



Volume B – Agreement

Ayalon Highways Company Ltd.

Online Tender No. 29/26

Agreement No _____

**for the Supply, Integration, Operation and Maintenance of a MUTC
(Metropolitan Urban Traffic Control) System**

drawn up and signed and signed on month _____ day _____, year _____

between

Ayalon Highways Company Ltd.

(Hereinafter and in all this agreement’s documents "**the Company**"/"Ayalon Highways")

and

(Hereinafter and in all this agreement’s documents "**The Supplier**")

Whereas: The Company is interested in the supply, integration, operation and maintenance of a MUTC (Metropolitan Urban Traffic Control) system hereinafter: "**the Services**" or "**the Project**";

and whereas: The Company has published an online Tender No. 29/26 for the supply, integration, operation and maintenance of a MUTC system (hereinafter: "**the Tender**");

and whereas: The Company has accepted the Supplier’s Proposal for the Tender;

and whereas: In this Agreement, the Parties wish to define their relationship for the execution the Services, all as detailed in this Agreement;



therefore the following have been agreed upon, conditioned and declared:

1. **General**

- 1.1 The preamble to this Agreement constitutes an integral part hereof.
- 1.2 The headings to the sections in this Agreement have been introduced solely for the reader's convenience and should not be used for interpreting the content of the sections in any form and manner.
- 1.3 The terms in this Agreement shall have the meanings given to them in the Tender Documents, unless expressly specified otherwise.

2. **The Agreement's Appendices**

Appendix A – the Tender Documents (including the SOW) and the Supplier's Proposal (including the Price Proposal)

Appendix B – Insurance Form

Appendix C – Guarantee Form

Appendix D – A Written Undertaking to Maintain Confidentiality.

Appendix E – Liquidated Damages

Appendix F – Temporary Traffic Arrangements

Appendix G – Emergency Time Provisions

3. **Definitions**

In this Agreement, the following terms shall have the meaning next to them:

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| MUTC | - The Metropolitan Urban Traffic Control system, in its entirety. |
| Business Days | - Sunday thru Thursday, except for Israeli holidays (including holiday eve) on which businesses in Israel are closed. |
| Change Order | - As defined in Section 13.2. |
| Consideration | - As defined in Section 9.1. |

- Extension Periods** - As defined in Section 5.1.
- Guarantee** - As defined in Section 12.1.
- Liquidated Damages** - As defined in Section 14.1.
- Handover** - The official delivery of the MUTC to the Company, in accordance with the SOW.
- Maintenance Period** - The Maintenance Period of the MUTC will commence once the Supplier received an approval for the successful completion of the Warranty Period, and will end upon termination of the Period of Engagement.
- Period of Engagement** - As defined in Section 5.1.
- The Services** - development and adaptations, supply, integration, operation and maintenance of the MUTC, or part thereof, as detailed in the SOW.
- Tender Documents** - The tender documents as detailed in Section 2 of the Terms of Tender (Volume A), and any clarification and/or addendum thereto made by the Tender Committee in writing.
- Warranty Period** - As defined in Section 5.1.

4. The Supplier's Affidavits and Commitments

The Supplier hereby declares and undertakes the following and its commitments shall remain valid throughout the Period of Engagement:

- 4.1 That there are no prohibitions, restrictions or impediments, including by virtue of any law, contract or its foundation documents, preventing it to engage with the Company in the Agreement and to perform its obligations pursuant to it, that it is under no commitment which conflicts with its commitments in accordance with the Agreement, and the signing and performing of its obligations in accordance with the Agreement does not violate any other agreement,



commitment or law, and it is aware that it will be obligated to compensate and indemnify the Company for any claim and/or demand submitted against it, regarding the violation of this undertaking.

- 4.2 That all the affidavits and/or presentations and/or information and/or data and/or documents submitted and/or presented as a part of its Proposal for the Tender are correct, accurate, and valid and that it has presented the full requested information and/or data and/or the full relevant information and/or data for the engagement in the Agreement.
- 4.3 That all its representations and warranties pursuant to the Tender Documents and the Agreement will remain in force during the entire Period of Engagement; and that it will inform the Company, immediately, in the event of any change in its representations or warranties given regarding the Agreement, and without derogating from the generality of the foregoing - especially those which could affect its ability to perform the Services.
- 4.4 That it holds all the authorizations and/or licenses and/or permits required by law, and that it has all the means, facilities and equipment needed for its operation and, particularly, for performing its commitments pursuant to the Agreement.
- 4.5 That the Services shall be of a high quality and precision and will comply with the requirements of every applicable law. The Supplier is responsible for complying with the provisions in this section; that its systems and all the elements to be installed by the Supplier will comply with all the provisions of the law and with every applicable standard, stipulation or other instruction.
- 4.6 That it will perform all the required preparations for the purposes of providing the Services efficiently, excellently and to the Company's satisfaction.
- 4.7 That it has examined everything that requires prior inspection in relation to the provision of Services; that it is well aware of all that is required for the provision of Services; and it irrevocably waives any claim and/or demand and/or other objection against the Company relating to the aforementioned.
- 4.8 The Supplier hereby declares that it owns, or shall own the intellectual property including copyrights or licenses to use the software products which will be used



for the purpose of providing the Services (except for software provided by the Company), and that, at all times, it will have all the necessary authorizations and licenses from all the software suppliers for the purpose of providing the Services and that it will not infringe any third party intellectual property rights.

Should any claim be submitted against the Company, based on the fact that any product used by the Supplier obtained from a third party pursuant to the Agreement, infringes any intellectual property rights, including a patent or copyright, the Supplier will conduct the defense against such claim at its expense and under its responsibility and will indemnify the Company and/or the Ministry of Transport for any damage and/or loss and/or expense caused to them, including legal expenses and attorney's fees, immediately upon the Company's first demand, after a final verdict of the court, provided that the Company will promptly notify Supplier in writing of such claim, reasonably supply information requested by Supplier and reasonably cooperate in the defense and not settle with plaintiff without the Supplier's consent. Furthermore, in the event that a temporary or permanent injunction is issued prohibiting the use of any software product or licenses, due to its infringement of intellectual property rights, including a patent or copyright as aforementioned, or that it was produced while infringing such rights, or if the Supplier suspects an injunction will be issued, the Supplier declares and undertakes, to obtain permission to continue using the infringing product or to replace or change the infringing product with an equivalent product in its performances, at its expense, so that the alleged infringement is eliminated and in a manner in which the provisions of its ongoing Services to the Company and/or the Ministry of Transport shall not be jeopardized.

- 4.9 That it and/or the MUTC will operate in accordance with every applicable law, including the Protection of Privacy Law, 5741 – 1981 and its regulations, the Transportation Ordinance, the Transportation Regulations, 5721 – 1961 and the Transportation (activating cameras by the local authority for the purposes of documenting improper use of a public transport lanes) Regulations, 5777 – 2016. The MUTC will not store images of passengers in vehicles in any database,



unless the image is completely blurred and unidentifiable, and in such way that it will be impossible to restore a recognizable image and/or eliminate the said blurring.

- 4.10 That it maintains its bookkeeping and/or reports in accordance with the Income Tax Ordinance[New Version], 5721-1961 and the Valued Added Tax Law, 5736 – 1975. The Supplier undertakes to provide the Company, whenever required, with confirmation regarding its compliance with the aforementioned, or, alternatively, confirmation that it is exempt from doing so. Such confirmation will be issued by an authorized official as defined in the Public Entities Transactions Law, 5736 – 1976, or by an accountant.
- 4.11 That it is aware that the Company is entering this Agreement based on its representations, statements and obligations detailed in the Agreement and its Proposal.

5. Period of Engagement

- 5.1 The term of the engagement shall terminate 4 years after Handover of the MUTC, (the “**Period of Engagement**”), in which the Supplier shall provide Maintenance Services. The first year following Handover shall be the Warranty Period (the “**Warranty Period**”), followed by a Maintenance Period of 3 years. The Company reserves the right, at its sole and absolute discretion, to extend the Period of Engagement for up to 5 additional periods of 24 months each (hereinafter: the “**Extension Periods**”). Reference to the Period of Engagement shall include the Extension Periods, and all terms of the Agreement shall apply to the Extension Periods.
- 5.2 The Company may, at its sole discretion and for any reason whatsoever (including budgetary considerations), terminate the Period of Engagement, with the Supplier, by giving 45 days advance written notice, without derogating from any other provision in this Agreement. In such event, the Supplier will not be entitled to any payment or compensation, other than the consideration for completed payment milestones (as detailed in Section 9.3 below) and a proportional part of payment milestones in the process of being fulfilled,



properly rendered by the Supplier, in accordance with the Agreement, until the termination notice. Notwithstanding the foregoing, insofar as the termination of the Agreement is not due to fundamental breach by the Supplier (as per Section 19 below), the Company will reimburse the Supplier for irrevocable reasonable expenses to third parties, subject to the Supplier's obligation to mitigate its losses.

6. The Services

6.1 The Supplier shall provide the Services in accordance with the Tender Documents, the Company's instructions and requirements as they shall be furnished to the Supplier from time to time, the approved work plans, and every applicable law.

6.2 It is hereby expressly clarified that all the Services are included in the Supplier's Price Proposal and no additional consideration will be paid in respect of the aforementioned.

6.3 Schedule

6.3.1 The date for commencing the Services shall be as detailed in the work commencement order which will be issued to the Supplier after the Company executes this Agreement. The schedule for execution and completion of the Services shall be according to the milestones and tasks detailed in the SOW, the schedule approved by the Company during the design stage (taking into consideration the Supplier's proposal in the Tender) and the provisions in this Section 6.3 below shall apply.

6.3.2 The Supplier is aware of the utmost importance of complying with the schedule approved by the Company at the design stage, of providing the Services continuously, and of the continuous availability of the Supplier and its staff. The Supplier undertakes to provide the Services in accordance with such schedules and milestones and will use all such work methods and use the required staff in order to ensure



- the fulfillment of its obligations regarding the Services pursuant to the Agreement.
- 6.3.3 In the event the Supplier completes Handover earlier than the contractual milestone date for its completion, the Supplier shall be entitled to a bonus as detailed in Section 9.9 below.
- 6.3.4 Without derogating from the Supplier's responsibility for complying with the schedule as aforementioned, the Supplier shall notify the Company in advance and in writing of any matter which could affect the schedule and shall request the Company's instructions. The Company will determine, at its sole discretion, whether to extend the schedule and the period of time for such extension to be given by it.
- 6.3.5 Delays in the provision of the Services, will constitute a fundamental breach of the Agreement and will subject the Supplier to Liquidated Damages, as set forth in **Appendix E** of this Agreement.
- 6.3.6 Without derogating from the payment provision in Section 9.8.2 below, once a version of the System is operative, the Maintenance Services shall begin and they shall be provided even in times of national emergency.
- 6.4 The Company is entitled to order the Supplier, in writing, to suspend the performance of the Services for up to 90 cumulative days throughout the entire Period of Engagement, for any reason at its sole discretion, without paying any compensation to the Supplier.
- 6.5 In case of either (i) suspension by the Company, or (ii) delays in the critical path for which the Company is solely responsible, for a period longer than 90 cumulative days, the Company will compensate the Supplier for any direct and reasonable expenses it incurred from the 91st day, subject to the Supplier's obligation to mitigate its losses.
- 6.6 The Supplier will execute the Services, including manner and stages of performance, as defined in the SOW and defined by the Company. The Supplier



will also be required to be prepared for executing irregular tasks according to the Project's needs, which may include the operation of several work teams simultaneously and/or night work.

- 6.7 The work required of the Supplier includes all that is necessary for the execution of the Services in full and as required, including obtaining and receiving all authorizations from the relevant authorities and coordinating with other service providers employed in the relevant project and obtaining all the authorizations required for the execution of the work according to every applicable law.
- 6.8 The Company may order the Supplier to add certain means, tools and staff, insofar it deems them necessary for the proper and full compliance with the contractual obligations, to the Company's satisfaction.
- 6.9 Without derogating from the aforementioned generality, the Supplier will fully cooperate with the relevant project manager and any other parties in the Project, all in accordance with the Company's instructions and guidelines.

7. Control, Inspection and Coordination

- 7.1 The Supplier undertakes to manage and supervise its work, including inspection of its staff and any other and/or additional issue which will be defined by the Company.
- 7.2 The Company has the right to inspect and/or supervise the Services provided by the Supplier, at all times, and the Supplier shall comply and cooperate with the exercise of such rights. Inspection, supervision or approval by the Company does not derogate from the Supplier's responsibility pursuant to the Agreement or impose any liability on the Company.
- 7.3 The Supplier is aware and expressly agrees that a certain part of the Services will be executed from the Company's offices or sites (such as acceptance tests). Therefore, other works may be simultaneously carried out in nearby sites by other service providers / contractors / suppliers, on behalf of the Company.
- 7.4 Without derogating from other provisions in this Agreement, the Supplier will cooperate with the other service providers/contractors/suppliers and will



coordinate with them (if applicable and as necessary) the performance of the Services, in a manner in which the services and works executed by the Supplier shall not cause any damage and/or disturbance and/or delay to other works of any kind.

7.5 The Company will resolve any disputes between the service providers/contractors/suppliers and its decision shall be final.

7.6 The Company will not pay the Supplier any additional consideration for the said cooperation and coordination as aforesaid.

8. Personnel and Subcontractors

8.1 For the purposes of providing the Services, the Supplier's staff will, at all times, include excellent and experienced professionals, including a project management team with at least the members expressly detailed in Section 11.1 of the SOW, in the composition and number required for complying with the Supplier's obligations pursuant to the Agreement.

8.2 The Supplier undertakes to pay its staff members, full wages, including the mandatory social rights required by any applicable law.

8.3 The Supplier undertakes to ensure safety and suitable health conditions for maintaining the health and welfare of its staff members, including convenience arrangements, means of arrival at the site, proper dining sites and any required clothing, if applicable, and to comply with any instructions regarding safety at work in accordance with any applicable law.

8.4 Subcontractors -

8.4.1 The Supplier may only use subcontractors if the Company has explicitly authorized, in advance and in writing, the use of such subcontractors.

8.4.2 To the extent the Supplier chooses to provide part of the Services by subcontractors, the subcontractor must comply with the Agreement's provisions as well as required standards, regulations and procedures set forth in the Company's instructions.



- 8.4.3 The Company may reasonably order the Supplier to suspend the work of any of the subcontractors employed by it and/or to replace them, at its sole discretion. If the Company has ordered the Supplier to replace the subcontractor, the Supplier shall do so and obtain the Company's approval, within 30 days of the Company's request. To the extent the Company has authorized a subcontractor, it is hereby clarified that the Supplier shall be solely responsible for the acts and omissions of such subcontractor and any other person acting on its behalf.
- 8.4.4 It is clarified that the transfer of the execution of part of the Services, to a subcontractor, does not relieve the Supplier or derogate from any commitment or liability of the Supplier towards the Company pursuant to any law and this Agreement.
- 8.4.5 The subcontractor appointed by the Supplier for supply, installation and maintenance of low-voltage equipment on roads in Israel, must be presented to the Company for authorization, no later than the SRR submission documents, along with proof that such subcontractor meets the following minimum conditions:
- 8.4.5.1 It is an entity incorporated in the State of Israel.
- 8.4.5.2 The subcontractor has, during the 5 years preceding the date its authorization is requested by the Supplier, completed at least 2 projects, each with a value of not less than NIS 2,000,000 (excluding VAT), which included installation, connection and commissioning works of field equipment (such as cameras, LCS, VMS, VPS, traffic lights, detectors, etc.) in transportation systems, including electrical and communication works, as well as the provision of maintenance services (preventive and corrective) for a period of not less than 24 months for each of the projects, which were carried out, in whole or in part, on active roads and under approved traffic arrangements;



and such experience was performed by the subcontractor as a prime contractor or as a subcontractor performing the works in practice, and is not based on the experience of any third party other than the subcontractor.

Such subcontractor shall be required to coordinate and implement temporary approved traffic arrangements in accordance with Appendix F, to act in times of emergency as an "essential economy" and the provisions of Appendix G shall apply, and to cooperate (together with the Supplier) with the Company's traffic light maintenance contractor.

9. Consideration

- 9.1 In consideration for full compliance with the Supplier's obligations, including the provision of the Services pursuant to the Agreement to the Company's satisfaction, the Supplier will be entitled to the consideration detailed in its Price Proposal – Appendix 2B(1) – Bill of Quantities of the Tender Documents (hereinafter: "**the Consideration**"). The Consideration for Part 1 of the Price Proposal, shall be referred to below as the Fixed Price component of the Consideration.
- 9.2 The Fixed Price component of the Consideration will be paid for all Services provided by the Supplier in accordance with the Agreement, until Handover. The Fixed Price will be paid according to the payment milestones set forth in Section 9.3 below. The Company retains the right to cancel or decrease Services, in which case the Fixed Price shall be reduced accordingly, and the provisions of Section 13 below shall apply.
- 9.3 The Fixed Price shall be paid according to the following payment milestones, subject to the Company's written approval of each milestone as defined in the SOW:
 - 9.3.1 **Design Milestones (Block 1) (15%)**

Milestone No.	Percentage	Milestone Description	SOW Reference
#1	3.0%	SDR – System Design Review (Full System) Approval	11.7
#2	5.0%	PDR – Preliminary Design Review (System + Block 1) Approval	11.8
#3	7.0%	CDR – Critical Design Review (System + Block 1) Approval	11.9

9.3.2 Block 1 – Versions 1-3 (75%)

#4	7.0%	FAT – Factory Acceptance Test (Version 1.1) Approval	12.3
#5	9.0%	SAT – System Acceptance Test (Version 1.1) Approval	12.5
#6	9.0%	Installation and Deployment (Version 1.1) Approval	12.6
#7	7.0%	FAT – Factory Acceptance Test (Version 1.2) Approval	12.3
#8	9.0%	SAT – System Acceptance Test (Version 1.2) Approval	12.5
#9	9.0%	Installation and Deployment (Version 1.2) Approval	12.6
#10	6.0 %	FAT – Factory Acceptance Test (Version 1.3) Approval	12.3
#11	7.0%	SAT – System Acceptance Test (Version 1.3) Approval	12.5
#12	12.0%	End of Trial-Run (Block 1 Completion) Approval	12.7

9.3.3 Handover and Warranty (10%)



#13	5.0%	Official System Handover	12.8
#14	5.0%	End of Warranty Period	14.3

9.4 Upon receipt of the Company's written approval of full attainment of a payment milestone, the Supplier shall submit a payment request (to which it must attach such written approval). Despite the foregoing, in exceptional circumstances the Company may allow partial payment of a payment milestone, if partially attained provided that such partial attainment constitutes a functional and verifiable subset of the milestone.

9.5 The Supplier may begin working on a later version, even if a previous one has not been fully completed, however payment for such later version milestone is subject to the Company's advance approval.

9.6 Consideration for Part 3 (migrating intersection data from exiting system), shall be paid upon attainment of milestones #6, #9 and #12 respectively, according to the actual number of migrated intersections which have not yet been paid for.

9.7 **Optional services:**

9.7.1 Optional services forming part of Block 2 developments, as detailed in Chapter 8 of the SOW, and some of the optional workloads detailed in Chapter 9 of the SOW, have been priced by the Supplier in Part 2 of its Price Proposal – Appendix 2B(1) of the Tender Documents, and shall be paid according to such pricing, which includes all actions and materials necessary to comply with the terms of such optional services as detailed in the Tender Documents and the Supplier's Proposal. Alternatively, the Company reserves its right to price such optional service as a Change Order in accordance with Section 13 below.

9.7.2 Optional services priced in Part 2 of the Supplier's Price Proposal and exercised by the Company during the design review stage of Block 1, shall be paid according to the same payment milestones as those of the Fixed Price component, detailed in Section 9.3 above. Optional



services priced in Part 2 of the Supplier's Price Proposal and requested by the Company at a later stage, shall be paid according to the following milestones: 15% upon the approval and issuance of a Change Order according to Section 13 below; 25% upon approval of the detailed design; 40% upon completion of development and integration; 20% upon final acceptance by the Company.

9.8 The Yearly Maintenance Fee:

9.8.1 Shall be calculated according to the percentage proposed by the Supplier in its Price Proposal - Appendix 2B(1) of the Tender Documents, multiplied by the consideration paid to the Supplier for Parts 1 and 2 (only options that have been exercised and completed) of the Price Proposal.

9.8.2 The Yearly Maintenance Fee shall be paid to the Supplier in 4 equal quarterly installments after each calendar quarter of Maintenance Services rendered during the Maintenance Period, including during the Extension Periods. The first and last payments shall be pro rata if not a full calendar quarter. For the avoidance of doubt it is clarified that no payment shall be made for Maintenance Services rendered until the end of the Warranty Period.

9.8.3 The Yearly Maintenance Fee will be linked to all fluctuations (increase or decrease) in the indexes / exchange rates elected by the Supplier in its Price Proposal (Appendix 2B of the Tender Documents), from the last index/rate published as of the date of Handover until the last index/rate published as of the beginning of each maintenance year.

9.9 Early completion bonus - Subject to the full and final completion of Block 1 and the Company's certification of the Handover date, the Company shall pay the Supplier a bonus in the amount of NIS 100,000 for each full calendar month by which the Handover date is advanced in relation to the maximum schedule defined in the Tender Documents, and a pro rata sum for a partial month.



However, in any event, the total acceleration eligible for such bonus shall not exceed six (6) months.

- 9.10 VAT will be lawfully added to the Consideration, subject to the issuance of a lawful tax invoice.
- 9.11 Subject to the Company's approval of the payment requests duly submitted, the Company will pay the Supplier within 45 days from the end of the month in which the approved bill was submitted to the Company, subject to a receipt of a lawful tax invoice, and to the extent the Company is requested to transfer the payment to an offshore account - also subject to the Supplier presenting all the required approvals in accordance with Israeli law and the requirements of the Israeli tax authorities (including withholding tax certificate, etc.). The date in which the Company stamps the Supplier's bill, shall be considered as the determining date for the date of submission of the bill. The Consideration will be paid after withholding legal tax at source (unless the Supplier has provided the Company with a legal authorization regarding an exemption from withholding at the source).
- 9.12 For the avoidance of doubt, it is hereby emphasized that the Company may offset any amount due to it by the Supplier pursuant to this Agreement and/or any other agreement that it has with it and/or pursuant to any law, including reimbursement for advances and/or payment of damages, against any sum it owes the Supplier.
- 9.13 It is hereby expressly clarified that the Consideration includes all the preparation and necessary works for the execution of the Services, to the Company's full satisfaction.
- 9.14 For the avoidance of doubt, it is clarified that the Consideration is final and includes all the service components (including additional and/or indirect services) that are the subject of this Agreement, as detailed in the Tender Documents and this includes: overhead expenses, price increases, office and/or general expenses, equipment costs, wages of employees and/or those employed by the Supplier including full social expenses, travel expenses (including travel



abroad) and any additional and/or other expense of any kind and type. For the avoidance of doubt, it is clarified that the Supplier shall not be entitled to any consideration and/or additional payment for/or regarding its work beyond the aforementioned, unless otherwise stipulated expressly in the Agreement or if the parties have agreed upon this expressly in writing.

9.15 The Supplier is aware and agrees that any instruction that may affect the Consideration and/or scope of the Agreement which is not approved by the Company in a written document signed by the Company's signatories, shall not bind the Company and the Supplier shall not be entitled to act pursuant to it and, should it act pursuant to it, it shall not be entitled to any consideration whatsoever in this regard.

10. Responsibility and Indemnification

10.1 The Supplier is solely responsible for the quality of the Services. The Company's approval of the Services in whole or in part, does not exempt the Supplier from its full professional responsibility and confirmation does not impose any liability on the Company relating to the quality of the Services.

10.2 Without derogating from any other instruction in the Agreement and/or in any law, the Supplier shall be solely responsible for any loss, injury, damage or financial loss of any kind caused to the Company (including to any of its employees and/or the Ministry of Transport and/or the State of Israel) or to any third party, during and/or in relation to providing the Services and/or as a result of any act and/or omission of the Supplier and/or anyone on its behalf.

10.3 Without derogating from any other provision in this Agreement and/or in any law, the Supplier undertakes to indemnify the Company immediately upon its first demand, subject to a final verdict which execution has not been withheld by court's decision, for any claim and/or allegation filed against the Company due to any loss, injury, damage or financial loss as aforementioned in Section 10.2, and for any expenses incurred by the Company or which it may bear, in relation to the aforementioned (including court expenses and legal fees), all without derogating from the Company's rights pursuant to the Agreement and/or



to any law for any other relief or remedy. The Company shall inform the Supplier as soon as possible of receipt of a claim and enable it to participate in its defense against it.

10.4 The provisions in this section shall not exempt the Supplier from the obligations imposed on it, in the performance of its work pursuant to any law. Their content shall not be interpreted as the Company's waiver of any right or remedy to which it is legally entitled.

10.5 The provisions of this Section 10 shall also apply to any part of the MUTC that is not owned by the Supplier, and will replace the provisions of any agreement or warranty whether signed by the parties or imposed on the user via the actual use of product or by opening its package or in any other way, unless the terms of the other agreement or warranty are more favorable to the Company.

11. **Insurance**

Without prejudice to the Supplier's liability under the Agreement and under any law, the Supplier undertakes to deliver, before the commencement of the Services and for the entire Period of Engagement, valid insurance policies at its expense, in its name and the Company's name, all as set forth in **Appendix B** to this Agreement. The delivery of insurance certificates in accordance with the provisions of **Appendix B** as aforesaid is a prerequisite for the Company signing this Agreement. The Supplier will submit the above valid insurance policies to the Company within 14 days of receiving the winning notification notice from the Company.

12. **Guarantee**

12.1 To ensure the full performance of all obligations of the Supplier under this Agreement, as a prerequisite for the Company signing this Agreement, the Supplier undertakes to deposit an autonomous, unconditional, irrevocable bank guarantee, at the Company's order (hereinafter: "**the Guarantee**"), within 14 days of receiving the winning notification notice from the Company.



- 12.2 The Guarantee shall be issued in an amount equal to 2,000,000 (two million) NIS linked to the index specified in Appendix C and according to its wording, by a reputable bank acceptable to the Company.
- 12.3 At the end of the Warranty Period, the Supplier may reduce the Guarantee amount to 1,000,000 (one million) NIS linked to the index specified in Appendix C.
- 12.4 The Guarantee shall be extended from time to time and remain valid until 90 days following the termination of the Agreement, including the Extension Periods, if any. The Guarantee will be returned to the Supplier following the termination of the Agreement and subject to the full fulfillment of the Supplier's obligations pursuant to this Agreement.
- 12.5 It is emphasized that all the Guarantee expenses shall be borne exclusively by the Supplier. Without derogating from the other provisions of the Agreement, the Company may exercise the Guarantee and use its funds, to cover anything owed to it by the Supplier pursuant to this Agreement and/or the law, during the Period of Engagement.
- 12.6 The Guarantee may be exercised by presenting it to the bank without the Company having to present any document and/or additional proof whatsoever and without the Company having to rationalize its decision or to prove its damages to the bank. The Company will notify the Supplier, in writing, 5 days in advance, regarding its intention to exercise the Guarantee.
- 12.7 The amount of the Guarantee does not serve as a limitation or ceiling to the Supplier's commitments. Without derogating from the Supplier's obligation to maintain a Guarantee at any time pursuant to the provisions in this Agreement, if during the Period of Engagement the Guarantee period is approaching termination, the Company will notify the bank that issued the Guarantee (with a copy to the Supplier), that if the Guarantee period is not extended, it will be exercised. No payment will be made to the Supplier, until it provides a Guarantee pursuant to the Company's demand in accordance with the provisions in this section 12.



- 12.8 It is clarified and agreed that if, for any reason, the Company exercised the Guarantee, or part thereof, without termination of this Agreement, the Supplier shall supplement the Guarantee amount, within 7 days, and place a new full Guarantee. Should the Supplier fail to place a full and new guarantee on the aforementioned date, this shall constitute a breach of the Agreement and the Company shall be entitled to terminate it immediately. The supplement amounts shall not exceed 100% (thus the original Guarantee amount of 2 million NIS, and the supplement amounts, shall total no more than twice the original Guarantee amount).
- 12.9 For the avoidance of doubt, it should be emphasized that the amount of the Guarantee is for the purpose of facilitating collection only, and under no circumstances does it constitute Liquidated Damages compensation of any kind.

13. Changes

- 13.1 The Supplier shall not be entitled to make any changes to the Services, unless it has obtained the Company's express written approval. Should the Supplier make changes that were not required as part of the Services, the Company may be exempt, at its sole discretion, from paying the Supplier for such changes.
- 13.2 The Company may order any change in the Services or their schedule, or any part thereof, including cancellation or reduction of any of the Services, at its sole discretion, and the Supplier will make the change as aforementioned (hereinafter: "**Change Order**").
- 13.3 For the avoidance of doubt, it is hereby clarified that any action or task or system capability detailed in the Tender Documents or in the Supplier's Proposal, as well as any task that the Supplier will be required to perform within the framework of the items detailed below, will not be considered a "Change" for the purposes of this Agreement and this Section 13, but rather included from the outset as part of the Services already priced by the Supplier as part of its Price Proposal, including each of the following:
- 13.3.1 Instructions and guidelines that will be given to the Supplier by the Company as part of the design stage and the approval of the Design



- Review documents by the Company, including amendments and changes to such documents or their deliverables, towards fulfilling the Supplier's obligations in accordance with the Agreement.
- 13.3.2 Changes of any kind and type resulting from requirements or guidelines of any authority acting in accordance with law.
- 13.3.3 Changes arising, directly or indirectly, from matters expressly regulated in this Agreement and without derogating from the foregoing - the Company's rights expressly specified in the SOW to require changes or additions in relation to specific service components, unless expressly stated next to them that they will be considered a Change Order.
- 13.3.4 Changes arising from an act or omission or breach of the Supplier.
- 13.3.5 Any act that the Supplier must perform in order to comply with its obligations under this Agreement, including any act that by its nature is included in the actions mentioned in the Tender Documents even if that act is not expressly written in the Tender Documents.
- 13.3.6 Replacement, renewal or update of the MUTC to the extent required in the SOW, including requirements resulting from changes to third-party licenses and products.
- 13.4 The Supplier shall be responsible for notifying the Company, within 30 days of the date on which it received a written instruction or order or approval from the Company or anyone on its behalf, including as part of quality control or professional examinations of the system and approval of Design Reviews or execution phases, which it believes constitutes a change to the project for which a Change Order must be given. If the Supplier fails to notify the Company within the said time, the instruction / order / approval, will not be considered a Change Order and no additional consideration will be paid in respect thereof.
- 13.5 If, during the development and implementation of Block 1, the Company elects, at its sole discretion, not to proceed with the implementation of a subsequent



version thereof (for example, Version 1.3), then all payment milestones associated exclusively with such non-implemented version (in the present example: Milestones #10, #11 and #12) shall not become due and shall not be payable.

In such event, the remaining Handover and Warranty milestones (Milestones #13 and #14) shall remain payable upon their successful completion and approval by the Company; however, such payments shall be calculated on a pro-rata basis, taking into account only the actual scope of implementation executed in practice and the updated total contract value reflecting the non-implementation of the relevant version.

For the avoidance of doubt, the Supplier shall not be entitled to any compensation, loss of profit, demobilization costs, or other payment in respect of the Company's decision not to implement a subsequent version, except for payment of milestones duly completed and approved in accordance with this Agreement.

13.6 The Company shall pay the Supplier for its **direct** additional costs as a result of Change Orders, or reduction of costs (such as in the event of reduction of Services), which shall be priced as follows:

13.6.1 If a tariff has been quoted for a certain (or similar) change, or for a component thereof, as part of the Supplier's Price Proposal (including proposals for development hours), such tariffs shall apply for Change Orders requested by the Company, unless the Company requests to price the change or its component, according to other provisions of this Section 13.

13.6.2 Direct additional costs as a result of the Change Order shall be priced at market value, as determined by the Company, including on the basis of existing pricelists (the Company's pricelist, if no relevant pricing then Netevei Israel Company pricelist minus 10%, and if no relevant pricing in either then finally Dekel pricelist minus 10%). The Supplier must prove such market value, including by way of a price analysis to



be conducted by the Supplier based on at least 3 quotes, if possible, which will be examined by the Company and subject to its approval. The Company may also procure price quotes independently. If such price proposals are those of external suppliers/subcontractors, then the Company shall add 6% for overhead and profit of the Supplier.

- 13.6.3 Following calculation of the payment due according to the above, including foreseeable professional personnel working hours, the Company may, with the Supplier's consent, set the payment for the Change Order at a fixed predetermined cost.
- 13.6.4 (a) It is clarified that only Change Orders that have a direct effect on the Supplier's maintenance costs, shall incur an increase to the Yearly Maintenance Fee, at a rate that shall reflect such direct effect, to be determined by the Company in the Change Order, after consultation with the Supplier. However in no event shall the yearly maintenance cost for the Change Order exceed the establishment cost of the change multiplied by the Supplier's proposed maintenance percentage for the Yearly Maintenance Fee (the "**Cap**"), except for third party licenses which will be paid in full even if exceed such Cap: e.g. if the establishment fee for the change is 100,000 NIS, and the Supplier's proposed maintenance percentage is 12%, then the yearly maintenance cost to be paid as a result of the change shall not exceed a Cap of 12,000 NIS (12% of 100,000) plus cost for third party licenses; and from the end of the Warranty Period such cost shall be linked according to the Supplier's linkage election for the Yearly Maintenance Fee in its Price Proposal.
- (b) For Change Orders completed during the Maintenance Period - the maintenance cost for the change shall be paid only from the beginning of the next fiscal quarter following the successful completion of the change.



- 13.7 Some sections of Chapter 9 of the SOW (such as 9.2.1.1, 9.2.1.2, 9.2.2.4, 9.2.2.5, 9.2.2.8, 9.2.3, 9.2.4.7, 9.2.5, 9.2.7, 9.2.8, 9.2.9), are **not** included in Part 2 of Appendix 2B(1) – Bill of Quantities, and accordingly, the Bidder is not required to submit any price proposal in respect thereof.

Any implementation of these Sections, if and to the extent ordered by the Company (without any obligation of the Company in this regard), shall be subject to the issuance of a specific Change Order in accordance with the provisions of the Agreement, following the Company's assessment of operational need, the technological maturity and readiness of the relevant solution as may be demonstrated by the Supplier at the time of such request, budget availability, and the receipt of the required internal managerial and corporate approvals. The inclusion of these Sections in the SOW, or any discussions held between the Parties in relation thereto, shall not create any expectation, representation, reliance, or obligation on the part of the Company to order or implement them.

- 13.8 Any Change Order as set forth in this section above, shall not obligate the Company, unless given in writing, signed by the Company's authorized signatories. The Company may request the Supplier to price the costs of the Change Order (without charge) in order to allow the Company to consider whether to execute such Change Order.
- 13.9 In the event the Company cancels or reduces the Services provided by the Supplier, the Supplier shall, if so instructed by the Company, reasonably cooperate with the Company to implement any necessary transition to a third party supplier or the Company's employees, including with respect to installation procedures and integration.

14. Liquidated Damages

- 14.1 Without derogating from any provision in this Agreement and in addition to them, it is agreed that, if the Supplier has failed to fulfil its obligations in accordance with the SOW, the Supplier will pay the Company pre-agreed Liquidated Damages for every deviation from the Service Level Agreement



(SLA) and delay in the performance of the Services, according to the amounts detailed in **Appendix E** to this Agreement (hereinafter: “the **Liquidated Damages**”).

- 14.2 For the avoidance of doubt, the Company’s right to claim Liquidated Damages shall be cumulative and non-exclusive. In the event of multiple breaches, each applicable Liquidated Damage shall be calculated and applied independently and concurrently, and the payment of one shall not offset or exempt the Supplier from the payment of any other.
- 14.3 The Parties declare that the Liquidated Damages as aforementioned, do not require proof of damage and are the correct and fair compensation in relation to the scope of the expected damages to the Company.
- 14.4 The Company may collect the amount of Liquidated Damages as aforementioned in any manner, at its sole discretion, including by way of a set-off and/or exercise of the Guarantee, following 7 days advance notice to the Supplier.
- 14.5 The payment, deduction or collection of the Liquidated Damages compensation, as aforementioned, does not exempt the Supplier from its obligations for completing the services or from any other commitment pursuant to the Agreement.
- 14.6 For the avoidance of doubt, it is clarified that the aforementioned provisions in this section contain shall not derogate from any right and remedy available to the Company, pursuant to any law and/or to derogate from the rights of the Parties pursuant to the Contracts (Remedies for Breach of Contract) Law, 5731 – 1970, including compensation claims for damage to be proven (with the deduction of the Liquidated Damages compensation already paid).
- 14.7 The total cumulative Liquidated Damages payable by the Supplier under this Agreement shall not exceed an aggregate cap of NIS 3,000,000 until the end of the Warranty Period. During the Maintenance Period, the annual Liquidated Damages shall not exceed 33% of the applicable Yearly Maintenance Fee.



15. Absence of Employee-Employer Relationship

- 15.1 The relationship between the parties, pursuant to this Agreement, are those of service provider-recipient relationship. Nothing in this Agreement shall be constructed as creating an employer-employee relationship.
- 15.2 The Supplier is an independent service provider and wishes to remain independent in managing its business and subject to the provisions in this Agreement, the Supplier is free to engage with other customers for the provision of services. Therefore, the Supplier hereby waives any claim and/or demand deriving from employee-employer relationship between it and the Company. The Supplier declares that it is aware of the legal and factual implications deriving from this waiver.
- 15.3 The Supplier undertakes that it shall not sue the Company for any cause regarding an employee-employer relationship between it and the Company and/or the state. If, despite its commitment, it does so, or if any additional expenses beyond those provided in this Agreement are imposed on the Company, deriving from a determination that employee-employer relationships prevailed between the Company and the Supplier and/or its employees and/or those employed by it, during the Period of Engagement – then, subject to a final verdict which execution has not been withheld by court's decision, the Supplier will indemnify the Company, upon its first demand, for any expense incurred by it relating to a claim as aforementioned, including legal fees, provided that, (except where Supplier is a plaintiff), the Company will promptly notify Supplier in writing of such claim, enable Supplier to participate in defense against such claim and not settle with plaintiff without the Supplier's consent.
- 15.4 The Supplier shall bear all payments to which its employees and/or anyone on its behalf providing the services to the Company are entitled, including income tax payments, social security payments and any additional payment that applies or shall by virtue of the Labor Laws in the state of Israel and/or state laws that are applicable to the Supplier in its country, including severance pay, vacation, provisions to provident funds, pension funds, travel expenses, convalescence,



expenses repayments of any kind, advance termination notice or redeeming it or for any other social conditions and additional social payments as prescribed in any law.

15.5 It is hereby clarified that the Consideration to be paid to the Supplier, was determined on the assumption that it includes all the payments to which the Supplier is responsible by law. The Supplier shall be solely responsible for making the payments and any deductions that must be made pursuant to the law and, is solely responsible for making all the aforementioned payments.

15.6 It is agreed and conditioned that the Company's rights pursuant to this Agreement, including its right to inspect and/or supervise the Services provided by the Supplier, do not create any employee-employer relationship between the Company and the Supplier.

16. Ownership of the Work Products, Documents and Information

16.1 Subject to Section 16.2 below, the Documents shall be the sole property of the Company and will be transferred to its possession immediately upon its demand. The Supplier and/or anyone on its behalf shall not have any claim and/or demand against the Company and/or anyone on its behalf regarding this and/or any lien on the Documents;

The Company shall be entitled to make any use of the Products of the Services at its sole discretion and, inter alia, transfer them to any party (including the Ministry of Transport) and for any other purpose, including: modification of the Documents and/or for any other use at its sole discretion, without having to request permission from the Supplier and without entitling the Supplier to any additional payment.

“Products of the Services” or “Documents” - Any documents, including adaptations, photographs, copies, materials and auxiliary materials, presentations, plans, calculations, sketches, innovations, developments, inventions, patents, databases and any other products of the Services, including interim products etc., or information to be prepared by the Supplier and/or received by the Supplier in relation to the Services. In this regard, **"document"**



– including digital and any other data stored on magnetic media and/or on any other media. It is hereby clarified that documents in the possession of any other third party, are also sole property of the Company.

16.2 Ownership of IP -

16.2.1 In this Section:

(a) Background IP: a party's Background IP shall mean all proprietary technology and information, materials, products and services, tools, methods, techniques, processes, discoveries, inventions, innovations, patentable processes, technical information and specifications, that were either owned by such Party prior to the parties' signing of the Agreement or developed by or on behalf of such party outside the scope of this Agreement, or licensed by a third party to such party prior to or during the Period of Engagement.

(b) Foreground IP: shall mean all intellectual property rights (which are not Background IP) developed by the Supplier in connection with this Agreement.

16.2.2 For the avoidance of doubt it is clarified that all Supplier's declarations and undertakings in Section 4.8, including non-infringement of any third party intellectual property rights and indemnification undertaking towards the Company, shall apply to both the Background IP and Foreground IP brought by, or developed by, the Supplier as part of this Agreement.

16.2.3 Ownership of Background IP shall remain unaffected by this Agreement and neither the Company nor the Supplier shall acquire any rights in or under Background IP of the other party other than such as expressly set out in this Agreement. The Supplier shall grant the Company a non-exclusive, irrevocable license (including sub-licenses for third party components), which is not subject to royalties or payments of any kind, for use in the State of Israel only and transferable to any other Israeli governmental entity active in the



transportation field (hereinafter: “the **License**”) for the entire duration of the Period of Engagement and for an additional 24 months thereafter. Such License shall include customizations, especially those necessary for the proper operation of the MUTC.

16.2.4 Foreground IP shall be **jointly owned** by both the Supplier and the Company, each fully entitled as owner to make any and all decisions, at its sole discretion, regarding such developments, including without limitation, disposition, further developments thereof, etc. Following the go-live stage of each version, the Supplier shall submit to the Company the source code for such developments, and traffic control algorithms, together with all documents and information necessary to maintain, utilize and further develop the code, and repeat such submission following subsequent developments.

16.3 Upon termination of this Agreement for any reason, the Supplier will provide the Company with all original Documents and copies of any Documents in its possession that are related to the Services or/and previously provided to it by the Company or directly concerning or mentioning the Company, within fourteen (14) days, as well as a written affidavit stating that the Supplier has no such original Documents or copies of such Documents in its possession. Additionally, the Supplier shall provide the Company with a copy of all Documents necessary in the Company's reasonable opinion for the full usage of the License conferred to the Company, including software code, procedures and configuration files with respect to Forward IP, in accordance with Sections 12.8.1.7 and 12.8.1.8 of the SOW. The Supplier shall not be entitled to any payment beyond the provisions in this Agreement for the aforementioned services in this section or for updating the Documents. For avoidance of doubt it is clarified that a copy of any of the Documents above may also be requested by the Company on an ongoing basis during the Period of Engagement.

17. **Maintaining Confidentiality**



- 17.1 The Supplier undertakes, without any time limitation: to keep confidential; not to transfer in any manner; not to deliver, publish, disclose, copy or use any knowledge, information, Document and any other information disclosed to the Supplier relating to the Agreement or to the provision of Services, whether prior to the execution of the Agreement or during the Period of Engagement or after its termination.
- 17.2 Without derogating from the provisions in this Section 1717, the Supplier undertakes to sign and to procure the signature of anyone on its behalf who has or will have access to information related to this Agreement, on the written undertaking for maintaining confidentiality attached as **Appendix D** to this Agreement.
- 17.3 Such undertaking shall not apply to information that is public knowledge on the date of signing this Agreement, or that becomes public knowledge thereafter, provided that the information did not become public knowledge after the date of signing this Agreement, due to a direct or indirect act or omission of the Supplier or anyone on its behalf, including by tacit consent. The burden of proof of compliance with the provisions of this Section 17 shall be imposed on the Supplier.

18. Avoidance of Conflicts of Interest

- 18.1 The Supplier expressly declares that it and/or its staff members are not in a state of a conflict of interests, directly or indirectly, including a personal, professional or business conflict of interests between them and the Company and/or the Ministry of Transport. The Supplier undertakes to avoid causing or being in such state in which they and/or their actions, will be in conflict with their obligations in accordance with this Agreement. In any event, the Supplier undertakes to inform the Company as soon as it becomes aware of any situation of potential conflict of interest regarding the Supplier or anyone on its behalf.
- 18.2 Without derogating from the aforementioned, any of the staff members who is in an unforeseen state of a conflict of interest, will be removed immediately or by a longer period, as shall be determined solely by the Company. The



replacement of the said staff member shall be within fourteen (14) days or a longer period, as shall be determined by the Company, and subject to the Company's approval of such replacement.

19. Fundamental Breaches

19.1 If the Supplier has fundamentally breached the Agreement and/or breached the Agreement in a non-fundamental breach and has not rectified the breach within 10 Business Days from the date of the Company's written demand, the Company may, at its sole discretion, take one or more of the following measures, without terminating the Agreement:

19.1.1 To immediately, permanently or temporarily, suspend the provision of services, in whole or in part;

19.1.2 To replace the Supplier, temporarily, with another service provider in order to complete the services;

19.1.3 To charge the Supplier for its expenses regarding the aforementioned with the addition of administrative expenses at a rate of 15%, including VAT.

To obviate any doubt, it is hereby declared that the Company's action pursuant to this section does not terminate this Agreement and does not exempt the Supplier from its obligations pursuant to the Agreement, unless the Company has terminated the Agreement.

19.2 Without derogating from the aforementioned, and in addition to the provisions in Section 19.1 above, the Company may, at its sole discretion, terminate this Agreement immediately, in whole or in part, by giving written notice to the Supplier, without the need for providing any warning and without being obligated to pay any compensation, this without derogating from any other or additional remedy at its disposal, on the occurrence of one of the following instances. It is clarified that in the event of termination, the Supplier shall be entitled to consideration for services and deliverables properly carried out or provided prior to the date of termination, however the Company has the right to



offset any expenses and damages it may have as a result of the Supplier's breach and/or actions, and any other rights and remedies according to the agreement (including Section 19.1) and/or applicable law:

- 19.2.1 A fundamental breach of the Agreement by the Supplier, or a non-fundamental breach which was not rectified within 10 Business Days from the date of the Company's written demand;
- 19.2.2 Any representation or statement made by the Supplier in or in connection with this Agreement is false or inaccurate;
- 19.2.3 The Supplier violated its fiduciary duty and/or responsibility and/or violated its conflict of interest obligations under Section 18;
- 19.2.4 The Supplier violated its confidentiality obligations under Section 17;
- 19.2.5 The Supplier accumulated Liquidated Damages in an amount exceeding 600,000 NIS for a period of 12 consecutive months during the Period of Engagement;
- 19.2.6 The Supplier replaced a project team member without the Company's prior written consent;
- 19.2.7 The Supplier is suspected of committing an offense involving moral turpitude;
- 19.2.8 A request for dissolution or a request for an arrangement with creditors or a request for insolvency has been submitted against or by the Supplier, which was not removed within 30 days;
- 19.2.9 A foreclosure has been imposed on the Supplier's property and/or funds due to the Supplier by the Company and held by the Company, and the said foreclosure has not been removed within 30 days.

20. Remedies and Relief

All remedies and/or rights granted to the Company pursuant to this Agreement are cumulative and non-exclusive, shall not derogate from any other remedy or right to



which it is entitled pursuant to any law and pursuant to this Agreement and the other Tender Documents.

21. Assignment of the Agreement / Execution of the Services by a Third Party

- 21.1 The Supplier may not assign the Agreement or any part thereof to any other party and may not transfer or assign or encumber or pledge any right or obligation pursuant to the Agreement to any other party, including a right to payments which it may be owed pursuant to the Agreement, without the Company's advanced written approval.
- 21.2 The Supplier may not transfer the performance of the Services, in whole or in part, to any other party, without the Company's advanced written approval.
- 21.3 Without derogating from the provisions in Sections 21.1 and 21.2 above, in case the Supplier transferred its rights or obligations pursuant to this Agreement and/or deliver performance of the Services, in whole or in part, to another, the Supplier shall continue to bear full responsibility for its obligations to the Company pursuant to this Agreement.
- 21.4 The Company may assign its rights and obligations by virtue of the Agreement, in whole or in part, to the Ministry of Transport and/or any ministry and/or other government entity and/or an entity controlled by the State of Israel, as long as the Supplier's rights pursuant to this Agreement are not prejudiced.
- 21.5 Without derogating from the aforementioned generality, it is hereby agreed that the Services may be given directly to the Ministry of Transport and/or any ministry and/or other government entity and/or entity controlled by the State of Israel and/or to any other entity, all pursuant to the provisions in the Agreement, the Tender conditions and subject to the fact that the Supplier's rights shall not be prejudiced.
- 21.6 Should the Company transfer the performance of the Services as abovementioned, the Supplier undertakes to assist, to the best of its ability, in transferring the activity and/or knowledge and/or Products of the Services, to any other party within a period that shall not exceed 21 days or a longer period



the Company deems necessary, in accordance with the Company's instructions and at its sole discretion.

22. Settling Disputes

22.1 Any dispute deriving from the Agreement, will first be brought for inquiry, in order to settle it amicably, before the parties' Deputy CEO. If the dispute is not resolved as aforesaid, the dispute will be brought before the Company's CEO and/or anyone on his behalf and the Supplier's CEO. The parties' representatives will discuss the dispute in good faith, in an effort to settle it pleasantly, without the need for judicial or quasi-judicial proceedings.

22.2 A dispute between the parties which has not been resolved in the manner established in Section 22.1 above, within 30 days from the date on which the dispute arose, will be transferred to court proceedings pursuant to Section 23.423.5 below.

22.3 In this context, it is hereby emphasized that a dispute – whether financial or other – shall not constitute a valid reason for the suspension or termination of the Agreement by the Supplier or failure to comply with its obligations pursuant to the Agreement and the dispute will be resolved in accordance with the said mechanism.

23. Miscellaneous

23.1 **Non-Enforcement does not Prejudice Rights.** Failure by a party to this Agreement to enforce its rights, does not constitute a waiver of such rights or the right to sue (including enforcement) for breach thereof, and shall not prevent enforcement of the provisions of the Agreement at the request of that party, on a later date or for another breach of the agreement.

23.2 **Amending and Altering the Agreement.** Any amendment or alteration to this Agreement must be made in writing, signed by the signatories of the parties to the Agreement.

23.3 **Entire Agreement.** This Agreement covers all the agreed between the parties, and there will be no relevance to any negotiation, statement, representation,



obligation and/or consent, which were made, if made, either in writing or orally between the parties, beyond the execution of this Agreement, with the exception of amendments duly made in accordance with Section 23.2 above.

23.4 **Governing Law.** This Agreement, including the Tender Documents and any matter arising therefrom or associated therewith, shall be governed by, and construed exclusively in accordance with, the laws of the State of Israel, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this Agreement.

23.5 **Jurisdiction.** Any dispute, controversy, or claim arising out of or relating to this Agreement, including its validity, interpretation, performance, breach, or termination, shall be brought exclusively before the competent courts of the Central District of Israel, to whose sole and exclusive jurisdiction the Parties hereby irrevocably submit.

24. The Parties' Addresses and Sending Notices

24.1 Notices regarding this Agreement shall be sent by registered mail or facsimile or email or delivered manually, pursuant to the parties' addresses specified in the preamble to this Agreement. Any notice shall be deemed to have been received on the following dates: One day after the date of delivering it, if manually delivered; one day after the date of transmitting it via facsimile, subject to confirmation of the transmission; on the date of confirmation of its opening by the recipient if sent via email or after 24 hours (whichever is sooner); or on the lapse of 7 days from the date on which it was sent for delivery via registered mail.

24.2 Each Party reserves the right, on giving notice pursuant to the provisions in this section, to change its address and the address for mailing copies that appears in this Agreement.

In witness whereof the Parties of hereunto set their signatures:



The Company

The Supplier



Appendix A – the Tender Documents (including the SOW) and the Supplier’s Proposal
(including the Price Proposal)

Appendix B – Insurance Form

Appendix C – Guarantee Form

Bank: _____

Street _____ No. _____ City _____

Ayalon Highways Co. Ltd.
2 Nim Blvd., Azrieli Towers
Rishon Le'Zion, 7546302

Re: **Performance Guarantee No.**

Pursuant to the request of _____ (hereinafter: the “Supplier”), we hereby guarantee to you payment, on behalf of the Supplier, up to a total of 2,000,000 NIS (two Million New Israeli Shekels) plus linkage to the Israeli consumer price index until the date of actual payment, as security for the fulfillment of all the Supplier's undertakings pursuant to Agreement no. __ for the Supply, Integration, Operation and Maintenance of a MUTC (Metropolitan Urban Traffic Control) System.

We hereby undertake to pay you, from time to time, any amount you may demand, not later than seven (7) business days after receipt of your written demand addressed to us, without requiring you to prove or show grounds for such demand or to first demand payment from the Supplier, provided the total amount paid by us under this guarantee shall not exceed the sum of the guarantee plus linkage differentials as specified above.

We further agree that no change or addition or other modification of the terms of the Agreement including its Appendices, between you and the Supplier, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall remain in effect up to and including _____, and shall be extended upon your request. Any demand hereunder must reach us at _____, by the end of the business day on the above-mentioned date.

This guarantee is not transferable.

Sincerely yours,

Signature of Bank's Authorized Signatories and Bank's Stamp

Title of the Authorized Signatories

Date



Appendix D – Confidentiality Undertaking ("NDA")

_____ [Please complete], a company organized and existing under the laws of _____ [Please complete], with an address at _____ [Please complete] (“**Recipient**”), hereby undertakes towards Ayalon Highways Company Ltd. (“**Disclosing Party**”) the undertakings set forth below,

Whereas This NDA is an integral part of the Agreement for the Supply, Integration, Operation and Maintenance of a MUTC (Metropolitan Urban Traffic Control) System (the "**Agreement**") and capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement; and

Whereas Recipient is aware that Disclosing Party may disclose, from time to time, Confidential Information (as such term is defined hereunder), to Recipient, pertaining to the subject matter of the Tender, Project and/or the Agreement, for the purpose of fulfilling Recipient's obligations under the Agreement (“**Purpose**”), and other information deemed by Disclosing Party as being Confidential Information; and

Whereas The Disclosing Party would like to protect the confidentiality of, maintain its respective rights in, and prevent the unauthorized use and disclosure of such Confidential Information,

Now therefore Recipient hereby undertakes as follows:

1. **Confidential Information.** Recipient agrees that all information disclosed by the Disclosing Party, or obtained by Recipient in connection with the Purpose, whether oral, visual or in writing, including but not limited to, all pricing, specifications, formulas, prototypes, computer programs (source and/or object code) and any and all records, data, ideas, methods, techniques, processes and projections, plans, marketing information, materials, financial statements, memoranda, analyses, notes, legal documents and other data and information (in whatever form), as well as improvements, patents (whether pending or duly registered) and any know-how related thereto, relating to the Disclosing Party, its agents and/or contractors and information learned by the Recipient from the Disclosing Party through the inspection of the Disclosing Party's property, that relates to Disclosing Party's products, designs, business plans, business opportunities, finances, research, development, know-how, personnel, or third-party confidential information, the terms and conditions of this NDA will be considered and referred to collectively in this NDA as “**Confidential Information**”. Notwithstanding, Confidential Information, shall not include information that: (i) is now or subsequently becomes generally available in the public domain through no fault or breach on the part of Recipient; (ii) Recipient can demonstrate in its records to have had rightfully in its possession prior to disclosure of the Confidential Information by the Disclosing Party; (iii) Recipient rightfully obtains from a third party who has the right to transfer or disclose it, without default or breach of confidentiality or this undertaking; or (iv) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; *provided, however*, that Recipient shall make the best effort to provide prompt notice of such court order or requirement to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure. Disclosing Party retains all right, title and interest in and to the Confidential Information and all improvements, enhancements and derivatives thereof and all

intellectual property rights thereto, all of which is and shall continue to be exclusively owned by Disclosing Party and no right or license therein are granted to recipient hereunder.

2. **Non-Disclosure and Non-Use of Confidential Information.** Recipient agrees to accept and use Confidential Information solely for the Purpose. Recipient will not disclose, publish, or disseminate Confidential Information to a third party other than those of its employees with a need to know, bound in writing by the terms hereof and further agrees to prevent any unauthorised use, disclosure, publication, or dissemination of Confidential Information and ensure that such Recipient's employees fully perform the duties and obligations hereunder, and to this end such party shall obtain appropriate written agreements with its employees, but in any event the Recipient agrees to be responsible for any use or disclosure of Confidential Information of any of its said employees. Recipient agrees not to use Confidential Information otherwise for its own or any third party's benefit without the prior written approval of an authorised representative of the Disclosing Party in each instance. In performing its duties and obligations hereunder, Recipient agrees to use at least the same degree of care as it does with respect to its own confidential information of like importance but, in any event, at least reasonable care. Further, Recipient agrees that it shall not make any copies of the Confidential Information on any type of media, without the prior express written permission of the authorised representative of the Disclosing Party.
3. **Compliance with Law.** Recipient hereby undertakes to comply at all times with Israeli Law, including without limitation the provisions of the Protection of Privacy Law, 5741-1981, all regulations promulgated thereunder, all standards, guidelines and regulations of the National Cyber Bureau and/or the Israeli, Law, Information and Security Authority and/or the Ministry of Transportation and Road Safety (including without limitation the Emergency, Security, Information and Cyber departments) and other government authorities, and will take all actions and sign all documents required in order to allow the Disclosing Party to be in full compliance with any of the aforementioned laws, regulations and guidelines.
4. **No License or Joint Venture.** All Confidential Information, and any derivatives thereof is and shall remain the property of the Disclosing Party and no license or other rights to Confidential Information is granted or implied hereby to have been granted to the Recipient, now or in the future.
5. **Indemnification.** Recipient shall, upon demand, indemnify Disclosing Party and its affiliates, its and their shareholders, directors, agents and employees ("**Indemnities**") for any loss, cost, liability, damage, expense or harm (including, without limitation, reasonable attorneys' fees and court costs) suffered or incurred by Indemnities as a result of Recipient's breach of any of its undertakings herein and/or for loss of goodwill.
6. **Return of Confidential Information.** Disclosing Party may decide to discontinue the disclosure of Confidential Information at any time, at will, with or without cause. Upon request of Disclosing Party, Recipient shall (i) return to Disclosing Party any information disclosed in any tangible form, and all copies thereof (on whatever physical, electronic or other media such information may be stored) containing any of the Confidential Information, if such Confidential Information is stored in electronic form, it is to be immediately deleted; and (ii) provide a certification, in writing, executed by an appropriate officer of the Recipient, that it has retained no copies of the Confidential Information on any media and that it has retained no notes or other embodiments of the information contained in the Confidential Information. The obligations set forth herein regarding confidentiality and use of Confidential Information shall survive any expiration or termination of this undertaking.

7. **Equitable Relief.** Recipient hereby acknowledges that unauthorised disclosure or use of Confidential Information could cause irreparable harm and significant injury to Disclosing Party that may be difficult to ascertain. Accordingly, the Recipient agrees that Disclosing Party, in addition to any other right or remedy that it may have available to it at law or in equity, will have the right to seek and obtain immediate injunctive relief to enforce obligations under this NDA without the necessity of proving actual damages and without the necessity of posting bond or making any undertaking in connection therewith.
8. **Entire Agreement and Governing Law.** This NDA constitutes the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. This NDA may not be amended except by the written agreement signed by authorised representatives of both parties. This NDA shall be governed and construed solely in accordance with the laws of the state of Israel, without giving effect to conflicts of law principles thereof, and only the courts of the Central District Israel shall have jurisdiction in any conflict or dispute arising out of this NDA.
9. **Term.** This NDA shall govern the communications relating to Confidential Information between the parties during the Term of the Agreement and any survival period. The obligations set forth in this NDA shall bind Recipient from the date of disclosure of the Confidential Information and any part thereof in perpetuity, and such obligations shall survive the termination or earlier expiration of this NDA and/or the Agreement.
10. **Assignment.** This NDA may not be assigned by Recipient without the prior written consent of Disclosing Party and any purported assignment not permitted hereunder shall be construed null and void.

IN WITNESS WHEREOF, the recipient has caused this NDA to be executed by its duly authorised representative.

Signed this ____ day of _____

[Recipient]

By: _____

[Name and Title]

Appendix E – Liquidated Damages (“LD”)

1. Failure to perform the Services as per the Agreement's requirements shall incur a deduction of the predetermined Liquidated Damages amounts from the Consideration due to the Supplier, as provided in the table below, without derogating from any other remedy available to the Company according to the Agreement and/or law.
2. The Supplier's Liquidated Damages for failure to meet Project requirements:

SN	Description	Grace Period	Units	LDs (NIS, w/o VAT)	Comments
1	Failure to meet the Installation & Delivery – Version 1.1 contractual milestone*	2 weeks	days	5,000 per day	—
2	Failure to meet the Installation & Delivery – Version 1.2 contractual milestone*	2 weeks	days	5,000 per day; after 30 days beyond grace period – 7,500 per day	—
3	Failure to meet the Completion & Trial – Version 1.3 contractual milestone*	2 weeks	days	5,000 per day; after 30 days beyond grace period – 7,500 per day	—
4	Failure to meet Handover contractual milestone*	2 weeks	days	7,000 per day; after 30 days beyond grace period – 10,000 per day	—
5	Failure to meet any Project contractual milestone (except for those detailed in items 1-4 above)*	2 weeks	days	2,000 per day	Per day following grace period for each contractual milestone.
6	Delay in the execution of an approved Change Order beyond the agreed implementation schedule (including any milestones, if defined, or the final completion date)	1 week	days	1,000 per day	Applies only to approved Change Orders with agreed scope, schedule and price.
7	Delay in commencing Correction and/or completing Solution of a Severity Level 1 Maintenance Event	N/A	hour	Correction: NIS 2,000 per hour; Solution: NIS 2,000 per hour	According to SLA response times Per hour or part thereof.
8	Delay in commencing Correction and/or completing Solution of a Severity Level 2 Maintenance Event	N/A	hour	Correction: NIS 1,000 per hour; Solution: NIS 1,000 per hour	According to SLA response times. Per hour or part thereof.
9	Delay in commencing Correction and/or completing Solution of a Severity Level 3 or 4 Maintenance Event	first 1 event per every 12	day	Correction: NIS 1,000 per day; Solution: NIS 1,000 per day	According to SLA response times. Per hour or part thereof.

		month period			
10	Failure to perform a preventive Maintenance Service at the dates specified in the Maintenance Services Plan	first 1 event per warranty or maintenance year	event	3,000 per event	For each event following grace period, starting from Handover.
11	Reoccurrence of the same Maintenance Event (Severity Level 1 or 2) within 90 days	N/A	event	5,000 per event	For the avoidance of doubt, 'same' refers to the same fault or root cause, and excludes different or unrelated events, even if of the same Severity Level.
12	Reoccurrence of the same Maintenance Event within 48 hours after the Supplier has reported the previous occurrence as resolved	N/A	event	4,500 per event	For the avoidance of doubt, 'same' refers to the same fault or root cause, and excludes different or unrelated events.
13	Quarterly system availability below 99.9%	N/A	event per any rolling 3 month period	(a) below 99.9% and equal to or above 99.8% – 50,000; (b) below 99.8% and equal to or above 99.5% – 100,000; and (c) below 99.5% – 120,000	For the avoidance of doubt, payment of liquidated damages under this section shall not relieve the Supplier of its obligation to restore compliance with the availability requirement. The collection of Liquidated Damages resets the 3-month count.
14	Failure to pass a penetration test and/or cyber security test, performed in accordance with the agreed test plan.	N/A for the event; 2 days for remediations	event + days	For each Critical finding: 100,000 NIS per event For each High finding: 40,000 NIS per event For each Medium finding: 15,000 NIS per event; 1,000 NIS per day for delay in remediations.	Each finding shall be assigned a severity level (Critical, High, Medium, Low) based on its CVSS (v3.1) Base Score or an equivalent industry standard, as approved by the Company.
15	Intentional interruption of a Signalized Intersection without authorization	N/A	event	4,500 per event	—

16	Traffic-performance degradation caused by Adaptive Traffic Management, outside an approved Adaptive Adjustment Period or beyond approved thresholds, scope, or duration, for each affected Adaptive Signalized Intersection, per day until correction. Based on Section 14.10 of the SOW.	N/A	days	2,500 per affected Adaptive Signalized Intersection per day	In addition, the Company may instruct the Supplier to suspend adaptive operation and revert the affected Signalized Intersection or Sub-Network to the last approved non-adaptive mode of operation until the issue is corrected. Such suspension shall not relieve the Supplier from liability for the degradation event and the related corrective obligations
17	Unavailability of a project team member without the Company's prior approval	2 days	days	1,000 per day	—
18	Failure to fill key positions (PM / CSE / TE)	1 week	days	3,000 per day	—
19	Replacement of a project team member without the Company's prior approval	N/A	event	20,000 per event	—
20	Departure of the Project Manager and/or Chief System Engineer and/or Traffic Engineer prior to the completion of Version 1.3	N/A	event	50,000 per event	—
21	Failure to timely complete maintenance management system report	1 day	days	300 per day	—
22	Failure to timely deliver a periodic report	1 week	days	500 per day	—
23	Delay in delivering As-built plans	30 days	event	5,000 per event	—
24	Failure to timely deliver CDRL and/or SDRL items not otherwise specifically addressed in this table	1 week	event	4,000 per event	—
25	Failure (or delay exceeding 2 hours) to appear for scheduled work on site, as agreed and confirmed in advance	N/A	event	3,000 per event	Applies per scheduled site activity
26	Leaving waste and/or damaged equipment at the site	N/A	event	3,000 per event	—

27	Breach of safety rules at the work site	N/A	event	4,500 per event	—
28	Any other breach of the Supplier's contractual obligations not otherwise specifically addressed in this table, including obligations and performance commitments set out in the Supplier's Proposal	N/A	event	1,000 per event	This provision shall apply only where no specific Liquidated Damages are defined elsewhere in this table.
29	Any other delay in the performance of the Supplier's contractual obligations not specifically addressed in this table	1 week	days	200 per day	—

* It is clarified that a delay of one milestone (whether within or beyond the grace period, and whether Liquidated Damages were collected or not) shall not entitle the Supplier to postpone later milestones, including the Handover milestone. However, timely completion of milestone **Handover** will result in the refund of penalties for previous milestone delays, previously collected.

Appendix F - Temporary Traffic Arrangements

Appendix G - Emergency Time Provisions