

Agreement No. _____ (this "Agreement")

Entered and signed this _____ day of _____ 2024
in Lod, Israel (the "**Effective Date**")

between

Israel Railways Ltd.
Company No. 52-004361-3
Of
3 Darchei Moshe St.
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 Ballast Bogie Hopper Wagons and Flat Bogie Wagon Wooden Floor for Israel Railways (hereinafter, both shall be collectively referred to as the: "**Wagons**") as described in the Technical Specifications attached as Annex A, in accordance with and subject to the terms and provisions of this Agreement; and

WHEREAS, ISR published Tender No. 42203 requesting proposals for the design, manufacture and supply of the Wagons (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 warrant the Wagons , as well as to fulfill all of the obligations set forth in this Agreement, including the Technical Specifications; and

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

manufacture and supply of the Wagons; 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, testing and training of ISR railway staff and warranty of the Wagons 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 Form |
| 1.2.5. | Annex D | Factory Acceptance Tests Certificate |
| 1.2.6. | Annex E | Final Acceptance Certificate |
| 1.2.7. | Annex F | Spare Parts List |
| 1.2.8. | Annex G1 | Down Payment / Payment Guarantee |
| 1.2.9. | Annex G2 | Performance Guarantee |
| 1.2.10. | Annex H | Change Order Form |
| 1.2.11. | Annex I | Training plan |

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 Attachment B to the Tender);
- Supplier's Proposal to the Tender.

- 1.4 In case of any discrepancy, conflict, inconsistency, ambiguity and/or uncertainty as to the interpretation of any provision contained in this Agreement and/or the order of precedence between the various provisions contained in this Agreement, which discrepancy, ambiguity, conflict, inconsistency or uncertainty is not resolved by applying the above order of precedence, those provisions that provide ISR with the maximum rights and which best serve the interest of ISR under the circumstances, as ISR shall determine at its sole discretion, shall apply.
- 1.5 Except as otherwise specifically indicated, all references to Sections refer to Sections of this Agreement, and all references to Annexes refer to Annexes to this Agreement. Annexes to be attached hereto after the Effective Date shall be deemed an integral part of this Agreement. The words "herein," "hereof," "hereinafter," and similar words and phrases, shall refer to this Agreement as a whole and not to any particular Section. The word "days" shall mean a calendar day and the term "Business Days" shall have the meaning ascribed to it in Section 2. Whenever required by the context of this Agreement, the singular shall include the plural, the masculine shall include the feminine and vice versa.

2. DEFINITIONS

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

- 2.1 "**Acceptance**" - shall mean ISR's issuance of a signed Final Acceptance Certificate in the form attached hereto as **Annex E**, following delivery of the Wagons to the Site in accordance with the Delivery Terms, the performance of all tasks required to bring the Wagons to full operational condition and the successful performance of the Acceptance Tests in accordance with Technical Specifications, the completion of the Training as well as the fulfillment of all required obligations pursuant to this Agreement;
- 2.2 "**Agreement Period**" – as defined in Section 3;
- 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 "**Business Days**" - any day of the week other than Friday and Saturday, and excluding official holidays and bank holidays in Israel;
- 2.5 "**DAP**" – the terms of delivery for the Wagons shall be "Delivered At Place" (DAP) at ISR's Site, according to "INCOTERMS 2020" - International Rules for the Interpretation of Trade Terms (ICC Pub. No. 723), subject to the Delivery Terms;
- 2.6 "**Delivery Terms**" – as defined in Section 10.1;
- 2.7 "**Delivery Time**" – as defined in Section 10.2;
- 2.8 "**Intellectual Property Rights**" – as defined in Section 19.2;

- 2.9 **"IPM"** – ISR's project manager for this Agreement, as set forth in Section 7.5 and as may be changed from time to time at ISR's sole discretion by notification in writing to Supplier;
- 2.10 **"Resolution Time"** the time from the report of a malfunction and until it was rectified;
- 2.11 **"Site"** - ISR's depots located at ISR's facilities located at Kishon, Haifa, Israel;
- 2.12 **"Supplier's Factory"** – as defined in Section **שגיאה! מקור ההפניה לא נמצא.**
- 2.13 **"Spare Parts List"** – all materials, equipment, components and other elements of every kind required to perform all preventive maintenance during the Warranty Period as detailed in **Annex F** to this Agreement;
- 2.14 **"SPM"** - Supplier's project manager for this Agreement, as set forth in Section 7.5 and as may be changed from time to time at ISR's sole discretion by notification in writing to the Supplier;
- 2.15 **"Subcontractor"** – as defined in Section 22;
- 2.16 **"Technical Specifications"** – the technical specifications attached hereto as Annex A1;
- 2.17 **"Training"** – as defined in Section 5.6;
- 2.18 **"Wagons"** – shall mean Ballast Bogie Hopper Wagons and Flat Bogie Wagon Wooden Floor which comply with the Technical Specifications, attached herein as **Annex A1**;
- 2.19 **"Warranty Period"** – as defined in Section 13;
- 2.20 **"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, tests, training and warranty of the Wagons pursuant to this Agreement including supply of all Spare Parts for Preventive Maintenance, cleaning of the Wagons, 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, 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 ten (10) years and/or the end of the Warranty Period for the last Wagon, 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 periods of up to additional (10) years by providing Supplier with 30 days prior written notice before the end of the Agreement Period (the "**Optional Period**"). All terms and conditions of this Agreement shall apply, *mutatis mutandis*, during Optional Period.

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 Wagons shall be designed, manufactured, tested, supplied and delivered to ISR, and the execution of the Works required for the provision of the Wagons 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 Wagons 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 Wagons , 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.

- 4.5.1. 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 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 Wagons 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 Wagons 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 Wagons ; this shall include, without limitation, the training, testing, operating, demonstration and commissioning of the Wagons 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 Wagons , 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 Wagons**. The provision of the Wagons 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 Wagons 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 Wagons or any part thereof shall assure the reliability, efficiency, competency as well as the functionality of the Wagons to ISR's full satisfaction.

5.5 **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 Wagons and the provision of all ancillary services, pursuant to this Agreement.

5.6 **Training.** No later than 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 Wagons and/or any part thereof by ISR.

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

- Operators 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.

5.6.2. 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	5	5	10 for Operation and 10 for Maintenance

5.6.3. 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).

5.6.4. All costs related to the training according to the Training Plan are included in the Wagons 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.

5.6.5. 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.

5.7 **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.

5.8 **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 Wagons and any other equipment and/or infrastructure of ISR.

5.9 **Personnel.** Supplier shall employ trained skilled employees and consultants as shall be necessary or appropriate to enable Supplier to supply Wagons and the Warranty including the execution of the Works.

5.9.1. 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.

5.9.2. 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.

5.9.3. No later than 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 Wagons .

5.10 **Environmental Standards**. The Wagons 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.

5.11 **Quality Management System**. Supplier hereby undertakes warrants and confirms to remain Notified in accordance with latest ISO 9001 or 9002 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.

5.12 **Reports & Documentation**. Without derogating from the Technical Specifications, Supplier shall submit at the IPM's request, progress reports, for the planning, construction, assembly, final adjustments, testing and maintenance of the Works, or as specifically set out in this Agreement and shall detail at least the following:

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

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

5.12.3. 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;

5.12.4. 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;

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

- 5.12.6. Supplier shall timely provide any and all documents required in the Technical Specifications and as specified therein;
- 5.12.7. 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.
- 5.12.8. 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;
- 5.12.9. 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;
- 5.12.10. ISR, at its sole discretion, may record or copy any information, provided by Supplier under this Agreement, regardless of form or media.
- 5.13 **ICA.** The Supplier undertakes to comply with and fulfil the obligations specified in the Foreign Supplier's Industrial Cooperation Undertaking with regard to offset procurement which is to be carried out in connection with the execution of this Agreement. Without derogating from the generality of the above, the Supplier warrants that it has fulfilled the aforesaid obligations in accordance with the Mandatory Tenders Regulations (Mandatory Industrial Cooperation) 5767-2007, including submitting a plan for the execution of industrial cooperation in Israel, all in accordance with the Israeli Mandatory Tenders Regulations (Mandatory Industrial Cooperation) 5767 – 2007, and without limitation Section 8 of such regulations with respect to the period for fulfilment of the aforesaid obligations.

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, by itself or through any third party in Israel and/or abroad, and Supplier undertakes to cooperate as required with respect thereto. For the removal of doubt, nothing contained herein shall be construed as derogating from any provision of this Agreement and/or from Supplier's responsibility to perform the Works in accordance with the provisions of this Agreement and/or as imposing any responsibility on ISR which is not otherwise expressly specified in this Agreement. In addition, Supplier hereby undertakes to fully cooperate with any audit procedure that may be conducted by ISR and/or by any third party acting on ISR's behalf or controlling ISR with respect to the Works, all as may be reasonably required for the purposes of such audit.

6.2 **Notified Body**. Without derogating from the generality of Section 6.1, Supplier acknowledges that the Works will be supervised and subject to approvals and validation by a notified body (as specified in the Technical Specifications) and/or an independent safety assessor, to be appointed by Supplier at its own cost and expense, subject to the approval of the Ministry of Transport to such appointment. The extent of such supervision shall be determined by ISR and/or such notified body/safety assessor at their sole discretion, and may include *inter alia* every stage of the design, manufacture, testing and acceptance phases of the Wagons. For the removal of doubt, ISR shall also be entitled to appoint additional third parties in connection with the works and services rendered by the notified body and/or safety assessor.

6.3 **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 but without limitation any drawings, material or component) 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. For the removal of doubt, nothing herein shall be construed as restricting or limiting in any manner ISR's access to the ISR sites where the Works are being installed, and ISR shall at all times have free and unrestricted access to such sites.

Places of Production. Supplier hereby undertakes that the place of production (assembly plant) of the Units shall be Supplier's production site in _____ [**Note: to be approved by ISR. Such place of production should be the main place of production of Supplier**]. Any change in the place of production specified above is subject to the prior written approval of ISR at its sole discretion. Supplier alone shall bear and pay any and all costs and expenses incurred by ISR in connection with the review of a new place of production proposed by Supplier and ISR and shall be entitled to approve or to reject any such proposed place of production at its sole discretion.

Without derogating from the generality of the above, the standards in any new place of production proposed by Supplier shall not be inferior to the standards in the place of production 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 review by ISR as per the above shall not give grounds to any delay or extension in the timetables set forth in the Delivery Schedule.

6.4 **Assistance by Supplier**. 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, test and measurements in connection with this Agreement.

6.5 **Access to Subcontractors Locations**. If work for or in connection with the Works is being carried out at a Subcontractor's premises, Supplier shall, by a term in the Subcontractor agreement, secure similar rights of access by ISR as set out in this Section 6 מעל 6 above, 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. 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 6.6 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. For the removal of doubt, no such rejection shall give grounds to any delay or extension in the timetables set forth in the Delivery Schedule.
- 6.7 **Inspection not to Relieve Supplier's Obligations.** Supervision, inspection, examination, rejection or approval with no objections by ISR or on its behalf of finished or unfinished Works or of materials or components, including but without limitation pursuant to this Section 6 above, shall neither relieve nor derogate from Supplier's obligations and/or liability under this Agreement or under Applicable Law, nor impose any liability or responsibility on ISR or on any third party on its behalf (including but without limitation the notified body and/or safety assessor).

7. ORDER PROCEDURE

- 7.1 Subject to the Supplier's fulfillment of all of its obligations pursuant to this Agreement, ISR intends to issue a Purchase Order for thirty (30) Wagons (15 Ballast Bogie Hopper Wagons and 15 Flat Bogie Wagon Wooden Floor, hereinafter: the "**Initial Purchase Order**"), within one (1) year from the Effective Date, by issuing a written Purchase Order dully signed by ISR all on a non-exclusive basis ("**Purchase Order**").
- 7.2 The time of issuance of the Purchase Order shall be subject to ISR's discretion and Supplier hereby waives any claim and/or demand against ISR including for loss of income and/or profits.
- 7.3 Additionally, during the Agreement Period and/or the Optional Period, ISR, at its sole discretion, shall have the option to purchase from the Supplier 50 additional Wagons (the "**Optional Wagons** ") within ten (10) years. The relevant terms and conditions detailed in this Agreement, including its Appendices, shall apply, *mutatis mutandis*, to the Optional Wagons. It is hereby expressly emphasized that ISR is under no obligation whatsoever to order the Optional Wagons from the Supplier.
- 7.4 Upon receipt of a Purchase Order by email, Supplier shall confirm via email receipt of the Purchase Order to ISR's contact person. An original document of such confirmation shall be sent to ISR via air mail.
- 7.5 The Parties' contact persons are as follows, or any replacement contact persons as notified in writing by one Party to the other:

For ISR: Mr. _____
Israel Railways Ltd.

Address:
Telephone:
E-mail:
("IPM")

For the Supplier: _____

("SPM")

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

7.6 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.

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

7.7.1. Commercial invoices. The invoice/s shall include a clear reference to this Agreement, the amount, part number (inclusive of serial number), if any, quantity, delivery note number, shipping date, Supplier's company registration number and ISR's order number for the goods;

7.7.2. Original Certificate of Origin and Non-Manipulation Certificate, if required;

7.7.3. Bill of Lading - issued in ISR's name;

7.7.4. Packing Lists;

7.7.5. Any and all other documentation necessary to release the Wagons 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 Wagons 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.

7.8 Original copies of all of the above mentioned documents **must arrive** at ISR's designated site at least **three (3) calendar days before** the arrival of the ship delivering the Wagons or any part thereof to Israel. In addition, copies of all of the above mentioned documents shall be sent to ISR by E-mail simultaneously with the delivery of the originals. The above mentioned documents **must** be forwarded solely in ISR's name and shall state ISR's exact name.

8. CONSIDERATION

8.1 The consideration payable for the Works including design, manufacture, supply, Training,

Warranty, support, testing and examination of the Wagons as well as for all ancillary services and materials, equipment, 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 "**Wagons 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 Wagons Price shall be the final, complete and inclusive price for the manufacture, supply and delivery of the Wagons and for the performance of the Works and ancillary services related thereto. There will be no adjustment whatsoever for the Wagons 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 Wagons, 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 קניה"), 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 Wagons at port, supervision while discharging at port, discharging terms at port, etc. shall be considered as part of the Wagons Price and shall be borne solely by Supplier. Notwithstanding the above, Israeli Value Added Tax, if applicable, shall be borne by ISR.

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 Wagons.

8.6 In the event that ISR shall exercise its option under Section 7.3 above and without derogating from Section 7.3 above, the Optional Wagons Price shall be as specified in Annex B. Except for the linkage mechanism, that shall apply on the Optional Wagons Price as detailed in Annex B this Section shall apply, *mutatis mutandis*, on the Optional Wagons Price.

9. TERMS OF PAYMENT

9.1 Payment by ISR to Supplier shall be as follows:

9.2 A down payment of thirty (30%) percent of the Wagons Price payable shall be paid to Supplier within forty five (45) calendar days following the Supplier's receipt of a Purchase Order by ISR (the "**Down Payment**"), provided that Supplier has provided ISR at least thirty (30) calendar days prior with all of the following:

9.2.1. An invoice in the amount of the Down Payment; and

- 9.2.2. A Down Payment Guarantee in the form set forth in **Annex G1** in the amount of the Down Payment. The Down Payment Guarantee shall remain in force until thirty (30) calendar days following the issuance of a Acceptance Certificate by ISR.
- 9.3 A payment of forty percent (40%) of the Wagons Price payable shall be paid to Supplier within forty five (45) calendar days following the Successful completion of the Factory Acceptance Tests (the "**Second Payment**") provided that Supplier has provided ISR at least thirty (30) calendar days prior with all of the following:
 - 9.3.1. An invoice in the amount of the Second Payment; and
 - 9.3.2. The Factory Acceptance Tests Certificate, signed by ISR; and
 - 9.3.3. A Payment Guarantee in the form set forth in **Annex G1** in the amount of the Second Payment. The Payment Guarantee shall remain in force until thirty (30) calendar days following the issuance of a Acceptance Certificate by ISR.
- 9.4 The remaining balance of thirty percent (30%) of the remainder of the consideration payable shall be paid within forty five (45) days following the issuance of Acceptance Certificate for the Wagons providing that Supplier has provided ISR at least thirty (30) calendar days prior to the payment with all the following:
 - 9.4.1. An invoice in the amount of the Purchase Order, as applicable, as part of the remaining balance;
 - 9.4.2. The Acceptance Certificate, signed by ISR.
 - 9.4.3. A Performance and Warranty Guarantee in the form set forth in **Annex G2**.
- 10. Payments under this Agreement shall be made to the Supplier by means of a bank transfer to the Supplier's bank account as specified in the Supplier's Bank Account Form attached hereto as **Annex C**.

11. DELIVERY TERMS AND DELIVERY TIME

- 11.1 The terms of supply and delivery of the Wagons shall be DAP at ISR's Site, and subject to the expressed terms and conditions defined herein in this Agreement (the "**Delivery Terms**").
- 11.2 The time of delivery of the Wagons shall not exceed twelve (12) months following the issuance of the Purchase Order ("**Delivery Time**").
- 11.3 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.

11.4 Passage of Title

11.4.1. The ownership and title to the Wagons 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.

11.4.2. 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 Wagons and any related Works, components, material and equipment until the Final Acceptance thereof.

12. TESTING AND ACCEPTANCE TESTS

12.1 Upon the completion of the assembly of the Wagons in Supplier's Factory, Supplier shall conduct all the relevant tests and inspections of the Wagons in accordance with this Agreement and the Technical Specifications. ISR shall be notified of completion of assembly of the Wagons prior to commencement of the tests.

12.2 ISR and/or its representatives shall participate in all such Factory Acceptance Tests and shall be given advance notice of at least sixty (60) business days. In the event that ISR shall decide not to show up to the such Factory Acceptance 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 Factory Acceptance Tests, except for the expenses for ISR's representative (flights, room and board) which shall be borne by ISR.

12.3 Upon completion of said Factory Acceptance Tests to the full satisfaction of ISR, Supplier shall prepare for ISR's signature Factory Tests Acceptance Certificate in the form attached as **Annex D ("Factory Acceptance Tests Certificate")** attesting that the Wagons is (1) in full compliance with all of the terms and requirements of this Agreement including the Technical Specifications; and (2) the Wagons is without any discoverable damage, fault or defect. The Wagons 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 Factory Acceptance Tests Certificate.

12.4 Upon delivery DAP of the Wagons or any part thereof to the Site, Supplier shall perform all Works required to bring the Wagons to a full operational condition in accordance with the applicable terms and conditions defined herein in this Agreement and the Technical Specifications.

12.5 Upon the completion of the Works, including the testing, commissioning and Training to ISR's full satisfaction, ISR 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 WAGONS and/or any part thereof confirms to the standards, requirements and specifications set out in the Agreement.

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. Supplier shall bear all expenses related to such visit.

- 12.6 Supplier shall be responsible for all costs related to the testing and acceptance procedures specified in this Agreement shall be included in the Wagons 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.

13. **WARRANTY**

- 13.1 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 Wagons, and any part thereof, shall operate and perform to the maximum extent of its capabilities and in all respects in strict accordance with the terms and 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, etc. During the Warranty Period Supplier shall perform an annual visit (2 visits in total) for preventive maintenance services including calibration, all in accordance with Technical Specifications.
- 13.2 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 willful misconduct, gross negligence, negligence and/or vandalism on the part of ISR to the Wagons.
- 13.3 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 Wagons 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, of Supplier or of any and all of the Subcontractors or any third party acting on Supplier's behalf.
- 13.4 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 for corrective maintenance, replacement of spare parts resulting from the corrective maintenance, and troubleshooting.
- 13.5 Without derogating from its other obligations in this Section, Supplier further certifies and confirms that during the Warranty Period it shall provide ISR without any additional charge or cost:
- 13.5.1. In case of any malfunction, the Resolution Time shall not exceed fourteen (14) 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.
- 13.5.2. Without derogating from the above and in addition, in the event that Supplier fails

to remedy any malfunction within the timeframe specified therein, ISR shall be entitled to charge the Supplier with liquidated damages amounting to 500 € for each day during which the malfunction was not resolved (from the fifteenth day and onwards).

- 13.5.3. 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.
 - 13.5.4. 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.
 - 13.5.5. 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.
- 13.6 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.
- 13.7 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 the Wagons 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.

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 specification]ns, and (iii) the best professional practice, required for maintenance and for the repair of the Wagons or any part thereof, while assuring that the Wagons 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.
- 14.2 A detailed Spare Parts List of all necessary and recommended Spare Parts and their prices, is attached hereto as **Annex F** (the "**Spare Parts List and Prices**"). The Spare Parts List and Prices shall be linked in accordance with the linkage mechanism set forth in Annex B.
- 14.3 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.

14.4 Notwithstanding the undertaking of Supplier to sell ISR the necessary Spare Parts for a period specified in Section 15.1 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 Wagons 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 Wagons Price for each calendar week of delay, or any part thereof. The liquidated damages shall not exceed a total of seven and half percent (7.5%) of the value of the consideration specified in this Agreement (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 Wagons 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 Wagons and/or any part thereof, the Wagons 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 Wagons 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 Wagons Price and Delivery Time requested by Supplier.

16.5 The Changes will be incorporated in the Wagons, only after and to the extent that the Parties are agreed as to their impact on the Wagons 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 Wagons, 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 Wagons 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, Supplier will furnish Down Payment and Payment Guarantees and Performance and Warranty 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 **Down Payment/Payment Guarantee.** Before payment by ISR of the Down Payment or the Second Payment specified in Section 9 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 or Second Payment in the form attached hereto as **Annex G1** (the "**Down Payment/Payment Guarantee**").

17.3 The Down Payment/Payment Guarantee (to the extent not collected) will be in force until, and will be returned to Supplier within sixty (60) days after, and subject to, the Final Acceptance Certificate Wagons.

17.4 **Performance and Warranty Guarantee.** No later than seven (7) Business Days following the issuance of a Purchase Order, the Supplier shall furnish ISR with an irrevocable autonomous bank guarantee, approved in advance by ISR and issued in the form attached hereto as **Annex G2** in the amount equal to ten percent (10%) of the Wagons, valid until two (2) months following the end of the Warranty Period (the "**Performance and Warranty Guarantee**").

17.5 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.

17.6 Each Guarantee shall be in the relevant form for such Guarantee attached hereto as Annex G1 and Annex 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.

17.7 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.

17.8 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 to do so will entitle ISR, 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.

17.9 Collection of 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 the Supplier's responsibilities and liabilities under this Agreement and/or under the Applicable Law, the Supplier shall maintain, at its own expense through a reputable and legally licensed, at all times for as long as any liability under this Agreement may exist, a worldwide Third Party Liability Insurance with a limit of liability not less than €5,000,000 per occurrence and in the aggregate for an annual period of insurance, covering any liability (including Product Liability) of the Supplier for any loss or damage derived from the execution of this Agreement (hereinafter: "**Supplier's Insurance Policy**").

18.2 The Supplier shall refrain from canceling the Supplier's Insurance Policy and/or from reducing its scope. The Supplier further undertakes to notify ISR of any situation of cancellation and/or reducing the scope of the Supplier's Insurance Policy, sixty (60) days before the date of occurrence of such situation.

18.3 The Supplier waives and shall have no claims or demands of any kind against ISR and/or anyone on its behalf, with respect to the content and/or extent and/or coverage of the Supplier's Insurance Policy.

18.4 The Supplier undertakes to indemnify ISR and/or the Israeli Government for any amount incurred by ISR and/or the Israeli Government as a result of a violation by the Supplier and/or any person or entity acting on its behalf of any of the conditions of the Supplier's Insurance Policy.

18.5 The Supplier alone is responsible for payment of premiums and deductibles stated in the Supplier's Insurance Policy.

18.6 The Supplier is required to notify ISR immediately of any event which is likely to give rise to a claim under the Supplier's Insurance Policy, as well as to cooperate with ISR as required in order to obtain settlement of any insurance claim under the Supplier's Insurance Policy.

18.7 It is clarified and agreed that insurance payments shall not derogate from the Supplier's liability under the Agreement and/or under the Applicable Law.

18.8 Within fourteen (14) days of ISR's first request, the Supplier undertakes to provide ISR an insurance certificate duly signed by its insurers conforming the Supplier's obligations under this section 18.

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 Wagons, as well as in any Works and any component thereof (including, without limitation, systems, parts, software incorporated in the WAGONS 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 Wagons, 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 Wagons, Works and documentation and/or Software in accordance with the terms and conditions of this Agreement, including the operation and maintenance of the Wagons 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 Wagons, 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 Wagons, 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 Wagons and Works 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 Wagons 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 Wagons.

The foregoing license and right is provided at no extra charge to ISR and is included in the Wagons 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 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 Wagons (and/or any part thereof), as well as the Warranty;
- 21.1.2. the use of the Wagons 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 Wagons 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 20.5 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 21.1, 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% 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 and 20.5 above shall not apply with respect to:

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

21.6.2. Death or injury;

21.6.3. 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 20.1 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, pandemic, war, governmental interference or embargoes, strikes, labor difficulties or transportation delays of the Wagons ("**Force Majeure**").

23.2A 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 Tel Aviv, Israel, and the competent Israeli courts shall have exclusive jurisdiction in all matters arising therefrom unless otherwise mutually and expressly agreed, in writing, by the Parties.

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 25.3 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 Wagons 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 to the TENDER

Annex B
Consideration Annex

Annex C
Supplier's Bank Account Information

PART A – Supplier's Bank Details

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

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

Bank Account No.: _____

Swift Code: _____

EBAN Code (applicable to European Accounts): _____

Branch Number: _____

Bank Name: _____

Bank Address: _____

Signature: _____

Name: _____

Title: _____

Date: _____

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 Factory Tests

To:
Israel Railways Ltd.
3 Darchei Moshe St., Lod 7136801
Israel

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

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

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

We hereby warrant that the Wagons 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 Factory Tests.

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

Supplier:
Date: _____

Acknowledged and agreed by ISR:
Date: _____

Annex E

Form of Final Acceptance Certificate

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

From:
Israel Railways Ltd.
3 Darchei Moshe St., Lod 7136801
Israel

We hereby certify that the Wagons, 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 and Technical Specifications 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 List

Annex G1

Form of Down Payment/Payment Guarantee

To: Israel Railways Ltd. ("ISR")
3 Darchei Moshe St., Lod 7136801
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.

For collecting any amount under this Guarantee, ISR shall not have to refer first to Supplier, nor shall it have to produce any judgment or any other judicial document, nor shall it have to prove any breach, failure or non-compliance on the part of Supplier or on the part of any person acting for Supplier or on its behalf or in its name, and a written demand or facsimile notice to Guarantor from an authorized representative of ISR shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sum(s) under this Guarantee from the Guarantor immediately upon the demand of ISR

This Guarantee, 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 Lod, 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")
3 Darchei Moshe St., Lod 7136801
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.

For collecting any amount under this Guarantee, ISR shall not have to refer first to Supplier, nor shall it have to produce any judgment or any other judicial document, nor shall it have to prove any breach, failure or non-compliance on the part of Supplier or on the part of any person acting for Supplier or on its behalf or in its name, and a written demand or facsimile notice to Guarantor from an authorized representative of ISR shall be sufficient for all purposes of this Guarantee, and specifically shall be sufficient to collect any sum(s) under this Guarantee from the Guarantor immediately upon the demand of ISR

This Guarantee, 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 Lod, 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 WAGONS Price and Delivery Time

Signature: _____

IPM, on behalf of ISR

Date:

Signature: _____

SPM, on behalf of the Supplier

Date:

Annex I

Training plan