

FORM OF CONTRACT NO. __/2019

This contract (hereinafter referred to as the “**Contract**”) is made
this ___ day of _____, 2019

Between

JERUSALEM TRANSPORTATION MASTERPLAN TEAM

From 97 Jaffa Street, Jerusalem, Israel

(hereinafter referred to as the “**JTMT**”)

on the one side;

and

Via _____

(hereinafter referred to as the “**Consultant**”, and collectively with JTMT, the
“**Parties**”, each a “**Party**”)

on the other side;

- WHEREAS:** The Jerusalem Transportation Masterplan Team (“**JTMT**”) operates through the Association for Urban Planning, Development and Preservation – Jerusalem (R.A.). JTMT advances a variety of projects in Jerusalem proper and metropolitan Jerusalem, including the Jerusalem Mass Transit System Project (the “**Project**”); and
- WHEREAS:** JTMT has requested proposals for the performance of certain traffic design services through a public tender, a copy of which, together with its annexes and appendices, is attached as **Annex C** (the “**RFP**”);
- WHEREAS:** The Consultant is the owner of all rights, title, and interest in and to the Software.
- WHEREAS:** The Consultant submitted a bid in response to the RFP, which is attached to this Contract as **Annex D** (the “**Bid**”), and was selected as a Preferred Bidder;
- WHEREAS:** As a result, and as part of its ongoing work, and subject to the terms and conditions of this Contract, JTMT is interested in licensing from the Consultant and integrating Consultant’s Traffic Signals Planning Software System as detailed in the Bid (the “**Software System**”) and receiving other related services as further set forth herein and in the Annexes attached hereto, including without limitation, the scope of work attached hereto

as **Annex A** (hereinafter: the “**Services**” or the “**Work**” as applicable);

WHEREAS

The Consultant is the owner of all rights, title, and interest in and to the Software free and clear of any and all mortgages, liens, security interests or charges, and that it has the right, authority, and legal capacity to enter into this Contract and grant any rights set forth herein to JTMT.

WHEREAS:

The Consultant declares that it is interested in licensing to JTMT the Software System, and that it has the experience, qualifications, skills, personnel, know how, technological means, and ability required to perform the Services at high professional standards and according to the provisions of this Contract;

WHEREAS:

JTMT, based on the Consultant’s aforementioned representations and undertakings, has resolved to bestow on the Consultant the performance of the Services as defined hereunder, and the Consultant wishes to perform the Services, all in accordance with the terms of this Contract;

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

1. **The Contract.**

JTMT hereby procures the Services as defined herein from the Consultant and the Consultant hereby undertakes to provide JTMT with such Services, all in accordance with, and subject to the terms of, this Contract.

2. **Interpretation.**

- 2.1. The preamble and annexes to this Contract constitute an integral part hereof.
- 2.2. Headings in this Contract are used for purposes of convenience only, and shall not serve for purposes of interpretation.
- 2.3. Capitalized terms undefined herein shall have the meanings attached to such terms elsewhere in the RFP.

3. **Annexes; Order of Precedence.**

3.1. The following annexes shall form an integral part of this Contract

Annex A – The Scope of Work

Annex B – Specification of Services and Fees

Annex C – The RFP

Annex C-1 – Clarifications to the RFP.

Annex D – The Bid

Annex E – Confidentiality, Non-Competition and Proprietary Information Undertaking

Annex F – The Performance Guarantee

3.2. Unless otherwise specified in this Contract, in the event of a contradiction between the Annexes detailed above, the following order of precedence shall apply:

- **Annex B**
- **Annex C-1**
- **This Contract**
- **Annex C**
- **Annex A**
- **Annex D**
- **Annex E**
- **Annex F**

4. **Definitions**

In this Contract, the following terms have the meaning herein, while:

<u>“Contract”</u>	This contract signed and executed by JTMT and the Consultant, including its annexes and any future modifications completed in accordance with terms herein;
<u>“JTMT Representative”</u>	JTMT or any other individual on its behalf, as shall be designated to the Consultant in writing by JTMT from time to time;

5. **Representations, Warranties and Undertakings of the Parties**

- 5.1. The Consultant hereby declares that it has the expertise, experience, skills, personnel and professional ability to provide the Services at the highest level, to the satisfaction of JTMT.
- 5.2. The Consultant declares and obligates that there are no legal, contractual and/or any other limitations or obstacles, including, without limitation, in accordance with the Consultant's incorporation documents or any conditional obligation, to execute this Contract and/or to fulfill all of its obligations or grant the rights granted to JTMT under this Contract. The Consultant further declares that its obligations hereunder do not conflict with any obligation, agreement, or law to which it is bound.
- 5.3. The Consultant represents and warrants that is the owner of all rights, title, and interest in and to the Software free and clear of any and all mortgages, liens, security interests or charges, and that it has the right, authority, and legal capacity to enter into this Contract and grant any rights set forth herein to JTMT. The Consultant agrees that it will promptly inform JTMT if it knows or has any reason to believe any product or method may constitute an infringement or misappropriation of the patents, copyrights, trade secrets or other proprietary technology or designs owned by third parties.
- 5.4. **MOT Guidelines.**

- 5.4.1. If necessary, the Consultant undertakes to obtain, by no later than the MOT Approval Deadline, the MOT approval of the Software, and following the receipt of the approval, to deliver and implement the Software in accordance with the MOT Guidelines. To the extent the Consultant needs to further develop its Software so that the Software is approved by the MOT prior to the MOT Approval Deadline (an “**MOT Approval Applicant Developer**” or “**MAAD**”), JTMT will compensate the MOT Approval Applicant Developer for the costs of such development in an amount that shall be no greater than ILS 200,000, all pursuant to the achievement of those milestones detailed in Section 6.2 of the ITB (the “**Development Milestones**”).
- 5.4.2. In the event, however, that the MOT updates such requirements following MOT Approval of the Software, whether the updated requirements are more lenient or more stringent than the previous requirements, the Consultant shall be required to meet such updated requirements and any adjustments, additions or improvements made to the Software in order to meet the updated MOT requirements are at the sole expense of the Consultant and the Consultant shall have no demand or claim in such situations.
- 5.5. The Consultant undertakes to act in good faith, decency and loyalty towards JTMT and its affiliates and to refrain from doing any deed or taking any action that may harm JTMT, its reputation, its business and/or the Project. The Consultant further undertakes to fulfill any legal obligations it may have to obtain a license or permit, as any applicable law may require from time to time.
- 5.6. The Consultant will provide the Services to JTMT according to the scope of work detailed in **Annex A** of this Contract (“**Scope of Work**” or “**SOW**”), the Bid, and the provisions of this Contract, with the expertise and professionalism required by customary professional standards in the field of the Services. Additionally, the Consultant 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.
- 5.7. The Consultant 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.
- 5.8. The Consultant warrants that it has, and will have at all times, all permits, consents, licenses and approvals as required to fulfill its obligations under this Contract.
- 5.9. The Services will be performed by the Consultant as stated in the Scope of Work, using a team led by a qualified manager, whose identity will be approved in advance by JTMT in writing.
- 5.10. The Consultant undertakes to comply, act, and operate according to the procedures and guidelines provided by JTMT, the JTMT Representative, JTMT'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.

- 5.11. The Consultant undertakes to participate and take an active part in meetings conducted by JTMT, the JTMT Representative, JTMT's consultants or any other forum as per JTMT'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 JTMT's request, from time to time.
- 5.12. Moreover, the Consultant shall perform the Services in cooperation and coordination with JTMT's consultants and other experts employed by JTMT. It is hereby clarified that solely the JTMT Representative, is authorized to direct the Consultant on all matters pertaining to the Services.
- 5.13. The Consultant agrees to complete all actions required for the completion of the Services to fulfill any applicable law, and without receiving any further consideration.
- 5.14. The Consultant undertakes to report to JTMT, the JTMT Representative and JTMT's consultants, immediately, about any irregular incident or fact that is brought to the Consultant's attention in the course of and in connection with the provision of the Services by it.
- 5.15. The Consultant undertakes to provide JTMT, the JTMT Representative and JTMT's consultants with reports as specified in the Scope of Work, as well as ongoing interim reports about the progress of the Services and the findings collected by it according to JTMT's request, on the dates specified in the Scope of Work.
- 5.16. The Consultant 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.
- 5.17. The Consultant hereby undertakes to hold presentations in English or Hebrew to JTMT, the JTMT Representative and/or JTMT'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 Contract and JTMT's requirements and needs, from time to time at JTMT's sole discretion.
- 5.18. The Consultant 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 JTMT, JTMT's consultant and/or the JTMT Representative, within seven (7) days of receiving comments and/or a request from JTMT, JTMT's consultants and/or the JTMT Representative.
- 5.19. The Consultant hereby undertakes that documents and reports prepared and produced by it and submitted to JTMT, according to the terms and conditions of this Contract and/or JTMT's directives, will be in English or Hebrew and according to JTMT's instructions.
- 5.20. Without derogating from the aforementioned in Section 5.18, the Consultant hereby undertakes to transfer to JTMT each document prepared by it by magnetic storage media, unless JTMT instructs otherwise in writing.

- 5.21. The Consultant hereby undertakes to create copies and a proper backup for each document, opinion, any database 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 JTMT instructs otherwise in writing.
 - 5.22. Without derogating from the generality of the above, the Consultant hereby undertakes to do everything required and reasonable, that an expert would do in order to perform the Services according to this Contract, and that it complies and will comply with all professional rules and applicable laws and regulations.
 - 5.23. The Consultant 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 Consultant shall hold JTMT harmless from all claims regarding Intellectual Property Rights.
 - 5.24. JTMT and/or a representative on behalf of may visit the offices of the Consultant, subject to prior coordination, and review any relevant document, relating to the Services; and the Consultant is committed to provide this representative with any explanation required.
 - 5.25. The Consultant hereby undertakes to act according to the provisions of any applicable law, as updated from time to time. The Consultant undertakes that its personnel and/or its subcontractor and/or any person acting on its behalf will act according to this section.
 - 5.26. The Consultant acknowledges and agrees that this Contract does not provide the Consultant with exclusivity in connection with the performance of the Services. JTMT may, at any time, and in its absolute discretion, add additional consultants to perform the Services or similar services, replace consultants or perform the Services by itself. in any way JTMT sees fit during the Term.
 - 5.27. The Consultant further agrees that JTMT is not obligated to use or receive the scope of the Services as provided in **Annex A** or elsewhere in this Contract, and that it may reduce the scope of the Services at any time and for any period of time (and the corresponding consideration due to the Consultant) in its sole discretion.
6. **License.**
- 6.1. **License.** Consultant hereby grants JTMT 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 , without any limitation on the scope or volume of design completed in practice, and for as long as this Contract is in effect. For the avoidance of doubt, JTMT right to sublicense, assign or transfer its license hereunder shall include, without limitation, the Government, the MOT, the Municipality of Jerusalem, and any Related Entity.
7. **Consultant's Personnel**

- 7.1. The Consultant 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 Consultant 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 Contract.
 - 7.2. JTMT shall be entitled to demand from the Consultant, at any time, by written notice, to replace any employee, person or entity employed by it in performance of the Services, and the Consultant 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 7 days following JTMT's first demand. It is clarified, that the Consultant must receive JTMT's prior written approval for the substitute employee, person and/or entity, and the Consultant must train the substitute employee at its own expense. It is further clarified that no demand from JTMT to substitute one or more employees shall be, or used as, a reason for a change in the timetable for the completion of the Services, as applicable, and the Consultant shall have no claims in this regard.
8. **Term.**
- 8.1. The Contract will be valid for a period of 10 calendar years from the date the Contract goes into effect (the "**Initial Term**"). JTMT may, in its sole discretion, extend the Contract twice in periods of 5 calendar years (each an "**Additional Term**", with the Initial Term, either by itself, or together with one or both of the Additional Terms, referred to as the "**Term**"). JTMT shall notify the Consultant in writing if it wishes to extend the Term for an Additional Term no later than 30 days prior to the end of the Term.
 - 8.2. Notwithstanding the above, it is clarified that the Term may change in accordance with the needs of JTMT and the timetable of the Project, with a prior written notice of 30 days.
9. **The Consideration; Terms of Payment**
- 9.1. The consideration for which the Consultant shall be entitled to for performing the Services, shall be as specified in **Annex B** of the Contract (the "**Consideration**"). The Consideration will be paid by JTMT in Israeli Shekels ("**ILS**"), in accordance with the official exchange rate published by the Bank of Israel on the Submission Date.
 - 9.2. The Consideration shall include all taxes, levies and charges however designated and levied by any state, local, or government agency. The Consultant shall be responsible for the payment of all taxes, levies and charges in connection with this Contract, whosoever levied, except for VAT, payable as follows: If the Consultant is a company registered outside of Israel, VAT will be paid to the Israel Tax Authority directly by JTMT. If the Consultant is a company registered in Israel, VAT will be paid to the Israel Tax Authority directly by the Consultant.
 - 9.3. Any additional tax amounts and other payments lawfully required under Israeli law, if applicable, will be withheld by law from any amount JTMT

will pay the Consultant, under the provisions of this Contract, unless the Consultant 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.

- 9.4. The Consideration covers all payments and benefits of any kind to which the Consultant is entitled to from JTMT in consideration for the provision of the Services, and the Consultant will not be entitled to, and shall not require any further payment and/or benefit from JTMT (including, without limitation, in exchange for any license, maintenance or technical or other support of Software after it is upgraded or enhanced in any way during the Term) unless explicitly specified in this Contract and/or if agreed in writing that it is entitled hereto.
- 9.5. 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 Consultant, 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 Consultant.
- 9.6. Without derogation to the generality of the above, the Consultant shall provide to JTMT, 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 JTMT to the Consultant's bank account.
- 9.7. Except as expressly agreed otherwise in writing by JTMT, the Consultant shall bear all of its own expenses arising from its performance or its obligations under this Contract.
- 9.8. Notwithstanding anything to the contrary, it is hereby clarified that where the progress of the work under this Contract does not proceed as swiftly planned, or where there is a delay or change in the schedule for the performance of the Services for whatever reason, JTMT shall be entitled to change the schedule of payments at its sole reasonable discretion, and in accordance with circumstances which may arise.
- 9.9. Payments owed to the Consultant shall be made at the scheduled date (as applicable) + sixty (60) days after submission of an invoice by the Consultant and the approval of such by the JTMT Representative.
- 9.10. The Consultant shall submit all invoices to bills@jtmt.gov.il.
- 9.11. It shall be the responsibility of the Consultant to make sure that its invoice is detailed and includes all the relevant necessary documentation (such as approved order for relevant work, achievement of a milestone, as applicable, calculations, and so forth) in order for JTMT to be able to understand the manner in which the invoice has been made out. It is hereby clarified that invoices that are not submitted as set forth herein shall not be considered, and the number of days for JTMT payment as set forth in Section 9.9 shall not apply.

10. Schedule.

- 10.1. Except if otherwise set forth in this Contract, the Services shall be carried out in accordance with the schedule that shall be established by JTMT.
- 10.2. Without derogating from Section 10.1 above, a full Software System license shall be provided to JTMT within two weeks of the Consultant being declared a Preferred Bidder under the RFP.
- 10.3. A delay of more than 7 days in the proper receipt of the Software System shall give JTMT the right to offset 5% of the consideration due to the Consultant for every week of delay or part thereof, beginning from the 8th day of delay.

11. Liability of the Consultant.

- 11.1. The Consultant shall be professionally liable to the JTMT and to any third party for the performance of the Services to the highest professional standard and as provided in accordance with all Laws and Regulations.
- 11.2. The Consultant shall be solely liable for the payment of indemnification for all damages, compensation or any other payment owed due to negligence by the Consultant to JTMT, the State of Israel, the Ministry of Transport, and/or to any person connected with the Project and/or their employees and/or to any third party, in accordance with all Laws and Regulations. In addition, the Consultant shall compensate and indemnify JTMT for all expenses and/or payments and/or losses of any kind resulting from any claim or lawsuit submitted against it by any third party in connection with the wrongful and/or negligent performance of the Services or as a result of the wrongful and/or negligent performance of the Services. JTMT shall duly inform the Consultant of any such claim or lawsuit submitted against it and will enable JTMT to participate in any dispute settlement negotiations and/or to handle the defense of the lawsuit at its expense.

12. Insurance Coverage. The Consultant shall procure insurance coverage policies as follows:

12.1. Professional Liability Insurance.

- 12.1.1. The policy will have a limit of liability of not less than USD 1,000,000 for any one event and in the annual aggregate.
- 12.1.2. The policy will be extended to cover liability with respect to (i) employee dishonesty; (ii) unintended violation of authority; and (iii) the loss of documentation or magnetic or similar media.
- 12.1.3. The policy shall include: (i) an extended 'reporting and disclosure period' of 36 months; and (ii) A retroactive date – from the date of this Contract.

12.2. Employer's Liability and Workers' Compensation Insurance (with respect to the personnel and employees of the Consultant).

- 12.2.1. The policy shall be in accordance with relevant provisions of the Laws and Regulations, as well as, with respect to such personnel, shall include any such life, health, accident, travel or other insurance as may be appropriate; and

12.3. Third Party Liability Insurance.

12.3.1. The policy shall have a limit of liability of not less than USD 250,000 for any one event and in the annual aggregate.

12.4. **Period of Insurance.** The period of insurance of the all above policies shall be twelve (12) months as from the date of the Contract and shall be renewed annually as long as this Contract is force. The Consultant will present certificates of insurance with respect to the insurance policies that it is required to maintain pursuant to that detailed above (the “**Insurance Certificates**”) within ten (10) Israeli business days of the execution of this Contract in accordance with Section 6.2 of the ITB.

12.5. **Insured Parties and Insurance Provisions.**

12.5.1. The insured parties to all the aforementioned policies shall include the Consultant, the Consultant’s personnel and/or employees, the Consultant’s sub-contractors, as well as JTMT, the State of Israel, the Ministry of Transport.

12.5.2. The aforementioned insurance policies shall also include provisions as follows: (i) a cross liability section; (ii) A waiver of subrogation in favor of the insured parties, subsidiaries and/or shareholders of the above-mentioned entities, and/or directors and officers and other employees of the above mention entities; (iii) The policies are “primary insurance” to the policies held by JTMT.

12.5.3. Policies may not be terminated and/or their terms adversely modified, whether by the Consultant and/or by the insurance company(ies), except, in both cases, with the prior written approval of JTMT and following a written request by the Consultant to JTMT no later than 60 days prior to the requested termination and/or modification date.

13. **Assignment**

13.1. The Consultant may not assign, pledge, transfer or dispose any of its rights and obligations under this Contract and/or any part thereof to any third party. The obligations of the Consultant under this Contract may not be subcontracted by Consultant, in whole or in part, without the written consent of JTMT.

13.2. JTMT will be entitled to transfer and/or assign any of its rights and obligations under this Contract, or any part thereof, at its sole and absolute discretion, provided that the Consultant’s rights under this Contract will not be harmed.

14. **Relationship between the Parties**

14.1. The Consultant declares and confirms that it is an independent contractor of JTMT under this Contract and nothing herein shall be construed to create JV, partnership or an employer/employee relationship. Neither the Consultant nor its employees will not be considered JTMT’s employees in any case and under any circumstances. For the avoidance of doubt it is hereby clarified explicitly, that in this Contract, employer-employee relationships are not created between JTMT and the Consultant, and not between JTMT and any of the Consultant’s employees and/or its subcontractors and/or any person

acting in its name or on its behalf in connection with this Contract, as an agent, contractor or any other status. Any right of JTMT to order, supervise, or instruct the Consultant and/or its employees and/or its subcontractors in the performance of this Contract, does not create employer-employee relations.

- 14.2. Notwithstanding anything to contrary, the Consultant shall be liable for 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 Consultant 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 or engaged by it, as applicable.
- 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 Consultant and/or any of its employees and/or its shareholders and JTMT, the consideration described 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 JTMT shall not bear any additional payment on account of these.
- 14.5. The Consultant undertakes to employ its employees in accordance with the law and to comply with all labor laws.
 - 14.5.1. If the Consultant violates one or more of the provisions of the Law for Increased Enforcement of Labor Laws, 5772-2011, JTMT may send notice to the Consultant providing that it must act to rectify the violation.
 - 14.5.2. If JTMT sends the Consultant a notice as set forth in Section 14.5.1 14.5.1 above, the Consultant will rectify the breach within a reasonable amount of time.
 - 14.5.3. If the Consultant does not rectify the breach within a reasonable amount time, JTMT may immediately terminate the Contract, and the Consultant may not demand any compensation for such termination of the Contract.
- 14.6. It is agreed between the Parties that if JTMT is sued by any of the Consultant's employees or consultants, the Consultant will agree to add JTMT as an additional defendant in the lawsuit, to the extent that JTMT so requests.
- 14.7. In addition to the above, the Consultant will indemnify, hold harmless and at JTMT's first request defend JTMT, 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 Consultant'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. **Intellectual Property; Confidentiality**

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

“**Deliverables**” shall mean the deliverables provided by the Consultant to JTMT hereunder, including, without limitation, any work products, documentation, reports and specifications and other work products produced as a result of the Work performed by either the Consultant or JTMT or any of JTMT’s employees or consultants under this Contract 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) (viii) moral rights.

- 15.2. It is hereby agreed that the team will have the right to make use of any material related to the Deliverables, including modifying or transferring it to others, including but not limited to the Municipality of Jerusalem or the Ministry of Transport, for alteration or execution or any other need. The Consultant will not be entitled to make any claim in this regard, and in particular may not argue that the changes must be made by the Consultant or that the changes infringe on its IPR in any way.
- 15.3. The Consultant will not be able to use any Deliverables. In addition, the Consultant will not be able to sell or offer the Deliverables that have been developed for JTMT to its additional customers without the written permission of the JTMT Representative.
- 15.4. The Consultant shall not have any right of detention with respect to the Deliverables or any Service, including any document related to the performance of the Work or obtained by it under this Contract. Nothing in this section shall detract from the Consultant's obligation to keep copies of any document as required by any applicable law.
- 15.5. The Parties agree that the Consideration is a reasonable fee for the Services, even including the terms of this Section 15
- 15.6. Consultant 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 JTMT, any Confidential Information, other than with the prior express written consent of JTMT. All right, title and interest in and to Confidential Information are and shall remain the sole and exclusive property of JTMT or, if applicable, the third party providing such Confidential Information to JTMT. "**Confidential Information**" means information, in any form or media, that relates to JTMT, its business, assets, financial condition, activities, software, technology, products, plans and projections, customers, consultants, partners, and other third parties with whom JTMT has agreed to hold information of such Party in confidence and shall include, without limitation, Deliverables, the terms of this Contract and any other information that relates to JTMT, 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 Consultant.
- 15.7. The Consultant agreed to refrain from using any Confidential Information or Deliverables without the written approval of JTMT.
- 15.8. Concurrently upon the signing of this Contract, Consultant 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 Undertaking, attached hereto as **Annex C**. Consultant shall be fully liable and responsible for all of the acts and omissions of each Developer.

16. **Conflict of Interest Prohibition**

- 16.1. The Consultant 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 Contract.
- 16.2. If and to the extent it becomes clear to JTMT that it is facing a claim as stated above in Section 16.1, JTMT may take whatever steps it deems appropriate, in order to enable the Services to progress in the best and quickest way possible. *Inter alia*, JTMT may reach any settlement with any third party regarding these matters, once it has updated the Consultant, and the Consultant will reimburse the team for all expenses and / or damages that it may incur as a result.
- 16.3. The Consultant hereby undertakes to refrain from any action that may involve any conflict of interest between performing its duties under this Contract, and performing any other duty and/or commitment of the Consultant and/or its employees, directly and/or indirectly, and it undertakes to act in accordance with JTMT's instructions to prevent such conflict of interest.
- 16.4. Furthermore, and without derogating from the foregoing, the Consultant undertakes to notify JTMT in writing immediately of any conflict of interest whether such conflict stems from personal, business, professional, property, family or other source, whether related to in its activities, or any party to which it is directly or indirectly connected, including any person or entity providing the Services, and the entities listed on the JTMT website (www.jet.gov.il). It is clarified that this list will be updated periodically and that it is the responsibility of the Consultant to check updates to the JTMT website from time to time.
- 16.5. Without derogating from generality of the above in Section 16.4, all employees, consultants, and shareholders of the Consultant shall refrain from entering into any agreement with the entities stated above in a manner that constitutes a conflict of interest, whether directly or indirectly.
- 16.6. All Consultant employees shall refrain from any action that entails exploiting business opportunities for themselves or directly and indirectly Controlled corporations, as long as this Contract is valid and for two calendar years following the termination of the Contract.
- 16.7. The Consultant agrees not to receive any monies or other consideration related to the completion of the Services without the express prior written consent of JTMT.

17. Contract Suspension and Termination Events

- 17.1. JTMT is entitled to suspend this Contract or to terminate it, at its absolute discretion, for any reason, with 30 days prior written notice without the Consultant having any claim and/or demand against JTMT.
- 17.2. Upon termination and/or suspension of this Contract, Consultant shall promptly deliver to JTMT all Deliverables created prior to termination or suspension, as the case may be. Consultant shall also, at JTMT's option, either deliver to JTMT or delete/destroy all Confidential Information and JTMT IPR in its possession or under its control, in any media or form whatsoever. The provisions of Sections 2, 3, 5, 11, 13, 14, 15, 16, 18, 20,

21,22 shall survive termination of this Contract and shall remain in full force and effect in perpetuity.

- 17.3. In the event JTMT decides on the suspension or termination of this Contract, the Consultant 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 JTMT will not be indebted by any compensation, reward or any other payment for, or in connection with the suspension or termination of this Contract, except for compensation due to expenses pre-approved in writing by JTMT that were already incurred by the Consultant for the purpose of executing the Services, that are to JTMT's full satisfaction; provided that the Consultant provides JTMT with a valid receipt thereof.
- 17.4. Without derogating from the generality of the foregoing, it is hereby agreed that JTMT will have the right, at its sole discretion, to terminate the Contract effective immediately either if in case a temporary liquidator and/or a temporary receiver is appointed to the Consultant and/or if declared as insolvent or legally incompetent, and JTMT shall have the right to deduct from any payments due to the Consultant any losses it and the Consultant shall have no claim and/or demand towards JTMT with respect thereto.
- 17.5. The Consultant declares that if the Contract is terminated as stated under this Section 17 above, then it hereby gives its consent to transfer the continuation of the Services to any other Consultant designated by JTMT and at JTMT's sole discretion. Any controversy regarding the consideration, and/or in any other matter, will not delay the transfer of the Services to another Consultant, including transfer of all licenses, permits, consents and approvals necessary for the operation and continuation of the Services for the benefit of JTMT or any other entity on its behalf.
- 17.6. Notwithstanding anything to the contrary, if MOT approval of the Software is not obtained by the Consultant by the MOT Approval Deadline, the Contract between JTMT and the Preferred Bidder shall terminate on the MOT Approval Deadline at JTMT's sole discretion, and JTMT will not pay for any software licenses supplied by the Consultant, other than amounts transferred to a MAAD at Development Milestones achieved by said MAAD prior to the MOT Approval Deadline – monies transferred to the Consultant by JTMT before said termination of the Contract (if any) shall be returned to JTMT in full, and the Consultant will have no demand or claim whatsoever in this regard.
- 17.7. In case of termination of the Contract as stated above, the Consultant undertakes to cooperate with JTMT and any new consultant selected by JTMT to the extent required, and transfer the Work to that new consultant in an orderly manner and as quickly as possible.

18. **Violations and Remedies**

- 18.1. In a case the Consultant violates one or more of its obligations under this Contract, it will have to pay JTMT compensations for the damages, losses and expenses incurred to JTMT as a result of said violation, and this is in addition to and without derogating from JTMT's right under any law and in accordance with this Contract.

- 18.2. For the avoidance of doubt, and without affecting JTMT's rights according to this Contract and under any law, it is hereby agreed that JTMT will be permitted to offset and deduct any amount which it deserves from the Consultant, from the amounts which the Consultant deserves according to this Contract.
- 18.3. The Consultant has no lien right in or over the Services and/or in JTMT IPR and/or in any document including report and/or any Confidential Information stored on magnetic media related to performance of the Services.
- 18.4. **Liquidated Damages**. In an event that despite its obligations, representations and warranties under this Contract, the Consultant is unable and/or unwilling to provide the Maintenance Services for a reason that is not dependent on JTMT's performance of this Contract or MOT Approval (An "**LD Event**"), the Consultant shall pay JTMT agreed liquidated damages up to an amount of ILS 1,000,000 for any one LD Event and in the aggregate for all LD Events. Any liquidated damages under this Contract shall be paid to JTMT immediately following JTMT's first written demand, and without any delay.

19. **Instruction for the Performance of Services not included in this Contract**

- 19.1. Performance of Services not included under this Contract is subject to the prior written approval of JTMT.
- 19.2. The Consultant hereby undertakes to notify JTMT in writing upon receipt of an instruction, written or oral, which in the opinion of the Consultant is not covered and/or is not part of the scope of the Services included under this Contract and which should therefore entitle it to further compensation.
- 19.3. The Consultant's above written notification shall be sent immediately upon receipt of the instruction from JTMT and in any event no later than within 10 days of receipt of the instruction and in any event prior to performing such instruction whichever is the earlier.
- 19.4. Such written notification in the above timeframe shall specify in detail:
 - 19.4.1. the instruction referred to and the extent to which such instruction exceeds the scope of work under the Contract and the reasons why, in its view, such instruction is not covered and/or is not part of the Services;
 - 19.4.2. its best and most up to date estimation of all the implications (bill of quantities, cost, time implications, man hours, other) arising from the implementation of such instruction. Such estimation shall be priced proportionately in accordance with similar Services required under the Contract.
- 19.5. Where JTMT agrees that the performance of the instruction is not part of the scope of the Services included under the Contract, the Parties shall negotiate in good faith the remuneration for the carrying out of such instruction. Where, notwithstanding the Consultant's written notification, JTMT considers that the carrying out of the instruction forms part of the scope of work under the Contract, the Consultant shall be obliged to carry out the instruction without receiving any further compensation.

19.6. Where JTMT has issued an instruction and the Consultant has failed to provide JTMT with such notification as set forth above, the instruction shall be considered part of the Consultant's obligations under the Contract and this Contract that it is required to perform without entitlement to any additional payment and or extension of time.

19.7. **Performance Guarantee.**

19.7.1. Upon the effective date of this Contract, the Consultant shall deliver to JTMT an unconditional bank guarantee issued by a recognized Israeli banking institution, or by a reputable international bank having and S&P rating of at least AA (or an equivalent rating assigned by one of the other "Big Three" credit rating agencies) in a form to be reasonably approved by JTMT in advance, in a sum up to ILS 200,000 (the "**Performance Guarantee**"), which Performance Guarantee is attached hereto as **Annex E**.

19.7.2. 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, and delays or failures to meet minimum service levels (as defined in the TOR), and in accordance therewith, the Consultant may draw down from the Performance Guarantee in all or in part. 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.

19.7.3. In the event of drawdowns on the Performance Guarantee, it may be renewed, at the JTMT's sole discretion, in an amount up to (i) the original total sum of the Performance Guarantee set forth in Section 19.7 above; less (ii) the amount drawn down.

20. **Law and Jurisdiction**

This Contract 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 Contract shall be resolved in the competent courts of Jerusalem, and each of the parties hereby agrees irrevocably to the exclusive jurisdiction of such courts.

21. **Miscellaneous**

21.1. **Entire Contract.** This Contract and anything referenced and incorporated herein, sets forth the entire agreement between the Parties as to the subject matter herein and supersedes any prior or contemporaneous agreements, written or oral, between the Parties.

21.2. **Force Majeure.** Delay or default in performance arising from but not limited to the event of war, flood, riot, act of governmental authority, acts of God or contingencies beyond the reasonable control of either Party hereto interfering with the production, transportation or consumption of the material covered hereby shall not be deemed a breach of this Contract by either Party.

21.3. **Amendment.** This Contract may be amended or modified only in accordance with its terms or by a written instrument executed by both of the Parties to this Contract.

21.4. **Waiver.** The failure of a party to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Contract.

22. **Notices**

22.1. According to this Contract, 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 JTMT or the counselors (as applicable), according to the addresses in the title.

22.2. Any notice that 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 signed this Contract on the date first written above.

FOR AND ON BEHALF OF JTMT

Zohar Zoller, CEO JTMT

DATE: _____

FOR AND ON BEHALF OF THE CONSULTANT

Authorized Representative of the Consultant

Authorized Representative of the Consultant

DATE: _____

Company Stamp:

Consultant Signature Approval

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

Date

Attorney

Annex B

Specification of Services as Fees

[Attached separately.]

Annex C
The RFP

Annex D
The Bid

Annex E

Confidentiality, Non-Competition and Proprietary Information Undertaking

I, the undersigned ("**Developer**"), hereby undertakes towards the Jerusalem Transportation Master Plan Team (the "**JTMT**") that I will comply with the following terms and conditions:

1. Confidentiality

- 1.1. The Developer recognizes and acknowledges that Developer's access to the trade secrets and confidential or proprietary information (collectively, the "**Confidential Information**") of JTMT is essential to the performance of Developer's duties for the Consultant related to the Services.
- 1.2. By way of illustration and not limitation, such Confidential Information shall include (no matter in what medium such information is transferred in and no matter whether such information or material is marked as confidential or not) (i) any and all information concerning the business and affairs of JTMT, 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 JTMT, and any other information, however documented of JTMT; (ii) any and all information concerning the business and affairs of JTMT (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 JTMT has an obligation of confidentiality; and (v) any and all notes, analysis, compilations, studies, summaries, and other material prepared by or for JTMT containing or based, in whole or in part, on any information included in the foregoing.
- 1.3. 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 JTMT, as evidenced in Developer's written documents.
- 1.4. Developer further recognizes and acknowledges that such Confidential Information is a valuable and unique asset of JTMT, and that its use or disclosure (except use or disclosure as required for carrying out Developer's duties related to services provided to JTMT by Developer's employer) would cause JTMT 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 JTMT 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 JTMT's prior written consent; provided, however, that this provision shall not preclude Developer from making, upon written advice of counsel satisfactory to JTMT, any disclosure required by any applicable law.

- 1.5. Developer will not disclose or otherwise make available to JTMT in any manner any confidential information or proprietary materials or content owned by and/or received by Developer from third parties.
- 1.6. Developer further recognizes and acknowledges that JTMT 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 JTMT consistent with JTMT's agreement with the Consultant.
2. **Return of Materials.** Upon termination of Developer's employment with its current employer or at the request of JTMT made at any time, Developer will promptly deliver to JTMT, or if JTMT 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**
 - 3.1. **Exclusive Property.** Developer confirms that all Confidential Information and Inventions (as defined below) are, will be, and shall remain the exclusive property of JTMT for its sole and exclusive use and benefit.
 - 3.2. **Assignment & Waiver.** Developer hereby assigns to JTMT, 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 JTMT (directly or indirectly) and/or that are related to JTMT's business (collectively, the "**Inventions**"). All Inventions shall be owned exclusively by JTMT 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.
 - 3.3. **Perfection of Rights.** Developer shall provide all assistance JTMT may request, and shall execute, verify and deliver such documents and perform such other acts (including appearing as a witness) JTMT 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.

- 3.4. **Attorney-in-fact.** If JTMT is unable because of the Developer's mental or physical incapacity or the Developer's refusal to cooperate with JTMT after receiving JTMT'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 JTMT 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. **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 JTMT.
5. **Enforcement.** JTMT may enforce this Undertaking 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 JTMT may have for the breach of this Undertaking. This Undertaking 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 Undertaking 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 Jerusalem courts for any lawsuit arising from or relating to this Undertaking.

IN WITNESS WHEREOF, the Developer has executed this Undertaking as of the date of signature below.

Developer: _____ Date: _____

Annex F

The Performance Guarantee