

State of Israel

**Ministry of Transport and
Road Safety**



Ministry of Finance

Acting through the Inter-Ministerial Tender Committee

INVITATION FOR PRE-QUALIFICATION

**IN RELATION TO THE PARTICIPATION IN A TENDER
FOR THE BLUE LINE OF THE JERUSALEM LIGHT RAIL TRANSIT
NETWORK**

APRIL 2020

INVITATION FOR PRE-QUALIFICATION

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Appendix B	-	Expected Requirements of the Tender Process
Appendix C	-	Advisors to the Tender Committee (to be published at a later stage) ¹
Appendix D	-	Exchange Rates (to be published at a later stage) ²
Appendix E	-	Pre-Qualification Forms (to be published at a later stage) ³
<u>Appendix F</u>	-	<u>Participating Entity Affidavit and Advisor Confirmation</u> ⁴

List of Pre-Qualification Forms (Appendix E)

Pre-Qualification Form “1”	The Pre-Qualification Submission Letter
Pre-Qualification Form “2”	Participating Entity
Pre-Qualification Form “3”	Experience in the Design and Installation of Systems
Pre-Qualification Form “4”	Experience in the Design and Installation of Signaling Systems
Pre-Qualification Form “5”	Experience in the Design and Construction of Track-Way
Pre-Qualification Form “6”	Rolling Stock Experience
Pre-Qualification Form “7”	Project Execution, Management and Organization Experience

¹ Deleted as part of Addendum No. 1, dated August 18, 2020.

² Deleted as part of Addendum No. 1, dated August 18, 2020.

³ Deleted as part of Addendum No. 1, dated August 18, 2020.

⁴ Added as part of Addendum No. 1, dated August 18, 2020.

Pre-Qualification Form “8”	Operating Experience
Pre-Qualification Form “9”	Maintenance Experience
Pre-Qualification Form “10”	Financial Robustness
Pre-Qualification Form “11”	Turnover
Pre-Qualification Form “12”	Securing Finance for an Infrastructure Project
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Pre-Qualification Form “14”	Institutional Investor Financial Robustness
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⁵ Amended as part of Addendum No. 1, dated August 18, 2020.

I. INVITATION FOR PRE-QUALIFICATION

1. Definitions

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

- | | | |
|------|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.1. | “70% Low Floor” | 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. |
| 1.2. | “Addendum” or “Addenda” | Shall have the meaning ascribed thereto in Section 14 of this Invitation. |
| 1.3. | “Advisors” | Shall have the meaning ascribed thereto in Section 18.2 of this Invitation. |
| 1.4. | “Agreement” | Shall mean the agreement which will be signed between the State of Israel and the Successful Bidder for the execution of the Project. |
| 1.5. | “Anticipated Holdings” | Shall mean the intended share of holdings of each Member in the Participant, to the extent applicable, as described in Pre-Qualification Form “2” (<i>Participating Entity</i>). |
| 1.6. | “Applicable EU Standards” | <p>Shall mean latest edition, immediately preceding the Pre-Qualification Submission Date of the following standards:</p> <ul style="list-style-type: none">(i) EN 12663: Railway Applications -Structural requirements of railway vehicle bodies;(ii) EN 13452: Railway Applications -Braking. Mass transit brake systems;(iii)EN 50121: Railway applications -Electromagnetic compatibility;(iv)EN 45545: Railway application - Fire protection on railway vehicles;(v) EN 15227: Railway applications - Crashworthiness requirements for railway vehicle bodies; and(vi)EN 14752: Railway applications - Body side entrance systems for rolling stock. |
| 1.7. | “Assets Under Management” | Shall mean the aggregate of all capital commitments and contributions made available to a fund, or funds under common Control, by the limited partners. |
| 1.8. | “Authorized Representative” | Shall have the meaning ascribed thereto in Section 25 of this Invitation. |
| 1.9. | “Bid” | Shall mean the bid submission submitted by an Eligible |

Participant within the Tender Process.

- 1.10. **“Business Day”** Shall mean any working day (excluding, Friday and Saturday) on which banks are open for business in Israel.
- 1.11. **“Commercially Operating”** Shall mean a Rail Project which is operational, providing transportation services to members of the public.
- 1.12. **“Competition Law”** Means the Promotion of Competition and Reduction of Concentration Law, 2013.
- 1.13. **“Completion” or “Completed”** Shall mean the delivery of the referenced project to the client, or the commencement of its operation in accordance with its intended use, whichever is earlier.
- 1.14. **“Construction”** Shall mean the procurement, supply and construction, installation, testing, commissioning and Completion of a referenced project.
- 1.15. **“Conference”** Shall have the meaning ascribed thereto in Section 15.1 of this Invitation.
- 1.16. **“Contract Value”** Shall mean the total amount of all payments which were paid to the Entity executing the referenced contract, pursuant to that specific referenced contract, excluding VAT, interest and indexation.
- 1.17. **“Control”** Shall have the meaning ascribed thereto in the Securities Law 1968.

Notwithstanding the above, with respect to a joint venture shall mean the power to impose or materially influence professional decisions on the joint venture or the power to veto decisions made by the joint venture.
- 1.18. **“Declared Entity”** Shall mean an entity: (i) declared pursuant to Section 3 and/or Section 9 of the Law for the Struggle with Iran’s Nuclear Program from 2012; and/or (ii) declared pursuant to Section 3 and/or 4 of Law for the Prevention of Distribution and Financing of Weapons of Mass Destruction from 2018; (iii) listed by the Israeli Sanctions Administration (“מטה הסנקציות”) according to any applicable Law.
- 1.19. **“Depot”** Shall mean a facility for light and heavy maintenance, washing plant and stabling facilities for LRT or Metro vehicles (in one location or in several separate locations).
- 1.20. **“Design”** Shall mean the detailed design process without the need for any additional studies or further development of the design.

- 1.21. **“Deviation”** 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.
- 1.22. **“Effective”** Shall mean the effective percentage of all Means of Control held by Entity A in Entity X, calculated by multiplying the percentages of Means of Control held by Entity A in each of the Entities in chain of holdings between Entity A and Entity X.

e.g. if Entity A holds 50% of all Means of Control of Entity B which holds 50% of all Means of Control of Entity X, then Entity A Effectively holds 25% of all Means of Control Entity X.
- 1.23. **“Eligible Participant”** Shall have the meaning ascribed thereto in Section 64 (Announcement of Eligible Participants) of this Invitation.
- 1.24. **“Entity”** Shall mean any corporation, company or partnership, recognized by law within its domicile, excluding individuals.
- 1.25. **“EPC Contractor”** Shall have the meaning which will be ascribed thereto in the Tender Documents.
- 1.26. **“Experience Provider(s)”** Shall have the meaning ascribed thereto in Section 21 (Experience Provider) of this Invitation.
- 1.27. **“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.
- 1.28. **“Financial Entity”** Shall mean: (i) a Private Investment Fund; or (ii) an Institutional Investor; or (iii) an Investment Entity.
- 1.29. **“Financial Pre-Qualification Requirement(s)”** Shall mean the requirements of Section 34 (Turnover); Section 35 (Members' Weighted Average Operating Cash Flow); Section 36 (Minimal Equity), Section 37 (Securing Finance for an Infrastructure Project) and (if applicable) Section 38 (Private Investment Fund) Section 39 (Institutional Investors) and Section 40 (Investment Entities) of this Invitation.

For the avoidance of doubt, the form of submission referenced in each of the Sections within Section V, shall not be deemed as a Financial Pre-Qualification Requirement.

- 1.30. **“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 42 (Submission of Financial Statements) 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 42 of this Invitation.
- 1.31. **“General Partner” or “Fund Manager”** Shall mean:
- a. the general partner or fund manager of the Private Investment Fund if such has successfully managed and raised at least two funds;
- or
- b. 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
- c. 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 entity₁ holds X% in fund manager₁, it shall not hold more than (X+10)% or less than

- (X-10)% in any other fund manager or general partner presented).
- 1.32. **“GoI”** Shall mean the Government of the State of Israel.
- 1.33. **“Guarantor”** Shall have the meaning ascribed thereto in Section 22 (Guarantor) of this Invitation.
- 1.34. **“Infrastructure Project”** Shall mean, a project for the Design and Construction of a large-scale infrastructure, including any of the following: a Rail Project, a highway project, a desalination facility, a tunnel, a hospital, a power generation facility, a port or an airport; with a Contract Value of not less than seven hundred and fifty million (750,000,000) NIS.
- 1.35. **“Installation” or “Installed”** Shall mean procurement, supply, integration, installation, testing, commissioning and Completion.
- 1.36. **“Institutional Investor”** Shall mean (i) each of the Entities listed in Sections 1–4 of Schedule 1 of the Securities Law 1968; and/or with respect to an Entity registered outside the State of Israel – a similar Entity pursuant to applicable law under the applicable jurisdiction.
- 1.37. **“Institutional Investor SPV”** ~~Shall mean a single incorporated limited liability company or partnership incorporated under the laws of the State of Israel, the Means of Control of which are held solely by Management Companies, which are all directly or indirectly Controlled by the same Institutional Investor.⁶~~
- 1.38. **“Interested Party”** Shall mean with respect to Entity₁: (a) any Entity or individual directly holding at least 15% of any of the Means of Control of Entity₁ (in this definition: “Entity₂”); (b) any Entity or individual Effectively holding at least 70% of any of the Means of Control of Entity₂; (c) the CEO of Entity₁; or (d) any of the directors of Entity₁.
- 1.39. **“Investment Entity”** Shall have the meaning ascribed thereto in the International Financial Reporting Standard (IFRS) 10 (Consolidated Financial Statements).
- 1.40. **“Invitation” or “Invitation for Pre-Qualification”** Shall mean this invitation for pre-qualification including all clarifications, Addenda, Amendments, notices and appendices or annexes thereof.
- 1.41. **“JTMT”** Shall mean the Jerusalem Transportation Master Plan Team.

⁶ Deleted as part of Addendum No. 1, dated August 18, 2020.

- 1.42. **“Law(s)”** Shall mean 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.
- 1.43. **“LRT” or “LRT Line(s)”** 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).
- 1.44. **“Main Contractor”** Shall mean an entity which is directly accountable for the execution of the referenced project (with respect to the applicable scope of work), bearing the risks related to the execution thereof, including its management and administration and the engagement and coordination of subcontractors. For the avoidance of doubt, entities which are accountable for the execution of the referenced project solely as a “project company” or a “concessionaire” pursuant to a “concession” or a “PPP” agreement will not be considered as Main Contractor under this definition.
- 1.45. **“Maintenance”** Shall mean to maintain or restore an asset in a specific condition so that it is able to perform a specific service.
- 1.46. **“Management Company(ies)”** ~~Shall have the meaning ascribed thereto in Section 20.3 of this Invitation.⁷~~
- 1.47. **“Manufactured”** Shall mean an entity which is directly accountable for the manufacturing of the Vehicles, bearing all the risks related thereto.
- 1.48. **“Means of Control”** Shall have the meaning ascribed thereto in the Securities Law 1968.
- Notwithstanding the above, with respect to a joint venture shall mean only the right to participate in the decision-making processes of a joint venture in a manner similar, mutatis mutandis, to those specified in the definition of "Means of Control" in the Securities Law 1968.

⁷ Deleted as part of Addendum No. 1, dated August 18, 2020.

- 1.49. **“Member(s)”** Shall have the meaning ascribed thereto in Section 20 (Members of the Participant) of this Invitation.
- 1.50. **“Member's Weighted Average Turnover”** Shall have the meaning ascribed thereto in Section 34.1.2 (Member's Weighted Average Turnover) of this Invitation.
- 1.51. **“Metro” or “Metro Lines”** 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.
- 1.52. **“Minimal Weighted Turnover Required”** Shall have the meaning ascribed thereto in Section 34.1.3 (Minimal Weighted Turnover Required) of this Invitation.
- 1.53. **“Network”** Shall mean the operation of several lines or Routes at different corridors at the same time by a single entity which is responsible for 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.
- 1.54. **“O&M Contractor”** Shall have the meaning which will be ascribed thereto in the Tender Documents.
- 1.55. **“Offence”** 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, the Economic Competition 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.
- 1.56. **“Operation”** Shall mean 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.
- 1.57. **“Operator”** Shall have the meaning ascribed thereto in Section 3 of Appendix B to this Invitation.
- 1.58. **“Participant”** Shall have the meaning ascribed thereto in Section 19.1 (The Participant) of this Invitation.
- 1.59. **“Participant's Weighted Turnover”** Shall have the meaning ascribed thereto in Section 34.1.1 (Participant's Weighted Turnover) of this Invitation.
- 1.60. **“Participating Entity”** Shall mean the Participant, a Member, an Experience Provider or a Guarantor.
- 1.61. **“Participation Fee”** Shall have the meaning ascribed thereto in Section 10.2 of this Invitation.
- 1.62. **“Pre-Qualification Documents”** Shall mean this Invitation, its Appendices, the Pre-Qualification Forms and any other document issued by the Tender Committee during the Pre-Qualification Process.
- 1.63. **“Pre-Qualification Forms”** Shall mean the forms attached hereto as Pre-Qualification Forms “1” - “16” which each Participant is required to complete, execute and submit as part of its Pre-Qualification Submission.
- 1.64. **“Pre-Qualification Process”** Shall have the meaning ascribed thereto in Section 2.1 (Introduction and General Description of the Project; Preface) of this Invitation; without derogating from the foregoing, shall mean the first stage of the Tender, ending upon the announcement of Eligible Participants which will be invited to participate in the Tender Process.
- 1.65. **“Pre-Qualification Submission Date”** Shall have the meaning ascribed thereto in Section 59 (Pre-Qualification Submission Date) of this Invitation.
- 1.66. **“Pre-Qualification Submission Letter”** Shall have the meaning ascribed thereto in Section 46 (Pre-Qualification Submission Letter) of this Invitation.
- 1.67. **“Pre-Qualification Submission(s)”** Shall mean the complete written pre-qualification submission submitted by a Participant, complying with the terms and conditions contained in this Invitation and including all the information and completed Pre-Qualification Forms.

1.68.	“Pre-Qualification Requirement(s)”	Shall mean the Technical Pre-Qualification Requirements and the Financial Pre-Qualification Requirements.
1.69.	“Private Investment Fund”	Shall mean an Entity incorporated for the purpose of making financial investments in which: (i) at least 60% of its financial investments were made available to it by Institutional Investors and (ii) it has a General Partner or Fund Manager.
1.70.	“Privileged Information”	Shall have the meaning ascribed thereto in Section 49.12 (Identification of Sensitive or Classified Information) of this Invitation.
1.71.	“Project”	Shall have the meaning ascribed thereto in Section 2 (Introduction and General Description of the Project) of this Invitation.
1.72.	“Rail Project”	Shall mean an LRT, a Metro, a commuter rail, or a heavy rail project, excluding high speed lines and freight trains.
1.73.	“Qualified Local Public Transportation Operator”	Shall have the meaning ascribed thereto in Section 3 of Appendix B (Expected Requirements) to this Invitation.
1.74.	“Regulations”	Shall mean the Mandatory Tender Regulations 1993, as amended from time to time.
1.75.	“Request(s) for Clarifications”	Shall have the meaning ascribed thereto in Section 13.1 (Requests for Clarifications) of this Invitation.
1.76.	“Related Entity”	Shall have the meaning ascribed to such term (“גורם קשור” or “גורמים הקשורים לתאגיד הזר המסייע”, as applicable, including derivatives thereof), pursuant to: (i) the Law for the Struggle with Iran’s Nuclear Program from 2012; and/or (ii) the Law for the Prevention of Distribution and Financing of Weapons of Mass Destruction from 2018.
1.77.	“Relying Entity”	Shall have the meaning ascribed thereto in Section 43 of this Invitation.
1.78.	“Route”	Shall mean a bi-directional route of a Rail Project. In the event that a Route includes double track alignment it will be counted as a single Route for the purpose of this Invitation.
1.79.	“Signaling Systems”	Shall mean (i) line of sight driving signaling system (LOSD) which supports operation of at-grade urban sections; or (ii) automatic train control (ATC) signaling

system for the safe regulation of movement of trains.

- 1.80. **“SPC”** Shall have the meaning ascribed thereto in Section 69 (Formation of a Single Purpose Company) of this Invitation.
- 1.81. **“SPV”** Shall mean a special purpose company, a special purpose partnership or a special purpose joint venture.
- 1.82. **“Stops”** Shall mean the points along an LRT or a Metro Route (at grade or underground), with a dedicated platform for passengers to board and alight from vehicles, and all necessary facilities and structures, including the relevant sub-systems. For the avoidance of doubt:
- (i) a pole shall not be considered a “Stop” for the purpose of this definition; and
- (ii) multiple platforms located at the same location (such as parallel platforms), will be counted as a single “Stop”.
- 1.83. **“Subsidiary”** Shall mean company or a partnership in which the relevant Entity directly holds 50% or more of the shares, all partnership interests and of all other Means of Control.
- 1.84. **“Successful Bidder”** Shall mean the Eligible Participant awarded with the Agreement pursuant to the completion of the Tender Process.
- 1.85. **“Systems”** Shall mean all of the following: (i) power supply and distributions; (ii) overhead catenary systems; and (iii) at least two (2) of the following low voltage systems: operation control center, SCADA, transmission network and automatic vehicle location (AVLS).
- 1.86. **“Technical Pre-Qualification Requirement(s)”** Shall have the meaning ascribed thereto in Chapter IV (Technical Pre-Qualification Requirements) of this Invitation.
- For the avoidance of doubt, the form of submission referenced in each of the Sections within Chapter IV, shall not be deemed as a Technical Pre-Qualification Requirement.
- 1.87. **“Tender”** Shall have the meaning ascribed thereto in Section 2.2 (Introduction and General Description of the Project; The Selection Process and the Tender Stages) of this Invitation.
- 1.88. **“Tender Committee”** Shall mean the committee appointed by the Accountant General of the State of Israel in accordance with the provisions of the Regulations, in order to control and manage the Pre-Qualification Process and the Tender Process.

- 1.89. **“Tender Documents”** Shall mean the Pre-Qualification Documents and the Tender Process Documents.
- 1.90. **“Tender Process Documents”** Shall mean all documents which shall be issued as part of the Tender Process, including the request for proposals and all forms provided therein, the Agreement, the technical volumes and all appendices attached therein, and any other document which will be issued by the Tender Committee during the Tender Process.
- 1.91. **“Tender Process”** Shall mean the second stage of the selection process, in which Eligible Participants will submit their Bids and a Successful Bidder for the Project shall be selected.
- 1.92. **“Track-way”** Shall mean a ballast-less track system which:
- (a) Provides support and guidance for vehicles carried on flanged wheels;
 - (b) Includes slab track rails and switches; and
 - (c) Has not been precast. I.e. the track shall not be a generic, ready to be laid product that is produced by means of an automatic mechanical process which is particularly adapted to track laying on long distance, outside the urban context.
- 1.93. **“Updated Financial Statements”** Shall have the meaning ascribed thereto in Section 68.2 (Updated Financial Statements) of this Invitation.
- 1.94. **“Update Statement”** Shall have the meaning ascribed thereto in Section 68.1 of this Invitation.
- 1.95. **“Vehicle(s)”** Shall mean self-propelled motorized light rail or metro passenger cars with a minimum length of twenty-five (25) meters and a minimum capacity of thirty (30) seats and one hundred and fifty (150) passengers.
- 1.96. **“Website”** Shall have the meaning ascribed thereto in Section 10.1 of this Invitation.
- 1.97. **“Weighted Average Operating Cash Flow”** Shall have the meaning ascribed thereto in Section 35.2 (Financial Pre-Qualification Requirements; Operating Cash Flow) of this Invitation.

2. Introduction and General Description of the Project

2.1. Preface

- 2.1.1. The Government of the State of Israel, operating through the Tender Committee, hereby invites Entities to participate in the Pre-Qualification Process in relation to a project for the finance, design, construction, operation, maintenance and transfer of the Blue Line of the Jerusalem LRT network, all in accordance with the provisions of the Pre-Qualification Documents, including all Appendices thereof (the “**Pre-Qualification Process**” and the “**Project**”, respectively).
- 2.1.2. The Tender Committee is issuing this Invitation as part of a tender for the execution of the Project with a pre-qualification stage. However, it is hereby clarified, without derogating from the provisions of Section 70.5 below, that as of the date of the publication of this Pre-Qualification Invitation, the next stages of this Tender, including the Tender Process and the issuance of the Tender Process Documents, the execution of an agreement between the State of Israel and the Successful Bidder and the execution of the Project shall only progress subject to the applicable decision of the GoI which is a condition precedent for continuing with the subsequent stages of this Tender, without any obligation or representation in this regard.

2.2. The Selection Process and the Tender Stages

The Tender Committee intends to select the Successful Bidder which will execute the Project through a competitive process with the following two stages (the “**Tender**”):

- 2.2.1. this Pre-Qualification Process; and
- 2.2.2. the Tender Process.

2.3. General Description of the Project

- 2.3.1. Without derogating from the provisions of any other Pre-Qualification Document, hereunder is only a general and indicative description of the Project. It is hereby clarified that the actual scope of works shall be determined in the Tender Process Documents and shall be considered the definitive scope for the execution of the Project.
- 2.3.2. The Project includes the finance, design, construction, operation and maintenance of the Blue Line of the Jerusalem LRT network, as further detailed in **Appendix A** (General Description of the Project).
- 2.3.3. The term of the Agreement shall be determined in the Tender Process Documents and shall include a development phase, construction phase and operation and maintenance phase. The term of the Agreement is expected to be twenty-five (25) years.
- 2.3.4. It is hereby clarified that the Tender Committee has not yet made a decision with regard to the operation of the Blue Line as part of the Jerusalem LRT network, including all aspects thereof, and, accordingly, the Tender Committee reserves all of its rights, in considering all relevant alternatives, at its sole discretion, inter alia, its right to assess and determine in the future

which tasks in connection with the operation of the Blue Line or the Jerusalem LRT network, if any, will be entrusted to the Successful Bidder.

Without derogating from the above, the Tender Committee reserves its rights to determine within the Tender Process Documents (to the extent that it is decided to proceed with the Tender, following the Pre-Qualification Process), inter alia, without limitation, that the operation of the Blue Line will not be performed by the Successful Bidder (or that the Successful Bidder will be partially responsible or responsible for a limited period of time or any other alternative), and that the responsibility for such will be assumed by a different operator.

2.3.5. It is hereby clarified that the foregoing shall not be construed to limit or derogate from the discretion of the Tender Committee, and the foregoing shall not be interpreted in a manner that requires the Tender Committee to act or refrain from acting in any particular way.

2.3.6. It is further clarified that the foregoing shall not derogate from any authority vested in the Tender Committee under any Law or the Pre-Qualification Process Documents, including Section 70 (Reservation of Rights) of this Invitation. Furthermore, without derogating from Section 2.1.2 above, it is clarified that a decision has not been made by the GoI in connection with the advancement of the Tender following the Pre-Qualification Process.

3. The Pre-Qualification Process

- 3.1. The purpose of this Pre-Qualification Process is to identify Eligible Participants, who will be invited to participate in the Tender Process.
- 3.2. 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.
- 3.3. Pre-Qualification Submissions submitted by the Participants will be evaluated by the Tender Committee, in accordance with the provisions of this Invitation.
- 3.4. Without derogating from the provisions of Chapter IX (REVIEW AND EVALUATION OF PRE-QUALIFICATION SUBMISSIONS) of this Invitation, at the end of its evaluation, the Tender Committee will announce the Eligible Participants. Only those Participants who: (i) demonstrated compliance with all Pre-Qualification Requirements and all other applicable provisions of this Invitation, and; (ii) were not otherwise disqualified thereby; and (iii) were announced as Eligible Participants, will be invited to participate in the Tender Process.
- 3.5. It is hereby clarified that some of the minimum threshold requirements stipulated herein may be construed to exceed the levels stipulated in Section 2 of the annex to the Mandatory Tender Law, 1992. The Tender Committee refers to these as necessary, inter alia, for the following reasons: (i) the Blue Line of the Jerusalem LRT network is a unique project requiring proven experience in complex works, systems and operations; (ii) it includes requirements for innovative technical and

technological solutions and is open for international leading companies in their field of expertise; (iii) the engagement is for a long concession period and will require extensive financial resources; and (iv) the Tender Committee wishes to ensure it engages a profoundly qualified as well as a financially stable concessionaire with extensive activity and experience.

4. The Tender Process and Expected Requirements

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

4.2. Without derogating from Tender Committee's rights and prerogatives pursuant to the Pre-Qualification Documents, inter alia Section 70 (Reservation of Rights), and the Law, it is expected that, within its proposal during the Tender Process each Eligible Participant and each Member, Guarantor and Experience Provider will be required to comply with the requirements specified in **Appendix B** (Expected Requirements).

4.3. 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.

4.4. Anticipated Schedule

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

- | | | | |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-------------------|
| 4.4.1. | Publication of the Invitation for Pre-Qualification | - | April 7, 2020 |
| 4.4.2. | Final date for the Submission of Requests for Clarifications in accordance with Section 13 (Requests for Clarification of this Invitation) of this Invitation. | - | September 7, 2020 |
| 4.4.3. | Pre-Qualification Submission Date | - | November 11, 2020 |

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 14 (Addenda) of this Invitation.

II. RULES AND PROCEDURES

5. Governing Law and Jurisdiction

- 5.1. The Pre-Qualification Process and the Pre-Qualification Documents shall be governed and construed in accordance with the provisions of the Laws of the State of Israel, including the Mandatory Tenders Law 1992, and the Mandatory Tender Regulations 1993.
- 5.2. 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.
- 5.3. The foregoing does not derogate from the obligation of any Participating Entity (to the extent applicable) and anyone on their behalf, to address the Tender Committee, in writing, with a specific and detailed claim or complaint.

6. Preparation for Submission

- 6.1. By submitting a Pre-Qualification Submission, each Participating Entity confirms and will be deemed to have confirmed that it has received the complete Pre-Qualification Documents, that it has read, considered and understood the Pre-Qualification Documents, and that it accepts the terms and conditions thereof and all obligations and undertakings specified or implied therein.
- 6.2. Each Participating Entity and the Pre-Qualification Submissions shall: (i) abide by the Laws; and (ii) shall be subject to any changes in any of the Laws, even if such changes will be introduced during the Pre-Qualification Process.
- 6.3. Each Participating Entity is assumed to have obtained professional advice with respect to the relevant disciplines, including legal, financial and constructional disciplines, for participating in the Pre-Qualification Process.

7. 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.

8. 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.

9. 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.

10. Access to Documents and Registration

- 10.1. Any Entity wishing to participate in the Pre-Qualification Process may view the Pre-Qualification Documents (a) at the offices of the JTMT at 97 Jaffa St., Jerusalem from Sunday to Thursday, between 9:00–17:00 Israel time, subject to prior coordination with Ms. Sapir Kratenstein, the coordinator of the Tender Committee, phone no. +972(0)3-9778092; or (b) by sending a request (via email: blue_line@jtmt.gov.il) to receive the Pre-Qualification Documents by email; or (c) at the following websites: www.jlrt.org.il and <https://www.mr.gov.il/OfficesTenders/Pages/SearchOfficeTenders.aspx> (the “Website”).
- 10.2. As a pre-condition for the participation in the Tender and the submission of the Pre-Qualification Submission, each Participant shall pay a participation fee in an amount of NIS 5,000 (five thousand New Israeli Shekels) (VAT included) (the “Participation Fee”).
- 10.3. The Participation Fee shall be paid by any of the following methods:
- 10.3.1. By an Israeli credit card or wire transfer, at the following website:
<https://ecom.gov.il/counter/general/Homepage.aspx?counter=62>
- 10.3.2. By a bank transfer from an Israeli bank account - to the Bank of Israel (bank code: 99, branch code: 001), bank account number 1310010081303 (Accountant General - NIS income account).
- 10.3.3. By a bank transfer from a foreign bank account -
- Final Beneficiary Bank = Bank of Israel, Jerusalem
Swift code = ISRAILJ
Beneficiary Name = Accountant General-NIS income account
Beneficiary IBAN = IL370990011310010081303
- 10.4. Without derogating from the provisions of Section 70 (Reservation of Rights) the Participation Fee shall not be refunded in any way, for any reason.
- 10.5. Participants shall submit a copy of the receipt for the payment of the Participation Fee together with Pre-Qualification Form “1” (*The Pre-Qualification Submission Letter*).
- 10.6. A person or an Entity may pay the Participation Fee on behalf of another Entity. It is hereby clarified that an Entity who has not paid the Participation Fee may submit a Pre-Qualification Submission, provided that the right to participate pursuant to the payment of the Participation Fee was assigned or transferred from an Entity entitled to participate. For the avoidance of doubt, any single Participation Fee shall entitle the submission of one (1) Pre-Qualification Submission.
- 10.7. Participants shall be responsible for informing the Tender Committee of any change in their contact details and by submitting its Pre-Qualification Submission each Participant shall be deemed to have received all Pre-Qualification Documents.

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

11. Cost of Participation in the Pre-Qualification Process

A Participating Entity and anyone on its behalf, will solely bear any and all costs and expenses connected with participation in the Pre-Qualification Process and the preparation of the Pre-Qualification Submission(s) as incurred by such, regardless of any amendments made to the requirements herein by the Tender Committee 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 or in the event that the Tender does not continue following the Pre-Qualification Process for any reason whatsoever.

12. Language

This Invitation is published in English. Notwithstanding the foregoing, the Tender Committee reserves the right to issue a Hebrew version of this Invitation or any part of the Pre-Qualification Documents, 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, at any time. In addition, the Tender Committee reserves the right to conduct its business in Hebrew or English, including in meetings, discussions, correspondences, internal deliberations, etc.

13. Requests for Clarification of this Invitation

13.1. Questions and requests for clarifications or interpretations to the Pre-Qualification Documents may be submitted, in writing, by no later than the deadline for the submission of requests for clarifications as set forth in Section 4.4 (Anticipated Schedule) ("**Request(s) for Clarification**") above.

13.2. Such Requests for Clarifications shall be addressed, in writing only, to:

Mr. Nechemya Kind
Chairman of the Tender Committee

Via: Ms. Sapir Kratenstein, Coordinator of the Tender Committee
The Jerusalem Transportation Master Plan Team
Address: 97 Jaffa St. Jerusalem
P.O.B 28034
Phone: +972-2-6299888
Email: blue_line@jtmt.gov.il

When submitting its first Request for Clarification, each Entity shall provide details of its appointed representative for purpose of sending Requests for Clarifications and receiving notices regarding the publication of Addenda (as stipulated in Section 14.3 below), including its postal address, telephone and facsimile numbers and e-mail address.

It is hereby clarified that 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 an Entity or anyone on its behalf, due to an error or omission with respect to any information provided by such Entity under this Section.

- 13.3. Requests for Clarifications shall be submitted via email in a signed, searchable PDF file and in an open for editing MS-Word file, and in the following format:

Clarification No.	Section (Reference to the relevant Section in the exact Pre-Qualification Documents/Tender Process Documents)	Subject	Clarification/Question
1.			
....			

Without derogating from the provisions of Section 13.6 below, 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 13.3.

- 13.4. Entities that submit Requests for Clarification shall verify the receipt of Requests for Clarifications by the Tender Committee.
- 13.5. The Tender Committee may request Entities to provide clarifications to any part of their Request for Clarifications, including by way of meeting with such Entities or any of them.
- 13.6. 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.
- 13.7. 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 14 (Addenda). Entities shall acknowledge receipt of any Addendum in the manner set forth in Section 14 (Addenda).
- 13.8. 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.
- 13.9. Any request for clarification not responded by the Tender Committee shall be deemed rejected.

13.10. Any Request for Clarification of the Pre-Qualification Documents raised at a date following the deadline for the submission thereof as provided in Section 4.4 (Anticipated Schedule), will be accepted or rejected, answered or not, at the discretion of the Tender Committee.

13.11. For the avoidance of doubt, a response by the Tender Committee to any Request for Clarification shall not derogate from the discretion or the prerogatives of the Tender Committee under any Law and under this Invitation, including under Section 14 (Addenda).

14. **Addenda**

14.1. Notwithstanding any of the provisions of the Pre-Qualification Documents and without derogating from the discretion of the Tender Committee under the provisions of Section 70 (Reservation of Rights) and Law, 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, at any time, 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 the Pre-Qualification Documents.

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

For the avoidance of doubt, no answers, clarification or amendment to the Pre-Qualification Documents shall be binding unless issued in the form of an Addendum.

14.3. Copies of Addenda published by the Tender Committee shall be published at the Website and notices regarding such publication shall be furnished to all Entities or Participants who have addressed the Tender Committee with Request(s) for Clarification(s) in accordance with Section 13 (Request for Clarification of this Invitation).

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

14.5. Entities who have provided the Tender Committee with contact details in accordance with the provisions of Section 13.2 above, are required to acknowledge receipt of notices regarding publication of Addenda in writing no later than two (2) Business Days following receipt thereof by a return email to the email address specified in Section 13 (Requests for Clarifications) above.

The foregoing does not derogate from the provisions of Section 14.6 below and shall not be construed as creating any obligation on the part of the Tender Committee to inform any Entity or Participant of any Addenda published at the Website.

- 14.6. Participants are required to check the Website on a regular basis for any addenda, updates, postponements, changes, clarifications or modifications, during the Pre-Qualification Process and prior to the Pre-Qualification Submission Date.
- 14.7. Without derogating from the generality of the provisions of Sections 4.4 (Anticipated Schedule) and 14 (Addenda) above, the Tender Committee may postpone the Pre-Qualification Submission Date, or any other date herein, by such number of days as shall be necessary in the opinion of the Tender Committee and may repeat this process if necessary. The announcement of a new Pre-Qualification Submission Date, if any, shall be by an Addendum in accordance with this Section 14 (Addenda), and all of the provisions with respect to the previous Pre-Qualification Submission Date shall apply to such new date, including any Addendum, unless otherwise specified in the Addenda with regard to the postponement. Nothing in this Section shall be construed as an obligation by the Tender Committee to grant an extension.

15. Site Visit and Conference

- 15.1. The Tender Committee reserves the right to hold a conference and/or a site visit and/or face-to-face meetings (the “**Conference**”), which will take place at the location and at the time to be announced by the Tender Committee.
- 15.2. The Tender Committee may limit the number of participants on behalf of a Participant in the Conference and may request a prior confirmation for participation in the Conference.
- 15.3. It is hereby clarified that the participation of the Participant or its authorized representative in the Conference shall not be a Pre-Qualification Requirement nor a requirement for submission of the Pre-Qualification Submissions and shall not be mandatory.
- 15.4. At the Conference, the Tender Committee may answer questions referred to it by participants.
- 15.5. However, it is hereby clarified that the Tender Committee shall not be bound by, and Participants shall not rely on, any oral representation or information made by the Tender Committee or Participants during the Conference, and any such information shall be provided for informative purposes only. Only an Addendum or written minutes issued by the Tender Committee, if issued, following the Conference in accordance with the provisions of Section 14 (Addenda) above, shall be binding.

16. Intellectual Property Rights

The Pre-Qualification Documents and any and all intellectual property rights therein, including any professional and general matters with respect to the Project, are exclusively owned by the Tender Committee and are supplied to the Participants solely for the purpose of participation in the Pre-Qualification Process.

17. Information Supplied to the Participants

- 17.1. The description of the Project detailed in each section of this Invitation is general and indicative only. The actual scope of works and further particulars with respect to the Project may differ from the description thereof in this Invitation.
- 17.2. In any event and without derogating from the foregoing, to the extent applicable during the Pre-Qualification Process, Participating Entities 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.
- 17.3. 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 the Participating Entities, is either complete or accurate or has undergone any independent verification of the GoI, the Tender Committee, the JTMT or on their behalf. The Tender Committee shall not be responsible for such information and/or any use of such information by the Participating Entities and/or anyone on their behalf and/or the Successful Bidder and/or anyone on its behalf.
- 17.4. The issuance of the Pre-Qualification Documents, including any information and data provided therein or by the Tender Committee or anyone on its behalf, shall not be construed as giving rise to or creating any representation, undertaking or warranty by the Tender Committee or anyone on its behalf with respect to the Tender Process, the Project and its execution, the time schedule for the execution of the Project and the expected requirements with respect thereof, all of which are subject to change.
- 17.5. It is expressly understood that the reliance of the Participating Entity and/or any Entity and/or anyone on their behalf, including their employees, officers, agents, or any other persons for whom Participants may be contractually or legally responsible or accountable, on any information contained in the Pre-Qualification Documents or provided in connection therewith, 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, and the Participants shall refrain from any claim against the Tender Committee and the JTMT/or against anyone on its behalf with respect thereto.
- 17.6. The GoI, the Tender Committee and JTMT, any anyone on their behalf, shall not be responsible in any respect for any loss or damage whatsoever suffered by a Participating Entity 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.

18. Advisors to the Tender Committee

- 18.1. The Participating Entities 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 interest, including a conflict of interest which may arise as a result of engaging employees, advisors or sub-contractors of the Tender Committee.

18.2. Without derogating from the foregoing, **Appendix C** (Advisors to the Tender Committee) to this Invitation contains a list of the advisors to the Tender Committee (the “**Advisors**”). Subject to the provisions of any and all applicable Laws, the Tender Committee may exercise its rights under any of the Pre-Qualification Documents 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 **Appendix C** or any part thereof as it shall deem appropriate under the circumstances.

18.3. **Prohibition on Provision of Services in Connection to the Pre-Qualification Process, the Tender Process or the Project.** Any Entity or person listed in **Appendix C**, 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, Participating Entities with respect to the Pre-Qualification Process, the Tender Process or the Project.

For avoidance of doubt, the foregoing shall apply: (a) if the Advisor is an Entity – to any person who is an employee of such Entity; and (b) if the Advisor is a person – to any Entity Controlled by such person.

18.4. **Provision of Services in Other Projects.** Without derogating from the foregoing, the engagement of an Advisor(s) by a Participating Entity which meets the following conditions shall be permitted, subject to the provisions of Sub-sections 18.5, 18.6 and 18.7 below:

18.4.1. the services provided by the relevant Advisor to the Participating Entity are not related, directly or indirectly, to the Pre-Qualification Process, the Tender Process or the Project; and

18.4.2. the services are provided to the Participating Entity by different personnel, individuals and/or teams of the Advisor from those personnel, individuals and/or teams of the Advisor that (i) advise the Tender Committee; and/or (ii) are involved with the Tender or Project in any capacity; and/or (iii) report to those that advise the Tender Committee and/or are involved with the Tender or Project in any capacity; and

18.4.3. the Advisor’s revenues from such services to a Participating Entity do not exceed 1% of its annual revenue.

18.5. Where a Participating Entity has engaged an Advisor that complies with the conditions listed in Section 18.4 above, the Participating Entity is required to notify the Tender Committee of such as soon as possible but by no later than forty-five (45) days prior to the Pre-Qualification Submission Date, and submit a duly signed affidavit with a declaration to such effect, signed by the Participating Entity or the

relevant Advisor, in the format attached hereto as **Appendix F**.⁸ To the extent that the Participating Entity does not notify the Tender Committee of such, the engagement of the Advisor shall be deemed not approved and shall give rise to suspicion of a conflict of interest.

- 18.6. For the avoidance of doubt, any engagement of an Advisor that does not meet the conditions in Section 18.4 is prohibited so long as it has not been specifically approved by the Tender Committee, in the event of which, the Participating Entity or the relevant Advisor shall submit a duly signed affidavit with a declaration to such effect, in the format attached hereto as **Appendix F** for the Tender Committee's decision.⁹
- 18.7. The Tender Committee reserves the right to determine that the engagement of any Advisor by a Participating Entity is not approved, despite its seeming compliance with the conditions listed in Section 18.4 above.
- 18.8. Without derogating from the provisions of this Section 18 (Advisors to the Tender Committee) and from any and all of the Tender Committee's rights under the Pre-Qualification Documents and under any Law, the Tender Committee shall be entitled, at its sole discretion, to take any action required to ensure the absence of a conflict of interest including, *inter alia*, request to amend or amend the terms of any engagement of an Advisor, to disqualify Participants, Members 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.

III. GENERAL PROVISIONS RELATING TO PARTICIPANTS

19. The Participant

- 19.1. A Participant is required to be: (i) a single Entity which complies with the provision of Section 20 (Members of the Participant); or (ii) a number of Entities, each of which complies with the provision of Section 20 (Members of the Participant), acting jointly for the purpose of submitting a Pre-Qualification Submission ("**Participant**").
- 19.2. The incorporation of a Participant as a special purpose company for purposes of the Project, will be only required during the Tender Process as described in Section 69 (Formation of a Single Purpose Company).
- 19.3. **Form of Submission.** In order to demonstrate compliance with this Section 19 (The Participant), each Participant, if incorporated, and each of its Members shall complete, execute and submit Pre-Qualification Form "1" and Pre-Qualification Form "2".

20. Members of the Participant

⁸ Added as part of Addendum No. 1, dated August 18, 2020.

⁹ Added as part of Addendum No. 1, dated August 18, 2020.

20.1. Members of a Participant shall mean each of the Entities committed to hold Anticipated Holdings in the Participant, as detailed in Pre-Qualification Form “2” (*Participating Entity*) and which complies with:

20.1.1. all of the requirements of Section 23 (Participation - General Requirements); and

20.1.2. the applicable Financial Pre-Qualification Requirements in accordance with the provisions of Chapter V (FINANCIAL PRE-QUALIFICATION REQUIREMENTS).

(a “**Member**”).

20.2. ~~Without derogating from the generality of the foregoing, a Participant shall not have more than five (5) Members.~~¹⁰

20.3. ~~Notwithstanding the foregoing, if, as is required pursuant to any applicable Law and pursuant to internal regulations (subject to the approval of the Tender Committee) in order to comply with any applicable Law, an Institutional Investor which Controls several companies managing assets of pension and provident funds (“**Management Company(ies)**”), is required to participate in the Pre-Qualification Process or the Tender Process through more than one of such Management Companies, such Institutional Investor will be entitled (in order for the Participant not to exceed the limitation specified in Section 20.2 above), and if the Participant through which it participates is announced an Eligible Participant, to form an Institutional Investor SPV in order to participate in the Tender Process, and~~

~~(i) — the Institutional Investor SPV shall be deemed a Member, for the Purposes of the Tender Process and the Project, and~~

~~(ii) — each Management Company shall be deemed a Member for the purpose of the Pre-Qualification Process, with the exception of the limitation on the number of Member pursuant to Section 20.2 above.~~

~~It is expected that, during the Tender Process, each Management Company will be requested to provide the Tender Committee with a Management Company’s undertaking in accordance with the provisions of the Tender Documents.~~¹¹

20.4. **Form of Submission.** In order to demonstrate compliance with, *inter alia*, the provisions of this Section 20 (Members of the Participant), each Member shall complete, execute and submit Pre-Qualification Form “2”.

21. **Experience Provider**

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

¹⁰ Deleted as part of Addendum No. 1, dated August 18, 2020.

¹¹ Deleted as part of Addendum No. 1, dated August 18, 2020.

21.1.1. all of the requirements of Section 23 (Participation - General Requirements); and

21.1.2. any of the Technical Pre-Qualification Requirements in Chapter IV (TECHNICAL PRE-QUALIFICATION REQUIREMENTS).

(an “**Experience Provider**”).

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

21.2. **Form of Submission.** In order to demonstrate compliance with this Section 21 (Experience Provider), each Experience Provider shall complete, execute and submit Pre-Qualification Form “2”.

22. **Guarantor**

22.1. A Guarantor for a Member shall mean a single Entity, which (i) is another Member or; (ii) Controls the Member which seeks to rely on it,

and complies with:

22.1.1. all of the requirements of Section 23 (Participation - General Requirements); and

22.1.2. the applicable Financial Pre-Qualification Requirements in accordance with the provisions of Chapter V (FINANCIAL PRE-QUALIFICATION REQUIREMENTS);

(a “**Guarantor**”).

22.2. **Form of Submission.** In order to demonstrate compliance with this Section 22 (Guarantor), each Guarantor shall complete, execute and submit Pre-Qualification Form “2”.

23. **Participation - General Requirements**

Each Participant (if such is a single Entity, already incorporated on the Pre-Qualification Submission Date), and each Member, Experience Provider and Guarantor (if applicable) needs to comply and satisfy all of the following requirements:

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

23.2. 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).

23.3. Without derogating from Section 26.3 below, in the event that a Participating Entity is a non-Israeli governmental or municipal authority or company, it has the requisite authority to operate outside of its jurisdiction, and in particular, in Israel.

- 23.4. 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 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, 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.
- 23.5. Its most recent Financial Statements do not include a “going concern notice” or a notice of similar effect.
- 23.6. It 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 or domiciled in a country which does not have diplomatic relations with the State of Israel.
- 23.7. It is not a Declared Entity and it is not a Related Entity of a Declared Entity; and the office holders thereof involved in the Pre-Qualification Process, in the Tender Process or in the Project (including individuals) are not Declared Entities or Related Entities of the Declared Entities.
- 23.8. 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.
- 23.9. To the extent required under Law, if incorporated in the State of Israel, or registered in Israel as a Foreign Company as defined under the Companies Law 1999, it shall provide all relevant approvals and statements as required in accordance with the provisions of the Public Entities Transactions Law 1976 by completing and executing Pre-Qualification Form “16”, 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, to the extent required under the Law, which shall be appended to Pre-Qualification Form “16”.
- 23.10. Each Entity shall provide an authenticated copy of its certificate of incorporation and articles of association, or if an Entity is not incorporated in the State of Israel it shall provide the equivalent approvals and statements regarding its corporate registration in accordance with the laws in its domicile.

In the event such foreign Entity is registered in Israel as a Foreign Company under the Israel Corporation Law 5759-1999, or as a foreign partnership under the Israeli Partnership Ordinance, 1975, such Entity shall also attach the appropriate certification of registration accordingly. A Member which is a Private Investment Fund shall also attach to its submission the Private Investment Fund’s partnership agreement. All such documents of incorporation shall be submitted under the relevant Pre-Qualification Forms, as indicated therein.

24. An Entity Charged with, or Convicted of, an Offence

- 24.1. In the event that a Participating Entity or any Interested Party thereof which is required to comply with the provisions of Section 23 (Participation - General Requirements) does not comply with the requirement of Section 23.8, such Participating Entity shall submit to the Tender Committee, as soon as possible but by no later than forty-five (45) 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).

Without derogating from the foregoing, the Participating Entity is encouraged to submit the applicable information as soon as possible (prior to the Pre-Qualification Submission Date), to facilitate the Tender Committee's decision stipulated in Section 24.2 below.

- 24.2. Without derogating from the provisions of Section 70 (Reservation of Rights), the Tender Committee: (i) shall decide (at its sole discretion), whether or not an Entity which does not comply with the provisions of Section 23.8 may participate in a Pre-Qualification Submission; or (ii) impose conditions with respect to its participation, in each case, as the Tender Committee shall deem fit.
- 24.3. Any decision reached by the Tender Committee shall be provided to the Participant and will be conveyed to all other Participants in a manner which shall be determined by the Tender Committee, but without disclosing the identity of such Entity or the nature of the Offence (unless otherwise determined by the Tender Committee, at its sole discretion).

25. **Authorized Representative**

- 25.1. As part of the Pre-Qualification Submission, 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 all the Participating Entities (an "**Authorized Representative**"). It is hereby clarified that a notice delivered by the Authorized Representative shall be deemed to have been duly delivered by the Participant and all Participating Entities on its behalf, and shall bind them for all intents and purposes.
- 25.2. 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.

26. **Participation in a Pre-Qualification Submission**

26.1. General

- 26.1.1. Each Participant may participate in only one Pre-Qualification Submission.
- 26.1.2. Each Member may participate in only one Pre-Qualification Submission.

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

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

26.2. Interpretations

For the purpose of the provisions of Section 26.1, 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.

26.3. Government Companies

26.3.1. 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, including as a Participant, a Member, an Experience Provider or a Guarantor.

26.4. 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.

26.5. Security and Additional Considerations

Without derogating from any of its rights and prerogatives pursuant to this Invitation or Law, the Tender Committee reserves the right:

26.5.1. to impose additional or new conditions, limitations, prohibitions, or restrictions, inter alia, with respect to the participation of a Participating Entity in the Pre-Qualification Process, the Tender Process or the Project, which relate to security considerations (including national security); and

26.5.2. to impose additional or new conditions, limitations, prohibitions, or restrictions, inter alia, with respect to the participation of a Participating Entity in the Pre-Qualification Process, the Tender Process or the Project, which relate to competition, including pursuant to the Promotion of Competition and Reduction of Concentration Law;

26.5.3. to 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 (including Approval of a Recognized Contractor for Governmental Works) (or the presentation of applicable exemption).

IV. TECHNICAL PRE-QUALIFICATION REQUIREMENTS

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

27. Experience in the Design and Installation of Systems

Each Participant is required to demonstrate that during the period commencing on January 1, 2007 and ending on the Pre-Qualification Submission Date, an Experience Provider on its behalf has:

27.1. Completed, as a Main Contractor, the Design and Installation of Systems for at least three (3) Rail Projects: (i) at least two (2) of which consist of not less than twelve (12) km of Routes (each); and (ii) cumulating at least thirty-six (36) km of Routes;

27.2. At least two (2) of the referenced Rail Projects are in different cities; and

27.3. At least two (2) of the referenced Rail Projects have been Commercially Operating for at least two (2) consecutive years following their Completion.

Form of Submission. In order to demonstrate compliance with this Section 27 (Experience in the Design and Installation of Systems), the Experience Provider shall complete, execute and submit Pre-Qualification Form “3”.

28. Experience in the Design and Installation of Signaling Systems

Each Participant is required to demonstrate that during the period commencing on January 1, 2007 and ending on the Pre-Qualification Submission Date, an Experience Provider on its behalf has:

28.1. Completed as a Main Contractor the Design and Installation of Signaling Systems for at least three (3) LRT Lines or Metro Lines;

28.2. In one of the referenced projects, a line of sight driving signaling subsystem (LOSD) was Designed, Installed and Completed in at least one (1) LRT Line which consists of not less than seven consecutive (7) km of Routes;

28.3. All of the referenced LRT or Metro Lines cumulating at least twenty-one (21) km;

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

28.5. At least two (2) of the referenced LRT or Metro Lines have been Commercially Operating for at least two (2) consecutive years following their Completion.

Form of Submission. In order to demonstrate compliance with this Section 28 (Experience in the Design and Construction of Signaling Systems), the Experience Provider shall complete, execute and submit Pre-Qualification Form “4”.

29. Experience in the Design and Construction of Track-Way

Each Participant is required to demonstrate that during the period commencing on January 1, 2007 and ending on the Pre-Qualification Submission Date, an Experience Provider on its behalf has:

- 29.1. Completed, as a Main Contractor the Design and Construction of Track-way for Rail Projects: (i) at least two (2) of which consist of not less than ten (10) km of Routes (each); and (ii) cumulating at least thirty (30) km; and
- 29.2. At least two (2) of the referenced Rail Projects are in different cities; and
- 29.3. At least two (2) of the referenced Rail Projects have been Commercially Operating for at least two (2) consecutive years following their Completion.
- 29.4. Without derogating from all other requirements in this Section 29, where the Experience Provider demonstrates experience by means of a referenced Rail Project which has both ballast-less track and ballast track, only the portion of the referenced Rail Project with ballast-less track will be considered for the purpose of demonstrating compliance with the provisions of this Section 29.

Form of Submission. In order to demonstrate compliance with this Section 29, the Experience Provider shall complete, execute and submit Pre-Qualification Form “5”.

30. **Rolling Stock Experience**

Each Participant is required to demonstrate that during the period commencing on January 1, 2005 and ending on the Pre-Qualification Submission Date, an Experience Provider on its behalf has:

- 30.1. Manufactured at least one hundred and eighty (180) 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
- 30.2. The clients which received the referenced Vehicles have Commercially 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 30 (Rolling Stock Experience), the Experience Provider shall complete, execute and submit Pre-Qualification Form “6”.

31. **Project Execution, Management and Organization Experience**

Each Participant is required to demonstrate that during the period commencing on January 1, 2007, and ending on the Pre-Qualification Submission Date an Experience Provider on its behalf has Completed, as a Main Contractor, at least two (2)

Infrastructure Projects, with an aggregated Contract Value of not less than NIS two billion (2,000,000,000).

Form of Submission. In order to demonstrate compliance with this Section 31 (Project Execution, Management and Organization Experience), the Experience Provider shall complete, execute and submit Pre-Qualification Form “7”.

32. Operating Experience

Each Participant is required to demonstrate that an Experience Provider on its behalf has:

- 32.1. From January 1, 2015 (or earlier) until the Pre-Qualification Submission Date, has been continuously acting as a Main Contractor for the Operation of (i) one (1) Network, having not less than twenty (20) km of Routes or forty (40) Stops, out of which at least ten (10) km are LRT Routes or twenty (20) Stops are LRT Stops; or (ii) two (2) Networks, one (1) of which having not less than ten (10) km of LRT Routes or twenty (20) LRT Stops and the other Network having not less than thirty (30) km of Routes (LRT or Metro);
- 32.2. From January 1, 2015 (or earlier) until the Pre-Qualification Submission Date, has been continuously¹² acting as a Main Contractor for the Operation of at least one Network (LRT or Metro) which 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
- 32.3. For at least three (3) calendar years as of January 2015 (or later) until the Pre-Qualification Submission Date, has been managing an annual ridership of not less than twenty million (20,000,000) passengers from all LRT Lines and/or Metro Lines.

For the avoidance of doubt:

- (i) The abovementioned three (3) calendar years do not have to be consecutive;
- (ii) The annual ridership for any given year shall be calculated as of January 1st until December 31st of such calendar year; and
- (iii) To the extent the ridership for the year, during which the Pre-Qualification Submission Date occurs, is with respect to a part of a year, then the annual ridership shall be calculated by dividing the ridership of such part of the year by the relative portion such part constitutes out of the calendar year.

Form of Submission. In order to demonstrate compliance with this Section 32 (Operating Experience), the Experience Provider shall complete, execute and submit Pre-Qualification Form “8”.

33. Maintenance Experience

Each Participant is required to demonstrate that from January 1, 2015 (or earlier) until the Pre-Qualification Submission Date, an Experience Provider on its behalf

¹² Added as part of Addendum No. 1, dated August 18, 2020.

has been continuously acting as a Main Contractor of up to three (3) projects for the Maintenance of an LRT Line, a Metro Line, an LRT Network or a Metro Network, each consisting of not less than ten (10) km of Routes and not less than thirty (30) km of Routes in the aggregate, and:

- 33.1.1. Each referenced project includes the Maintenance of Track-way and Systems;
- 33.1.2. All referenced projects (in the aggregate) include the Maintenance of at least forty (40) rolling stock Vehicle(s); and
- 33.1.3. At least one referenced project includes the Maintenance of at least one (1) Depot, including all buildings and related facilities.

Form of Submission. In order to demonstrate compliance with this Section 33 (Maintenance Experience), the Experience Provider shall complete, execute and submit Pre-Qualification Form “9”.

V. FINANCIAL PRE-QUALIFICATION REQUIREMENTS

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

34. Turnover

- 34.1. Each Participant is required to demonstrate that the Participant's Weighted Turnover (as such term is defined in Section 34.1.1 below), is not lower than the Minimal Turnover Required (as such term is defined in Section 34.1.3 below).

34.1.1. Participant's Weighted Turnover

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

$$Participant\ Weighted\ Turnover = \sum_{i=1}^{i=n} ATO_i \cdot HS_i$$

Where:

ATO_i = Member (i)'s Weighted Average Turnover (as such term is defined in Section 34.1.2 below).

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

n = the number of Members in the Participant.

(“Participant's Weighted Turnover”).

34.1.2. Member's Weighted Average Turnover

The Weighted Average Turnover of each Member in the Participant shall be calculated in the following manner:

34.1.2.1. For: (i) any Member in the Participant which is a Financial Entity; and (ii) any Member in the Participant the Anticipated Holdings of which, in the Participant are lower than ten percent (10%) – the Member's Weighted Average Turnover shall be deemed as Zero (0).

34.1.2.2. For any Member in the Participant which is not a Financial Entity and the Anticipated Holdings of which in the Participant are at least ten percent (10%) such Member's Weighted Average Turnover shall be calculated as a weighted average of the Member's annual turnover for the three (3) most recent consecutive, annual Financial Statements (provided that such are not earlier than for the year 2017), as follows:

$$ATO_i = \frac{3 * TO_t + 2 * TO_{t-1} + 1 * TO_{t-2}}{6}$$

Where:

TO_t = Member (i)'s annual turnover for year t.

t = most recent annual Financial Statement (provided such is not earlier than for the year 2019).

(“Member's Weighted Average Turnover”)

34.1.3. Minimal Participant Weighted Turnover Required

The minimal Weighted Turnover required of the Participant is either of the following, according to the Participant's composition:

	Participant's Composition	Minimal Turnover Required (in NIS)
(i)	None of the Members of the Participant are Financial Entities	1,400 million
(ii)	One or more of the Members of the Participant is a Financial Entity	1,400 million multiplied by the Anticipated Holdings of all Members which are not Financial Entities

(“Minimal Weighted Turnover Required”)

Form of Submission. In order to demonstrate compliance with this Section 34 (Turnover), the applicable Entities shall complete, execute and submit Pre-Qualification Form”10” and Pre-Qualification Form “11”.

35. Members' Weighted Average Operating Cash Flow

- 35.1. Each Member which is not a Financial Entity, is required to demonstrate that its Weighted Average Operating Cash Flow for its three (3) most recent consecutive, annual Financial Statements (provided that such are not earlier than for year 2017), is not negative (i.e. either positive or equal to zero).
- 35.2. For the purpose of this Pre-Qualification Requirement, the Weighted Average Operating Cash Flow of each Member which is not a Financial Entity, shall be calculated in the following manner:

$$\text{Weighted Average Operating Cash Flow} = \frac{3 * CF_{(t)} + 2 * CF_{(t-1)} + 1 * CF_{(t-2)}}{6}$$

Where:

CF_t = Member's Operating Cash Flow for year t

t= the most recent Financial Statement (provided such is not earlier than for the year 2019)

(“Weighted Average Operating Cash Flow”)

or:

- 35.3. In the event that the Weighted Average Operating Cash Flow of a Member which is not a Financial Entity, is negative, then the Member is required to demonstrate that the ratio between the absolute value of (a) and (b) below is less than twenty-five (25%):
- (a) Shall be the lesser of:
 - (i) Said Member's Weighted Average Operating Cash Flow, as calculated pursuant to the provisions of section 35.2 above; or
 - (ii) Said Member's Operating Cash Flow, based on its most recent annual Financial Statement, which is not earlier than for the year 2019).
 - (b) The equity of said Member on the last day of its most recent annual Financial Statements, which is not earlier than for the year 2019.

So that –

$$\text{ABS } [3*CF_t + 2*CF_{(t-1)} + 1*CF_{(t-2)}] / 6 / E < 25\%$$

Or that –

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

Where:

ABS [X] = the absolute value of [X].

CF = Operating Cash Flow.

E = the equity of the Member, who is not a Financial Entity, on the last day of its most recent annual Financial Statement, which is not earlier than for the year 2019.

t = most recent annual Financial Statement, which is not earlier than for the year 2019.

Form of Submission. In order to demonstrate compliance with this Section 35 (Members' Weighted Average Operating Cash Flow), the applicable Entities shall complete, execute and submit Pre-Qualification Form “10”.

36. Minimal Equity

- 36.1. Each Member which is not a Financial Entity is required to demonstrate equity of not less than NIS six million (6,000,000), for each one percent (1%) of its Anticipated Holdings in the Participant, based on its most recent annual Financial Statements (provided such is not earlier than for the year 2019).

Form of Submission. In order to demonstrate compliance with this Section 36, the applicable Entities shall complete, execute and submit Pre-Qualification Form “10”.

37. Securing Finance for an Infrastructure Project

- 37.1. Each Participant is required to demonstrate that at least one of its Members has, as of January 1, 2010, obtained (borrowed) External Financing for at least two (2) Infrastructure Projects. The amount of External Financing for each referenced project shall not be less than NIS seven hundred and fifty million (750,000,000).
- 37.2. For the purpose of this Section, an Infrastructure Project may be presented even if such has not been Completed, provided, that funds have been drawn (utilized) pursuant to such External Financing.

Form of Submission. In order to demonstrate compliance with this Section 37 (Securing Finance for an Infrastructure Project), the applicable Entities shall complete, execute and submit Pre-Qualification Form “12”.

38. **Private Investment Fund**

- 38.1. Any Member, which is a Private Investment Fund, is required to demonstrate that as of the last day of its most recent Financial Statement (provided that such is not earlier than for the year 2019), the General Partner or Fund Manager of such Private Investment Fund, managed Assets under Management in an aggregate value of at least NIS one billion, five hundred million (1,500,000,000).

In the event that the Private Investment Fund has been incorporated during 2020, such Private Investment Fund shall submit its most recent Financial Statement even if it does not constitute a full year in order to demonstrate the above requirement (with respect to Assets under Management).

- 38.2. In addition, any Member who is a Private Investment Fund, is required to submit a statement (signed by its General Partner or Fund Manager), providing a breakdown of the total amount of Assets under Management by detailing the amount of Assets under Management managed by the General Partner or Fund Manager under each of its funds which were accounted for in the total amount of Assets under Management specified by the Member.

For the avoidance of doubt, in the event that Assets under Management were transferred between funds managed by the same General Partner or Fund Manager, such Assets under Management may only be presented and counted once.

Form of Submission. In order to demonstrate compliance with this Section 38 the applicable Entities shall complete, execute and submit Pre-Qualification Form “13”.

39. **Institutional Investors**

- 39.1. Any Member which is an Institutional Investor, is required to demonstrate that:

39.1.1. Its equity (excluding minimal equity required by law, to the extent relevant) is not less than NIS ten million (10,000,000) for each one percent (1%) of Anticipated Holdings in the Participant, based on the Member's most recent annual Financial Statements (provided such is not earlier than for the year 2019); and

39.1.2. It manages assets with a net worth of not less than NIS one-hundred and fifty million (150,000,000) for each one percent (1%) of its Anticipated Holdings in the Participant, based on its most recent annual Financial Statements (provided such is not earlier than for the year 2019).

Form of Submission. In order to demonstrate compliance with this Section 39, the applicable Entities shall complete, execute and submit Pre-Qualification Form “14”.

40. **Investment Entities**

- 40.1. Each Member which is an Investment Entity is required to demonstrate that:

- 40.1.1. Its equity is not less than NIS eighteen million (18,000,000), for each one percent (1%) of Anticipated Holdings in the Participant, based on its most recent annual Financial Statements (provided such is not earlier than for the year 2019); and
- 40.1.2. As of the Pre-Qualification Submission Date, it has made investments in infrastructure projects or in companies/initiatives in the infrastructure sector in an amount which is not less than NIS two hundred and fifty million (250,000,000).

Form of Submission. In order to demonstrate compliance with this Section 40 (Investment Entity), the applicable Entities shall complete, execute and submit Pre-Qualification Form “15”.

41. Reliance on a Guarantor

- 41.1. Each Member which 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 requirements under Section 23 (Participation - General Requirements) above.
- 41.2. For the purpose of determining a Guarantor’s compliance with all Financial Pre-Qualification Requirements in the event that the Guarantor is also a Member of the Participant, the Anticipated Holdings of such Guarantor in the Participant will be deemed to include all Anticipated Holdings of the Member(s) seeking to rely on such Guarantor.
- 41.3. Notwithstanding the provisions of Section 41.1 above, a Member which is a Private Investment Fund, may demonstrate compliance with the Financial Pre-Qualification Requirements specified in Section 37 (Securing Finance for an Infrastructure Project) by presenting and relying on referenced Infrastructure Projects in which the External Financing was obtained by a different Private Investment Fund, provided that both the Member and the Private Investment Fund which obtained the External Financing for the referenced Infrastructure Projects have the same General Partner or Fund Manager.

42. Submission of Financial Statements

- 42.1. In order to demonstrate compliance with the Financial Pre-Qualification Requirements, each Entity required to submit its Financial Statements shall submit its relevant Financial Statements, duly prepared and presented in accordance with one of the following accounting standards:
 - 42.1.1. Israeli GAAP;
 - 42.1.2. US GAAP (published by the FASB);
 - 42.1.3. International Financial Reporting Standards (including, with respect to the cash flow statements, IAS (International Accounting Standards) IAS No. 7 and IFRS updates);

42.1.4. China Accounting Standards (CAS);

42.1.5. Chinese ASBE;

42.1.6. French GAAP;

42.1.7. Hong Kong FRS;

42.1.8. Japanese GAAP;

42.1.9. Germany IFAD GAAP;

42.1.10. South Korea K-IFRs;

42.1.11. Australian GAAP;

42.1.12. UK GAAP; or

42.1.13. Ind AS 101 standard.

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

42.2. Entities whose Financial Statements are presented based on a different accounting principles than those listed in Section 42.1 above, are required to submit a specific request to the Tender Committee to approve submission of such Financial Statements, at least thirty (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.

42.3. Without derogating from the foregoing, if an Entity submits its Financial Statements based on accounting principles other than the accounting principles listed in Section 42.1 above such Entity shall provide a letter, signed by an external auditor, confirming that the Member's Weighted Average Turnover, the Weighted Average Operating Cash Flow and the Minimal Equity of the Entity as presented in its Financial Statements, substantially comply with US GAAP or IFRS methodology.

42.4. Without derogating from the generality of Section 42.1 above, the Financial Statements must include a balance sheet, a profit and loss statement, a cash flow statement, and auditor's report and notes.

42.5. An Entity whose Financial Statements do not include cash flow statements should provide such statements in accordance with one of the accounting principles set out in Section 42.1 above, duly executed by the Entity's external auditors.

In the event that an Entity submits its cash flow statements based on accounting principles other than Israeli GAAP, US GAAP or IFRS, such Entity will provide a letter, signed by an external auditor, confirming that the cash flow statements substantially comply with US GAAP or IFRS methodology.

Without derogating from the above, if an Entity wishes to present its cash flow statements based on different accounting principles than those listed in Section 42.1 above, the provisions of Section 42.2 above shall apply, *mutatis mutandis*.

42.6. Notwithstanding the provision of Section 42.4 above, a Private Investment Fund is not required to submit a cash flow statement if the laws, regulations and accounting principles in its domicile do not require it to include a cash flow statement in its Financial Statements.

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

Notwithstanding the foregoing, in the event any Financial Statements required to be submitted pursuant to the Invitation have been originally prepared in a language other than English or Hebrew, such Financial Statements shall be submitted in their original language and shall be accompanied by a translation to English authenticated in accordance with Section 53 below.

42.8. For the purpose of demonstrating compliance with the Financial Pre-Qualification Requirements, in the event of a reliance by a Member on a Guarantor, the Financial Statements of such Guarantor shall be submitted and shall be subject to the provisions of Section 40 (Reliance on a Guarantor) above.

In addition, a Member relying on Guarantor is required to submit its most recent Financial Statements in order to demonstrate compliance with Section 23.5 above.

42.9. Without derogating from the aforementioned, in the event that the Financial Statements of an Entity contain comparative figures to the preceding years which meet the Financial Pre-Qualification Requirements listed in Section 34 (Turnover) and Section 35 (Members' Weighted Operating Cash Flow) above, the Entity will not be required to submit the Financial Statements for the preceding years, and it can rely on the comparative figures presented in its most recent Financial Statements.

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

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

43. Relying on a Referenced Project which was executed by an Entity Held by the Experience Provider

43.1. For the purpose of demonstrating compliance with the Technical Pre-Qualification Requirements, an Experience Provider is allowed to present and rely on a referenced project which was executed by one of the following Entities, in accordance with the provision of Sections 43.1.1– 43.2 below:

(in this Section 43, an Experience Provider relying on a referenced project which was executed by another Entity shall be referred to as a “**Relying Entity**”).

43.1.1. An SPV in which:

43.1.1.1. The Relying Entity Effectively held, directly or indirectly, at least twenty percent (20%) of all Means of Control; and

43.1.1.2. Where the SPV is not a limited liability company, the Entities which directly held the Means of Control of the SPV, were responsible, jointly and severely, for the execution of the referenced project; or

43.1.2. A Subsidiary of the Relying Entity; or

43.1.3. A second tier Subsidiary of the Relying Entity in which the Relying Entity Effectively holds at least fifty percent (50%) of all Means of Control; or

43.1.4. An Entity which is held by the Relying Entity so that:

(i) the Relying Entity Effectively holds, directly or indirectly, one hundred percent (100%) of all Means of Control in an intermediate Entity(ies) (in this Section “**Entity₁**”); and

(ii) Entity₁ directly holds 75% or more of all Means of Control in the Entity which executed the referenced project.

43.2. In the event a Relying Entity requests to demonstrate compliance with the Technical Pre-Qualification Requirements in accordance with the provisions of this Section 43, such Relying Entity shall include, in the relevant Pre-Qualification Forms, details as requested therein with respect to the Entity which executed the referenced project and the connection between such Entity and the Relying Entity, including a chart describing the structure of holdings.

43.3. Without derogating from the provision of Section 43.1, with respect to the Technical Pre-Qualification Requirements specified in Sections 27 (Experience in the Design and Installation of Systems), 28 (Experience in the Design and Installation of Signaling Systems), and 29 (Experience in the Design and Construction of Track-Way), an Experience Provider may present a project which was executed pursuant to:

43.3.1. a single contract (executed by one Entity); or

43.3.2. two (2) separate contracts, one for the Design and the other for the Installation or the Construction (as applicable), executed either by: (i) one Entity; or (ii) by two separate Entities each of which Effectively held by the Relying Entity is accordance with the provisions of Sections 43.1.1 - 43.1.4 above.

43.4. For the purpose of demonstrating compliance with the Financial Pre-Qualification Requirements specified in Section 37 (Securing Finance for an Infrastructure Project), a Member or a Guarantor (as the case may be), is allowed to present and rely on a referenced project which was executed by an SPV, where:

- 43.4.1. the Relying Entity Effectively held, directly or indirectly, at least twenty four percent (24%) of all Means of Control in the SPV; or
- 43.4.2. the Relying Entity Effectively held, directly or indirectly, twenty percent (20%) or more of all Means of Control in the SPV which executed the referenced Infrastructure 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), provided, that for each percent below twenty four percent (24%), the required Contract Value of the referenced Infrastructure Project shall increase by NIS fifty million (NIS 50,000,000).

44. Exchange of Currency

- 44.1. The financial figures included in the Pre-Qualification Documents must be submitted in New Israeli Shekels (NIS) and, to the extent indicated in relevant Pre-Qualification Forms, in the applicable original currency.
- 44.2. Financial information (such as Contract Value or amount of External Financing)) and the figures included in the Financial Statements, presented in any currency other than NIS, will be converted to NIS in accordance with the applicable instructions of **Appendix D** (Exchange Rates).

45. Conversion of Other Currencies

- 45.1. Without derogating from the requirements of Section 44.1 above, an Entity whose financial information (such as a Contract Value or amount of External Financing), or Financial Statements are presented in currencies other than the currencies listed in **Appendix D** is required to submit a specific request to the Tender Committee for other currency conversion to US\$ based on exchange rates as published by the US Federal Reserve System, at least thirty (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.
- 45.2. An Entity whose fiscal year, according to its place of registration, is not one of the fiscal years specified in **Appendix D**, is required to submit a specific request to the Tender Committee 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.

VII. PRE-QUALIFICATION SUBMISSION

46. Pre-Qualification Submission Letter

- 46.1. Each Participant shall attach to its Pre-Qualification Submission the Pre-Qualification Submission Letter provided in **Pre-Qualification Form “1”** duly completed and signed (“**Pre-Qualification Submission Letter**”).

47. **Description of the Participating Entities**

47.1. In order to demonstrate compliance with the provisions of Sections 19 (The Participant), 20 (Members of the Participant) 21 (Experience Provider), and 22 (Guarantor), each Participant shall submit all of the Pre-Qualification Forms duly completed and signed.

48. **Receipt of Participation Fee**

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

49. **Identification of Sensitive or Classified Information**

49.1. Without derogating from the generality of the provisions of Regulation 21(e) of the Regulations and/or the discretion granted to the Tender Committee thereunder and pursuant to the Pre-Qualification Documents and the provisions of any applicable Law, each Participant shall detail, within Pre-Qualification Form “1” (*The Pre-Qualification Submission Letter*), 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 (“**Privileged Information**”) and the reasons for such assertion of confidentiality for each of the items identified as such. For the removal of doubt, general confidentiality statements may be disregarded at the discretion of the Tender Committee.

49.2. 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 67 (Disclosure of Documents) below.

50. **Validity of Pre-Qualification Submissions**

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

VIII. METHOD OF SUBMISSION

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

51. **Compliance with the Requirements of the Pre-Qualification Documents**

51.1. Participants shall prepare their Pre-Qualification Submissions in strict conformity with the requirements of the Pre-Qualification Documents. 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.

- 51.2. Without derogating from the generality of the foregoing, Participants shall submit all Pre-Qualification Forms attached as **Appendix E** (Pre-Qualification Forms) to this Invitation.

52. No Unauthorized Modification

- 52.1. 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, all in accordance with the rights and prerogatives of the Tender Committee.
- 52.2. 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 13 (Requests for Clarification) and approved by the Tender Committee in the form of an Addendum, issued in accordance with the provisions of Section 14 (Addenda), may be deemed as unauthorized and may result in the disqualification of the Pre-Qualification Submission and of the Participant.
- 52.3. Whether a statement, condition, limitation, modification, supplement, reservation, disclaimer or provision attached to the Pre-Qualification Submission will be considered to be “unauthorized” as referred to above will be determined by the Tender Committee on the basis of substance rather than form. Thus, a statement expressed as an “assumption”, a “request for a change”, a “clarification” or “we suggest to discuss at a later stage” (or any comparable words or expressions), may be treated by the Tender Committee as “unauthorized modifications”.

53. Language of the Pre-Qualification Submission

- 53.1. All Pre-Qualification Submissions, including Pre-Qualification Forms and statements contained therein and responses to requests for clarifications sent by the Tender Committee pursuant to Section 62 below (if any), shall be in English.
- 53.2. 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 in accordance with the applicable laws of the jurisdiction in which the applicable Participating Entity, submitting the relevant material, is organized), in which case, for purposes of interpretation, the translation to English shall prevail.
- 53.3. If, in accordance with the applicable laws of the jurisdiction in which the applicable Participating Entity is organized, authentications are carried out by a person or an entity which is not a public notary or a sworn translator, the Participating Entity will inform the Tender Committee of such thirty (30) days prior to the Pre-Qualification Submission Date accompanied by a legal opinion explaining the legal basis for the local authentication process. The Tender Committee shall be entitled to approve, impose conditions or request additional information or explanations from the Participating Entity regarding the validity and methodology of the authentication process in such jurisdiction.

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

54. Signing of the Pre-Qualification Submission

54.1. Each page of the Pre-Qualification Submission including all Pre-Qualification Forms and appendices shall be duly signed by the authorized signatories of: (i) the Participant (if the Participant is a single Entity already incorporated on the Pre-Qualification Submission Date) and each of the other Participating Entities (where applicable) or (ii) each of the Members of the Participant (if the Participant is not a single incorporated Entity on the Pre-Qualification Submission Date) and each of the other Participating Entities (where applicable). Each form of the Pre-Qualifications Forms and any information submitted therein, shall be duly signed by the authorized signatories of the relevant Entity described in such form, as applicable.

54.2. 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 relevant Entities which are required to sign on such documents may sign the first and last pages of each of the binders and clearly indicate the number of pages of such binder.

54.3. The Participant shall seal the original and each of the Submission copies (in accordance with the provisions of Sections 57 and 58 below) in separate envelopes. The envelopes shall then be sealed in an outer envelope or a box.

55. Table of Contents

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

56. Authorization of Signatures by an Attorney

56.1. Adjacent to each signature (excluding signatures by initials) on the signature page of each Pre-Qualification Form within the Pre-Qualification Submission of the Participating Entities, there shall be a confirmation by an attorney, or any person who is legally qualified by law within his/her domicile to provide such confirmation, that the signatory (i) was cautioned that he/she is required to state the truth, and that if he/she fails to do so he/she shall be liable to the punishments prescribed by law; and (ii) 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.

57. Number of Pre-Qualification Submission Copies

57.1. Pre-Qualification Submissions must be submitted and clearly marked as one (1) 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.

57.2. In addition, the Pre-Qualification Submission shall include five (5) USB storage devices or other storage device accessible to and by the Tender Committee each containing a copy of the Pre-Qualification Submission (including the Financial Statements) in PDF format. Such USB storage devices shall also contain the completed Pre-Qualification Forms in open Word format.

57.3. In the event of a discrepancy between the original and the other Pre-Qualification Submission documents, and/or the USB storage devices, the original shall prevail.

57.4. **Redacted Copy of the Pre-Qualification Submission.** Without derogating from all other provisions of this Section 57, and without derogating from the Tender Committee's rights and prerogatives pursuant to the Pre-Qualification Documents or any Law (including with respect to Privileged Information), if a Participant submitted a request to refrain from disclosure of Privileged Information as specified in Section 49 (Identification of Sensitive and Classified Information) above, then, in addition to the copies of the executed Pre-Qualification Submission and the USB storage devices specified above, such Participant shall submit:

57.4.1. An additional one (1) redacted copy of the Pre-Qualification Submission (excluding the Financial Statements), in which those parts of the Pre-Qualification Submission identified by the Participant as being of a sensitive or confidential nature in accordance with Section 49 above and which, in its opinion, should not be disclosed to other Participants, shall be redacted (provided that any redacted information shall be clearly so concealed in the "Redacted Copy" of the Pre-Qualification Submission (and not simply omitted)); and

57.4.2. Three (3) additional USB storage devices accessible to and by the Tender Committee containing copies of the redacted Pre-Qualification Submission (excluding the Financial Statements) in PDF format and open Word formats.

58. **Sealing and Marking of Pre-Qualification Submissions**

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

58.2. Each envelope or box submitted as part of the Pre-Qualification Submission shall be clearly marked with the following words:

‘Pre-Qualification Submission in relation with a Tender for the Financing, Designing, Construction and Operation of the Blue Line of the Jerusalem LRT network, submitted by [*the name of the Participant*]’.

No other details shall be indicated on the outer envelope or box.

59. **Pre-Qualification Submission Date**

59.1. Without derogating from the Provisions of Section 14 (Addenda) above, Pre-Qualification Submissions should be submitted at the address provided in Section 58 (Sealing and Marking of Pre-Qualification Submissions) above on the date designated for such submission, as set forth in Section 4.4 (Anticipated

Schedule) above, no later than 14:00 (2 pm) Israel time, (the “**Pre-Qualification Submission Date**”).

- 59.2. 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.

60. Opening of Pre-Qualification Submissions

All Pre-Qualification Submissions shall be kept in the tender box until the opening thereof. For the purpose of this Section: the “tender box” shall mean also a closed and locked room. The opening of any Pre-Qualification Submission shall be documented.

IX. REVIEW AND EVALUATION OF PRE-QUALIFICATION SUBMISSIONS

61. Review and Evaluation by the Tender Committee

- 61.1. 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 the Pre-Qualification Documents, including all Technical and Financial Pre-Qualification Requirements and all other applicable provisions of this Invitation.
- 61.2. The Pre-Qualification Submissions will not be graded by the Tender Committee. Pre-Qualification Submissions shall either “pass” or “fail” the Pre-Qualification Process.

62. Requests for Clarifications

- 62.1. Without derogating from any of its rights under the Pre-Qualification Documents and any applicable Law, the Tender Committee, at its sole discretion, may conduct an independent evaluation in connection with any Pre-Qualification Submission. In its independent evaluation, the Tender Committee may rely on any information available to it, including information provided by any third- party, *inter alia*, with respect to any referenced project.
- 62.2. As part of such evaluation, 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 62.3.
- 62.3. 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 a Participant, address any of the clients mentioned in any of its Pre-Qualification Forms and visit any site operated by any Participating Entity.

- 62.4. Participants will comply with the requests of the Tender Committee and will submit all requested clarifications and additional information by email and in original hardcopy to be delivered by hand, within the time period which shall be stipulated by the Tender Committee.
- 62.5. Such requests for clarifications from Participants will be in writing and delivered to the Participants by email, and the receipt thereof shall be confirmed by the Participant by return mail, to the address noted in Section 13.2 above, within forty-eight (48) hours of receipt, all without derogating the rights of the Tender Committee to set different arrangements for clarifications, approvals and submissions.
- 62.6. 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.
- 62.7. The Tender Committee may exercise its right under this Section 62 (Requests for Clarifications) at its sole discretion and any number of times during the evaluation of the Pre-Qualification Submissions.

63. Deviation

- 63.1. 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:
- 63.1.1. disqualify the Participant and the Pre-Qualification Submission;
 - 63.1.2. ignore the unauthorized modification or the Deviation or any part thereof;
 - 63.1.3. deem the unauthorized modification or the Deviation or any part thereof as a technical error;
 - 63.1.4. 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.
- 63.2. 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 63.1.1 - 63.1.4.
- 63.3. 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.
- 63.4. 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, the Pre-Qualification Documents or under applicable

Law, the Tender Committee may disqualify the Participant's Pre-Qualification Submission.

63.5. Under exceptional circumstances, the Tender Committee may amend or waive any requirement herein, if the Tender Committee is of the opinion that it is beneficial for the Project.

63.6. The Tender Committee may request Participants to provide clarifications which are necessary in the opinion of the Tender Committee for the evaluation of the Pre-Qualification Submission or any part thereof.

64. Announcement of Eligible Participants

64.1. 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: (i) successfully demonstrated compliance with the requirements of the Pre-Qualification Documents, including with all Pre-Qualification Requirements; and (ii) which were not otherwise disqualified thereby (“**Eligible Participant**”).

64.2. Without derogating from the generality of the provisions of Section 2.1.2 above and Section 70 (Reservation of Rights) below, the Tender Committee intends to publish the Tender Process Documents to the Eligible Participants, who will be allowed to submit their Bids in accordance with the provisions of the Tender Process Documents.

64.3. The Pre-Qualification Submission shall be deemed an integral part of the Bid submission submitted by any Eligible Participant (to the extent that a Bid was submitted).

64.4. 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.

65. Rejection of the Pre-Qualification Submissions

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

65.1. The Tender Committee reserves the right to reject any or all Pre-Qualification Submissions.

65.2. The Tender Committee reserves the right to reject a Pre-Qualification Submission if the Tender Committee is of the opinion that, based on the information included in its Pre-Qualification Submissions, including financial and technical information, the Participant is prima facie unable to execute the Project.

65.3. Without derogating from the rights of the Tender Committee pursuant to the provisions of the Pre-Qualification Documents 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.

65.4. Without derogating from the rights of the Tender Committee pursuant to the provisions of the Pre-Qualification Documents and the Law, 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 the Pre-Qualification Documents, or which are partial, reserved, lacking, conditional, or are false or based on false or misleading information.

65.5. 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:

65.5.1. Any changes to a Participating Entity or to the organizational structure presented by the Participant, including a Member's Anticipated Holdings in the Participant, without the prior approval of the Tender Committee;

Notwithstanding the foregoing, changes to a Participating Entity which is a publicly listed stock company shall not be subject to the prior written approval of the Tender Committee, provided that such changes do not result in the creation of a new "principal shareholder" ("בעל עניין") (as such term is defined in the Securities Law, 1968);

65.5.2. The commencement of insolvency, receivership, liquidation or reorganization proceedings against a Participating Entity or against any Entity which a Participating Entity relied upon or presented 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;

65.5.3. The appointment of a temporary or a permanent receiver or liquidator over a Participating Entity or against any Entity which a Participating Entity relied upon or presented;

65.5.4. The commencement of self-liquidation or bankruptcy proceedings and/or cease of activity by a Participating Entity;

65.5.5. The commencement of mergers proceedings and/or re-organization proceedings and/or change of Control by a Participating Entity, without the prior written approval of the Tender Committee;

65.5.6. In the event that any Participating Entity or an Interested Party thereof, has been convicted of an Offence, or an indictment (criminal charges) has been served against such or a criminal investigation has been initiated or is taking place against any Participating Entity or Interested Party thereof, either with respect to an Offence or an investigation, with respect to (i) dishonest conduct; (ii) grave professional misconduct; (iii) fraud and breach of faith; or (iv) any offence which effects the integrity and/or credibility of the Participating Entity or Interested Party thereof; including where the Tender Committee is of the opinion that such may result in a material or adverse change in the business of such Participating Entity or interested Party thereof.

- 65.5.7. In the event that any Participating Entity or an Interested Party thereof, including the office holders thereof involved in the Pre-Qualification Process, in the Tender Process or in the Project (including individuals), is or becomes a resident or citizen of or domiciled in a country which does not have diplomatic relations with the State of Israel.
- 65.5.8. In the event that any Participating Entity or an Interested Party thereof, including the office holders thereof involved in the Pre-Qualification Process, in the Tender Process or in the Project (including individuals), is or becomes a Declared Entity or a Related Entity of a Declared Entity.
- 65.5.9. Any engagement with Advisors other than in accordance with the provisions of Section 18 (Advisors to the Tender Committee) above.
- 65.5.10. Any material breach of the provisions of the Pre-Qualification Documents 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 or collision with other Participants;
- 65.5.11. Any material change in, or exceptional circumstances with respect to, a Participating Entity or any Entity which a Participating Entity relied upon or presented, 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;
- 65.5.12. A Participating Entity has a “going concern notice” or a notice of similar effect in its most recent Financial Statements (including pursuant to a change in circumstances following the Pre-Qualification Submission Date);
- 65.5.13. Any reason for which the Tender Committee deems that a Participating Entity, 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 or the Participating Entity (including circumstances which materially and adversely affect, a Participating Entity’s ability to execute the Project);
- 65.5.14. Any other reason for which the Tender Committee deems that a Participant is not eligible to be announced as the Successful Bidder, including due to dishonesty of such Participant during the Pre-Qualification Process. The Tender Committee reserves its right to take any action, at its sole discretion, with respect to dishonesty of a Participant.
- 65.6. The Participant shall be required to notify the Tender Committee of the existence of any of the events described in this Section 65 (Rejection of the Pre-Qualification Submissions) within a period of time reasonable under the circumstances.
- 65.7. The Tender Committee may initiate and request the submission by the relevant Participant of applicable information with respect to any of the above.

65.8. The Tender Committee may base its decision under this Section 65 (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.

66. Intended Decision

66.1. In the event that the Tender Committee intends to disqualify a Pre-Qualification Submission submitted by a Participant, to disqualify a Participating Entity or otherwise imposes conditions or restrictions with respect to their participation pursuant to the provisions of Section 65 (Rejection of the Pre-Qualification Submissions), the Tender Committee will allow such a Participant or Participating Entity (as applicable) to present its case, in writing, with respect to such intended decision. The foregoing shall not derogate from the Tender Committee's right to determine, under special circumstances, at its sole discretion, that the Participant or Participating Entity (as applicable) shall present its case verbally or in any other appropriate manner.

67. Disclosure of Documents

67.1. 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 of the other Pre-Qualification Submissions submitted by other Eligible Participants and to receive a copy thereof.

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

67.3. 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 the Participants' requests with respect to Privileged Information and with respect to those parts of the Pre-Qualification Submissions which are commercially sensitive or confidential under the Pre-Qualification Documents or Law. The procedure (including the time schedule), with respect to disclosure of documents and review by the Participants shall be determined by the Tender Committee.

67.4. The Tender Committee shall evaluate, as it deems necessary, the requests with respect to Privileged Information submitted by each of the Participants in accordance with the provisions of Section 49 (Identification of Sensitive or Classified Information). The decision of the Tender Committee with respect thereto will be issued to each Participant.

67.5. If a Participant identified parts of its Pre-Qualification Submission as being of a commercially sensitive or confidential nature ("**Privileged Information**"), such Participant: (i) will not be entitled to claim that the other parts of its Pre-Qualification Submission (which have not been identified by it as Privileged Information) are of a commercially sensitive or confidential nature and cannot be disclosed to and reviewed by other Participants; and (ii) shall not be entitled to

review information which is of the same type or character as the Privileged Information identified by it, in the Pre-Qualification Submissions of other Participants, unless otherwise determined by the Tender Committee; and (iii) shall be deemed to have waived any claims it may have with respect thereto.

67.6. The foregoing shall apply, (i) even if the request of a Participant with respect to Privileged Information was rejected by the Tender Committee and the Privileged Information subject matter of the request was not approved as such by the Tender Committee; and (ii) even if the Tender Committee decides to apply its decision with respect to information it considers to be of a commercially sensitive or confidential nature (in a consistent manner) with respect to all Pre-Qualification Submissions (even if not specifically requested to apply such measures by a particular Participant).

67.7. For the avoidance of doubt, the provisions of Section 67.5 above and 67.6 above shall apply even if a Participant did not submit any request with respect to Privileged Information in accordance with the provisions of Section 49 (Identification of Sensitive or Classified Information). The fact that no request with respect to Privileged Information was submitted by a Participant, will not be construed, or interpreted as derogating from the discretion and prerogatives of the Tender Committee in this respect.

67.8. Without derogating from the Tender Committee's rights, discretion and prerogatives under the Pre-Qualification Documents and Law (including its right to amend this provision), it is expected that the following information with respect to any Participating Entity shall be considered Privileged Information, and shall not be disclosed by the Tender Committee to other Participants:

67.8.1. An Entity's Financial Statements (except for Financial Statements of Entities which are publicly traded companies, which will be disclosed);

67.8.2. Pre-Qualification Forms "10" through "15";

67.8.3. Clients' contact information detailed in the Pre-Qualification Forms (such as address, contact person, phone number, email address, etc.). For avoidance of doubt, the clients' identity (name) will not be considered Privileged Information; and

67.8.4. Details regarding Advisors' revenues submitted pursuant to Section 18;

67.9. Although the documents themselves will not be disclosed by the Tender Committee to other Participants, the Tender Committee may determine, at its sole discretion, the manner by which the pertinent information presented in each of the aforementioned documents will be provided to the other Participants, and may prepare summaries, lists or other forms of presentation of the applicable information.

Notwithstanding the foregoing, the Tender Committee may determine, at its sole discretion, whether or not exact monetary figures presented in the Pre-Qualification Forms or in the Financial Statements will be disclosed in such summaries, lists or other forms of presentation.

X. THE TENDER PROCESS

68. Issuance of the Tender Process Documents; Update Statement

68.1. General

68.1.1. Without derogating from the generality of Section 70 and from the provisions of Section 65.6 and without derogating from the Tender Committee's right, discretion and prerogative pursuant to the Tender Documents and Law, as part of the Tender Process, each Participating Entity will be required to provide a statement detailing any and all changes with respect thereto, which occurred after the Pre-Qualification Submission Date, immediately when such changes occur, and within its Bid submission ("**Update Statement**"). It is expected that even in the absence of any changes, a statement to that effect will be required. Without derogating from the foregoing, the Tender Committee may request all or any Eligible Participants to submit an Update Statement at any time.

68.1.2. The Tender Committee will review the information provided in the Update Statement and, without derogating from its rights and prerogatives under the Tender Documents and Law, shall be entitled to request a Participant to provide further clarifications and/or documents and/or any other information as shall be deemed necessary at the sole discretion of the Tender Committee, in order to examine and evaluate the Update Statement. The Tender Committee may, at any stage, disqualify any Participating Entity or Eligible Participant in the event that it no longer meets the requirements of the Pre-Qualification Documents, 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 Participating Entity or Eligible Participant to execute the Project (or any part thereof) arise following the review of the Updated Statements, at such time as shall be suitable by the Tender Committee.

68.1.3. The Tender Committee reserves the right to evaluate the Update Statement, including, *inter alia*, the repercussions thereof on the Participating Entities' eligibility, at any time, at its sole discretion. It is hereby clarified, that the refraining of the Tender Committee from evaluating the Update Statement upon its receipt shall not derogate from the Tender Committee's rights stipulated in Section 68.1.2 above, and the Participating Entity and Eligible Participant shall not have any claim against the Tender Committee with respect thereto.

68.2. Updated Financial Statements

68.2.1. In addition to the Update Statement, it is expected that, as part of the Tender Process, and in accordance with the provision of the Tender Process Documents, each Eligible Participant shall be required to submit the most recent available audited Financial Statements of its Members and the Guarantor(s), as applicable (the "**Updated Financial Statements**").

- 68.2.2. The Tender Committee shall evaluate the information in the Updated Financial Statements and, without derogating from its rights and prerogatives under the Tender Documents and Law, may request an Eligible Participant and/or any of its Members or Guarantors to clarify, complete or add any information or documents, as may be required, at its sole discretion, for the review of the Updated Financial Statements. The Tender Committee shall be entitled to disqualify any Participating Entity or Eligible Participant, in any stage, in the event that it no longer meet the requirements of the Pre-Qualification Documents 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 Participating Entity or Eligible Participant to execute the Project (or any part thereof) arise following the review of the Updated Financial Statements of any of the Members or the Guarantor(s).
- 68.2.3. The Tender Committee reserves the right to evaluate the Updated Financial Statements, including, *inter alia*, the repercussions thereof on the Participant's eligibility, at any time, at its sole discretion. It is hereby clarified, that the refraining of the Tender Committee from evaluating the Updated Financial Statements upon its receipt shall not derogate from the Tender Committee's rights stipulated in Section 68.2.2 above, and the Participating Entity and Eligible Participant shall not have any claim against the Tender Committee with respect thereto.
- 68.2.4. For the avoidance of doubt, nothing in the foregoing shall derogate from or limit the discretion of the Tender Committee in the occurrence of a material adverse effect in the market conditions.

69. Formation of a Single Purpose Company

- 69.1. 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), all in accordance with the provisions of the Tender Process Documents (“SPC”).
- 69.2. 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, and were approved by the Tender Committee pursuant to the Pre-Qualification Process. The shareholdings and the holdings of other interests by the Members in the SPC (or by the Member if the Participant was a single Entity) shall be as provided in Pre-Qualification Form “2” (*The Participating Entity*), all as shall further be detailed in the Tender Process Documents.

70. Reservation of Rights

- 70.1. All Participants acknowledge that the Project description as specified in this Invitation, including Appendix A, 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 Process 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 or the Tender Process. The Tender Committee reserves the right to update, amend or change the Project, including the site of the Project, the required works and services for the Project, general conditions for the execution of the Project and the selection of Eligible Participants, including determining additional pre-qualification requirements or minimum requirements, whether as part of the Pre-Qualification Process or the Tender Process.

- 70.2. For the avoidance of doubt, without derogating from the provisions of the Pre-Qualification Documents, 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, the scope or content thereof, or any future proceedings which will be conducted with respect thereto, including the Tender Process. The Tender Committee reserves all rights and prerogatives to determine the exact scope, the content, and the terms and conditions of the Tender Documents and for the execution of the Project.
- 70.3. It is further clarified that the issuance of this Invitation is not intended to guarantee the initiation, execution or the implementation of the Project or any part thereof.
- 70.4. It is expressly understood that any reliance by any Entity or Participant on any information in the Pre-Qualification Documents, or any information provided or which will be provided by the GoI, the Tender Committee and the JTMT or anyone on its behalf, including any assumption, conclusion, interpretation, intention or information with respect to the Project and the Tender Process, is at the sole responsibility of the Entity or Participant, and such shall not have any claim against the GoI, the Tender Committee, JTMT or anyone on its behalf with respect thereto. The GoI, the Tender Committee, JTMT and anyone on their behalf, shall not be responsible in any respect to any loss or damage whatsoever suffered by any Entity and/or Participant and/or anyone on their behalf, by reason of any assumption, conclusion or reliance on the information contained in the Pre-Qualification Documents in connection therewith, or any action or forbearance in reliance thereon.
- 70.5. Without derogating from the generality of the foregoing, the Tender Committee reserves the right not to proceed with this Pre-Qualification Process, or with the Tender Process for the execution of 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, for any reason whatsoever, as it shall deem appropriate.
- 70.6. Under the circumstances described herein, including where the next stages of the Tender, inter alia, the Tender Process and the issuance of the Tender Process Documents, are not approved (including in accordance with Section 46A of the Railway Ordinance [New Version] 5732-1972), 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 and/or anyone on

their behalf, including 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.

- 70.7. 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 invite or not the Participants to take part in such process, or execute the Project or any part thereof, in any other way they deem appropriate.

71. Prerogatives of the Tender Committee

Without derogating from any provision under the Tender Documents or any applicable Law, the Tender Committee reserves the right to 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.

- 71.1. The Tender Committee reserves the right to add, determine or amend the requirements of the Pre-Qualification Process and the Tender Process, at any stage.
- 71.2. Without derogating from the foregoing, the Tender Committee may, *inter alia*, add or determine additional Pre-Qualification Requirements; determine new technical requirements and/or financial requirements or any other requirements it deems necessary under the circumstances, or require 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).
- 71.3. 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.
- 71.4. Without derogating from any of its rights and prerogatives pursuant to this Invitation or Law, in evaluating the Pre-Qualification Submissions, decisions will be reached by the Tender Committee on the basis of substance rather than form. Thus, the Tender Committee may:
- 71.4.1. in requests for clarification issued by it pursuant to the provisions of this Invitation, request the demonstration of the Pre-Qualifications Requirements by a form of submission other than that which is specified pursuant to the provisions of this Invitation, including by providing documents which have been prepared following the Pre-Qualification Submission Date;

- 71.4.2. require or permit the demonstration of compliance with the Pre-Qualifications Requirements by Members or Experience Providers on behalf of a Participant other than those originally presented;
 - 71.4.3. determine that compliance with the Pre-Qualifications Requirements was demonstrated, or raise questions and requests for clarifications with respect to lack of compliance with the Pre-Qualifications Requirements or other provisions of this Invitation, based on information available to it;
- 71.5. Without derogating from the provisions of Section 43, the qualifications of one Entity may be accredited to another:
- 71.5.1. following a Merger as such term is defined under the Companies Law 1999 (or, with respect to Entities established outside the State of Israel, a similar amalgamation, which, in accordance with the applicable law under the applicable jurisdiction, has substantially the same outcome), which was completed prior to the Pre-Qualification Submission Date; and/or
 - 71.5.2. following an acquisition of 100% of all Means of Control of another Entity prior to the Pre-Qualification Submission Date; and/or
 - 71.5.3. following a transfer of relevant assets of an Entity, a business or a division of an Entity (in this Section the “**Former Holding Entity**”), as part of a corporate reorganization, to a newly formed Entity or to an existing Entity; provided that (i) the Former Holding Entity no longer holds any of the transferred assets, business or division (as applicable), and (ii) the transfer was completed prior to the Pre-Qualification Submission Date,
- provided that a confirmation of the date of the completion of the merger, acquisition, or the transfer of assets, business or division (as the case may be), and a description of the main features of the said merger, acquisition, or the transfer of assets, business or division (as the case may be), issued by the Entity’s (i) external auditor; or (ii) internal or external legal advisor.
- 71.6. The Tender Committee may exercise any of the prerogatives pursuant to this Section 71 (Prerogatives of the Tender Committee) at any time (including following the issuance of the Tender Process Documents), any number of times as it deems required.
- 71.7. For the avoidance of doubt the Tender Committee shall not be obligated to exercise any of the prerogatives pursuant to this Section 71 (Prerogatives of the Tender Committee).
