarterly status report on the progress of the Services.
 - 5.9.4 Consultant shall inform ISR immediately if it is in default by more than five (5) Business Days in relation to any aspect of the Schedule, indicating the measures it intends to take to make up for this delay. The costs of such measures shall be borne by Consultant.
- 5.10 Consultant shall submit to ISR written reports and data detailing the status of the Services and all issues relating thereto and/or any other drawings and/or documents and/or designs pertaining to the Services ("Reports"). Reports shall be submitted on a reporting cycle as shall be instructed by ISR. Reports will be provided in the English language only unless required otherwise by ISR.
- 5.11 Reports relating to the status of the Services and all Services provided by Consultant in each Task Order shall be submitted according to the Schedule and/or ISR's Project Manager and shall fully detail all Services provided by Consultant during such term. ISR may request Consultant to advance the submission of the Quarterly Reports. All provisions relation to Reports shall apply to Advance Reports, mutatis mutandis.
- 5.12 Consultant shall not be entitled to make any representations of whatsoever nature in the name of ISR and/or to obligate and/or to represent it obligating ISR and/or to sign in the name of ISR and/or in the name of anyone on its behalf without the prior written approval of ISR, and within the confines of such approval. Without derogating from the above, Consultant shall not be entitled to obligate and/or to represent it obligating ISR and/or to sign in the name of ISR and/or in the name of anyone on its behalf without the prior written approval of ISR in any matter that might affect the consideration to be paid to Consultant.
- 5.13 Consultant shall not be entitled to make any use whatsoever of the name of ISR and/or of the name of its directors or any of its employees and/or anyone on its behalf without receiving the prior written approval of ISR and within the confines of such approval.

6. SCOPE OF SERVICES

- 6.1 ISR hereby engages with Consultant, to provide ISR financial, economic and operational consulting services, in the field of development and maintenance of ISR's _____ [the specific division/s shall be completed prior to signing of the Agreement], all as set out in the attached Annex A attached hereto (the "Scope of Services") and additional consulting services, related to the Services, as set out in Section 6.5 below.
- 6.2 The Services to be performed by the Consultant, including the time frame for the performance thereof, shall be carried out through specific assignment orders issued from time to time by ISR as provided below (the "**Task Order**"), in accordance with the requirements set forth in the scope of services set out in *Annex A* ("**Scope of Services**") and as instructed by ISR. It is hereby clarified that ISR shall be under no obligation whatsoever to obtain all or any part of the above-mentioned Services and may decide not to issue any Task Orders throughout the Agreement Period.
- 6.3 The Services shall be provided in the Consultant's home country, Israel or in other country, as the circumstances shall require and as defined in each Task Order.
- 6.4 **Task Order:**
- 6.4.1 The Task Orders shall set out the specifications and special requests concerning the Services as specified in *Annex A* ("**Task Orders**").
- 6.4.2 All Task Orders will specify the following items:
- a. Details of the Services and specific scope of the work to be carried out;
 - b. Deliverables to be provided (characteristics, reports, maps, etc.);
 - c. Name of ISR coordinator for each Task Order;
 - d. Milestones and Time schedule for each Task Order. Such time schedule shall include, but is not limited to, details relating to the continuity of work, vacation or leave time, transportation requirements both within, and to and from Israel, work location;
 - e. The identities of the experts/technicians who will perform the Services;
 - f. Fees to be paid on the basis set out in Annex B.
- 6.5 **Suspension of work:**
- Without derogating from any of ISR's rights under Applicable Law and/or this Agreement, ISR may, at any time, by written notice to the Consultant require Consultant to suspend the Services, or any portion thereof for any reason whatsoever including delays in the ISR's projects and/or changes in Applicable Law and/or budget deficiencies, etc. ("Suspended Services"). The scope of the Suspended Services shall be subject to ISR's sole discretion and Consultant hereby waives any claim and/or demand against ISR.
- 6.6 **Additional services:**
- Additional consulting services, being services to be provided by the Consultant beyond those specified in the Scope of Services, shall be

performed upon mutual agreement between the parties, in writing in accordance with the daily rates specified in Annex B.

Without derogating from the above-mentioned, Task orders for supervision and/or project-management Task Orders and/or Long term Task Orders (as defined in paragraph 4.6 in the attached **Annex B**), shall be negotiated between the parties on a Task Order basis, based on the daily rates specified in Annex B.

- 6.7 Upon completion of each Task Order, the Consultant shall submit to ISR's Project Manager a signed form evidencing completion of the specific Task Order in the form attached hereto as **Annex C** ("**Certificate of Completion**").

7. ALTERATIONS AND MODIFICATIONS

- 7.1 The parties acknowledge and confirm that the Scope of Services shall be the basis of the Consultant's tasks.

- 7.2 ISR's Project Manager may at any time, by written order, make changes within the Scope of Services to be performed hereunder.

7.2.1 To the extent that such alterations result in an increase or decrease in cost and completion time, such adjustments shall be based, to the extent possible, upon the elements and prices which were taken into account in formulating the pricing and timing for the originally-planned Services.

7.2.2 The Consultant must submit its proposal for the required adjustments within fifteen (15) days from the date of receipt of the IPM's written request. Failure to submit such a proposal shall be deemed to be a waiver of the Consultant's right to do so.

7.2.3 In the event the parties fail to agree to any adjustment under this Section 7.2, the Consultant shall nevertheless be obligated to perform the Services as directed by the IPM in accordance with the written changed Task Order.

8. TERMINATION

- 8.1 ISR may terminate the Agreement, in whole or in part, upon thirty (30) days prior written notice to the Consultant for any reason, including for convenience and without any cause. Upon receipt of such notice, Consultant shall take immediate steps to bring the Services to a close and to reduce expenditures to a minimum. Consultant hereby waives any claim and/or demand ISR for any cost and/or expense and/or loss incurred by ISR for such termination.

- 8.2 Without derogating from its rights under Applicable Law, ISR may terminate this Agreement in the event of a breach by the Consultant of this Agreement which has not been cured within seven (7) days following receipt of a written notice of the breach. In the event that the Consultant does not satisfactorily respond to such notice within seven (7) days, ISR may deem this Agreement as being immediately terminated without the need for further notice.

- 8.3 Consultant may terminate this Agreement in the event of a material breach by ISR of this Agreement which has not been cured within thirty (30) days following receipt of a written notice of the breach provided that ISR has not cured such breach.
- 8.4 Notwithstanding the provision of Section 8.2 above to the contrary, ISR may terminate this Agreement immediately upon the event of a perpetration by the Consultant of a criminal offence, or a breach of trust or impairment to ISR .In the event of termination of this Agreement for any reason whatsoever, the Consultant shall assist ISR with transferring all of the Consultant's activities to any other person or entity chosen by ISR in an orderly fashion without any cost.
- 8.5 Upon termination of any Task Order, subject to the obligation of Consultant to reduce expenditures to a minimum and provided that the Consultant fulfills its obligations under this Agreement, and is not in breach of the Agreement, the Consultant shall be entitled to receive the remuneration due it up to the effective date of termination.
- 8.6 Upon termination of this Agreement, for any reason (including without cause), Consultant shall not be entitled to receive any compensation including but not limited to compensation for loss of reputation, loss of profits and/or income, loss of business and/or any other loss and/or damages. Parties

9. **CONSULTANT'S PERSONNEL**

- 9.1 The Services shall be carried out by the personnel specified in **Annex E** hereof ("**Consultant's Personnel**").
- 9.2 Consultant shall at all times retain full responsibility for the due performance of its obligations hereunder and for the satisfactory completion of the Services.
- 9.3 Consultant shall supervise all services provided by Consultant's Personnel and shall provide Consultant's Personnel any assistance required by Consultant's Personnel and/or ISR so that Consultant's Personnel shall be able to fully provide Consultant's Personnel Services. Without derogating from the above, Consultant shall at all times retain full responsibility for the due performance of its obligations by the Consultant's Personnel and for the satisfactory completion of the Services and shall be liable for any act and/or omission of any of the Consultant's Personnel not in accordance with the terms of this Agreement.
- 9.4 Consultant hereby declares and warrants that all Consultant's Personnel are and shall be at all times qualified and skilled employees.
- 9.5 Without derogating from above, Consultant shall be solely responsible to obtain any permits and authorizations required under Applicable Law with respect to Consultant'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.

- 9.6 For the removal of doubt, in the event that such permits or any of them shall not be obtained: (i) Consultant shall not be entitled to any delay in the Services, and (ii) Consultant shall not be released from any of its obligations, and shall employ for this purpose, subject to Applicable Law, works and/or Services for which such permits are not required. Consultant is aware that receiving such permits may take some time and shall perform all activities to ensure that permits shall be granted on time.
- 9.7 In any case in which ISR shall demand, at its sole discretion, the replacement of the Consultant's Personnel, the Consultant undertakes to take immediate action to replace Consultant's Personnel (as applicable) with any other person holding a position whose identity is approved by ISR, and for such purposes, the Consultant undertakes to present ISR with at least two options for manager / member (as applicable). Such replacement of any of Consultant's Personnel shall take no longer than 14 days.
- 9.8 Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of any of the Consultant's Personnel.
- 9.9 Consultant shall be responsible to obtain and arrange all costs and expenses relating to Consultant's Personnel (including visas and insurance, etc.) unless specifically excluded in Annex B to this Agreement.
- 9.10 ISR's security procedures, as shall be amended from time to time, shall apply to Consultant's Personnel.
- 9.11 Consultant declares that it is solely responsible for the safety of Consultant's Personnel and undertakes to take reasonable care to keep them secure. Should ISR be obliged to compensate any Consultant's Personnel for any damage caused to it during their provision of Services, the Consultant undertakes to indemnify ISR, upon demand, for any amount charged to it as aforesaid.
- 9.12 Consultant shall procure that the personnel devote all of their working time as defined in the Task Orders issued by ISR to the performance of the Services obligations under this Agreement.
- 9.13 Consultant will not replace any of the Consultant's Personnel. If, for any reason beyond the reasonable control of the Consultant, it becomes necessary to replace the Consultant's Personnel, or to add individuals to the Consultant's Personnel, the Consultant shall provide, as a replacement, a person of equivalent or better qualifications. The identity of any substitute must be authorized by ISR in writing and in advance, ISR shall be authorized to reject the identity of such substitute subject to reasonable ground-

10. SUBCONTRACTOR

- 10.1 Consultant will inform ISR within a reasonable time period in advance if any portion of the Services will be performed by a Subcontractor ("Subcontractors"). Appointment of a Subcontractor by Consultant shall be subject to compliance by the Subcontractor with all applicable terms and conditions of this Agreement.

- 10.2 The retaining by Consultant of any Subcontractor for the provision of the Services and/or any part thereof shall be subject to ISR's prior written approval. Notwithstanding the above, it is agreed between the parties that Consultant may engage the services of the SII that shall be deemed as a Subcontractor for all purposes.
- 10.3 If any Subcontractor shall fail to comply with this Agreement, ISR shall have the right to rescind its approval and/or or to instruct the Consultant to perform the relevant Services through another approved Subcontractor, whereupon the Consultant shall immediately stop employing such Subcontractor.
- 10.4 Consultant shall pay all consideration due to the Subcontractors (unless agreed otherwise by ISR) and shall defend and indemnify ISR against any claim and/or demand by any of the Subcontractors against ISR for payment and/or any consideration and/or compensation. Consultant shall procure that all Subcontractors shall have no legal recourse against ISR in any matter.
- 10.5 Consultant's Obligations and Liabilities. 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, any and all Subcontractor, shall not relieve Consultant of its responsibility to ISR in connection with the execution of the Services in accordance with this Agreement or from any liability assumed by or imposed upon Consultant 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 Services executed by any and all Subcontractor, and Consultant shall be fully responsible towards ISR for the acts and omissions of the Subcontractor.
- 10.6 Consultant declares that it is solely responsible for the safety of its Subcontractor and undertakes to take reasonable care to keep them secure. Should ISR be obliged to compensate any Subcontractor for any damage caused to it during their provision of Services, the Consultant undertakes to indemnify ISR, upon demand, for any amount charged to it as aforesaid.
- 10.7 The agreement signed between the Consultant and its Subcontractor which relates to the performance of Consultant obligations under this Agreement shall include all of the following provisions:
- 10.7.1 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 Services 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.
- 10.7.2 Subcontractor shall have no legal recourse against ISR in any matter arising out of or connected with the Services. Without derogating from the generality of the above, Subcontractor shall waive any Retention Right against Consultant and ISR, and will confirm that the payments to be made by Consultant to Subcontractor contain ample financial provisions concerning such waiver by Subcontractor of all Retention Rights.

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

10.8 No Changes in Identity of Subcontractor. Following the approval of any Subcontractor by ISR, no changes in the identity of such Subcontractor shall be made absent ISR's prior written approval.

11. INDEPENDENT CONTRACTOR

11.1 The Consultant shall for all purposes of this Agreement be deemed to be an independent contractor, and shall not be considered in any way or manner an employee, agent or representative of ISR.

11.2 All acts, deeds and omissions of the Consultant and/or its employees, and/or anyone acting on its behalf in performing the Services (including without limitation any of Consultant's Personnel) shall be the sole responsibility of the Consultant as an independent contractor.

11.3 The Consultant undertakes that neither it nor anyone acting on its behalf shall assert any claim or cause of action against ISR in connection with employer-employee relations which may have allegedly existed between the Consultant and ISR, and if it does so, the Consultant shall indemnify ISR upon its first demand for any expense that may be incurred by it in respect of or in connection with a claim as aforesaid, including attorneys fees.

11.4 Consultant (or a Subcontractor, as applicable), is the sole employer of its personnel. Consultant shall be solely responsible and shall bear and pay all payments required from an employer under any Applicable Law, collective bargaining agreement and extension orders, including but without limitation, payment of all salaries (which shall not be less than the minimum salary required under law), vacation payment, sick leave payment, recuperation payment, severance, social security, fringe benefits, and all payments which Consultant (or a Subcontractor, as applicable) is obligated to pay as an employer with respect to such Consultant's (or Subcontractor as applicable) personnel, and Consultant (or a Subcontractor, as applicable) will issue a pay slip to such personnel every month.

11.5 For the removal of doubt, Consultant (or a Subcontractor, as applicable) and any of its/their employees and anyone on its or their behalf shall be prevented from asserting any claim at any time in the future which may result in the imposition on ISR of any of Consultant's (or Subcontractor, as applicable) obligations under this Section, and ISR shall under no circumstances be liable for any payment to which the Consultant's (or Subcontractor, as applicable) personnel may be entitled as a result of employee-employer relations.

11.6 despite the foregoing, any tribunal and/or any other competent authority will determine that this Agreement and/or the performance of this Agreement creates an employer-employee relationship between ISR and any of the Consultant's (or Subcontractor as applicable) personnel and/or that any of the Consultant's (or Subcontractor, as applicable) personnel are entitled to any rights and/or payments as a result thereof, then (i) Consultant shall indemnify and defend ISR from and against all such liabilities, including any expenses

incurred by ISR with respect to such claims; and (ii) without derogating from the generality of subsection (i) above, it is hereby agreed that all payments made to Consultant according to this Agreement, will be reduced by 40%, retroactively as of their payment or grant, and in that case, Consultant will repay ISR any overpayments made by ISR as a consequence of such reduction, adjusted to reflect the change in the CPI from that known when the overpayment was made to that known when the repayment is made.

- 11.7 Consultant declares that it is solely responsible for the safety of its employees /employed/engaged by it in the Services and undertakes to take reasonable care to keep them secure. Should ISR be obliged to compensate any employee employed on Consultants behalf, for any damage caused to them during their Services, the Consultant undertakes to indemnify ISR, upon demand, for any amount charged to it as provided.

12. REPRESENTATIONS AND WARRANTIES OF CONSULTANT

- 12.1 The Consultant undertakes that the Services will be performed faithfully, efficiently, expertly, with due diligence, to ISR's full satisfaction, at high professional standard, in accordance with the accepted professional techniques and practices, and in accordance with ISR's instructions.
- 12.2 Consultant represents and warrants that it has in the past performed similar tasks to those referred to in the Scope of Services, that it is fully capable of performing those tasks in accordance with recognized professional standards, and that it has the know-how, expertise, experience, adequate financial resources and all that is required in connection with such tasks.
- 12.3 All work prepared and submitted by the Consultant shall be the sole and original work of the Consultant, its employees, agents, sub-consultants and representatives.
- 12.4 The Consultant warrants that it acknowledges the time schedule (as shall be specified in each Task Order) required for completing the Services under the Agreement and will perform the Services in accordance with said schedule.

13. INTELLECTUAL PROPERTY

- 13.1 The copyright and other intellectual property rights of all documents prepared by Consultant in connection with the Agreement shall belong exclusively to ISR. Consultant may make copies of such documents but shall not use the contents thereof for any purpose unrelated to the Services without the prior written approval of ISR.
- 13.2 The Consultant agrees that all work undertaken by Consultant for ISR during the period of the Agreement, including without limitation all protocols, processes, documentation, notes, records, reports, inventions, improvements, developments, discoveries, and trade secrets (collectively, the "Work Products") which the Consultant produces in the course of performing the Services hereunder, are and shall be, the sole property of ISR. The Consultant hereby assigns any right and title that he may have by law in such Work Products ISR and undertakes to sign any further deed or document required to perfect such assignment.

- 13.3 Without derogating from the above, ISR may exploit as it sees fit the results of the Services and/or any document provided by Consultant including changing it and/or disclosing it to third parties, without any limitation.
- 13.4 Any assignment of copyright hereunder (and any ownership of a copyright as a work made for hire) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as “moral rights” (collectively “Moral Rights”). To the extent such Moral Rights cannot be assigned under Applicable Law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, Consultant hereby waives such Moral Rights and consent to any action of the ISR that would violate such Moral Rights in the absence of such consent.
- 13.5 Equipment and materials furnished to Consultant by ISR or purchased by Consultant with funds supplied or reimbursed by ISR shall belong to ISR and shall be so marked.
- 13.6 Upon completion or termination of the Services, for any reason, Consultant shall promptly submit and deliver to ISR without any cost all documents, notes and other information or equipment furnished to Consultant by ISR or prepared or designed by Consultant specifically in connection to the Agreement.
- 13.7 Consultant shall be liable for, and shall hold ISR harmless and indemnify it from and against, any claim of infringement of any intellectual property right of third parties contained in documents or other work prepared by it.

14. OBLIGATIONS OF ISR

ISR shall furnish Consultant, without charge and within a reasonable time, pertinent data and information available to it, and shall make reasonable effort in order to assist the Consultant in carrying out its duties under this Agreement. ISR shall decide on all sketches, drawings, reports, recommendations and other matters properly referred to it for decision by Consultant in such reasonable time as not to delay or disrupt the performance by Consultant of the Services under this Agreement.

15. LIABILITY OF CONSULTANT

15.1 Notwithstanding anything contained herein to the contrary, Consultant agrees to indemnify and hold harmless ISR and its directors, officers, and employees from and against all taxes, losses, damages (including direct, indirect or consequential damages) or loss to property of either ISR or third parties, or injuries to or death of persons, including employees of ISR and third parties, of whatever kind caused by, arising out of, incidental to, or connected with the Services, 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 Consultant or Consultant's assistants, employees or agents, (ii) a determination by a court that the Consultant is not an independent contractor, or (iii) any breach by the Consultant or Consultant's assistants, employees or agents of any of the covenants contained in this Agreement. Such responsibility shall include court costs and attorneys' fees, if any, in proportion to the Consultant's share of the liability.

- 15.2 In the event that a competent court has determined that the Consultant is not an independent Contractor as aforesaid in Section ~~15.145.1~~, the Consultant agrees and acknowledges that were the Consultant to have been engaged as an employee of the ISR, the monthly salary that would have been payable to the Consultant would have been based on only forty percent (40%) of the daily fee (excluding VAT) multiplied by the number of hours worked per month and this salary would have been the basis for calculating any statutory social benefits due to the employee.
- 15.3 Should ISR be charged by a court of law to pay any amount to a third party for damages or loss for which the Consultant is responsible, as stated herein, the Consultant shall either reimburse ISR or fully compensate the third party directly, at ISR's option, for any amount which ISR or the Consultant shall be obliged to pay by a court of law as aforesaid, including all the loss and expenses incurred by ISR in that respect. The amount of any such reimbursement shall be regarded as a debt due from the Consultant to ISR under this Agreement. In the event of such a claim being lodged against ISR as aforesaid, ISR shall inform the Consultant about it in writing within a reasonable time thereafter.
- 15.4 ISR does not assume any liability to third persons, nor will ISR reimburse the Consultant for its liability to third persons (including but not limited to the Consultant's sub-consultants, agents, employees and representatives), with respect to loss or damage due to death, bodily, mental or emotional injury or damage to property resulting in any way from the performance of the Services under this Agreement or any subcontract hereunder, and the Consultant alone shall bear the responsibility in any such case.
- 15.5 Consultant's total monetary liability towards ISR arising out of or in connection with this Agreement (whether from provisions of the Agreement or of any Applicable Law) shall be limited to 100% of the Agreement value. In the event that the Consultant's total liability sum as per the above has been fully recovered (whether in one or several events), ISR, at its discretion, shall have the right (in addition to and without derogating from its rights pursuant to the provisions of this Agreement) to terminate this Agreement subject to a fourteen (14) days advance written notice to Consultant. In the event of termination of this Agreement due to Consultant 's breach, the limits of liability of the Consultant under this Section shall be capped not to exceed 150% (one hundred and fifty percent) of the Agreement value.
- 15.6 Notwithstanding the foregoing, the liability of the Consultant towards ISR in connection to this Agreement as described above shall not be limited to the maximum liabilities as provided above solely in the following circumstances:
- 1.1
- 15.6.1 Any liability in respect of personal injury and death, including monetary damages directly incurred as a result of such injury or death;
- 15.6.2 Any liability arising out of fraud, willful misconduct and gross negligence;
- 15.6.3 any liability in respect of loss or damage of any third party, including monetary damages directly incurred as a result of such loss or damage.

15.7

16. INSURANCE

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

16.1.1 **Workers Compensation / Employer's Liability Insurance:** covering liability towards any and all persons who shall be engaged by the Consultant in any duties connected with this Agreement.

16.1.2 **Third Party Liability Insurance:** covering the legal liability of the Consultant and its employees in connection with this Agreement, towards third parties, for physical injuries and/or property damages which may arise as a result of the performance of this Agreement. The limit of liability thereof shall not be less than 250,000 Euro (€) for any one occurrence and in the aggregate for any annual insurance period.

This policy shall be extended to indemnify ISR for its liability due to any act or omission of the Consultant in connection with the services, subject to a "Cross Liability" clause.

16.1.3 **Professional Liability Insurance:** covering the legal liability of the Consultant as a result of any negligent act, error or omission of the Consultant, its employees, agents or other parties that may be engaged by the Consultant in connection with this Agreement arising out of the performance of this Agreement. The limit of liability thereof shall be no less than the following for any one occurrence and in the aggregate for any annual insurance period:

Consultant's Remuneration (Maximum)	Liability Limit (Minimum)
125,000 Euro (€)	250,000 Euro (€)
250,000 Euro (€)	500,000 Euro (€)
1,250,000 Euro (€)	1,000,000 Euro (€)
2,250,000 Euro (€)	2,000,000 Euro (€)
5,000,000 Euro (€)	3,500,000 Euro (€)
Above 5,000,000 Euro (€)	5,000,000 Euro (€)

The Retroactive Date must coincide with, or precede, the commencement of the Agreement;

This policy shall be extended to indemnify ISR for its liability due to any act or omission of the Consultant in connection with the Agreement, subject to a "Cross Liability" clause.

16.2 The Consultant's insurances required under this section are primary and precedent to any of ISR and/or the Israeli Government's insurances, and the Consultant'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 Consultant's insurance policies.

- 16.3 The Consultant shall refrain from canceling the insurance policies and/or from decreasing their scope. The Consultant 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
- 16.4 The Consultant 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 the performing of the services. The foregoing shall not apply for the benefit of any one who caused damage with malicious intent.
- 16.5 The Consultant 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 Consultant 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 Consultant. The Consultant 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 Consultant undertakes to indemnify ISR for any amount incurred by ISR as a result of a violation by the Consultant (and/or any person or entity acting on its behalf) of any of the conditions of its insurance policies.
- 16.7 The Consultant shall be responsible to ensure that any and all Subcontractors working on its behalf shall carry the same insurance policies as mentioned in this section, and that such insurance policies shall include the same waivers required from the Consultant towards ISR and/or anyone on its behalf and/or the Israeli Government.
- 16.8 The Consultant undertakes to provide ISR with a copy of all of its insurance policies, within fourteen (14) days of ISR's first written request.

17. REMUNERATION OF CONSULTANT

- 17.1 The Consultant's total remuneration for providing the Task Orders will be as detailed in **Annex B** attached to this Agreement ("**Task Order Price**").
- 17.2 The prices and fees specified in Annex B include all taxes, fees, duties, licenses, costs and other payments that are to be paid in connection with the Services including the applicable Value Added Taxes ("VAT"). It is clarified that, ISR shall only be liable for any VAT levied on the Services by the Israeli Tax Authorities.
- 17.3 The prices and fees specified in Annex B include any sum which the Israeli Tax Authorities require to be withheld at source. The amounts required by the applicable law to be withheld at source by the Israeli Tax Authorities shall be paid by ISR directly to the Israeli Tax Authorities and shall be deducted from all sums set out in Annex B pursuant to the Agreement, unless the supplier submits to ISR, a formal exemption-approval from the Israeli Tax authorities.

17.4 The sums stated in **Annex B** constitute the final, complete and inclusive price that will be paid to the Consultant for providing the Services, including all of the related staff costs, office expenses, typing of documents, preparation of drawings, blueprints, communications, and mailing and all other costs, expenses and taxes incurred by the Consultant in carrying out the Services, and the Consultant shall not be entitled to any other payment, fee or compensation whatsoever from ISR. Without derogating from the aforementioned, neither the Consultant nor any of its personnel shall accept any trade commission, discount, allowance, indirect payment, or any other consideration whatsoever in connection with or in relation to this Agreement or to the discharge of its obligations hereunder.

17.5 Payment by ISR to the Consultant shall be made in Euro (€) currency, paid on a per Task Order basis in the manner set forth in Annex B attached hereto, by means of a bank transfer to the Consultant's Bank Account No. Swift Code: _____, Account Name: _____, Bank name and address: _____.

18. LIQUIDATED DAMAGES

18.1 In the event that the completion of any of the Milestones and/or Schedule, as such terms shall be defined in each Work Package, shall be delayed beyond the time specified in the relevant Work Package, or in any other schedule agreed in writing by the parties, ISR may impose agreed upon liquidated damages in the amount of 0.5% of the applicable Task Order Price per each Business Day of delay (the "**Liquidated Damages**").

18.2 The aggregate amount of Liquidated Damages pursuant to this Section to which ISR will be entitled to under this Agreement shall be capped to ten percent (10%) of the then applicable Task Order Price.

18.3 Without derogating from any other provisions of this Agreement and/or from any right and/or remedy available to ISR under the relevant circumstances, the following provisions shall apply to any liquidated damages to be paid by Consultant under this Agreement:

18.3.1 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 and shall not be conditioned on ISR having to present evidence of any loss.

18.3.2 Liquidated damages shall be paid by Consultant to ISR within sixty (60) days from the date they become due.

19. NON EXCLUSIVITY

19.1 The Consultant hereby acknowledges and agrees that it is granted no exclusivity with respect to the performance of the Services, any part thereof or any related services. Accordingly, ISR shall be entitled to retain other consultants for the performance of the Services, any part thereof or any related services, all as ISR shall determine at its sole and absolute discretion.

19.2 In addition, the Consultant may be required to cooperate with other consultants retained by ISR.

19.3 For the avoidance of doubt, the Consultant shall not be entitled to any compensation in relation to the Services and/or related services performed by third parties.

20. LANGUAGE

All communication and documentation submitted under this Agreement whether by way of oral presentation or written reports, including all correspondence between ISR and the Consultant, shall be in English or in Hebrew.

21. FORCE MAJEURE

The failure of either party to fulfill any of its obligations under the Agreement shall not be considered a breach of, or default under, this Agreement, insofar as such inability arises from circumstances beyond the reasonable control of the party affected, including, but not limited to, acts of God, fire, flood, war, accident, labor strikes, any law, regulation, direction or request, or any ruling of a court or tribunal; provided however that the party affected by such an event (a) has informed the other party as soon as possible about the occurrence of such an event; and (b) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of the Agreement.

22. ASSIGNMENT

This Agreement, including the rights and obligations herein, may not be transferred by the Consultant 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 Consultant ("Notice of Assignment"). Upon receipt of Notice of Assignment by the Consultant, the assignment and/or the transfer shall be binding and the Consultant 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 Consultant and such reassign and/or retransfer shall be binding and the Consultant 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 Consultant 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. CONFIDENTIALITY

- 23.1 Consultant agrees that Confidential Information will not be used for any purpose other than for the performance of the Services under this Agreement (the “**Purpose**”). Consultant shall only disclose the Confidential Information to those of its Representatives (as hereafter defined) that have a need to know such Confidential Information for the Purpose and who are subject to non-disclosure and non-use obligations no less restrictive than those set forth herein.
- 23.2 Consultant shall maintain in confidence all Confidential Information disclosed by or on behalf of the ISR and/or generated under this Agreement.
- 23.3 Consultant shall not, and shall cause any of its affiliates and its and their respective trustees, directors, officers, employees, Subcontractors ("Representatives") not to, directly or indirectly, use or exploit nor allow others to use or exploit any of the ISR's intellectual property for any purpose other than the Purpose. Consultant shall be liable for any disclosure or misuse of the ISR's Confidential Information which results from its failure, or the failure of its Representatives, to comply with the terms and conditions of this Agreement or their other obligations and/or duties with respect to the ISR's Confidential Information.
- 23.4 Promptly, but in any event within seven days, following (i) the termination or expiration of this Agreement or (ii) the receipt of a written request by the ISR, Consultant and its Representatives will cease making any reference to or use of the Confidential Information and deliver to the ISR all Confidential Information and all documents or media containing any such Confidential Information. The Consultant shall be entitled to keep one archival copy of all the Confidential Information to comply with its obligations imposed by any applicable laws or regulations including but not limited to compliance with statutory record keeping standards as well as compliance with the requirements of its accreditation bodies and to disclose such Confidential Information upon request.
- 23.5 Consultant shall not use the names of the ISR or its Representatives in any manner or for any purpose whatsoever in relation to this Agreement, its subject-matter and any matter arising from this Agreement or otherwise, unless the prior written approval of the ISR has been obtained thereto, unless such mention is to any competent authority for regulatory approval, or the filing of any patent application pursuant to this Agreement, or in the fulfillment of any legal duty owed to such competent authority (including reporting requirements), or is required by applicable law, rule or regulation, or in any publication.

24. APPLICABLE LAW; SETTLEMENT OF DISPUTES

- 24.1 The Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Israel, without giving effect to its choice of law rules.
- 24.2 The Parties shall resolve all disputes in connection with the validity or interpretation of this Agreement, unless otherwise expressly stated in the Agreement, in the following manner:
 - 24.2.1 By direct negotiations between the IPM and CPM.

24.2.2 If such negotiations do not yield results to the satisfaction of both Parties, the matter shall be referred for direct negotiation between the General Managers of each Party.

24.2.3 If negotiations between the General Managers of each party are unsuccessful, the matter shall be referred to the competent court located in Lod, Israel, and the competent Israeli courts shall have exclusive jurisdiction in all matters arising there from unless otherwise agreed between the Parties in writing.

25. NOTICES

All notices shall be in writing and shall be sent by registered mail, facsimile or personal delivery to the Project Managers at the addresses set forth in Section 3 above, or to such changed address as shall be notified pursuant hereto, and shall be deemed to have been delivered to the addressee, if by mail, seven days after the date on which the notice was posted; in the case of notice by facsimile, one (1) business day after dispatch by facsimile; or in the case of personal delivery, at the time of delivery.

26. ENTIRE AGREEMENT; AMENDMENT

This Agreement constitutes the entire agreement between the parties regarding its subject matter. However, this Agreement shall not cancel or supersede all prior representations, undertakings, promises, understandings, discussions and agreements, whether written or oral, between the parties and/or between ISR and other third party (consultants). This Agreement may not be modified, amended or canceled, in whole or in part, except in a writing signed by both parties.

27. WAIVERS

In any case where a party shall fail to exercise, or delays the exercise of, any of its rights under this Agreement, this shall not be deemed a waiver, consent or admission of any kind on its part with regard to such rights in the future.

28. BUDGET CERTIFICATION

ISR certifies that all conditions and approvals under the Budget Foundations Law, 1985 were established and given and that the monetary expense for its execution has been appropriated in the appropriate budget for ISR.

IN WITNESS WHEREOF, the Parties have signed this Agreement:

ISRAEL RAILWAYS LTD.

Signature: _____

Signature: _____

By:

By:

Title:

Title:

Date: _____

Date: _____

Signature: _____

By:

Title:

Date: _____

List of Annexes to Agreement

Annex A	Scope of Services	The relevant Appendices of the RFP
Annex B	Remuneration	Appendix B of the RFP pursuant to obligated changes in its wording as a result of becoming a contract's Annex.
Annex C	Certificate of Completion	
Annex D	Confidentiality Undertaking	Appendix E of the RFP
Annex E	Consultant's personnel	Appendix F of the RFP
Annex F	RFP documents	

ANNEX A

SCOPE OF SERVICES

ANNEX B

REMUNERATION

ANNEX C1

CERTIFICATE OF COMPLETION
OF MILESTONE

I hereby certify that Milestone _____ in the Task Order No. _____ has been completed in accordance with Agreement No. ### dated _____ .

This certificate is issued without prejudice to the rights and powers of ISR under the above mentioned Agreement and the laws of Israel.

Consultant's Project Manager: _____

Date: _____

ISR's Project Manager: _____

Date: _____

ANNEX C2

CERTIFICATE OF COMPLETION
OF TASK ORDER

I hereby certify that the Task Order No. _____ has been completed and all services have been received by ISR in accordance with Agreement No. ### dated _____ .

This certificate is issued without prejudice to the rights and powers of ISR under the above mentioned Agreement and the laws of Israel.

Consultant's Project Manager: _____

Date: _____

ISR's Project Manager: _____

Date: _____

ANNEX E

CONSULTANT'S PERSONNEL

ANNEX F

RFP Documents