



Tender No. 18/19

For Delivery, Implementation & Support of
Traffic Signals Planning Software

THE AGREEMENT

Volume B

Appendices

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Agreement

For Delivery, Implementation & Support of Traffic Signals Planning Software System

Agreed and stipulated on _____ day of _____ year _____ (“**Effective Date**”)

Between:

Ayalon Highways Co. Ltd
(Hereinafter: **the "Company"**)

On the one part;

And

(Hereinafter: **the "Supplier"**)

On the second part;

WHEREAS: The Company is a government-owned company entrusted, inter alia, with advancing the design and the implementation of the "Urban Express" project, which aims to improve and develop public transportation infrastructure for buses in the Tel Aviv metropolitan area (the "**Project**"); and

WHEREAS: Subject to the terms and conditions of this Agreement, the Company is interested in licensing from the Supplier and integrating Supplier's Traffic Signals Planning Software System (the "**Software System**") and receiving from Supplier the services for the operation of the Project and other projects under its responsibility as set forth in Appendix A of this Agreement (hereinafter: the "**Supplier Services**" or the "**Services**" or the "**Work**" as applicable);

WHEREAS: The Company has requested a proposal to perform the Services through a public tender, a copy of which is attached as Appendix G (the "**Tender**");

WHEREAS: The Supplier has submitted a proposal to perform the Supplier Services, which is attached to this Agreement as Appendix H;

AND WHEREAS: The Supplier declares that it is interested in licensing the Company the Software System, and that it has the experience, qualifications, skills, personnel, know how, technological means, and ability required to perform the Services in high standards and according to the provisions of this Agreement;

NOW, THEREFORE, the parties hereto declare, agree, and stipulate as follows:

1. Preface

- 1.1. The preface and appendices to this Agreement constitute an integral part hereof.
- 1.2. This Agreement's section titles are intended for the sake of convenience only and bear no relevance to the interpretation of this Agreement.

2. Definitions

In this Agreement, the following terms have the meaning herein:

"Agreement"	This agreement signed and executed by the Company and the Supplier, including its appendices and any future modifications in accordance with terms of Section 20.2 of this Agreement;
"Project"	the "Urban Express" project, which aims to improve and develop public transportation infrastructure for buses in the Tel Aviv metropolitan area.
"Project Manager"	the Company or any other individual on its behalf, as shall be designated to the Supplier in writing by the Company from time to time;
"MOT"	The Ministry of Transportation of the State of Israel.

3. Appointment

the Company hereby wishes to license the Software System from the Supplier and to retain the Services in accordance with the terms and conditions as specified in this Agreement, and the Supplier hereby undertakes to license the Software System to Company and to provide the Company with the Services in high standards and quality, all as further detailed in this Agreement.

4. License

Supplier hereby grants Company a worldwide, non-exclusive, sublicensable, assignable, transferable, royalty-free license to use, integrate and fully exploit the Software System at its sole discretion in connection with the Project.

5. Representations, Warranties and Responsibilities of the Supplier

- 5.1. The Supplier hereby declares that its has the expertise, experience, skills, personnel and professional ability to provide the Services.
- 5.2. The Supplier will provide the Services to the Company according to the scope of works detailed in Appendix A of this Agreement ("**Scope of Work**" or "**SOW**"), the Proposal, and the provisions of this Agreement, with the expertise and professionalism required by customary professional standards in the field of the Services. Additionally, the Supplier undertakes to perform all duties required to

provide and perform the overall Services on time, according to the timetable detailed in the Scope of Work.

- 5.3. The Supplier undertakes to devote its best efforts and experience to advance the Services, bearing the sole responsibility and liability for the performance and quality of the Software System and Services.
- 5.4. The Services will be performed by the Supplier as stated in the Scope of Work, using team led by a Supplier's qualified manager, whose identity will be approved in advance by the Company in writing.
- 5.5. The Supplier represents and warrants that it complies and will comply with the requirements and specifications detailed in *the Ministry of Transport's Requirements for Traffic Light Planning Software*, attached to this Agreement as Appendix B, and in *Unified Format for Defining Timing Plan for Signaled Junctions*, attached to this Agreement as Appendix C. The Supplier represents and warrants that it has obtained all approvals and permits from the Ministry of Transportation of the State of Israel for the Traffic Signals Planning Software in accordance with these requirements and specifications as required by Supplier to fulfill all of its obligations or grant the rights granted to Company under this Agreement (collectively, the “**MOT Approval**”).

The Supplier hereby acknowledges and agrees that the Company's obligations under this Agreement, including (inter alia) to license the Software System, are suspended and subject to Supplier obtaining the MOT Approval.

- 5.6. The Supplier undertakes to act in good faith, decency and loyalty towards the Company and its affiliates and to refrain from doing any deed or taking any action which may harm the Company, its reputation, its business and/or the Project.
- 5.7. The Supplier undertakes to comply, act, and operate according to the procedures and guidelines provided by the Company, the Project Manager, the Company's consultants and/or anyone on their behalf, as provided from time to time, including any directive pertaining to the Services and the manner of performing thereof.
- 5.8. The Supplier undertakes to participate and take an active part in meetings conducted by the Company, the Project Manager, the Company's consultants or any other forum as per the Company's request, and/or conduct ongoing monitoring meetings led by it with all required entities, as required in order to perform the Services and according to the Company's request, from time to time.

Moreover, the Supplier shall perform the Services in cooperation and coordination with the Company's consultants and other experts employed by the Company. It is hereby clarified that solely the Project Manager, is authorized to direct the Supplier on all matters pertaining to the Services.

- 5.9. The Supplier undertakes to report to the Company, the Project Manager and the Company's consultants, immediately, about any irregular incident or fact that is brought to the Supplier's attention in the course of and in connection with the provision of the Services by it.
- 5.10. The Supplier undertakes to provide the Company, the Project Manager and the Company's consultants with reports as specified in the Scope of Work, and ongoing interim reports about the progress of the Services and the findings collected by it according to the Company's request, on the dates specified in the Scope of Work.

- 5.11. The Supplier undertakes to ensure that at all times, the reports on its behalf are updated and accurate, and it undertakes to sign any and all reports prepared by it.
- 5.12. The Supplier hereby undertakes to hold presentations in English to the Company, the Project Manager and/or the Company's consultants, about each part of the Services with various means and mediums as required, and submit clarifications on the findings, the considerations it takes throughout the performance of the Services and their conclusions as specified in a document it must submit, according to the Scope of Work, this Agreement and the Company's requirements and needs, from time to time at the Company's sole discretion.
- 5.13. The Supplier declares and obligates that there are no legal, contractual and/or any other limitations or obstacles, including in accordance with the Supplier's incorporation documents, to sign and execute this Agreement and/or to fulfill all of its obligations or grant the rights granted to Company under this Agreement.
- 5.14. The Supplier undertakes to provide clarifications and/or completions and/or changes and/or fixes to any documents prepared by it, as a response to any request by the Company, the Company's consultant and/or the Project Manager, within seven (7) days of receiving comments and/or a request from the Company, the Company's consultants and/or the Project Manager.
- 5.15. The Supplier hereby undertakes that documents and reports prepared and produced by it and submitted to the Company, according to the terms and conditions of this Agreement and/or the Company's directives, will be in English and according to the Company's instructions. Each document draft presented to the Company for review shall be submitted in three (3) color copies.
- 5.16. Without derogating from the aforementioned in Section 5.14, the Supplier hereby undertakes to transfer to the Company each document prepared by it by magnetic storage media, unless the Company instructs otherwise in writing.
- 5.17. The Supplier hereby undertakes to create copies and a proper backup for each document, opinion, any data base and/or any other documents prepared by it, in providing the Services in a manner that they could be restored quickly and reliably, if necessary, unless the Company instructs otherwise in writing.
- 5.18. Source Code Escrow
 - 5.18.1. Supplier is obliged to place a copy of the source code of the Software System ("**Source Code**") into escrow in accordance with an escrow agreement between the Parties and the Escrow Agent (defined below).
 - 5.18.2. Supplier shall modify and update the Source Code placed with the Source Code Escrow Agent prior to, or at the time that any modifications and/or upgrades of the Software System are available.
 - 5.18.3. The Supplier hereby agrees to sign an escrow agreement with an escrow agent, which will be selected by the Company, at its sole and absolute discretion, in accordance with the provisions of this Section 5.18 ("**Escrow Agent**"). This escrow agreement shall be signed by all parties and the Escrow Agent following the Effective Date but not later than thirty (30) days thereafter. For the avoidance of any doubt, it is clarified that violation of this provision shall be considered as a material breach of this Agreement.

The executed signed Source Code escrow agreement shall be annexed, as Appendix D, and shall be considered as part of this Agreement.

- 5.18.4. The escrow agreement shall contain a provision providing that the Escrow Agent shall release the Source Code to the Company upon the Company's request if Supplier: (i) discontinues Services at any time during which Company is entitled to receive such Services; (ii) fails to offer Services for the minimum period of time specified in this Agreement; (iii) materially breaches any obligation of this Agreement and fails to remedy such breach within thirty (30) days of receipt of notice; or (iv) becomes subject to any form of bankruptcy, insolvency, administration, receivership, debtor's relief law, or anything analogous to such event, in each case in any jurisdiction, or Supplier becomes insolvent or there is a change in control in which a new person or entity obtains a fifty percent or greater ownership interest in Supplier.
- 5.19. Supplier hereby grants Company and its affiliates a world-wide, perpetual, fully paid-up, irrevocable license to modify, enhance, translate, convert, recompile, upgrade and otherwise prepare derivative versions of the Source Code that Company receives under this Agreement, including the right to authorize others to do the foregoing on Company and its affiliates' behalf and for the purpose of continuing the Project. Company shall have the right at any time to contact the Escrow Agent for purposes of confirming the existence of the Source Code, including updates, and for verification of the instructions to the Escrow Agent to release the Source Code. The Company will have full and free access to all documentation and information that the Supplier prepares under or in connection with this Agreement. All such documentation and information will be retained in the Supplier's systems, and the Company will continue to have full and free access to it even after the termination of this Agreement, for any reason. All such documentation and information will be retained during the Support Period, as defined in Section 2.3.1 of the SOW (that is to say, a minimum of ten (10) years, or any longer period which the Supplier adopts as its corporate practice) after the latest of the transactions or events to which it related; or if any legal or arbitration proceeding is commenced during the Support Period, until such proceedings are finally disposed of, all at Company's determination.
- Without derogating from the generality of the above, the Supplier hereby undertakes to do everything required and reasonable, that an expert would do in order to perform the Services according to this Agreement, and that it complies and will comply with all professional rules and applicable laws and regulations.
- 5.20. The Supplier warrants that it has, and will have at all times, all permits, consents, licenses and approvals as required to fulfill its obligations under this Agreement.
- 5.21. The Supplier warrants that the Software System, Deliverables (defined below) and/or the Services do not and will not infringe the rights of any third party, including without limitation any Intellectual Property Rights (defined below). The Supplier shall hold the Company harmless of all claims regarding IP proprietary rights.
- 5.22. the Company and/or its representative may visit the offices of the Supplier, subject to prior coordination, and review any relevant document, relating to the Services; and the Supplier is committed to provide this representative with any explanation required.

5.23. The Supplier hereby undertakes to act according to the provisions of any applicable law, as updated from time to time. The Supplier undertakes that his personnel and/or his subcontractor and/or any person acting on its behalf will act according to this section.

6. Supplier's personnel

- 6.1. The Supplier undertakes to perform the Services by itself and using experienced, responsible, and professional personnel who are able to meet the required Scope of Work while providing the Services, in the quality required therein and within the timetables set forth therein. This is without derogating from the overall responsibility and liability of the Supplier for the quality of the Services executed by it, as well as the quality of the Software System and all its other obligations under this Agreement.
- 6.2. The Company shall be entitled to demand from the Supplier, at any time, by written notice, to replace any employee, person or entity employed by it in performance of the Supplier's Services, and the Supplier undertakes to replace such employee, person and/or entity with an appropriate person or entity, with equivalent skills and abilities, as soon as possible, and no later than 14 days following the Company's first demand. It is clarified, that the Supplier must receive the Company's prior written approval for the substitutive employee, person and/or entity.

7. Changes in the Scope of Work

- 7.1. the Company is entitled, from time to time and at any point during the performance of the Services, at its sole discretion, to require the Supplier to perform any change, either minor or significant, to the Scope of work, to increase or decrease the Scope of Work, and/or require from the Supplier to perform additional tasks, and/or modify the Services requirements (the "**Additional Changes**"); and the Supplier undertakes to operate in accordance with all written instructions it may receive from the Company, or the Project Manager immediately following the receipt of the Company's written notification detailing the Additional Changes, the Supplier shall commence performing the Services in accordance with the Additional Changes. The consideration for said Additional Changes, if required, shall be calculated by the Company in accordance with the Supplier's Commercial Proposal that was submitted for the Tender, which is attached to this Agreement as Appendix H.
- 7.2. Notwithstanding the aforementioned, in the event that the Company determines that the Additional Changes are immaterial, or that the Additional Changes are required as a result of a lack of conformity of the reports and/or documents to the Company's requirements, as reflected in the Scope of Work, and/or any instructions, guidelines and/or codes of conduct provided to the Supplier by the Company, and/or as a result of a lack of conformity with the requirements of the competent authorities, the Supplier will perform the necessary Additional Changes, as soon as possible without any delay, for no additional consideration.
- 7.3. Changes in the Software System that will be required by the MOT in order to approve the Software System at the MOT will be part of the SOW and will not be considered as an Additional Change.

8. Documents and Data Available to the Supplier

the Company will make every reasonable effort, at its sole discretion, to assist the Supplier in attaining any documents that may be necessary or helpful in order to license the Software System, and to meet the SOW.

9. The Term of the Agreement

9.1. This Agreement shall remain in full force and effect for a period of ten (10) years following the Effective Date, unless earlier terminated in accordance with this Agreement (“**Initial Term**”). Thereafter, the Initial Term of the Agreement may be extended for additional two (2) periods of up to five (5) years each (each, a “**Renewal Period**”), upon the Company's written notice, which shall be provided to the Supplier at least thirty (30) days prior to the applicable termination date (the Initial Term and any Renewal Period, hereinafter together the: “**Term**”).

10. The Consideration

10.1. The consideration for which the Supplier shall be entitled to for performing the Services, and the payment terms of the consideration shall be as specified in Appendix E of the Agreement (the “**Consideration**”). The Consideration will be paid by the Company in New Israeli Shekel (“**NIS**”), in accordance with the official exchange rate published by the Bank of Israel on the submittal date of the Tender Proposal.

10.2. The Consideration shall include all taxes, levies and charges however designated and levied by any state, local, or government agency. The Supplier shall be responsible for the payment of all taxes, levies and charges in connection with this Agreement, whosoever levied, except for VAT, payable as follows:

If the Supplier is a company registered outside of Israel, VAT will be paid to the Israel Tax Authority directly by the Company.

If the Supplier is a company registered in Israel, VAT will be paid to the Israel Tax Authority directly by the Supplier.

10.3. Any additional tax amounts and other payments lawfully required under Israeli law, if applicable, will be withheld by law from any amount the Company will pay the Supplier, under the provisions of this Agreement, unless the Supplier will provide a confirmation of withholding tax exemption as stated. For the avoidance of doubt, it is declared and clarified that this section refers to deductions required by payments to an independent contractor only.

10.4. The Consideration (as defined in this Section) covers all payments and benefits of any kind to which the Supplier is entitled to from the Company, and the Supplier will not be entitled to, and shall not require any payment and/or benefit from the Company, unless explicitly specified in this Agreement and/or if agreed in writing that it is entitled hereto.

10.5. VAT in connection with the Consideration shall be paid in accordance with applicable law. Without derogation from the generality of the provision that all taxes payable in connection with the Consideration (other than VAT) shall be borne and be paid by the Supplier, for the avoidance of doubt it being clarified that same will also apply, without limitation, to all jurisdictions, including the laws of the state of incorporation and/or residence of the Supplier.

10.6. the Company shall be entitled to deduct from any payment due to the Supplier, all withholding taxes which may be applicable to such payment and/or to the Supplier

and the Company's determination in this respect shall prevail, subject to the duly and timely delivery by Supplier to the Company of a certificate issued by the Israeli Tax Authority to the extent that such payment is fully exempted from all such withholding taxes.

Without derogation to the generality of the above, the Supplier shall provide to the Company, at its sole responsibility and expenses, and as a precondition to any payment, a certificate from the Israeli Tax Authority approving the transfer of any such payment from the Company to the Supplier's bank account.

- 10.7. Except as expressly agreed otherwise in writing by Company, Supplier shall bear all of its own expenses arising from its performance or its obligations under this Agreement.

11. Agreement Delay and Termination Events

- 11.1. The Company is entitled to suspend this Agreement or to terminate its immediately, at its absolute discretion, in any case, including absence of the MOT Approval, without the Supplier having any claim and/or demand against the Company.
- 11.2. The Company shall notify the Supplier in writing about its decision as stated. The date of suspension or termination shall be as specified in the notice.
- 11.3. Upon termination and/or suspension of this Agreement, Supplier shall promptly deliver to Company all Deliverables created prior to termination or suspension (as the case may be. Supplier shall also, at Company's option, either deliver to Company or delete/destroy all Confidential Information and Company IPR in its possession or under its control, in any media or form whatsoever. The provisions of Sections 1, 5, 11, 12, and 14-21 shall survive termination or suspension of this Agreement and shall remain in full force and effect in perpetuity.
- 11.4. In the event the Company decides on the suspension or termination of this Agreement, the Supplier will be entitled to Consideration solely for the Services actually performed by it until the date of termination or suspension (as the case may be), and the Company will not be indebted by any compensation, reward or any other payment for, or in connection with the suspension or termination of this Agreement, except for compensation due to expenses pre-approved in writing by Company that were already incurred by the Supplier for the purpose of executing the Services, that are to Company's full satisfaction; provided that the Supplier provides Company with a valid receipt thereof.
- 11.5. Without derogating from the generality of the foregoing, it is hereby agreed that the Company will have the right, at its sole discretion, to terminate the Agreement immediately in case a temporary liquidator and/or a temporary receiver is appointed to the Supplier and/or if declared as insolvent or legally incompetent, and the Supplier shall have no claim and/or demand towards the Company with respect thereto.
- 11.6. The Supplier declares that if the Agreement is terminated as stated under this Section 11 above, then it hereby gives its consent to transfer the continuation of the Services to any other supplier designated by Company and at the Company's sole discretion. Any controversy regarding the consideration, as stated in Section 11.4 above and/or in any other matter, will not delay the transfer of the Services to another supplier, including transfer of all licenses, permits, consents and approvals necessary for the

operation and continuation of the Services for the benefit of the Company or any other entity on its behalf.

- 11.7. In case of termination of the Agreement as stated above, the Supplier undertakes to cooperate with the Company and the new supplier selected by the Company as much as may be required, and transfer the Work to that the new supplier in an orderly manner and as quickly as possible.

12. Ownership and Confidential Information

- 12.1. All Deliverables and any and all modifications, enhancements and derivatives thereof and all Intellectual Property Rights thereto (“**Company IPR**”) shall be owned exclusively by Company upon their creation and shall be deemed works made for hire by Supplier for Company. Without derogating from the foregoing, any and all content, material, code, or documentation provided by Company shall be deemed as Company IPR. If by operation of law any of Company IPR is not owned in its entirety by Company automatically upon creation thereof, Supplier hereby assigns and agrees to assign to Company exclusive ownership and all right, title and interest of such. Nothing herein contained shall be construed as granting Supplier any rights in respect of any Intellectual Property Rights of Company and Supplier hereby waives all right, title and interest in and to the Company IPR, including moral rights and any right to compensation or royalties, including under Section 134 of the Israeli Patent Law – 1967. Supplier will not directly or indirectly take any action to contest Company IPR or infringe them in any manner. The Supplier agrees to assist Company, in every proper way to obtain for Company and enforce any Intellectual Property Rights for Company IPR in any and all countries. Supplier will execute any documents that Company may reasonably request for use in obtaining or enforcing such Company IPR and other legal protections. Supplier hereby irrevocably designates and appoints Company and its authorized officers and agents as Supplier's agent and attorney in fact, coupled with an interest to act for and on Supplier behalf and in Supplier's stead to execute and file any document needed to apply for or prosecute any Company IPR, any applications regarding same or any other right or protection relating to any Company IPR, and to do all other lawfully permitted acts to further the prosecution and issuance of Company IPR or any other right or protection relating to any Company IPR, with the same legal force and effect as if executed by Supplier itself.

“**Deliverables**” shall mean the deliverables (including but not limited to any underlying software in source and executable form and all components thereof) provided by Supplier to Company hereunder, including, without limitation, any work products, documentation, reports and specifications and other work products produced as a result of the work performed under this Agreement and all the information and materials created in connection with the Services.

“**Intellectual Property Rights**” shall mean all worldwide, whether registered or not (i) patents, patent applications and patent rights; (ii) rights associated with works of authorship, including copyrights, copyrights applications, copyrights restrictions; (iii) rights relating to the protection of trade secrets and confidential information; (iv) trademarks, logos, service marks, brands, trade names, domain names, goodwill and the right to publicity; (v) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; (vi) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vii) all registrations, initial applications, renewals, extensions, continuations,

divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

- 12.2. Concurrently upon the signing of this Agreement, Supplier shall obtain the signature of each of its employees and subcontractors, assigned for the provision of the Services (each, a “**Developer**”), on the Confidentiality, Non-Competition and Proprietary Information Agreement, attached hereto as Appendix I. Supplier shall be fully liable and responsible for all of the acts and omissions of each Developer.
- 12.3. Supplier shall keep in strict confidence and trust, shall safeguard, and shall not disclose to any person or entity, nor use for the benefit of any party other than Company, any Confidential Information, other than with the prior express written consent of Company. All right, title and interest in and to Confidential Information are and shall remain the sole and exclusive property of Company or, if applicable, the third party providing such Confidential Information to Company. "**Confidential Information**" means information, in any form or media, that relates to Company, its business, assets, financial condition, activities, software, technology, products, plans and projections, customers, suppliers, partners, and other third parties with whom Company has agreed to hold information of such party in confidence and shall include, without limitation, Deliverables, the terms of this Agreement and any other information that relates to the Company, whether or not marked or designated as confidential. Confidential information shall not include any information known generally to the public or ascertainable from public or published information, other than as a result of unauthorized disclosure by Supplier.

13. Conflict of Interest Prohibition

- 13.1. The Supplier hereby declares that it has no any conflict of interest between any other activity and/or its other obligations and/or any of its employees and the obligations and rights under this Agreement.
- 13.2. The Supplier hereby undertakes to refrain from any action that may involve any conflict of interest between performing its duties under this Agreement, and performing any other duty and/or commitment of the Supplier and/or its employees, directly and/or indirectly, and it hereby undertakes to inform the Company about any concern for conflict of interest between its obligations and/or the obligations of any of its employees under this Agreement and other activities of his and/or of its employees, and it undertakes to act in accordance with the Company’s instructions to prevent such conflict of interest.

14. Independent Contractor

- 14.1. The Supplier declares and confirms that it is an independent contractor of Company under this Agreement and nothing herein shall be construed to create JV, partnership or an employer/employee relationship. The Supplier and its employees will not be considered the Company’s employees in any case and under any circumstances. For the avoidance of doubt it is hereby clarified explicitly, that in this Agreement, employer-employee relationships are not created between the Company and the Supplier, and not between the Company and any of the Supplier's employees and/or its subcontractors and/or any person acting in its name or on its behalf in connection with this Agreement, as an agent, contractor or any other status. Any right of the Company to order, supervise, or instruct the Supplier and/or its employees and/or its subcontractors in the performance of this Agreement, does not create employer-employee relations.

- 14.2. The Supplier undertakes to pay all taxes, levies, labor costs and expenses and all other mandatory payments imposed on it, including without limitation, income tax, and VAT.
- 14.3. The Supplier alone will be responsible for any payment for damage indemnity or compensation or any other payment due by it under any law to the people employed by it.
- 14.4. Without derogating from the generality of the above, in case any authority determines that despite the provisions of Sections 14.1 and 14.3 above, employer-employee relations existed between the Supplier and/or any of its employees and/or its shareholders and the Company, the consideration described in Section 10 above will be considered as including any payment, of any kind whatsoever required by law and/or agreement and/or arrangement and/or practice and/or custom between employer-employee including, without derogating from the generality of the above, provisions for compensations and rewards, vacation pay, travel allowance, annual leave, etc., and the Company shall not bear any additional payment on account of these.
- 14.5. In addition to the above, the Supplier will indemnify, hold harmless and at the Company's first request defend Company, its affiliates and their officers, directors, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees, arising out of or in any way connected with or based on a determination by a competent authority that is contrary to Section 14.1 above and/or any claim, demand or allegation by Supplier's employees, consultants or subcontractors, including without limitation in respect of any labor law issues, payment, royalties, pension, social security, insurance, sick days, overtime, holidays, etc.

15. Liability and Insurance

- 15.1. The Supplier will be responsible towards the Company and towards any third party to perform the entire Services; i.e., the Services performed, directly and/or indirectly, under its supervision will be executed in the best reasonable manner and reasonably high expertise, as required by this Agreement and under any law.
- 15.2. If any consideration is paid according to this Agreement, and/or in the event the Company approved documents and/or presentations related to the Services, which were prepared by the Supplier according to this Agreement, or according to the requirements of the Company and/or the Project Manager – the said payment of consideration and/or the said approval will not free the Supplier from its professional responsibility and liability on account of the Services, the Software System or any part thereof, and their quality.
- 15.3. Supplier shall indemnify, hold harmless, and at Company's first request, defend Company, its affiliates and their officers, directors, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees, arising out of or in any way connected with or based on: (i) the Services (ii) any claims by a third party alleging that the Services, the Deliverables, the System Software or any part thereof infringe any right of a third party, including Intellectual Property Rights; (iii) Supplier's breach of this Agreement; and provided that the Company informed the Supplier about the claim within a reasonable period of time from the date of filing the claim, and subject to the fact that the Supplier was given the option to take part in the negotiations for compromise and/or in the defense against the claim.

- 15.4. Without derogating from the Supplier's liability under this Agreement and/or any law, the Supplier hereby declares that it has obtained insurance policies as set forth below, in a reputable insurance company, to protect itself, its partners, any person or entity under its service or employed by it as well as the Company and the Project Manager:
- 15.4.1. **Liability to third parties:**
Third Party Liability Insurance for bodily injury and/or property damage and any ensuing loss incurred during the period of performing the Services within liability limits no less than \$1,000,000 (one million US Dollar) for each occurrence and in the aggregate for any annual period of insurance. The insurance is extended to indemnify the Company in respect of liability which is imposed on the Company for the errors and/or omissions of the Supplier and/or any party acting on behalf of the Supplier and this subject to a cross liability clause.
- 15.4.2. **Employer's Liability Insurance:**
Liability to employees for bodily injury caused during the period of performance, throughout and due to performing the Services, is within liability limits of \$5,000,000 (five million US Dollar), per event and in the aggregate for any annual period of insurance. The insurance is extended to indemnify the Company if it is determined that due to the occurrence of the work accident and/or occupational disease, the Company is liable in any manner as an employer of the Supplier's employees.
- 15.4.3. **Worker's Compensation Insurance** or any other similar form of employees social insurance which is required pursuant to any local employment law.
- 15.4.4. **Professional Indemnity Liability Insurance:**
The professional liability of the Supplier on account of an act of negligence, error or omission, is within liability limits of no less than \$500,000 (five hundred thousand US Dollar) per event and in the aggregate for any annual period of insurance. The insurance will not include a limitation for dishonesty of employees, loss of documents, loss of use and delay. The insurance is extended to indemnify the Company in respect of liability which is imposed on the Company due to the errors or omissions of the Supplier or of any party acting on behalf and this without derogating from the insurance covering the liability of the Supplier towards the Company.
- 15.4.5. The insurance includes an extension in respect of a breach of intellectual property rights, breach of the duty of confidentiality, breach of the Law of Privacy and liability due to the unintentional distribution of viruses. The insurance does not contain any exclusion regarding damage or harm to databases, software, hardware and internet sites.
- 15.4.6. Any other insurance required under any applicable law.
- 15.5. The Supplier undertakes to maintain the Professional Indemnity Liability insurance for as long as its liability exists under this Agreement and/or under any law.
- 15.6. The Supplier's insurances will include an explicit term upon which the insurer is not entitled to revoke them and/or reduce their scope, unless the insurer and/or the

Supplier delivers a notice of its intention to do so, by registered mail to the Company, sixty (60) days in advance.

- 15.7. The Supplier is required to provide the Company any and all signed insurances certificates.
- 15.8. In any case of discrepancy between the provisions of any Supplier's insurances certificates, and the provisions of this Agreement, the Supplier undertakes, to the Company's demand, to make changes to the insurances in order to match the provisions of this Agreement within seven (7) days of the Company's first request. It is specifically agreed hereby, that obtaining such insurances, providing the certificates and/or changing them shall not be considered as an approval of their suitability, and any responsibility shall not to be imposed on the Company and/or reduce the responsibility of the Supplier under this Agreement, the Tender and/or by any applicable law.
- 15.9. The Supplier undertakes to comply with the terms of all insurances formulated according to this Agreement.
- 15.10. The Supplier exempts the Company and any party acting on the Company's behalf from liability for any loss or damage to property or equipment of any type which is brought by the Supplier or any party acting on behalf of the Supplier into the premises of the Company or which serves the Supplier for the purpose of providing the services, and the Supplier will not have any allegation, demand or claim against the aforementioned parties for any loss and/or damage as aforementioned. The aforementioned exemption will not apply to anyone who causes malicious damage.
- 15.11. Without derogating from any of the provisions of this Agreement regarding assignment of the Agreement, and in the event that the services addressed by this Agreement or any part thereof are provided by subcontractors on behalf of the Supplier, the Supplier must ensure that the subcontractors hold suitable insurance policies depending on the nature and scope of the services. Alternatively, the Supplier will be entitled to include the subcontractors in the named insured under the policies arranged by the Supplier as stated above.

16. Guarantees

To ensure any and all undertakings of the Supplier, its Personnel and Subcontractors, upon the Effective Date the Supplier shall obtain and deliver to the Company, an unconditional bank guarantee issued by a recognized Israeli banking institution, or by a reputable international bank having S&P rating of at least AA (or an equivalent rating assigned by one of the other "Big Three" credit rating agencies) which will be approved by the Company in advance, payable to the Company according in a form reasonably satisfactory to the Company, which shall remain in full force and effect at least until 60 days after the applicable end of the Term, in a sum equal to 200,000 NIS (or equal sum in US Dollars or Euros) ("**Performance Guarantee**"). The Performance Guarantee shall serve as security and a guarantee for all of the Supplier's obligations hereunder, including, but not limited to, material breach, liquidated damages for delays and failure to meet minimum service level (as defined in the SLA). The Performance Guarantee shall be renewed at least sixty (60) days prior the date on which it is scheduled to expire, and shall remain in full force and effect at least until the end of the Term (including, for the avoidance of doubt, any extension thereof).

17. Assignment and Subcontracting

- 17.1. The Company will be entitled to transfer and/or assign any of its rights and obligations under this Agreement, or any part thereof, at its sole and absolute discretion, provided that the Supplier's rights under this Agreement will not be harmed.
- 17.2. The Supplier may not assign, pledge, transfer or dispose any of its rights and obligations, and shall not sublicense the software provided to the Company under this Agreement and/or any part thereof to any third party.
- 17.3. The obligations of Supplier under this Agreement may not be subcontracted by Supplier, in whole or in part without the written consent of the Company.

18. Contradiction between Documents

- 18.1. In any case of contradiction between the Appendices and any provisions of the Agreement, the provisions of the Appendices will prevail over the provisions of this Agreement with respect to the particular contradicted subject matter.
- 18.2. Each of the provisions of this Agreement is independent and severable from the remaining provisions and enforceable accordingly. In a case that any provision of this Agreement shall be unenforceable for any reason but would be enforceable if part of the wording thereof were deleted, it shall apply with such deletions as may be necessary to make it enforceable.

19. Violations and Remedies

- 19.1. Violation of any of Sections 3, 5, 6, 7.1, 9, 10, 12, 13, 14, 15.2-15.4, 15.10, 15.11, 16, 17, 18.2 will be deemed a material breach of this Agreement.
- 19.2. In a case the Supplier violates one or more of its obligations under this Agreement, it will have to pay the Company compensations for the damages, losses and expenses incurred to the Company as a result of said violation, and this is in addition to and without derogating from the Company's right under any law and in accordance with this Agreement.
- 19.3. For the avoidance of doubt, and without affecting the Company's rights according to this Agreement and under any law, it is hereby agreed that the Company will be permitted to offset and deduct any amount which it deserves from the Supplier, from the amounts which the Supplier deserves according to this Agreement.
- 19.4. The Supplier has no lien right in or over the Services and/or in Company IPR and/or in any document including report and/or any Confidential Information stored on magnetic media related to performance of the Services.
- 19.5. Liquidated Damages
 - 19.5.1. In an event that despite its obligations, representations and warranties under this Agreement, the Supplier is unable and/or unwilling to provide support and maintenance services for the Traffic Signals Planning Software System for a reason that is not depends on the Company's performance of this Agreement or MOT Approval, the Supplier shall pay the Company agreed liquidated damages in an amount of one million US Dollar (US\$1,000,000).
 - 19.5.2. Without prejudice to the above, in the event of failure to conform with the Service Level Agreement, as defined in Section 2.7 of the SOW (in Appendix A to this Agreement)(the "SLA"), the Company will have the

right to deduct the sums mentioned in the SLA from the annual Post-Warranty payment.

- 19.5.3. Any liquidated damages under this Agreement shall be paid to the Company immediately following the Company's first written demand, and without any delay.

20. Law and Jurisdiction

This Agreement shall be governed by and construed according to the laws of the State of Israel, without regard to the conflict of laws provisions thereof. Any dispute arising under or in relation to this Agreement shall be resolved in the competent courts of Tel-Aviv, and each of the parties hereby agrees irrevocably to the exclusive jurisdiction of such courts.

21. Miscellaneous

- 21.1. This Agreement covers the agreed between the parties, and there will be no relevance to any negotiation, statement, representation, obligation and/or consent, which were made, if they did, either in writing or orally between the parties, beyond the execution of this Agreement, with the exception of Section 21.2 hereunder.
- 21.2. There will be no validity to any change in this Agreement or any of its provisions, unless made in writing and signed by all the parties to this Agreement.
- 21.3. The conduct of either party will not be considered as a consent and/or waiver of any rights under this Agreement and/or under any law, unless the consent and/or waiver are done in writing.

22. Notices

- 22.1. According to this Agreement, each notice shall be delivered by hand delivery in exchange for a certificate of approval, or by delivery by registered mail or by e-mail or by facsimile addressed to the Company or the counselors (as applicable), according to the addresses in the title.
- 22.2. Any notice which will be delivered by hand, or sent by e-mail or sent by facsimile will be considered as if it was provided at the time of delivery. Any notice sent by registered mail will be considered as if provided five (5) days after delivery and any notice sent by facsimile shall be considered as if provided 24 hours after delivery and on the condition that the fax reception was approved by phone. The sender will keep the approvals about the delivery of the notices.

IN WITNESS WHEREOF, the parties hereto have undersigned:

Ayalon Highways Co. Ltd

The Supplier

Supplier signature approval

I, the undersigned, _____, attorney at law, from _____
hereby certify that the signature of the _____ obligates the Supplier for all
intents and purposes.

Date

Attorney

Supplier Agreement No. _____, Appendix A

Scope of Work

Attached to the Tender as Appendix F

Supplier Agreement No. _____, Appendix B

**The Ministry of Transport's Requirements for
Traffic Light Planning Software**

Attached to the Tender as Appendix G

Supplier Agreement No. _____, Appendix C

Unified Format for Defining Timing Plan for Signaled Junctions

Attached to the Tender as Appendix G

Supplier Agreement No. _____, Appendix D

Escrow Code Agreement

Appendix E

Consideration

For the implementation of the Services, the Supplier will be eligible for Consideration in accordance with the Supplier's technical proposal attached as **Volume C** to the Tender Documents.

1. After the first year of services, all prices and considerations will be indexed to the Israeli consumer price index (CPI) that is published by the Central Bureau of Statistics (Israel). In any case, even if the CPI will exceed 3% (three percent) a year, the Company will not pay more than 3% indexation.
2. All prices are not inclusive of VAT.
3. In case the Supplier makes any expenses in connection with the performance of this Agreement for any reason whatsoever, including subsistence and other expenses, which expense are not mentioned above, or without the prior written consent of the Company and/or the Project Manager, the Supplier will not be eligible to request a refund of the expenses from the Company and the Supplier hereby waives any claim or action in this regard.
4. The Supplier declares that the Consideration as defined in the Supplier's proposal, as may be applicable, is complete and final and includes all the Supplier's expenses, including but not limited to, compulsory payments, commissions to local bodies, travel expenses, office and similar expenses and includes all payments and/or other benefits of any sort that the Supplier will be entitled to from the Company in consideration for the complete performance of the Supplier's Services. The Supplier shall not be entitled nor may it demand any payment and/or benefit from the Company unless specifically specified in the Agreement and/or agreed upon in writing.
5. The Consideration shall be paid by the Company to the Supplier in accordance with the provisions set out in this Appendix, following the submission of a duly invoice, which will be deemed as having been submitted at the beginning of the following month and will be paid within forty five (45) days from the beginning of the said following month. The Consideration, will be paid by the Company in NIS as mentioned on section 10.1 of this agreement.
6. the Company is entitled from time to time and at any point during the performance of the Supplier's Services, at its sole discretion, to require the Supplier to perform any

change, either minor or significant, to the scope of the Supplier's Services, as further detailed in the Agreement, and the Supplier shall undertake to operate in accordance with the written instructions it may receive from the Company.

Appendix F

Declaration and Obligation of No Conflict of Interest

To

Ayalon Highways Co. Ltd

Dear Sir / Madam,

Re: Irrevocable Declaration and Obligation of No Conflict of Interest

I, the undersigned, [REDACTED] carrier of ID/Passport No. [REDACTED], employee / an external expert of [REDACTED] (hereinafter: the "**Supplier**") which provides services to Ayalon Highways Co. Ltd (hereinafter: the "**Company**"), by an agreement signed between them (hereinafter: the "**Agreement**"), hereby declare as follows:

1. At the time of signing the Agreement there is no conflict of interest between any other activity and obligation of mine and between the Supplier obligations under the Agreement.
2. I will refrain from any activity that involves a conflict of interest between fulfilling my functions as an employee of the Supplier under the Agreement and between the performance of a function and/or other obligation of the Supplier, directly and/or indirectly, and I hereby undertake to notify the Supplier and the Company of any concern regarding a conflict of interest between my obligations as an employee of the Supplier under the Agreement and between other activity of mine, and I undertake to act in accordance with the Company's instructions to prevent such conflict of interest.
3. I hereby declare that it was made clear to me and that I am aware that I will not be allowed to participate, directly and/or indirectly, by myself and/or as a partner and/or as a Supplier or otherwise, with any entity who will participate and/or compete in connection with future tenders for the designing, implementation and operation of the "Urban Express" project, which aims to improve and develop public transportation infrastructure for buses in the Tel Aviv metropolitan area (the "**Project**"), whether or not for compensation, as may be held (hereinafter: the "**Future Tenders**") unless I will issue an appropriate request and receive a written approval in advance for it from the Company, to be given in its sole discretion.
4. Provisions of this declaration shall apply, respectively, to contractual relations between me and competitors in the Future Tenders, as defined in Section 3 above, including the bodies comprising the same competitors, and will apply to any body and/or company to be elected at the end of the Future Tenders.
5. I hereby undertake not to provide any third party, including other Consultant of the Company or anyone acting on their behalf, any service or information related to the services provided under the Agreement and/or in connection with the Project and/or any other service relating to, directly or indirectly, the services under the Agreement, whether such service or information is given for compensation or not, except for services on behalf of the Company, unless the Company gave its prior written consent.

6. I acknowledge that the provisions of Section 3 shall remain in force even after the termination of the Agreement. Provisions of Section 4 as far as they relate to providing advice in connection with the services under the Agreement and/or the Project will remain in force even after the termination of the Agreement without limitation while provisions of Section 4 regarding providing of advice in relation to any other matter and the provisions of Section 5 shall remain in force one (1) year after the termination of the Agreement.

7. My obligations above were given of my own free will and are irrevocable.

_____ _____
Name and Signature Date

Appendix G
The Tender Documents

[To be attached]

Appendix H

Tender Technical Proposal and Commercial Proposal

[To be attached]

Appendix I

Confidentiality, Non-Competition and Proprietary Information Agreement

I, the undersigned ("**Developer**"), hereby undertakes towards Ayalon Highways Co. Ltd. (the "**Company**") that I will comply with the following terms and conditions:

1. Confidentiality

(a) The Developer recognizes and acknowledges that Developer's access to the trade secrets and confidential or proprietary information (collectively, the "**Confidential Information**") of the Company is essential to the performance of Developer's duties.

By way of illustration and not limitation, such Confidential Information shall include (i) any and all information concerning the business and affairs of the Company, product specifications, data, know-how, compositions, processes, formulas, methods, designs, samples, inventions and ideas, past, current and planned development or experimental work, current and planned distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures and architectures (and related processes, algorithms, compositions, improvements, know-how, inventions, discoveries, concepts, ideas, designs, methods and information) of the Company, and any other information, however documented of the Company; (ii) any and all information concerning the business and affairs of the Company (which includes budgets and plans, the names and backgrounds of key personnel, personnel training and techniques and materials), however documented; and (iii) all Inventions (defined below); and (iv) information of third parties as to which the Company has an obligation of confidentiality; and (v) any and all notes, analysis, compilations, studies, summaries, and other material prepared by or for the Company containing or based, in whole or in part, on any information included in the foregoing.

The Confidential Information shall not include information which: (i) has become publicly known and made generally available through no wrongful act of Developer or of others who were under confidentiality obligations as to the information involved; (ii) was known to the Developer prior to his involvement with the Company, as evidenced in Developer's written documents.

(b) Developer further recognizes and acknowledges that such Confidential Information is a valuable and unique asset of the Company, and that its use or disclosure (except use or disclosure as required for carrying out Developer's duties related to services provided to the Company by Developer's employer) would cause the Company substantial loss and damages. Developer undertakes and agrees that Developer will not, in whole or in part, disclose such Confidential Information to any person or organization under any circumstances (except use or disclosure as required for carrying out Developer's duties related to services provided to the Company by Developer's employer), will not make use of any such Confidential Information for Developer's own purposes or for the benefit of any other person or

organization, and will not reproduce any of the Confidential Information without the Company's prior written consent; provided, however, that this provision shall not preclude Developer from making, upon written advice of counsel satisfactory to the Company, any disclosure required by any applicable law.

(c) Developer will not disclose or otherwise make available to the Company in any manner any confidential information or proprietary materials or content owned by and/or received by Developer from third parties.

(d) Developer further recognizes and acknowledges that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to certain limited purposes. Developer agrees to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out Developer's work for the Company consistent with the Company's agreement with the third party.

2. Return of Materials.

Upon termination of Developer's employment with its current employer or at the request of the Company made at any time, Developer will promptly deliver to the Company, or if Company so requests in writing delete and destroy, all Confidential Information in Developer's possession or under Developer's control, without retaining any copies thereof.

3. Ownership of Property and Rights

(a) Exclusive Property. Developer confirms that all Confidential Information and Inventions (as defined below) are, will be, and shall remain the exclusive property of the Company for its sole and exclusive use and benefit.

(b) Assignment & Waiver. Developer hereby assigns to the Company, without any consideration, the entire right, title and interest in and to any and all content, material, work product, ideas, inventions, original works of authorship, developments, improvements, modifications, enhancements, trade secrets, and in and to any and all documentation, software, hardware, firmware, creative works, know-how and information, and any and all improvements, enhancements and derivatives thereof and Intellectual Property Rights thereto conceived or reduced to practice, in whole or in part, by Developer during the period that Developer is involved in the provision of services to the Company (directly or indirectly) and/or that are related to the Company's business (collectively, the "**Inventions**"). All Inventions shall be owned exclusively by the Company upon creation. Developer hereby waives any and all rights, claims and demands in respect of the Inventions, including without limitation moral rights and any right for compensation or royalties, including under Section 134 of the Israeli Patent Law – 1967.

(c) Perfection of Rights. Developer shall provide all assistance the Company may request, and shall execute, verify and deliver such documents and perform such other acts (including appearing as a witness) the Company may reasonably request for use in applying

for, obtaining, perfecting, evidencing, sustaining and enforcing such proprietary rights and the assignment thereof, as set forth above.

(d) Attorney-in-fact. If the Company is unable because of the Developer's mental or physical incapacity or the Developer's refusal to cooperate with the Company after receiving the Company's request to secure the Developer's signature for the protection, prosecution, enforcement and/or perfection of any right to Inventions, Developer hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Developer's agent and attorney-in-fact, to act for in behalf and stead to protection, prosecution, enforcement and/or perfection and to do all other lawfully permitted acts to further such actions with same legal force and effect as if executed by the Developer.

4. No Competition. For so long as Developer is involved in the provision of services to the Company (directly or indirectly) and continuing for 12 months thereafter, Developer shall not, directly or indirectly:

(a) solicit, endeavor to entice away from the Company or otherwise interfere with the relationship of the Company with any person or organization who is, or was within the preceding two years, a customer of the Company, or who is employed by the Company; or

(b) own an interest in, manage, operate, join, control, or participate in or be connected with, as an officer, partner, stockholder, consultant or otherwise, any project, at such time, directly competes with the Company anywhere in the world; provided that this shall not preclude Developer from owning a stock interest not greater than 5% in a publicly traded company.

(c) Provide to any competitor of the Company any services (whether as an employee or independent contractor), whether technological, business or marketing.

5. Survivability. The obligations and undertakings herein are perpetual and shall survive termination of Developer's employment with its current employer and/or involvement with the provision of services to the Company.

6. Enforcement. The Company may enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that the Company may have for the breach of this Agreement. This Agreement shall be enforced to the fullest extent permissible under the laws of the State of Israel, without regard to its conflict of law principles. If any portion of this Agreement shall be adjudicated to be invalid or unenforceable, it shall be deemed to be amended to delete such portion. Developer expressly consents to the exclusive personal jurisdiction and venue of Tel-Aviv courts for any lawsuit arising from or relating to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature below.

Developer: _____ Date: _____