To: Participants of the Tender

Re: **Tender No. 18/19 For Delivery, Implementation & Support of Traffic Signals Planning Software**

Response to Questions and Requests for Clarifications of the Tender Documents

Ayalon Highways Co. Ltd. (the "**Company**") is hereby publishing a response to questions and requests for clarifications of the Tender Documents submitted by the participating Bidders.

No.	Section	Question/Answer
		General Questions
1.	**General**	**Question**: The provisions of the Agreement stipulate that the Company shall be granted the intellectual property rights of such software (including the option to receive the source code of the software). We kindly request the Tender Committee to change such provisions to be compatible with an agreement for purchasing off-the-shelf software.
		Answer: **Please see answers to questions 8,9,15, 20, 21 below regarding this matter.**
2.	**General**	**Question**: Among the Tender Documents there is no reference as a PQ or as a score to the following issues: ▪ Experience in the Israeli market. ▪ Employment of Israeli employees/Local presence. ▪ Bi-lingual support (Hebrew and English). ▪ Traffic engineers familiarity and experience with the solution. ▪ Ability to re-use current INBAR time plans and save planning time and money. We kindly request the Tender Committee to amend the Tender provisions in such a manner that the abovementioned issues will be taken into consideration as part of the Participants proposal and the Proposal Scoring will be evaluated according to the abovementioned issues as well.
		Answer: **The software approval by the Israeli Ministry of Transportation (MOT) will be taken into consideration as part of the General - Software Requirements as mentioned in Volume E -Functional & Technical Requirements.** **Other than that, the abovementioned requests are rejected.**
3.	**General**	**Question**: We kindly request the Tender Committee to clarify and confirm that the use of the Supplier's software shall be solely for the purpose of the Project that is the subject of the Agreement. Furthermore, we kindly request the Tender Committee to include in the Agreement a provision that obligates the Company and its employees to maintain the confidentiality

		of the information received from the Supplier in the context of the software and to use it solely for the purposes of the Project.
		Answer: The use of the Traffic Signals Planning Software shall be solely for the purpose of the Company's activity. It is hereby clarified that the Company shall be entitled to use the Traffic Signals Planning Software also for additional projects under its responsibility, other than the 'Urban Express' Project. **The rest of the abovementioned requests are rejected.**
		**Questions regarding Volume A - TENDER CONDITIONS AND INSTRUCTIONS**
4.	1.7.1 1.7.2	**Question:** In the referenced clauses, it is stated that the Company will be entitled to engage and sign the Agreement with up to 2 Winning Participants. in addition, in the referenced clauses, it is stated that the Company shall have sole and absolute discretion to determine the number of Winning Participant. We kindly request the Tender Committee to clarify the above-mentioned provisions. Furthermore, we kindly request the Tender Committee to clarify what are the criterions and considerations for the allocation of the scope of engagement for each of the Winning Participants.
		Answer: As set forth in the referenced clauses, the Company shall have sole and absolute discretion to determine the number of Winning Participants, and up to 2 Participants. Hence, the Company shall determine if there are 1 or 2 Winning Participants as well as the scope of engagement in accordance with the needs of the Company and the Project, as may be from time to time
5.	11.1.1	**Question:** 1. Under Vol. B section 5.5 it is stated "The Supplier represents and warrants that it has obtained all approvals and permits from the Ministry of Transportation. a) The time frame for obtaining the MOT approval is not defined. b) There are no LDs for not obtaining the MOT approval – and by that not comply with the submission PQ (while other deviations are subject to LDs. It is unreasonable that a Supplier that invested in getting the MOT approval a priory will have no advantage on maybe's with no real leverage. 2. We kindly request the Tender Committee to specify the period for obtaining the MOT approval.
		Answer: The title of Vol. A Section 11 is <u>preconditions</u> to the Company's engagement with the Winning Participant, and it determines - "The Winning Participant shall submit the software and all the documents required for obtaining the MOT approval within 3 months following the notification of Winning Proposal, and shall obtain such approval within a period determined by the Company". **In the event that the Winning Participant fails to submit the aforementioned required documents and/or fails to obtain the software approval by the MOT within the aforesaid determined period, the Company shall be entitled, at its sole discretion, to cancel the award of Winning Proposal, or to give the Winning Participant an extension of time to obtain the software approval by the MOT.**
		**Questions regarding Volume B – AGREEMENT**
6.	2	**Question:** In the referenced clause it is stated that *"accordance with terms of Section 20.2 of this Agreement"* – there is no section 20.2 in the Agreement. We kindly request the Tender Committee to amend the abovementioned clause.
		Answer: This provision refers to Section 21.2 of the Agreement.

7.	5.5	**Question:** In the referenced clause it is stated that *"The Supplier represents and warrants that it complies and will comply with the requirements and specifications detailed in the Ministry of Transport's Requirements for Traffic Light Planning Software, attached to this Agreement as Appendix B,"* We kindly request the Tender Committee to clarify if the abovementioned provision contradicts the provision in Volume A clause 11.1.1 in regard to obtaining the MOT approval only to the period <u>after</u> the agreement is signed. If there is no contradiction as specified above, we kindly request the Tender Committee to specify what is the above-mentioned period for obtaining the MOT approval after the Participant Proposal is declared as the Winning Proposal.
		Answer: Please see answer to question 5 above.
8.	5.18	**Question:** In the referenced clause it is stated that the *"Supplier is obliged to place a copy of the source code of the Software System ("Source Code") into escrow in accordance with an escrow agreement between the Parties and the Escrow Agent".* The purpose of the Agreement is the purchasing of the off-the-shelf software and not for the purchase of software development services. In the abovementioned described circumstances, the requirement to place a copy of the source code into escrow in such a manner that it can be transferred to the Company is unreasonable, excessive and cannot be accepted. The source code is the main asset of the Supplier, placing a copy of it into escrow and the possibility it may be transferred to another party is an unreasonable risk for the Supplier of the off-the-shelf software.
		Answer: The request is accepted. Section 5.18 shall be deleted.
9.	5.19	**Question:** In the referenced clause it is stated that the *"license to modify, enhance, translate, convert, recompile, upgrade and otherwise prepare derivative versions of the Source Code that Company receives under this Agreement, including the right to authorize others to do the foregoing on Company and its affiliates' behalf".* We kindly request the Tender Committee to clarify which affiliates does the Company have, and how they are connected to the Project?
		Answer: Section 5.19 shall be deleted.
10.	5.20	**Question:** In the referenced clause it is stated that *"The Supplier warrants that it has, and will have at all times, all permits, consents, licenses and approvals as required to fulfill its obligations under this Agreement".* We kindly request the Tender Committee to advise regarding the future "permits, consents, licenses and approvals" that will be required. Please clarify how can the Participants commit to something that is undefined?
		Answer: **The Supplier shall declare that it has all permits, consents, licenses and approvals as required to fulfill its obligations under the Agreement. In addition, the Supplier shall act in order to receive all future permits, consents, licenses and approvals as**

		required to fulfill the obligations of the Supplier under the Agreement. Violation of such obligation will be deemed a material breach of the Agreement.
11.	**7.2**	**Question**: In the referenced clause it is stated that *"Notwithstanding the aforementioned, in the event that the Company determines that the Additional Changes are immaterial"* - We kindly request the Tender Committee to clarify the following issues: 1. The abovementioned clause voids clause 7.1 from its essence as the Company can always determine that Additional Changes are immaterial. 2. On what grounds does the Company determine that the Additional Changes are immaterial? 3. On what grounds does the Company determine that the Additional Changes are required as a result of a "lack of conformity" of the reports and/or documents to the Company's requirements?
		Answer: 1. **there is no contradiction between section 7.1 and section 7.2. section, as section 7.2 sets the results in the event that Company determines that the Additional Changes are immaterial.** 2. **In accordance with the needs of the Project.** 3. **In accordance with the reasonable requires of reports/documents in similar aspects and projects.**
12.	**10.6**	**Question:** In the referenced clause it is stated that "*the Supplier shall provide …… as a precondition to any payment, a certificate from the Israeli Tax Authority approving the transfer of any such payment from the Company to the Supplier's bank account*". We kindly request the Tender Committee to specify which certificate is required in the abovementioned clause.
		Answer: Such certificate as required for the purpose of transferring payments to a non-Israeli bank account.
13.	**11.4**	**Question**: In the referenced clause it is stated that "*the Supplier will be entitled to Consideration solely for the Services actually performed by it until the date of termination or suspension"*. Regarding the abovementioned clause, it's not reasonable that on "termination for convenience" there won't be any compensation to the supplier. The supplier's commercial proposal is based upon the assumption that the services will be provided over a long period of time. Termination for convenience undermines the proper allocation of risks between the parties. Therefore, compensation to the supplier in such event is needed.
		Answer: The Section shall remain unchanged.
14.	**11.6**	**Question**: In the referenced clause it is stated that "transfer of the Services to another supplier". The Services consist of support and maintenance for our software. We kindly request the Tender Committee to clarify the following issues: 1. What exactly the Supplier is obliged to transfer? 2. Which "licenses, permits, consents and approvals" shall be transferred?
		Answer: 1. **The supplier obliged to give his consent to transfer the continuation of the Services to any other supplier designated by Company and at the Company's sole discretion, and to transfer all products regarding to the services performed by him to the date of termination.**

		2. **All licenses, permits, consents and approvals in which the Supplier received in order to perform the Services under the Agreement.**
15.	**12.1**	**Question**: In the referenced clause it is stated that *"and shall be deemed works made for hire by Supplier for Company"* The license we sell is an Off-the-shelf product as a suit. The development is based on market needs and not "work for hire". Even the innovation authority does not demand for an IP. We kindly request the Tender Committee to delete the abovementioned provision.
		Answer: **The request is accepted. Section 12.1 shall be deleted.**
16.	**16**	**Question**: *"Performance Guarantee"* – there is no correlation between the value of the contract (it could be only 1 license) and the guarantee sum. The Company has no obligation to fulfil the Agreement or to place an order. We kindly request the Tender Committee to create a correlation in such a manner that the sum of the Performance Guarantee will be derived from the sum of the actual order performed by the Company.
		Answer: **The Section shall remain unchanged.**
17.	**17.2**	**Question**: We kindly request the Tender Committee to clarify if the Agreement provisions forbid the Supplier from selling its assets and/or parts of its activity.
		Answer: **Such actions shall be subject to prior written consent of the Company.**
18.	**19.5.1**	**Question**: There is no correlation between the value of the Agreement (it could be only 1 license or even none) and the sum of the liquidated damages. We kindly request the Tender Committee to create a correlation in such a manner that the sum of the liquidated damages will be derived from the sum of the actual order performed by the Company.
		Answer: **The Section shall remain unchanged.**
19.	**6 in Appendix E**	**Question**: We kindly request the Tender Committee to specify what is the compensation mechanism in case the new Change of Scope incur the supplier additional costs?
		Answer: Since it is unknown at this stage which changes may be required, the compensation mechanism shall be determined in negotiations between the parties, based on the price for hour of labor as proposed in the Supplier's Commercial Proposal.
20.	**3 and 5 in Appendix F**	**Question**: The referenced clauses limits the Professional services of the Supplier. 1. We kindly request the Tender Committee to specify what are the reasons that the Supplier cannot sell Professional Services to other suppliers? 2. We kindly request the Tender Committee to cancel any contractual requirement and/ or provision, if such exist, that may limit the Supplier's employs from participating in future tenders regarding the "Urban Express" project.
		Answer: **Section 3-4 in Appendix F shall be deleted.**

| 21. | 3(a) and 3(b) in Appendix I | **Question**: In the referenced clause it is stated that "any and all improvements, … and Intellectual Property Rights thereto conceived or reduced to practice, in whole or in part, by Developer during the period that Developer is involved in the provision of services to the Company (directly or indirectly) and/or that are related to the Company's business (collectively, the "Inventions"). All Inventions shall be owned exclusively by the Company upon creation"

The abovementioned provisions cannot be accepted. These provisions are very broad and the requirement of "owned exclusively by the Company upon creation" is unreasonable when purchasing off-the-shelf-product.

Furthermore, the requirement that the Inventions conceived or reduced to practice, in whole or in part, by Developer during the period that Developer is involved in the provision of services to the Company, not necessarily in their context as those that relates to the project that is the subject of the Agreement is unreasonable.

We kindly request the Tender Committee to limit the abovementioned clause only to products that are developed exclusively for the benefit of the project, during the execution period of the Agreement. |
| | | **Answer:** **Appendix I shall be deleted.** |

	Questions regarding Volume D – SOW	

| 22. | | **Question:** According to the business model that was chosen for this Tender, the licenses for using the software are priced that may be suitable for some of the potential Participants but not to the business model of all the potential Participants.

We kindly request the Tender Committee permission to submit a Proposal in which the pricing is per intersection. |
| | | **Answer:** **The request is rejected.** |

	Questions regarding Volume E – SOW	

| 23. | 1-8 | **Question:** We kindly request the Tender Committee to clarify if (M) requirements are being evaluated as part of the scoring.

If (M) requirements don't have scoring, we kindly request the Tender Committee to specify how the points are being given in a certain section.

We kindly request the Tender Committee to clarify if the scores split evenly between the different sub sections? |
| | | **Answer: There are two types of mandatory sections -**

1) **Sections with a binary score if the software meets the criterion or not. These sections describes basic requirements, and are not part of the overall score.**
2) **Sections with a continuous score based on the reviewer's analysis of the software's performance. Additionally, the reviewer must decide if the software meets the listed criterion.** |

| 24. | 3.5.3 | **Question:** Our runtime framework which runs the logic inside the traffic controller offers the possibility to transmit synchronization pulses between different junctions. |

		The synchronization pulses can also be controlled from the logic. It is also possible to create and display a green wave diagram with our planning tool. In our opinion the creation of a green wave in the planning tool has nothing to do with the sync pulses of the controller, because creation or planning of green waves happen offline. What do you mean by "… /generate green wave diagram accordingly? Should the program be able to generate green waves (time space diagram with green bands) from within the logic?
		Answer: This section is a supporting requirement. It refers to the ability of the software to present a time-space diagram that is responsive to changes in the operational status of the junction (Vehicle detectors, LRT sensors, pedestrian demand buttons, etc.) in accordance to the logic of the junction.
25.	**4**	<u>**Question:**</u> In the referenced clause it is stated that *"M - at least one of the chapters 4.1 and/or 4.2 "*. We kindly request the Tender Committee to clarify the meaning of the abovementioned clause.
		<u>**Answer:**</u> **The software must meet one of the mandatory requirements noted in Sections 4.1 and 4.2. to the Tender documents. The overall score for the software will be awarded in accordance to the sub-scores of both of these two sections.**

* * *

This clarifications document, constitutes an integral part of the Tender Documents, and the Bidder is requested to attach a signed copy thereof to its Bid.

Name of Bidder: _____ Bidder's Signature: _____
Date: _____