

Agreement No. _____ (this "Agreement")

Entered and signed this _____ day of _____ 2019
in Lod, Israel (the "**Effective Date**")

between

Israel Railways Ltd.
Company No. 52-004361-3
1 Yoseftal, Lod
7136801, Israel
("ISR")

Of the First Part

and

("Supplier")

Of the Second Part

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

WHEREAS, ISR wishes to purchase Turnouts Carrier Tilting Wagons as described in the Technical Specifications attached as Annex A1 (the "**TCTW**"), in accordance with and subject to the terms and provisions of this Agreement; and

WHEREAS, ISR published Tender No. _____ requesting proposals for the design, manufacture and supply of the TCTW (the "**Tender**"); and

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

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

WHEREAS, the Parties desire to set forth a contractual framework to determine the Parties' relationship and obligations with regards to the design, manufacture, supply training of ISR railway staff and warranty of the TCTW all as detailed below.

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

1. PREAMBLE, APPENDICES AND HEADINGS

- 1.1 The headings in this Agreement are for reference purposes only, are not a material part of and shall not be used in interpreting this Agreement.
- 1.2 This Agreement shall consist of the following documents each of which is attached hereto and is an integral and inseparable part hereof:
- 1.2.1. Annex A1 Technical Specifications
 - 1.2.2. Annex A2 Supplier's Proposal in response to the Tender
 - 1.2.3. Annex B Consideration Annex
 - 1.2.4. Annex C Supplier's Bank Account Information Form
 - 1.2.5. Annex D Certificate of Completion of Foreign Tests
 - 1.2.6. Annex E Final Acceptance Certificate
 - 1.2.7. Annex F Spare Parts for Preventive Maintenance and Calibration List
 - 1.2.8. Annex G1 Form of Down Payment / Payment Guarantee
 - 1.2.9. Annex G2 Form of Performance and Warranty Guarantee
 - 1.2.10. Annex H Change Order Form
 - 1.2.11. Annex I Training Plan
 - 1.2.12. Annex J Detailed Design Plan ("**DDP**")
 - 1.2.13. Annex K Quality Assurance Plan ("**QAP**")
 - 1.2.15 Annex L ITP
 - 1.2.15 Annex M - Spare Parts Price List and Delivery Time
 - 1.2.16 Annex N -Safety and Security Regulations.

1.3 Order of Precedence.

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

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

- 1.4 In case of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty as to the interpretation of any provision contained in this Agreement and/or the order of precedence between the various provisions contained in this Agreement, which discrepancy, ambiguity, conflict, inconsistency or uncertainty is not resolved by applying the above order of precedence, those provisions that provide ISR with the maximum rights and which best serve the interest of ISR under the circumstances, as ISR shall determine at its sole discretion, shall apply.

1.5 Except as otherwise specifically indicated, all references to Sections refer to Sections of this Agreement, and all references to Annexes refer to Annexes to this Agreement. Annexes to be attached hereto after the Effective Date shall be deemed an integral part of this Agreement. The words "herein," "hereof," "hereinafter," and similar words and phrases, shall refer to this Agreement as a whole and not to any particular Section. The word "days" shall mean a calendar day and the term "Business Days" shall have the meaning ascribed to it in Section 2. Whenever required by the context of this Agreement, the singular shall include the plural, the masculine shall include the feminine and vice versa.

2. DEFINITIONS

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

2.1 "**Agreement Period**" – as defined in Section ~~33~~;

2.2 "**Optional Service Support Visit**" – as defined in Section ~~1313~~;

2.3 "**Applicable Law**" – shall mean any Israeli statute, law, ordinance, rule, regulation, order, writ, injunction, judgment, decree, and all other requirements of any governmental entity existing as of the date hereof or at any time during the term of this Agreement and applicable to ISR and/or Supplier;

2.4 "**Final Acceptance**" - shall mean ISR's issuance of a signed Final Acceptance Certificate in the form attached hereto as **Annex E**, following delivery of the TCTW to the Site in accordance with the Delivery Terms, the performance of all tasks required to bring the TCTW to full operational condition and the successful performance of the Acceptance Tests in accordance with the ITP, the completion of the Training submitting all documentation as well as the fulfillment of all required obligations pursuant to this Agreement;

2.5 "**TCTW**" – shall mean TCTW which complies with the Technical Specifications, attached herein as **Annex A1**;

2.6 "**TCTW Price**" – as defined in Section 8.1;

2.7 "**Business Days**" - any day of the week other than Saturday, and excluding official holidays and bank holidays in Israel;

2.8 "**DAP**" – the terms of delivery for the TCTW shall be "Delivered At Place" (DAP) at ISR's Site, according to "INCOTERMS 2010" - International Rules for the Interpretation of Trade Terms (ICC Pub. No. 715), subject to the Delivery Terms;

2.9 "**DDP**" – as defined in Section ~~5.135.13~~;

2.10 "**Delivery Terms**" – as defined in Section 10.1;

2.11 "**Delivery Time**" – as defined in Section 10.2;

2.12 "**Foreign Acceptance Tests**" – successful completion of all procedures detailed in

Section ~~11.11~~.1-11.7, and Supplier shall submit to ISR the documentation detailed in Section 16 of the Technical Specifications to the full satisfaction of ISR.

- 2.13 "**Spare Parts List**" – all software, materials, equipment, tools, spare parts, accessories, components and other elements of every kind required to perform all preventive and corrective maintenance, calibration, trouble shooting and any other repair as detailed in **Annex M** to this Agreement.
- 2.14 "**Intellectual Property Rights**" – as defined in Section 19.2;
- 2.15 "**IPM**" – ISR's project manager for this Agreement, as set forth in Section ~~7.47~~.4 and as may be changed from time to time at ISR's sole discretion by notification in writing to Supplier;
- 2.16 "**ITP**" – the inspection and test plan as specified in Section ~~11.111~~.1 below;
- 2.17 "**Maintenance Plan**" – as detailed in section ~~10.410~~.4;
- 2.18 "**Notified Body**" – as defined in section ~~11.511~~.5;
- 2.19 "**POD**" – Purchase Order Date;
- 2.20 "**QAP**" – as defined in Section ~~5.13.25~~.13.2;
- 2.21 "**Resolution Time**" the time from the report of a malfunction and until it was rectified;
- 2.22 "**Response Time**" - the time within which Supplier begins to handle a reported malfunction;
- 2.23 "**Severe Malfunction**" - an event whereby (i) the TCTW is not useable for any purpose and/or (ii) an important work or service of the TCTW is not running;
- 2.24 "**Service Support Visit**" – as defined in Section ~~12.512~~.5;
- 2.25 "**Site**" - ISR's Depots located at Lod and/or Haifa and/or any other place in Israel on ISR tracks designated by ISR;
- 2.26 "**Supplier's Factory**" – as defined in Section ~~6.36~~.3;
- 2.27 "**Spare Parts for Preventive Maintenance and Calibration**" – all software, materials, equipment, components and other elements of every kind required to perform all preventive maintenance and calibration during the Warranty Period as detailed in **Annex F** to this Agreement;
- 2.28 "**SPM**" - Supplier's project manager for this Agreement, as set forth in Section ~~7.47~~.4 and as may be changed from time to time at ISR's sole discretion by notification in writing to the Supplier;
- 2.29 "**Subcontractor**" – as defined in Section ~~2222~~;

- 2.30 "**Technical Specifications**" – the technical specifications attached hereto as Annex A1;
- 2.31 "**Training**" – as defined in Section [5.75-7](#);
- 2.32 "**Warranty Period**" – as defined in Section [1212](#);
- 2.33 "**Works**" – shall mean all works, components, materials and equipment to be executed or supplied by Supplier, directly or indirectly, in connection with the design, manufacture, supply, assembling, tests, trial running, commissioning, training, warranty of the TCTW pursuant to this Agreement including supply of all Spare Parts for Preventive Maintenance and Calibration, cleaning of the containers, unloading at the Site. Works shall include but shall not be limited to, works to be implied therefrom or incidental thereto and including all temporary works of every kind required in or for carrying out and completion of the Works, provision of all labor, provision and use of software, materials, equipment, machinery, tools, spare parts, accessories, components and other elements of every kind and description (including Intellectual Property Rights), all in accordance with the Technical Specifications and this Agreement.

3. **AGREEMENT PERIOD**

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

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

Supplier hereby represents and warrants to ISR as follows:

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

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

4.4 **Supplier Examination and Evaluation.**

Supplier hereby represents and warrants to ISR that:

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

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

4.6 **Discrepancies and Omissions**

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

Specifications, Supplier's proposal to the Tender (**Annex A2**), drawings or other documents constituting a part of this Agreement, its prices reflect the type of materials, construction, works or other relevant element, item or unit best suited (to ISR) and consistent with the Technical Specifications and Supplier's proposal to the Tender (**Annex A2**). No inaccuracies, errors, misstatements, omissions, discrepancies, defective or incomplete descriptions, contradictions or ambiguities in or between any of the provisions of this Agreement, or any information or instructions communicated or given by ISR to Supplier from time to time, shall constitute grounds for stoppage of the Works, for relieving or releasing Supplier of any of its responsibilities, duties, obligations or liabilities pursuant to this Agreement, for cancellation or termination of this Agreement by Supplier or for withdrawal from the Works.

4.6.2. Should any works, matters or things required for the proper execution and completion of the Works be omitted from this Agreement by ISR, the IPM shall – upon notice from Supplier to that effect or on its own initiative – give necessary explanations and instructions and decide what Works, matters or things are to be done by Supplier and in what manner and order. Supplier shall thereupon be bound to do such Works, matters and things as instructed. In case any such instruction with regard to an omission involves matters of price or terms of payment or timetable, such matters shall be settled by mutual agreement in writing in accordance with the provisions of Section ~~16~~16 herein (prices shall be based upon the prices specified in the Consideration Annex or pursuant thereto) – without derogating from Supplier's obligation to execute such Works as instructed by the IPM.

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

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

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

5. GENERAL OBLIGATIONS

- 5.1 **Purchase and Sale.** Supplier hereby agrees to execute any and all Works required for the provision of the TCTW in accordance with the terms and the conditions of this Agreement, including, *inter alia*, the design, manufacture, integration, testing, supply, commissioning, Training, Warranty as well as the fulfillment of Supplier's obligations in accordance with the Technical Specifications and Supplier's proposal to the Tender and in compliance with the guidelines and procedures set out in this Agreement. In any conflict or inconsistency between the instructions or any data contained in the Technical Specifications and Supplier's proposal to the Tender the terms and conditions more favorable to ISR shall take priority. In case of controversy, ISR shall have the final decision what is favorable to ISR.
- 5.2 **"Turn Key Basis"**. The TCTW shall be supplied on a "turn key" basis such that Supplier shall perform at its own expense and risk any and all Works in accordance with the provisions of this Agreement. Without limiting the generality of the foregoing, Supplier shall be solely responsible, at its own expense and risk, to carry out any and all Works, import and supply of any and all components, equipment and materials, perform any and all activities and pay and bear all costs and expenses pertaining to the performance of the Works and supply of the TCTW; this shall include, without limitation, the training, testing, operating, demonstration and commissioning of the TCTW and any other tasks or duties relating to the above – all as shall be required in order to timely deliver operable, safe, efficient and reliable TCTW, and putting same into full operation in accordance with all of the requirements of this Agreement, while applying state-of-the-art technology.
- 5.3 **Conformity of the TCTW.** The provision of the TCTW and the execution of the Works shall be made in strict conformity with the terms and conditions of this Agreement. Any deviation from the terms and the conditions of this Agreement must be approved in writing in advance by ISR.
- 5.4 **Standards.** The Works and the TCTW shall meet the standards set forth by ISR in this Agreement, and if no standard is expressly mentioned, Supplier shall comply with the standards which shall ensure the highest quality of workmanship, material and equipment required by the applicable law and/or as instructed by ISR in accordance with ISR's sole discretion. All calculations, designs, integration and drawings related to the TCTW or any part thereof shall assure the reliability, efficiency, competency as well as the functionality of the TCTW to ISR's full satisfaction.
- 5.5 **No Lock.** The TCTW and/or any part thereof shall not incorporate any lock, clock, timer, counter, copy protection feature, CPU serial number reference, or any other device which is intended to (i) prevent ISR from fully utilizing all or any part or software of the TCTW; or (ii) require action or intervention by Supplier or any other person or entity, to allow ISR to utilize all or any part of the TCTW.
- 5.6 **Permits.** Supplier shall, at its sole expense, obtain, maintain, comply with and keep in effect all approvals, permits and licenses required for the execution of this Agreement, the supply of the TCTW and the provision of all ancillary services, pursuant to this Agreement.
- 5.7 **Training.** No later than fourteen (14) days after POD, the Supplier shall provide ISR with

a proposed training plan in that after its approval by ISR (including ISR's Training department) it shall be annexed to this Agreement as **Annex I ("Training Plan")**. Supplier shall provide ISR with Training in accordance with the Training Plan ("**Training**") The Training Plan shall ensure the highest level of operation and maintenance of the TCTW and/or any part thereof by ISR.

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

- Operation Course
- Maintenance Course

The training shall be performed by at least two (2) experienced instructors that hold appropriate skills and knowledge in the above areas of practice.

5.7.2. The minimum time of Training and no. of participants shall be as follows:

Place of Training	Minimum Business days for Operation	Minimum Business days for Maintenance	No. of Participants
ISR Site	10	10	10 for Operation and 10 for Maintenance

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

- Training schedule.
- Theoretical lessons.
- Practical lessons.
- Job Aids.
- Evaluation package.
- Training Aids.

The Training Materials shall be provided in the following format:

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

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

5.7.5. Without derogating from any other right conferred to ISR, ISR shall be entitled to copy and/or record (including by video camera or other digital means) the Training sessions and/or any part of the Training program and to use such

recordings for ISR's study, operation and maintenance purposes.

- 5.8 **Safety**. All Works of Supplier and any Subcontractor 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.
- 5.9 **Cooperation**. 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 TCTW and any other equipment and/or infrastructure of ISR.
- 5.10 **Personnel**. Supplier shall employ trained skilled employees and consultants as shall be necessary or appropriate to enable Supplier to supply the TCTW and the Warranty including the execution of the Works.
- 5.10.1. Supplier's personnel, employees and consultants and any Subcontractor's personnel, employees and consultants (the "**Supplier Personnel**" and "**Subcontractor Personnel**", and together, the "**Personnel**") shall not be deemed under any circumstances whatsoever, to be the employees of ISR, and Supplier shall indemnify and defend ISR from and against all claims made by the Personnel against ISR. The foregoing indemnity shall survive the expiration or termination of this Agreement. All matters pertaining to the employment, Training, conduct, supervision, compensation, promotion and discharge of the Personnel shall be the sole and exclusive responsibility of Supplier and Supplier shall comply with all applicable laws and regulations relating to worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions and safety and similar matters with respect to such Personnel. Supplier acknowledges and agrees that Supplier is obligated to report as income all compensation received by Supplier pursuant to this Agreement, and Supplier agrees to and acknowledges the obligation to pay all self-employment and other taxes thereon. Supplier agrees to indemnify and hold harmless ISR and its directors, officers, and employees from and against all taxes, losses, damages, liabilities, costs and expenses, including attorney's fees and other legal expenses, arising directly or indirectly from (i) any negligent, reckless or intentionally wrongful act of Personnel, (ii) a determination by a court or agency that Supplier and/or any of the Personnel is not an independent contractor, or (iii) any breach by the Personnel of any of the covenants contained in this Agreement.
- 5.10.2. Without derogating from the above, Supplier shall bear any cost and/or expense relating to the Personnel (including but not limited to travelling, accommodation and lodging expenses). Supplier shall be responsible and bear all expenses associated to visas, work permits etc. associated to any service to be provided by Supplier through personnel in Israel.
- 5.10.3. No later than sixty (60) days before the arrival of Personnel to any of ISR's sites, Supplier shall provide ISR with a list of such Personnel, including ID/Passport numbers and such other details as shall be reasonably requested by ISR, prior to

any involvement of such Personnel in the implementation of the TCTW.

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

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

5.13 **Detailed Design and Quality Assurance Plan**

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

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

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

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

- 5.14.2. A summary of the activities performed by Supplier and/or its Subcontractors since the previous report;
 - 5.14.3. An updated list of Supplier and ISR action items and open issues, with their status;
 - 5.14.4. A description of current and anticipated project problems and the steps that have to be taken in order to resolve such problems;
 - 5.14.5. Copies of quality assurance documents, test results and certificates of materials and systems, answers to deviation reports, intended to form or forming part of the Works;
 - 5.14.6. Supplier shall submit to the IPM's review existing drawings, summaries, special studies and reports as may be requested by the IPM from time to time, as well as access to detailed drawings and calculations, all without any additional charge;
 - 5.14.7. Supplier shall provide all assembly and other drawings, technical documentation and catalogues necessary to perform proper maintenance operations;
 - 5.14.8. Supplier shall timely provide any and all documents required in the Technical Specifications and as specified therein;
 - 5.14.9. Supplier shall submit all documentation, reports, design, drawings and other documents specified in the Technical Specifications for ISR's approval. In addition, ISR shall be entitled to require from Supplier to submit to ISR any other drawings including all dimensions in softcopy 3D files or AutoCAD files and/or documents and/or design in connection with the Works reasonably required by ISR; Such documents and drawings shall be for ISR internal use only and shall be kept confidential.
 - 5.14.10. For the removal of doubt, Supplier shall not be entitled to any compensation or payment from ISR and/or from any third party with respect to any documentation and/or drawings and/or reports to be provided to ISR under this Agreement;
 - 5.14.11. In the event of any discrepancy, conflict, ambiguity, uncertainty and/or inconsistency between any of the above documentation and the provisions of this Agreement including its Annexes, the provisions of this Agreement shall prevail. Supplier hereby undertakes to specifically notify the ISR in writing in the event of such uncertainty;
 - 5.14.12. ISR, at its sole discretion, may record or copy any information, provided by Supplier under this Agreement, regardless of form or media.
- 5.15 **Safety and Security**. Supplier shall comply with the Safety and Security Regulations as detailed in **Annex N** and any amendment to such regulations, as shall be decided by ISR from time to time upon its sole discretion.

6. SUPERVISION; ACCESS TO PLACES OF PRODUCTION; INSPECTIONS

- 6.1 **Supervision by ISR.** ISR shall be entitled (but not obligated) to monitor and supervise the performance of the Works with regards to the provision of the TCTW and Warranty, by itself or through any third party in Israel and/or abroad, and Supplier undertakes to cooperate as required with respect thereto including submitting all information required by ISR and/or any third party on its behalf. Such supervision, if applicable, shall not derogate from any provision of this Agreement and/or from Supplier's liability and responsibility to perform the Works in accordance with the provisions of this Agreement and to supply the TCTW and/or fulfill the obligations set out in this Agreement, nor shall it impose any responsibility on ISR which is not otherwise expressly set forth in this Agreement.
- 6.2 **ISR's Access.** Without derogating from the generality of Section 6.1, ISR, by means of any person acting for or on its behalf, shall at all times, have free access to all places of production, including but without limitation the factories, sites, offices, workshops, and other places where the Works (including any material or component being part of the Works) are being produced, assembled or completed, either in Israel or abroad. Such right to free access shall include, without limitation, the right to inspect the Works (including any material or component being part of the Works) at any stage of design, production, assembly, testing and commissioning. In the event of a request to inspect the Works at times other than normal working hours, the Parties shall mutually agree as to the time(s) at which such inspection shall be carried out and shall be granted free access to any information required by ISR and/or any third party on its behalf. Nothing herein shall be construed as restricting or limiting in any manner ISR's access to the Supplier sites where the Works are being performed, and ISR shall at all times have free and unrestricted access to such sites.
- 6.3 **Places of Production and Tests.** Supplier hereby undertakes that the place of production (assembly and integration plant) of the TCTW shall be _____ [**Note: to be approved by ISR**] ("**Supplier's Factory**"). Any change in Supplier's Factory is subject to the prior written approval of ISR at its sole discretion. Supplier alone shall bear and pay any and all costs and expenses incurred by ISR in connection with the review of a new place of production proposed by Supplier and ISR and shall be entitled to approve or to reject any such proposed place of production and tests at its sole discretion. Without derogating from the generality of the above, the standards in any new place of production and tests proposed by Supplier shall not be inferior to the standards in the place of production and tests previously approved by ISR and shall comply with any and all requirements of the Technical Specifications. For the removal of doubt, request by Supplier to change a place of production and tests and review by ISR as per the above shall not give grounds to any delay or extension in the timetables set forth in the Delivery Time.
- 6.4 **Assistance by Supplier.** Without derogating from the above, Supplier shall afford free of charge any assistance and access reasonably requested by ISR's inspectors and duly authorized representatives in order to enable them to carry out inspection, checking and tests in connection with this Agreement and provide them with any information requested.
- 6.5 **Access to Subcontractors Locations.** Without derogating from the above, Work for or

in connection with the Works is being carried out at a Subcontractor's premises, Supplier shall, by a term in the Subcontractor agreement, secure similar rights of access by ISR or by means of any person acting for or on its behalf as set out in this Section 6, and shall take all action necessary to make such rights effective.

- 6.6 **Rejection of the Works, Materials and Components.** If any of the Works, materials or components, whether completed or in process, is rejected on inspection, the same shall be marked in a manner satisfactory to the IPM, so as to ensure its subsequent identification as a rejected article. If no other solution is provided by Supplier that is acceptable by ISR, Supplier shall within seven (7) days or within such other reasonable time, pull down, take out, separate and sort out any such marked Works, materials or components so rejected. Materials or components of the Works or the entire Works rejected under this Section shall not be considered as having been delivered under this Agreement and Supplier shall, without delay, replace and deliver satisfactory materials, components or Works at Supplier's sole cost and expense. No such rejection shall give grounds to any delay or extension in the Delivery Time.
- 6.7 **Inspection not to Relieve Supplier's Obligations.** Inspection, examination, rejection or approval with no objections by ISR of finished or unfinished Works or of materials 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.

7. ORDER PROCEDURE

- 7.1 Within 60 (sixty) days of the Effective Date, ISR shall issue a Purchase Order of three (3) TCTW and forward such Purchase Order to Supplier by email to the contact person of Supplier, a copy of which shall be sent via air mail.
- 7.2 During the Agreement Period including the Optional Period, ISR in its sole discretion, shall have the option to purchase from the Supplier one (1) or more additional TCTW (the "**Optional TCTW**").

The terms and conditions of this Agreement will apply, mutatis mutandis, to the Option TCTW subject to Section 8.6. For the prevention of any doubt, it is hereby expressly emphasized that ISR is under no obligation whatsoever to order certain or any amount of Optional TCTW from Supplier.

- 7.3 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.
- 7.4 The Parties' contact persons are as follows, or any replacement contact persons as notified in writing by one Party to the other:

For ISR:

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, email and telephone numbers, if any.

- 7.5 Supplier will endeavor to furnish a secured electronic mail service or other equivalent means, in accordance with ISR safety requirements, which will be used by both Parties for the purpose of ordering procedure, requests, queries, reports etc.
- 7.6 The following original documents will be supplied by Supplier to ISR:
 - 7.6.1. Commercial invoices. The invoice/s shall include a clear reference to this Agreement, the amount, part number (inclusive of serial number), if any, quantity, delivery note number, shipping date, Supplier's company registration number and ISR's order number for the goods;
 - 7.6.2. Original Certificate of Origin and Non-Manipulation Certificate, if required;
 - 7.6.3. Bill of Lading - issued in ISR's name;
 - 7.6.4. Packing Lists;
 - 7.6.5. Any and all other documentation necessary to release the TCTW 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 TCTW and/or any part thereof through customs and which will enable ISR to make payment in foreign currency in accordance with the applicable Israeli law.
- 7.7 Original copies of all of the above mentioned documents **must arrive** at ISR's designated site at least **five (5) calendar days before** the arrival of the ship delivering the TCTW or any part thereof to Israel. In addition, copies of all of the above mentioned documents shall be sent to ISR by email simultaneously with the delivery of the originals. The above mentioned documents **must** be forwarded solely in ISR's name and shall state ISR's exact name.

8. CONSIDERATION

- 8.1 The consideration payable for the Works including design, manufacture, assembly, integrate, testing and examination, supply, Training, Warranty, support, of the TCTW as

well as for all ancillary services and materials, equipment, licenses to software, hardware, spare parts and all undertakings of Supplier under this Agreement required for the execution and completion of the Works and for the fulfillment of all of the Supplier's obligations in accordance with the terms and conditions of this Agreement, to be paid by ISR to Supplier, shall be the Consideration set forth in **Annex B** (the "**TCTW Price**").

- 8.2 ISR shall be entitled to deduct from any and all sums payable pursuant to this Agreement the amounts ISR is legally required to withhold at source, unless an appropriate exemption has been provided by Supplier, as applicable, prior to the date of such payment, and any amount so deducted shall be deemed for any and all purpose to have been paid in full by ISR under this Agreement. The Supplier shall be responsible to obtain any appropriate exemption.
- 8.3 The TCTW Price shall be the final, complete and inclusive price for the design, manufacture, supply and delivery of the TCTW and for the performance of the Works and ancillary services related thereto. There will be no adjustment whatsoever for the TCTW Price specified in the Consideration Annex (**Annex B**), and shall only be linked to the index as detailed in **Annex B**.
- 8.4 To preclude any doubt, it is hereby clarified that all taxes, fees, duties, licenses, costs or other payments that are to be paid in connection with the exportation, supply and delivery of the TCTW, including but not limited to all types of importation and custom duties and services, such as transportation costs, customs agents' fees, purchase tax (in Hebrew "Mas Kniya" or "מס קנייה"), wharfage fees (in Hebrew "Dmei Ratzif" or "דמי רציף"), cleaning of the containers, unloading and unstiffing at the Site, Israeli customs duties, port handling fees (in Hebrew "Dmei Nitul" or "דמי ניטול"), port infrastructure fees (in Hebrew "Dmei Tashtit" or "דמי תשתית"), cam locks for discharging the TCTW at port, supervision while discharging at port, discharging terms at port, etc. shall be considered as part of the TCTW Price and shall be borne solely by Supplier.
- 8.5 Notwithstanding the above, ISR shall be required to pay, if applicable, the VAT (and only the VAT) imposed by the Israeli Tax Authorities on the TCTW.
- 8.6 In the event that ISR shall exercise its option under Section 7.2 above and without derogating from Section 7.2 above, the Optional TCTW Price shall be the Optional TCTW Price as specified in the table in Annex B. Except for the linkage mechanism, that shall apply on Optional TCTW Price as detailed in Section 4 of Annex B this Section shall apply mutatis mutandis on the Optional TCTW Price.

9. **TERMS OF PAYMENT**

Payment by ISR to Supplier shall be made as follows:

- 9.1 A down payment of thirty percent (30%) of the TCTW Price ("**Down Payment**") shall be paid to Supplier within sixty (60) calendar days following POD, provided that Supplier has provided ISR at least forty-five (45) calendar days prior to the payment with all the following:
 - 9.1.1. an invoice in the amount of the Down Payment; and
 - 9.1.2. a Down Payment Guarantee issued in accordance with the terms and condition set out in Section 17 below;

- 9.1.3. the Performance and Warranty Guarantee as defined in Section ~~1747~~ below.
 - 9.1.4. The DDP, ITP, QAP and Training Plan and all other documents detailed in the Technical Specifications.
- 9.2 A second payment of fifty (50%) percent of the TCTW Price shall be paid to Supplier within sixty (60) calendar days following the provision of the Certification of Completion of Foreign Acceptance Tests (the "**Second Payment**"), provided however that Supplier has provided ISR at least forty-five (45) calendar days prior to the payment with all the following:
- 9.2.1. an invoice in the amount of the Second Payment; and
 - 9.2.2. a Payment Guarantee issued in accordance with the terms and conditions set out in Section ~~1747~~ below, in the amount of the Second Payment (the "**Second Payment Guarantee**").
 - 9.2.3. a Form of Certificate of Completion of Foreign Acceptance Tests, issued and signed by Supplier in the form attached hereto as **Annex D** and countersigned by IPM to be sent to Supplier within 14 days after receipt of said Certificate.
- 9.3 The remaining balance of twenty percent (20%) of the TCTW Price shall be paid within sixty (60) days following the issuance of the Final Acceptance Certificate (the "**Balance Payment**"), provided that Supplier has provided ISR at least forty-five (45) calendar days prior to the payment with all the following:
- 9.3.1. an invoice in the amount of the Balance Payment; and
 - 9.3.2. the Final Acceptance Certificate, in the form attached hereto as **Annex E**, signed by ISR, and sent to Supplier within fourteen (14) days after signing, as set forth in Section 11 below.
- 9.4 Payments under this Agreement shall be made to Supplier by means of bank transfer to Supplier's bank account as specified in the form attached hereto as **Annex C**.

10. DELIVERY TERMS AND DELIVERY TIME

- 10.1 The terms of supply and delivery of the TCTW shall be DAP at ISR's Site, and subject to the expressed terms and conditions defined herein in this Agreement (the "**Delivery Terms**").
- 10.2 The time of delivery for of the TCTW shall not exceed fourteen (14) months following the issuance of the Purchase Order ("**Delivery Time**").
- 10.3 Any unjustifiable delay of ISR in procurement of the Down Payment (Section 9.1) and/or Second Payment (Section ~~9.29.2~~) shall extend the Delivery Time accordingly.
- 10.4 As an integral part of the delivery of the TCTW and concurrently with the supply of the TCTW, Supplier shall supply to ISR on DAP terms to ISR Site (i) the complete and full set of all Spare Parts for Preventive Maintenance and Calibration for all TCTW to for the be carried out during the Warranty Period. The Delivery Terms and Delivery Time of the TCTW shall apply *mutatis mutandis* to the Spare Parts for Preventive Maintenance and Calibration (ii) a detailed and comprehensive maintenance plan for 20 (twenty) years of the preventive maintenance of the TCTW to be approved by ISR in writing and in advance ("**Maintenance Plan**").

For the avoidance of any doubt, Supplier shall not be entitled to Final Acceptance Certificate unless it provides ISR with all of the Spare Parts List (which include the Spare Parts for Preventive Maintenance and Calibration) and the Maintenance Plan.

10.5 At least sixty (60) days prior to Delivery Time, Supplier shall submit to ISR the documentation detailed in Section 17 of the Technical Specifications.

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

10.7 **Passage of Title**

10.7.1. The ownership and title to the TCTW 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 Final Acceptance Certificate. The passing of title to ISR and vesting of ownership rights shall be without prejudice to any right that may accrue to ISR under this Agreement.

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

11. **TESTING AND ACCEPTANCE TESTS**

11.1 Within thirty (30) days following the POD, Supplier shall submit to ISR, for its approval, an Inspection and Test Plan for the TCTW (the "ITP"). The ITP shall include a description of all inspections and tests to be carried out during the manufacture and assembly of the TCTW or parts thereof and all inspections and tests to be carried out prior to and during the actual acceptance tests and their respective minimum acceptance criteria. ITP shall further include all tests, inspections, checks, examinations, running and operation tests etc., required by pertinent and internationally accepted standards, rules or codes.

11.2 The approved ITP shall be attached to this Agreement as **Annex L**.

11.3 ISR and/or its representatives shall be entitled to participate in all such Foreign Acceptance Tests (including but not limited to the tests performed by the Notified Body, as detailed below) and shall be given advance notice of at least thirty (30) business days. In the event that ISR shall decide not to show up to the tests, Supplier shall proceed without ISR presence and not delay the tests. Supplier shall be responsible for all equipment and resources and expenses with regards to the Foreign Acceptance Tests, excluding flights, room and board for ISR's representative, at its expense.

11.4 Prior to the completion of the assembly of the first TCTW and prior to the Notified Body's inspection, ISR shall inspect the first TCTW unit at the Supplier's facility and shall approve the continuation of the final assembly. In case of ISR disapproval, Supplier shall perform any necessary modifications as required from ISR.

- 11.5 Upon the completion of the assembly of the TCTW Supplier shall: (1) conduct all the relevant tests and inspections of the TCTW in accordance with the ITP and the Technical Specifications. ISR shall be notified of completion of assembly of the TCTW prior to commencement of the tests; (2) submit to ISR a certificate issued by a Notified Body (as defined below) assuring that the TCTW have been approved by such Notified Body in accordance with TSI Directives, EN14033-1;2;3 and the Technical Specifications ("**Notified Body Certificate**"). Such Notified Body Certificate (in the English Language or a certified translation into English) shall detail all standards according to which the approvals were made. All costs and expenses required in order to receive the Notified Body Certificate shall be solely borne by Supplier. The Notified Body Certificate can relate to only one of the TCTW.

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

- 11.6 Upon completion of said Foreign Acceptance Tests and the receiving of a Notified Body Certificate by ISR, to the full satisfaction of ISR, Supplier shall prepare for ISR's signature Foreign Tests Acceptance Certificate in the form attached as **Annex D** attesting that TCTW are (i) in full compliance with all of the terms and requirements of this Agreement including the Technical Specifications and the ITP; and (ii) TCTW are without any discoverable damage, fault or defect. The TCTW or any part thereof, shall not be sent to any port for shipment to Israel and shall not be shipped to Israel prior to ISR issuance of the signed Foreign Tests Acceptance Certificate.
- 11.7 Upon delivery DAP of the TCTW or any part thereof to the Site, Supplier shall perform all Works required to bring the TCTW to a full operational condition in accordance with the applicable terms and conditions defined herein in this Agreement and the Technical Specifications.
- 11.8 Upon the completion of the Works, including the testing, commissioning, ITP, Training, and the tests specified in the ITP on Site to ISR's full satisfaction, Supplier shall complete and sign a Final Acceptance Certificate, in the form Attached hereto as **Annex E** (a "**Final Acceptance Certificate**"), declaring that Supplier has fulfilled any and all of its obligations in accordance with the Agreement and that the TCTW and/or any part thereof confirms to the standards, requirements and specifications set out in the Agreement. For the avoidance of any doubt, unless Training is completed to the full satisfaction of ISR and ISR received all Spare Parts for Preventive Maintenance and Calibration, a complete and comprehensive Maintenance Plan approved by ISR, and all Documentation, a Final Acceptance Certificate shall not be issued.

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

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

12. **WARRANTY**

12.1 Supplier confirms and warrants to ISR that commencing on the issuance date of the Final Acceptance Certificate and for a period of twenty four (24) months thereafter (the "**Warranty Period**"), the TCTW, and the Optional TCTW (if applicable), and any part thereof (including software and hardware components as well as any materials, system embedded in the TCTW), shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and the conditions of this Agreement, including the Technical Specifications, and be free of any faults, defects and/or deficiencies, including but not limited to any faults, defects and/or deficiencies in design, material, workmanship, dismantling for sea and land conveyance, assembly, materials, components, software, hardware, etc.).

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

12.3 For the avoidance of any doubt, ISR shall perform at its own cost and expense all preventive maintenance and calibration using the Spare Parts for Preventive Maintenance and Calibration supplied by Supplier in accordance with the Training and the Maintenance Plan. Suppliers shall be responsible to correct at its own cost and expense any defect and/or deficiencies in the preventive maintenance and calibration if such defect and/or deficiencies are a result of lack of equipment and/or spare parts and/or materials in the Spare Parts for Preventive Maintenance and Calibration supplied by Supplier and/or insufficient Training to ISR.

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

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

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

- 12.5 The Warranty Period shall also include, as an inseparable part thereof, without any additional charge or cost every twelve months support visit in Israel for at least three (3) business days ("**Service Support Visit**"). The Service Support Visit shall be conducted by an adequately staffed qualified and expert at hands team that shall include at least a senior engineer having at least ten (10) years of experience in the relevant field. Without derogating from the above, Supplier shall bear all flights, room and board for expenses of its personal and/or representatives. The schedule of the Service Support Visit shall be coordinated with ISR in advance.
- 12.6 ISR shall promptly inform the Supplier of a Work defect it is aware of after discovery of such defect. Supplier shall not bear responsibility for defects if such defect is a result of gross negligence and/or vandalism on the part of ISR to the TCTW.
- 12.7 Without derogating from any rights or remedies available to ISR according to this Agreement and/or under applicable law, upon receipt by Supplier of a written notice from ISR claiming that the Warranty has been breached, in any way whatsoever, Supplier shall, at its sole cost and expense and within the time set out in the Technical Specifications and in accordance the severity of such breach, shall: (i) promptly investigate and examine the TCTW or any part thereof; (ii) remedy, cure, repair, replace (including the supply and installation of the new components), fix and take any action necessary to remedy any defect, deficiency, damage or loss, due to any failure, fault, shortcoming or non-conformity, such as faulty or negligent design (including errors and omissions in design), workmanship, materials or components, assembly or software, of Supplier or of any and all of the Subcontractors or any third party acting on Supplier's behalf.
- 12.8 Without derogating from its other obligations in this Section, Supplier further certifies and confirms that during the Warranty it shall provide ISR without any additional charge or cost:
- 12.8.1 Malfunction report service 24 hours a day 7 days per week whether through human staffed stations or through automatic recording.
- 12.8.2 In case of a Severe Malfunction, the Response Time shall not exceed five (5) Business Days and the Resolution Time shall not exceed ~~ten-thirty~~ (1030) Business Days from the report of the problem. In such time ISR may demand upon its sole discretion the personnel and uninterrupted presence of professional representatives of the Supplier in Site, having the appropriate skills and in the relevant number as the case may be, at no additional charge ("**Presence on Site**"), and Supplier shall immediately comply with such demand.
- 12.8.3 In case of any other malfunctions, the Response Time shall not exceed ten (10)

Business Days and the Resolution Time shall not exceed ~~twenty-onesixty~~ (2160) Business Days from the report of the problem. In such time ISR may demand Presence on Site and Supplier shall immediately comply with such demand.

12.8.4 Without derogating from the above and in addition, in the event that Supplier fails to remedy a Severe Malfunction within the timeframe specified therein, ISR shall be entitled to charge the Supplier with liquidated damages amounting to 1,000 € for each day during which the malfunction was not resolved (from the fourth day and onwards).

12.8.5 Without derogating from the above and in addition, in the event that Supplier fails to remedy a malfunction which is not a Severe Malfunction within the timeframe specified therein, ISR shall be entitled to charge Supplier with liquidated damages amounting to 500 € for each day during which the TCTW is not fully available for operation.

12.8.6 The total amount of liquidated damages due in the event of failure according to Section 12.8.4 and 12.8.5, shall not exceed a total of ten percent (10%) of the value of the consideration specified in this Agreement

12.8.67 Treatment of any malfunction shall be continuous until the solution is found, i.e. until the malfunction is repaired or until a reasonable way is found to circumvent it. The report by ISR's representative as to the malfunction shall include the categorization of the malfunction (whether severe or not) according to his discretion. A solution which is circumvented shall not absolve the Supplier of its duty to repair the malfunction or be considered a solution to the malfunction for any respect.

12.8.78 For the removal of doubt, the liquidated damages as herein provided shall not derogate from any other rights or remedies available to ISR under any applicable law or under this Agreement.

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

12.9 For the avoidance of doubt, the Warranty requirements specified herein are irrespective of whether the defect, deficiency or deviation from this Agreement was already present upon the issuance by ISR of any Acceptance Certificate.

12.10 For the avoidance of doubt it is hereby clarified that Supplier shall not be entitled, directly or indirectly, to receive any additional reimbursement, consideration, cost, fee and/or payment for the provision of the Warranty and/or Service Support Visit and the TCTW Price is deemed as the final complete and inclusive price for the provision of the Warranty and all obligations and undertakings pertaining thereto as well as for all ancillary services and Works required for the provision of the Warranty including the Service Support Visit).

13. OPTIONAL SERVICE SUPPORT VISIT

- 13.1 ISR shall have an option, exercisable at its sole discretion, to require Supplier, from time to time (subject to ISR's necessity) to provide Service Support Visits for the TCTW commencing upon the completion of the Warranty Period (the "**Optional Service Support Visit**"). ISR may decide, at its sole discretion, whether to purchase from Supplier the Optional Service Support Visits. Parties shall mutually coordinate the dates of the Optional Support Visits, in the event that ISR shall exercise its right to such visits. The maximum number of years in which ISR may purchase Optional Service Support Visits shall not exceed 10 years starting from the end of the Warranty Period.
- 13.2 All Supplier's undertakings during Warranty Period regarding the Optional Service Support Visits shall apply mutatis mutandis during the Optional Service Support Visits which shall include also calibration, if required. Subject to Supplier's successful completion of each Optional Service Support Visit, ISR shall pay Supplier Fifty Percent (50%) of the Optional Service Support Visit Price (including calibration) within 60 days after an invoice in the amount of Fifty Percent (50%) of the Optional Service Support Visit Price for the relevant visit has been issued to ISR. The Optional Service Support Visit Price shall be linked in accordance with the linkage mechanism set forth in the Consideration Annex.

14. SPARE PARTS

- 14.1 Without derogating from Supplier's undertaking to provide the Warranty, Supplier undertakes that during a period of twenty (20) years commencing on the date of issuance of the Final Acceptance Certificate, it will supply ISR with all Spare Parts and tools and updates necessary and recommended pursuant to (i) the Technical Specifications, (ii) the applicable manufacturer specifications, and (iii) the best professional practice, required for maintenance and for the repair of the TCTW or any part thereof, while assuring that the TCTW and all systems therein shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and the conditions of this Agreement, including the Technical Specifications (the "**Spare Parts**").
- 14.2 Without derogating from the generality of Section 14.1, Supplier shall furnish a detailed Spare Parts List of all necessary and recommended Spare Parts and their prices, in the form attached hereto as **Annex M** within the Effective Date (the "**Spare Parts List and Prices**"). The Spare Parts List and Prices shall be in English or Hebrew and shall quote the delivery time, description, original manufacturer's name, part number of original manufacturer and the prices DAP ISR's Site for each Spare Part, and subject to the terms specified in Section ~~10.4~~. The Spare Parts List and Prices shall be linked in accordance with the linkage mechanism set forth in the Consideration Annex.
If Supplier foresees that it will be unable to manufacture and/or supply any or all Spare Parts, for any reason whatsoever, it shall notify ISR in writing six (6) months in advance, so that ISR can make any arrangements necessary to obtain alternate spare parts and Supplier shall support ISR in making all arrangements.
- 14.3 Notwithstanding the undertaking of Supplier to sell ISR the necessary Spare Parts for a period specified in Section 14.1 above, ISR shall be under no obligation whatsoever to acquire any Spare Parts from Supplier. ISR, in its sole discretion, shall decide if, and when, it will acquire the Spare Parts from Supplier during the relevant time period. Supplier shall support ISR in acquiring the Spare Parts even if ISR shall decide not to

purchase the Spare Parts from Supplier.

15. LIQUIDATED DAMAGES

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

15.2 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.

16. ALTERATION OF TECHNICAL SPECIFICATIONS

16.1 ISR reserves the right to alter the Technical Specifications ("**Changes**"). Supplier shall be notified of the alterations in writing by the IPM ("**Change Order**") in a Change Order Form (attached hereto as **Annex H**). Any Change Order shall specify a date following which the TCTW and/or any part thereof shall be designed, manufactured and supplied in accordance with the amended specifications.

16.2 Within ten (10) Business Days following the receipt of a Change Order, Supplier shall provide ISR with a written confirmation and if applicable, shall state on the Change Order Form requested changes to the TCTW and/or any part thereof, TCTW Price, Delivery Time, and any other terms relevant to the provision thereof.

16.3 The price for any Changes included in the Change Order which is a supplement or addition of parts or systems used elsewhere in the TCTW and/or any part thereof or which are included in the Spare Parts List, shall be no higher than the price applied to such systems or parts therein.

16.4 Following receipt of Supplier's request for changes as detailed above, the Parties shall, in good faith, review the changes and any changes to the TCTW Price and Delivery Time requested by Supplier.

16.5 The Changes will be incorporated in the TCTW, only after and to the extent that the Parties are agreed as to their impact on the TCTW Price and Delivery Time. Such agreement shall be set out in writing in the Change Order Form and shall be signed by both parties. For the avoidance of doubt, ISR maintains sole discretion regarding the Changes themselves.

In the event that Supplier objects to any Change Order or any part thereof, on the grounds that it may affect safety or structural soundness of the TCTW, Supplier shall have a right not to proceed with the Change Order and the parties shall discuss said objections and shall seek a solution to ISR's request for change.

16.6 Should Supplier find at any time during the design or manufacture of the TCTW that, in its judgment, existing conditions demand or make desirable or beneficial a modification in the requirements covering any particular item, it shall promptly report in writing, any such matter to ISR for its' decision and instruction.

17. GUARANTEES

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

17.2 **Performance and Warranty Guarantee**. No later than seven (7) Business Days following the Effective Date the Supplier shall furnish ISR with an irrevocable autonomous bank guarantee, approved in advance by ISR and issued in the form attached hereto as **Annex G2** in the amount equal to five percent (5%) of the TCTW Price, valid until two (2) months following the end of the Warranty Period (the "**Performance and Warranty Guarantee**").

17.3 **Down Payment Guarantee**. Before payment by ISR of the Down Payment specified in Section 99 above, and as a condition thereto, the Supplier shall furnish ISR with an irrevocable autonomous bank guarantee in the full amount of such Down Payment in the form attached hereto as **Annex G1** (the "**Down Payment Guarantee**").

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

17.5 The Down Payment Guarantee and the Payment Guarantee (to the extent not collected) will be in force until, and will be returned to Supplier within ~~sixty forty five~~ (60/45) days after, and subject to, the Final Acceptance Certificate of the TCTW.

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

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

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

17.9 Supplier shall maintain the Guarantees valid through their respective times as stipulated in this Section. If sixty (60) days prior to the expiration of any Guarantee Supplier has not

completed all of the respective obligations to be performed during the time period secured by such Guarantee, or if such period has been extended, the Supplier shall provide, at its own expense, a substitute Guarantee meeting the requirements of this Section, or extend the term of the relevant Guarantee and notify ISR of such extension, failing which ISR shall be entitled, without derogating from any other remedy that may be available to it under the circumstances, to collect from any of the Guarantees the amount of that Guarantee.

17.10 Collection on a Guarantee or any part thereof by ISR shall not derogate from the right of ISR to terminate this Agreement, nor from its right to any remedy that may be available to it under any applicable law and/or agreement or relieve Supplier of any of its liabilities and undertakings under this Agreement, including its liability to indemnify ISR.

18. INSURANCE

18.1 Without derogating from any of Supplier's responsibilities and liabilities under this Agreement and/or under any applicable law, Supplier 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:

18.1.1. **Property Insurance** covering any loss or damage arising out of, or caused by any risk in respect of the manufacture and/or supply of the TCTW, the Spare Parts, and any related tools and any other equipment. The insurance policy shall cover the complete manufacture and replacement value of the TCTW as well as any other equipment abovementioned brought.

18.1.2. Marine "All Risk" Insurance for the TCTW at their full replacement value, including an at 110% (one hundred and ten percent) of its DAP value during transport thereof, the Spare Parts, and any related tools and any other equipment brought to ISR's Site, in the joint names of ISR and Supplier, against any loss or damage to the TCTW arising out of, in course of, or caused by any risk in respect of the TCTW.

18.1.3. **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 €2,000,000 per occurrence and in the aggregate for an annual period of insurance, covering any liability (including Product Liability and Professional Liability) of the Supplier for any loss or damage derived from the execution of this Agreement and/or from any act or omission of Supplier and/or whoever act on its behalf.

18.2 Suppliers insurances required under this section are primary and precedent to any of ISR and/or the Israeli Government's insurances, and Supplier's insurers shall waive their right to contribution from any of ISR and/or the Israeli Government's insurers with respect to any damage covered by Supplier's insurance policies.

18.3 Supplier shall refrain from canceling the insurance policies and/or from decreasing their scope. Supplier further undertakes to notify ISR of any situation of cancellation and/or expiration of any of the insurance policies specified in this section, sixty (60) days before the date of occurrence of such situation

- 18.4 Supplier represents and warrants that it shall not have any claims, demands and/or actions against ISR and/or anyone on its behalf and/or the Israeli Government, concerning damage to its property or other property used in connection with this Agreement including the TCTW, spare parts, and any related tools and any other equipment. The foregoing shall not apply for the benefit of any one who caused damage with malicious intent.
- 18.5 Supplier waives and shall have no claims or demands of any kind against ISR and/or anyone on its behalf, with respect to the content and/or extent and/or coverage of the insurance policies required to be purchased by it under this section, and Supplier hereby confirms that it shall be prevented from raising any such claim or demand. For the avoidance of doubt, it is agreed that the insurance policies required to be purchased under this section, including the limits specified herein, are stated as a minimal demand from Supplier. Supplier is encouraged to further scrutinize its exposure to liability and to add and/or increase the types and scope of insurance coverage.
- 18.6 Supplier undertakes to indemnify ISR for any amount incurred by ISR as a result of a violation by Supplier (and/or any person or entity acting on its behalf) of any of the conditions of its insurance policies.
- 18.7 It is hereby clarified and agreed that all the insurance policies required in accordance with this Agreement shall be procured at Supplier's expense and that under no circumstances shall the duty to procure such incur expenses and/or any duty for payment on ISR. It is also clarified and agreed that the liability for the payment of the insurance deductible applies to Supplier only and under no circumstances to ISR.
- 18.8 It is clarified and agreed that insurance payments shall not derogate from Supplier's liability under the Agreement and/or under any law, and should the insurance payments not be sufficient in order to cover the extent of the loss and/or the damage actually caused, Supplier shall be responsible for completing such.
- 18.9 As a condition precedent to the first payment under this Agreement, Supplier shall furnish a 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 all recoveries payable by way of claims or otherwise under the Property and Marine "All Risk" insurances stated in clauses 18.1.1 and 18.1.2 of the Agreement shall be paid in full to ISR exclusively.

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

19. **INTELLECTUAL PROPERTY RIGHTS**

- 19.1 **Intellectual Property Rights Warranty**. Supplier represents and warrants that it is the

owner of all rights and title (including but without limitation Intellectual Property Rights, as defined below) in and to the TCTW, as well as in any Works and any component thereof (including, without limitation, systems, parts, software incorporated in the TCTW or integrated with them), and documentation provided to ISR under this Agreement and the Technical Specification and/or Software, and/or that it has obtained sufficient rights and is authorized to give rights to ISR any such TCTW, Works or documentation and/or any part thereof and/or Software, by the relevant third parties who developed and/or own and/or hold the Intellectual Property Rights thereof, and that ISR may use any part of said TCTW, Works and documentation and/or Software in accordance with the terms and conditions of this Agreement, including the operation and maintenance of the TCTW and for the purpose of interface with other ISR's equipment (whether existing now or in the future).

19.2 **Non Infringement Warranty.** Supplier warrants that the TCTW, Works and/or Software and documentation, and their use by ISR in accordance with this Agreement (i) do not and will not infringe any patents, copyrights, whether or not registered, trade names, registered and unregistered trademarks, service marks, trade dress, domain name registrations and other source indicators; computer software, including databases; trade secrets, commercial secrets, inventions (whether or not patentable and whether or not reduced to practice), know-how, methodologies, or other intellectual property right of any person ("**Intellectual Property Rights**"), and (ii) no claim, action or suit for the misappropriation or infringement of any Intellectual Property Right has been brought or is pending or, to the best of its knowledge, threatened against Supplier and/or any third party from which Supplier has obtained such Intellectual Property Rights in connection with the TCTW, Works or documentation provided under this Agreement.

19.3 **Responsibility of Supplier.** Supplier shall be solely and fully liable and responsible for the use of, and shall fully and timely pay all royalties, fees and other payments with respect to, all Intellectual Property Rights, licenses and rights of whatever type, manufactured, used, implemented or employed in the design, production, completion, use or operation of the TCTW and Works and/or Software by Supplier or ISR.

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

19.4.1. The title in and to the designs, drawings, documentation and other technical documents that may and/or shall be submitted by Supplier to ISR according to this Agreement shall pass to ISR. The Intellectual Property rights shall be deemed to be the sole and exclusive property of the Supplier. ISR has the royalty free, non-exclusive right to use these drawing, documentation and other documents to the extent necessary for the use of maintenance of the TCTW according to this Agreement.

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

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

any hardware for the purpose of operation of the TCTW.

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

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

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

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

20. **TERMINATION**

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

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

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

20.1.3. An attachment order has been imposed and/or any other execution process has been taken with respect to all or a material part of Supplier's assets, or a part thereof which is material for the performance of any of its obligations hereunder and has not been removed within thirty (30) days.

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

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

20.1.6. Supplier breaches any material provision of this Agreement (such as, and not limited to, a breach of Sections ~~44,55,66,77,1010,1111,1212,1313,1414,1717,1818,1919,2121,2222,2525~~ and fails to cure such breach within twenty (20) days from the date of ISR's notice.

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

20.2 **Restitution of Payments**. Without prejudice to any other remedies available to ISR under any agreement and/or under any applicable law, in the event that ISR exercises its right to terminate this Agreement for any of the reasons set forth in Section 20.1, then within thirty (30) days from notification by ISR that it has rescinded or terminated this Agreement, prior to the issuance of Final Acceptance Certificate, Supplier shall return to ISR all payments it has received from ISR in respect of all terminated Works.

20.3 **Termination for Convenience**. In addition to, and without derogating from any other right that ISR may have to terminate this Agreement, including but without limitation pursuant to any other provision of this Section and/or to any Applicable Law, ISR shall have the right to terminate this Agreement at will, without cause and at ISR's sole and absolute discretion .

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

20.5 **Effect of Termination**

20.5.1. Subject to Sections ~~20.5.4~~ and ~~20.5.5~~ below, termination of this Agreement will not limit either Party from pursuing any other remedies available to it under any agreement and/or applicable law, and termination or expiration of this Agreement, from whatever cause arising, shall be without prejudice to the rights of the Parties accrued under this Agreement up to the time of termination.

20.5.2. The provisions of this Agreement which expressly or by their nature are required to survive termination of this Agreement (including but without limitation provisions regarding Warranty, Intellectual Property and Liability) shall survive the expiration or termination of this Agreement.

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

(i) Cease all Works according to the IPM's instructions; and

(ii) Transfer to ISR all its rights under all warranties extended by its suppliers.

20.5.4. Payment to Supplier (if and to the extent that Supplier shall be entitled thereto) shall constitute the sole and exclusive remedy (monetary or otherwise) to Supplier in connection with the Agreement and/or the cancellation and/or the termination thereof, and Supplier shall not be entitled to any other payment or recourse for loss of profits or to any other remedy that might be available to it under applicable law

and/or agreement (including but without limitation specific performance and/or injunctive relief) in the event of termination of this Agreement pursuant to this Section.

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

21. RISKS AND LIABILITIES

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

- 21.1.1. the Works, including but without limitation, their design, assembly, integration, adjustment, tests and trials of the TCTW (and/or any part thereof), as well as the Warranty;
- 21.1.2. the use of the TCTW and/or any part thereof, when the Damages arise from faulty design (including errors and omissions in design) or workmanship;
- 21.1.3. any damage to property, death or injury to persons, arising out of, or in connection with, the TCTW or the Works;
- 21.1.4. Supplier's breach of any term or provision of this Agreement or any applicable law;
- 21.1.5. any claims against ISR made by any Subcontractor arising from, or in connection with, the Works to be performed by the Subcontractor, including but without limitation any payments related to the Works or any part thereof to any Subcontractor;
- 21.1.6. any negligent or willful act, error or omission by Supplier, its employees, agents, representatives and Subcontractors, in the performance of this Agreement (including, for the removal of doubt, the execution of the Works);
- 21.1.7. any actual or alleged infringement of Intellectual Property Rights of whatever type arising out of, in connection with, or otherwise resulting from the use of the Works by Supplier, its Subcontractors or ISR.

- 21.2 **Payment of Indemnification Amounts.** Any amount for which ISR claims for indemnification hereunder shall be paid to it within the time specified in the notice requiring indemnification.
- 21.3 **Defense against Proceedings.** If any legal action or any other proceeding (collectively "**Proceedings**") are commenced against ISR, in respect of which Supplier may be liable to indemnify ISR under this Section, then the following provisions shall apply:
- 21.3.1. Notice of such Proceedings shall be promptly given to Supplier.
- 21.3.2. Supplier shall, at its sole cost and expense, defend any litigation that may arise from such Proceedings and conduct all negotiations for the settlement of same, provided that any settlement of such Proceedings will be subject to ISR's prior written consent and provided further that Supplier shall not, in connection with such defense and/or settlement (i) injure ISR's reputation; (ii) purport to take any action expressly or implicitly on behalf of ISR; or (iii) purport to make any representation and/or admission regarding and/or concerning ISR or ISR's activities. ISR's written consent shall not be unreasonably withheld.
- 21.3.3. At the request and expense of Supplier, ISR shall afford reasonable assistance to Supplier in the defense of such Proceedings.
- 21.3.4. So long that Supplier timely takes over and properly conducts the negotiations or litigation, Supplier shall not be required to reimburse ISR the fees for services of attorneys retained by ISR (if and to the extent so retained). If ISR finds, however, that Supplier is not coordinating its defense with ISR in a proper manner or fails to defend ISR diligently or if ISR determines, at its sole and absolute discretion, that representation should be by ISR, then ISR may retain the services of attorneys on its behalf and at Supplier's expense, which attorneys will represent ISR in the said Proceedings and may settle such Proceedings, provided that Supplier gives its consent to such settlement in advance and in writing (which consent shall not be unreasonably withheld). For the removal of doubt, the settling of such Proceedings by ISR shall not relieve Supplier of the obligation to indemnify ISR as provided in this Agreement (including without limitation, for reasonable legal fees and expenses incurred by ISR in connection with the enforcement of Supplier's indemnification obligations hereunder).
- 21.3.5. In addition to the above, if ISR is a defendant in any Proceedings, ISR may at its sole discretion participate and retain the services of attorneys on its behalf at its own expense.
- 21.4 **Exclusions.** Subject to the provisions of Section 21.5 below, in no event shall either Party be liable towards the other for any and all indirect or consequential Damages, including but not limited to loss of profit, loss of revenue, loss of goodwill, etc. with respect to this Agreement (including the Works to be performed hereunder), whether in an action based on contract, tort (including negligence) or any other cause of action.
- 21.5 Subject to the provisions of Section ~~21.121.1~~, Supplier'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~~80% of the Agreement value.

In the event that the Supplier'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 Supplier.

21.6 **Exceptions.** The provisions of Sections ~~21.4~~21.4 and 21.5 above shall not apply with respect to:

21.6.1. Any Damages to ISR incurred in connection with endemic failures, including but without limitation such damages to ISR as: replacement of components, publication of advertisements and/or manpower specifically assigned to rectification of such faults and damages;

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

21.6.3. Death or injury;

21.6.4. Claim for payment by any Subcontractor.

21.7 **Withholding of Payments and Collection on Guarantees.** Without derogating from any other rights of ISR under any applicable law and/or agreement, in the event that any claim is made against ISR, or any lien or attachment is affixed against any of its properties, which claim, lien or attachment relates to or is based on circumstances and/or events which fall within the responsibilities and/or indemnification obligations of Supplier as per Section 21.1 above, then unless Supplier provides adequate security, to ISR's satisfaction, that the claim will be covered, ISR may (i) withhold all payments then due or thereafter becoming due to Supplier, until such claim is satisfied and such liens or attachments released, and (ii) settle the matter by paying any such claim or removing such lien or attachment, and recover any amounts required in order to do so by collecting upon any of the applicable Guarantees.

22. **SUBCONTRACTORS**

22.1. Supplier may nominate the Subcontractors detailed in this Section and shall inform ISR on the identity of such Subcontractors in writing and in advance.

22.2. Suppliers hereby warrant that all Subcontractors meet and continue to meet all conditions detailed in the Technical Specifications.

22.3. Suppliers hereby warrant that it shall monitor and supervise the Subcontractors and shall be fully responsible towards ISR and/or any third party to any act and/or omission of such Subcontractors and/or any third party on their behalf.

22.4. Without derogating from the above, the approval, non-rejection, recommendation, instructions, directives or determinations made by ISR with regard to the employment of, and/or to the placement any Subcontractors, shall not relieve Supplier of its responsibility to ISR in connection with the execution of the Works, the supply of the Turnouts and the fulfillment of the obligations under this Agreement or from any liability assumed by or imposed upon Supplier under this Agreement and under applicable law, nor shall it impose any liability or responsibility upon ISR in connection with the Subcontractor, including but without limitation for any acts and omissions done and/or works executed by Subcontractors, and Supplier shall be fully responsible towards ISR for the acts and omissions of the Subcontractors.

23. **FORCE MAJEURE**

23.1 Neither Party shall be liable for any delay in the performance of the Agreement, if such delay is, directly or indirectly, caused by, or arises from, an impediment beyond the control and without fault or negligence of the party effected, including the following occurrences fires, floods, accidents, civil unrest, acts of God, war, governmental interference or embargoes, strikes, labor difficulties or transportation delays of the TCTW ("**Force Majeure**"). The above does not extend for any contingencies stated above happening to Supplier's Subcontractors except for the TCTW engine and bogie.

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

24. **LANGUAGE**

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

25. **APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

25.1 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.

25.2 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.

25.3 Any dispute in connection with the Agreement including its validity or interpretation shall be settled between the Parties. This also applies to other legal matters arising out of or in connection with this Agreement. The negotiations shall be conducted by at least two persons chosen by each party for this purpose. The timeframe for the settlements of disputes between the Parties shall not exceed a period of three (3) months.

25.4 All matters in dispute, following failure of negotiations as outlined above, shall be referred to the competent court located in Lod, 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.

- 25.5 **Dispute not Effecting Delivery.** Supplier agrees and undertakes that no Dispute shall entitle Supplier to delay or withhold (i) the continuation of the Works so as to meet the Delivery Schedule or any other schedules agreed between the parties, and/or (ii) the performance of the Warranty, subject to ISR paying to Supplier any undisputed amounts, and the dispute shall be resolved pursuant to the dispute resolution process specified in Section 25.325.3 above.

26. MISCELLANEOUS

- 26.1 **Waiver of Lien Supplier.** Supplier hereby waives from the moment of Final Acceptance any possessory lien, mechanic's lien or similar possessory or retention right (in Hebrew: "זכות עיכבון") and preservation of ownership (in Hebrew: "שימור בעלות") (collectively, "**Retention Rights**") against ISR with regard to the TCTW and the Works, including, but not limited to, the items of the Works that are in the possession of Supplier in Supplier's workshops or which are in the possession of Subcontractors. Supplier represents and warrants that the consideration to be paid by ISR under this Agreement includes ample financial provisions concerning the waiver by Supplier of all Retention Rights with regard to the Works, and the payments to be made by Supplier to its Subcontractors contain ample financial provisions for the insertion of a clause requiring a similar waiver by said Subcontractor in connection with the Works.
- 26.2 **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).
- 26.3 **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.
- 26.4 **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.

- 26.5 **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).
- 26.6 **Assignment.** This Agreement, including the rights and obligations herein, may not be transferred by Supplier to any third Party without receiving ISR's prior written consent. Notwithstanding the above, ISR shall consent to the assignment of Supplier's right to receive payment under this Agreement to Supplier's bank, provided a dully written notice is provided to ISR in advance and ISR's right shall not be prejudiced.
- 26.7 **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.
- 26.8 **Notices.** All notices, unless otherwise expressly provided in this Agreement, shall be in writing and shall be sent by either of the parties to the other party by registered mail, or personal delivery to the addresses set forth at the head of this Agreement, and shall be deemed to have been given seven (7) Business Days after the date on which the notice was posted, or in the case of notice by fax, twenty four (24) hours after dispatch by fax, or in the case of personal delivery, at the time of delivery.

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

ISRAEL RAILWAYS LTD.

Signature:

Title: **CEO**

Printed Name:

Signature:

Title: **CFO**

Printed Name:

Signature:

Title:

Printed Name:

Signature:

Title:

Printed Name:

Annex A1

Technical Specifications

Annex A2

Supplier's Proposal in response to the Tender

Annex B
Consideration Annex

Annex C
Supplier's Bank Account Information Form

PART A – Supplier's Bank Details

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

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

Bank Account No.: _____
Swift Code: _____
EBAN Code (applicable to European Accounts): _____
Branch Number: _____
Bank Name: _____
Bank Address: _____

Signature: _____
Name: _____
Title: _____
Date: _____

PART B - Certificate of Authorization

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

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

Signature and stamp: _____

Bank Account Form

PART B - Certificate of Authorization

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

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

Signature: _____
Name: _____
Title: _____
Stamp: _____

Annex D

Certificate of Completion of Foreign Tests

To:
Israel Railways Ltd.
3 Yoseftal St, Lod
Israel

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

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

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

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

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

Supplier:
Date: _____

Acknowledged and agreed by ISR:
Date: _____

Annex E

Final Acceptance Certificate

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

From:
Israel Railways Ltd.
3 Yoseftal St, Lod
Israel

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

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

Signed: _____ Israel Railways Ltd.

Name

Date

Confirmed:

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

Name

Date

Annex F

Spare Parts for Preventive Maintenance and Calibration List

Annex G1

Form of Down Payment/Payment Guarantee

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

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

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

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

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

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

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

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

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

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

Date

Annex G2

Form of Performance and Warranty Guarantee

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

Performance and Warranty Guarantee

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

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

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

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

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

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

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

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

Date

Date:

Part 2

Supplier's requests for changes

Signature: _____

SPM, on behalf of the Supplier

Date:

Part 3

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

Signature: _____

IPM, on behalf of ISR

Date:

Signature: _____

SPM, on behalf of the Supplier

Date:

Annex I

Training Plan

Annex J

Detailed Design Plan ("DDP")

Annex K
Quality Assurance Plan ("QAP")

Annex L

Inspection and Test Plan ("ITP")

Annex M

Spare Parts Price List and Delivery Time