

To: Tender Participants

**E-Tender (Online) No. 51/22 For the Supply, Implementation & Support of a Charging Management System for Bus Depots (the “Tender”)**

**Clarification Notice no. # 5**

Ayalon Highways Co. Ltd. (the “**Company**”) is hereby publishing a clarification to the Tender Documents, as follows.

This notice centralizes the questions raised, unifying similar questions, with no background detail or identifying data. Requested made by Bidders but not addressed below will be deemed rejected.

	Volume	Section	Question			Answer	
1.	B - Appendix A2	12 (New)	12	User Management	months	From signing date/request	Included in base price
			12.1	The System will support a role for advanced support – enabling fault investigation and data transfer command	3	request	no
			12.2	The System will support a user scope based on the charger vendor.  Users with the new scope applied should only see chargers of the defined vendor.	3	request	no
2.	C	1.1	All OCPP commands must be accessible through the system user interface. The Company’s assigned admin must have the ability to use all OCPP functionalities directly with no remote support.				
3.	A	3.1.1	In the definition of Joint Venture, it is stated that this is “Non-registered partnership of two legal entities [...]”. While, in section 3.1.1 C it is stated: “C. The Bidder Joint Venture (as defined below) in which: (1) the entity which meets the professional threshold conditions listed in Sections 3.1.4 - 3.1.7 below holds at least 80% of the Joint Venture, and (2) both members of the Joint Venture meet threshold conditions 3.1.1 - 3.1.3”.			It means that this entity's percentage in the profits and expenses of the Joint Venture (the Bidder), as agreed upon between the two entities, is at least 80%.	

			Please clarify what do you mean by “holds at least 80%” considering that should be a non-registered partnership and is formed by a contract without forming any separate legal entity?	
4.	A	3.1.5	Please confirm that the system can be developed by a company belonging to the same group of one of the two entities composing the bidding JV (e.g. the system is developed by a sister company of one of the two entities)?	Request denied.
5.	A	3.1.5	May we present a system developed by a sister company or a subcontractor of the Bidder, in order to meet this threshold?	Request denied.
6.	A – Appendix 4	2-4	<p>1. Section 2-3: Please revise the Attorney Confirmation in a way it shall be provided “based on information provided by the Bidder”, as these are facts that are not within a lawyer’s knowledge.</p> <p>2. Section 4: Please revise the confirmation under section 4 as follows:</p> <p>“The signatures of _____ as well as of _____, <del>who have signed before me</del> on this Proposal and the Agreement attached to it, in addition to the affixation of the Bidder’s corporate stamp, obligate the Bidder’s corporation for all intents and purposes.”</p>	Requests denied. Note that the Bidders may sign the Appendix in front of a <u>foreign</u> attorney.
7.	B	“Services” definition; Section 4.1; Section 5.1, 5.2	<p>Please amend the definition to clarify that the services provided are Software as a Service (SaaS), provided to Company using the System. System as such, shall not be supplied and access the system shall be granted online as long as the Agreement is in effect.</p> <p>Accordingly, no license to the system is granted, but rather a right to access and use the services.</p> <p>Section 5.2 should be therefore revised such that the Supplier grants the Company, in consideration for the payment of fees as detailed in the Agreement, a non-exclusive, non-transferable, right to access and use the Services in Israel during the Period of Engagement, solely for the Company’s internal business operations which include use by its End Users, all pursuant and subject to the terms and conditions of this Agreement</p>	Request partially accepted. If the Services are provided as SaaS, Section 5 shall be replaced with the following: "5. Right to Access and Use: Supplier grants the Company, for the Consideration stipulated in Section 10 of the Agreement, a non-exclusive right to access and use the Services in Israel during the Period of Engagement, by all users listed in Appendix A1 (SOW), all pursuant and subject to the terms and

				conditions of this Agreement."
8.	B	4.3	Please clarify whether this section applies to Change orders/requests.	Section 4.2 describes the manner in which the Company will activate the Supplier – through Work Orders from time to time. Change orders will be handled in accordance with Section 13 to the Agreement.
9.	B	6.7	Please clarify that any third party software included in the Services, shall be subject to the applicable license thereof. Supplier provides no express or implied warranty, indemnity or support for, and have no liability in connection with, such third party licenses (except that Supplier undertakes to comply with the license terms). Any infringement by such third party software not as a result of Supplier's breach of such license shall be in accordance with the third party license.	Request denied. The Supplier is responsible and liable to the Company for the entire supplied System, and all Services rendered pursuant to this Agreement, as stipulated in the Agreement (including section 18.1).
10.	B	7.2	Please clarify whether this section applies to SaaS services, since Supplier is not assigning employees to perform services dedicated to Company. Supplier's employees support the system for all the customers using SaaS.	Section 7.2 only refers to employees engaging directly with the Company on a regular basis.
11.	B	8.4	Please delete the following: "any dispute between Supplier and its contractors shall be resolved in accordance with their agreements (which are not executed specifically in respect to this Agreement)".	Request denied. Note that this section refers to disputes between the Supplier and other contractors employed by the Company.
12.	B	9.1	Please clarify that the extension of additional 4 years is a consecutive 4 year period.	Yes. Up to a maximum of 4 years in total.
13.	B	9.2	Please revise the section as following: (a) The Agreement cannot be terminated within the first 24 months and (b) thereafter any termination can only be done by sixty (60) days written notice before the expiration of the then current annual term.	Requests denied.
14.	B	10.2.4	Please clarify that a dispute between the parties regarding such decision will not constitute a reason for the Supplier to delay the required developments, as long as any amount not in dispute is timely paid to Supplier	Confirmed.
15.	B	10.6	Please amend the section as following: 1. The approval of the report by Company should be provided within no later than 7 days from the delivery of the report by the Supplier, and	1. At the end of section 10.5 the following shall be added: "The Company will review

			<p>if it was not approved in writing or rejection by providing detailed comments in writing within said period, the relevant report shall be deemed approved by the Company.</p> <p>2. Please remove reference to stamping of the bill by Company.</p>	<p>the monthly report within 5 days”.</p> <p>2. Request accepted. The words “The date in which the Company stamps the Supplier’s bill, shall be considered as the date of submission of the bill” will be deleted.</p>
16.	B	10.9, 22	<p>Please amend the section in a way that offset rights will be applied only following fourteen (14) days prior written notice and only in respect to fixed amounts due to the Company under the Agreement and not in respect to unproven damages.</p>	Request denied.
17.	B	11.2	<p>Please delete this section.</p>	Request denied.
18.	B	11.4, 12.4, Section 2.6 of the SOW	<p>Please clarify that:</p> <ol style="list-style-type: none"> <li>no liquidated damages shall be imposed in connection with a delay caused as a result of any act or omission of the Company or anyone acting on its behalf, including Company’s delay in the provision of required infrastructure, and/or due to circumstances not in Supplier’s reasonable control.</li> <li>liquidated damages shall only be collected following fourteen (14) days prior written notice during which the breach was not cured.</li> <li>liquidated damages shall be subject to a cap of 10% of the annual service fees.</li> <li>liquidated damages if collected, shall be sole and exclusive remedy for the delay.</li> </ol>	<ol style="list-style-type: none"> <li>Request partially accepted - that no liquidated damages shall be imposed in connection with a delay caused as a result of any act or omission of the Company or anyone acting on its behalf.</li> <li>Request denied.</li> <li>Request denied.</li> <li>Request denied, see section 12.6.</li> </ol>
19.	B	14.1	<p>Please amend the section as following:</p> <ol style="list-style-type: none"> <li>Extend the period to 30 days.</li> <li>Change it to a cure period, so that termination right shall only apply if the breach was not cured within such period.</li> </ol>	<ol style="list-style-type: none"> <li>Request partially accepted, the period will be extended to 14 days.</li> <li>Request accepted – following the words "in any case" the words "unless breach was cured during such notice period" shall be added.</li> </ol>
20.	B	14.2	<p>Please delete this section.</p>	Request denied.
21.	B	14.5	<p>Please delete this section.</p>	Request denied.
22.	B	18.1	<p>Please delete this section since the Supplier is only obliged for the provision of the Services vis a vis the Company and not any third party.</p>	Request denied. Note that the Supplier shall provide the Services to various

				entities, listed in the SOW.
23.	B	18.3	<p>Please amend the section as following:</p> <ol style="list-style-type: none"> <li>1. Supplier shall not be responsible for any failure of the Services caused due to any of the following: (i) Company's misuse of the Services or in violation of the terms of the Agreement; (ii) failures of Company's internet connectivity; (iii) Company's failure to meet any minimum hardware or software requirements set forth in the SOW; (iv) scheduled downtime set forth in the SLA; (v) failure attributed to the purchased cloud base hosting services; and (vi) failure of the Services due to unauthorized changes or modification or additions made by Company in the existing interfaces with Services.</li> <li>2. Indemnification shall be conditional upon Company giving Supplier (i) prompt written notice upon becoming aware of any claim; (ii) reasonably requested information and cooperation as necessary for the defense of such IP Claim; and (iii) sole authority to defend or settle such claim, and Company shall not settle or compromise any claim without Supplier's prior written approval.</li> <li>3. Supplier shall have no liability or obligation in respect to an IP claim arising out of or resulting from any of the following (i) the use of the Services by Company or any of its users contrary to this Agreement or written instructions provided by the Supplier; (ii) the combination, conjunction and/or integration of the Services with any product, device, or software, which were not supplied by the Supplier; (iii) the alteration and/or modification of the Services, other than by the Supplier; (iv) such IP claim is based upon any information, data, design, specification, instruction, software, or material furnished by Company or on its behalf. In such events, Company shall, at its own expense, defend and indemnify Supplier.</li> </ol>	<ol style="list-style-type: none"> <li>1. Requests (i), (ii) and (vi) are accepted. Requests (iii)-(v) denied.</li> <li>2. Request partially accepted. The Company will not settle such claim without the Bidder's approval, unless its consent is deemed by the Company to be unreasonably withheld.</li> <li>3. Request denied, not applicable to the Services.</li> </ol>
24.	B	18	<p>Please add limitation of liability provisions as following: The Supplier shall not</p> <p>(a) be liable in connection with this Agreement in an amount greater than the amount actually paid by Company under this agreement during the</p>	<p>(a) Request partially accepted. A new Section 18.12 shall be added as follows: "The Supplier shall not be</p>

			<p>twenty four (24) month period immediately preceding the event giving rise to such claim, but not less than the amount paid during the initial twenty four months period, and (b) have any liability arising out of or related to this agreement for any lost profits, revenues, failure to realize savings, indirect, incidental, consequential, or punitive damages.</p>	<p>liable in connection with this Agreement in an amount greater than the amount actually paid by Company under this agreement during the twenty four (24) month period immediately preceding the event giving rise to such claim, but not less than one milliom (1,000,000) NIS."</p> <p>(b) Request denied.</p>
25.	B	19	<p>Please clarify that the exercise of the guarantee shall be only:</p> <ol style="list-style-type: none"> <li>1. in case of material breach of the Agreement by Supplier which was not cured by Supplier within fourteen (14) days prior written notice detailing the breach.</li> <li>2. to the extent of the damages actually caused to the Company or to collect liquidated damages due to Company.</li> </ol>	<ol style="list-style-type: none"> <li>1. Request partially accepted - following the words "due to fundamental breach)" in section 19.2 the words "Supplier shall be granted fourteen (14) days prior written notice detailing the breach, before being exercised by the Company" will be added.</li> <li>2. Request denied.</li> </ol>
26.	B - Appendix A1 - SOW	10.2.5.2	<p>Please amend the section as following: Additional Developments shall be deemed approved by Company upon the earlier of: (i) the date Company provides written approval, (ii) the date on which Supplier demonstrates that the Additional Developments are in compliance with the SOW or upon the Service becoming live (whether or not Company executed such approval or commenced use of the Services; (iii) upon the expiration of the trial period, if Company did not provide a list describing in reasonable detail all material non conformities with the SOW until the expiration of such period; or (iv) the date on which Company commences use of the Services incorporating the Additional Developments other than for the performance of trial.</p>	<p>Additional Developments shall be deemed approved by Company upon the earlier of: (i) the date the Company provides written approval, (ii) if no feedback was provided by the Company within 60 days of the date the Additional Development was completed by the Supplier and made available for the Company's review.</p>
27.	B - Appendix A1	5.1	<p>Will the Supplier be required to support such as Priority 1/ Priority 2 (Help desk support-for drivers) in addition to EV Charging &amp; Energy Management platform?</p>	<p>Yes, a helpdesk must be available 24/7/365 for all priority levels.</p>



28.	B - Appendix A1 - SOW	5.5	Please delete the “Solution to allow normal operations” for Priority 1 issues, since Supplier cannot undertake a solution time, but only to response time and working continuously to solve such issues.	Request denied.
29.	B - Appendix A2 -		<p>Please clarify the following sections in Appendix A2:</p> <ol style="list-style-type: none"> <li>1. Section 6.2 - Which data does the system require publishing?</li> <li>2. Section 9.6 - the system will provide a mobile app for end users”. Please clarify for which use cases applies: Should the app unlock depot charging? Should it unlock public charging? Or should the app unlock both?</li> <li>3. Section 10.1 - the system will integrate with any system (e.g. BMS) to push any data from the system (e.g. charge point faults), as defined by the company”. Please clarify for which use cases applies.</li> <li>4. Section 10 - please clarify which integrations are required between the Bidder's platform and the customer internal systems. If possible, please send API documentation for such interfaces.</li> <li>5. Section 11.7 - which Telematics system is the Company currently using and if possible please share API?</li> </ol>	These are future developments and will be defined by the Company when it shall request the developments from the Supplier.
30.	B - Appendix A2	7.2	What does local depot management system integration involve? If possible please provide APIs. What is the technology, interface, data flows?	The integration could be with multiple systems and will be defined by the Company when it shall request the development from the Supplier.
31.	C		Please add a “comments” column to the excel spreadsheet.	Request denied. Note that this document includes the threshold conditions for the proposed System, which it must fully meet as of the Deadline for Submission of Proposals.
32.	D		Please add a “comments” column to the excel spreadsheet	Request accepted. See attached amended Document D.
33.	General	N/A	Please provide volumes of charge points in the near future ,(2022-2026) as well as type (public/private including AC, DC, home, work, etc), speed (regular, fast, ultra-fast).	Request denied.

34.	General	N/A	Please provide an estimate of EV charging transactions annually (volumes and cost if possible).	Request denied.
35.	General	N/A	Please provide location of chargers	Chargers are deployed all over the State of Israel.
36.	General		Please postpone the Deadline for Submission of Clarification Questions.	Request denied.

**This document is integral part of the Tender Documents, and the Participant is requested to attach a signed copy thereof to its Proposal.**

Name of Participant: \_\_\_\_\_ Participant's Signature:  
 \_\_\_\_\_ Date: \_\_\_\_\_