

**STATE OF ISRAEL**  
**INVITATION FOR PRE-QUALIFICATION**  
**IN RELATION TO THE PARTICIPATION IN A**  
**TENDER**  
**FOR THE JERUSALEM “J-NET”**

**April 2017**

## INVITATION FOR PRE-QUALIFICATION

### TABLE OF CONTENTS:

<b>1. INVITATION FOR PRE-QUALIFICATION</b>	<b>5</b>
1.1. Definitions	5
1.2. Introduction and General Description of the Project	18
1.3. The Selection Process	18
a. this Pre-Qualification Process; and	18
b. the Tender Process.	18
1.4. The Pre-Qualification Process	18
1.5. The Tender Process; and Expected Requirements	19
1.6. Invitation for Pre-Qualification	22
1.7. Anticipated Schedule	22
<b>2. RULES AND PROCEDURES</b>	<b>23</b>
2.1. Governing Law and Jurisdiction	23
2.2. Preparation for Submission	23
2.3. The Invitation	24
2.4. Priority of Documents	24
2.5. Severability	24
2.6. Access to Documents and Registration	24
2.7. Cost of Participation in the Pre-Qualification Process	25
2.8. Language	25
2.9. Requests for Clarification of this Invitation	25
2.10. Addenda	27
2.11. Site Visit and Conference	28
<b>3. GENERAL PROVISIONS RELATING TO PARTICIPANTS</b>	<b>31</b>
3.1. The Participant	31
3.2. Members of the Participant	32
3.3. Experience Provider	32
3.5. Participation - General Requirements	33
3.6. An Entity Convicted of an Offence	34
3.7. Authorized Representative	34
3.8. Participation in a Pre-Qualification Submission	35
3.9. Government Companies	35
3.10. Promotion of Competition and Reduction of Concentration Law, 2013	35
3.11. Participating in Multiple Capacities	37
3.12. Security Considerations	37
<b>4. TECHNICAL PRE-QUALIFICATION REQUIREMENTS</b>	<b>37</b>
4.1. Experience in the Design and Construction of Systems	37
4.2. Experience in the Construction of Track-Way	37
4.3. Integration Experience	38
4.4. Rolling Stock Experience	38
4.5. Project Execution, Management and Organization Experience	39
4.6. Operating Experience	39
4.7. <u>Bus Public Transportation</u> <sup>1</sup> Operating Experience	40
4.8. Maintenance Experience	41
<b>5. FINANCIAL PRE-QUALIFICATION REQUIREMENTS</b>	<b>41</b>
5.1. Turnover	41

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<sup>1</sup> Added as part of Addendum no. 3 dated August 9, 2017.

5.2.	Operating Cash Flow _____	43
5.3.	Equity _____	44
5.4.	Securing Finance for an Infrastructure Project _____	44
5.5.	Private Investment Fund _____	44
5.6.	<del>Banking Corporation or</del> <sup>2</sup> Institutional Investors _____	45
5.7.	Reliance on a Guarantor _____	45
5.8.	Content and Submission Form _____	46
6.	<b>GENERAL INSTRUCTIONS WITH RESPECT TO DEMONSTRATION OF COMPLIANCE WITH THE PRE-QUALIFICATION REQUIREMENTS _____</b>	<b>47</b>
6.1.	Presentation of a Referenced Project Executed as Part of a Joint Venture _____	47
6.2.	Exchange of Currency _____	49
6.3.	Conversion of Other Currencies _____	49
7.	<b>PRE-QUALIFICATION SUBMISSION _____</b>	<b>50</b>
7.1.	Pre-Qualification Submission Letter _____	50
7.2.	Description of the Participant, Members, Experience Providers and Guarantors _____	50
7.3.	Receipt of Purchase _____	50
7.4.	Identification of Sensitive or Classified Information _____	50
7.5.	Validity of Pre-Qualification Submissions _____	51
8.	<b>METHOD OF SUBMISSION _____</b>	<b>51</b>
8.1.	Compliance with the Requirements of the Pre-Qualification Documents _____	51
8.2.	No Unauthorized Modification _____	51
8.3.	Language of the Pre-Qualification Submission _____	51
8.4.	Signing of the Pre-Qualification Submission _____	51
8.5.	Table of Contents _____	52
8.6.	Authorization of Signatures by an Attorney _____	52
8.7.	Number of Pre-Qualification Submission Copies _____	52
8.8.	Sealing and Marking of Pre-Qualification Submissions _____	52
8.9.	Pre-Qualification Submission Date _____	53
8.10.	Opening of Pre-Qualification Submissions _____	53
9.	<b>REVIEW AND EVALUATION OF PRE-QUALIFICATION SUBMISSIONS _____</b>	<b>53</b>
9.1.	Review and Evaluation by the Tender Committee _____	53
9.2.	Requests for Clarifications _____	53

## LIST OF FORMS:

<u>Pre-Qualification Form “1”</u>	The Pre-Qualification Submission Letter
<u>Pre-Qualification Form “2”</u>	The Participant
<u>Pre-Qualification Form “3”</u>	The Members of the Participants
<u>Pre-Qualification Form “4”</u>	The Participant and its Experience Providers
<u>Pre-Qualification Form “5”</u>	The Experience Providers of the Participant
<u>Pre-Qualification Form “6”</u>	Experience in the Design and Construction of Systems
<u>Pre-Qualification Form “7”</u>	Experience in the Construction of Track-Way
<u>Pre-Qualification Form “8”</u>	Integration Experience
<u>Pre-Qualification Form “9”</u>	Rolling Stock Experience
<u>Pre-Qualification Form “10”</u>	Project Execution, Management and Organization Experience
<u>Pre-Qualification Form “11<sub>A</sub>”</u>	Operating Experience

<sup>2</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<u>Pre-Qualification Form “11<sub>B</sub>”</u>	<del>Bus</del> <u>Public Transportation</u> <sup>3</sup> Operating Experience
<u>Pre-Qualification Form “12”</u>	Maintenance Experience
<u>Pre-Qualification Form “13”</u>	Financial Robustness
<u>Pre-Qualification Form “14”</u>	Securing Finance for an Infrastructure Project
<u>Pre-Qualification Form “15”</u>	General Partner/Fund Manager Statement
<u>Pre-Qualification Form “16”</u>	Letter of Guarantee

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<sup>3</sup> Added as part of Addendum no. 3 dated August 9, 2017.

## 1. INVITATION FOR PRE-QUALIFICATION

### 1.1. Definitions

All terms used in this Invitation shall have the meaning ascribed thereto herein:

<b>“Addendum” or “Addenda”</b>	Shall have the meaning ascribed thereto in Section 2.10 (Addenda) of this Invitation.
<b>“Agreement”</b>	Shall mean the agreement which will be signed between the GoI and the Successful Bidder.
<b>“Anticipated Holdings”</b>	Shall mean the intended share of holdings of each Member in the Participant.
<b>"Applicable EU Standards"</b>	Shall mean latest edition immediately preceding the Pre-Qualification Submission Date of : (i) EN 12 663: Railway Applications – Structural Requirements of Railway Vehicle Bodies; (ii) EN 13452-2: Railway Applications – Braking, Mass Transit brake systems; (iii) EN 50121: Part 1-5 2010 Railway applications – Electromagnetic Compatibility; (iv) EN 45545 – 2: European Standard & Category 2; (v) EN 15227 - Crashworthiness; (vi) EN 12663-1 – Structural Requirements; and (vii) EN 14752 - Bodyside Entrance Systems.
<b>"Assets Under Management"<sup>4</sup></b>	Shall mean the aggregate of all capital commitments and contributions made available to a fund, <u>or funds under common Control</u> , by the limited partners.
<b>“Authorized Representative”</b>	Shall have the meaning ascribed thereto in Section 3.7 (Authorized Representative) of this Invitation.
<b>“Average Operating Cash Flow”</b>	Shall have the meaning ascribed thereto in Section 5.2 (Operating Cash Flow) of this Invitation.
<b><del>“Banking Corporation”<sup>5</sup></del></b>	<del>Shall mean (i) each of the Entities listed in Section 4 of Schedule 1 of the Securities Law 1968; and/or (ii) with respect to an Entity registered outside the State of Israel – a similar Entity pursuant to applicable law under the applicable jurisdiction.</del>

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<sup>4</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>5</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<b>“Blue Line”</b>	Shall have the meaning ascribed thereto in <u><b>Annex 1</b></u> (General Description of the Project), of this Invitation.
<b>“Bus”</b>	Shall mean a rubber-tire vehicle designated for the public transportation of passengers with a capacity of not less than twenty 20 seating passengers and a driver.
<b>"Competition Law"</b>	Means the Promotion of Competition and Reduction of Concentration Law, 2013.
<b>“Completion” or “Completed”</b>	Shall mean the delivery of the referenced project to its owner, or the commencement of its operation in accordance with its intended use.
<b>“Construction”</b>	Shall mean the commencement, procurement, supply and construction, installation, testing (factory, on site and others), commissioning and Completion of a referenced project.
<b>“Construction Contract”</b>	Shall mean a single contract pursuant to which the responsibility for the Construction of a referenced project (which, for the avoidance of doubt must be an independent functioning unit), including the warranty with respect thereto, is assumed by a single entity.
<b>“Consultation”</b>	Shall have the meaning ascribed thereto in Section 3.10 (Promotion of Competition and Reduction of Concentration Law, 2013) of this Invitation.
<b>“Contract Value”</b>	Shall mean the total amount of all payments which were paid to the Entity presenting the referenced contract, pursuant to that specific referenced contract, excluding VAT, and interest, and including an addition of 2% per annum on the referenced amount (compounded between years) as of the date on which the referenced contract was executed.
<b>“Control”</b>	Shall have the meaning ascribed thereto in the Securities Law 1968.

<b>“Depot”</b>	Shall mean a work shop, control center, washing plant and stabling facilities for vehicles, including for the maintenance thereof (in one location or in several separate locations).
<b>“Design”</b>	Shall mean the execution of up to and including the last phase of the design, which follows the completion of the conceptual, preliminary, or basic design, providing all elements necessary for the execution of a referenced project, without the need for any additional studies or additional parts of design.
<b>“Design Build Contract”</b>	Shall mean a single contract pursuant to which the responsibility for both the Design and the Construction of a referenced project (which, for the avoidance of doubt must be an independent functioning unit), including the warranty with respect thereto, is assumed by a single entity.
<b>“Deviation”</b>	Shall mean any deviation, amendment, omission, addition, condition, reservation or qualification of the contents of this Invitation, including of the Pre-Qualification Requirements, made by the Participant in its Pre-Qualification Submission.
<b>“Eligible Participant”</b>	Shall have the meaning ascribed thereto in Section 9.4 (Announcement of Eligible Participants) of this Invitation.
<b>“Entity”</b>	Shall mean any corporation, company or partnership, recognized by law within its domicile, excluding individuals.
<b>"EPC Contract"</b>	Shall mean a single contract pursuant to which the responsibility for both the Design and the Construction of a referenced project (which, for the avoidance of doubt must be an independent functioning unit), including the warranty with respect thereto, is assumed by a single entity.
<b>“EPC Contractor”</b>	Shall have the meaning which will be ascribed thereto in the Tender Documents.
<b>“Experience Provider(s)”</b>	Shall have the meaning ascribed thereto in Section 3.3 (Experience Provider) of this Invitation.

**"External Financing"**

Shall mean a limited recourse loan to a referenced project which is provided by an Entity which is not related to, does not Control, is not Controlled by and/or is not under common Control with the Entity presenting the referenced project.

**"Financial Entity"<sup>6</sup>**

Shall mean: (i) a Private Investment Fund; or (ii) a ~~Banking Corporation; or~~ (iii) an Institutional Investor.

**"Financial Pre-Qualification Requirement(s)"<sup>7</sup>**

Shall mean the requirements of Section 5.1 (Turnover); Section 5.2 (Operating Cash Flow); Section 5.3 (Equity), Section 5.4 (Securing Finance for an Infrastructure Project) and (if applicable) Section 5.5 (Private Investment Fund) and Section 5.6 (~~Banking Corporation or~~ Institutional Investors) of this Invitation.

**"Financial Statement(s)"**

Shall mean, for each Entity, its annual audited consolidated financial statement which includes a report signed by the external auditor of the Entity, confirming its compliance with one of the accounting standards specified pursuant to Section 5.8 (Content and Submission Form) of this Invitation; in the event such Entity does not have audited consolidated financial statement as specified above, then such Entity shall issue its annual audited solo financial statement which includes a report signed by the external auditor of the Entity, confirming its compliance with one of the accounting standards specified pursuant to Section 5.8 (**Content** and Submission Form) of this Invitation.

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<sup>6</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>7</sup> Added as part of Addendum no. 3 dated August 9, 2017.

**“General Partner” or “Fund Manager”**<sup>8</sup>

Shall mean:

(i) the general partner or fund manager of the Private Investment Fund if such has successfully managed and raised at least two funds;

or

(ii) a single Entity holding 50% or more of all Means of Control, at Substantially the Same Percentage of Holdings, in:

(A) the general partner or fund manager of the Private Investment Fund; and

(B) other general partners or fund managers;

provided, that the entities listed in (A) and (B) (combined) have managed and raised at least two funds;

or

(iii) an association of several Entities or individuals (an “Association”) holding together 50% or more of all Means of Control, at Substantially the Same Percentage of Holdings, in:

(A) the general partner or fund manager of the Private Investment Fund; and

(B) other general partners or fund managers.

provided, that the entities listed in (A) and (B) (combined) have managed and raised at least two funds.

For purposes of this definition “Substantially the Same Percentage of Holdings” shall mean a difference in holdings which does not exceed 10% (e.g. if entity<sub>1</sub> holds X% in fund manager<sub>1</sub>, it shall not hold more than (X+10)% or less than (X-10)% in any other fund manager or general partner presented).

**“GoI”**

Shall mean the Government of the State of Israel.

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<sup>8</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<b>“Green Line”</b>	Shall have the meaning ascribed thereto in <b><u>Annex 1</u></b> (General Description of the Project), of this Invitation.
<b>“Guarantor”</b>	Shall have the meaning ascribed thereto in Section 3.4 (Guarantor) of this Invitation.
<b>“Infra Works”</b>	Shall mean the Construction and Completion of the Track-way Works and Stops.
<b>“Infrastructure Project”<sup>2</sup></b>	Shall mean, a project with a Contract Value of not less than NIS <del>1,500</del> <u>1,000</u> Million for the Design and Construction of a large scale infrastructure, including any of the following: a hospital, a power generation facility, a port, an airport or another transportation system (including highways).
<b>“Institutional Investor”<sup>10</sup></b>	Shall mean (i) each of the Entities listed in Sections 1- <del>34</del> of Schedule 1 of the Securities Law 1968; and/or (ii) with respect to an Entity registered outside the State of Israel – a similar Entity pursuant to applicable law under the applicable jurisdiction.
<b>“Integration”</b>	Shall mean the bringing together (during Design and Construction), of all components of a project as a whole, managing the interfaces between such components ensuring that such components are compatible and are functioning together and form one system fit for its intended purpose.
<b>“Interested Parties”</b>	Shall have the meaning ascribed thereto in the Securities Law, 1968.
<b>“Invitation”</b>	Shall mean this invitation for pre-qualification including all Annexes thereof.
<b>“J-Net”</b>	Shall have the meaning ascribed thereto in <b><u>Annex 1</u></b> (General Description of the Project), of this Invitation.
<b>“JTMT”</b>	Shall mean the Jerusalem Transportation Master Plan Team.

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<sup>9</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>10</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<b>“Law(s)”</b>	The various national (state) laws and legislation, statutes, ordinance, codes, and regulations (including the Regulations), as enacted by the State of Israel, and any by-laws, codes, regulations enacted by the relevant authorities or municipalities, and precedents of relevant competent judicial authorities; all as modified, amended, replaced or created from time to time.
<b>“70% Low Floor”</b>	Shall mean passenger access to the vehicle at the same level than the station platform. The floor is without any steps and is flat (<8% slopes) for at least 70% of the surface dedicated to the passengers of the vehicle.
<b>“LRT” or "LRT Line(s)”</b>	Shall mean a light rail based mass transit system including the associated facilities required for allowing an operator to supply the expected transportation services along a Route or Routes which are integrated into an urban environment, and including interfaces with intersections and other public and private transportation (where most of the intersections with other public or private transportation are without barriers and/or other protection means).
<b>“Main Contractor”<sup>11</sup></b>	Shall mean an entity which is directly accountable for the execution of the referenced project, bearing all the risks related to the execution thereof, including its management and administration and the engagement and coordination of all subcontractors. For the avoidance of doubt entities which are directly accountable for the execution of the referenced project <u>solely as a concessionaire pursuant to a</u> <del>under</del> a concession agreement will not be considered as Main Contractor under this definition.
<b>“Maintenance”</b>	Shall mean to maintain or restore an asset in a specific condition so that it is able to perform a specific service
<b><u>“Means of Control”<sup>12</sup></u></b>	<u>Shall have the meaning ascribed thereto in the Securities Law 1968.</u>

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<sup>11</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>12</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<b>“Member(s)”</b>	Shall have the meaning ascribed thereto in Section 3.2 (Members of the Participant) of this Invitation.
<b>“Member's Average Turnover”</b>	Shall have the meaning ascribed thereto in Section 5.1.2 (Member's Average Turnover) of this Invitation.
<b>“Metro” or “Metro Line(s)”</b>	Shall mean a rail based transit system including the associated facilities required for allowing an operator to supply the expected transportation services along a Route or Routes in an urban environment.
<b>“Minimal Turnover Required”</b>	Shall have the meaning ascribed thereto in Section 5.1.3 (Minimal Turnover Required) to this Invitation.
<b>“Network”</b>	Shall mean the operation of several lines or Routes at different corridors at the same time by a single entity which is responsible on managing and regulating the Routes, interactions and interfaces between them on a regular basis, according to a periodic operational plan defined by the owner or the regulator of the system.
<b>“O&amp;M Contract”</b>	Shall mean a single contract pursuant to which the responsibility for both the Operation and Maintenance of a referenced project is assumed by a single entity. For the avoidance of doubt entities which are directly accountable and responsible for both the Operation and Maintenance of a referenced project under a concession agreement will not be included under this definition.
<b>“O&amp;M Contractor”</b>	Shall have the meaning which will be ascribed thereto in the Tender Documents.

<b>“Offence”</b>	Shall mean criminal offences included in Chapters 7 (National Security, Foreign Relations and Official Secrets), 8 (Offences against the Public Order and the Society), 9 (Offences against the Government and the Law) and 10 (Bodily Harm) of the Penal Code 1977, Criminal offences in Sections 384A, 402, 413E, 415, 418, 423, 425, 427, 428 and 456 of the Penal Code 1977, offences under the Antitrust Law 1988, offences under the Securities Law 1968, offences under the Prohibition on Money Laundering Law 2000, or any other criminal offence which resulted in a prison sentence of at least one (1) year, or if the Entity or any office holder or representative thereof is not a citizen or a resident of the State of Israel, analogous offences committed under the laws of its domicile, provided that the conviction for such offence (committed in Israel or outside of Israel) was given during the seven (7) years preceding the Pre-Qualification Submission Date.
<b>“Operation”</b>	Shall mean all the practices for managing traffic on an LRT or Metro, including the facilitating of the smooth continuous driving of trains, allocating time schedules on the tracks, managing railway safety and railway equipment, and the cost of transport.
<b>“Participant”</b>	Shall have the meaning ascribed thereto in Section 3.1 (The Participant) of this Invitation.
<b>“Participant's Weighted Turnover”</b>	Shall have the meaning ascribed thereto in Section 5.1.1 (Participant's Weighted Turnover) of this Invitation.
<b>“Participation Fee”</b>	Shall have the meaning ascribed thereto in Section 2.6.2 of this Invitation.
<b>"Preliminary Information Notice"</b>	Shall have the meaning ascribed thereto in Section 3.10 (Promotion of Competition and Reduction of Concentration Law, 2013) of this Invitation.
<b>“Pre-Qualification Documents”</b>	Shall mean the Invitation, its Appendices, the Pre-Qualification Forms and any other document issued by the Tender Committee during the Pre-Qualification Process.

<b>“Pre-Qualification Forms”</b>	Shall mean the forms attached hereto as forms 1-16 which each Participant is required to complete, execute and submit as part of its Pre-Qualification Submission.
<b>“Pre-Qualification Process”</b>	Shall mean the process commencing upon the issuance of this Invitation, and ending upon the announcement of Eligible Participants.
<b>“Pre-Qualification Submission Date”</b>	Shall have the meaning ascribed thereto in Section 8.9 (Pre-Qualification Submission Date) of this Invitation.
<b>“Pre-Qualification Submission Letter”</b>	Shall have the meaning ascribed thereto in Section 7.1 (Pre-Qualification Submission Letter) of this Invitation.
<b>“Pre-Qualification Submission(s)”</b>	Shall mean the complete written pre-qualification submission, complying with the terms and conditions contained in this Invitation and including all the information and completed Pre-Qualification Forms.
<b>“Pre-Qualification Requirement(s)”</b>	Shall mean the Technical Pre-Qualification Requirements and the Financial Pre-Qualification Requirements.

**“Private Investment Fund”<sup>13</sup>**

Shall mean an Entity incorporated for the purpose of making financial investments in which: (i) at least 60% of ~~its~~ the capital (at any given time), is held by Institutional Investors; and (ii) at least 60% of the investments ~~actually~~ made by ~~it~~ such Entity (at any given time), were made by Institutional Investors; and (iii) ~~its~~ it ~~has a~~ gGeneral ~~pPartner~~ or ~~fFund~~ mManager (depending on the applicable jurisdiction) ~~has successfully managed and raised at least two funds.~~<sup>14</sup>

~~For purposes of this definition a “General Partner” or “Fund Manager” shall mean either:~~

~~(i) A single Entity; or~~

~~(ii) A single Entity holding 50% or more of all means of control of general partners or fund managers which raised at least two funds, provided that such general partners or fund managers are held by the single Entity at substantially the same percentage of holdings.~~<sup>15</sup>

**“Project”**

Shall have the meaning ascribed thereto in Section 1.2 (Introduction and General Description of the Project) of this Invitation.

**“Rail Project”**

Shall mean an LRT, a Metro, a commuter rail, a mono rail or a heavy rail project.

**“Red Line”**

Shall have the meaning ascribed thereto in Annex 1 (General Description of the Project), of this Invitation.

**“Red Line Extensions”**

Shall have the meaning ascribed thereto in Annex 1 (General Description of the Project), of this Invitation.

**“Regulations”**

Shall mean the Mandatory Tender Regulations 1993, as amended from time to time.

**“Request(s) for Clarifications”**

Shall have the meaning ascribed thereto in Section 2.9.1 of this Invitation.

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<sup>13</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>14</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>15</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<b>“Related Entity”</b>	Shall mean an Entity which exercises Control over a Member, an Entity which is under a common Control as the Member or an Entity Controlled by a Member.
<b>“Route”</b>	Shall mean a bi-directional route of an LRT or Metro. In the event that a Route includes double track alignment it will be counted as a single Route for the purpose of this Invitation.
<b>“SPC”</b>	Shall have the meaning ascribed thereto in Section 9.9 (Formation of a Single Purpose Company) of this Invitation.
<b>"Stops"</b>	<p>Shall mean the points along an LRT or a Metro Route (at grade or underground), with a dedicated platform for passengers to board and align from vehicles, and all necessary facilities and structures, including the relevant sub-systems. For the avoidance of doubt:</p> <p>(i) a pole shall not be considered a "Stop" for the purpose of this definition; and</p> <p>(ii) multiple platforms located at the same location (such as parallel platforms), will be counted as a single "Stop".</p>
<b><u>“Subsidiary”</u><sup>16</sup></b>	<u>Shall mean company or a partnership in which the relevant Entity directly holds more than 50% of the shares, all partnership interests and of all other <del>m</del>Means of eControl.<sup>17</sup></u>
<b>“Successful Bidder”</b>	Shall mean the Eligible Participant awarded with the Agreement pursuant to the completion of the Tender Process.
<b>"Systems"</b>	Shall mean all of the following: (i) power supply and distributions; (ii) overhead catenary systems; (iii) railway signaling; and (iv) low voltage systems (such low voltage systems including at least: operation control center, SCADA, transmission network, automatic vehicle location (AVLS)).

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<sup>16</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>17</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<b>“Technical Pre-Qualification Requirement(s)”</b>	Shall have the meaning ascribed thereto in Section 4 (Technical Pre-Qualification Requirements) of this Invitation.
<b>“Tender Committee”</b>	Shall mean the committee appointed by the GoI in accordance with the provisions of the Regulations, in order to control and manage the Pre-Qualification Process and the Tender Process.
<b>“Tender Documents”</b>	Shall mean all documents which shall be distributed to Eligible Participants as part of the Tender Process, including the request for proposals and all forms provided therein, the Agreement, the technical volumes, and any other document which will be issued by the Tender Committee during the Tender Process.
<b>“Tender Process”</b>	Shall mean the second stage of the selection process described in Section 1.3 (The Selection Process) of this Invitation, in which Eligible Participants will submit their bids and a Successful Bidder for the Project shall be selected.
<b>“Track-way Works”</b>	<p>Shall mean the procurement, supply, Construction and Completion of rails for an LRT Line or a Metro Line which:</p> <ul style="list-style-type: none"> <li>(a) Provides support and guidance for vehicles carried on flanged wheels on concrete track laying; and</li> <li>(b) Are laid wholly or mainly along a Route, or in any other place to which the public has access and including the track-bed;</li> </ul> <p>including multitubulars, drainage, rails and switches, floating slab if any and direct fixation and slab track.</p>
<b>“Update Statement”</b>	Shall have the meaning ascribed thereto in Section 9.8.1 of this Invitation.

**“Vehicle(s)”<sup>18</sup>**

Shall mean light rail or metro ~~vehicles~~ configurations with a minimum length of twenty five (25) meters for a ~~single vehicle configuration~~ and a minimum capacity of thirty (30) seats and one hundred and fifty (150) passengers, provided that such configuration is able to run itself (motorized).

**“Website”**

Shall have the meaning ascribed thereto in Section 2.6.1 of this Invitation.

**1.2. Introduction and General Description of the Project**

Over the past few years, the GoI has been developing the Jerusalem LRT system. The GoI, operating through the Tender Committee in collaboration with the Jerusalem Transportation Master Plan Team (“**JTMT**”) has initiated a project for the design, financing, construction, operation and maintenance of the LRT lines referenced in **Annex 1** (General Description of the Project), the J-Net, all as shall be further detailed in the Tender Documents (the “**Project**”).

**1.3. The Selection Process**

The Tender Committee intends to select the Successful Bidder to execute the Project through the following stages:

- a. this Pre-Qualification Process; and
- b. the Tender Process.

**1.4. The Pre-Qualification Process**

1.4.1. The purpose of this Pre-Qualification Process is to identify Eligible Participants, who will be invited to participate in the Tender Process.

1.4.2. During the Pre-Qualification Process, Participants will be required to submit Pre-Qualification Submissions, in accordance with the provisions of this Invitation, in order to demonstrate their compliance with all Pre-Qualification Requirements and all other applicable provisions of this Invitation.

1.4.3. Pre-Qualification Submissions submitted by the Participants will be evaluated by the Tender Committee, in accordance with the provisions of this Invitation. Without derogating from the provisions of Section 9 (REVIEW AND EVALUATION OF PRE-QUALIFICATION SUBMISSIONS), at the end of its evaluation, the Tender Committee will announce the Eligible Participants. Only those Participants which demonstrated compliance with all Pre-Qualification Requirements and all

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<sup>18</sup> Added as part of Addendum no. 2 dated June 29, 2017.

other applicable provisions of this Invitation, and were not otherwise disqualified thereby, will be announced as Eligible Participants and will be invited to participate in the Tender Process.

### 1.5. The Tender Process; and Expected Requirements

Following the completion of the Pre-Qualification Process, the Tender Committee intends to invite all Eligible Participants to participate in the Tender Process, and submit bids for the execution of the Project.

Without derogating from the Tender Committee's rights under Section 1.7 (Anticipated Schedule) or under Section ~~9.109.9~~<sup>19</sup> (Reservation of Rights), it is expected that, within its proposal during the Tender Process each Eligible Participant will be required to demonstrate that<sup>20</sup>:

#### 1.5.1. either<sup>21</sup>:

~~(i) each Eligible Participant will be required to demonstrate that the Experience Provider which demonstrated compliance with any of the Pre-Qualification Requirements specified in Sections 4.1 (Experience in the Design and construction of Systems) through 4.4 (Rolling Stock Experience), and section 4.8 (Maintenance Experience),~~

or

(ii) a Subsidiary thereof<sup>22</sup>,

shall be ~~directly~~ responsible directly, or through a Subsidiary,<sup>23</sup> for the Project function and the performance of the applicable part of the work for which it was prequalified, as shall be further specified under the Tender Documents;<sup>24</sup>

#### 1.5.2. either<sup>25</sup>:

(i) the Experience Provider which demonstrated compliance with the Pre-Qualification Requirements specified in Section 4.5 (Project Execution, Management and Organization Experience),

or

(ii) a Subsidiary thereof<sup>26</sup>

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<sup>19</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>20</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>21</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>22</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>23</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>24</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>25</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>26</sup> Added as part of Addendum no. 3 dated August 9, 2017.

shall be ~~directly~~ responsible ~~directly, or through a Subsidiary,~~<sup>27</sup> for the overall management and coordination of all the EPC functions of the Project either as the EPC Contractor itself or as a member, holding 50% or more of ~~the shares and other interests~~ all Means of Control<sup>28</sup> in the EPC Contractor;<sup>29</sup>

The main principles of EPC Contract will be specified under the Tender Documents.

1.5.3. The Tender Documents will include additional requirements with respect to the presentation of valid registration and certifications pursuant to the Registration of Contractors for Construction Engineering Works Law, 1969 and other applicable Laws (or the presentation of applicable exemption).

1.5.4. Each Eligible Participant will be required to demonstrate that:

Alternative A<sup>30</sup>

1.5.4.1. Either<sup>31</sup>:

(i) the Experience Provider which demonstrated compliance with the Pre-Qualification Requirement specified in Section 4.6 (Operating Experience) (the "**Operator**"),

or

(ii) a Subsidiary thereof<sup>32</sup>,

shall be responsible ~~directly, or through a Subsidiary,~~<sup>33 34</sup> for the overall management and coordination of all O&M functions of the Project either as the O&M Contractor itself or as a member holding 50% or more of ~~the shares and other interests~~ all Means of Control<sup>35</sup> in the O&M Contractor.

Without derogating from the above, and regardless of the specific organizational structure, it is expected that the Operator will be required to carry out at least the obligations stipulated under the provisions of Section 1.5.4.3;

Or

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<sup>27</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>28</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>29</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>30</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>31</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>32</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>33</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>34</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>35</sup> Added as part of Addendum no. 3 dated August 9, 2017.

Alternative B<sup>36</sup>

1.5.4.2. Either<sup>37</sup>:

(i) the Experience Provider which demonstrated compliance with the Pre-Qualification Requirement specified in Section 4.7 (~~BusPublic~~ Transportation Operating Experience) (the "**Additional Operator**"),

or

(ii) a Subsidiary thereof<sup>38</sup>,

shall be ~~directly~~ responsible ~~directly, or through a Subsidiary~~<sup>39 40</sup> for the overall management and coordination of all O&M functions of the Project as:

(A) the O&M Contractor itself; or

(B) as a member of the O&M Contractor (provided however, that if the other members of the O&M Contractor are not the Operator, the Additional Operator shall hold ~~70%~~ 50%<sup>41</sup> or more of ~~the shares and other interests~~ all Means of Control<sup>42</sup> in the O&M Contractor);

and

(iii) the Operator, shall be required to carry out certain obligations and responsibilities under a service agreement.

1.5.4.3. The main principles of the service agreement will be specified under the Tender Documents, however, it is expected that the Tender Documents will include, *inter alia*, the following requirements:

(A) the duration of the service agreement shall be for at least the period ending on the earlier of: (i) five (5) years following commencement of the full commercial operation of the J-Net first part of the Green Line; and (ii) two (2) years following the commencement of the full operation of the J-NET; and<sup>43</sup>

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<sup>36</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>37</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>38</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>39</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>40</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>41</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>42</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>43</sup> Added as part of Addendum no. 2 dated June 29, 2017.

(B) the Operator shall be required to carry out specific activities and obligations during pre-operation and operation including, the preparation of the safety case, the responsibility for training and the appointment of key personals which will comply with specific requirements such as the operation manger as defined in the Rail Ordinance (פקודת מסילת הברזל).

1.5.5. Without derogating from the foregoing, the method of performance by the Operator and the Additional Operator (including the method of engagement thereof), shall be graded as part of the Tender Process, and, as such, it is expected that:<sup>44</sup>

1.5.5.1. the highest score for this criterion will be awarded if the Operator shall be responsible for the overall management and coordination of all O&M functions of the Project, as stipulated in Section 1.5.4.1;

1.5.5.2. a lower score for this criterion will be awarded if the Additional Operator which demonstrated compliance with the requirements specified in Alternative A or Alternative B of Section 4.7 (Public Transportation Operating Experience), shall be responsible for the overall management and coordination of all O&M functions of the Project, as stipulated in Section 1.5.4.2;

1.5.5.3. the lowest score for this criterion will be awarded if the Additional Operator which demonstrated compliance with the requirements specified in Alternative C of Section 4.7 (Public Transportation Operating Experience), shall be responsible for the overall management and coordination of all O&M functions of the Project, as stipulated in Section 1.5.4.2.

## 1.6. Invitation for Pre-Qualification

The Tender Committee hereby invites Entities to participate in the Pre-Qualification Process, according to the terms and conditions of this Invitation.

## 1.7. Anticipated Schedule

The anticipated schedule for the Pre-Qualification Process is as follows:

1.7.1. Publication of the Invitation: April 9, 2017.

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<sup>44</sup> Added as part of Addendum no. 3 dated August 9, 2017.

1.7.2. Final date for the Submission of the Preliminary Information Notice: ~~June 8, 2017~~ ~~June 29, 2017~~<sup>45</sup> August 9, 2017<sup>46</sup>.

1.7.3. Final date for the Submission of Requests for Clarifications: ~~June 27, 2017~~ ~~July 18, 2017~~<sup>47</sup> August 31, 2017<sup>48</sup>.

1.7.4. Pre-Qualifications Submission Date: ~~October 3, 2017~~ November 9, 2017<sup>49</sup>.

The Tender Committee reserves the right to amend any date contained herein, at any time, at its sole discretion by issuing a written clarification or Addenda to this Invitation in accordance with the provisions of Section 2.10 (Addenda).

## 2. RULES AND PROCEDURES

### 2.1. Governing Law and Jurisdiction

2.1.1. The Pre-Qualification Process shall be governed and construed in accordance with the provisions of all applicable Laws, including the Mandatory Tenders Law 1992, and the Regulations.

2.1.2. The applicable court in Jerusalem shall have the sole jurisdiction over all matters and all disputes arising in connection with the Pre-Qualification Process and the Tender Process.

2.1.3. The foregoing does not derogate from the obligation of any Participant, each of its Members, Experience Providers and/or Guarantors (to the extent applicable) and anyone on their behalf, to address the Tender Committee, in writing, with a specific and detailed claim or compliant.

### 2.2. Preparation for Submission

2.2.1. By submitting a Pre-Qualification Submission each Participant (and each Entity participating with such Participant) confirms that it has received the complete Pre-Qualification Documents, that it has read, considered and understood the Invitation, and that it accepts the terms and conditions thereof and all obligations and undertakings specified or implied therein.

2.2.2. Each Participant (and each Entity participating with such Participant) is assumed to have obtained legal advice.

2.2.3. Each Participant (and each Entity participating with such Participant) and the Pre-Qualification Submissions shall: (i) abide by the Laws; and (ii) shall be subject to any changes in any of the Laws, should such changes be introduced during the Pre-Qualification Process.

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<sup>45</sup> Added as part of Addendum no. 1 dated June 1, 2017.

<sup>46</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>47</sup> Added as part of Addendum no. 1 dated June 1, 2017.

<sup>48</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>49</sup> Added as part of Addendum no. 2 dated June 29, 2017.

### 2.3. **The Invitation**

The Pre-Qualification Documents include this invitation for pre-qualification, its Appendices, the Pre-Qualification Forms and any other document issued by the Tender Committee during the Pre-Qualification Process.

### 2.4. **Priority of Documents**

In the event of discrepancies between any of the provisions of this Invitation, the stricter provision, as determined by the Tender Committee at its sole discretion, shall prevail, unless otherwise determined by the Tender Committee and approved in writing. Any discrepancy shall be brought to the attention of the Tender Committee as soon as possible.

### 2.5. **Severability**

The invalidity or unenforceability of any part, provision or section of the Pre-Qualification Documents shall not affect the validity or enforceability of other parts, provisions or sections thereof. Any invalid or unenforceable part, provision or section shall be deemed severed from the Pre-Qualification Documents, and the Pre-Qualification Documents shall be construed and enforced as if this Invitation did not contain such invalid or unenforceable part provision or section.

### 2.6. **Access to Documents and Registration**

2.6.1. Any Entity wishing to participate in the Pre-Qualification Process may view the Pre-Qualification Documents at the offices of the JTMT: between 9:00 a.m., until 14:00 (2p.m.) at number 97 Jaffa St. Jerusalem and at the following websites: [www.jlrt.org.il](http://www.jlrt.org.il) and [www.mof.gov.il](http://www.mof.gov.il) (the “**Website**”)

2.6.2. As a pre-condition for the participation in the Pre-Qualification Process, each Participant shall pay a participation fee in an amount of NIS fifteen thousand (15,000) (VAT included) (the “**Participation Fee**”).

2.6.3. The Participation Fee shall be paid by using the following website: <https://ecom.gov.il/counter/general/Homepage.aspx?counter=62>. Without derogating from the provisions of Section 9.10 (Reservation of Rights) the Participation Fee shall not be refunded in any way.

2.6.4. Without derogating from the provisions of Sections ~~7 (Compliance with the Requirements of the)~~ 8.1 (Compliance with the Requirements of the Pre-Qualification Documents)<sup>50</sup> and 8.2 (No Unauthorized Modification), an electronic copy of this Invitation and the Pre-Qualification Forms shall be furnished to all Entities or Participants who have paid the Participation Fee, following presentation of the receipt for the payment of the Participation Fee.

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<sup>50</sup> Added as part of Addendum no. 2 dated June 29, 2017.

In the event of discrepancies between the hardcopy and the electronic copy of this Invitation and the Pre-Qualification Forms, the provisions of the hardcopy shall prevail.

2.6.5. Participants shall submit a copy of the receipt for the payment of the Participation Fee as well as the Participant's contact details (inter alia, the name of the Participant, its Authorized Representative, address, phone number, fax number, address, email address etc.) to the email address referenced in Section 2.9.1 below. Participants shall be responsible for informing the Tender Committee of any change in their contact details.

2.6.6. It is hereby clarified that an Entity who has not purchased this Invitation may submit a Pre-Qualification Submission, provided that the right to participate pursuant to the purchase of this Invitation was assigned or transferred from an Entity entitled to participate. A person or an Entity may pay the Participation Fee on behalf of another Entity. For the avoidance of doubt, one (1) purchase shall entitle the submission of one (1) Pre-Qualification Submission.

2.6.7. The Tender Committee or anyone on its behalf shall not be responsible in any respect for any damage or loss of any kind whatsoever, suffered by a Participant or anyone on its behalf (including its Members, Experience Providers and Guarantor (to the extent applicable)), due to an error or omission with respect to any information provided by a Participant under this Section.

By submitting its Pre-Qualification Submission each Participant shall be deemed to have received all Pre-Qualification Documents.

2.6.8. It is hereby emphasized that the payment of the Participation Fee does not constitute recognition of an Entity's (including a Participants) eligibility, qualifications or competence to meet the requirements of this Invitation.

## **2.7. Cost of Participation in the Pre-Qualification Process**

A Participant, its Members, its Guarantors and its Experience Providers (to the extent applicable) and anyone on their behalf, will bear any and all costs and expenses connected with participation in the Pre-Qualification Process as incurred by such, and will not be reimbursed or otherwise compensated by the Tender Committee, the GoI or the JTMT for any costs or expenses so incurred thereby, including in the event of termination of the Pre-Qualification Process for any reason whatsoever.

## **2.8. Language**

This Invitation is published in English. Notwithstanding the forgoing, the Tender Committee reserves the right to issue a Hebrew version of this Invitation or any part thereof and to determine the order of precedence in case of any discrepancy between the provisions of the English version and the provisions of the Hebrew version.

## **2.9. Requests for Clarification of this Invitation**

2.9.1. Participants who have paid the Participation Fee and have provided the Tender Committee with contact details in accordance with the provisions of Section 2.6.5, may raise questions and requests for clarifications or interpretations to the Pre-Qualification Documents, in writing, by no later than the deadline for the submission of requests for clarifications as set forth in Section 1.7 (Anticipated Schedule) (“**Request(s) for Clarification(s)**”). Such Requests for Clarifications shall be addressed to:

Mr. ~~Yariv Nehama~~ **Nechemya Kind**<sup>51</sup>  
 Chairman of the Tender Committee  
 Co./ Mr. Ariel Piperno  
 Coordination manager of the Tender Committee  
 The Jerusalem Transportation Master Plan Team  
 Number 97 Jaffa St. Jerusalem  
 P.O.B 28034  
 Phone: +972-2-6299888  
 Email: [jnet@jtmt.gov.il](mailto:jnet@jtmt.gov.il)

Participants shall verify the receipt of Requests for Clarifications by the Tender Committee.

2.9.2. Requests for Clarifications shall be submitted via email in a signed PDF file and in a MS-Word file and in the following format:

<b>Clarification No.</b>	<b>Section</b> (reference to the relevant Section in the applicable Pre-Qualification Document)	<b>Subject</b>	<b>Clarification/ Question</b>
1.			
....			

The Tender Committee reserves the right to ignore Requests for Clarifications which are not submitted in accordance with the requirements of submission specified in this Section 2.9.2.

2.9.3. The Tender Committee may request Participants to provide clarifications to any part of their Request for Clarifications, including by way of meeting with the Participants or any of them.

2.9.4. The Tender Committee has no obligation to clarify or interpret this Invitation, to respond to any specific question or to publish any of the Requests for Clarifications submitted to it.

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<sup>51</sup> Added as part of Addendum no. 2 dated June 29, 2017.

- 2.9.5. Although the Tender Committee has no obligation to clarify or interpret this Invitation, the Tender Committee may issue an Addendum for the purpose of clarifying or interpreting the Pre-Qualification Documents in response to Requests for Clarifications, in accordance with the provisions of Section 2.10 (Addenda). Participants shall acknowledge receipt of any Addendum in the manner set forth in Section 2.10 (Addenda).
- 2.9.6. In its response to a Request for Clarification the Tender Committee may, rephrase any Request for Clarification including adding to the original language or omitting from the original language, as it shall deem fit under the circumstances.
- 2.9.7. Any Request for Clarification of the Pre-Qualification Documents raised at a date following the deadline for the submission thereof as provided in Section 1.7 (Anticipated Schedule), will be accepted or rejected, answered or not, at the discretion of the Tender Committee.
- 2.9.8. For the avoidance of doubt, a response by the Tender Committee to any Request for Clarification shall not derogate from the discretion or the prerogative of the Tender Committee under this Invitation, including under Section 2.10 (Addenda).
- 2.9.9. Without derogating from the rights reserved by the Tender Committee and without in any way limiting its discretion, the Tender Committee will endeavor to avoid the issuance of Addenda to the Pre-Qualification Documents during the fourteen (14) days immediately preceding the Pre-Qualification Submission Date.

## 2.10. Addenda

- 2.10.1. Notwithstanding any of the provisions of this Invitation and without derogating from the discretion of the Tender Committee under the provisions of Section ~~9.109-9<sup>52</sup>~~ (Reservation of Rights), the Tender Committee reserves the right to revise, modify, amend, clarify, add, eliminate or otherwise change the Pre-Qualification Documents or any part thereof, including, but not limited to, any instruction, requirement, specification, Pre-Qualification Requirement(s) or date contained therein, whether at the discretion of the Tender Committee or as a result of a Request for Clarification. Such revisions, if any, shall be announced by written clarification or addenda to the Pre-Qualification Documents (“**Addenda**” or “**Addendum**”, respectively) and will be deemed an integral part of this Invitation.

The Tender Committee shall not be bound by, and Participants shall not rely on, any oral clarification to the Pre-Qualification Documents.

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<sup>52</sup> Added as part of Addendum no. 2 dated June 29, 2017.

No clarification or amendment to the Pre-Qualification Documents shall be binding unless issued in the form of an Addendum.

2.10.2. Copies of Addenda published by the Tender Committee shall be published at the Website and furnished to all Entities or Participants who have paid the Participation Fee and have provided the Tender Committee with contact details in accordance with the provisions of Section 2.6.5.

Should any Addendum result from any Request for Clarification submitted by a Participant, the identity of such Entity or Participant shall not be disclosed.

2.10.3. Participants are required to acknowledge receipt of Addenda in writing no later than two (2) days following receipt thereof by a returned email to the Tender Committee.

2.10.4. Without derogating from the generality of the provisions of Sections 1.7 (Anticipated Schedule) and 2.10 (Addenda), the Tender Committee may postpone the date for submission of Pre-Qualification Submissions, or any other date herein, by such number of days as shall be necessary in the opinion of the Tender Committee to enable the Participants to revise their Pre-Qualification Submissions as a result of any Addendum issued by the Tender Committee. The announcement of a new date, if any, will be included in the Addendum.

## **2.11. Site Visit and Conference**

2.11.1. The Tender Committee reserves the right to hold a conference and/or a site visit (the "**Conference**"). The participation of the Participant or its Authorized Representative, in the Conference shall not be mandatory.

2.11.2. At the Conference, the Tender Committee may answer questions referred to it by Participants in accordance with the provisions of Section 2.9 (Requests for Clarification of this Invitation).

2.11.3. Should the Tender Committee answer or present any questions referred to it by a Participant, or any clarification, interpretation or amendment resulting from any request for clarification or interpretation submitted to it by a Participant, the identity of that Participant shall not be disclosed.

2.11.4. Following the Conference, the Tender Committee shall issue minutes of the Conference to all Participants in the form of an Addendum. Only the written minutes issued by the Tender Committee at the end of the Conference in the form of an Addendum shall be binding. The Tender Committee shall not be bound by, and Participants shall not rely on, any oral representation made by the Tender Committee or by Participants during the Conference.

2.11.5. The fact that questions, clarifications, interpretations and amendments to the Pre-Qualification Documents will be presented by the Tender Committee at the Conference does not, in any way, restrict the Tender

Committee's right to issue an Addendum or to postpone any of the dates contained therein in accordance with the provisions of Section 2.10 (Addenda).

## **2.12. Intellectual Property Rights**

The Pre-Qualification Documents and any and all intellectual property rights therein are exclusively owned by the GoI and are supplied to the Participants solely for the purpose of participation in the Pre-Qualification Process.

## **2.13. Information Supplied to the Participants**

2.13.1. The description of the Project detailed in this Invitation is general and indicative only. The actual scope of works and further particulars may differ from the description thereof in this Invitation.

2.13.2. In any event and without derogating from the foregoing, to the extent applicable during the Pre-Qualification Process, Participants are required to independently examine and verify all aspects of the Project, inter alia, the site, its borders and surrounding, all statutory plans relating thereto, the Pre-Qualification Documents and any other legal, organizational, operational, technical or financial detail relevant to the Pre-Qualification Submission.

2.13.3. The GoI, the Tender Committee and the JTMT, do not represent or warrant that the information contained in the Pre-Qualification Documents or any other information which they or anyone on their behalf are making available to Participants, is either complete or accurate or undergo any independent verification of the Tender Committee.

2.13.4. It is expressly understood that any reliance of the Participants or anyone on their behalf on any such information and the making of any deductions, interpretations or conclusions from information which is made available by the GoI, the Tender Committee or the JTMT or anyone on their behalf, is at the Participants' sole responsibility.

2.13.5. The GoI, the Tender Committee and the JTMT shall not be responsible in any respect for any loss or damage whatsoever suffered by the Participants, its Members, Experience Providers (to the extent applicable), Guarantor (to the extent applicable) and/or any Entity, their employees, officers, agents, or any other persons for whom Participants may be contractually or legally responsible or accountable, by reason of any use of information contained in the Pre-Qualification Documents or provided in connection therewith, or any action or forbearance in reliance thereon.

## **2.14. Advisors to the Tender Committee**

2.14.1. The Participants, Members, Experience Providers and Guarantors (if applicable) participating in the Pre-Qualification Process shall refrain, during the Pre-Qualification Process, the Tender Process or the Project, from creating or maintaining a conflict of interests, including a conflict of

interest which may arise as a result of engaging employees, advisors or sub-contractors.

2.14.2. **Annex 2** of this Invitation contains a list of the advisors to the Tender Committee. Subject to the provisions of any and all applicable Laws, the Tender Committee may exercise its rights under this Invitation through its advisors. The Tender Committee reserves the right, from time to time, to release any advisor or to engage additional advisors, update or otherwise amend **Annex 2** or any part thereof as it shall deem appropriate under the circumstances.

2.14.3. Any Entity or person listed in Part A of **Annex 2** ("**Part A Advisors**"), shall not participate in the Pre-Qualification Process, the Tender Process or the Project on behalf of any third party other than the Tender Committee and shall not advise, directly or indirectly, Participants, Members, Experience Providers and Guarantors with respect to the Pre-Qualification Process, the Tender Process or the Project. In the event a Participant, Member, Experience Provider or Guarantor engages or considers engaging any Part A Advisor for any purpose which is not connected to the Pre-Qualification Process, the Tender Process or the Project, such engagement shall be subject to the prior written approval of the Tender Committee. An approval by the Tender Committee will be granted only in special cases, where it considers that such engagement does not give rise to a conflict of interests.

Any request for the approval of an engagement of any Part A Advisor shall include details of the nature and expected duration of the engagement as well as the circumstances or reasons justifying the receipt of the Tender Committee's approval for such engagement.

2.14.4. Any Entity or person, which is listed in Part B of **Annex 2** ("**Part B Advisors**"), shall not participate in the Pre-Qualification Process, the Tender Process or the Project on behalf of any third party other than the Tender Committee, and shall not advise directly or indirectly, Participants, Members, Experience Providers or Guarantors with respect to the Pre-Qualification Process, the Tender Process or the Project. In the event a Participant, Member, Experience Provider or Guarantor engages or considers engaging any Part B Advisor:

2.14.4.1. for any purpose which is not connected to the Pre-Qualification Process, the Tender Process or the Project such engagement shall be subject to the prior written notification to the Tender Committee ("**Notification**"); or

2.14.4.2. with respect to the Pre-Qualification Process, the Tender Process or the Project, such engagement shall be subject to the prior written approval of the Tender Committee ("**Request for Approval**").

Any Notification or Request for Approval of an engagement of any Part B Advisor shall include details of the nature and expected duration of the engagement as well as the circumstances or reasons justifying the Tender Committee's approval of such engagement.

2.14.5. The Tender Committee shall confirm receipt of a Notification or a Request for approval, as the case may be.

2.14.6. Following receipt of a Notification or Request for Approval, the Tender Committee may, at its sole discretion, require additional details, notify the relevant Entity that it does not approve such engagement or impose certain restrictions on such engagement, as the Tender Committee shall deem fit.

Notwithstanding the foregoing, in the event the Tender Committee does not provide any objection or otherwise respond to a Notification within thirty (30) days following the issuance by the Tender Committee of the confirmation of receipt thereof, such shall be deemed as an approval of the request for engagement subject matter of the Notification.

2.14.7. In addition and without derogating from the foregoing, in the event that a Participant, Member, Experience Provider or Guarantor is aware that an Entity or person which it engages is also engaged by JTMT or the Ministry of Transportation (whether or not such is in connection with the Pre-Qualification Process, the Tender Process or the Project), it shall notify the Tender Committee accordingly.

2.14.8. The Tender Committee shall be entitled, at its sole discretion, to take any action required to ensure the absence of a conflict of interests including, *inter alia*, request to amend or amend the terms of any engagement of an advisor to disqualify Participants, Members, Experience Providers or Guarantors from participating in the Pre-Qualification Process or to impose further restrictions with respect to their participation in the Pre-Qualification Process, as the Tender Committee shall deem fit.

### 3. GENERAL PROVISIONS RELATING TO PARTICIPANTS

#### 3.1. The Participant

3.1.1. A Participant shall mean a single Entity which complies with the provision of Section 3.2 (Members of the Participant); or a number of Entities, each of which complies with the provision of Section 3.2 (Members of the Participant), associated for the purpose of submitting a Pre-Qualification Submission (“**Participant**”).

3.1.2. The incorporation of a Participant as a special purpose company for purposes of the Project, will be only required during the Tender Process.

3.1.3. In order to demonstrate compliance with this Section 3.1 (The Participant), each Participant and each of the Entities associated in relation therewith

(its Members) shall complete, execute and submit Pre-Qualification Form [“1”] and Pre-Qualification Form [“2”].

### 3.2. **Members of the Participant**

3.2.1. Members of a Participant shall mean each of the Entities committed to hold Anticipated Holdings in the Participant, as detailed in Pre-Qualification Form [“3”] and which complies with:

3.2.1.1. all of the requirements of Section 3.5 (Participation - General Requirements); and

3.2.1.2. the applicable Financial Pre-Qualification Requirements in accordance with the provisions of Section 5 (FINANCIAL PRE-QUALIFICATION REQUIREMENTS);

(a “**Member**”).

3.2.2. Without derogating from the generality of the foregoing a Participant shall not have more than five (5) Members.

3.2.3. In order to demonstrate compliance with, inter alia, the provisions of this Section 3.2 (Members of the Participant), each Member shall complete, execute and submit Pre-Qualification Form [“3”].

### 3.3. **Experience Provider**

3.3.1. An Experience Provider shall mean an Entity which complies with:

3.3.1.1. all of the requirements of Section 3.5 (Participation - General Requirements); and

3.3.1.2. any of the requirements in Section 4 (TECHNICAL PRE-QUALIFICATION REQUIREMENTS)

(an “**Experience Provider**”).

For the avoidance of doubt, an Experience Provider does not have to be a Member.

3.3.2. In order to demonstrate compliance with this Section 3.3 (Experience Provider), each Participant shall complete, execute and submit Pre-Qualification Form [“4”] and each Experience Provider shall complete, execute and submit Pre-Qualification Form [“5”].

### 3.4. **Guarantor**

3.4.1. A Guarantor shall mean an Entity which Controls the Participant (if there is only one Member in the Participant)<sup>53</sup> or a Member and which complies with:

3.4.1.1. all of the requirements of Section 3.5 (Participation - General Requirements); and

3.4.1.2. the applicable Financial Pre-Qualification Requirements in accordance with the provisions of Section 5 (Financial Pre-Qualification Requirements);

(“**Guarantor**”).

3.4.2. In order to demonstrate compliance with this Section 3.4 (Guarantor), each Guarantor shall complete, execute and submit Pre-Qualification Forms [“3”] and [“16”].

### **3.5. Participation - General Requirements**

Each Participant, Member, Experience Provider and Guarantor needs to comply and satisfy all of the following requirements:

3.5.1. It is a duly organized and a validly existing Entity under the laws of the jurisdiction in which it is organized.

3.5.2. It has all requisite corporate power and authority for the ownership and operation of its properties and for the carrying on of its business as currently conducted or proposed to be conducted for the purposes of the Project (including the participation in this Pre-Qualification Process).

3.5.3. There are no actions or proceedings pending with respect to dissolution, liquidation, freeze of assets, bankruptcy, insolvency, appointment of a trustee, a liquidator or a receiver (including temporarily), or any other analogous situation nor, are there to the best of its knowledge, ~~there are no~~ any actions or proceedings which might result in dissolution, liquidation, freeze of assets, bankruptcy, insolvency, appointment of a trustee, a liquidator or a receiver (including temporarily), or any other analogous situation.<sup>54</sup>

3.5.4. It's most recent Financial Statements do not include a "going concern notice".

3.5.5. The Entity and any Interested Party including the office holders thereof involved in the Pre-Qualification Process, in the Tender Process or in the Project (including individuals) are not residents or citizens of a state which does not have diplomatic relations with the State of Israel.

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<sup>53</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>54</sup> Added as part of Addendum no. 2 dated June 29, 2017.

3.5.6. It and any Interested Party thereof (including individuals), have not been convicted of an Offence and no indictment (criminal charges) with respect to an Offence has been filed (submitted) against any of such.

3.5.7. To the extent required under Law, Each Entity incorporated in the State of Israel, or registered in Israel as a Foreign Company as defined under the Companies Law 1999, shall provide all relevant approvals and statements as required in accordance with the provisions of the Public Entities Transactions Law 1976, and an ascertainment of regular reports of revenues to the tax assessor and the director of V.A.T. in transactions that is taxable under the Value Added Tax Law 1975.<sup>55</sup>

3.5.8. If an Entity is not incorporated in the State of Israel it shall provide approvals and statements equivalent to the approvals and statements in Section 3.5.7, as required by law within its domicile.

### **3.6. An Entity Convicted of an Offence**

3.6.1. In the event that a Participant, a Member, an Experience Provider, a Guarantor or any Interested Party thereof which is required to comply with the provisions of Section 3.5 (Participation - General Requirements) and does not comply with the requirement of Section 3.5.6, the Authorized Representative, on behalf of the Entity or the Interested Party, shall submit to the Tender Committee, either within its Pre-Qualification Submission or no later than 60 days prior to the Pre-Qualification Submission Date, relevant information with respect to the filing (submission) of an indictment (criminal charges) in an Offence or with respect to a conviction (as applicable).

3.6.2. Without derogating from the provisions of Section ~~9.109.9~~<sup>56</sup> (Reservation of Rights), the Tender Committee shall decide (at its sole discretion), whether an Entity which does not comply with the provisions of Section 3.5.6 may participate in a Pre-Qualification Submission or impose conditions with respect to its participation.

3.6.3. Any decision reached by the Tender Committee prior to the Pre-Qualification Submission Date shall be provided to the Participant, and an Addendum shall be published in accordance with the provisions of Section 2.10 (Addenda), conveying to all other Participants that the Tender Committee has approved or rejected the participation of an Entity or any Interested Party which does not comply with the provisions of Section 3.5.6, without disclosing the identity of such Entity or the nature of the Offence (unless otherwise determined by the Tender Committee, at its sole discretion).

### **3.7. Authorized Representative**

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<sup>55</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>56</sup> Added as part of Addendum no. 2 dated June 29, 2017.

3.7.1. Each Participant shall appoint one of its Members, through one individual on its behalf, as an authorized representative for: (i) conducting correspondence with the Tender Committee; and (ii) receiving instructions from the Tender Committee for and on behalf of the Participant (including any and all the Members Experience Providers and Guarantors) (an “**Authorized Representative**”).

3.7.2. A Participant may replace its Authorized Representative by giving a prior written notice to the Tender Committee, signed by all Members of the Participant. The appointment of an Authorized Representative shall not be terminated other than by the appointment of a replacement and the receipt of notice thereof by the Tender Committee.

### **3.8. Participation in a Pre-Qualification Submission**

#### 3.8.1. General

3.8.1.1. Each Participant may participate only in one Pre-Qualification Submission.

3.8.1.2. Each Member may participate in only one Pre-Qualification Submission.

3.8.1.3. Each Experience Provider may participate in only one Pre-Qualification Submission.

3.8.1.4. Each Guarantor may participate in only one Pre-Qualification Submission Guarantor.

#### 3.8.2. Interpretations

For the purpose of the provisions of Section 3.8.1, the terms “**Participant**”, “**Member**” “**Experience Provider**” and “**Guarantor**” (if applicable), shall be deemed to include any Entity which exercises Control over such entity, is under the common Control of such entity or is Controlled by such entity.

### **3.9. Government Companies**

Any Company budgeted by the GoI as defined under Section 21 of the State Budget Law, 1985 any Municipal Company or a subsidiary thereof as defined under Section 21 of the State Budget Law, 1985 any Company supported by the GoI as defined under Section 32 of the State Budget Law, 1985 any Entity incorporated by Law (a statutory corporation), or any Company subject to the provisions of the Government Companies Law, 1975 is not permitted to participate in the Pre-Qualification Process as a Participant, a Member, an Experience Provider or a Guarantor.

### **3.10. Promotion of Competition and Reduction of Concentration Law, 2013**

3.10.1. The subject matter of the Tender Process is subject to the Promotion of Competition and Reduction of Concentration Law, 2013 (the

"**Competition Law**"), and therefore the Tender Committee may instruct, restrict or condition the future participation of Participants, Members, Experience Providers or Guarantors (or any of them) in the Pre-Qualification and/or the Tender Process.

- 3.10.2. In light of the foregoing, Participants are entitled to provide the Tender Committee, by no later than the date referenced in Section 1.7.2 above, with a notice containing the names of its Members, Experience Providers and/or Guarantors (to the extent applicable) (the "**Preliminary Information Notice**").
- 3.10.3. Following receipt thereof, the Tender Committee will present the Preliminary Information Notices and consult the applicable committee pursuant to the Competition Law (the "**Consultation**"). The Participants are advised that the broader the Preliminary Information Notice is and the more information it includes with respect to the relevant Entities (including, inter alia, with respect to the Anticipated Holdings in the Participant etc.), the more efficient the Consultation will be.
- 3.10.4. It may be that following the Consultation, instructions, restrictions or conditions may be imposed with respect to the future participation of a Participant, its Members, Experience Providers or Guarantors (or any of them) in the Pre-Qualification Process and/or the Tender Process. If such instructions, restrictions or conditions will be imposed, such will be informed by the Tender Committee to the relevant Participant(s). Following the Consultation (and taking into consideration the results of the Consultation), the Tender Committee may issue an Addendum to all Participants.
- 3.10.5. Participants are advised that instructions, restrictions or conditions of the applicable committee pursuant to the Competition Law are made available to the general public in its designated website; however the published information does not include information which is not to be disclosed in accordance with the provisions of Section 9(a) of the Freedom of Information Law, 1998; and the committee may decide not to publish information which it is entitled not to disclose in accordance with the provisions of Section 9(b) of the Freedom of Information Law, 1998.
- 3.10.6. Each Participant will be required to submit its Pre-Qualification Submission in compliance with any instructions, restrictions or conditions issued to it following the Consultation.
- 3.10.7. The submission of a Preliminary Information Notice is not mandatory. However, if a Preliminary Information Notice will not be submitted and the relevant Participant will subsequently be announced as an Eligible Participant, the Tender Committee will nevertheless be required consult the applicable committee pursuant to the Competition Law (following the announcement of the Eligible Participants), and such Eligible Participant bears the risk that it shall be required to comply with any instructions, restrictions or conditions imposed thereon following such consultation. In

this respect the attention of all Participants is referred to the provisions of Section 9.5.5.1. Under such circumstances approval pursuant to the provisions of Section 9.5.5.1 will be granted only under exceptional circumstances.

### 3.11. Participating in Multiple Capacities

In the event an Entity participates in the Pre-Qualification Process in more than one role (e.g. Member, Experience Provider, Guarantor etc.), such Entity will be required to comply with all requirements pertaining to each of its various roles.

### 3.12. Security Considerations

Without derogating from the generality of the provisions of this Invitation, the Tender Committee reserves its rights to impose conditions, limitations or restrictions which relate to security considerations (including national security).

## 4. TECHNICAL PRE-QUALIFICATION REQUIREMENTS

Each Participant is required to demonstrate compliance with all of the following Technical Pre-Qualification Requirements;

### 4.1. Experience in the Design and Construction of Systems

Each Participant is required to demonstrate that an Experience Provider on its behalf has, during the ten (10) years immediately preceding the Pre-Qualification Submission Date:

4.1.1. Completed, as a Main Contractor under an EPC Contract or a Design Build Contract, the Design and Construction of Systems for at least three (3) LRT or Metro Lines, each of which consisting of not less than twelve (12) km of Routes;

4.1.2. At least two (2) of the referenced LRT or Metro Lines are in different cities; and

4.1.3. At least two (2) of the referenced LRT or Metro Lines have been successfully operating for at least two (2) consecutive years following their Completion (including the Completion of the Design and Construction of Systems, as demonstrated pursuant to Section 4.1.1 above).

**Form of Submission** - In order to demonstrate compliance with this Section 4.1 (Experience in the Design and Construction of Systems), the Experience Provider shall complete, execute and submit Pre-Qualification Form [“6”].

### 4.2. Experience in the Construction of Track-Way

Each Participant is required to demonstrate that an Experience Provider on its behalf has, during the ten (10) years immediately preceding the Pre-Qualification Submission Date:

- 4.2.1. Completed, as a Main Contractor under an EPC Contract, a Design Build Contract or a Construction Contract, the Design and Construction of Track-way Works for ~~at least three (3)~~ LRT or Metro Lines: (i) at least two (2), each of which consisting of not less than twelve (12) km of Routes (each); and (ii) cumulating at least thirty six (36) km; and<sup>57</sup>
- 4.2.2. At least two (2) of the referenced LRT or Metro Lines are in different cities; and
- 4.2.3. At least two (2) of the referenced LRT or Metro Lines have been successfully operating for at least two (2) consecutive years following their Completion (including the Completion of the Track-way Works, as demonstrated pursuant to Section 4.2.1 above).

**Form of Submission** - In order to demonstrate compliance with this Section 4.2 (Experience in the Construction of Track-Way), the Experience Provider shall complete, execute and submit Pre-Qualification Form [“7”].

#### 4.3. **Integration Experience**

Each Participant is required to demonstrate that an Experience Provider on its behalf was, during the ten (10) years immediately preceding the Pre-Qualification Submission Date:

- 4.3.1. Primarily responsible for the Integration of at least two (2) LRT or Metro Line projects (which were Completed), cumulating at least twenty (20) km of Routes in at least two (2) different cities;
- 4.3.2. Primarily responsible for the Integration of at least one (1) project for an expansion (connection of a new Route to an existing Route or extension of an existing Route), of a Rail Project Route with or by at least one (1) additional Stop and half (0.5) km of additional Routes;
- 4.3.3. One (1) of the referenced projects (presented pursuant to Section 4.3.1 and/or Section 4.3.2) includes primarily responsibility for the Integration of a Rail Depot; and
- 4.3.4. The referenced project which included the Depot and at least one (1) additional referenced project have been successfully operating for at least two (2) consecutive years following their Completion.

**Form of Submission** - In order to demonstrate compliance with this Section 4.3 (Integration Experience), the Experience Provider shall complete, execute and submit Pre-Qualification Form [“8”].

#### 4.4. **Rolling Stock Experience**

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<sup>57</sup> Added as part of Addendum no. 2 dated June 29, 2017.

Each Participant is required to demonstrate that an Experience Provider on its behalf has, during the twelve (12) years immediately preceding the Pre-Qualification Submission Date:

4.4.1. Manufactured, as a Main Contractor, at least two hundred (200) Vehicles which have been delivered to the respective client(s) and out of which at least thirty (30) Vehicles were LRT Vehicles which are at least 70% Low Floor; and

4.4.2. The clients which received the referenced Vehicles have successfully operated such as part of their ordinary course of business for at least two (2) consecutive years following the delivery or the integration therein of the referenced Vehicles.

The Experience Provider demonstrating compliance with this Pre-Qualification Requirement is required to declare that it will be capable, if the Successful Bidder it participates with will be awarded with the Project, to design and manufacture the rolling stock in accordance with the Applicable EU Standards.

**Form of Submission** - In order to demonstrate compliance with this Section 4.4 (Rolling Stock Experience), the Experience Provider shall complete, execute and submit Pre-Qualification Form [“9”].

#### **4.5. Project Execution, Management and Organization Experience**

Each Participant is required to demonstrate that an Experience Provider on its behalf has, during the ten (10) years immediately preceding the Pre-Qualification Submission Date, Completed, as a Main Contractor under an EPC Contract, a Design Build Contract or a Construction Contract, at least two (2) Infrastructure Projects, with an aggregated Contract Value of not less than NIS 2,500 Million.<sup>58</sup>

**Form of Submission** - In order to demonstrate compliance with this Section 4.5 (Project Execution, Management and Organization Experience), the Experience Provider shall complete, execute and submit Pre-Qualification Form [“10”].

#### **4.6. Operating Experience**

Each Participant is required to demonstrate that an Experience Provider on its behalf, during the five (5) years immediately preceding the Pre-Qualification Submission Date:

4.6.1. Has been acting as a Main Contractor for the Operation of at least one (1) Network, such Network having not less than twenty (20) km of Routes or forty (40) Stops, out of which at least ten (10) km of Routes are LRT Routes or twenty (20) Stops of which are LRT Stops;

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<sup>58</sup> Added as part of Addendum no. 2 dated June 29, 2017.

4.6.2. At least one of the referenced ~~LRT~~ Networks (LRT or Metro) has at least two (2) different LRT or Metro Lines with at least one (1) common Route and at least one (1) common Stop; and<sup>59</sup>

4.6.3. Has been managing an annual ridership of not less than thirty million (30,000,000) passengers from LRT Lines and Metro Lines.

**Form of Submission** - In order to demonstrate compliance with this Section 4.6 (Operating Experience), the Experience Provider shall complete, execute and submit Pre-Qualification Form [“11A”].

4.7. **BusPublic Transportation**<sup>60</sup> **Operating Experience**

In the event that the Participant is interested in participating in the Project by applying the structure described in Section ~~4.5.3~~4.5.4.2<sup>61</sup>, in addition to demonstrating compliance with the Pre-Qualification Requirement of Section 4.6 (4.6), the Participant is required to demonstrate that an Experience Provider on its behalf, during the three (3) years immediately preceding the Pre-Qualification Submission Date:

Alternative A<sup>62</sup>

4.7.1. Has been acting as a Main Contractor, for the operation of at least one (1) Bus Network in an urban environment. For the purpose of this Section, Network shall be deemed to include at least five (5) lines;

4.7.2. Has been managing a fleet of at least three hundred (300) Buses; and

4.7.3. An annual ridership of at least twelve million (12,000,000) passengers;

Or

Alternative B<sup>63</sup>

4.7.4 Has been acting as a Main Contractor, for the operation of at least two (2) LRT Lines or Metro Lines located in a single urban environment (e.g. the same city) and having, in aggregate at least twenty (20) km of Routes or at least forty (40) Stops; and

4.7.5 Has been managing an annual ridership of not less than fifteen million (15,000,000) passengers from LRT Lines and/or Metro Lines.

Or

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<sup>59</sup> Added as part of Addendum no. 2 dated June 29, 2017.  
<sup>60</sup> Added as part of Addendum no. 3 dated August 9, 2017.  
<sup>61</sup> Added as part of Addendum no. 2 dated June 29, 2017.  
<sup>62</sup> Added as part of Addendum no. 2 dated June 29, 2017.  
<sup>63</sup> Added as part of Addendum no. 2 dated June 29, 2017.

#### Alternative C<sup>64</sup>

4.7.6 Has been acting as a Main Contractor for the operation of a single LRT Line having at least ten (10) km of Routes or at least twenty (20) Stops; and

4.7.7 Has been managing an annual ridership of not less than thirty million (30,000,000) passengers.

**Form of Submission** – In order to demonstrate compliance with this Section 4.7 (~~Bus~~Public Transportation Operating **Experience**), the Experience Provider shall complete, execute and submit Pre-Qualification Form [“11B”].

#### 4.8. **Maintenance Experience**

Each Participant is required to demonstrate that an Experience Provider on its behalf, during the five (5) years immediately preceding the Pre-Qualification Submission Date, has been acting as a Main Contractor of up to three at least one (13) projects for the Maintenance of an LRT, Metro Line or an LRT Network or a Metro Network, each consisting (in the aggregate) of not less than thirty (30) km of not less than ten (10) km of Routes and not less than thirty (30) km of Routes in the aggregate, including the Maintenance of:<sup>65</sup>

4.8.1. Infra Works and Systems;

4.8.2. At least forty (40) rolling stock vehicle(s) (in the aggregate); and<sup>66</sup>

4.8.3. At least one (1) Depot, including all buildings and related facilities.

**Form of Submission** - In order to demonstrate compliance with this Section 4.8 (Maintenance Experience), the Experience Provider shall complete, execute and submit Pre-Qualification Form [“12”].

### 5. **FINANCIAL PRE-QUALIFICATION REQUIREMENTS**

Each Participant is required to demonstrate its Members' compliance (by themselves or through a Guarantor), with all of the applicable Financial Pre-Qualification Requirements:

#### 5.1. **Turnover**

Each Participant is required to demonstrate that the Participant's Weighted Turnover (as such term is defined in Section 5.1.1 below), is not lower than the Minimal Turnover Required (as such term is defined in Section 5.1.3 below).

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<sup>64</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>65</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>66</sup> Added as part of Addendum no. 2 dated June 29, 2017.

**Form of Submission** - In order to demonstrate compliance with this Section 5.1 (Turnover), the applicable Entities shall complete, execute and submit Pre-Qualification Form ["13"].

#### **5.1.1. Participant's Weighted Turnover**

The Participant's Weighted Turnover shall be calculated in the following manner:

$$Participant\ Turn\ Over = \sum_{i=1}^{i=n} ATO_i \cdot HS_i$$

Where:

$ATO_i$  = Member (i)'s Average Turnover (as such term is defined in Section 5.1.2 below).

$HS_i$  = the Anticipated Holdings of Member (i) in the Participant.

$n$  = the number of Members in the Participant.

("Participant's Weighted Turnover").

#### **5.1.2. Member's Average Turnover**

The weighted average turnover of each Member in the Participant shall be calculated in the following manner:

5.1.2.1. For: (i) any Member in the Participant who is a Financial Entity; and (ii) any Member in the Participant whose Anticipated Holdings in the Participant is lower than 10% – the Member's Average Turnover shall be deemed as Zero (0).

5.1.2.2. For any Member in the Participant who is not a Financial Entity and whose Anticipated Holdings in the Participant exceeds 10% – the Member's Average Turnover shall be calculated as a simple average of the Member's annual turnover for the years 2014, 2015 and 2016, as follows:

$$ATO_i = \frac{TO_c + TO_{c-1} + TO_{c-2}}{3}$$

Where:

$TO_c$  = Member (i)'s annual turnover for year c.

C = 2016

("Member's Average Turnover")

#### **5.1.3. Minimal Turnover Required**

The minimal turnover required of the Participant is:

5.1.3.1. In the event that all Members of the Participant are not Financial Entities – not be less than NIS 1,400 Million.

5.1.3.2. In the event that one or more of the Members of the Participant is a Financial Entity – the minimal turnover required of a Participant shall not be less than the sum of NIS 1,400 Million multiplied by the Anticipated Holdings of all Members who are not Financial Entities.

**("Minimal Turnover Required")**

**5.2. Operating Cash Flow**

5.2.1. Each Member of the Participant who is not a Financial Entity, is required to demonstrate that its Average Operating Cash Flow for the years 2014, 2015 and 2016, is not negative (either positive or equal to zero).

**Form of Submission** - In order to demonstrate compliance with this Section 5.2 (Operating Cash Flow), the applicable Entities shall complete, execute and submit Pre-Qualification Form ["13"].

5.2.2. For the purpose of this Pre-Qualification Requirement, the Average Operating Cash Flow of each Member who is not a Financial Entity, shall be calculated in the following manner:

$$(CF_{(t)} + CF_{(t-1)} + CF_{(t-2)})/3$$

Where:

CF = Operating Cash Flow

t= Financial Statement for the year 2016

**("Average Operating Cash Flow")**

**or:**

5.2.3. In the event that the Average Operating Cash Flow of a Member who is not a Financial Entity, is negative, the Member is required to demonstrate that the ratio between the absolute value of (a) and (b) below is less than 25%:

(a) Shall be the lesser of:

(i) The Average Operating Cash Flow of the Member who is not a Financial Entity, (as calculated pursuant to the provisions of section 5.2.2 above); or-

(ii) The Operating Cash Flow of the Member who is not a Financial Entity, for the year 2016.

- (b) The equity of a Member, who is not a Financial Entity, on December 31<sup>st</sup>, based on its Financial Statements for the year 2016.

So that –

$$\text{ABS } [CF_t + CF_{(t-1)} + CF_{(t-2)}] / 3 / E < 25\%$$

Or that –

$$\text{ABS } [CF_t] / E < 25\%$$

Where:

ABS [X] = the absolute value of (a)(i) or (a)(ii).

CF<sub>t</sub> = the Operating Cash Flow of year t.

E = the equity of the Member, who is not a Financial Entity, on December 31<sup>st</sup>, based on its Financial Statements for the year 2016 (b).

t = the relevant year of the Financial Statements of the Member who is not a Financial Entity.

### 5.3. **Equity**

Each Member who is not a Financial Entity is required to demonstrate equity of not less than NIS 7 Million, for each one percent (1%) of Anticipated Holdings in the Participant, based on its Financial Statements for the year 2016.

**Form of Submission** - In order to demonstrate compliance with this Section 5.3 (Equity), the applicable Entities shall complete, execute and submit Pre-Qualification Form [“13”].

### 5.4. **Securing Finance for an Infrastructure Project**

Each Participant is required to demonstrate that at least one of its Members has, during the ten (10) years immediately preceding the Pre-Qualification Submission Date, obtained External Financing for at least two (2) Infrastructure Projects. The amount of External Financing for each referenced project shall not be less than NIS 750 Million.

**Form of Submission** - In order to demonstrate compliance with this Section 5.4 (Securing Finance for an Infrastructure Project), the applicable Entities shall complete, execute and submit Pre-Qualification Form [“14”].

### 5.5. **Private Investment Fund<sup>67</sup>**

Any Member, who is a Private Investment Fund, is required to demonstrate that as of December 31<sup>st</sup>, 2016, ~~its the gGeneral pPartner or the fFund mManager~~

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<sup>67</sup> Added as part of Addendum no. 3 dated August 9, 2017.

~~(depending on the applicable denomination under the relevant jurisdiction),~~ managed an amount of Assets under Management which is not less than NIS 1,500 Million in aggregate.

**Form of Submission** - In order to demonstrate compliance with this Section 5.5 (5.5), the applicable Entities shall complete, execute and submit Pre-Qualification Form ["15"].

In addition, the Member, who is a Private Investment Fund, is required to submit its investment agreements and appointment agreements demonstrating the overall investment commitments, as required pursuant to the provisions of this Section.

#### 5.6. ~~Banking Corporation or~~ **Institutional Investors**<sup>68</sup>

Any Member, who is a ~~Banking Corporation or~~ an Institutional Investor, is required to demonstrate that:

5.6.1. Its equity (excluding minimal equity required by law, to the extent relevant) is not less than NIS 7 Million for each one percent (1%) of Anticipated Holdings in the Participant, based on the Member's Financial Statements for the year 2016; **or**

5.6.2. It manages assets with a net worth of not less than NIS 125 Million for each one percent (1%) of Anticipated Holdings in the Participant, based on the Financial Statements of the Member for the year 2016.

**Form of Submission** - In order to demonstrate compliance with this Section 5.6 (~~Banking Corporation or~~ **Institutional Investors**), the applicable Entities shall complete, execute and submit Pre-Qualification Form ["13"].

#### 5.7. **Reliance on a Guarantor**

5.7.1. Each Member who is not a Financial Entity, may demonstrate compliance with the Financial Pre-Qualification Requirements by relying on a Guarantor, provided that the Guarantor itself complies with all Financial Pre-Qualification Requirements, and provided that both the Member and its Guarantor comply with the ~~Financial Pre-Qualification Requirements~~<sup>69</sup> under Section 3.5 (Participation - General Requirements) above.

5.7.2. A Member relying on a Guarantor shall attach to its Pre-Qualification Submission Pre-Qualification Form ["16"], duly executed by the Guarantor.

5.7.3. In the event that the Guarantor is a parent company of a Member, and such parent company is also a Member of the Participant for the purpose of determining compliance with all Financial Pre-Qualification Requirements, the Anticipated Holdings of such Guarantor in the

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<sup>68</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>69</sup> Added as part of Addendum no. 2 dated June 29, 2017.

Participant will be deemed to include all Anticipated Holdings of the Member seeking to rely on such Guarantor.

## **5.8. Content and Submission Form**

5.8.1. In order to demonstrate compliance with the Financial Pre-Qualification Requirements, the Participant shall submit the Financial Statements of each Member and each Guarantor (to the extent relevant) for the years 2014, 2015, and 2016, duly prepared and presented in accordance with one of the following:

5.8.1.1. Israeli GAAP (including Standard No. 51 of the Institute of Certified Public Accountants in Israel);

5.8.1.2. US GAAP (published by the FASB);

5.8.1.3. International Financial Reporting Standards (including, with respect to the cash flow statements, IAS (International Accounting Standards) IAS No. 7 and IFRS updates);

5.8.1.4. China Accounting Standards (CAS);

and duly executed by the Entity's management (or the equivalent thereof) and by its external auditors.

However, if a Member submits its Financial Statements based on CAS, in addition, such Member will provide a letter, signed by an external auditor, confirming that the Member's Average Turnover, the Average Operating Cash Flow and the equity of the Member as presented in the CAS based Financial Statements, substantially comply with US GAAP or IFRS methodology

5.8.2. Members whose Financial Statements are presented based on a different accounting principles than those listed in Section 5.8.1 above, are required to submit a specific request to the Tender Committee to approve submission of such Financial Statements, at least 30 days prior to the Pre-Qualification Submission Date; the Tender Committee will consider each request on a case by case basis and may issue an Addendum as a result thereof.

5.8.3. Without derogating from the generality of Section 5.8.1 above, the Financial Statements must include a balance sheet, a profit and loss statement, a cash flow, and auditor's report and notes.

5.8.4. An Entity whose Financial Statements do not include cash flow statements should provide such statements in accordance with one of the GAAP versions set out in Section 5.8.1 above (as applicable), duly executed by the Entity's external auditors.

5.8.5. The Financial Statements will be provided either in English or in Hebrew, but in no other language.

5.8.6. In the event of a reliance by a Member on a Guarantor, the Financial Statements of such Guarantor shall be included (instead of those of the Member), and shall be subject to the provisions of Section 5.7 (Reliance on a Guarantor) above.

5.8.7. Without derogating from the aforementioned, in the event that the Financial Statements of an Entity for the year 2016 contain comparative figures to years 2014 and 2015 which meet the Financial Pre-Qualification Requirements listed in Section 5.1 (Turnover) and Section 5.2 (Operating Cash Flow) above, the Entity will not be required to submit the Financial Statements for the years 2014 and 2015, and it can rely on the comparative figures presented in its year 2016 Financial Statements.

5.8.8. In the event of a discrepancy between the Financial Statements and the Pre-Qualification Form, the provisions of the Financial Statements shall prevail.

## 6. GENERAL INSTRUCTIONS WITH RESPECT TO DEMONSTRATION OF COMPLIANCE WITH THE PRE-QUALIFICATION REQUIREMENTS

### 6.1. ~~Presentation of a-Referenced Projects Executed as Part of a Joint Venture~~<sup>7071</sup>

Presentation of Referenced Projects. Sections 4.5 (Project Execution, Management and Organization Experience), 4.6 (Operating Experience) and 4.7 (Public Transportation Operating Experience).

For the purpose of demonstrating compliance with the requirements of the Pre-Qualification Requirements specified in Sections 4.5 (Project Execution, Management and Organization Experience) 4.6 (Operating Experience) and 4.7 (Public Transportation Operating Experience), ~~A~~<sup>72</sup> Member or an Experience Provider is allowed to present and rely on a referenced project it executed as part of an SPV ~~special purpose company, a special purpose partnership or a joint venture~~, provided that:

6.1.1. ~~The Member or the Experience Provider directly held Controlled~~ at least twenty ~~five~~<sup>71</sup>four percent (25<sup>4</sup>%) of ~~the all~~ Means of Control in the Entity ~~(the special purpose company, special purpose partnership or a joint venture)SPV~~<sup>73</sup> ~~(the special purpose company or the joint venture)~~ which executed the referenced project;

6.1.2. the Entity which executed the referenced project executed it as a Main Contractor; and

6.1.3. ~~The Member or the Experience Provider~~ was responsible, jointly and severely, for the execution of the referenced project.

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<sup>70</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>71</sup> Added as part of Addendum no. 2 dated June 29, 2017.

<sup>72</sup> Added as part of Addendum no. 3 dated August 9, 2017.

<sup>73</sup> Added as part of Addendum no. 3 dated August 9, 2017.

For the avoidance of doubt, for purposes of the Definitions "Construction Contract", "Design Build Contract", "EPC Contract", "Network" and "O&M Contract", a joint venture shall also be deemed as a "single entity", provided that all other requirements of this Section ~~5.9.16.1~~ are met.

~~Notwithstanding the foregoing, for the purpose of demonstrating compliance with the requirements of Pre Qualification Requirement specified in Section 5.4 (Securing Finance for an Infrastructure Project) by presenting and relying on a referenced project a Member executed as part of a special purpose company or a joint venture, only the provisions of Section 6.1.1 will apply.~~

**Presentation of Referenced Projects.** Sections 4.1 (Experience in the Design and Construction of systems), 4.2 (Experience in the Construction of Track-Way), 4.3 (Integration Experience), 4.4 (Rolling Stock Experience) and 4.8 (Maintenance Experience)

~~In addition, for~~For the purpose of demonstrating compliance with the requirements ~~or of pre~~the Pre-Qualification Requirements specified in Sections: ~~(a)~~ 4.1 (Experience in the Design and Construction of systems); ~~(b)~~ 4.2 (Experience in the Construction of Track-Way); ~~(c)~~ 4.3 (Integration Experience); ~~(d)~~ 4.4 (Rolling Stock Experience); and ~~(e)~~ 4.8 (Maintenance Experience), an Experience Provider is allowed to present and rely on a referenced project it executed:

(A) as part of an SPV, provided, that all other requirements of Sections 6.1.1 – 6.1.3 are met,

or

(B) a referenced project may be presented, subject to the provisions of sections 6.1.2-6.1.3, even if it was executed by a company or partnership which is not an SPV, provided that under such circumstances the Entity which executed the referenced project is: (1) a Subsidiary of such Experience Provider; or (2) a granddaughter company or partnership of such Experience Provider (in which the Experience Provider holds (indirectly) more than 50% of the shares, all partnership interests and of all other Means of Control); and (3) provided further that all other requirements of Sections 6.1.2 and 6.1.3 are met.

**Presentation of Referenced Projects.** Section 5.4 (Securing Finance for an Infrastructure Project)

For the purpose of demonstrating compliance with the requirements of the Pre-Qualification Requirement specified in Section 5.4 (Securing Finance for an Infrastructure Project), a Member or a Guarantor is allowed to present and rely on a referenced project it executed as part of an SPV, provided that the Member or the Guarantor held, directly or indirectly, at least twenty four percent (24%) of all Means of Control in the SPV which executed the referenced project on the date such project obtained External Financing (including by way of holding the Means of Control in the SPV through more than one Entity).

“SPV” in this Section 6.1 shall mean a special purpose company, a special purpose partnership or a joint venture.

## 6.2. Exchange of Currency

All of the financial figures included in the Pre-Qualification Documents must be submitted using New Israeli Shekels (NIS). In the event that financial information (such as a Contract Value), or the Financial Statements are presented using USD (US\$), Euro (€) or British Pounds (£), the Entity shall convert the financial data in the following manner:

### 6.2.1. Turnover, Operating Cash Flow, Asset Under Management and Contract Value

The Participant's Weighted Turnover, the Operating Cash Flow and/or the Contract Value (as the case may be), shall be converted to NIS in accordance with the average exchange rates for the relevant calendar fiscal year, as are published in the National Bureau of Statistics and Economical Research data and presented in **Annex 3**.

### 6.2.2. Equity

An Entity's equity shall be converted to NIS, in accordance with the following exchange rates, as are published in the National Bureau of Statistics and Economical Research data:

<b>Day</b>	<b>December 31, 2016</b>
<b>Currency</b>	<b>New Israeli Shekel (NIS)</b>
1 USD (US\$)	<b>3.8450</b>
1 Euro (€)	<b>4.0438</b>
1 British Pound (£)	<b>4.7252</b>

## 6.3. Conversion of Other Currencies

An Entity whose Financial Statements are presented in currencies other than NIS/US\$/€/£ (the exchange rates of which are presented above) are required to submit a specific request to the Tender Committee for other currency conversion to US\$, at least 30 days prior to the Pre-Qualification Submission Date. Such a request shall contain all the relevant information, including exchange rate tables and a reference to the source thereof. The Tender Committee will consider each request on a case by case basis and may issue an Addendum as a result thereof.

6.3.1. An Entity whose fiscal year, according to its place of registration, ends on a day other than December 31, is required to request the Tender Committee's consent to use alternative exchange rates, at least thirty (30) days prior to the Pre-Qualification Submission Date. The request must specify all the relevant information and exchange rate tables, on which the Entity relies. The Tender Committee will consider each request on a case by case basis and may issue an Addendum as a result thereof.

## **7. PRE-QUALIFICATION SUBMISSION**

### **7.1. Pre-Qualification Submission Letter**

Each Participant shall attach to its Pre-Qualification Submission the Pre-Qualification Submission Letter provided in Pre-Qualification Form ["1"] duly completed and signed.

### **7.2. Description of the Participant, Members, Experience Providers and Guarantors**

In order to demonstrate compliance with the provisions of Sections 3.1 (The Participant), 3.2 (Members of the Participant) and 3.3 (Experience Provider), each Participant shall submit all of the Pre-Qualification Forms specified in Sections 3 (GENERAL PROVISIONS RELATING TO PARTICIPANTS) and 4 (TECHNICAL PRE-QUALIFICATION REQUIREMENTS) duly completed and signed.

### **7.3. Receipt of Purchase**

Each Participant shall include in its Pre-Qualification Submission a copy of the receipt for payment of the Participation Fee.

### **7.4. Identification of Sensitive or Classified Information**

7.4.1. Without derogating from the generality of the provisions of Regulation 21(e) of the Regulations (and the discretion granted thereunder to the Tender Committee), Participants will detail, within Pre-Qualification Form ["1"], in a clear, complete and legible manner, all information contained in their Pre-Qualification Submissions, which they consider to be of a commercially sensitive or confidential nature and which in their mind should not be disclosed to other Participants.

7.4.2. Without derogating from the provisions of any applicable Law and the discretion of the Tender Committee pursuant to the provisions of this Invitation, Participants will detail in a clear, complete and legible manner, all information contained in their Pre-Qualification Submissions, which they consider to be of a commercially sensitive or confidential nature as provided by the Participant in Pre-Qualification Form ["1"]. For the avoidance of doubt, the Tender Committee may allow the review of information which the Participant considers to be of a commercially sensitive or confidential nature and to act in accordance with the provisions of Section 9.7 (Disclosure of Documents).

### **7.5. Validity of Pre-Qualification Submissions**

The Pre-Qualification Submissions shall be valid until 12 months as of the Pre-Qualifications Submissions Date.

## **8. METHOD OF SUBMISSION**

The Pre-Qualification Submission shall be submitted in accordance with the following provisions:

### **8.1. Compliance with the Requirements of the Pre-Qualification Documents**

Participants shall prepare their Pre-Qualification Submissions in strict conformity with the requirements of this Invitation. Participants shall complete all applicable parts of the Pre-Qualification Submission in an accurate and detailed manner, disclosing all the information requested, as well as any additional information or data required to clarify, substantiate and, in general, support the Pre-Qualification Submission.

Without derogating from the generality of the forgoing, Participants shall submit all Pre-Qualification Forms attached to this Invitation.

### **8.2. No Unauthorized Modification**

Participants shall not modify or supplement the instructions of this Invitation. Unauthorized conditions, limitations, modifications, supplements, reservations, disclaimers or provisions attached to a Pre-Qualification Submission may result in the disqualification of the Pre-Qualification Submission and of the Participant. For the avoidance of doubt, any conditions, limitations, modifications, supplements, reservations, disclaimers or provisions attached to the Pre-Qualification Submission, which were not submitted by the Participant to the Tender Committee in accordance with the provisions of Section 2.9 (Requests for Clarification of this Invitation) and approved by the Tender Committee in the form of an Addendum, issued in accordance with the provisions of Section 2.10 (Addenda), may be deemed as unauthorized and may result in the disqualification of the Pre-Qualification Submission and of the Participant.

### **8.3. Language of the Pre-Qualification Submission**

All Pre-Qualification Submissions, including Pre-Qualification Forms and statements contained therein shall be in English. Supporting documents and printed literature submitted by a Participant in any other language, other than English, should be accompanied by a translation to English (authenticated by a Public Notary), in which case, for purposes of interpretation, the translation to English shall prevail.

Notwithstanding the above, official documents and authenticated certificates of Israeli corporations may be submitted in Hebrew.

### **8.4. Signing of the Pre-Qualification Submission**

8.4.1. Each page of the Pre-Qualification Submission including all Pre-Qualification Forms and appendices shall be duly signed by the Participant and each of its Members and if and where applicable, by the Experience Providers and/or the Guarantor.

8.4.2. Without derogating from the generality of the foregoing, in the event a document or a set of documents consisting part of the Pre-Qualification Submission are set in binders, the Participant and each of its Members and if and where applicable, the Experience Providers and/or the Guarantor are only required to sign the first and last pages of each of the binders and clearly indicate the number of pages of such binder.

8.4.3. The Participant shall seal the original and each of the four (4) Submission copies of the Pre-Qualification Submissions in separate envelopes. The envelopes shall then be sealed in an outer envelope or a box.

#### **8.5. Table of Contents**

All pages of the Pre-Qualification Submission will be enumerated, and the Pre-Qualification Submission will include a detailed table of contents.

#### **8.6. Authorization of Signatures by an Attorney**

Adjacent to each signature on the signature page of each Pre-Qualification Form within the Pre-Qualification Submission of the Participant, its Members, Experience Providers, and Guarantors (if applicable), there shall be a confirmation by an attorney that the signatory is authorized to submit the required information on behalf of such Entity and to commit such Entity in relation to the document on which such signature appears.

#### **8.7. Number of Pre-Qualification Submission Copies**

8.7.1. Pre-Qualification Submissions must be submitted, and clearly marked as an original and four (4) identical copies (five (5) altogether). Notwithstanding the foregoing, Financial Statements shall be submitted in only one (1) copy attached to the original Pre-Qualification Submission.

8.7.2. In addition, the Pre-Qualification Submission shall include five (5) CDs each containing a copy of the Pre-Qualification Submission (including the Financial Statements) in PDF format.

8.7.3. In the event of a discrepancy between the original and the other Pre-Qualification Submission documents, and/or the CD, the original shall prevail.

#### **8.8. Sealing and Marking of Pre-Qualification Submissions**

8.8.1. The Pre-Qualification Submissions shall be submitted to the Tender Committee, at the allocated tender box to be placed in the JTMT offices, at number 97 Jaffa St. Jerusalem.

8.8.2. Each envelope or box submitted as part of the Pre-Qualification Submission shall be clearly marked with the name of this Invitation: ‘Pre-Qualification Submission for [the Jerusalem “J-Net”] submitted by [*the name of the Participant*]’. No other details shall be indicated on the outer envelope or box.

#### **8.9. Pre-Qualification Submission Date**

8.9.1. Without derogating from the Provisions of Section 2.10 (Addenda), Pre-Qualification Submissions should be submitted at the address provided in Section 8.8 (Sealing and Marking of Pre-Qualification Submissions) on the date designated for such submission, as set forth in Section 1.7 (Anticipated Schedule), no later than 14:00 (2p.m.), (the “**Pre-Qualification Submission Date**”).

8.9.2. Pre-Qualification Submissions submitted after the Pre-Qualification Submission Date may be opened by the Tender Committee solely for the purpose of identifying the relevant Participant. Such Pre-Qualification Submissions shall be rejected and promptly returned to the Participant who shall consequently be disqualified from participating in the Tender Process.

#### **8.10. Opening of Pre-Qualification Submissions**

All Pre-Qualification Submissions shall be kept in the tender box until the opening thereof. The opening of any Pre-Qualification Submission shall be documented.

### **9. REVIEW AND EVALUATION OF PRE-QUALIFICATION SUBMISSIONS**

#### **9.1. Review and Evaluation by the Tender Committee**

9.1.1. The Tender Committee, with the assistance of any of its advisors and experts, shall review and evaluate the Pre-Qualification Submissions in order to determine whether each of the Participants meets the Pre-Qualification Requirements in this Invitation, including all technical and financial requirements and all other applicable provisions of this Invitation.

9.1.2. The Pre-Qualification Submissions will not be graded by the Tender Committee. Pre-Qualification Submissions shall either “pass” or “fail” the Pre-Qualification Process.

#### **9.2. Requests for Clarifications**

9.2.1. Without derogating from any of its rights under of this Invitation and the Law, the Tender Committee may conduct an independent evaluation in connection with any Pre-Qualification Submission.

9.2.2. The Tender Committee may request additional information and clarifications from a Participant or any other Entity or person, including through meetings in accordance with the provisions of Section 9.2.3.

9.2.3. The Tender Committee may request a Participant or any other Entity or person to clarify any item included in any Pre-Qualification Submission and to submit any additional information, clarification, document, reference etc. which is necessary in the opinion of the Tender Committee for the evaluation of the Pre-Qualification Submission or any part thereof.

In doing so, the Tender Committee may hold meetings with the Participants or any of them and visit any site operated by the Participant or an Experience Provider on its behalf.

9.2.4. Participants will comply with the requests of the Tender Committee and will submit all requested clarifications and additional information by email and in hardcopy in the same number and manner as the submission of its Pre-Qualification Submission, within the time period which shall be stipulated by the Tender Committee.

9.2.5. The requests for clarifications from Participants will be in writing and delivered to the Participants by mail, messenger or facsimile. The receipt thereof shall be confirmed by the Participant by return mail, to the address noted in Section 2.9.1 above, within three (3) days of receipt.

9.2.6. The responses of Participants to the requests for clarifications from the Tender Committee will form an integral part of their Pre-Qualification Submissions. In the event of a discrepancy between the Pre-Qualification Submission and the response of the Participant to the requests for clarifications, the response of the Participant to the requests for clarifications shall prevail.

9.2.7. The Tender Committee may exercise its right under this Section any number of times during the evaluation of the Pre-Qualification Submissions.

### **9.3. Deviation**

9.3.1. In any event that a Pre-Qualification Submission contains an unauthorized modification or a Deviation, the Tender Committee may act as it deems appropriate, including without limitation, in any one or more of the following ways:

9.3.1.1. disqualify the Participant and the Pre-Qualification Submission;

9.3.1.2. ignore the unauthorized modification or the Deviation or any part thereof;

9.3.1.3. deem the unauthorized modification or the Deviation or any part thereof as a technical error;

9.3.1.4. request of the Participant to amend the unauthorized modification or the Deviation by resubmitting its Pre-Qualification Submission or any part thereof, by providing a

notice of absolution to the Tender Committee, or by any other means deemed necessary in the opinion of the Tender Committee.

- 9.3.2. The Tender Committee shall be entitled, at its sole discretion, to determine whether or not to act in accordance with any of the alternatives specified in Sections 9.3.1.1.-9.3.1.4.
- 9.3.3. The approval of the Tender Committee to correct a certain type of Deviation shall not be deemed as approval to correct any other type of Deviation.
- 9.3.4. In the event that a Participant refuses to comply with a request of the Tender Committee, without derogating from any of its other rights pursuant to the provisions of this Invitation or under Law, the Tender Committee may disqualify the Participant's Pre-Qualification Submission.
- 9.3.5. Under exceptional circumstances, the Tender Committee may amend or waive any requirement herein, if the Tender Committee is of the opinion that it beneficial for the Project.

#### **9.4. Announcement of Eligible Participants**

- 9.4.1. Upon the completion of its evaluation of the Pre-Qualification Submissions, the Tender Committee will announce those Participants which the Tender Committee deemed to have successfully demonstrated compliance with the requirements of the Pre-Qualification Documents, including with all Pre-Qualification Requirements, and which were not otherwise disqualified thereby (“**Eligible Participant**”).
- 9.4.2. Without derogating from the generality of the provisions of Section ~~9.109~~<sup>974</sup> (Reservation of Rights) following the publication of the Tender Documents, the Eligible Participants will be invited to submit a proposal in accordance with the provisions of the Tender Documents.
- 9.4.3. The Pre-Qualification Submission shall be deemed an integral part of the bid submission submitted by any Eligible Participant.
- 9.4.4. Upon the completion of the Pre-Qualification Process and the selection of Eligible Participants the Tender Committee may publish the identity of the Eligible Participants (including the Members, Experience Providers and Guarantors thereof) to all Participants and in a press release.

#### **9.5. Rejection of the Pre-Qualification Submissions**

Without derogating from the Tender Committee’s rights under the Law:

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<sup>74</sup> Added as part of Addendum no. 1 dated June 1, 2017.

- 9.5.1. The Tender Committee reserves the right to reject any or all Pre-Qualification Submissions.
- 9.5.2. The Tender Committee reserves the right to reject a Pre-Qualification Submission if the Tender Committee is of the opinion that, based on the financial and technical information provided in its Pre-Qualification Submission, the Participant is prima facie unable to execute the Project.
- 9.5.3. Without derogating from the rights of the Tender Committee pursuant to the provisions of this Invitation and the Law, the Tender Committee reserves the right to waive or amend any clerical error, arithmetic error or accidental omission in the Pre-Qualification Submission.
- 9.5.4. The Tender Committee reserves the right to reject Pre-Qualification Submissions which do not comply with the Pre-Qualification Requirements, or any other applicable provision of this Invitation, or which are partial, reserved, lacking, conditional, or are false or based on false or misleading information.
- 9.5.5. The Tender Committee may disqualify any Participant, or impose any condition or issue any instruction with respect to its participation in the Pre-Qualification Process and/or the Tender Process in any of the following events:
- 9.5.5.1. Any changes to a Member, an Experience Provider or a Guarantor, or to a Member's Anticipated Holdings in the Participant, or to the anticipated holdings in the EPC Contractor or the O&M Contractor (if such holding in the EPC Contractor or O&M Contractor was informed), without the prior approval of the Tender Committee;
  - 9.5.5.2. The commencement of insolvency, bankruptcy, receivership, liquidation or reorganization proceedings against a Participant, a Member, an Experience Provider or a Guarantor or any similar proceeding which may have the same effect, as determined by the Tender Committee, unless such proceedings are discharged within a reasonable period of time, as determined by the Tender Committee;
  - 9.5.5.3. The appointment of a temporary or a permanent receiver or liquidator over a Participant, a Member, an Experience Provider or a Guarantor;
  - 9.5.5.4. Any engagement of a Part A Advisor or a Part B Advisor other than in accordance with the provisions of Section 2.14 (Advisors to the Tender Committee).
  - 9.5.5.5. A change in circumstances following which a Participant, a Member, an Experience Provider or a Guarantor has a "going concern notice" in its most recent Financial Statements;

- 9.5.5.6. In the event that any Participant, Member, Experience Provider or Guarantor, an Interested Party thereof or directors or officer holders thereof (including individuals) has been convicted of an Offence, any offence which might result in an any material or adverse change in its business, any offence concerning grave professional misconduct, any offence concerning fraud and breach of faith or any other offence which, in the opinion of the Tender Committee, effects its integrity and/or credibility;
- 9.5.5.7. In the event that any Participant, Member, Experience Provider or Guarantor is or becomes a resident of or domiciled in a country which does not have diplomatic relations with the State of Israel;
- 9.5.5.8. Any material breach of the provisions of the Invitation or failure to comply with an instruction of the Tender Committee, including but not limited to the submission of any false incomplete, or misleading information to the Tender Committee;
- 9.5.5.9. Any material change in the Participant's, its Members', Experience Provider's or Guarantor's, which, in the Tender Committee's opinion, may hinder its participation in the Pre-Qualification Process and/or the Tender Process, or its involvement in the Project.
- 9.5.5.10. Any other reason for which the Tender Committee deems that a Participant will not be capable of executing the Project, should it be declared the Successful Bidder, or any other event or exceptional circumstances which the Tender Committee may consider (at its sole discretion), as justifying disqualification of the Participant (including circumstances which materially and adversely affect, a Participant's, a Member's, an Experience Provider's or a Guarantor's ability to execute the Project);
- 9.5.6. The Participant shall be required to notify the Tender Committee of the existence of any of the events described in Section 9.5.5 within a period of time reasonable under the circumstances.
- 9.5.7. Notwithstanding the foregoing, the Tender Committee may initiate and request the submission of applicable information with respect to any of the above.
- 9.5.8. The Tender Committee may base its decision under this Section 9.5 (Rejection of the Pre-Qualification Submissions) on the information provided by the Participant as well as on any other information available to it, and may request the Participant to provide it with additional information, as the Tender Committee deems necessary.

## 9.6. **Intended Decision**

In the event that the Tender Committee intends to disqualify a Pre-Qualification Submission submitted by a Participant or otherwise imposes conditions or restrictions with respect to its participation (either in the Pre-Qualification Process or the Tender Process) pursuant to the provisions of Section 9.5 (Rejection of the Pre-Qualification Submissions), the Tender Committee will allow such a Participant to present its case with respect to such intended decision.

## 9.7. **Disclosure of Documents**

9.7.1. In accordance with the provisions of regulations 21(e) and 21(f) of the Regulations and subject to the applicable qualifications thereunder, each Participant shall be entitled to review the relevant protocols of the Tender Committee and any relevant Pre-Qualification Submissions submitted by other Eligible Participants and to receive a copy thereof.

9.7.2. The foregoing review by a Participant shall be for a fee in the amount determined by the Tender Committee.

9.7.3. Participants shall not be entitled to review Pre-Qualification Submissions submitted by other Eligible Participants before a decision is issued by the Tender Committee with respect to those parts of the Pre-Qualification Submissions which are commercially sensitive or confidential under this Invitation or Law. The procedure (including the time schedule), with respect to disclosure of documents and review by other Participants shall be detrimental by the Tender Committee.

9.7.4. The Tender Committee shall evaluate, as it deems necessary, the commercially sensitive or confidential nature of parts of the Pre-Qualification Submission which were identified as such by the Participant in accordance with the provisions of Section 7.4.2. The decision of the Tender Committee with respect thereto will be issued to such Participant.

9.7.5. Participants shall not be entitled to claim that any part of the Pre-Qualification Submission other than those parts identified by them as being of a commercially sensitive or confidential nature cannot be reviewed by other Participants and each Participant shall be deemed to have waived any claims it may have with respect thereto.

9.7.6. A Participant shall not be entitled to review information included in the Pre-Qualification Submissions of other Participants, which it identified to be of a commercially sensitive or confidential nature pursuant to Section 7.4.2, unless otherwise determined by the Tender Committee. The foregoing shall apply, even in the event that the information identified by a Participant as commercially sensitive or confidential was not approved as such by the Tender Committee.

## 9.8. **Issuance of the Tender Documents; Update Statement**

- 9.8.1. **General.** Without derogating from the generality of the provisions of Section 9.10 (Reservation of Rights), it is expected that pursuant to the Tender Documents, each Eligible Participant will be required to include a statement detailing any and all changes with respect to the Participant, its Members its Experience Providers, and its Guarantors, which will have occurred since the Pre-Qualification Submission Date. It is expected that even in the absence of any changes, a statement to that effect will be required (“**Update Statement**”). Without derogating from the forgoing the Tender Committee may request all or any Eligible Participants to submit an Update Statement at any time.
- 9.8.2. The Tender Committee will review the information provided in the Update Statement and, without derogating from its rights under Law or under the Tender Documents, and without derogating from its rights under this Invitation, shall be entitled to disqualify any Eligible Participant in the event that such Eligible Participant no longer meets the requirements of this Invitation or impose any condition or instruction with respect to its participation in the Tender Process at such time as shall be suitable by the Tender Committee.
- 9.8.3. **Updated Financial Statements.** Pursuant to the Tender Documents it is expected that each Eligible Participant shall be required to submit the most recent available audited Financial Statements of the Members and the Guarantor(s), as applicable.
- 9.8.4. The Tender Committee may request an Eligible Participant or any of its Members or Guarantors to clarify, complete or add any information or documents, as may be required for the review of the updated Financial Statements.
- 9.8.5. The Tender Committee will review the information provided to it and, without derogating from its rights under Law or under the Tender Documents, shall be entitled to disqualify any Eligible Participant in the event that such Eligible Participant no longer meets the requirements of this Invitation or impose any condition or instruction with respect to its participation in the Tender Process, including in the event that concerns regarding the capability of the Eligible Participant to execute the Project arise following the review of the updated Financial Statements of any of the Members or the Guarantor(s).

## 9.9. **Formation of a Single Purpose Company**

- 9.9.1. Following completion of the Pre-Qualification Process, in order to participate in the Tender Process and submit a bid thereunder, it is expected that each Eligible Participant will be required to form a single purpose company, incorporated under the Laws, the sole purpose of which shall be the participation in the Tender Process, the submission of a bid therein and the execution of the Project (if eventually selected to do so) (“**SPC**”).

9.9.2. The shares and other interests in this SPC will be wholly held by the Member (if the Participant was a single Entity), or by the Members who participated, through the Participant, in the Pre-Qualification Submissions or by the Participant, and were approved by the Tender Committee pursuant to the Pre-Qualification Process. The shareholdings and the holdings of other interests by each such Member in the SPC shall be as provided in Pre-Qualification Forms ["2"] and ["3"], all as shall further be detailed in the Tender Documents. If the Participant was a single Entity, all shareholdings and the holdings of other interests by each single Entity Participant in the SPC shall be as provided in Pre-Qualification Forms ["2"] and ["3"], all as shall further be detailed in the Tender Documents.

#### **9.10. Reservation of Rights**

9.10.1. All Participants acknowledge that the Project description as specified in this Invitation is general and indicative only. All Participants further acknowledge that at the date of issuance of this Invitation, the Project is not completely formulated and the Tender Documents have not been completed and/or approved. The issuance of this Invitation is not intended to give rise to or create any representation, undertaking or warranty on behalf of the GoI, the Tender Committee, the JTMT or anyone on their behalf with respect to the Project.

9.10.2. Participation in this Pre-Qualification Process shall not confer upon an Entity, a Participant or an Eligible Participant any right with respect to the Project or any future proceedings which will be conducted with respect thereto, including the Tender Process.

9.10.3. The issuance of this Invitation is not intended to guarantee the initiation, execution or the implementation of the Project or any part thereof. It is expressly understood that any reliance by any Entity or Participant on any intention in their Pre-Qualification Submissions and the making of any deductions, interpretations or conclusions from the intention with respect to the Project which is expressed hereby by the GoI, the Tender Committee and the JTMT is at the Entity or Participant's sole responsibility. The GoI, the Tender Committee, the JTMT and anyone on their behalf, shall not be responsible in any respect to any loss or damage whatsoever suffered by any Entity or Participant, their employees, officers, agents, or any other persons for whom any Entity or Participant may be contractually or legally responsible or accountable, by reason of any assumption, conclusion or reliance on the information contained in this Invitation in connection therewith, or any action or forbearance in reliance thereon.

9.10.4. Without derogating from the generality of the forgoing, the GoI, the Tender Committee and the JTMT reserve the right not to proceed with this Pre-Qualification Process, or with the tender process for the Project or any part thereof, and may terminate or cancel this Invitation or any other proceedings which are conducted with respect thereto, or with respect to the Project or any part thereof, at any time, as it shall deem appropriate.

9.10.5. Under the circumstance described herein, the GoI, the Tender Committee, the JTMT or anyone on their behalf shall not be responsible in any respect to any loss or damage whatsoever suffered by any Entity or Participant, their employees, officers, agents, or any other persons for whom any Entity or Participant may be contractually or legally responsible or accountable, and shall not be required to compensate the Entity or the Participant, their employees, officers, agents, or any other persons for whom the Entity or Participant may be contractually or legally responsible or accountable.

9.10.6. The GoI, the Tender Committee, the JTMT or anyone on their behalf may publish a new invitation to pre-qualify or other proceedings with respect to the Project or any part thereof, which may include other pre-qualification requirements, or require additional pre-qualification or minimum requirements in the Tender Documents, or inviting or not the Participants to take part in such process, or execute the Project or any part thereof, in other way deemed appropriate.

#### **9.11. Prerogatives of the Tender Committee**

Without derogating from any other provision herein, due to the complexity of the Project and the preliminary stage of certain aspects thereof, the Tender Committee reserves the right act upon any of the following prerogatives, whether at the Pre-Qualification Process or at the Tender Process, and the GoI, the Tender Committee, the JTMT or anyone on their behalf shall not be responsible in any respect to any loss or damage whatsoever suffered by any Entity or Participant as a consequence of exercising such prerogatives.

9.11.1. The Tender Committee, reserves the right to determine or amend the requirements of the Pre-Qualification Process and the Tender Process at any stage.

Without derogating from the forgoing, the Tender Committee reserves the right to determine additional Pre-Qualification Requirements; determine new technical requirements and/or financial requirements or any other requirements it deems necessary under the circumstances; or required a change in the composition of the Participant (including waiving a requirement for the participation of an Experience Provider of a certain discipline or request the addition of an Experience Provider of a certain discipline).

9.11.2. The Tender Committee reserves the right to evaluate, at any stage, the compliance of any Pre-Qualification Submission with the requirements herein, including the compliance of any Pre-Qualification Submission reviewed by the Tender Committee (or any part thereof), to request additional information, to request the correction of any Deviation, to modify or nullify any decision of the Tender Committee, all for any reason as the Tender Committee may deem fit.

9.11.3. The Tender Committee may exercise any of the prerogatives pursuant to this Section 9.11 (Prerogatives of the Tender Committee) at any time (including following the issuance of the Tender Documents), up until bid submissions.

9.11.4. For the avoidance of doubt the Tender Committee shall not be obligated to exercise any of the prerogatives pursuant to this Section 9.11 (Prerogatives of the Tender Committee)

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