



**Volume B - Agreement**

**Ayalon Highways Company Ltd.**

**E-Tender (Online) No. 51/22**

**For the Supply, Implementation & Support of a  
Charging Management System for Bus Depots**

**drawn up and signed and signed on month \_\_\_\_\_ day \_\_\_\_\_, year 2022**

**between**

**Ayalon Highways Company Ltd.**

**Address:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

**Phone no.:** \_\_\_\_\_

(Hereinafter and in all this Agreement's documents "the Company"/"Ayalon Highways")

**and**

\_\_\_\_\_

**Address:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

**Phone no.:** \_\_\_\_\_

(Hereinafter and in all this Agreement's documents "The Supplier")

**Whereas:** The Company is interested in the supply, implementation & support of a charging management System for bus depots;

**and whereas:** The Company has accepted the Supplier's Proposal, among other Proposals, in an online Tender No. 51/22 for the supply, implementation & support of a charging management System for bus depots (hereinafter: "the Tender");

**and whereas:** The Supplier declares that it is interested in licensing the System to the Company, in accordance with its Proposal, 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;

**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 A1** - Scope of Work

**Appendix A2** – Additional Developments

**Appendix B** – The Supplier's Proposal and all its appendices, including its technical response and any Tender Documents attached by way of a referral (hereinafter: "**the Proposal**").

**Appendix C** – The Supplier's Price Proposal

**Appendix D** – Confidentiality Undertaking ("NDA")

**Appendix E** – Cyber requirements (attached separately)

**Appendix F** – Performance Guarantee

3. **Definitions**

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

<b>"Additional Developments"</b>	The software developments detailed in Appendix A2, as well as any other development requested by the Company throughout the Period of Engagement, not detailed in Appendix A2;
<b>"Agreement"</b>	This agreement signed and executed by the Company and the Supplier, including its appendices and including any future modifications and/or additions to them;
<b>"Period of Engagement"</b>	As defined in section 9.1;
<b>"Services"</b>	Supply, implementation & support of the System, according to this Agreement;
<b>"System"</b>	The charging management system for bus depots proposed by the Supplier, and further developed in accordance with the requirements of the Agreement;
<b>"Work Order"</b>	A specific assignment for the provision of Services, which the Company will issue to the Supplier.

#### **4. The Services**

- 4.1 The Company hereby wishes to engage with the Supplier for the supply, implementation and support of a charging management system for bus depots throughout the State of Israel (“**the Services**” or “**the Project**”).
- 4.2 The Services shall be executed by the Supplier in accordance with the Scope of Work specified in **Appendix A1**.
- 4.3 The Company shall be entitled to issue a Work Order to the Supplier, from time to time, for the execution of the Services in various bus depots throughout the State of Israel, in accordance with its needs and at its sole discretion. The Supplier will be required to adapt the System to the specific depot and its charge points in accordance with the Work Order, without the Supplier having any claim and/or demand against the Company. The Company may also request Supplier to manage charge points that are not located in depots.
- 4.4 The Company shall have sole and absolute discretion with respect to determining the scope of the engagement with each Supplier, including the number of charge points to be connected to each Supplier’s System, according to the needs of the Company only, and the Suppliers shall have no vested right to any minimum scope of engagement. In addition, the Company may reduce the number of charge points designated to the Supplier, and transfer them to another Supplier at its sole discretion, and the Supplier hereby waives any claim or demand in this regard.

#### **5. License**

- 5.1 The Company hereby wishes to license the System from the Supplier in accordance with the terms and conditions as specified in this Agreement and all its Appendices, and the Supplier hereby undertakes to license the System to the Company, all as further detailed in this Agreement.
- 5.2 The Supplier hereby grants the Company a worldwide, non-exclusive, sublicensable, royalty-free license to use, integrate and fully exploit the System during the Period of Engagement.

#### **6. 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:

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

- 6.2 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 and accurate, and should be perceived as if given by it within the Agreement. Any inaccuracy in its presentations and statements and/or non-compliance with any of its obligations pursuant to the Agreement, shall constitute a fundamental breach of its obligations and the Agreement. The said affidavits and/or representations and/or information will remain in force during the entire Period of Engagement; and the Supplier will inform the Company, immediately, in the event of any change in a presentation or obligation given by the Supplier regarding the Agreement, which could affect its ability to perform the Services.
- 6.3 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.
- 6.4 That it will perform the Services in accordance with the service level agreement (SLA) detailed in Appendix A1, that it will devote its best efforts and experience to advance the Services, bearing the sole responsibility and liability for the performance and quality of the System and Services and will comply with the requirements of any law.
- 6.5 That it will begin developing the Additional Developments listed in Appendix A2 immediately after the execution of this Agreement by the Company, and complete the development to the Company's satisfaction within the timeframe listed in Appendix A2. The above shall not apply to the Additional Developments listed as "upon request", to be developed only following the Company's written request, and in accordance with Section 13 below.
- 6.6 It is hereby clarified that the Company or any related entity (such as the MOT, Netivei Israel etc.), at its sole discretion, will have a license to use any Additional Developments.
- 6.7 That it owns, or shall own the copyrights or licenses to use the System and that, at all times, it will have authorizations and licenses from all the software suppliers for the purpose of providing the Services. 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 that are valid and enforceable, the Supplier will conduct the defense against such claim at its expense and under its responsibility and will indemnify the Company and 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 anyone on its behalf, shall not be jeopardized.

- 6.8 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. Any inaccuracy in its presentations and statements and/or non-compliance with any of its obligations pursuant to the Agreement, shall constitute a fundamental breach of its obligations and the Agreement.
- 6.9 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, if so required by law. 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.

## **7. Supplier's personnel and subcontractors**

- 7.1 The Supplier undertakes to perform the Services by itself and using experienced, responsible, and professional personnel who are able to provide the Services at all times, in the highest quality and within the timetables set forth in the Agreement.
- 7.2 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 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 thirty (30) 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.
- 7.3 The Supplier may use subcontractors for the purpose of providing any part of the Services, subject to the Company's explicit written approval. To the extent that the Company has approved a subcontractor, the Supplier shall be solely

responsible for the services provided. It is clarified that the transfer of the execution of the Services, or part thereof, 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.

- 7.4 The Supplier undertakes to pay its personnel full wages, including the mandatory social rights required by any law.
- 7.5 The Supplier undertakes to ensure safety and suitable health conditions for maintaining the health and welfare of its personnel, and to comply with any instructions regarding safety at work in accordance with any law.

## **8. Control, Inspection and Coordination**

- 8.1 The Supplier undertakes to manage and supervise its work, including inspection of its personnel and any other and/or additional issue requested by the Company relating to the Services.
- 8.2 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), and/or the MANTAM located in Tel Aviv and/or the National Public Transport Authority's offices. Therefore, other works may be simultaneously carried out in nearby sites by other service providers / contractors / suppliers, on behalf of the Company.
- 8.3 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.
- 8.4 The Company will resolve any disputes between the service providers/contractors/suppliers and its decision shall be final.
- 8.5 The Company will not pay the Supplier any additional consideration for the said cooperation and coordination between the service providers as aforesaid.

## **9. The Engagement Period**

- 9.1 The term of engagement with the Supplier shall be thirty six (36) months commencing on the date on which the Company signs the Agreement ("**Period of Engagement**"). The Company reserves the right, at its sole and absolute discretion, to extend the Period of Engagement for up to four (4) additional periods of up to twelve (12) months each, all as specified in the Agreement, with one or more of the Suppliers, and the Supplier hereby waives any claim or demand in this regard.

9.2 Without derogating from any other provision in this Agreement The Company may, at its sole discretion, terminate the Period of Engagement, with any or all of the Suppliers, by providing the Supplier with thirty (30) days advance written notice.

**10. The Consideration**

10.1 The consideration for which the Supplier shall be entitled to for the Services, shall be paid monthly, according to the number of the Company's Charge Point sockets that are connected to the System, in accordance with the terms specified in Appendix C of the Agreement (the "**Consideration**"). Sockets shall be counted following the Company's written approval of a successful connection to the System. The Consideration will be paid to the Supplier in New Israeli Shekel ("**NIS**"), linked to all changes in the official exchange rate published by the Bank of Israel, if relevant, in accordance with the Supplier's chosen preference in its Price Proposal attached as Appendix C.

**10.2 Consideration for Additional Developments**

10.2.1 The Company may from time to time, request a Supplier to perform Additional Developments, in accordance with Section 13 below. Notwithstanding, Additional Developments listed in Appendix A2 with a specified due date measured from Agreement execution date, shall be developed by the Supplier without the need for a specific request of the Company.

10.2.2 No additional consideration shall be paid for:

10.2.2.1 Additional Developments specified in Appendix A2, which are listed as developments included in base price (Section 10.1 above).

10.2.2.2 Additional Developments specified in Appendix A2 for which the Supplier received the quality score according to Volume D of the Tender Documents.

10.2.3 For all other requests, the Supplier will submit for the Company's approval, specification and justification for the number of development hours required for the Additional Development.

10.2.4 The Company will pay the Supplier 500 NIS per each development hour. The Company will determine the number of hours for each development, after consulting with the Supplier. A dispute between the parties regarding such decision will not constitute a reason for the Supplier to delay the required the developments, and the Supplier may forward the dispute between the parties to the relevant court in accordance with Section 23 to this Agreement.

- 10.2.5 Unless agreed upon otherwise upon the issuance of an Additional Development request, the Consideration for Additional Developments will be paid to the Supplier as follows:
- 10.2.5.1 10% of the Consideration shall be paid following the Company's written approval regarding the design of the requested development.
  - 10.2.5.2 90% of the Consideration shall be paid following the completion of such development to the Company's satisfaction.
- 10.3 The Consideration is final and shall include all preparation and necessary works for the execution of the Services to the Company's satisfaction, and includes: overhead expenses, price increases of any kind, office and/or general expenses, equipment costs, wages of employees and/or those employed by or on behalf of the Supplier (including full social expenses), 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 Consideration specified above.
- 10.4 The Supplier shall bear all of its own expenses arising from its performance or its obligations under this Agreement.
- 10.5 At the end of each month, the Supplier will submit a detailed monthly report to the Company, regarding the Services provided for the previous month, and for which the payment is requested, in the form requested by the Company. The monthly report will detail the calculation and payment requested, pursuant to the discount offered by the Supplier in its Price Proposal, and the quantity discount in Appendix B, as well as linkage (if applicable). In the said report the Supplier must also detail its compliance with the SLA during the reporting period. The Company may instruct the Supplier to provide additional data in its monthly report, at its sole discretion.
- 10.6 Subject to the Company's approval of the monthly report as aforementioned, the Supplier will submit the approved bill to the Company as aforementioned, by the 5<sup>th</sup> of the following month. The Company will pay the Supplier, within 45 days from the end of the month in which the bill was approved by the Company, subject to a receipt of a lawful tax invoice. The date in which the Company stamps the Supplier's bill, shall be considered as 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).
- 10.7 The Consideration includes all taxes, levies and charges however designated and levied by any state, local, or government agency, except for Israeli VAT ("VAT"). The Supplier shall be responsible for the payment of all taxes, levies



and charges in connection with this Agreement, 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.

- 10.8 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.
- 10.9 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.

## **11. Schedule**

- 11.1 The Supplier is aware of the utmost importance for complying with the schedule, for providing the Services continuously and for the availability of the Supplier and its staff. The Supplier undertakes to complete the execution of the Services in accordance with the schedules and milestones detailed in Appendix A1 and Appendix A2 and/or any Work Order to be delivered by the Company to the Supplier.
- 11.2 The Company may order the Supplier to add certain means, tools and staff, insofar it deems such to be added, to the Company's satisfactory, in order to meet such schedules.
- 11.3 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 implicate 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.
- 11.4 In the event of a delay in the provision of the Services, the Company will charge the Supplier with liquidated damages, in accordance with the provisions of Appendix A1.
- 11.5 Unreasonable delays in the provision of the Services, will constitute a fundamental breach of the Agreement.

## **12. Liquidated Damages**

- 12.1 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 relation to the SLA specified in Appendix A1, the Supplier will pay the Company pre-agreed liquidated (hereinafter: "**the Liquidated Damages**").
- 12.2 It is hereby clarified that, should there be grounds for exercising more than one Liquidated Damage, the compensation regarding each violation will be independent and activated simultaneously and accumulatively.
- 12.3 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.
- 12.4 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 forfeiture of guarantee.
- 12.5 The payment, deduction or collection of the Liquidated Damages, as aforementioned, does not exempt the Supplier from its obligations for completing the Services or from any other commitment pursuant to the Agreement.
- 12.6 For the avoidance of doubt, it is clarified that the aforementioned Liquidated Damages 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 already paid).

### **13. Instructions and 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 shall be exempt from paying the Supplier for such changes.
- 13.2 The Company may order any change in the schedules for provision of the Services, or any change or additions to the Services detailed in this Agreement including in Appendices A1-A2 or any part thereof (hereinafter: "**the Change**"), at its sole discretion, and the Supplier will make the Change as aforementioned. To the extent that the Changes impose additional costs on the Supplier, the Supplier will notify the Company within 14 days after receiving the Company's written Changes request, and the provisions regarding Additional Developments in Section 10.2 shall apply.
- 13.3 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 for this Agreement.

13.4 Without derogating from the above, during the Period of the Engagement, the Company may from time to time issue the Suppliers a specific invitation for the execution of a specific task, including, but not limited to, additional services it may wish to acquire that are not specified in any of the Tender Documents, and request the Suppliers to submit their proposal for such specific task. The specific invitation will contain the scope of work, technical specifications and other special provisions relating to such task, as well as the criteria for selecting the winning bidder, which may include, in addition to a price proposal - threshold conditions, quality measurements criteria, delivery schedules, or any combination of such criteria.

#### **14. Termination**

14.1 Violation of any of Sections 6, 7, 11-13, 15-**שגיאה! מקור ההפניה לא נמצא.** will be deemed a fundamental breach of this Agreement, in which case the Company is entitled to terminate this Agreement upon 7 days advance written notice, at its absolute discretion, in any case, without the Supplier having any claim and/or demand against the Company.

14.2 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.

14.3 The Company shall notify the Supplier in writing about its decision as stated. The date of termination shall be as specified in the notice.

14.4 in a case the Supplier violates one or more of its obligations under this Agreement, it will 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, including the right to terminate the Agreement.

14.5 To the extent that the Company terminates the Agreement with the Supplier due to a fundamental breach, the Supplier will pay the Company liquidated damages, without need to prove damages, in the pre-agreed amount equal to the Consideration paid to the Supplier up until the termination date for any Additional Developments, plus 10%, without derogating from the Company's right to claim from the Supplier compensation for any additional proven damage caused to it in respect of such fundamental breach.

- 14.6 In the event the Company decides to terminate this Agreement, and without derogating from the Company's right to damages as aforesaid, the Supplier will be entitled to Consideration solely for the Services actually and properly performed by it until the date of termination (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 termination of this Agreement.
- 14.7 Upon termination of this Agreement, the Supplier shall promptly, either deliver to Company or delete/destroy all Confidential Information and Company IP in its possession or under its control, in any media or form whatsoever.
- 14.8 The Supplier declares that if the Agreement is terminated as stated under this Section 1114, 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 14.6 above and/or in any other matter, will not delay the transfer of the Services to another supplier, for the operation and continuation of the Services for the benefit of the Company or any other entity on its behalf.
- 14.9 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.

**15. Confidential Information**

- 15.1 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 and/or the public transportation operator to whom it will provide services, 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 and/or the public transportation operator to whom it will provide services, 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, 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. All Confidential Information is owned by the Company and/or the public transportation operator to whom it will provide services.

15.2 Upon the signing of this Agreement, the Supplier shall obtain the signature of each of its employees and subcontractors, assigned for the provision of the Services, on the Confidentiality Undertaking (“NDA”) attached hereto as Appendix D. Supplier shall be fully liable and responsible for all of the acts and omissions of each developer.

**16. Conflict of Interest Prohibition**

16.1 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 its obligations towards the Company under this Agreement.

16.2 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.

**17. Independent Contractor**

17.1 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 with the Company. 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.

17.2 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.

17.3 Without derogating from the generality of the above, in case any authority determines that despite the provisions of Sections 16.117.1 and 17.2 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.

- 17.4 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 17.1 and 17.2 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.

## **18. Liability and Insurance**

- 18.1 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.
- 18.2 The approval of the Company to the Supplier's documents and/or services, will not free the Supplier from its professional responsibility and liability on account of the Services, the System or any part thereof, and their quality.
- 18.3 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 System 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 opportunity to take part in the negotiations for compromise and/or in the defense against the claim.
- 18.4 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:
- 18.4.1 **Commercial General Liability coverage** with a limit of liability of not less than \$2,000,000 (two million US Dollars) for each occurrence and annual aggregate for Bodily Injury (including death) and Property

Damage coverage. The Commercial General Liability Policy purchased by the supplier for this project shall include Contractual Liability coverage, Property Damage coverage, personal injury coverage (with employee exclusion deleted), and Products and Completed Operations coverage. The company shall be named as additional insured under such insurance.

**18.4.2 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 Dollars), 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.

**18.4.3 Worker's Compensation Insurance** or any other similar form of employees social insurance which is required pursuant to any local employment law.

**18.4.4 Professional Indemnity Liability Insurance including cyber protection:** The professional liability of the Supplier on account of an act of negligence, error or omission, is within liability limits of no less than \$ 2,000,000 (two million US Dollars) 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 Company shall be named as additional insured under such insurance.

**18.4.5** 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.

**18.4.6** Any other insurance required under any applicable law.

**18.5** 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.

**18.6** 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.

**18.7** The Supplier is required to provide the Company any and all signed insurances certificates.

- 18.8 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.
- 18.9 The Supplier undertakes to comply with the terms of all insurances formulated according to this Agreement.
- 18.10 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.
- 18.11 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.

## **19. Guarantee**

- 19.1 To ensure any and all undertakings of the Supplier, its personnel and subcontractors, 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 another reputable credit rating agency approved by the Company) which will be approved by the Company in advance, payable to the Company, in the form of Appendix F, or a similar form reasonably satisfactory to the Company. The initial guarantee shall be in a sum equal to 8% of the yearly (12 months) consideration for 200 sockets, according to the Supplier's Price Proposal ("**Performance Guarantee**"). Following 12 months of Services, and thereafter every 12 months, the Supplier shall update the sum of the Performance Guarantee in accordance with the updated number of sockets it manages for the Company should the number of such sockets exceed 220, and submit the updated Performance Guarantee to the Company within 7 days. The



Performance Guarantee may be in NIS (in which case it will be linked to the Israeli consumer price index) or in USD/Euros equivalent (calculated according to exchange rate published by the Bank of Israel).

- 19.2 The Performance Guarantee shall serve as security and a guarantee for all of the Supplier's obligations hereunder, including, but not limited to, fundamental breach, and liquidated damages (for delays, for failure to meet minimum service level as defined in the SLA, and for termination due to fundamental breach). 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 for at least ninety (90) days after the end of the Period of Engagement (including, for the avoidance of doubt, any extension thereof).

**20. Assignment**

- 20.1 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.
- 20.2 The Supplier may not assign, pledge, transfer or dispose any of its rights and obligations under this Agreement, and shall not sublicense the software provided to the Company under this Agreement and/or any part thereof to any third party.
- 20.3 Supplier may not sell its assets and/or parts of its activity, without the written consent of the Company.

**21. Contradiction between Documents**

- 21.1 In any case of contradiction between the Appendices and any provisions of the Agreement, the provision which is stricter with the Supplier or more beneficial to the Company, will prevail.
- 21.2 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.

**22. Offset and Lien**

- 22.1 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 due to the Supplier according to this Agreement.

22.2 The Supplier has no lien right in or over the Services and/or in any Charge Point and/or in any document including report and/or any Confidential Information stored on magnetic media related to performance of the Services.

**23. 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 law's provisions thereof. Any dispute arising under or in relation to this Agreement shall be resolved in the competent courts of the Central District of Israel.

**24. Miscellaneous**

24.1 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 Section 24.1 hereinafter.

24.2 There will be no validity to any change in this Agreement or any of its provisions, unless made in writing and signed by both parties to this Agreement.

24.3 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 in writing.

**25. Notices**

25.1 Any notice according to this Agreement shall be delivered by hand delivery, or by registered mail or by e-mail, addressed to the other party, according to the addresses in the preamble to this Agreement.

25.2 Any notice which will be delivered by hand will be considered as provided at the time of delivery. Any notice sent by email will be considered as if provided at the earlier of 24 hours after delivery, or upon receipt of a non-automatic acceptance notice. Any notice sent by registered mail will be considered as if provided five (5) days after delivery.

**IN WITNESS WHEREOF, the parties hereto have undersigned:**

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**Ayalon Highways Co. Ltd**

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**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

## **Appendix A1 - SOW**

### **1. General**

- 1.1. The System shall meet all requirements as described in Volume C throughout the Period of Engagement.
- 1.2. An overview of the charging management structure is detailed in Section 7 below.
- 1.3. The System shall be available immediately after signing the Agreement to connect all operational Charge Points included in the Supplier's Work Order.
- 1.4. The Supplier shall conduct remote integration testing with any new Charge Point model that will be managed by the System, within 7 days from Company's request.

### **2. Developments and Integrations**

- 2.1. The Supplier shall develop all Additional Developments within the timeframe specified in Appendix A2 of the Agreement, and regarding Additional Developments for which a timeframe isn't specified in Appendix A2 – as agreed upon.
- 2.2. Within 1 week from signing the Agreement, the Supplier shall hold an online workshop with the Company, presenting the current solution and the design for the first batch of Additional Developments set forth in Appendix A2, allowing the Company 2 weeks for reviewing and approving the design and the implementation plan.
- 2.3. Every 3 months, at the latest, the Supplier shall share the design for the next batch of Additional Developments set forth in Appendix A2, allowing the Company 2 weeks for reviewing and approving the design and the implementation plan.
- 2.4. The Supplier shall set up a progress update session every 2 weeks, during which it shall update the Company with the status of the current developments and raise any issues or concerns.
- 2.5. Once an Additional Development, as set forth in Appendix A2, is completed and made available to the Company, the Company will run a 2-week trial period to review it, at the end of which the Company may approve or reject the Additional Development. If further adjustments are required, the Supplier shall have 2 weeks to address any rejections.
- 2.6. Any delays in the execution of the Services, shall be subject to the applicable Liquidated Damages of 1,000 NIS for every week (and pro rata for a partial week delay).
- 2.7. All integrations with external systems shall be initiated by the Company, which will choose the systems and make introductions to the Supplier. The integration process shall be under the responsibility of the Supplier and shall be carried out directly with the 3rd party companies operating those systems. The Supplier shall present the design of the interface with appropriate documentation to the Company's approval. The Supplier shall take into consideration all relevant work for the purpose of the integration and shall include it in the cost submission.
- 2.8. The Supplier shall notify the Company, at least one week in advance, of any version upgrade of the System, and the system's functionalities and stability shall be tested by the Supplier shortly after the release.

### **3. Cyber Security**

- 3.1. The Supplier shall implement its solution for the cyber requirements, as approved by the Company, in accordance with Appendix E of the Agreement, within 3 months of the Agreement signing date. Every

delay will result in reduction of 10% of the monthly payment (and pro rata for a partial month delay), beginning with payment for month 4.

3.2. The Supplier shall be subject to an external audit at any point after 3 months of the Agreement signing date. The Supplier shall address any rejections detected in the audit immediately.

**4. Supplier Responsibilities**

4.1. The Supplier shall appoint a suitable local representative with relevant experience as key point of contact for the Company (hereinafter: the “Project Manager”), after receiving advance approval of the Company. Should the Company disapprove of the proposed Project Manager, the Supplier shall replace him/her with a suitable Project Manager. The Project Manager shall be at the disposal of the Company via phone or in person, as required at the sole discretion of the Company.

4.2. The Project Manager shall manage all the interfaces between the Supplier and the Company, including all the procedures mentioned in section 2 above. The Project Manager shall lead the required sessions, and ensure the attendance of all relevant personnel of the Supplier, including those required by the Company.

4.3. The Company will provide the Supplier with all the required files and relevant documentation, when new firmware updates are available for the managed Charge Points. Once a new firmware version is available, the Supplier shall upgrade a single test unit to verify firmware stability and new features. Once the firmware is approved by the Company, the Supplier shall coordinate with the Company a date to run the upgrades and shall carry out remote upgrade for all units.

**5. Service Level Agreement**

5.1. The Supplier shall operate a helpdesk (with Hebrew or English speakers) for providing technical support via email, chat and telephone, available 24 hours a day, 7 days a week, 365 days a year.

5.2. The Supplier shall provide the Company with user manuals and training materials, as well as the first training per Depot for the Company’s agents upon request. Any additional training shall be subject to fees according to Supplier's customary rates.

5.3. The Supplier shall respond to any fault or malfunction with an initial analysis/answer (“First Response”) and a fix or a workaround (“Solution”) within the time period defined in the Support Timetable below. The time period shall be counted 24/7/365 from the date and time the Supplier discovered the fault /malfunction or when the Company alerted the Supplier regarding it, whichever is earlier.

5.4. The Company will determine, at its sole discretion, the priority level for the fault/malfunction. Unless the Company determines otherwise, any fault/malfunction will be deemed as Priority 3.

5.5. Support Timetable:

<b>Priority</b>	<b>First Response Time</b>	<b>Solution to allow normal operations</b>	<b>Liquidated Damages</b>
<b>Priority 1</b>	<b>2 hours</b>	<b>5 hours</b>	<b>3,000 NIS for every 1-hour delay</b>

fault which substantially hinders or prevents all or a subset group of users from using a material part of the Service, or causing an issue with using a material functionality of all or a subset group of Charge Points			
<b>Priority 2</b>  fault which substantially hinders or prevents a single user from using a material part of the Service, or causing an issue with using a material functionality of a single Charge Point	<b>8 hours</b>	<b>24 hours</b>	<b>1,000 NIS for every 1-hour delay</b>
<b>Priority 3</b>  fault which substantially hinders or prevents users from using a non-material part of the Service	<b>3 Days</b>	<b>7 Days</b>	<b>500 NIS for every 1-Day delay</b>

5.6. The Supplier shall ensure that the System is available for 99.5% of the time (24/7/365), calculated monthly ("Availability Percentage"). The following items will be excluded from such calculation:

- a. Downtime (if such happens) during an agreed maintenance window, which is announced at least 5 days in advance by the Supplier.
- b. Downtime caused due to the Supplier's hosting cloud service provider.
- c. Downtime caused due to issues outside of the Service, over which the Supplier has no control, such as communications, electrical infrastructure, chargers etc.

Failure to meet the Availability Percentage as stated above in any given month shall incur liquidated damages equal to 10% of the monthly invoice for the first 0.5% unavailability, each further 0.5% downtime shall result in additional liquidated damages equal to 5% of the monthly invoice.

## 6. Conflict of Interests

The professional advisors of the Company regarding this Tender are Omer Benyamini and Teddy Flatau (Weev Energy Ltd.). The Bidders are hereby referred to Section 16 of the Agreement.

## 7. Charging Management Structure – Overview

The public transportation in Israel is managed by the Public Transport Authority, which is responsible, among others, for all the urban buses in Israel. Israel is divided into several regions, each managed by a Metropolitan Traffic Management Center. Each region includes facility managers responsible for the individual bus depots. Each bus depot includes various bus operators - different companies operating the bus lines, and responsible for the bus management and charging schedules. A single depot may include multiple operators and each operator is located in multiple depots.

The System is required to support a hierarchical structure with drill down capability from top to bottom (see chart below), allowing to set up users on each of the levels with different level of access, from administrator permissions to view only (each user inherits the permissions of all the levels below it):

a) Global – Public Transport Authority

Full access to all managed depots, settings and users. On the global level the users can view aggregated data for each region and drill down to each region, depot and operator.

b) Region – Metropolitan traffic management center

Similar access as global, only restricted to a specific region which is set for each depot based on its location.

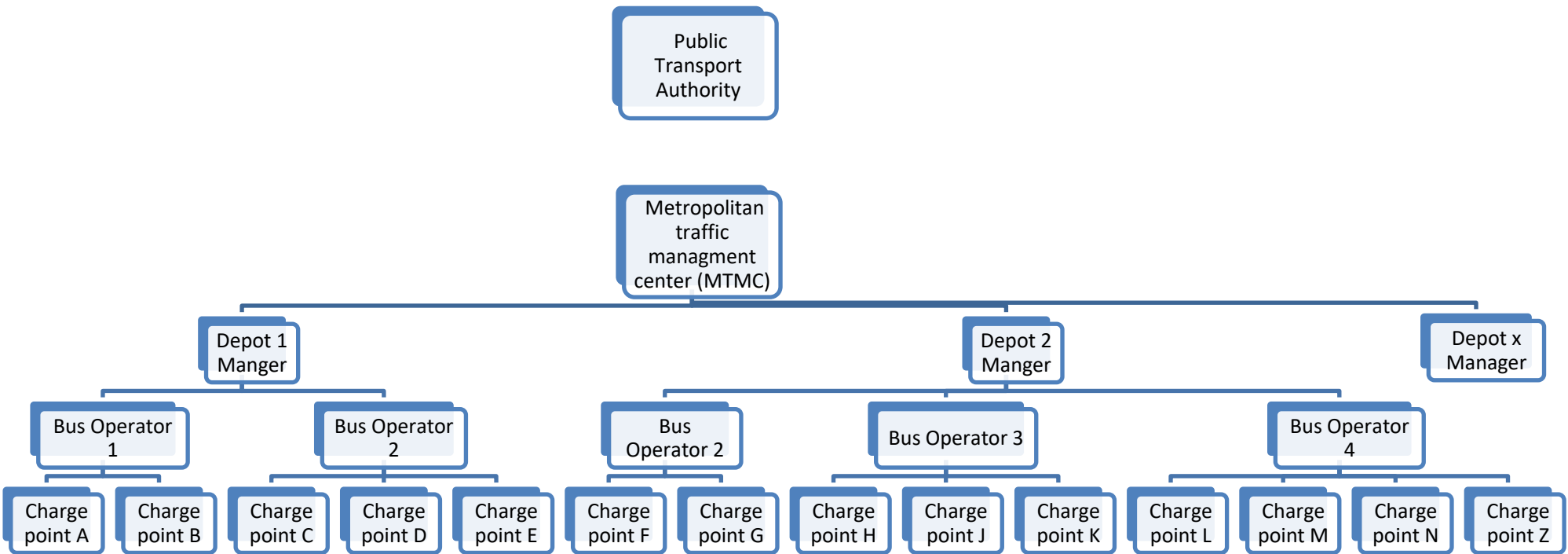
On the regional level the users can view aggregated data for each depot and drill down to each depot to view and manage its Charge Points, settings and users.

c) Depot – Depot management company

Access for the depot management company of a specific depot or group of depots. Each depot can host one or multiple bus operators. The Supplier shall be required to interface with any bus operator. The depot management company is responsible for assigning the Charge Points to the appropriate bus operator, which can be changed manually through the user interface of the System, and provide basic support. The assignment of the Charge Point shall also reallocate power to it based on the max capacity assigned to the operator in the depot. The depot management company can allocate Charge Points to guest charging, providing them the means to start the transaction, remotely or locally.

d) Bus Operator

A specific bus company operator, that can operate in multiple depots. The bus operators manage their Charge Points, their buses and their charging schedule. Buses defined by the bus operator are automatically added to any Charge Point assigned to the operator by the facility manager, so they shall be authorized by the System when charging via Plug&Charge and added to the local whitelist of the Charge Points.





## Appendix A2 - Additional Developments

1	General System	months	from signing date/request	Included in base price (If No - will be paid in accordance with Section 10.2 of Agreement)
1.1	The system will fully support Hebrew (Right To Left)	6	signing date	No
1.2	The supplier will have a local Israeli representative	3	signing date	Yes
1.3	The system will support OCPP 2.0 (or newer version)	6	request	Yes
1.4	The system will register the license plate number of the Vehicle/bus connecting via Plug&Charge - by mapping the license plate number of the Vehicle/bus to the Vehicle/bus Identifier that is sent from the charger to start a transaction while connecting with Plug&Charge.	3	signing date	No
2	The Charge Points Management complies with the following capabilities:			
<b>2.1</b>	<b>Supported fields</b>			
2.1.1	Charger Manufacturer	3	signing date	Yes
2.1.2	Charger Model	3	signing date	Yes
2.1.3	Charger Firmware version	3	signing date	Yes
2.1.4	Supports SMS/Email alerts per group of charge points for charge point fault, charge point offline, an unidentified bus/Vehicle connected (not in the authorized id tag list) according to a set of rules defined by the user (i.e. distribution list, applied units, duration).	6	signing date	No
2.1.5	Supports remote Firmware update	6	signing date	Yes
2.1.6	Supports get OCPP logs (show all OCPP correspondences)	9	signing date	No
3	The Transactions List complies with the following capabilities:			
<b>3.1</b>	<b>Supported fields</b>			
3.1.1	Plug in SoC and Plug our SoC (State of Charge)	3	signing date	Yes
3.1.2	Bus License Plate Number (see section 1.4)	3	signing date	Yes
4	The Load Balancing complies with the following capabilities:			

4.1	Supports dynamic load balancing based on the realtime load on the panel feeding the charger points, monitored by an external meter.	6	request	No
5	The Charge Points' Load Profile complies with the following capabilities:			
5.1	Supports pulling the actual schedule set on the Socket (OCPP- Get Composite Schedule)	6	signing date	Yes
5.2	Supports custom delay for each group of charge points - when applying a schedule to a charge point it will start charging at a custom or random time in the range of X minutes from the defined start time (to avoid spike in demand)	6	request	No
6	The Reporting complies with the following capabilities:			
6.1	Supports a report for measuring the actual charging vs the plan	6	request	No
6.2	The system is able to publish any data, as defined by the customer, by a standard API (for analysis with external systems)	3	request	No
7	The Bus Depot complies with the following capabilities:			
7.1	Supports setting maximum SoC (e.g. only charge bus/Vehicle up to 80%) - define default level and manually per bus/Vehicle	6	signing date	No
7.2	The system will integrate with the local depot management system, pulling the expected arrival/departure time and the total expected driving distance for each bus. The expected driving distance will be used to determine the required SoC.	6	signing date	No
7.3	The system will automatically create and update the charging plan based on all the data from the depot management system	6	signing date	No
7.4	The system will support multiple depot management systems, where each one is allocated to one or multiple operators	6	signing date	No
8	Optimization			
8.1	The system will support integration with energy generation assets and energy storage for modifying the charging plan based on the assets availability to achieve best performance	6	request	No
8.2	The system will support integration with 3rd party systems for real time grid optimization (demand response) using OSCP or OCPI	6	request	No

8.3	The system will support vehicle to Grid (V2G)	6	request	No
<b>9</b>				
<b>Billing</b>				
9.1	The system will integrate with a payment processing system as required by the company	6	request	No
9.2	The system will be able to bill the operator for each charging using the external payment processing system	6	request	No
9.3	Supports additional pricing options for operator - fixed price, charging fee, parking fee	6	request	No
9.4	The system will be EMV complaint to allow secure payment of request	6	request	No
9.5	The system will provide a web page to allow external drivers to start charge and pay using a manual input of payment details	6	request	No
9.6	The system will provide a mobile app for end users	6	request	No
<b>10</b>				
<b>Integration with 3rd party systems</b>				
10.1	The system will integrate with any system (e.g. BMS) to push any data from the system (e.g. charge point faults), as defined by the company	3	request	No
<b>11</b>				
<b>Bus Operator Management</b>				
11.1	Charge point will support two parameters: 1. By location: the physical location of the bus depot in which the charge point is located. 2. By bus/Vehicle operator: the operator that manages the specific charger.	3	signing date	No
11.2	The authorized list of ID tags will be managed by the operator with a user interface, and applied dynamically for each charge point that belongs to the relevant operator (including applying to the local whitelist on each unit)	6	signing date	No
11.3	Supports reporting based on both charge point parameters	6	signing date	Yes
11.4	Supports user scoping based on both charge point parameters	3	signing date	Yes
11.5	The operator details will be kept on each transactions based on the operator the charge point was assigned to at the time of the transaction	3	signing date	Yes

11.6	<p>System should support dynamic display based on the two parameters with interchangeable hierarchy between them, For example:          In "Depot 1" in a specific location hosts 2 different operators          The user should be able to view it by location with both operators below it and also switch the view to show the operator as the top level with all his locations below.</p>	9	request	No
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**Appendix B - The Supplier's Proposal**

**Appendix C – The Supplier’s Price Proposal**

## 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, implementation & support of a Charging Management System for bus depots ("**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 unauthorised 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. Deleted.
6. **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.
7. **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.
8. **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.
9. **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.
10. **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.
11. **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 – Cyber Requirements (attached separately)**

**Appendix E – Performance Guarantee**

Bank: \_\_\_\_\_

Street \_\_\_\_\_ No. \_\_\_\_\_ City \_\_\_\_\_

Ayalon Highways Co. Ltd.  
2 Shderot Nim, 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 NIS \_\_\_\_\_ (\_\_\_\_\_ New Israeli Shekels) plus linkage to the 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, Implementation & Support of a Charging Management System for Bus Depots.

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 or any of the, 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