

State of Israel

**Ministry of Transport,
National Infrastructures
and Road Safety**



Ministry of Finance

Cross Israel Highway Ltd



Acting through the Inter – Ministerial Tender Committee

Tender for Cross Israel Northern Highway

Yoqneam – Somech

(Sections 3 and 7)

VOLUME 2 – CONCESSION AGREEMENT



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THE CONCESSION AGREEMENT

This Concession Agreement is made and entered into this _____ day of _____, _____ by and between:

THE GOVERNMENT OF ISRAEL, acting on behalf of the State of Israel (the “**State**”) by the office of the Accountant General of the State (the “**Accountant General**”);

and

_____, a limited liability company duly incorporated under the Laws of the State of Israel, certificate of incorporation number _____, having its registered office at _____ (the “**Concessionaire**”). (The State and the Concessionaire are each referred to as a “**Party**” and collectively as the “**Parties**”)

WHEREAS, The Government has decided to allocate substantial resources for the development of transportation infrastructure (Government decision 1421 dated February 24, 2010 (Israel Lanes - Transportation plan for the development of the Negev and the Galil 2010), and expressed its desire that part of the said infrastructure be developed in co-operation with the private sector;

WHEREAS, The State, acting through the Tender Committee, issued the Tender Documents seeking competent Bidders which will build, operate and transfer (“**B.O.T**”) the Highway in order to operate and maintain the Highway with toll sections;

WHEREAS, The Concessionaire has been declared the Successful Bidder pursuant to the Tender Process; and

WHEREAS, The Concessionaire desires to execute this Project as a B.O.T project in accordance with the provisions of the Contract Documents.

NOW THEREFORE, intending to be legally bound hereby, including the above recitals, which are an integral part of this Concession Agreement, the Parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

Capitalized terms used in this Concession Agreement and not defined herein, shall have the meaning ascribed to them in the Definitions Volume attached hereto as **Appendix A** (*Definitions Volume*).

1.2 Interpretations

In this Concession Agreement, except where the context otherwise requires, or as otherwise expressly provided, the interpretations of the following references shall be:

- 1.2.1 A “**day**” shall mean a 24-hour period beginning and ending at 24:00 (midnight).
- 1.2.2 Reference to any **gender and its possessive** shall include the other and the neutral gender and its possessives.
- 1.2.3 A “**month**” shall mean a civil calendar month.
- 1.2.4 A “**year**” shall mean a civil calendar year.
- 1.2.5 The **singular** includes the **plural** and vice versa, and in particular (but without derogating from the generality of the foregoing), any word or expression defined in the singular has the corresponding meaning used in the plural and vice versa.
- 1.2.6 The term “until...” in the context of time or place or reference, shall mean until and inclusive.
- 1.2.7 Each of the terms “including” or “inter alia” does not derogate from the generality of its foregoing.
- 1.2.8 Reference in this Concession Agreement to the Winning Bid shall mean such documents as approved by the State pursuant to the Tender Process.
- 1.2.9 References in any Contract Document to any other Contract Document are made for directory purposes and shall not alter the order of precedence as set forth in this Concession Agreement.
- 1.2.10 References in any Contract Document to any other Contract Document or to any section in any other Contract Document are made for directory purposes and for convenience purposes only and shall not be construed as intended to exclude or derogate from any other applicable provision of the Contract Documents.
- 1.2.11 Whenever an approval, consent, permission, acceptance or any similar instrument is required to be provided by the State all such instruments shall mean an approval, consent, permission or acceptance (as the case may be) in advance and in writing, unless specifically stated otherwise.
- 1.2.12 Whenever the terms “approved”, “permitted”, “accepted” or any conjugation or synonym of any of the above terms are used, and this Concession Agreement determines a procedure for such approval, permission or acceptance to be provided, all such terms shall mean

approved, permitted or accepted (as the case may be) in accordance with the procedures set out therefore in this Concession Agreement.

- 1.2.13 This Concession Agreement shall not be construed against its author, but rather based on the meaning derived from the context, and the provisions of Section 25(b)(1) of the Contracts Law (General Part), 1973, shall not apply.

1.3 Order of Precedence

- 1.3.1 The Contract Documents are to be taken as mutually explanatory, but in case of ambiguities and without derogating from the Concessionaire's obligation to bring such ambiguities to the attention of the State, the following shall apply:

- a) The Concessionaire is required to execute the Project in accordance with the Pre-Qualification Submission and the Winning Bid, in so far as the Concessionaire's obligations under the Pre-Qualification Submission and under the Winning Bid are greater or stricter than the obligations required in the other Contract Documents.
- b) In the event of any conflict among the provisions within any of the Contract Documents, the Concessionaire will be obligated to comply with the stricter provision, to be determined by the State at its sole discretion. Any such conflict will be brought to the attention of the State immediately upon its discovery by the Concessionaire.

- 1.3.2 In the event of conflict between the provisions of the Contract Documents and the provisions of any Law, including the National Master Plan, the Concessionaire shall be obliged to comply with the stricter requirement, unless otherwise determined by the State. Any such conflict will be brought to the attention of the State.

1.4 Headings

Headings in this Concession Agreement are inserted for convenience only, and shall not affect the interpretation of the text thereof.

1.5 Concession Documents

The following, hereby incorporated into this Concession Agreement or incorporated herein by reference, including all appendices and Addenda attached thereto, shall constitute an integral part of this Concession Agreement:

PART A

VOLUME 2A – Appendices

Appendix A	Definitions Volume
Appendix B	Concessionaire's Obligations during the Development Phase
Appendix B1	Execution of Project Agreements
Appendix C	Site Addendum

Appendix C1	HOMC
	<i>[Note: This Appendix will be issued to the Bidders during the Tender Process.]</i>
Appendix D	Adjustment of the Payments
Appendix D1	Toll Revenue Guarantee
Appendix D2	Payment Procedure
Appendix D3	Example of Calculation of the Actual State Periodic Payment
Appendix E	Toll Tariffs
Appendix F	Change Order
Appendix G	Insurance
Appendix H	Terms for Assumption of Senior Debt
Appendix H1	Terms for the Assumption of Hedging Agreements ISDA Schedule
Appendix I1	Form of Performance Bond
Appendix I2	Form of Early Works Bond
Appendix I3	Form of Construction Performance Bond
Appendix I4	Form of Operation and Maintenance Bond
Appendix I5	Form of Final Maintenance Bond
Appendix J	Reports and Meetings Obligations
Appendix K	Dispute Resolution
Appendix K1	Letter of Appointment of the Independent Expert
Appendix K2	Letter of Appointment for the Arbitrators
	<i>[Note: Appendices K, K1 and K2 will be issued to the Bidders during the Tender Process.]</i>
Appendix L	Payment Arrangements according to Sections 8 and 9(b) of the Toll Road Law.
	<i>[Note: This Appendix will be issued to the Bidders during the Tender Process.]</i>
Appendix M	Financial and Economical Regulations issued by the Accountant General of Israel on 16.5.2010 for the encouragement of employment of Israeli workers within the framework of government engagements.

Appendix N	Availability Mechanism <i>[Note: This Appendix will be issued to the Bidders during the Tender Process.]</i>
Appendix O	Tax Pre-Ruling <i>[Note: This Appendix will be issued to the Bidders during the Tender Process.]</i>
Appendix P	Decisions of the Government and approvals of the Knesset Economic Affairs Committee with respect to the Project

VOLUME 2B - Annex

(to be annexed to this Concession Agreement on the Signature Date)

Annex A	Winning Bid
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VOLUME 2C – Exhibits

(to be annexed to this Concession Agreement by the Concessionaire throughout the Concession Period)

Exhibit 1	Concessionaire's Certificate of Incorporation and Articles of Association.
Exhibit 2	Shareholders in the Concessionaire.
Exhibit 3	Shareholders' and Related Entities' Undertakings (and State's approval of Shareholders and Related Entities Investment).
Exhibit 4	Updated Financial Model
Exhibit 5	Insurance Proceeds Account
Exhibit 6	Tax Pre-Ruling.
Exhibit 7	Legal Opinion.
Exhibit 8	Concessionaire Declaration of Permits.
Exhibit 9	Index of Project Agreements.
Exhibit 10	Approved Project Agreements.
Exhibit 11	The Financing Agreements.
Exhibit 12	Project Agreement Affidavit.

Exhibit 13 Site Delivery Schedule

VOLUME 1 - INVITATION TO BID

Volume 1	The Invitation to Bid (including all Annexes, Appendices and Forms)
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PART B - ENGINEERING - TECHNICAL VOLUMES

Volume 3	Introduction to Engineering
Volume 4	Statutory Information and Instructions
Volume 5	Not Used
Volume 6	Utilities
Volume 7	Marketing, Advertising and Customer Service
Volume 8	Engineering
Volume 8.1	Roads Geometry & Traffic
Volume 8.2	Drainage
Volume 8.3	Structures
Volume 8.4	Foundation Engineering
Volume 8.5	Tunnels Excavation & Support
Volume 8.6	Tunnels Utilities Infrastructure
Volume 8.7	Pavement Design
Volume 8.8	Lighting & Electricity Systems
Volume 8.9	Landscape
Volume 9	Tolling System
Volume 10	Highway Traffic Management System
Volume 11	Design Construction and Quality Control
Volume 12	Operation and Maintenance

The Concession Agreement, Part B - the Engineering - Technical Volumes and the Invitation to Bid, jointly constitute the "**Contract Documents**".

2. CONTRACT PERIOD AND CONCESSION PERIOD

2.1 Contract Period

The Contract Period shall be as of the Signature Date and until the termination of the Concession Period, for any reason whatsoever.

2.2 Concession Period

The Concession Period shall be thirty four (34) years as of _____ [*twelve months as the Signature Date, date to be completed upon Signature Date*], subject to its early Termination or to its extension in accordance with this Concession Agreement and the provisions of any Laws, and subject to the following:

- 2.2.1 Should the Concessionaire achieve Financial Closing and satisfy all other conditions set forth in Section 2.5 (*Undertaking of the Concessionaire*) so as to enable the determination of the Effective Date prior to twelve (12) months after Signature Date, the remaining period of the twelve (12) months following the Signature Date shall be added to the thirty four (34) years stated above and shall constitute part of the Concession Period.
- 2.2.2 If Effective Date is determined on the day falling twelve (12) months after the Signature Date, the Concession Period shall be thirty four (34) years.
- 2.2.3 If the Concessionaire shall not achieve Financial Closing or shall not satisfy all other conditions set forth in Section 2.5 (*Undertaking of the Concessionaire*) within twelve (12) months from Signature Date, any additional period to satisfy the conditions set forth in Section 2.5 (*Undertaking of the Concessionaire*), if granted by the State, will be counted within the Concession Period and shall hence be reduced from the thirty four (34) years stated above, unless specifically determined otherwise by the State or under the provisions of the Concession Agreement.

(the "**Concession Period**").

2.3 Signature Date

- 2.3.1 The Signature Date is the date on which the State and the Concessionaire have executed this Concession Agreement. In the event that the Parties did not sign the Concession Agreement on the same date, the Signature Date shall be the latest execution date.
- 2.3.2 Unless expressly provided otherwise in the Contract Documents, all provisions of the Contract Documents and all of the obligations of the Parties thereunder shall enter into force and effect on the Signature Date and shall remain so throughout the Contract Period.
- 2.3.3 The Government has approved the terms of the Tender Process and the Knesset Economic Affairs Committee approved the Highway as a Toll Road and the Toll Tariff and its adjustment mechanism, in accordance with the provisions of the Toll Road Law. The aforesaid decisions are attached to this Concession Agreement as Appendix P (*Decisions of the*

Government and approvals of the Knesset Economic Affairs Committee with respect to the Project).

- 2.3.4 The execution of this Concession Agreement shall be conditioned upon the approval of the Knesset's Finance Committee with regard to the financial undertakings imposed on the State by this Concession Agreement.
- 2.3.5 The Concessionaire represents and undertakes that it has fulfilled the following provisions prior to the Signature Date:
- a) At least seven (7) days prior to the Signature Date, the Concessionaire shall submit to the State a letter confirming the identity of the Chief Executive Officer nominated for the Concessionaire (the "**Nominated CEO**") along with a detailed CV of such Nominated CEO.
 - b) The Concessionaire shall nominate its Project Manager in accordance with Section 10.1 (*Concessionaire's Management Team*) below.
 - c) The Concessionaire shall provide the State with an updated Financial Model, reflecting all changes thereto which occurred following the Bid Submission Date, to be attached hereto as Exhibit 4 (*Updated Financial Model*), if applicable;
 - d) The Concessionaire shall provide the State with an updated detailed schedule for the Financial Closing (the "**Detailed Financial Closing Schedule**"), in accordance with the provisions of Section 1.2 of Appendix 11B (*Schedules*) of Volume 11 (*Design, Construction and Quality Control*).
 - e) All insurance policies required have been submitted by the Concessionaire to the State, in accordance with the provisions of Section 25 (*Insurance*) and Appendix G (*Insurance*);
 - f) The Concessionaire shall provide the State with a valid approval, as required pursuant to the provisions of Section 2A of the Public Entities Transactions (Enforcement of Bookkeeping, Payment of Taxes, Legal Employment of Foreign Workers and Minimum Wage) Law, 5736-1976 (the "**Public Entities Transactions Approval**");
- 2.3.6 The undertakings of Shareholders and Related Entities, submitted as part of the Winning Bid and attached hereto as Exhibit 3 (*Shareholders' and Related Entities' Undertakings*), will be valid until the State approves in writing that each Initial Shareholder or its Related Entity(ies) contributed the Shareholder's Investment and that such Shareholder's Investment has been invested by the Concessionaire in the Project, excluding those parts of the Shareholders and Related Entities Undertaking in which it is specifically stated that they shall remain valid until the termination of this Concession Agreement, or any other date as stated therein. Such written Approval by the State shall be attached to Exhibit 3 (*Shareholders' and Related Entities' Undertakings*), following its issuance by the State.

- 2.3.7 At least ten (10) days prior to the Signature Date, the Concessionaire shall furnish to the State the executed Performance Bond, in accordance with Section 29.2 (*Performance Bond*) below.
- 2.3.8 Prior to the Signature Date, the Concessionaire shall obtain the State's Approval with respect to any change any to any amendment (if any) to any of the representations, warranties, information, data and agreements regarding the Concessionaire, its Shareholders and their Related Entities, including their Parent Entities, its Subcontractors or anyone else, contained in its Winning Bid or in any other document (including financial statements and figures) delivered by the Concessionaire to the State in the framework of the Tender Process or in connection with the Contract Documents.

2.4 **Effective Date**

- 2.4.1 Within thirty (30) days following the Signature Date, the Concessionaire shall provide the State with a written notice stating the date on which the Concessionaire anticipates to fulfill all its obligations under Section 2.5 (*Undertakings of the Concessionaire*) below (the "**Anticipated Effective Date**").
- 2.4.2 The Effective Date shall be the date, determined by the State, by which the Concessionaire shall achieve Financial Closing and shall have fulfilled all of its undertakings, set forth herein Section 2.5 (*Undertakings of the Concessionaire*) below, to the full satisfaction of the State, provided that such date is no later than twelve (12) months from the Signature Date (the "**Effective Date**").

2.5 **Undertakings of the Concessionaire**

- 2.5.1 At least thirty (30) days prior to the Anticipated Effective Date, the Concessionaire shall:
- a) Submit to the State all executed or, final drafts of Project Agreements and any other contractual documentation with relation to the Project (including MOUs), along with a complete detailed index of such, to be attached hereto as Exhibit 9 (*Index of Project Agreements*) and Exhibit 10 (*Approved Project Agreements*), following its approval by the State;
 - b) Establish an insurance proceeds account in accordance with the provisions of Appendix G (*Insurance*). The details of the insurance proceeds account shall be attached as Exhibit 5 (*Insurance Proceeds Account*).
 - c) Furnish the State with the Detailed Schedule in accordance with the provisions of Section 1.3 of Appendix 11B (*Schedules*) to Volume 11 (*Design, Construction and Quality Control*).
 - d) Furnish an executed legal opinion, by the Concessionaire's legal advisor, certifying the signatures of the Concessionaire's Authorized Representatives, to be attached hereto as Exhibit 7 (the "**Legal Opinion**"); and

- e) Provide the State with a declaration duly executed by an officer of the Concessionaire testifying that it has been granted all permits, Approvals and licenses as required by any Law, from all Relevant Authorities in order to commence the implementation of the Works, and the Partial Operation and Maintenance of the Existing Road Sections, for a period of at least twelve (12) months. In addition, the declaration shall testify that such permits, approvals and licenses are valid and that there is no prevention, prohibition, or limitation by any Law, to execute the implementation Works and of the Partial Operation and Maintenance of the Existing Road Sections, as stated above. The declaration shall be attached hereto as Exhibit 8 (the “**Concessionaire Declaration of Permits**”).
- 2.5.2 At least seven (7) days prior to the Anticipated Effective Date, the Concessionaire shall provide the State with an affidavit confirming that apart from the submitted documentation, as per section 2.5.1a) above, there is no other undertaking or agreement, written or oral, direct or indirect, with respect to the Project, between the Concessionaire and any other party which is not listed in Exhibit 9 (Index of Project Agreements) and attached as Exhibit 10 (*Approved Project Agreements*) and Exhibit 11 (*The Financing Agreements*), to be attached hereto as Exhibit 12 (the “**Project Agreements Affidavit**”).
- 2.5.3 The Parties shall appoint the Arbitrators in accordance with Section 32 (*Dispute Resolution*) and Appendix K (*Dispute Resolution*), and shall furnish to the State a "Letter of Appointment of the Arbitrators", in the Form of Appendix K2 (*Letter of Appointment of the Arbitrators*).
- 2.5.4 Without derogating from any other provision in the Contract Documents, the Concessionaire undertakes that on the Effective Date all representations, warranties, information, data, Project Agreements, Financing Agreements and other agreements provided by the Concessionaire and its Shareholders, including their Related Entities, its Subcontractors or anyone else, contained in any written statement or in any other document (including financial statements and figures), delivered in the framework of the Tender Process or in connection with the Contract Documents, are true, complete and accurate on and as of the date they were created, including the Financial Model and the document setting forth the composition of the board of directors, the management and organizational structure of the Concessionaire, as approved by the State; and all such documentation has been or shall be furnished to the State prior to the Effective Date.
- 2.5.5 It is hereby clarified, that the State’s approval to any of the aforesaid documentation shall not, in any way whatsoever, impose any responsibility or obligation on the State or on its representatives and shall not in impact the interpretation of this Concession Agreement and shall not derogate, in any way whatsoever, from the Concessionaire’s obligations of any kind and category, pursuant to the Contract Documents, or pursuant to the provisions of any and all Laws and Regulations.

2.6 Concessionaire's Failure to Meet Undertakings

- 2.6.1 Failure by the Concessionaire to reach Financial Closing and the obligations set forth under section 2.5 (*Undertakings of the Concessionaire*) above until the Effective Date shall be deemed a Material Breach of the Concession Agreement and the State shall be entitled to Terminate this Concession Agreement in accordance with Section 19 (*Termination by the State*). Furthermore, the State shall have the right to forfeit the Performance Bond. Forfeiture of the Performance Bond shall not derogate from any other remedy or from any right of the State under the Contract Documents and all Laws.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CONCESSIONAIRE

The Concessionaire hereby represents to the State and warrants and undertakes towards the State as follows:

3.1 Sole Purpose Company

- 3.1.1 The Concessionaire is a limited private company duly organized and validly existing under the Laws, has all requisite power to own its properties and assets and to carry on its business as now conducted and as proposed to be conducted pursuant to this Concession Agreement.
- 3.1.2 The Concessionaire is a single purpose corporation, and shall remain so throughout the Concession Period. As such, the Concessionaire shall not engage in any activities other than the implementation of the Project in accordance with the provisions of the Contract Documents.
- 3.1.3 The Concessionaire shall not set up Subsidiaries without the prior written consent of the State.
- 3.1.4 The Concessionaire's Certificate of Incorporation and Articles of Association duly certified, as in effect on the date hereof, are to be attached to this Concession Agreement as Exhibit 1 (*Concessionaire's Certificate of Incorporation and Articles of Association*).
- 3.1.5 The Articles of Association do not contradict or conflict with any of the provisions of the Contract Documents. In case any contradiction or conflict between the Articles of Association and the Contract Documents is found the Concessionaire shall amend the Articles of Association in a manner that will eliminate such contradiction or conflict. Any approval by the State to the Articles of Association shall not be deemed as a release from the Concessionaire's obligation to amend the Articles of Association.
- 3.1.6 The Concessionaire's Articles of Association shall include all necessary provisions to give effect to all of the limitations, warranties and representations included in this Concession Agreement, including with respect to the dissolution of the Concessionaire at the end of the Concession Period, subject and following to the fulfillment of all of its obligations under this Concession Agreement, including those obligations which intend to survive Termination of this Concession

Agreement, and which continue to apply by their nature after the expiration of the Concession Period.

3.1.7 Without derogating from the generality of the above, the Articles of Association shall at all times expressly provide that:

- a) any changes in the purpose and activity of the Concessionaire shall require the prior written consent of the State;
- b) any amendment to the Articles of Association shall require the prior written consent of the State;
- c) in the event of a conflict between the provisions of the Contract Documents and the provisions of the Articles of Association (regardless of its approval by the State, if so approved), the provisions of the Contract Documents shall prevail.
- d) All necessary provisions to give effect to all the limitations and provisions included in Section 3.3 (*Holdings and Change In Control*) of this Concession Agreement are included and comprise part of the Articles of Association of the Concessionaire.

3.2 Binding Agreement

- 3.2.1 This Concession Agreement constitutes the legal, valid and binding obligation of the Concessionaire, enforceable in accordance with its terms.
- 3.2.2 The Concessionaire has full authority to execute, deliver and perform the Project according to terms of the Contract Documents. The execution, delivery and performance of the Project according to the Contract Documents by the Concessionaire has been duly authorized by all requisite corporate action and no further authorization or approval is required.
- 3.2.3 The execution, delivery and performance of this Concession Agreement will not result in a breach of or a default under the Shareholders Agreement, the Articles of Association or other agreement or instrument or restriction to which the Concessionaire is a party or by which the Concessionaire is bound or affected and the Concessionaire is under no obligation which will prevent or otherwise obstruct the performance of this Concession Agreement by the Concessionaire.
- 3.2.4 The execution and the fulfillment by the Concessionaire of the provisions of the Contract Documents in accordance with the provisions thereto, do not conflict with, create legal impediments under, or breach the terms of any other agreements or of any Laws.
- 3.2.5 The Concessionaire has no knowledge that any litigation is in effect against it or any of its Initial Shareholders which would challenge the authority of the Concessionaire to enter into this Concession Agreement or to carry out or which could materially effect the ability of the Concessionaire its obligations under the Contract Documents and has no knowledge of such an expected litigation.

3.3 Holdings and Change In Control

- 3.3.1 The Equity of the Concessionaire is held by the entities listed in Exhibit 2 (*Shareholders in the Concessionaire*) according to the percentages indicated therein.
- 3.3.2 All shares issued by the Concessionaire are ordinary shares of one class having identical rights, privileges and preferences. The Concessionaire undertakes not to issue any shares of any additional class, or shares having different rights, privileges or preferences.
- 3.3.3 The Concessionaire has no other Shareholders except for the Initial Shareholders and, subject to the provisions of the Financing Agreements, no undertaking has been given by the Concessionaire or the Initial Shareholders to any third party to allot or to transfer to any third party Equity of the Concessionaire and there is no undertaking of the Concessionaire or the Initial Shareholders to change the Equity of the Concessionaire or to change the Initial Shareholdings of the Initial Shareholders in the Concessionaire, directly or indirectly.
- 3.3.4 The Concessionaire shall not attempt, approve or otherwise authorize, and according to the Shareholders Undertaking towards the Concessionaire and the State the Shareholders shall not undertake, a Transfer of Equity of the Concessionaire to any person, or a change of Control of the Concessionaire, without the prior written approval of the Minister of Finance.
- 3.3.5 In the event that in order to demonstrate its compliance with the financial Pre-Qualification Requirements of the Invitation to Participate in the Pre-Qualification Process, an Initial Shareholder relied on the financial capability of its Parent Entity, any Transfer of Equity of such Initial Shareholder or change in the Control of such Initial Shareholder which:
 - a) Occurred during the period in which either (i) the Shareholders' Undertaking, attached to this Concession Agreement as Exhibit 3 (*Shareholders and Related Entities Undertaking*) is still in effect; or (ii) twelve months as of the date of issuance of the Permit to Operate the Project; and
 - b) Results in a direct or indirect change in the equity of such Initial Shareholder,shall be deemed to constitute a Transfer of Equity or a change in Control of the Concessionaire. The Parent Entity's Undertaking towards the Initial Shareholder, the Concessionaire and the State, shall reflect the Parent Entity's acknowledgment to the provisions of this Section 3.3.5.
- 3.3.6 In the event that in order to demonstrate its compliance with the Professional Pre-Qualification Requirements an Initial Shareholder relied on the professional experience or capabilities of a Related Entity, then any Transfer of Equity of such Initial Shareholder or change in the Control of such Initial Shareholder, which:

- a) Occurred during the period in which either (i) the Shareholders' Undertaking attached to this Concession Agreement as Exhibit 3 (*Shareholders' and Related Entities' Undertakings*) is still in effect; or (ii) twelve months as of the date of issuance of the Permit to Operate the Project; and
- b) Results in a direct or indirect change in the equity of such Initial Shareholder,

shall be deemed to constitute a Transfer of Equity or a change in Control of the Concessionaire. The Related Entity's Undertaking towards the Initial Shareholder, the Concessionaire and the State, shall reflect the Related Entity's acknowledgment to the provisions of this Section 3.3.6.

- 3.3.7 The Concessionaire shall submit, prior to any Transfer of Equity or change in Control of the Concessionaire, a request to the State (a **“Request for Transfer of Equity”**). The Request for Transfer of Equity shall include a description of the proposed Transfer of Equity or change in Control, the transferee (including the identity thereof, its place of business and its financial and other capabilities) and, if applicable, an amendment to a Shareholders Agreement, in accordance with the provisions of this Section 3 and of Appendix B1 (*Execution of Project Agreements*).

- 3.3.8 Following receipt of the Request for Transfer of Equity, the State may request, and the Concessionaire shall provide the State, within fourteen (14) days, any additional information which the State considers necessary for its evaluation and consideration of the Request for Transfer of Equity.

The State may stipulate its approval to the Concessionaire's Request for Transfer of Equity, *inter alia*, upon satisfactory undertaking and securities to ensure that the purchaser or the assignee (for the purposes of this section the **“Transferee”**) of the Concessionaire's Equity or the Transferee of the Parent Entity's or Related Entity's Equity, as applicable, shall be able to comply with the Shareholder's, Parent Entity's or Related Entity's Undertakings, as applicable.

- 3.3.9 The Minister of Finance shall review the Request for Transfer of Equity and shall either comment, approve, with or without conditions precedent, or object in writing to such request within thirty (30) days following the receipt thereof.
- 3.3.10 The Concessionaire may not submit a Request for Transfer of Equity until the elapse of the first three (3) years of the Commercial Operation Phase, and the State shall not permit any Transfer of Equity within such time period unless due to unique justified circumstances, to be determined at the sole discretion of the Minister of Finance.
- 3.3.11 As of the end of the period specified above, the Minister of Finance will not unreasonably refuse to grant approval to any Request for Transfer of Equity. Without limiting the discretion granted to the Minister of Finance in any way whatsoever, it is hereby emphasized that any of the following shall be considered reasonable grounds and considerations

for the purpose of any Request for Transfer of Equity and a decision with respect therewith:

- a) the financial capability of the Transferee;
- b) the technical capabilities and professional skills and ability of the Transferee;
- c) the identity of the Controlling shareholder of the Transferee;
- d) the fact that the Transferee or its Controlling shareholder is suspected of being involved in a criminal activity;
- e) the fact that the Transferee or its Controlling shareholder is a resident of a country which does not have diplomatic relations with the State or conducts a substantial part of its business in such country;
- f) the fact that the Transferee or its Controlling shareholder is an entity budgeted by the State as defined under Section 21 of the State Budget Law 1985 ('*Guf Metuktsav*'), an entity supported by the State as defined under Section 32 of the State Budget Law 1985 ('*Guf Nitmach*'), or an entity subject to the provisions of the State Companies Law 1975.

Any attempted Transfer of Equity in violation of this Section 3 (*Representations, Warranties and Covenants of the Concessionaire*) shall be null and void and of no force and effect, and shall constitute an Event of Default.

- 3.3.12 In the event of any Transfer of Equity in the Concessionaire, and as condition to the approval thereof, the Concessionaire shall cause the Transferee to provide the State with an undertaking duly signed by the Transferee (the "**Transferee Undertaking**"), in which the Transferee undertakes to comply with all undertakings of the former or Initial Shareholder(s), Related Entity(ies) or Parent Entity(ies) as the case may be, entered into prior to the date of the purported Transfer of Equity. In addition, subject to the provision of the Transferee Undertaking, the former or Initial Shareholder(s), Related Entity(ies) or Parent Entity(ies), as the case may be, will be released from its/their undertakings under Exhibit 3 (*Shareholders' and Related Entity's Undertakings*).
- 3.3.13 In the event that in order to demonstrate its compliance with the Professional Pre-Qualification Requirements of the Invitation to Participate in the Pre-Qualification Process an Initial Shareholder relied on the professional capabilities of a Related Entity Controlled by such Initial Shareholder, then any Transfer of Equity of such Related Entity by the Initial Shareholder, shall be subject to the provisions of this Section 3.3 (*Holdings and Change In Control*) with respect to Transfer of Equity, and accordingly, be subject to the approval of the State.
- 3.3.14 Without derogating from the generality of the above, the Concessionaire will notify the State, in writing in advance, of any change in the rights, creation of new rights, or delivery, sale, transfer or issuance of an Initial Shareholder's shares or the placement of a lien

thereon, or a Related Entity's, or a Parent Entity's shares, as the case may be, even if such change in the rights, creation of new rights, delivery, sale, transfer or issuance of shares or the placement of a lien thereon does not constitute Transfer of Equity or change in Control.

- 3.3.15 For the avoidance of doubt, it is hereby clarified that this Section 3.3 (*Holdings and Change In Control*) does not derogate from Section 5(b) of the Toll Road Law.

3.4 Assignment of Obligations and Rights and Engaging with Subcontractors

- 3.4.1 The Concessionaire shall not sell, assign or transfer in any way whatsoever any obligation, right or asset that it has pursuant to this Concession Agreement, or pursuant to any of the Project Agreements, whether in one transaction or in a series of transactions, unless, subject to any and all Laws, the State has given prior, written, express approval.
- 3.4.2 In the absence of the State's prior, written, express consent, as aforesaid, any attempted delivery, endorsement, pledge or transfer of the Concession Agreement, in whole or in part, or of any right or obligation pursuant thereto, shall be null and void. The State's consent, as aforesaid, should it be granted, at the State's sole and absolute discretion, shall not, under any circumstances whatsoever, release the Concessionaire from its responsibility vis-à-vis the State for the precise and complete fulfillment of all of the Concessionaire's undertakings pursuant to this Concession Agreement.
- 3.4.3 A change in ownership or in Control of the Concessionaire, both directly and indirectly, whether by a transfer of shares, an increase of the Share Capital, by an allotment of shares, or by any other manner, shall be deemed a transfer of rights, which the Concessionaire is not permitted to effect without the State's prior, written, express consent, as aforesaid.
- 3.4.4 Without derogating from the generality of the foregoing, and subject to the provisions of any and all Laws, the Concessionaire shall be permitted to outsource the performance of certain Works by a Contractor or Subcontractor, solely in accordance with the provisions of this Concession Agreement and any Laws.
- 3.4.5 Without derogating from all other provisions of this Concession Agreement, should the execution of the Project (or any portion thereof) be outsourced to Subcontractors within the scope of the Project Agreements, the Concessionaire shall be responsible vis-à-vis the State for the actions of the Subcontractors, as if the Works had been executed directly by the Concessionaire, and the Concessionaire shall not have any claim on the grounds that the Works were executed by the Subcontractors.
- 3.4.6 The Concessionaire may enter into Subcontracts in order to perform its obligations pursuant to this Concession Agreement, only in accordance with the provisions of this Concession Agreement and the provisions of Appendix B1 (*Execution of Project Agreements*) and in strict conformity therewith.

Without derogating from the foregoing, in the event the Concessionaire demonstrated its compliance with any of the Professional Pre-Qualification Requirements through a Major Subcontractor, then the Concessionaire must enter into Subcontracts with the said Major Subcontractors in order to perform the respective obligations pursuant to this Concession Agreement, in accordance with the detailed requirements set forth in Tender Form H1 (*Principles for the Engagement of EPC Contractor, Tunneling Expert and the Transportation Infrastructure Expert*) and Tender From H2 (*Principles for the Engagement of the O&M Contractor*), as applicable.

- 3.4.7 The Concessionaire shall not be indebted, shall not undertake, shall not permit any liability whatsoever, and shall not provide any guarantee for an undertaking by a third party, shall not grant credit and shall not permit a lien, pledge or the granting of any other security, other than in accordance with the provisions of this Concession Agreement. Such limitation as aforesaid shall be expressly included in the Concessionaire's Articles of Association.
- 3.4.8 Without derogating from the generality of the foregoing, the Concessionaire shall not pledge the insurance account or the insurance policies, other than in accordance with the provisions of this Concession Agreement.
- 3.4.9 Notwithstanding that stated above, upon receipt of the Minister of Finance authorization (which authorization shall be subject to all terms and conditions agreed by the Parties but shall not be unreasonably withheld), the Concessionaire is permitted to assign and to pledge its rights pursuant to this Concession Agreement and pursuant to each of the Project Agreements for the purposes of the Project financing, and the Shareholders are permitted to assign and to pledge their shares in the Concessionaire, all as shall be required in accordance with the conditions of the Financing Agreements approved by the State. Without derogating from the discretion granted to the Minister of Finance, the State and the Minister of Finance shall not authorize a pledge as aforesaid, unless the Pledge Documents shall include the following provisions:
 - (a) in any instance of realization of the Transfer or the Pledge, every replacement of the Concessionaire, every transfer of shares in the Concessionaire and any appointment of a receiver to the Concessionaire or to its assets, shall require the State's consent;
 - (b) an express provision whereby the Pledge shall solely be used to secure the Project financing, and not for any other purpose;
 - (c) an express provision whereby exercise of the Pledge shall be subject and subordinate to the State's rights pursuant to this Concession Agreement.
- 3.4.10 Without derogating from the aforesaid, from the provisions pursuant to any and all Laws and Regulations, and from all additional provisions pursuant to this Concession Agreement, the approval of the Financing Agreements by the State, unless explicitly stated otherwise, shall be

considered as approval for the allowance of all the collateral and security provisions and their conditions as detailed in the Financing Agreements.

3.5 Related Party Transactions

Related Party Transactions shall be subject to the Approval of the State at all times and shall be subject to the provisions of Appendix B1 (*Execution of Project Agreements*).

3.6 Health and Safety

The Concessionaire has familiarized itself with all health and safety aspects of the Project, including the provisions of all applicable Laws and this Concession Agreement, with respect therewith, and hereby represents and warrants to the State that it is fully capable of complying with the same and preserving the health and safety of all employees of the Concessionaire, its Subcontractors and any third party.

3.7 Licenses and Permits

- 3.7.1 **Legal Status and Authority.** The Concessionaire shall possess throughout the term of the Contract Period all required authority and Approvals to perform its obligations under this Concession Agreement and shall perform them in a manner consistent with the Contract Documents.
- 3.7.2 **Obtaining Approvals and Permits.** The Concessionaire has no reason to believe that any of the Approvals or permits required to be obtained by the Concessionaire will not be granted in due course and thereafter remain in effect so as to enable the implementation and progress of the Works in accordance with the provisions of the Concession Agreement.
- 3.7.3 **Maintaining Approvals and Permits.** The Concessionaire shall, at its sole risk and expense, shall be solely responsible for obtaining, possessing, maintaining, complying with and keeping in effect, during the Contract Period all permits, licenses, and Approvals required for the execution of the Project.
- 3.7.4 **Expiry of Approval and Permits.** The Concessionaire shall notify the State in writing, not less than thirty (30) days prior to the then current expiration date, or the impending expiration of any permit, license or Approval which the Concessionaire is required to obtain and maintain in force under this Concession Agreement.
- 3.7.5 Furthermore, the Concessionaire shall notify the State in writing of any suspension, revocation or cancellation of any permit, license or Approval, or any amendment thereto, which affects its validity or scope of application, or of the failure of the Concessionaire to obtain the renewal of any permit, license or approval prior to its expiration.

3.8 Performance of Obligations

- 3.8.1 **Familiarity with the Project.** The Concessionaire has fully familiarized itself with all aspects of the Project and has all knowledge, experience, qualifications and ability (including financial qualification

and ability) to carry out the Project in accordance with the provisions of the Concession Agreement.

- 3.8.2 **Expert Evaluation.** The Concessionaire has evaluated, as an expert, all factors and data that may be deemed to affect the execution of the Project in compliance with the provisions of this Concession Agreement, including, *inter alia*: (i) the Site and its surroundings; (ii) financing aspects and risks; (iii) technical aspects and risks; (iv) design and construction aspects and risks; (v) Operation and Maintenance aspects and risks; and (vi) any other risk involved therein, and such other conditions that may reasonably be expected to affect the Implementation, progress or completion of the Project or the Operation of the Project in accordance with this Concession Agreement. Pursuant to its evaluation, the Concessionaire has reasonable grounds for believing and does believe that the performance of its obligations in accordance with the provisions of this Concession Agreement is feasible and practicable.

Without derogating from the generality of the foregoing the Concessionaire has fully and independently reviewed, examined and evaluated, as an expert, the data provided by the Sate within the Contract Documents regarding the geotechnical conditions at the Site and its surroundings and regarding other ground conditions, which may be relevant to the Project, and shall be responsible for the Implementation, Operation and Maintenance of the Project, according to the geotechnical conditions and any other ground conditions actually found in the Site, in accordance with the Concession Agreement, unless such responsibility, is specifically and expressly limited in the Concession Agreement, and to the extent limited.

The Concessionaire has examined and evaluated, as an expert, the condition of the Existing Road Sections, and all data and information provided with respect therewith and which may be deemed to affect the performance of the Concessionaire's obligations with respect to the Operation and Maintenance and upgrading thereof, and any other obligation the Concessionaire undertook with respect thereto. Pursuant to such examination and evaluation, the Concessionaire has reasonable grounds for believing and does believe that the performance of its obligations in accordance with the provisions of this Concession Agreement is feasible and practicable.

- 3.8.3 **Professional Advice.** Without derogating from the generality of the foregoing, the Project Schedule and the Financial Model have been prepared, updated and maintained by experts on a professional basis, with due care and consideration, and all assumptions contained therein are reasonable and attainable.
- 3.8.4 **Execution of Works.** The financing, Design, Construction, Operation and Maintenance shall be carried out in accordance with this Concession Agreement and shall include any work which is necessary to satisfy the obligations of the Concessionaire as set forth in this Concession Agreement, or as is implied by it, or arises from any obligation of the Concessionaire, and all works not mentioned in the

Contract Documents but which are necessary for the safe, reliable, timely and efficient performance and completion of the financing, Design, Construction, and Operation and Maintenance of the Project, including, and without derogating from the generality of the foregoing, purchasing, transport and supply of all of the products, Materials, manpower and Equipment, etc., that are required for the execution of the Works, including any expense, payment cost, duty, fee, or tax pertaining thereto.

3.9 Plans and Laws

- 3.9.1 **Legal Requirements.** The Concessionaire has evaluated, as an expert, and is aware of all legal requirements that must be followed for the execution of the Project. The Concessionaire shall abide by the various Laws and Regulations. Without derogating from the generality of the foregoing, the Concessionaire shall comply with all environmental regulations and obtain all the necessary permits, in accordance with the provisions of the various Laws in order to finance, Design, Construct, complete, Operate and Maintain the Project.
- 3.9.2 The Concessionaire represents and warrants that it bears the sole responsibility for obtaining all Approvals and Permits necessary for any and all Alternative Components included in its Winning Bid, which incorporated any change to the non-binding requirements of NMP 31A/3 or NMP 31A/7, including the Approval of the Accompanying Team. The Concessionaire further represents and warrants that in the event it shall fail to obtain such Approvals it shall proceed with the implementation of the Project on the basis of the plans and instructions originally approved under NMP 31A/3 and NMP 31A/7 at its sole responsibility and at its own expense. Such failure shall not be construed a Change and shall not entitle the Concessionaire to any remedy or compensation.
- 3.9.3 The Concessionaire shall bear the full and sole responsibility for complying with all changes in the various Laws as enacted from time to time, and to any changes in any of the various by-laws, codes or regulations as introduced from time to time by the relevant municipalities or authorities, and such compliance shall not entitle the Concessionaire to any relief under this Concession Agreement, nor will it limit, change or otherwise relieve the Concessionaire's obligations under this Concession Agreement other than as specifically stated in this Concession Agreement.
- 3.9.4 **Business Practices.** The Concessionaire shall employ good business practices and appropriate management techniques in the execution of the Project pursuant to this Concession Agreement and shall conduct its commercial affairs in a manner consistent with good faith and fair dealing.
- 3.9.5 **Marketing, Advertising and Customer Service.** The Concessionaire shall be responsible for managing and conducting public relations, including public information, marketing activities and advertising the Project, in accordance with the provisions set out in Volume 7 (*Marketing, Advertising and Customer Service*). The Concessionaire

undertakes, at its sole cost and expense to act diligently and professionally in the marketing, advertising, distributing and maintenance of in-vehicle readers, if any, and other devices used in the Tolling System and in conducting the customer service.

- 3.9.6 **Liquidation and Reorganization.** The Concessionaire shall not commence a voluntary case or other proceedings seeking liquidation, winding up, reorganization or other relief with respect to itself or its debts under any corporation, bankruptcy, insolvency or other similar law, or seek the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or any substantial part of its assets, file an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it, or shall consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or shall make an assignment for the benefit of creditors, or shall fail, be unable, or admit in writing the inability to pay its debts as they become due, or shall take any action to authorize any of the foregoing.

3.10 Personnel

- 3.10.1 **Sufficient Personnel.** The Concessionaire will ensure, at all times, the employment of sufficient and adequate personnel as required for the performance of its obligations under the Concession Agreement.
- 3.10.2 **Financial and Economical Regulations.** The Concessionaire is aware of the provisions of the Financial and Economical Regulations issued by the Accountant General of Israel on 16.5.2010 (attached as Appendix M) [**הוראות התכ"ס – הוראה מס' 7.12.9 מיום 16.5.2010, בעניין**], and undertakes that all of its activities will be performed in accordance thereof.
- 3.10.3 Without derogating from the generality of Section 19 of the Concession Agreement (*Termination by the State*), breach of the provisions of the Financial and Economical Regulations issued by the Accountant General of Israel on 16.5.2010, will be deemed as breach of the Concession Agreement, and the provisions of Section 19 of the Concession Agreement (*Termination by the State*) will apply.

3.11 Information Supplied; Disclaimer

- 3.11.1 The State, including the Tender Committee, have made available to the Concessionaire information which they consider relevant for the Project, and have allowed the Concessionaire reasonable access to the Site for the purposes of conducting reasonable independent evaluation, review, inspection, study and testing.
- 3.11.2 The Concessionaire shall be deemed to have examined all information contained in the Contract Documents irrespective of any actual examination and shall be bound by all information stated therein.
- 3.11.3 The State does not represent or warrant that the information contained in the Contract Documents which it has made available to the

Concessionaire is either complete or accurate. It is expressly understood that no information derived from an investigation, or interpretation of the information contained in the Contract Documents by the Concessionaire or any representatives of the Concessionaire, will, in any way, relieve the Concessionaire from any responsibility, risk or obligation to properly fulfill its obligations under the Concession Agreement.

3.12 Project Related Information

The Concessionaire specifically acknowledges and agrees that:

- 3.12.1 The Concessionaire relies on the Project related information provided by the State, including the information contained in the Contract Documents, at its own risk;
- 3.12.2 The Concessionaire was obliged to ascertain whether there were any errors in any Project related information provided by the State, and to notify the State of any such errors or defects prior to the submission of the Bid, and has the continuing obligation to ascertain whether any such errors or defects exist and to notify the State regarding any potential difficulties which might arise from such errors or defects; and
- 3.12.3 Prior to the submission of the Bid, the Concessionaire was obliged to verify all data contained in the Project related information provided by the State, for which such verification is appropriate, given the scope of the Concessionaire's responsibilities under the Contract Documents.

3.13 General Disclaimer

- 3.13.1 The Concessionaire agrees that it has full responsibility for the execution of the Project, including finance, Design, Construction, and Operation and Maintenance of the Project.
- 3.13.2 The Concessionaire understands and agrees that the State shall not be responsible in any respect to any loss or damage whatsoever suffered by the Concessionaire, its employees, officers, agents, Subcontractors, or any other persons for whom the Concessionaire may be legally or contractually responsible or accountable, by reason of any use of any information contained in the Contract Documents provided or in connection therewith, or any action or forbearance in reliance thereon.
- 3.13.3 The Concessionaire further acknowledges and agrees that if and to the extent the Concessionaire or any person on the Concessionaire's behalf uses any of said information in any way, such use is made on the basis that the Concessionaire, not the State is the source of said information; and the Concessionaire is capable of conducting and is entitled there under to conduct any and all studies, analyses and investigations as it deems advisable to verify or supplement said information, and that any use of said information is entirely at its own risk and at its own decision.
- 3.13.4 The Concessionaire is satisfied, on the basis of its examinations, that the consideration pursuant to this Concession Agreement constitutes full and fair consideration for the performance of its obligations pursuant to this Concession Agreement, of any form and type, in their

entirety and on the dates stipulated herein, and the Concessionaire hereby waives any claim, any demand and any action for any further consideration, other than as explicitly specified in this Concession Agreement. The Concessionaire shall not be allowed to make any pecuniary or other claims, including for an extension of the Project Schedule or the Detailed Basic Schedules and the timetables listed therein, on the basis of a lack of knowledge of any of the terms and conditions of the Tender, of the Concession Agreement, of the provisions of all Laws, of the implications and effect of such terms and conditions, on the basis of a lack of knowledge of or lack of familiarity with any condition or circumstance pertaining to the performance of its obligations pursuant to this Concession Agreement.

3.14 Approvals Granted By the State.

Any Approval by the State pursuant to this Concession Agreement shall not relieve the Concessionaire of its obligations and liability under this Concession Agreement and shall not impose any obligations or liability on the State.

3.15 No representation or warranty of the Concessionaire in this Concession Agreement omits to state a material fact necessary to make the statements herein that in light of the circumstances in which they were made, are not misleading.

3.16 The Concessionaire shall not engage in any legal or other relationship, directly or indirectly, with any other body, apart from the State, that might be deemed to create a direct or indirect conflict of interests between the activities of such body and the activities of the State or its Primary Advisors in the Tender, during the Contract Period and for a period of 24 (twenty-four) months after the expiration or termination of the Concession Period, for any reason whatsoever.

3.17 All of the Concessionaire's declarations and representations in this Concession Agreement are true on the Signature Date, and all the Concessionaire's undertakings pursuant to this Concession Agreement shall apply with full force and effect throughout the Contract Period. The Concessionaire further declares and acknowledges that its declarations and undertakings in the Pre-Qualification Documents and in the Tender Process constitute an integral part of this Concession Agreement. It is hereby further clarified that nothing in this Concession Agreement will derogate in any way from the discretion of the State to allow (including providing its consent subject to the fulfillment of any types of conditions) any changes to the declarations and undertakings of the Concessionaire that the State deems proper.

3.18 The Concessionaire is aware that the State has entered into this Concession Agreement, *inter alia*, on the basis of the above representations and warranties.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE STATE

4.1 This Concession Agreement constitutes the legal, valid and binding obligation of the State, enforceable in accordance with its terms.

4.2 The Implementing Authority is duly appointed and authorized by the State to implement and supervise the execution of the Project and the performance of this Concession Agreement throughout the Contract Period, including, but not limited

to, collection of Tolls and the performance of the Concessionaire's other undertakings under this Concession Agreement. The Implementing Authority shall be deemed to be acting for and on behalf of the State for any and all the purposes of this Concession Agreement. The Implementing Authority shall be the Concessionaire's single point of contact on behalf of the State for all purposes of this Concession Agreement. Actions and obligations of the Implementing Authority with respect to this Concession Agreement shall be deemed to be actions and obligations of the State, and rights and remedies of the Implementing Authority under this Concession Agreement shall be deemed rights and remedies of the State.

- 4.3 Except as otherwise provided in this Concession Agreement, during the Contract Period, the State shall use reasonable efforts in order to assist the Concessionaire in its dealings with Relevant Authorities to the extent permitted by the Law in connection with executing and implementing the Project in accordance with the Contract Documents, provided, however, that the State shall bear no liability whatsoever for any failure of the Concessionaire to obtain any result. According to the Toll Road Law, the Concessionaire shall have the power of a local signage authority as provided in the Traffic Ordinance in respect to the Operation of the Toll Road. The State shall use reasonable efforts to assist the Concessionaire to get appointed and authorized as a local signage authority during the Construction Phase. The State shall bear no liability whatsoever for any failure to obtain such appointment.
- 4.4 The State reserves the right to assign or transfer any of its rights or obligations hereunder, or any portion thereof, to any other government authority, government owned company, or to any other entity appointed by the State, provided that: (i) any such assignment or transfer shall become effective only after the assignee or transferee, as the case may be, has furnished written notice to the Concessionaire of the said assignment or transfer; (ii) that any such assignment or transfer shall not adversely affect the rights or obligations of the Concessionaire, to be determined by the State at its sole discretion and (iii) the State shall remain the guarantor of all its obligations pursuant to this Concession Agreement.
- 4.5 In the event of the Implementing Authority being dissolved or ceasing to have the power or authority to perform its obligations under this Concession Agreement or for another reason the Implementing Authority is unable to fulfill its undertakings hereunder, the rights and obligations of the Implementing Authority under this Concession Agreement shall, unless the provisions of Section 4.4 above have been invoked, automatically be assigned and transferred to the State. Written notice of such assignment shall be delivered by the State to the Concessionaire.
- 4.6 **No Liability of the State.**
- 4.6.1 Despite the stated in or implied from any other provision herein or anywhere else in the Contract Documents, it is hereby clarified that any action (including finance, responsibility of making certain payments, designing and planning, constructing, operating, etc.) required to be taken in connection with the Project, shall be the sole responsibility of the Concessionaire, whether the requirement for such action or the Concessionaire's responsibility is stated explicitly, is implied or is not stated at all. The foregoing shall not apply solely where it is explicitly stated, in a way that can not be misinterpreted, that it is the State's

responsibility to take certain action; then, such action only shall be considered the responsibility of the State and any other subsequent or related actions (such as financing) shall remain the sole responsibility of the Concessionaire.

- 4.6.2 It is hereby further clarified that, unless explicitly provided for otherwise in the Contract Documents, any responsibility and liability of a Government owned entity shall not impose any direct or indirect liability on the State.

4.7 Payments

The Concessionaire shall be entitled to the following payments during the Contract Period:

4.7.1 Construction Grant

Subject to the Concessionaire's compliance with the conditions set forth for Milestone Payment:

- (a) The State shall pay the Concessionaire a Construction Grant in the following amounts and in the form of Milestone Payments:

Milestone Payment Number	Condition for Milestone Payment	Percentage of the Construction Grant	Base Construction Grant Payment (in Millions NIS)
1	Issuance of Interim Permit to Operate for the Partial Operation and Maintenance of a Section of the Highway.	40%	<i>[to be completed upon Signature Date in accordance with the Winning Bid]</i>
2	Issuance of Permit to Operate.	60%	<i>[to be completed upon Signature Date in accordance with the Winning Bid]</i>
			Total: <i>[to be completed upon Signature Date in accordance with the Winning Bid].</i>

(the "Construction Grant")

4.7.2 Base Total Target Income

The State has set a quarterly target income in the total sum of forty million NIS (NIS 40,000,000) for each quarter of the fiscal Year ("**The Base Total Target Income**"), as of the commencement of Commercial Operation Phase of the Project.

4.7.3 **Base Periodic Payment for Partial Operation Phase - Section of the Highway**

From the issuance of the Interim Permit to Operate for the Partial Operation of a Section of the Highway, and until the commencement of the Commercial Operation Phase, the Concessionaire shall be entitled to periodic payments for the partial operation of section of the Highway in the sum of fifteen million NIS (NIS 15,000,000) for each quarter of the fiscal Year ("**The Base Periodic Payment for the Partial Operation Phase**").

4.7.4 **Adjustment of Payments**

The Base Construction Grant, the Base Total Target Income and the Base Periodic Payment for the Partial Operation Phase, shall each be adjusted in accordance with the applicable terms and conditions set forth in Appendix D (*Adjustment of the Payments*) and shall be paid in accordance with the terms of payments provided in Appendix D2 (*Payment Procedure*).

4.7.5 **Toll Revenue and Toll Revenue Guarantee Payments**

- (a) From the commencement of Commercial Operation Phase of the Project the Concessionaire shall be entitled to Actual Toll Revenue ("**ATR**") payments collected from the users of the Highway.
- (b) In addition to the Toll Revenue payments the Concessionaire shall be entitled to a complementary payment from the State of the Toll Revenue Guarantee ("**TRG**"), or shall be subject to a deduction of the Toll Revenue Guarantee payments, in the event that the Concessionaire revenues from Adjusted Actual Toll Revenue payments exceeds the Adjusted Toll Revenue Target ("**TRT**").
- (c) The Toll Revenue and the Toll Revenue Guarantee shall be adjusted and calculated according to the provisions of Appendix D1 (*Toll Revenue Guarantee*).
- (d) Without derogating from the aforesaid, from the commencement of the Partial Operation and Maintenance of a Section of the Highway, the Concessionaire shall be entitled to collect Tolls from the users of the Toll sections of the Highway.

4.7.6 **Actual State Periodic Payment**

The Actual State Periodic Payment which shall be paid to the Concessionaire shall be calculated according to the following formula:

$$ASPP(i,j) = ATTI(i,j) - ATRTq(i,j) + TRG(i,j)$$

ASPP(*i,j*) - Actual State Periodic Payment for every quarter *j* of every Year *i*;

ATTI(*i,j*) - Adjusted Total Target Income for every quarter *j* of every Year *i*;

ATRTq (i,j) - Adjusted Quarterly Toll Revenue Target for every quarter j of every Year i ;

TRG(i,j) - Toll Revenue Guarantee for every quarter j of every Year i

("Actual State Periodic Payment").

4.7.7 Payments; General

Except where expressly specified otherwise in the Contract Documents the Adjusted Periodic Payment for the Partial Operation Phase, the Actual State Periodic Payments and the Toll Revenue Payments shall constitute the Concessionaire's sole remedy for any loss of revenue and for any loss of demand (whether actual or potential), including any loss of revenue and any loss of demand resulting from failure of the State to fulfill any of its obligations under the Contract Documents, and the Concessionaire shall not be entitled and hereby waives any claim for any additional compensation for any such loss of revenues and of any loss of demand, including with respect to any failure by the State to fulfill its obligations under the Contract Documents.

4.8 Marketing, Advertising and Customer Service

Without derogating from the Concessionaire's obligation under Section 3.9.5 (*Marketing, Advertising and Customer Service*) the State reserves the right to conduct public relations and to market the Project or any part thereof, including by way of holding advertisement campaigns. All marketing activities shall be coordinated in advance with the Concessionaire.

5. THE PROJECT'S CONCEPT, SCOPE, PHASES AND SCHEDULE

5.1 Execution of a B.O.T Project

5.1.1 The Concessionaire hereby undertakes, at its sole risk and expense, to implement the Project as a B.O.T. project in accordance with the provisions of the Contract Documents, including *inter alia*, to develop, engineer, design, obtain all required permits and authorizations, raise all finance, manufacture, procure, inspect, supply, transport, insure, construct, install, test, manage, train personnel, operate and maintain the Project, and transfer it to the State at no cost upon the termination, or early termination, of the Concession Period, all in accordance with the provisions of the Contract Documents, and without recourse to the State, the Implementing Authority, the Tender Committee or CIH, except as expressly provided herein.

5.1.2 The Concessionaire undertakes to execute the Project in compliance with this Concession Agreement, and all of the terms and conditions set forth in the Contract Documents and all Amendments and Addenda thereto, and in accordance with all of the relevant Tender Forms in its Winning Bid, as approved by the State.

- 5.1.3 Furthermore, the Concessionaire undertakes to execute the Project skillfully and in a professional and expeditious manner, pursuant to all Laws and to the satisfaction of the State.

5.2 The Phases of the Project

The Contract Period shall be divided into three (3) phases:

- (a) the Development Phase;
- (b) the Construction Phase (including the Partial Operation and Maintenance Phase); and
- (c) the Commercial Operation Phase.

5.3 Project Schedule

The Project shall be executed by the Concessionaire according to the Basic Schedules and the provisions of Appendix 11B (*Schedules*) of Volume 11 (*Design, Construction and Quality Control*).

6. THE DEVELOPMENT PHASE

6.1 Commencement of the Development Phase.

Following the Signature Date, the State shall issue the Concessionaire a “Commencement Order of Development Phase”.

6.2 Concessionaire’s Obligations during the Development Phase

During the Development Phase, the Concessionaire shall, at its sole risk and expense:

- 6.2.1 Provide the State with all Detailed Schedules in accordance with the provisions of Appendix 11B (*Schedules*) of Volume 11 (*Design, Construction and Quality Control*);
- 6.2.2 Provide the State with a Detailed Quality Plan in accordance with the provisions of Volume 11 (*Design, Construction and Quality Control*) and of Volume 12 (*Operation and Maintenance*).
- 6.2.3 Obtain all permits, licenses, governmental, municipal and other approvals required in order to commence the Construction of the Project and for the Partial Operation and Maintenance of the Existing Road Sections;
- 6.2.4 Complete the Detailed Design and any other work plan, and obtain the approval of the Accompanying Team for at least the period of the first twelve (12) Months of the Construction Phase, according to the Concessionaire's Detailed Design Schedule and in accordance with the provisions of Appendix B (*Concessionaire’s Obligations during the Development Phase*);
- 6.2.5 Complete the Operation and Maintenance Plan in accordance with the provisions of Volume 12 (*Operation and Maintenance*);
- 6.2.6 Execute all Project Agreements in accordance with the provisions of Appendix B (*Concessionaire’s Obligations during the Development*

Phase) and the provisions of Appendix B1 (*Execution of Project Agreements*); and

- 6.2.7 Without derogating from the generality of Sub-Section 6.2.5 above, achieve Financial Closing in accordance with section 2.4.2 above, and with the Detailed Financial Closing Schedule.

7. THE SITE

7.1 The Site

- 7.1.1 The State undertakes to deliver the Site to the Concessionaire, at its own expense and responsibility, pursuant to the National Highway Law.
- 7.1.2 The State shall deliver the Site, or any part thereof to the Concessionaire, clear of invaders and occupants, as shall be required for the performance of the Concessionaire's obligations under this Concession Agreement, unless specifically stated otherwise in the Contract Documents.
- 7.1.3 The State shall deliver the Site to the Concessionaire pursuant to the delivery schedule agreed by the State and the Concessionaire as set forth in Exhibit 13 (*Site Delivery Schedule*) and in accordance with the procedures set forth therein and in Appendix C (*Site Addendum*) to this Concession Agreement. The Implementing Authority shall inform the Concessionaire in writing of the date of delivery of any part(s) of the Site, whether the delivery date is as set forth in Exhibit 13 (*Site Delivery Schedule*) or if it is prior to or after the date set forth in Exhibit 13 (*Site Delivery Schedule*).

7.2 The Right to Utilize the Site

- 7.2.1 The Concessionaire has and will have no title, rights of ownership or leasehold rights or any other rights under the Land Law, or other property rights or other rights under any other Laws with respect to the land of the Site on which the Highway, the Miscellaneous Structures and any Associated Facilities are to be constructed, including, but without limitation to, any right of possession, tenancy, renting, easement, right of preemption, equity rights, and rent-control, except for the Right of Use with regard to the land of the Site for the sole purpose of Constructing the Highway, the Miscellaneous Structures and the Associated Facilities and, Operating and Maintaining the Highway, the Interchanges and the Miscellaneous Structures during the Concession Period, all subject to the terms of this Concession Contract.
- "Right of Use" for the purpose of this Section means that the Concessionaire shall also have those powers granted under Sections 16, 17 and 18 of the Land Law.
- 7.2.2 Without derogating from the generality of Section 7.2.1 above, it is hereby clarified that the Concessionaire has and will have no rights with respect to the airspace above, or subsoil rights below the Site

(except for the subsoil space of the tunnels which shall comprise part of the Site) on which the Project is to be undertaken. The State reserves unto itself and may, at its sole discretion, grant to third parties or to the Concessionaire all rights with respect to the airspace and sub-soil rights (except for the subsoil space of the tunnels which shall comprise part of the Site), provided that the exercise of such rights by the State or third parties shall not materially adversely affect the rights and obligations of the Concessionaire under this Concession Agreement.

- 7.2.3 Prior to the issuance of the Construction Completion Certificate, the Concessionaire shall have no rights with respect to the Site, except for the right to develop and construct the Project and the right to operate and maintain the Highway, in accordance with the provisions of the Contract Documents. Solely as of the receipt of the Construction Completion Certificate the Concessionaire shall be granted the right to utilize the Site, for the sole purpose of operating and maintaining the Project in accordance with the provisions set forth hereunder, unless otherwise explicitly approved in writing by the State (the “**Right to Utilize the Site**”).
- 7.2.4 Notwithstanding the aforesaid, in the event the Concessionaire shall locate the HOMC outside the limits of the Site, the provisions of Appendix C1 (*HOMC*) shall apply.
- 7.2.5 The Concessionaire shall provide the State, the Implementing Authority, any other Relevant Authority and any person acting on their behalf, immediate access to any parts of the Site and to any additional land in which the Concessionaire is performing any Works or any of its obligations in accordance with this Concession Agreement, for the purpose of exercising their rights and authorities under the Contract Documents or under any Laws. In such case the Concessionaire shall supply all safety measures required in order to enable such exercise of authority.
- 7.2.6 The Concessionaire shall allow crossing (whether temporary or permanent) of the Site and shall provide access to all parts of the Site including those to which the public does not have access, to all Utility owners, to all Utility providers and to anyone acting on their behalf, at their request, for performing works on the Site, including for the purpose of laying infrastructure and maintaining existing infrastructure. The Concessionaire shall provide such access to Utility owners or Utility providers (all on terms and conditions that shall be in accordance with common market practice), and shall not be entitled to any indemnification or payment by the State for providing such access to the Site.

7.3 Termination

Termination of this Concession Agreement in any manner whatsoever shall cause termination of the Concessionaire’s Right to Utilize the Site or any other right with respect to the Site, including the right to develop and construct the Project, if

such termination occurs prior to the receipt by the Concessionaire of the Construction Completion Certificate.

7.4 Representations, Warranties and Covenants Relating to the Site

Without derogating from the generality of the provisions of Section 3 herein above, the Concessionaire warrants, represents and covenants as follows:

- 7.4.1 The Concessionaire has fully examined and evaluated, as an expert, all provisions with respect to the Site, and it is familiar with, understands, accepts and undertakes to execute such provisions.
- 7.4.2 The Concessionaire visited the Site, and inspected, as an expert, all factors and data that may be deemed to affect the execution of the Project in compliance with the provisions of the Contract Documents, including, *inter alia*:

- a) the physical and geological conditions of the Site and its surroundings, its subsurface conditions and other natural and other limitations of the Site, including the existing above - and below - ground infrastructure facilities, whether active or inactive, and those that are planned to be constructed, the Existing Road Sections, and obtained information available in connection therewith;
- b) technical and environmental aspects and risks including the restrictions and limitations imposed pursuant to the provisions of the Contract Documents and any Law;
- c) the requirements of the National Master Plans and all other outline schemes and Relevant Authorities;
- d) the legal status of the Site and its surroundings; and
- e) the entire set of circumstances pertaining to the execution of all Works it has committed to execute pursuant to this Concession Agreement;

pursuant to such evaluation, the Concessionaire believes that the performance of its obligations hereunder is feasible and practical. Pursuant to its evaluation, the Concessionaire has satisfied itself that all of the above are suitable for the fulfillment of its obligations in accordance with the provisions of this Concession Agreement.

Furthermore, the Concessionaire hereby waives any claim of incompatibility of any kind or type, in relation to the Site, and in relation to all matters pertaining thereto.

- 7.4.3 Without derogating from the provisions of subsection 7.4.2 above, the Concessionaire warrants that it was invited to and had full opportunity to carry out, at its own expense and risk, any tests in order to ascertain the conditions at the Site, and in order to evaluate the feasibility of the Project.
- 7.4.4 For the removal of doubt, it is hereby clarified that, the Concessionaire shall not be permitted to register a caution remark (*Hearat Azhara*) on the Site or on any other land related to the Project (other than in

accordance with the provisions of Appendix C1 (*HOMC*), if applicable). Furthermore, the Concessionaire asserts in a definitive and irrevocable manner, that there is not and it shall not have a right of lien with regard to the Highway, the Site and the land on which the Project was built, any part of it and all that which is connected to it or connected to anything which is connected to it or any tangible property, unless as explicitly provided for in the Contract Documents. The Concessionaire does not have and shall not have any rights whatsoever in connection with the airspace above the Site and the ground beneath it (except for the Tunnels, which shall comprise part of the Site).

- 7.4.5 The Concessionaire shall not be deemed a “Protected Tenant” under the Tenant’s Protection Law [Consolidated Version], 5732- 1972.
- 7.4.6 The Right to Utilize the Site shall not limit, restrict, impair or deprive the State of any of its rights pursuant to the Contract Documents, including with respect to the entrance to the Site.
- 7.4.7 The Concessionaire shall not transfer its Right to Utilize the Site or any part thereof except as specifically permitted pursuant to the provisions of this Concession Agreement. Any transfer by the Concessionaire of its Right to Utilize the Site or any part thereof in a manner inconsistent with this Concession Agreement shall be null and void and shall constitute a Material Breach of this Concession Agreement. For the removal of doubt, it is hereby clarified that securities created and approved in accordance with the provisions of Section 3.4.10 above, will not be deemed a violation of the provisions of this Section.

7.5 Enforcement by the State.

Without derogating from the generality of the foregoing or from any other provisions of the Contract Documents, the Concessionaire hereby acknowledges that the State is entitled to enforce any remedy available to it in the event of breach, or anticipated breach of any of the obligations of the Concessionaire pursuant to the Concession Agreement or pursuant to the Project Agreements, including rights and remedies available to the State set forth herein or under any Law.

7.6 Availability of the Site for the Concessionaire

- 7.6.1 The Site shall be made available to the Concessionaire on an “As-Is” basis, at the Site Delivery Date, unless otherwise stipulated in this Concession Agreement or in any of the other Contract Documents.
- 7.6.2 The Works shall be carried out within the boundaries of the Site (except in the case of Works related to the *HOMC* which shall be carried out in accordance with the provisions of Appendix C1 (*HOMC*), if applicable). Any Works performed by the Concessionaire out side the boundaries of the Site shall be done in full co-ordination with the Relevant Authorities and other third parties who have any rights with respect to such additional sites and at the Concessionaire's full and sole responsibility. The Concessionaire shall bear any and all costs associated with the performance of such works outside the boundaries of the Site.

- 7.6.3 The Concessionaire shall be responsible for the uprooting and removal of trees and shrubs, fences, etc. from the Site, as well as for dealing with the nuisances existing above and below ground, unless specifically provided otherwise in this Concession Agreement; and all insofar as necessary for performance of the Works. The removal of nuisances found at the Site (if applicable) shall be handled in full coordination with the Relevant Authorities, and with their approval.
- 7.6.4 The Concessionaire shall have no claims of any kind or category, against the State or against the Relevant Authorities in relation to the information provided under this Section, including *inter alia* in relation to the payment of expenses incurred due to the adaptation of the Works to the requirements of Relevant Authorities or authorized parties. Failure to obtain authorization from the Relevant Authorities shall not justify and shall not constitute grounds for delaying the performance or for nonperformance of any of the Works, by the Concessionaire.

7.7 Delay in Delivery of the Site to the Concessionaire: Prior to the Date of Issuance of Notice to Proceed

- 7.7.1 In the event that the Site, or any part thereof, has not been delivered to the Concessionaire on the date set forth for the delivery of the same in Exhibit 13 (*Site Delivery Schedule*), by the date of issuance of the Notice to Proceed, and such failure to deliver the Site, or the respective part thereof, is not due to any act or omission of the Concessionaire with respect to its obligations hereunder, and such delay in delivery of the Site or any part thereof, to the Concessionaire is the effective cause of the delay in the commencement or in the execution of the Works which the Concessionaire was fully prepared and able to timely perform in accordance with the Basic Schedule (hereinafter in this Section 7.7 a “**Delay**”) then, the Concessionaire shall be entitled to the following remedies subject to the conditions set forth hereunder:
- a) **Adjustment of the Construction Completion Date** - if the Delay does not exceed a period of forty five (45) days in aggregate, the Concessionaire shall not be entitled to any remedy, relief or compensation other than an adjustment of the Project Schedule by the duration of the Delay, in accordance with the provisions of Volume 11 (*Design, Construction and Quality Control*).
 - b) **Direct Costs** - if the Delay exceeds forty five (45) consecutive days, the Concessionaire shall be entitled to: (1) the remedy available pursuant to subsection (a) above; and (2) the Direct Costs, incurred by the Concessionaire as a result of the Delay, for the duration of the Delay which exceeds forty five (45) consecutive days.
 - c) **Extension of the Concession Period** - Should the Delay exceed a consecutive period of sixty (60) days, then, the Concessionaire shall be entitled to: (1) the remedies available pursuant to subsections (a) and (b) (if applicable) above; and (2) in the event the Project Construction Completion Dates have been Delayed (for

the removal of doubt, in any event, only after the project main buffer and all the contingency buffers, which were integrated into the Basic Schedule, in accordance with the provisions of Appendix 11B (*Schedules*) of Volume 11 (*Design, Construction and Quality Control*) have been fully exhausted) the Concession Period shall be extended by the duration of the Delay which exceeds sixty (60) days in aggregate.

- d) **Mutual Right to Terminate** - if the Delay exceeds a cumulative period of twelve (12) months, either Party may issue the other a notice of termination, which shall become effective forty five (45) days following the issuance of such notice (the “**Notice of Termination**”) and the provisions of Section 20 (*Termination by the Concessionaire*) will apply.
- e) **No Issuance of Notice of Termination.** In the event no Notice of Termination was issued by either Party pursuant to the provisions of subsection (d) above, then, for the duration of the Delay: (1) the Concessionaire shall be entitled to the remedies under subsections (a)-(c) above; and (2) every ninety (90) days (calculated as of the end of the twelve Month (12) of the Delay) either Party may issue the other with a Notice of Termination in accordance with subsection (d) above.
- f) **Term of a Delay** - It is hereby clarified that only a delay of seven (7) cumulative days will trigger any right to remedy for a Delay for the purposes of this Section 7.7.1; it is further clarified that in the event a Delay exceeds a period of seven (7) cumulative days, the duration of the Delay will be calculated as of the first day of the delay. In any event, any delay caused prior to receipt of a written notice by the Concessionaire of the occurrence of the event causing the delay shall not be counted within the period of Delay.

7.7.2 **Duty to Mitigate.** The provisions of Section 7.7.1 are subject to the Concessionaire’s duty to mitigate (and cause any other person on its behalf to mitigate) any delays and any increase of costs. The Concessionaire will submit to the approval of the State a detailed suggestion for mitigating delays and costs, and, subject to the approval thereof by the State, the Concessionaire shall be entitled to the Direct Costs incurred by it in connection with the implementation of the approved suggestion (for the purposes of this Section a “**Mitigation Plan**”). The Mitigation Plan shall be submitted by the Concessionaire to the State and approved thereby as soon as is reasonably practicable under the circumstances. Once approved by the State, the Mitigation Plan will be deemed to constitute an integral part of this Concession Agreement, including with respect to the Concessionaire’s obligation to comply with the schedule incorporated therein.

7.7.3 **No Multiple Compensation.** The Concessionaire shall not be compensated more than once for components which are included under Section 7.7.1.

7.7.4 **Terms of Payment:**

Compensation in accordance with the provisions of Section 7.7.1 above, will be paid in accordance with the following:

- a) Until the issuance of a Notice of Termination in accordance with Section 7.7.1d) or in the event no Notice of Termination was issued by either Party, compensation in accordance with the provisions of Section 7.7.1b) shall be paid to the Concessionaire no later than forty five (45) days following each ninety (90) days period in which a Delay event occurred (commencing on the first day of the Delay), for the Direct Costs, accumulated to the Concessionaire during such ninety (90) days period of Delay;
- b) In the event a Notice of Termination was issues by either Party, compensation in accordance with the provisions of Section 7.7.1d) shall be paid to the Concessionaire in accordance with the provisions of Section 20 (*Termination by the Concessionaire*).
- c) **Limitation of Remedies.** The remedies provided pursuant to the provisions of Section 7.7.1 shall be exhaustive and in full satisfaction of all Concessionaire's claims with respect to the Delay and with respect to Termination and other than explicitly provided for, the Concessionaire shall not be entitled to any relief, remedy, compensation or extensions in connection with the Delay or with the Termination.

7.8 Interruption or Delay in Granting the Right to Use the Site - Following the Date of Issuance of Notice to Proceed

In the event that, following the date of issuance of the Notice to Proceed,

- (a) the Concessionaire's rights with respect to the Site, or with respect to any part thereof, are revoked or interrupted (including due to a final court or arbitration decision, resulting from a successful claim made by a third party), **or**
- (b) any part of the Site, has not been delivered to the Concessionaire on the date set forth for the delivery of the same in Exhibit 13 (*Site Delivery Schedule*) following the date of the Notice to Proceed; **or**
- (c) for any reason of national security, public safety, public order or the performance of statutory duties by the State, the Municipalities or any other Relevant Authority, the use of the Project, the Site, or any part thereof is required;

and

in either case (a) or (b) or (c), the delay in the delivery of the respective part of the Site or the interruption to the Concessionaire's rights in the Site (for the removal of doubt, excluding Existing Roads under the operation and maintenance of the Concessionaire during Construction Phase), is the effective cause rendering impossible the performance of any critical path activity which the Concessionaire was fully prepared and able to timely perform in accordance with the Project Schedule and which shall result in delay of the Construction Completion Dates (for the removal of doubt, in any event, only after the project

main buffer and all the contingency buffers, which were integrated into the Basic Schedule, in accordance with the provisions of Appendix 11B (*Schedules*) of Volume 11 (*Design, Construction and Quality Control*), have been fully exhausted); or prevents or restricts, fully or substantially, the Operation of the Highway;

and

such failure to deliver the respective part of the Site or the interruption to the Concessionaire's right with respect thereto, is not due to any act or omission of the Concessionaire with respect to its obligations hereunder, as determined by the State in its sole discretion (for the purpose of this Section 7.8, an **“Interruption”**), then either Section 7.8.1 (*Interruption Following the Date of Issuance of Notice to Proceed and prior to the Date of Issuance of Permit to Operate*) or Section 7.8.2 (*Interruption Following the Date of Issuance of Permit to Operate; Effects*), will apply.

7.8.1 Interruption Following the Date of Issuance of Notice to Proceed and prior to the Date of Issuance of Permit to Operate

In the event that an Interruption shall result in a delay of the Construction Completion Dates (for the removal of doubt, in any event, only after the project main buffer and all the contingency buffers, which were integrated into the Basic Schedule, in accordance with the provisions of Appendix 11B (*Schedules*) of Volume 11 (*Design, Construction and Quality Control*), have been fully exhausted) (hereinafter in this Section 7.8.1 a **“Delay”**), the Concessionaire shall be entitled to the following remedies subject to the conditions set forth hereunder:

- a) **Adjustment of the Construction Completion Date** - if the Delay does not exceed thirty (30) days in aggregate, the Concessionaire shall not be entitled to any remedy, relief or compensation other than to an adjustment of the Basic Schedule so that the Concessionaire shall not be in breach of its obligations pursuant to this Concession Agreement, in accordance with the provisions of Appendix 11B (*Schedules*) of Volume 11 (*Design, Construction and Quality Control*).
- b) **Direct Costs** - If the Delay exceeds a cumulative period of thirty (30) days, then the Concessionaire shall be entitled to (1) the remedy pursuant to subsection (a) above; and (2) the Direct Costs, incurred by the Concessionaire as a result of the Delay, for the duration of the Delay which exceeds thirty (30) days in aggregate.
- c) **Payment of Actual State Periodic Payment** - If the Delay exceeds a cumulative period of sixty (60) days, then the Concessionaire shall be entitled to: (1) the remedies available pursuant to subsections (a) and (b) above; and (2) in the event that the Project Construction Completion Dates have been delayed (for the removal of doubt, after the project main buffer and all the contingency buffers, which were integrated into the Basic Schedule, in accordance with the provisions of Appendix 11B

(Schedules) of Volume 11 (*Design, Construction and Quality Control*), have been fully exhausted) the Concessionaire shall be entitled to seventy five percent (75%) of the Adjusted Total Target Income, in lieu of payments which the Concessionaire would have been entitled to receive had the Projects Construction Completion Dates not been delayed, for the duration of the Delay which exceeds sixty (60) days in aggregate. For the removal of doubt, in such event the Actual Toll Revenue Payment (if any) and the Toll Revenue Guarantee shall not be taken into account.

- d) **Mutual Right to Terminate** - if the Delay exceeds twenty four (24) cumulative months, and renders the performance of all or substantially all of the Concessionaire's obligations pursuant to the Concession Agreement impossible, either Party may issue the other a Notice of Termination, which shall become effective forty five (45) days following the issuance of such notice (the "**Notice of Termination**") and the provisions of Section 18.6.2 (*Termination due to Force Majeure - Compensation*) will apply.
- e) **No Issuance of Notice of Termination** - In the event no Notice of Termination was issued by either Party pursuant to the provisions of subsection (d) above, then, for the duration of the Delay: (1) the Concessionaire shall be entitled to the remedies under subsections (a)-(c) above; and (2) every ninety (90) days (calculated as of the end of the twenty fourth (24th) Month of the Delay) either Party may issue the other with a Notice of Termination in accordance with subsection (d) above.
- f) **Term of a Delay** - Only a delay of either (1) seven (7) consecutive days or (2) thirty (30) days in aggregate; the earlier to occur, will trigger any right to remedy for a Delay for the purposes of this Section 7.8.1 (*Interruption Following the Date of Issuance of Notice to Proceed and prior to the Date of Issuance of Permit to Operate*); it is further clarified that in the event a Delay exceeds a period of seven (7) consecutive days or thirty (30) days in aggregate, the duration of the Delay will be calculated as of the first day of the delay. In any event, any delay caused prior to receipt of a written notice by the Concessionaire of the occurrence of the event causing the delay shall not be counted within the period of Delay.
- g) **Duty to Mitigate.** The provisions of Section 7.8.1 (*Interruption Following the Date of Issuance of Notice to Proceed and prior to the Date of Issuance of Permit to Operate*) are subject to the Concessionaire's duty to mitigate (and cause any other person on its behalf to mitigate) any delays and any increase of costs. The Concessionaire will submit to the approval of the State a detailed suggestion for mitigating delays and costs, and, subject to the approval thereof by the State, the Concessionaire shall be entitled to the Direct Costs incurred by it in connection with the implementation of the approved suggestion (for the purposes of this Section a "**Mitigation Plan**"). The Mitigation Plan shall be

submitted by the Concessionaire to the State and approved thereby as soon as is reasonably practicable under the circumstances. Once approved by the State, the Mitigation Plan will be deemed to constitute an integral part of this Concession Agreement, including with respect to the Concessionaire's obligation to comply with the schedule incorporated therein.

- h) **No Multiple Compensation.** The Concessionaire shall not be compensated more than once for components which are included under Section 7.8.1 (*Interruption Following the Date of Issuance of Notice to Proceed and prior to the Date of Issuance of Permit to Operate*).

- i) **Terms of Payment:**

Compensation in accordance with the provisions of Section 7.7.17.8.1 (*Interruption Following the Date of Issuance of Notice to Proceed and prior to the Date of Issuance of Permit to Operate*), will be paid in accordance with the following:

- i. Until the issuance of a Notice of Termination in accordance with Section 7.8.1d) or in the event no Notice of Termination was issued by either Party, (a) compensation in accordance with the provisions of Section 7.8.1b) shall be paid to the Concessionaire no later than forty five (45) days following each ninety (90) days period in which a Delay event occurred (commencing from the first day of the Delay), for the Direct Costs, accumulated to the Concessionaire during such ninety (90) days period; and (b) compensation in accordance with the provisions of Section 7.8.1c) shall be paid in the period in which the Actual State Periodic Payment should have been received by the Concessionaire had the Delay not occurred and in accordance with the terms of payment set forth in Appendix D2 (*Payment Procedure*).
 - ii. In the event a Notice of Termination was issued by either Party, compensation in accordance with the provisions of Section 7.8.1d) shall be paid to the Concessionaire in accordance with the provisions of Section 18.6.2 (*Termination Due to Force Majeure - Compensation*).
- j) **Limitation of Remedies.** The remedies provided pursuant to the provisions of this Section 7.8.1 shall be exhaustive and in full satisfaction of all Concessionaire's claims with respect to the Delay and with respect to the Termination and other than explicitly provided for, the Concessionaire shall not be entitled to any relief, remedy, compensation or extensions in connection with the Delay or with the Termination.

7.8.2 Interruption Following the Date of Issuance of Permit to Operate; Effects

In the event the Interruption shall occur following the date of issuance of Permit to Operate, the Concessionaire shall be entitled to the following remedies subject to the conditions set forth hereunder:

- a) **Direct Costs** - Direct Costs, incurred by the Concessionaire as a result of the Interruption, for the duration of the Interruption.
- b) **Payment of Actual State Periodic Payments** - in addition to the remedy available to the Concessionaire pursuant to subsection (a) above;
 - (i) In the event that the Interruption applied to the Operation of both Sections of the Highway (i.e. both Section 7 and Section 3): the Concessionaire shall be entitled to ninety percent (90%) of the Adjusted Total Target Income, in lieu of the payments which the Concessionaire would have been entitled to receive had it not been for the Interruption. For the removal of doubt, the Adjusted Toll Target Income and the Toll Revenue Guarantee shall not be taken into account.
 - (ii) In the event that the Interruption applied only to one Section of the Highway (i.e. (either Section 7 or Section 3) the Concessionaire shall be entitled to ninety five (95%) percent of the Adjusted Total Target Income, in lieu of payments which the Concessionaire would have been entitled to receive had it not been for the Interruption. In such event the Adjusted Actual Toll Revenue Payments shall be deducted from the Adjusted Total Target Income. For the removal of doubt, the Adjusted Toll Target Income and the Toll Revenue Guarantee shall not be taken into account.
- c) **Duty to Mitigate.** The provisions of Section 7.8.2 (*Interruption Following the Date of Issuance of Permit to Operate; Effects*) are subject to the Concessionaire's duty to mitigate (and cause any other person on its behalf to mitigate) any Interruptions and any increase of costs. The Concessionaire will submit to the approval of the State a detailed suggestion for mitigating Interruptions and costs, and, subject to the approval thereof by the State, the Concessionaire shall be entitled to the Direct Costs incurred by it in connection with the implementation of the approved suggestion (for the purposes of this Section a "**Mitigation Plan**"). The Mitigation Plan shall be submitted by the Concessionaire to the State and approved thereby as soon as is reasonably practicable under the circumstances. Once approved by the State, the Mitigation Plan will be deemed to constitute an integral part of this Concession Agreement, including with respect to the Concessionaire's obligation to comply with the schedule incorporated therein.
- d) **No Multiple Compensation.** The Concessionaire shall not be compensated more than once for components which are included

under Section 7.8.2 (*Interruption Following the Date of Issuance of Permit to Operate; Effects*).

e) **Terms of Payment:**

Compensation in accordance with the provisions of Section 7.8.2 (*Interruption Following the Date of Issuance of Permit to Operate; Effects*) above will be paid in accordance with the following:

(1) compensation in accordance with the provisions of Section 7.8.2a) shall be paid to the Concessionaire no later than forty five (45) days following each ninety (90) days period in which an Interruption event occurred (commencing on the first day of the Interruption), for the Direct Costs, accumulated to the Concessionaire during such ninety (90) days period; and (2) compensation in accordance with the provisions of Section 7.8.2b) shall be paid in the period in which the Actual State Periodic Payment should have been received by the Concessionaire had the Interruption not occurred and shall be added to the Actual State Period Payments due to the Concessionaire in accordance with the terms of payment set forth in Appendix D2 (*Payment Procedure*).

f) **Limitation of Remedies.** The remedies provided pursuant to the provisions of this Section 7.8.2 (*Interruption Following the Date of Issuance of Permit to Operate; Effects*) shall be exhaustive and in full satisfaction of all Concessionaire's claims with respect to the Interruption and other than explicitly provided for, the Concessionaire shall not be entitled to any relief, remedy, compensation or extensions in connection with the Interruption.

g) For the removal of doubt, the provisions of this Section 7.8.2 (*Interruption Following the Date of Issuance of Permit to Operate; Effects*) shall not derogate from the provision of Sections 8, 9 or 10 of the Toll Road Law. In case the Interruption is due to any Relevant Authority's instruction according to the provisions of Sections 8 and 9(b) of the Toll Road Law, the provisions of this Section 7.8.2 (*Interruption Following the Date of Issuance of Permit to Operate; Effects*) shall not apply and the provisions of **Appendix L** (*Payment Arrangements According to Sections 8 and 9(b) of the Toll Road Law*) shall apply. This section does not derogate from the provisions of Section 13.7 (*Certain Vehicles Exempt from Tolls*).

7.9 Infrastructures

7.9.1 The State and the Concessionaire shall be responsible for the relocation, clearance or protection of all Infrastructures, other than those required for the support, construction or Operation of the Highway in accordance with the provisions of Volume 6 (*Utilities*) which set forth the assignment of responsibility between the Concessionaire and the State regarding the planning, coordination, execution and supervision of the relocation, clearance of Infrastructures from the Site to alternative locations or the protection thereof.

- 7.9.2 **Unknown Infrastructures.** Should the Concessionaire discover, during the Construction Phase, Unknown Infrastructure at the Site, it shall immediately notify the State of such discovery by telephone or in person, to be followed immediately by written notification. Subsequent to such written notification, the State shall determine as soon as possible who shall assume the responsibility of handling the Unknown Infrastructure and notify the Concessionaire of its decision. In the event that such discovery caused a Delay, then the provisions of Section 7.8.1 (*Interruption Following the Date of Issuance of Notice to Proceed and Prior to the Date of Issuance of Permit to Operate*) above shall apply, provided that the Adjusted Total Target Income which the Concessionaire shall be entitled to in such circumstances, in accordance with the terms and conditions stipulated therein, shall be sixty five percent (65%) of the Adjusted Total Target Income, deducted by the Adjusted Actual Toll Revenue Payments.
- 7.9.3 Should the State conclude that the responsibility for handling the Unknown Infrastructure be assumed by the Concessionaire, then such handling of Unknown Infrastructure shall be deemed a Change Order issued by the State, and the provisions of Appendix F (*Change Order*) shall apply. For the removal of doubt, the Concessionaire shall not be compensated more than once for any component which is included in Section 7.8 (*Interruption or Delay in Granting the Right to Use the Site - Following the Date of Issuance of Notice to Proceed*) or in Appendix F (*Change Order*) or in any other provision under the Contract Documents or in any applicable Law or Regulation.
- 7.9.4 Should the State conclude that the responsibility for handling the Unknown Infrastructure is to be assumed by the State or anyone on its behalf, then the Concessionaire shall be obliged under such circumstances to coordinate with such third party the manner in which the treatment, the protection or removal of the Unknown Infrastructure will be facilitated, including any activity required with respect thereto in accordance with all applicable Laws and regulations.
- 7.9.5 **Discovery of Underground Water or Ground Contamination.** The provisions of Sections 7.9.2 - 7.9.4 above shall apply, *mutatis mutandis*, to a Delay caused, during the Construction Phase, as a result of the discovery of water or ground contamination, where such contamination requires disposal by way of transfer of the soil to the Ramat Hovav plant, or to any similar plant designated for hazardous or toxic substances, or the treatment of the water prior to its disposal (other than by way of by way of causing a flow to the sewage system, the drainage system, to streams or to the aquifer). For the removal of doubt, the provisions of this Section 7.9.5 (*Discovery of Underground Water or Ground Contamination*) shall apply solely with respect to a discovery of an unknown water or ground contamination. The treatment of any water or ground contamination or any other finding which is mentioned or indicated in any of the Contract Documents constitutes part of the Concessionaire's scope of Work and the Concessionaire shall not be entitled to any sort of compensation or reimbursement for the treatment of such known contamination or finding. For the removal of doubt,

where no action is required for the treatment of soil or the water prior to its removal, the Concessionaire shall not be entitled to any relief, reimbursement, compensation or to any extension of any sort.

7.10 Condition or Finding at the Site

- 7.10.1 All natural resources, such as oil, gas, water springs, coal and metal ores, marble and stone quarries, sand and gravel and all other minerals of any kind, as well as antiquities, materials and trees found within the Site (hereinafter “**Condition**” or “**Finding**”), are the property of the State; and the Concessionaire does not and shall not have any right thereto or any right in connection therewith; including without limitation, no right of use, utilization, extraction, presentation, destruction or of taking any other action with respect to the aforesaid, except as is required, if at all, in accordance with the provisions of this Concession Agreement and any Addenda thereto.
- 7.10.2 Without derogating from the generality of the foregoing, the Concessionaire may not sell or transfer in any way materials (including natural resources, minerals or antiquities as aforesaid, shrubs and trees) that the Concessionaire has removed from the Site.
- 7.10.3 If during the Construction Phase, the Concessionaire becomes aware of any Condition or Finding at the Site then the Concessionaire shall immediately notify the State by telephone or in person, to be followed immediately by written notification. In addition, the provisions of Sections 7.9.2 - 7.9.4 above shall be applied, *mutatis mutandis*.

7.11 Antiquities at the Site

- 7.11.1 Antiquities, as defined in the Antiquities Law, 5738-1978, or in any Laws pertaining to antiquities as may be in force from time to time, as well as any other objects having religious, geological or archeological value, or other objects that might be discovered on the Site (an “**Object**”), are the property of the State, and the Concessionaire shall take appropriate precautionary measures to prevent any harm thereto or any unnecessary movement thereof.
- 7.11.2 Immediately upon discovering an Antiquity or Object, and while they are *in situ*, the Concessionaire shall notify the State of the Discovery by telephone or in person, to be followed immediately by written notification, and shall act in accordance with its instructions. The Concessionaire further undertakes to comply with the provisions of all Laws pertaining to Antiquities.
- 7.11.3 Without derogating from the generality of the foregoing, the Concessionaire acknowledges that according to the Antiquity Law, the official gazette of the State of Israel (Yalkut HaPirsumim) declares portions of the Site an “antiquity sites”. Such antiquity sites are detailed in Volume 6 (*Infrastructures*). The Concessionaire undertakes to act in accordance with all the terms and conditions of the Israel Antiquities Authority that may be provided with respect to these antiquity sites, and hereby declares that nothing by virtue thereof shall derogate from any undertaking on its part as specified in this Concession Agreement.

- 7.11.4 The Concessionaire undertakes that demolition, excavation and construction work carried out at the Site, to the extent required by the Israel Antiquities Authority, shall be performed under the strict supervision of the Israel Antiquities Authority. The conditions, arrangements, work procedures, fencing and guarding shall be those required by the Israel Antiquities Authority as a precondition for carrying out any of the Works. Should the archeological supervisor on behalf of the Israel Antiquities Authority decide that survey or rescue excavations at the Site, or both, are required, the Concessionaire hereby undertakes to carry out such survey and excavations under the supervision of and in coordination with the Israel Antiquities Authority.
- 7.11.5 The performance of all tasks, of any kind or type, deriving from the requirements of the Israel Antiquities Authority or the requirements of all Laws pertaining to Antiquities, shall be the sole responsibility of the Concessionaire and shall be at the Concessionaire's expense, subject to the provisions of this Section. In addition, all provisions that usually apply to a "collector" or an "owner" pursuant to the Antiquities Law, including payments and levies associated therewith, shall apply to the Concessionaire.
- 7.11.6 The provisions of Sections 7.9.2 - 7.9.4 above shall be applied, *mutatis mutandis* to this Section 7.11 (*Antiquities at the Site*). Notwithstanding the foregoing, or any other provision in the Contract Documents any payments for supervision of the Israel Antiquities Authority or the archeological supervisor on its behalf for which the Concessionaire shall be entitled to reimbursement, shall be limited to ninety percent (90%) of any such payments paid by the Concessionaire to the Israel Antiquities Authority.

7.12 Maintenance of the Site - Cleanliness, Disposal of Refuse and Evacuation of Third Parties from the Area of the Site

- 7.12.1 The Concessionaire shall maintain the cleanliness of the Site and shall comply with all statutory requirements regarding the maintenance and cleanliness of the Site. The Concessionaire shall also remove all refuse, all surplus earth works that have been excavated and all surplus materials that have accumulated at the Site and shall transport the aforesaid to a disposal site duly approved by the Relevant Authorities.
- 7.12.2 Upon completion of the Works, the Concessionaire undertakes (i) to clear the Site and the Highway of all scrap, refuse, sawdust, waste, surplus earth, fill in any holes, temporary excavations etc.; (ii) to clean all paint stains and traces of other types of dirt from various parts of the Work, (iii) to remove temporary installations and, (iv) to complete the Works to a point of cleanliness, to the State's satisfaction.
- 7.12.3 The Concessionaire undertakes to ensure that, throughout the Construction Phase, no third parties who are not associated with the Project, its construction, management or Operation and Maintenance shall be present at the Site (except for the parts of the Highway which are intended for the use of the public). Without derogating from the generality of the foregoing, throughout the Concession Period the Concessionaire undertakes without delay, to take all lawful measures

required in order to remove any party, object or person that is not permitted to be present at the Site, immediately upon being informed of the presence of such party, object or person as aforesaid, at the Site. For the purpose of the aforesaid (and for this purpose only), the Concessionaire shall be vested with the rights specified in Sections 16, 17 and 18 of the Land Law, 5729-1969.

8. HEALTH AND SAFETY

- 8.1.1 Throughout the Concession Period the Concessionaire shall strictly comply with the provisions of any and all Laws applicable to the execution of the Works, and shall assume full responsibility for releasing, holding harmless and for indemnifying the State and all duly authorized representatives of the State, within ten (10) days of receiving a demand for such, and for taking any other action in order to release the State and its duly authorized representatives from any liability, expense, damage or other loss, and from any action filed against them as a result of or in connection with a breach of any such provision by the Concessionaire, by any of the persons employed by the Concessionaire, any consultants, contractors, or other agents of the Concessionaire.
- 8.1.2 The Concessionaire hereby undertakes to operate the Site in a manner that shall prevent any harm to any person or property and to any third party present on the Site, as well as in a manner that shall minimize, to the extent possible, any disturbance to others while executing the Works. The Concessionaire undertakes to ensure the employees' safety conditions, and to ensure conditions for preserving the health and welfare of its employees, as well as to comply with all provisions pursuant to all Laws pertaining to safety at work, and, in the absence of any statutory requirement, to comply with the requirements of the Labor Inspectors, as defined in the Labor Inspection (Organization) Law, 5714-1954. The Concessionaire declares that it is familiar with the Labor Inspection (Organization) Law, 5714-1954, the Work Safety Ordinance (New Version), 5730-1970, and the regulations promulgated pursuant to said Laws, and accepts full responsibility for compliance with the said statutory provisions and regulations.
- 8.1.3 Without derogating from all other provisions of this Concession Agreement, it is hereby agreed that the Concessionaire deems itself, for the purposes of execution of the Works, as the "Primary Contractor" as "Constructor" and "Works Manager" as these terms are defined in the Work Safety Regulations (Construction Works) 5748-1988, and the Concessionaire hereby assumes responsibility for the duties imposed on the same as a result of the aforesaid.
- 8.1.4 All materials and equipment used for implementing the Project shall enter and leave the Site via such points of access and egress as shall be approved by the Relevant Authorities and the Implementing Authority, where such approval is necessary. Such request shall be submitted in accordance with the provisions of all applicable Laws. All movements of workers and materials or equipment on or across lanes open to public

traffic shall be performed in a manner that will not endanger public safety.

- 8.1.5 The Concessionaire hereby undertakes to provide every means necessary for the installation of sentry boxes, fences, signposts, flashing lamps, safety railings, safety ceilings, barriers, fire-extinguishing equipment, means for administering first aid, and all other safety and precautionary means for the security and convenience of the public, and of any person on or in close proximity to the Site, or as shall be required by the State, or as shall be required by Law, or by order of any Relevant Authority. Without derogating from the aforesaid, the Concessionaire hereby undertakes to institute and maintain proper safeguarding and security arrangements at the Site during the Construction Phase.
- 8.1.6 The Concessionaire hereby assumes all liability for any accident, injury or damage to its employees and to any person and to any third party, whose personal safety or the safety of their belongings is the Concessionaire's responsibility, which might be caused as a result of or in relation to the execution of the Works. The Concessionaire hereby releases the State from any and all responsibility or liability in relation to any accident, injury, damage or loss.
- 8.1.7 The Concessionaire undertakes to execute the Works in strict compliance with the provisions of the Building Permits and Approvals, the instructions of the Planning and Building Authority and the instructions of all other Relevant Authorities authorized by Law.
- 8.1.8 The Concessionaire further undertakes to comply with the provisions of any and all Laws with respect to any matter relating to the execution of the Works, including with respect to provision of notices and payment of taxes and charges - if such are or become the responsibility of the Concessionaire pursuant to any and all Laws and Regulations or pursuant to this Concession Agreement.
- 8.1.9 The Concessionaire shall comply with all provisions of Laws and Regulations connected to safety (including public safety, traffic and prevention of hazards) applying to the execution of the Project and Operation of the Highway and the Miscellaneous Structures throughout the Concession Period.
- 8.1.10 When leaving the Site and entering a roadway carrying public traffic, the Concessionaire or any entity operating on its behalf, engaged in the transfer of materials and equipment, whether loaded or not, shall in all cases, yield to public traffic.
- 8.1.11 No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic.
- 8.1.12 Temporary facilities which the Concessionaire uses during the Concession Period shall not be installed or placed where they will interfere with the free and safe passage of public traffic. Such temporary facilities shall comply with all Design Requirements for such facilities and with all provisions of applicable Laws and Regulations.

9. THE CONSTRUCTION PHASE

9.1 General

Construction of the Project shall be carried out by the Concessionaire in accordance with the provisions of the Concession Agreement and all Design Documents. The Concessionaire's Obligations during the Construction Phase are detailed in Part B in addition to the provisions of this Concession Agreement.

9.2 Phases of Construction

The Concessionaire shall divide the Construction of the Project to sub phases so that Partial Operation of certain Sections of the Highway shall commence as soon as possible, provided however that in the event the Concessionaire will not divide the Construction of the Project to more than two (2) sub phases;

- b) **Sub phase 1** - Construction of Section 7 - Construction Completion Date for Sub phase 1 shall be no later than thirty five (35) months from the commencement of the Construction Phase. At the end of this sub-phase the Concessionaire will open Section 7 of the Highway to traffic and shall Operate the Highway according to the provisions of Section 11.3 (*Partial Operation and Maintenance; Sections of the Highway*) and the applicable provisions of Volume 12 (*Operation and Maintenance*), and the other Contract Documents.
- c) **Sub phase 2** - Construction of Section 3 and Construction Completion of the Project - Construction Completion Date for Sub phase 2 shall be no later than forty (40) months from the commencement of the Construction Phase. At the end of this phase the Concessionaire will open the Highway to traffic and operate and maintain the Project according to the provisions of Volume 12 (*Operation and Maintenance*) and the other Contract Documents.

9.3 Early Works

In the event that the Concessionaire wishes to perform any part of the Construction of the Project at the Site, prior to the date of issuance of Notice to Proceed ("**Early Works**"), such Early Works will be performed in accordance with and subject to the provisions of this Section 9.3 (*Early Works*).

9.3.1 **Request to Commence Early Works.** The Concessionaire shall submit to the State a request to commence Early Works, which will include confirmation of the satisfactory fulfillment by the Concessionaire of all its applicable obligations pursuant to this Concession Agreement, including the following:

- a) The Concessionaire has submitted to the review of the State a detailed plan for the implementation of the Early Works, including a detailed description of the scope of the Early Works;
- b) The Concessionaire has obtained all the permits, licenses, governmental, municipal, and other approvals required prior to the commencement of the Early Works, including without limiting the foregoing, the approval of the Accompanying Team and the

fulfillment of any relevant conditions and payments due under any Law or agreement. The Concessionaire shall deliver to the State a statement specifically listing each permit, license and governmental and municipal approval required and confirming that all such permits, licenses and approvals have been obtained or will be obtained;

- c) The Concessionaire has obtained all the insurance policies required for the performance of the Early Works, in accordance with the provisions of Appendix G (*Insurance*), in the applicable changes, as shall be approved by the State;
- d) The State shall have approved the Detailed Design relevant to the Early Works, in accordance with the provisions of Section 2.4 (*Detailed Design*) of Appendix B (*Concessionaire's Obligations during the Development Phase*);
- e) The State shall have approved all Project Agreements applicable to the Early Works, in accordance with the provisions of Appendix B1 (*Execution of Project Agreements*) and such agreements have been duly executed by the parties thereto;
- f) The Concessionaire nominated the relevant members of the Concessionaire's Construction Phase Management Team, which are necessary for the proper performance of the Early Works;
- g) The Concessionaire has furnished the Early Works Bond pursuant to Section 29.3 (*Early Works Bond*) below and in the form of Appendix I2 (*Form of Early Works Bond*).
- h) The Concessionaire has furnished the State with a commitment that in case of Termination of the Concession Agreement prior to issuance of Notice to Proceed it shall restore the Site to its initial condition, to the maximum extent possible, and where restoration is not possible it shall perform all works necessary to the transfer the Site to the State in an acceptable condition. Notwithstanding the aforesaid, the Concessionaire shall be released from its commitment to restore the Site to its original condition, if the State shall decide to purchase any part of the Early Works performed by the Concessionaire. The price of the State's option to purchase the Early Works or any part thereof shall be determined according to the mechanism set forth in Section 2.10 (*Additional Costs*) of Appendix F (*Change Order*).

hereinafter “Request to Commence Early Works”.

- 9.3.2 **Approval of the Request to Commence Early Works.** The State shall approve the Request to Commence Early Works within thirty (30) days following receipt thereof, provided that the Request to Commence Early Works was not followed, within twenty one (21) days of receipt thereof, by a request from the State for further information or by a notice from the State of disagreement as to the satisfactory fulfillment of the requirements set forth in Section 9.3.1 above (*Request to Commence Early Works*).

- 9.3.3 In the event that the State shall request further information or issue a notice of disagreement, the Concessionaire shall comply with the instructions of the State, and submit an amended Request to Commence Early Works in accordance with the State's request and Section 9.3.2 above shall apply *mutatis mutandis*. The provisions of this section will apply to the submission of each amended Request to Commence Early Works.
- 9.3.4 **Approval of Early Works.** The State may approve the commencement by the Concessionaire of the Early Works at its sole discretion, taking into account, *inter alia*, the Concessionaire's satisfactory demonstration to the State of its compliance with the provisions of Section 9.3.1 above (*Request to Commence Early Works*), including the Concessionaire's compliance with its applicable obligations pursuant to the Concession Agreement, and of the high probability that it will reach Financial Closing in accordance with the applicable provisions of this Concession Agreement.
- 9.3.5 **Remedies of the Concessionaire.**
- a) The Concessionaire shall have no claim and shall not be entitled to any compensation or any other remedy pursuant to Sections 7.7 (*Delay in Delivery of the Site to the Concessionaire*), 7.8 (*Interruption*), 7.9 (*Infrastructures*), 7.10 (*Condition or Finding at the Site*) 7.11 (*Antiquities at the Site*), 9.6 (*Variations in Ground Conditions*), 15 (*Change Order*), 16.2.2 (*Effects of an Unjustifiable Suspension*), 17 (*Discriminatory Action*), 18 (*Force Majeure*), 19 (*Termination by the State*), 20 (*Termination by the Concessionaire*), as applicable; during or with respect to the period from the date of issuance of the approval of Early Works and until the date of issuance of the Notice to Proceed.
 - b) The Concessionaire shall have no claim against and shall not be entitled to any compensation or any other remedy from the State in the event that the State shall not approve the Detailed Design or in the event that changes to the works performed as part of the Early Works will be required under the approved Detailed Design of the Project.
 - c) Notwithstanding anything contrary in this Concession Agreement, the Concessionaire shall bear any tax, levies, fees and other compulsory payments, imposed under any Law in connection with the Early Works, including any land tax (if applicable).
- 9.3.6 **Early Works Schedule.** The Concessionaire shall provide the State with a schedule for the performance of the works with respect to the Project as a result of the Early Works. For the removal of doubt, such schedule shall be indicative only. Failure by the Concessionaire to meet the Early Works Schedule shall not constitute a breach of the Concession Agreement by the Concessionaire and the Concessionaire shall be entitled to revise it subject to prior coordination with the State.
- 9.3.7 **Rights of the State.** For the removal of doubt, and without derogating from the rights of the State under any Laws, during the implementation

of the Early Works, the State will have all rights granted to it under this Concession Agreement.

9.4 Notice to Proceed

A Notice to Proceed shall be issued by the State to the Concessionaire in accordance with the following:

9.4.1 **Request to Commence Construction.** By no later than ten (10) months following the Signature Date, the Concessionaire shall submit to the State a Request to Commence Construction, which will include confirmation of the satisfactory fulfillment by the Concessionaire of all of its obligations under Section 6 (*the Development Phase*) above - and under Appendix B (*Concessionaire's Obligations during the Development Phase*). In addition and without derogating from the generality of the foregoing:

- a) the State shall have approved the Detailed Design, in accordance with the provisions of Appendix B (*Concessionaire's Obligations during the Development Phase*) and the Winning Bid;
- b) the State shall have approved the Operation and Maintenance Manual, in accordance with the provisions of Appendix B (*Concessionaire's Obligations during the Development Phase*) and Volume 12 (*Operation and Maintenance*);
- c) the State shall have approved all applicable Project Agreements, in accordance with the provisions of Appendix B (*Concessionaire's Obligations during the Development Phase*) and such agreements have been duly executed by the parties thereto; including with respect to (i) the EPC Contractor; (ii) the Tunneling Expert; (iii) the Transportation Infrastructure Expert; (iv) the O&M Contractor and (v) the Tolling System provider agreement, in compliance with the requirements of Appendix B1 (*Execution of Project Agreements*).
- d) all permits, licenses and governmental and municipal approvals required for the commencement of Construction of the Project, and at least those required for the Works to be performed during the first twelve (12) months of Construction of the Project, including the applicable Building Permits and all permits and Approvals necessary for the Partial Operation and Maintenance of the Existing Road Sections, shall have been obtained, and the Concessionaire shall have delivered to the State a statement specifically listing each permit, license and governmental and municipal approval required and confirming that all such permits, licenses and approvals have been obtained;
- e) the State shall have approved the Detailed Schedule in accordance with the provisions of Appendix 11B (*Schedules*) and the provisions of Volume 11 (*Design, Construction and Quality Control*);
- f) the State shall have approved the nomination of the applicable personnel of the Concessionaire's Management Team in

accordance with the provisions of Section 10.1 (*Management of the Project by the Concessionaire*), Volume 11 (*Design, Construction and Quality Control*), Volume 12 (*Operation and Maintenance*) and the Winning Bid;

- g) all Insurance Policies required to be obtained on or prior to the date of issuance of a Notice to Proceed shall have been obtained by the Concessionaire and approved by the State in accordance with the provisions of Appendix G (*Insurance*); and
- h) all Bonds required to be obtained on or prior to the date of issuance of a Notice to Proceed shall have been furnished to, and approved by, the State in accordance with the provisions of Section 29 (Bonds) below.

hereinafter a “**Request to Commence Construction**”

- 9.4.2 **Approval of the Request to Commence Construction.** The State shall approve the Request to Commence Construction within twenty one (21) days following receipt thereof, provided that the Request to Commence Construction was not followed, within fourteen (14) days of receipt thereof, by a request from the State for further information or by a notice from the State of disagreement as to the satisfactory fulfillment of the requirements as set forth in Section 9.4.1 above.
- 9.4.3 In the event that the State shall request further information or issue a notice of disagreement, the Concessionaire shall comply with the instructions of the State, and submit an amended Request to Commence Construction in accordance with the State’s request. The provisions of this Section will apply to the submission of each amended Request to Commence Construction.
- 9.4.4 **Issuance of a Notice to Proceed.** The State shall issue the Notice to Proceed referred to in this Section 9.4 (*Notice to Proceed*) to the Concessionaire upon the approval of the Request to Commence Construction. The issuance of the Notice to Proceed shall indicate the commencement of the Construction Phase. For the avoidance of doubt it is hereby clarified that the State shall not issue a Notice to Proceed prior to the Effective Date. It is hereby further clarified that the State shall not issue a Notice to Proceed prior to the Concessionaire achieving Financial Closing and complying with the requirements of Section 2.5 (*Undertakings of the Concessionaire*) herein.
- 9.4.5 **Provisional Notice to Proceed.** If the Concessionaire fails to comply with minor aspects of the requirements mentioned in Section 9.4.1 (*Request to Commence Construction*), the State, at its sole discretion, may nevertheless issue a provisional Notice to Proceed, containing a list of all minor defects or deficiencies to be rectified by the Concessionaire together with a schedule for doing so. Following correction by the Concessionaire of all defects or deficiencies to the satisfaction of the State, the State shall issue the Notice to Proceed.

9.5 Performance of Construction

The Construction of the Project shall be carried out in accordance with the provisions of this Concession Agreement and the provisions of Volume 11 (*Design, Construction and Quality Control*) and Volume 8 (*Engineering*) and all other Contract Documents, including the Winning Bid.

9.6 Variations in Ground Conditions

- 9.6.1 **Adjustment of the Construction Grant.** It is hereby acknowledged by the Parties that the Construction Grant was priced in accordance with the provisions of the Invitation to Bid. The Construction Grant shall be adjusted to reflect the variations in ground conditions actually encountered by the Concessionaire during the performance of the Tunneling Works. The adjustments of the Construction Grant shall be made in accordance with the detailed provisions of Section 8.5.4 (*Payment for Tunneling Works*) of Volume 8.5 (*Tunnels Excavation and Support*) with respect to the relevant tunnel, as specified therein, and of Appendix D (*Adjustment of the Payments*).
- 9.6.2 **Limitation of Remedies.** The Concessionaire acknowledges that the adjustment payments provided pursuant to the provisions of this Section 9.6 (*Variations in Ground Conditions*) include, *inter alia*, reasonable costs of any necessary acceleration means in order to maintain the Construction Completion Date (for the removal of any doubt, changes in ground conditions shall not justify utilizing the project main buffer incorporated into the Basic Schedule in accordance with the provisions of Section 4.3 of Volume 11B (*Schedules*), other than in the circumstances set forth in Section 4.3(e) therein). Hence, it is agreed that the adjustment provided under Section 9.6.1 (*Adjustment of the Construction Grant*) shall be exhaustive and in full satisfaction of all Concessionaire's claims with respect to any variations in ground conditions, and the Concessionaire shall not be entitled to any relief, remedy, compensation or extensions with respect to any ground conditions actually encountered at the Site and shall not be entitled to any additional remedy, with respect thereto.
- 9.6.3 It is hereby specifically acknowledged that any details and information provided any where in the Contract Documents with respect to the ground conditions at the Site, are provided for reference purposes only. Such information shall not be deemed or construed as a representation on behalf of the State. For the removal of doubt, any variations encountered in the ground conditions shall not constitute a Change and the provisions of Section 15 (*Change Order*) shall not apply with respect therewith.

9.7 Work Stoppage

- 9.7.1 The State may order the Concessionaire to discontinue all or part of the Works for a certain period (including for further periods, once the designated period has elapsed) or permanently, due to a breach of this Concession Agreement by the Concessionaire, or due to Force Majeure, in accordance with the provisions of this Concession Agreement

(hereinafter “**Stop Work Order**”). The Stop Work Order will detail the reason for the work stoppage and the Concessionaire undertakes to immediately comply with such order, and to take all necessary measures to mitigate any damage that might result from said work stoppage.

- 9.7.2 A Stop Work Order issued by the State shall not be deemed an order for a permanent work stoppage, unless it is expressly stated as such in the Stop Work Order.
- 9.7.3 In the event that a Stop Work Order is issued, the Concessionaire shall stop the Works in accordance with the order, and shall take the necessary measures that are feasible for securing the executed Works and the Site to the State’s satisfaction. In the event that a Stop Work Order is issued, the provisions relating to breach of this Concession Agreement by the Concessionaire, or to Force Majeure, as the case may be, shall apply.
- 9.7.4 The Concessionaire undertakes to resume the Works immediately upon the State’s request to do so in accordance with the provisions of this Concession Agreement.

9.8 Supply of Materials, Equipment and Installations.

The Concessionaire is deemed to possess all equipment, products, tools and installations that are required for the efficient execution of the Works in accordance with the provisions of the Contract Documents.

9.9 Recruitment of Manpower

- 9.9.1 The Concessionaire undertakes to recruit the manpower necessary for the execution of the Works, in the number required for the execution thereof, in accordance with the qualitative standard it has undertaken.
- 9.9.2 The Concessionaire undertakes to employ skilled and experienced professionals in each category of work for execution of the Works (at least as specified in its Winning Bid) that require prior registration, a license or permit pursuant to all Laws. The Concessionaire shall only employ such person who is duly registered, or who holds a license or permit as aforesaid, as the case may be.
- 9.9.3 The Concessionaire shall bear all expenses in connection with the recruitment of the necessary manpower for execution of the Works, including employees’ wages, means of transportation for them, housing requirements, all taxes and payments to the social insurance funds and payments on their behalf to the National Insurance Institute and the Income Tax Authority.
- 9.9.4 Without derogating from the aforesaid, it is agreed that the Concessionaire shall employ employees in compliance with the provisions of the National Insurance Regulations (Collection of Insurance Payments), 5714 - 1954, and the Concessionaire shall strictly ensure that its employees employed at the Site are being employed in compliance with the provisions of all Laws, including the Employment Service Law, 5719-1959, Public Entities Transactions (Enforcement of

Bookkeeping, Payment of Taxes, Legal Employment of Foreign Workers and Minimum Wage) Law, 5736-1976, and the regulations promulgated thereunder.

- 9.9.5 The Concessionaire shall comply with any requirement of the State regarding the replacement and removal from the Site of any employee, person or party that is employed by or is operated by the Concessionaire, including Subcontractors, and persons employed by the Concessionaire's Subcontractors, if such order of the State for replacement or removal is given, on the basis of security or safety reasons or on the basis of improper or unprofessional conduct. A person, who has been removed in accordance with the State's order as aforesaid, shall not be re-employed by the Concessionaire at the Site or at any other place where Works are being carried out for the purposes of this Concession Agreement, without the prior, written and express approval of the State.

9.10 Prohibition of Inconvenience to the Public and Infringement on the Rights of Third Parties.

- 9.10.1 The Concessionaire undertakes that there shall be no inconvenience or unnecessary disturbance caused to the public during the execution of the Works (including to towns and villages located in proximity to the Site), nor shall there be any infringement on or unnecessary disturbance of any person's right of use and right of way on a highway, road, pathway, sidewalk etc., or with the right of use and possession of any public property; should there be any such infringement, the Concessionaire undertakes to obtain prior, written authorization for this infringement from the Relevant Authority, and to the extent that the authorization would entail any payment - to render such payment.
- 9.10.2 The Concessionaire is responsible for ensuring that, during the execution of the Works, the roads leading to the Site shall not be blocked in any manner that might affect the regular flow of traffic on said roads, that the requisite license for the transport of exceptional truck loads shall be obtained in advance from the Relevant Authorities, and that all necessary steps shall be taken, including the selection of roads, vehicles and transport times, in order to minimize the disturbance of normal traffic on the said roads to the extent possible, as well as to prevent damage to roadways to the extent possible.
- 9.10.3 Notwithstanding the aforementioned, in the event that the Concessionaire shall be required to disturb the regular flow of traffic of public roads, such disturbance shall be subject to the prior written approval of the Relevant Authorities - including the Israeli Police and subject to the standard procedures.
- 9.10.4 In the event that any disturbance shall be caused as aforesaid in this Section, the Concessionaire undertakes to eliminate said disturbance immediately, and to indemnify and to compensate the State, within ten (10) days of receiving a written demand to this effect, for all damages and for all expenses caused or incurred, if any, to the State as a consequence thereof.

- 9.10.5 If, for the purposes of the execution this Concession Agreement, it shall become necessary to transport an object, whose transport, if carried out without the use of special means of protection, is liable to cause damage to a highway, electricity lines, telephone lines, pipes, cables, etc., the Concessionaire shall notify the Relevant Authorities in advance of the details of the transport and its plan for ensuring proper means of protection. The Concessionaire shall be permitted to carry out the transport only after receipt of required approvals from the Relevant Authorities. Such approvals shall in no way release the Concessionaire from any liability whatsoever; and nothing by virtue thereof shall cause any extension of the timetables or delay in the timetables, as required in this Concession Agreement.
- 9.10.6 The Concessionaire shall be responsible for the repair of any damage or malfunction caused to all public and private property, including, but not limited to, a highway, road, sidewalk, pathway, rails, rail infrastructure, water network, sewage pipeline, channel, electricity lines, communication lines, television cables, supporting walls, and to other Infrastructures, including other communications infrastructure and fuel pipelines, gas pipelines or other conduits, to the Site, or to the common or adjacent areas, which has been caused by the Concessionaire or by any person acting on its behalf during the course of carrying out the Construction Works, whether such damage or malfunction was caused accidentally or was the foreseen outcome of a necessary act. The aforesaid damage or malfunction shall be repaired as soon as possible, and at the Concessionaire's expense, in the most efficient manner and to the satisfaction of the State and of any person or authority duly authorized to supervise the aforesaid repair.
- 9.10.7 The Concessionaire shall be responsible for any damage caused due to the Works carried out by the Concessionaire or any of its Subcontractors, including, but without limitation, to damage caused to agricultural crops, groves, orchards, fields etc. including damages caused due to dust and other nuisances, and for the payment of any compensation there for. The Concessionaire shall reimburse the State and the Implementing Authority for any compensation paid by the State or by the Implementing Authority, including if paid in the framework of an arbitration or according to any compromising arrangement, in lieu of a legal procedure, provided that the Concessionaire shall be given a prior written notice of any claim or demand submitted to the State or to the Implementing Authority.

9.11 Construction Sub Phase Completion Tests

- 9.11.1 Upon Completion of the Construction of each Sub phase of the Project (as the case may be), the Concessionaire shall obtain a Sub phase Construction Completion Certificate in accordance with the provisions of Volume 11 (*Design, Construction and Quality Control*) and any other applicable provision in the Contract Documents.
- 9.11.2 Immediately following the completion of any Section and its related Miscellaneous Structures and Associated Facilities, the Concessionaire

shall be obliged to request the Implementing Authority to issue an interim license for the Partial Operation and Maintenance of such Section and to make a corresponding announcement of the opening of such Section to the public.

- 9.11.3 An interim license to open a Section of the Toll Road (or any related Associated Facilities) will only be issued by the Implementing Authority, after the Concessionaire has submitted to the Implementing Authority all the Approvals and Permits required under any Laws and its declaration that the relevant Section was constructed in accordance with the provisions of this Contract Document, the Concession Agreement and its Annexes and is ready for Operation. The Implementing Authority shall examine the relevant Section of the Highway promptly upon receiving notice from the Concessionaire of completion of construction of that Section. Issuance of a Completion Certificate shall be subject to the provisions of Section 8.1 (*Construction Completion Certificate*) of Volume 11 (*Design, Construction and Quality Control*).

9.12 Construction Completion Date

The Concessionaire undertakes to complete and conclude the construction of the Project by no later than the Construction Completion Date, or as adjusted by the State in accordance with the provisions set forth herein. The Concessionaire is required to provide the State with prior written notice indicating its expected Construction Completion Date, and when it expects to commence the Construction Completion Inspection, at least sixty (60) days prior to such date.

9.13 Delay in the Construction Completion

- 9.13.1 Without derogating from the provisions of Section 9.2 (*Phases of Construction*) and of Section 12.1.2 (e)(vi), should the Concessionaire fail to obtain a Sub-Phase Construction Completion Certificate or the Project's Construction Completion Certificate by its respective Construction Completion Date, then the Concessionaire shall pay the State the following Liquidated Damages for such delay:
- a) With respect to each month of delay in each Sub-Phase Construction Completion Date, the Concessionaire shall pay the State Liquidated Damages in the amount of three million NIS (3,000,000 NIS) per each month of delay or the pro rata part thereof for any part of the month.
 - b) With respect to each month of delay in the Project's Construction Completion Date, the Concessionaire shall pay the State liquidated damages in the amount of six million NIS (6,000,000 NIS) per each month of delay or the pro rata part thereof for any part of the month.
- 9.13.2 For the removal of doubt, all sums of Liquidated Damages set out in this Section 9.13.1, shall be paid to the State in addition and notwithstanding any other Liquidated Damages payable under Section 9.13.1, Section 12.1.2 (e)(vi) or any other provision of this Concession

Agreement, even if the periods of delay subject to Liquidated Damages overlap.

- 9.13.3 If the delays in each Sub-Phase Construction Completion Date or in the Project's Construction Completion Date exceed a consecutive period of six (6) months, then the State will be entitled to issue a notice of termination to the Concessionaire and the provisions of Section 19 (*Termination by the State*) will apply.

10. THE MANAGEMENT OF THE PROJECT

10.1 Concessionaire's Management Team

- 10.1.1 The organizational structure and the management of the Project by the Concessionaire shall reflect the organizational structure presented by the Concessionaire in its Winning Bid.
- 10.1.2 Upon the Signature Date, the Concessionaire shall nominate and appoint as its project manager the entity identified for such a function in its Winning Bid (the "**Project Manager**").
- 10.1.3 Any changes in the identity of the Concessionaire's Project Manager shall be subject to the approval of the State, which approval shall not be unreasonably withheld. Without derogating from the generality of the foregoing, the State, at its sole discretion - while taking into consideration the need for a person with profound knowledge which is acquainted with all aspects of the Project, including all interfaces with suppliers and Sub-contractors, with Infrastructure owners and with the public sector, the importance of continuity of such position especially during the Development Phase and the Construction Phase as well as during the first years of the Commercial Operation Phase, may object to any change in the identity of the Concessionaire's Project Manager.
- 10.1.4 The Concessionaire's Project Manager shall be authorized to represent and act on behalf of the Concessionaire at all times during the Contract Period.
- 10.1.5 No later than thirty (30) days following the Signature Date, the Concessionaire shall nominate and appoint its management team in accordance with its Winning Bid (the "**Concessionaire's Management Team**"). The Concessionaire's Management Team shall include, in addition to the Concessionaire's Project Manager:
- a) A Chief Financial Officer, which shall be a qualified professional with the requisite experience and an academic degree in economics, business management or accounting.
 - b) A Chief Engineering Officer, which shall be a qualified and registered civil engineer with the requisite professional experience.
 - c) All other members of the Concessionaire's management team the nomination of whom is required in accordance with the provisions of Section 3.9.5 (*The Concessionaire's Designers*) of Volume 3 (*Introduction to Engineering*), Section 2.3 (*Concessionaire's and EPC'S Representatives and the Design Manager*) of Volume 11 (*Design, Construction and Quality Control*), or any of the other

Contract Documents, shall be nominated in accordance with the provisions and within the time schedule set forth therein.

The nomination and appointment of the Concessionaire's Management Team is subject to the prior approval by the State. Without derogating from the generality of the foregoing, during the Concession Period, the Concessionaire's Management Team shall include the following personnel:

- d) The Project Manager;
- e) The members of the management detailed in Section 10.1.5 (a)-(c) above;
- f) During the Construction Phase, the Concessionaire will be required to employ at least the personnel specified in Sections 2.3 and 4.2.2 of Volume 11 (*Design, Construction and Quality Control*) and the Engineer/Geologist which shall serve as its nominated Geology Evaluating Team member, in accordance with the provisions of Section 8.5.4 (*Payment for Tunneling Works*) of Volume 8.5 (*Tunnels Excavation and Support*). All such personnel will be approved by the State prior to the issuance of the Notice to Proceed; and
- g) The Operation & Maintenance Managing Director, the Operation Manager and the Operation & Maintenance Chief Engineer, as specified in Section 2.13.2 (*Staff*) of Volume 12 (*Operation and Maintenance*). The ETBS project manager, as required in Section 4.1 5) of Volume 9.1 (*Electronic Tolling & Billing System SOW*). Such personnel will be approved by the State prior to the issuance of the Notice to Proceed.

10.1.6 The members of the Concessionaire's Management Team will be expected to carry out the duties assigned to them in the organizational chart submitted by the Concessionaire in its Winning Bid.

10.1.7 Any changes in the identity of the key members of the Concessionaire's Management Team shall be subject to the approval of the State, which approval shall not be unreasonably withheld.

10.2 Management of the Project by the State

10.2.1 The Implementing Authority ("IA") shall manage the Project on behalf of the State throughout the Contract Period and shall be considered the representative of the State with respect to any rights and obligations of the State (including with respect to obligations of the Concessionaire towards the State) pursuant to the Contract Documents.

10.2.2 At all times during the Contract Period, the Implementing Authority shall be entitled to supervise, review, approve, reject, make decisions, determine, issue certificates, and perform any other action on behalf of the State, all in order to *inter alia* ensure the proper execution of the Project by the Concessionaire, in accordance with the terms of the Contract Documents, including without limitation:

- a) review and supervise the Concessionaire's programs, time schedules and performance throughout the Development, Construction, and Commercial Operation Phases;
- b) review and, if necessary, request the revision of the O&M Manuals;
- c) review and check all the Concessionaire's Preliminary Invoices and Invoices for Payment;
- d) consider and resolve safety matters affecting the Concessionaire and its Subcontractors; and
- e) supervise and enforce the Concessionaire's compliance with the provisions of the Contract Documents.

10.2.3 Without derogating from the authority of any Relevant Authority, the Implementing Authority may issue an opinion, instruction, certificate or valuation, or other determination, as applicable, on any matter relating to the Project (for the purpose of this section 10.2, a "**Decision**") with respect to all matters relating to the performance of the Project in accordance with this Concession Agreement.

10.2.4 The Implementing Authority's Decisions will be made in accordance with the Contract Documents. In the absence of any reference in the Contract Documents to a matter requiring a Decision or if there is a dispute on the interpretation of the contents of the Contract Documents, the Implementing Authority's Decision will be made in accordance with the accepted guidelines and professional principles and standards in the relevant field in question. The Implementing Authority shall give reasons for its Decisions in writing. Without derogating from the generality of the foregoing, the Implementing Authority shall appoint an engineer on its behalf to consult and provide its opinion on any professional matter the Implementing Authority shall deem required for the purpose of carrying out the Implementing Authority's powers and authorities under the Contract Documents, in order to ensure the proper performance of the Works, in accordance with the terms of the Concession Agreement.

10.2.5 The Concessionaire will submit to the Implementing Authority all information and as requested by the Implementing Authority. The Concessionaire will cooperate fully with the Implementing Authority's designated representatives in exercising its rights and in the performance of its obligations and undertakings under this Concession Agreement.

10.2.6 The Concessionaire will not prevent the Implementing Authority and all other designated representatives from accessing the Site.

10.3 Reporting and Meetings Obligations

During the Concession Period, the Concessionaire shall provide the State with reports in accordance with the provisions of Volume 11 (*Design, Construction and Quality Control*), Volume 12 (*Operation and Maintenance*) and the provisions of Appendix J (*Reports and Meetings Obligations*) and in accordance with applicable Law.

11. PARTIAL OPERATION AND MAINTENANCE PHASE

11.1 Partial Operation and Maintenance - Existing Road Sections

- 11.1.1 As of the date of Notice to Proceed, the Concessionaire shall be responsible for the Partial Operation and Maintenance of the Existing Road Sections in accordance with the provisions of Volume 12 (*Operation and Maintenance*), and according to all Laws.
- 11.1.2 No later than sixty (60) days prior to date on which the Concessionaire expects the Notice to Proceed to be issued, the Concessionaire shall request the Implementing Authority to issue an Interim Permit to Operate for the Partial Operation and Maintenance of Existing Road Sections. Such request shall be accompanied by all Insurance policies necessary for the Partial Operation and Maintenance of Existing Road Sections in accordance with the provisions of Appendix G (*Insurance*).
- 11.1.3 Subject to the Concessionaire's compliance with all the requirements set forth in this Concession Agreement and in Volume 12 (*Operation and Maintenance*) with respect to Partial Operation and Maintenance of Existing Road Sections and any Laws, the Implementing Authority shall issue an Interim Permit to Operate for the Partial Operation and Maintenance of Existing Road Sections to the Concessionaire by no later than the date of issuance of the Notice to Proceed. Should the Implementing Authority shall have determine that the Concessionaire failed to comply with any of the requirements set forth in this Concession Agreement with respect to Partial Operation and Maintenance of Existing Road Sections or in Volume 12 (*Operation and Maintenance*) or any Laws it shall issue a detailed notice to that effect to the Concessionaire, specifying the required remedial actions. The Concessionaire shall act in accordance with the Implementing Authority's notice and promptly thereafter, shall submit to the Implementing Authority an amended request to issue an Interim Permit to Operate for the Partial Operation and Maintenance of Existing Road Sections and the provisions of Section 11.1.2 and 11.1.3, shall apply, *mutatis mutandis*.
- 11.1.4 The Partial Operation and Maintenance of Existing Road Sections (and any of the related Associated Facilities) shall be done in a professional and proper manner, according to all the provisions set forth in this Concession Agreement and in Volume 12 (*Operation and Maintenance*), and all Laws, in the absence of such provisions or Laws, the Partial Operation and Maintenance of the Existing Road Sections shall be done in accordance with good engineering practice and acceptable safety practices. The Partial Operation and Maintenance of Existing Road Sections shall be done using equipment and materials of proper quality and suitable for their intended use, without any defects and deficiencies.
- 11.1.5 Without derogating from the generality of the aforesaid in Section 11.1.4 above and from any right of the State in accordance with this Concession Agreement and any Law, in any event of deviation from the provisions with respect to the Operation and Maintenance set forth in

Volume 12 (*Operation and Maintenance*), the Concessionaire shall be subject to the payment adjustments stipulated for such deviation in Volume 12 (*Operation and Maintenance*).

11.2 Performance Bond

The Construction Performance Bond provided by the Concessionaire in accordance with the provisions of Section 29.4 (*The Construction Performance Bond*) shall, *inter alia*, serve as a security and guarantee for the performance of the Concessionaire's obligations with respect to the Partial Operation and Maintenance of Existing Road Sections during the Construction Period and until the issuance of the Permit to Operate.

11.3 Partial Operation and Maintenance - Section of the Highway

- 11.3.1 Immediately following the completion of a Section of the Highway and its related Miscellaneous Structures and Associated Facilities, the Concessionaire shall be obliged to request the Implementing Authority to issue an Interim Permit to Operate for the Operation and Maintenance of a Section of the Highway and to make the corresponding announcement of the opening of such Section to the public. Until the date of issuance of the Permit to Operate, the Concessionaire shall be responsible for the Partial Operation and Maintenance of Sections of the Highway in accordance with the provisions of Volume 12 (*Operation and Maintenance*), and according to all Laws.
- 11.3.2 No later than sixty (60) days prior to date on which the Concessionaire expects the construction completion of a Section of the Highway, the Concessionaire shall request the Implementing Authority to issue an Interim Permit to Operate for the Partial Operation and Maintenance of a Section of the Highway. Such request shall be accompanied by all Insurance policies necessary for the Partial Operation and Maintenance of the Section of the Highway in accordance with the provisions of Appendix G (*Insurance*).
- 11.3.3 Subject to the Concessionaire's compliance with all the requirements set forth in this Concession Agreement and in Volume 12 (*Operation and Maintenance*) with respect to Partial Operation and Maintenance of Sections of the Highway and any Laws, the Implementing Authority shall issue an Interim Permit to Operate for the Partial Operation and Maintenance of a Section of the Highway to the Concessionaire by no later than thirty (30) days following the date of construction completion of the Section of the Highway. Should the Implementing Authority determine that the Concessionaire failed to comply with any of the requirements set forth in this Concession Agreements or in any of the other Contract Documents with respect to Partial Operation and Maintenance of a Section of the Highway or any Laws it shall issue a detailed notice to that effect to the Concessionaire, specifying the required remedial actions. The Concessionaire shall act in accordance with the Implementing Authority's notice and promptly thereafter, shall submit to the Implementing Authority an amended request to issue an Interim Permit to Operate for the Partial Operation and Maintenance of

a Section of the Highway and the provisions of Section 11.3.2 and 11.3.3, shall apply, *mutatis mutandis*.

- 11.3.4 From and after the Opening Date of any Section of the Highway and until the commencement of the Commercial Operation Phase the Concessionaire shall have the right to charge and collect Tolls from vehicles utilizing such Section (if applicable, to such Section of the Highway), subject to the completion and full implementation of the HOMC and the Tolling System, in accordance with the provisions of Volume 10 (*Highway Traffic Management System*) and Volume 9 (*Tolling System*) and as necessary for the collection of Tolls for the use of the relevant Section of the Highway, and the approval thereof by the Implementing Authority. In addition, and without derogating from the foregoing, the Concessionaire shall be entitled to the applicable payments in accordance with the provisions of Section 4.7 (*Payments*).
- 11.3.5 As of the date of issuance of an Interim Permit to Operate for the Partial Operation and Maintenance of a Section of the Highway the Concessionaire shall be responsible and shall fully comply with all the provisions of this Concession Agreement and of Volume 12 (*Operation and Maintenance*) relating to the Partial Operation and Maintenance of a Section of the Highway and with the provisions of Volume 7 (*Marketing, Advertising and Customer Service*).
- 11.3.6 The Partial Operation and Maintenance of a Section of the Highway (and any of the related Associated Facilities) shall be done in a professional and proper manner, according to all the provisions set forth in this Concession Agreement, the other Contract Documents and all Laws, in the absence of such provisions or Laws, the Partial Operation and Maintenance of a Section of the Highway shall be done in accordance with good engineering practice and acceptable safety practices. The Partial Operation and Maintenance of a Section of the Highway shall be done using equipment and materials of proper quality and suitable for their intended use, without any defects and deficiencies.
- 11.3.7 Without derogating from the generality of the aforesaid and from any right of the State in accordance with this Concession Agreement and any Law, in any event of deviation from the provisions with respect to the Operation and Maintenance set forth in Volume 12 (*Operation and Maintenance*), the Concessionaire shall subject to the payment adjustments stipulated for such deviation in Volume 12 (*Operation and Maintenance*).

11.4 Traffic Management and Control of a Section of the Highway

- 11.4.1 From the date of Issuance of the Interim Permit to Operate for the Partial Operation and Maintenance of a Section of the Highway and until the date of issuance of the Permit to Operate, the Concessionaire shall be responsible for performing the traffic management and control of the Section of the Highway, in accordance with the provisions of this Concession Agreement, and of Volume 10 (*Highway Traffic Management System*).

- 11.4.2 The traffic management and control of the Section of the Highway shall be performed in a professional and proper manner, in accordance with all the provisions and instructions of Volume 10 (*Highway Traffic Management System*), and in the absence of such provisions in accordance with good practice and acceptable safety practices.
- 11.4.3 The traffic management and control of the Section of the Highway shall be done using equipment and materials of proper quality and suitable for their intended use, without any defects and deficiencies.

11.5 Availability of Sections of the Highway

- 11.5.1 From the date of Issuance of the Interim Permit to Operate for the Partial Operation and Maintenance of a Section of the Highway and until the date of issuance of the Permit to Operate, the Concessionaire shall comply with the availability criteria determined for the Section of the Highway, in accordance with the provisions of this Concession Agreement and of Appendix N (*Availability Mechanism*).
- 11.5.2 The Operation and Maintenance activities, traffic management and control of the Section of the Highway shall be performed in a professional and proper manner and acceptable safety practices, which shall ensure the Concessionaire's compliance with all the provisions and instructions of Volume 12 (*Operation and Maintenance*).
- 11.5.3 Without derogating from the generality of the aforesaid in Section 11.5.2 above and any right of the State in accordance with this Concession Agreement and any Law, in any event of failure by the Concessionaire to comply with the availability requirements set forth in Volume 12 (*Operation and Maintenance*) or in Appendix N (*Availability Mechanism*), the Concessionaire shall be obliged to pay the sums stipulated for such non-compliance in Appendix N (*Availability Mechanism*).

11.6 Performance Bond

The Construction Performance Bond provided by the Concessionaire in accordance with the provisions of Section 29.4 (*The Construction Performance Bond*) shall, *inter alia*, serve as a security and guarantee for the performance of the Concessionaire's obligations with respect to the Partial Operation and Maintenance of Sections of the Highway during the Construction Period and until the issuance of the Permit to Operate.

- 11.7 For the avoidance of doubt, the Toll Revenue Guarantee (TRG) shall not apply during Partial Operation and Maintenance Phase, and the Concessionaire shall not be entitled to any consideration, payment, remedy or compensation during Partial Operation and Maintenance Phase, except as specifically provided in this Concession Agreement and to the extent provided.
- 11.8 Notwithstanding the issuance by the State of any Interim Permit to Operate and the opening of any Section, the Concessionaire shall be obliged to complete the entire Highway, the Miscellaneous Structures and the Associated Facilities in accordance with the terms of the Concession Agreement.

12. COMMERCIAL OPERATION PHASE

12.1 Conditions For Receiving a Permit to Operate

12.1.1 Subject to performance of all of the Concessionaire's obligations under the Contract Documents and obedience of the requirements of the State and the performance, *inter alia*, of all that is necessary for the orderly and sound inspection of the Project's Construction Completion, to the full satisfaction of the State, and that the Concessionaire submitted to the State all materials required in accordance with the provisions of Section 8.2.6 of Volume 11 (*Design, Construction and Quality Control*) and the State approved the Operation and Maintenance Manuals and all other requirements set forth in Volume 12 (*Operation and Maintenance*), Volume 10 (*Highway Traffic Management System*) and in Volume 7 (*Marketing, Advertising and Customer Service*), and as per the Concessionaire's Winning Bid, all subject to the Concessionaire's compliance with the provisions of all applicable Laws and Regulations; then, pursuant to the State's issuance of a duly executed Construction Completion Certificate in accordance with Section 8.1 of Volume 11 (*Design, Construction and Quality Control*), the Concessionaire shall be eligible to apply for a permit to commence Operation (hereinafter: **"Permit to Operate"**), and submit for this purpose a Request to Commence Operation, as defined below, to the Implementing Authority.

12.1.2 The Permit to Operate shall be issued by the Implementing Authority in accordance with the following:

- a) **Request to Commence Operation.** The Concessionaire shall submit to the Implementing Authority a Request to Commence Operation of the Highway, which will include confirmation of the satisfactory fulfillment by the Concessionaire of the following requirements:
 - i. The Concessionaire has fully complied with the requirements set forth in Volume 11 (*Design, Construction and Quality Control*) and shall have obtained a Construction Completion Certificate from the Implementing Authority;
 - ii. All permits, licenses and governmental and municipal approvals required for the Operation and Maintenance of the

Project shall have been obtained, and the Concessionaire shall have delivered to the Implementing Authority a statement specifically listing each permit, license and governmental and municipal approval required and confirming that all such permits, licenses and approvals have been obtained;

- iii. The Implementing Authority shall have approved the nomination of the applicable personnel of the Concessionaire's Management Team, including in accordance with the provisions of Volume 12 (*Operation and Maintenance*);
- iv. All Insurance Policies required to be obtained on or prior to the Commercial Operation Phase shall have been obtained by the Concessionaire, furnished to, and approved by the Implementing Authority in accordance with the provisions of Appendix G (*Insurance*); and
- v. All Bonds required to be obtained on or prior to the Commercial Operation Phase shall have been furnished to the State in accordance with the provisions of Section 29 (*Bonds*) herein;

(the “**Request to Commence Operation**”).

- b) **Approval of Request to Commence Operation.** The Implementing Authority shall approve the Request to Commence Operation within forty (40) days following receipt thereof, provided that the Request to Commence Operation was not followed, within twenty (20) days of receipt thereof, by a request from the Implementing Authority for further information or by a notice from the Implementing Authority of disagreement as to the satisfactory fulfillment of the requirements set forth in Section 12.1.2a) above (*Request to Commence Operation*).
- c) In the event that the Implementing Authority shall request further information or issue a notice of disagreement, the Concessionaire shall comply with the instructions of the Implementing Authority, and submit an amended Request to Commence Operation in compliance with the Implementing Authority's request. The provisions of Section 12.1.2a) (*Request to Commence Operation*) will apply to the submission of each amended Request to Commence Operation.
- d) **Issuance of Permit to Operate.** The Implementing Authority shall issue the Permit to Operate upon approval of the Request to Commence Operation.
- e) **Issuance of a Provisional Permit to Operate.** Where the Construction Completion Certificates states that the Highway or any Section thereof, Miscellaneous Structures and Associated Facilities are Substantially Completed, subject to minor matters which remain to be completed, the Implementing Authority may

decide to issue a provisional Permit to Operate the Project (including any Section thereof); under such circumstances:

- i. The Provisional Permit to Operate shall contain a list of all defects or deficiencies to be rectified by the Concessionaire, together with a schedule for doing so with respect to each item in the list which schedule will not exceed three (3) months from the date of issuance of the Provisional Permit to Operate of the Highway (or any Section thereof) ("**Permitted Period**").
- ii. The Concessionaire shall be required to rectify the defects or deficiencies listed in the Provisional Permit to Operate within the Permitted Period.
- iii. The Implementing Authority shall state, beside each item in the defects and deficiencies list the estimated cost for the rectification of such defect or deficiency. The Implementing Authority shall be entitled to withhold from the Construction Grant a sum equal to the total sum of all estimated costs for rectification of all outstanding defects and deficiencies included in the minor matters list.
- iv. If, at the end of the Permitted Period, the Concessionaire shall fail to remedy the defects or deficiencies listed in the Provisional Permit to Operate, but will demonstrate to the satisfaction of the Implementing Authority that it has promptly taken all such steps as may be reasonably required to remedy such failure and is diligently pursuing and for so long as it continues diligently to pursue such remedy, the Implementing Authority at its sole discretion, may extend the Permitted Period by an additional period which will not exceed three (3) months so that the maximum Permitted Period granted pursuant to this Section 12.1.2e) shall not exceed a total of six (6) months from the date of issuance of the Provisional Permit to Operate the Highway (or a Section thereof).
- v. If the Implementing Authority shall issue the Concessionaire with a Provisional Permit to Operate in accordance with the provisions of this Section 12.1.2, then without derogating from the provisions of the Concession Agreement, during the Permitted Period and until such time as the Concessionaire shall rectify the defects and deficiencies listed in the Provisional Permit to Operate:
 - 1) The Operation and Maintenance Bond shall serve to guarantee the rectification of all outstanding minor matters listed in the Provisional Permit to Operate;
 - 2) The Concessionaire shall be entitled to the applicable payments in accordance with the provisions of Section 4.7 (*Payments*). The withheld sums in accordance with sub-section (iii) above, shall be released upon the approval of the

Implementing Authority that the relevant defect or deficiency has been rectified. The released sum shall be added (without any linkage or interest payments) to the next Actual State Periodic Payment due to the Concessionaire from the State, in accordance with the provisions of the Concession Agreement.

vi. If following the inspection of Construction Completion, the Implementing Authority determines that:

- 1) The Project or any Section thereof, failed to comply with the requirements of the Contract Documents; or
- 2) That the Concessionaire has failed to rectify all defects and deficiencies, specified in the Provisional Permit to Operate, by the end of the Permitted Period:

then the Implementing Authority, at its sole discretion shall be entitled to either extend the Permitted Period; or issue the Concessionaire with a Permit to Operate; or refuse to issue a Permit to Operate.

If the Implementing Authority shall refuse to issue the Concessionaire with a Permit to Operate then, without derogating from the provisions of the Concession Agreement, and without limiting in any of its other rights, the Implementing Authority shall be entitled to liquidated damages in the sum of Three Hundred Thousand NIS (300,000 NIS) for every month of delay, in the completion of the rectification of such defects and deficiencies or the pro rata part thereof for any part of the month.

vii. It is hereby explicitly provided that the Highway, or any Section of the Highway, the Miscellaneous Structures and any of its Associated Facilities shall be considered as substantially completed only if the matters that remains to be completed:

- 1) Do not impede in any way the use of the Highway or any Section thereof by vehicles or adversely affect the safety measures on the Highway;
- 2) Do not affect the vehicle identification and toll collection facilities;
- 3) Do not prevent the procurement of all approvals and permits required under Laws including the Accompanying Team approval and all such approvals and permits have indeed been submitted.

12.2 Commencement of the Commercial Operation Phase

The issuance of the Permit to Operate, as per section 12.1.2 above, shall indicate the commencement of the Commercial Operation Phase of the Project.

13. TOLLS

13.1 Right to Charge and Collect Tolls

The Concessionaire shall charge and collect tolls from vehicles utilizing the Toll Sections in accordance with the terms and conditions of the Toll Road Law and in accordance with the terms and conditions hereof as part of the Concession Agreement.

13.2 Initial Toll

The Initial Tolls shall not exceed the maximum as specified in Annex E (*Toll Tariffs*).

13.3 Revisions of the Tolls

The Tolls levied for each vehicle class shall be subject to adjustment only as provided in Annex E (*Toll Tariffs*).

13.4 Concessionaire's Responsibility for Tolling System

The Concessionaire shall have absolute responsibility for the installation, operation and maintenance of the Tolling System and for the enforcement of collection the Toll and the Collection Fee as set forth in Section 13.8 (*Enforcement*). The State will not incur any liability in connection with any defect or deficiency of the Tolling System or of the collection of the Toll and Collection Fees. The Concessionaire shall have the powers prescribed in Section 7.2(2) of the Toll Road Law in connection with operation of the Toll Sections and the installation, operation and maintenance of the facilities and devices for collecting the Toll.

The Concessionaire's responsibility for enforcing collection of the Toll and the Collection Fee as stated above does not derogate from the State's powers in criminal proceedings on the basis of Section 13 of the Toll Road Law or any other Law.

Notice of the Toll and Collection Fee amounts and any revision of same shall be published in the Official Gazette and in an additional publication prescribed by the Minister of Transport, National Infrastructures and Roads Safety.

13.5 Toll Collection Expenses

All expenses relating to collection of the Toll and of the Collection Fee shall be borne by the Concessionaire.

13.6 Currency of Tolls

Tolls and Collection Fees shall be charged and collected in NIS.

13.7 Certain Vehicles Exempt from Tolls

13.7.1 The Concessionaire shall exempt from the obligation to pay Tolls for using the Toll Sections all such vehicles specifically so exempted under this Concession Agreement and under any Laws or Regulations including the Toll Road Law as well as vehicles of the Implementing

Authority requiring access for fulfilment of its duties under this Concession Agreement and under any Law. The Concessionaire shall not grant other exemptions or discounts other than those referred to above, except according to parameters on an equal basis which will be approved in advance by the State and published in a manner prescribed by the Minister of Transport, National Infrastructures and Roads Safety.

13.7.2 If the Toll is not collected by the Concessionaire due to the provisions of the order to be issued under Section 8 of the Toll Road Law or due to an emergency event under Section 9(b) of the Toll Road Law, as such order is defined therein, the State shall pay the Concessionaire compensation in accordance with the provisions of Appendix L (*Payment Arrangements according to Sections 8 and 9(b) of the Toll Road Law*).

13.7.3 Without prejudice to Section 13.7.1 or Section 7.8.2 (*Interruption Following the Date of Issuance of Permit to Operate; Effects*) the Concessionaire may reach an agreement with the Israel Defence Forces (IDF) and Israel Police on use of the Toll Sections or part of it by a vehicle of the IDF or the Israel Police. Payment for use by such vehicles shall be made according to the arrangement reached and a reduction determined on a commercial basis shall be given. Such agreement shall be subject to the prior Approval of the State.

13.8 Enforcement

The Concessionaire shall bear the sole responsibility for enforcement of Tolls and shall bear all costs associated therewith. The Concessionaire undertakes to act reasonably in applying enforcement measures and to act in accordance with the Toll Road Law and the Regulation enacted in accordance therewith, and any other applicable Law or Regulation, in the enforcement of payment and collection of the requisite Toll.

13.9 Tolling System

The Tolling System for the Toll Road shall be fully in accordance with the terms of this Concession Agreement including Volume 13.9 (*Tolling System*). The Concessionaire's responsibility for the Tolling System shall extend to the infrastructure of such system and all components and aspects of it including arranging for outlets through which the requisite in-vehicles readers (if applicable), if any, are distributed and all other accessories and devices requisite for the collection of the Toll.

13.10 Provisions of Reimbursement of Costs and Compensation

[TO BE COMPLETED DURING THE TENDER PROCESS]

14. ADDITIONAL COMMERCIAL ACTIVITY

Upon the elapse of the second (2nd) year of the Commercial Operation Phase, the Concessionaire may submit a Request for Additional Commercial Activity.

14.1 Request for Additional Commercial Activity.

- 14.1.1 The Concessionaire shall notify the State, within a reasonable time in advance and in any case not less than sixty (60) days in advance, of any Additional Commercial Activity, in which the Concessionaire may wish to be involved whether directly or through a Subsidiary. Such notice shall include a summary detailing the intended Additional Commercial Activity, any expected implications thereof on the Project, its projected revenues, the Works and the manpower required, and any agreements into which the Concessionaire intends to enter in connection therewith (the “**Request for Additional Commercial Activity**”).
- 14.1.2 The State shall review the Request for Additional Commercial Activity, taking into consideration all relevant issues detailed therein.
- 14.1.3 Where the State determines that according to the Request for Additional Commercial Activity such Additional Commercial Activity is expected to adversely affect the State’s interests in the Project, to increase the exposure of the State, to impose an additional risk thereon or to otherwise contrast the public interest, it may, within sixty (60) days from receipt of the Concessionaire’s Request for Additional Commercial Activity, object to the Concessionaire’s intended Additional Commercial Activity by instructing the Concessionaire or by instructing any Subsidiary thereof to refrain from engaging in the intended Additional Commercial Activity. Within its consideration of the public interest the State, shall take into account, *inter alia*, and without limitation, the following considerations: (i) the implications of the Additional Commercial Activity on the safety of the Project and the public; (ii) the expected effect of the Additional Commercial Activity on the nature of the Project or on the public positioning of the Project, (ii) time schedule implications; (iii) compliance with the requirements of Section 31 (*Intellectual Property*) with respect to the Additional Commercial Activity, *mutatis mutandis*, and (iv) the existence of satisfactory arrangements for ensuring compliance and subordination of the Additional Commercial Activities to the provisions of the Contract Documents.
- 14.1.4 Notwithstanding the abovementioned, if the State determines at any time after the aforementioned sixty (60) day period, that the actual implications of the Additional Commercial Activity deviate or will deviate from the expected implications detailed in the Request for Additional Commercial Activity and the actual implications thereof have such an adverse effect on the State’s interests in the Project or on the public interest or are expected to have such effect, it may exercise its right to object to any Additional Commercial Activity by instructing the Concessionaire or by instructing any Subsidiary thereof to limit its engagement in the Additional Commercial Activity or refrain from such Additional Commercial Activity in order to minimize to the extent possible or otherwise avoid any adverse effect on the State’s interests in the Project or on the public interest. The Concessionaire shall comply

with the State's instructions and shall cause any Subsidiary thereof to comply with the same.

- 14.1.5 Should the State determine to allow such Additional Commercial Activity, as detailed in the respective notice, the State shall either; (i) agree to the terms presented by the Concessionaire and subsequently issue an Approval of Additional Commercial Activity; or (ii) request a meeting with the Concessionaire for the purpose of settling the terms and conditions that shall apply with respect to the Additional Commercial Activity and the additional income generated from such Additional Commercial Activity.
- 14.1.6 The Concessionaire shall perform all Additional Commercial Activities under Section 14 (*Additional Commercial Activity*) through a Subsidiary, established solely for this purpose, or, subject to the State's prior written approval to do so, by managing a separate bookkeeping system for all such Additional Commercial Activities, in lieu of through a sole purpose Subsidiary.
- 14.1.7 The State's decision whether to issue an Approval of Additional Commercial Activity shall be made at its sole discretion and may be conditioned upon the State's receipt of a portion of the benefits attributable to or generated from such Additional Commercial Activity (the sum of which shall be as determined by the State at such time). The State's portion in the benefits attributable to or generated from such Additional Commercial Activity shall be determined by the Implementing Authority and the Concessionaire before the commencement of the Additional Commercial Activity.

Notwithstanding the aforesaid, the Concessionaire shall design, construct and install the infrastructure required for the future installation of optic fiber, and shall be permitted to use such optic fiber for any Additional Commercial Activity, subject to the provisions of all Laws. The Concessionaire shall bear the full and sole responsibility for obtaining the necessary Approvals, including any necessary licenses, from the Ministry of Communication and any other Relevant Authority. The State shall not have any portion in the revenues generated from the aforesaid permitted Additional Commercial Activity.

- 14.1.8 Nothing contained in this Section 14 (*Additional Commercial Activity*), including the State's approval for any Additional Commercial Activity, or any other provision of the Concession Agreement shall be construed as derogating from the Concessionaire's full and sole responsibility for the feasibility and the exercise of the Additional Commercial Activity. The Concessionaire shall bear all costs deriving from the exercise of such Additional Commercial Activity. Without derogating from the generality of the foregoing, should the performance of any Additional Commercial Activity necessitate obtaining or amendment of any Approval, the Concessionaire shall bear full and sole responsibility for obtaining all necessary Approvals in relation to such Additional Commercial Activity.
- 14.1.9 Upon Termination of this Concession Agreement the Concessionaire shall Transfer any Additional Commercial Activity to the State as part

of the Project, including any and all Intellectual Property entailed with such Additional Commercial Activity. The provisions of Section 22 (*Transfer Following Termination*) shall apply with respect to the Transfer of any Additional Commercial Activity, unless the State instructed otherwise in advance in writing.

- 14.1.10 The Concessionaire shall ensure that binding provisions, giving effect to the State's rights under this Section 14 (*Additional Commercial Activity*) and the provisions of Section 22 (*Transfer Following Termination*), are incorporated in all relevant agreements procured by the Concessionaire or by any Subsidiary thereof with respect to any Additional Commercial Activity, including provisions to allow for any changes to such agreements, necessitated by the exercise of the State's rights, hereunder.

15. CHANGE ORDER

During the Contract Period, any Changes to the Project, whether introduced by the State or the Concessionaire, shall be subject to the provisions of Appendix F (*Change Order*).

16. PREROGATIVES OF THE STATE

16.1 Instruction of the State

- 16.1.1 The State, any of its designated representatives and any of the Relevant Authorities shall be entitled, throughout the Contract Period to provide the Concessionaire with written instructions with regards to the Project (for the purpose of this Section 16, the "**Instruction**").
- 16.1.2 Where the Concessionaire receives any Instruction which relates to the Construction Phase and which in its view, is not covered by its obligations as set forth in the Concession Agreement (i.e. additional payment or time schedules extension is required), the Concessionaire shall provide notice of such effect to the State (for the purpose of this Section, the term 'State' shall be interpreted as "the State through the Implementing Authority and the Accountant General") in accordance with the following:
- a) Immediately, and in any event no later than within seven (7) days following receipt of the written Instruction, the Concessionaire shall provide notice to the State that the execution of such Instruction is, in its opinion, not included within its scope of work under the Concession Agreement (for the purpose of this Section, the "**Notice**").
 - b) Within twenty-one (21) days from the issuance of such Notice, the Concessionaire shall set out in writing the following (the "**Estimation**"):
 - i. The reasons why, in its view, the Instruction is not covered by the obligations of the Concessionaire as set forth in the Concession Agreement; and

- ii. Its best and most up to date non-binding estimation of all the implications (cost, timetable, etc.) arising from the execution of the Instruction.
 - c) Where the Concessionaire is unable to complete its Estimation within the said period due to reasons of complexity, it shall be entitled to notify the State accordingly prior to the end of the said period and request an extension ("**Request for Extension**"). Upon the State's receipt of the Request for Extension it shall notify the Concessionaire of its decision as soon as reasonably possible. Should an extension not be granted, the Concessionaire shall be obligated to submit its Estimation.
 - d) Without derogating from any claims that the State may have regarding the Concessionaire's failure to provide the Estimation, where the Concessionaire fails to provide the State with its Estimation the execution of the Instruction shall be deemed to have no implications with respect to cost, time or other, whether at such time or throughout the Contract Period, and to be covered by the Concessionaire's obligations under the Concession Agreement (i.e. no additional payment and no time schedule extension is required).
- 16.1.3 Upon the State's receipt of the Concessionaire's Estimation, the State shall, as soon as reasonably possible and in any event not later than thirty (30) days from the date of receipt of the Estimation, notify the Concessionaire, in writing, as follows:

Either -

- a) that the State concludes that the execution of the Instruction constitutes a Change to the Project to which the provisions of Section 15 herein (*Change Order*) shall apply; or
 - b) that the State considers the execution of the Instruction to be part of the Concessionaire's obligations under the Concession Agreement and for which the Concessionaire is not entitled to any additional payment or to any extension of time schedule. In this event the State shall provide written reasons for its decision as part of its response; or
 - c) that the State has determined to cancel the Instruction and by such no execution is required by the Concessionaire.
- 16.1.4 In the event of that the State decides as set forth in subsection 16.1.3b) above, then:
- a) If the Concessionaire accepts the State's decision, it shall execute the Instructions without any further compensation in terms of cost, time, or other; or
 - b) If the Concessionaire does not accept the State's decision, the following shall apply:
 - i. the Concessionaire shall be required to perform such Instruction, subject to obtaining the prior written approval of the Implementing Authority;

- ii. the Concessionaire shall have a period of thirty (30) days to notify the State of whether it intends to submit such matter to the Dispute Resolution Panel in accordance with Section 32 (*Dispute Resolution*) herein;
- iii. within seven (7) days following the issuance of such notice, either Party shall be entitled, by notice in writing to the other Party, to request negotiations for a period of up to thirty (30) days for the purpose of resolving the dispute on their own;
- iv. in the event the Instruction relates to the Construction Phase, the Concessionaire shall be entitled to submit such matter to the Dispute Resolution Panel solely within six (6) months from the receipt of the respective Instruction.

In the event the Concessionaire refrains from submitting the matter to the Dispute Resolution Panel within the time-frame as aforesaid, it shall be deemed to have accepted the State's decision and the provisions of subsection (i) above shall apply. For the removal of doubt, the aforesaid six (6) months period shall be the agreed limitation period according to the provisions of Section 19 to the Law of Limitation, 1958.

- 16.1.5 Where the State does not issue its decision within thirty (30) days as required in subsection 16.1.4b)iii. above, the matter shall be referred to Dispute Resolution Panel in accordance with Section 32 (*Dispute Resolution*) herein by the Concessionaire after exhausting the efforts to settle the disagreements amicably provided that in the event the Instruction relates to the Construction Phase, the matter will be referred to the Dispute Resolution Panel before the elapse of the agreed limitation period as provided in Section 16.1.4b)iv above.

16.2 Suspension

16.2.1 At the Discretion of the State

- a) The State shall have the authority to suspend the Project (including the construction or Operation and Maintenance of the Project or any part thereof), by issuing a written order, for such period as the State may deem necessary, due to failure to comply with safety requirements or with instructions of the State given in accordance with this Concession Agreement.
- b) The Concessionaire shall comply with such written order of the State immediately upon its receipt.
- c) The suspended work will be resumed when proper conditions are resumed or methods are corrected, as approved by the State at its sole discretion.
- d) Suspension of design, construction or Operation and Maintenance of the Project or any part thereof, by the State under any of the conditions set forth in this Section (or omission by the State to use its right to issue a suspension instruction), shall not relieve the Concessionaire of its responsibilities and obligations under the Contract Documents.

- e) For the removal of doubt, nothing in the aforementioned shall derogate from the right of any Relevant Authority under Law to suspend any Works, or suspend the Project, all in accordance with the Law. Such instructions will not be deemed an instruction of the State for purposes of Section 16.1 (*Instruction of the State*) above, and shall be under the Concessionaire's sole responsibility.

16.2.2 Effects of an Unjustifiable Suspension. If the State suspends Construction or Operation and Maintenance of the Project pursuant to the provisions above, and the Dispute Resolution Panel, pursuant to being approached by the Concessionaire in accordance with Section 32 (*Dispute Resolution*) herein, resolves that such suspension was not justifiable under the terms of this Concession Agreement (an "**Unjustifiable Suspension**"), then, if not otherwise agreed by the Parties, the Concessionaire shall request the Dispute Resolution Panel to determine the amount of compensation payable by the State, which shall be based on the provisions of Section 7.8.1 (*Interruption Following the Date of Issuance of Notice to Proceed and prior to the Date of Issuance of Permit to Operate*) or 7.8.2 (*Interruption Following the Date of Issuance of Permit to Operate; Effects*), *mutatis mutandis*.

16.3 Termination For Convenience

16.3.1 Right of the State to Terminate for Convenience

- a) The State shall have the right, for any reason and at its sole discretion, to terminate this Concession Agreement, as of the third (3) anniversary of the commencement of the Commercial Operation Phase.
- b) Should the State wish to exercise such right, it shall notify the Concessionaire and the Finance Providers of its intention in writing, specifying the date on which this Concession Agreement shall be Terminated ("**Notice of Termination**"), provided that such date be no less than twelve (12) months following the date of issuance of the Notice of Termination for convenience, unless a shorter period is mutually agreed between the Parties.

16.3.2 Compensation for Termination for Convenience

- a) In the event that a Notice of Termination is issued to the Concessionaire in accordance with the provisions of Section 16.3.1b), the State shall pay the Concessionaire compensation with respect to the Project, which compensation will be determined by the Dispute Resolution Panel in accordance with the provisions of Section 20.4.4 (*Termination Following Issuance of the Permit to Operate the Project*), 19.5 (*Assumption of Balance of Senior Debt*) and 19.6 (*Payment by the State; Compensation*) with the appropriate changes.
- b) Except as expressly set forth in this Section 16.3.2 (*Compensation for Termination for Convenience*), the Concessionaire shall not be entitled to any relief, reimbursement, compensation or extension of any sort in connection with the provisions of this Section 16.3 (*Termination for Convenience*), and the provisions set forth in this

Section 16.3.2 (*Compensation for Termination for Convenience*), shall be exhaustive and in full satisfaction of all its claims, outstanding or in the future.

17. DISCRIMINATORY ACTION

17.1 Discriminatory Action

The Concessionaire shall have no cause of action against the State due to a change to any Law or the legislation of a law, except with regard to a pecuniary claim with respect to such that satisfies all of the following conditions and is recognized as a Discriminatory Change by the State or by the Dispute Resolution Panel:

- 17.1.1 The provisions of the Law which resulted in such change or action apply directly and solely on the Concessionaire or to the Project or to concessionaire's of similar toll roads;
- 17.1.2 The provisions of the Law which resulted such change or action detrimentally affects the rights that have been granted to the Concessionaire pursuant to the Contract Documents or they impose on the Concessionaire significant obligations additional to those that were imposed on him under the Contract Documents;
- 17.1.3 The provisions of the Law, which resulted such change or action, either:
 - a) materially adversely affects the economic position of the Concessionaire or in the economic position of the Concessionaire; or
 - b) renders impossible the performance of all, or substantially all, of the Concessionaire's obligations under the Concession Agreement.

Sections 17.1.1 through 17.1.3 above shall be referred to hereinafter as a "Discriminatory Action".

- 17.1.4 An action shall not be considered Discriminatory Action where such action:
 - a) is carried out by any of the zoning and planning committees (including the Accompanying Team), by virtue of exercising their discretion, authorities, judgment and rights under applicable Law or any statutory scheme, including any Building Permit (or authorization); or
 - b) is carried out in response to any act or omission on the part of the Concessionaire which is illegal or contrary to its obligations in accordance with the Concession Agreement or the Toll Road Law and the regulations enacted in accordance there under; or
 - c) imposes or increases levies, taxes, charges or other payments of general application which are not directed towards the Concessionaire or other concessionaires in similar toll roads.

- 17.1.5 Should the Concessionaire be affected by an action which the Concessionaire believes to be a Discriminatory Action, the

Concessionaire shall within twenty one (21) days: (i) of the occurrence of such action; or (ii) of the date on which the Concessionaire has become aware of such action; the latest to occur, submit to the State a request for recognition of such action as a Discriminatory Action. In its request, the Concessionaire shall describe the said action and its likely impact on the Concessionaire.

17.1.6 In the event the State objects or refuses to recognize the said action as a Discriminatory Action, then, within thirty (30) days as of receipt of the State's response, the Concessionaire shall submit to the Dispute Resolution Panel a request for certification of such action as a Discriminatory Action, with a copy to the State. In its request, the Concessionaire shall describe the said action and its likely impact on the Concessionaire.

17.1.7 The Dispute Resolution Panel, shall certify or refuse to certify the said action as a Discriminatory Action, as such term is defined hereinabove.

17.2 Discriminatory Action; Compensation

In the event the State recognizes, or the Dispute Resolution Panel certifies, an action or change to any of the Contract Documents as a Discriminatory Action, the following will apply:

17.2.1 The State shall have ninety (90) days, from the date of recognition of the Concessionaire's request for certification of a Discriminatory Action by the State, or from the issuance of certification of a Discriminatory Action by the Dispute Resolution Panel, to effect a remedy which reinstates the Concessionaire's situation to the position it would have been in, had such Discriminatory Action not occurred.

17.2.2 If the State will not effect such a remedy within ninety (90) days, the State will be entitled to inform the Concessionaire of its intention to have the effects of the Discriminatory Action implemented by issuing a Change Order, which will reinstate the Concessionaire's situation to the position it would have been in, has such Discriminatory Action not occurred and the provisions of Appendix F (*Change Order*) will apply.

17.3 Discriminatory Action; Termination

The Concessionaire may issue a Notice of Termination in accordance with the provisions of Section 20 (*Termination by the Concessionaire*) in the event that all of the following have occurred:

17.3.1 Discriminatory Action was not remedied by the State within ninety (90) days, pursuant to the provisions of Section 17.2.1 above;

17.3.2 The State did not inform the Concessionaire of its intention to have the effects of the Discriminatory Action implemented by issuing a Change Order, pursuant to Section 17.2.2 above; and

17.3.3 The effects of the Discriminatory Action lasted at least one hundred and eighty (180) consecutive days as of the earlier of:

a) the date of recognition of the Concessionaire's request for certification of a Discriminatory Action by the State; or

- b) the date of issuance of certification of a Discriminatory Action by the Dispute Resolution Panel.

17.3.4 The provisions of this Section 17 (*Discriminatory Action*) shall not release the Concessionaire from obligations due, or compliance required, under this Concession Agreement prior to the occurrence of the Discriminatory Action, or the performance of obligations not affected by the Discriminatory Action. If the Dispute Resolution Panel shall determine that the performance of an obligation is prevented due to a Discriminatory Action, the Concessionaire shall resume performance of such obligation under this Concession Agreement when the effects of the Discriminatory Action are removed or rectified.

17.3.5 The provisions of this Section 17.3.517 (*Discriminatory Action*) shall apply subject to the Concessionaire's duty to mitigate (and cause any other person on its behalf to mitigate) any delays and any increase of costs. The Concessionaire will submit to the approval of the State a detailed suggestion for mitigating delays and costs, and, subject to the approval thereof by the State, the Concessionaire shall be entitled to the Direct Costs incurred by it carrying out the implementation of the approved suggestion (for the purposes of this Section, a "**Mitigation Plan**"). The Mitigation Plan shall be submitted by the Concessionaire to the State and approved thereby as soon as is reasonably practicable under the circumstances. Once approved by the State, the Mitigation Plan will be deemed to constitute an integral part of the Concession Agreement, including with respect to the Concessionaire's obligation to comply with the schedule incorporated therein.

18. FORCE MAJEURE

18.1 Event of Force Majeure - Definition

18.1.1 An "Event of Force Majeure" shall mean events beyond the reasonable control of either Party to this Concession Agreement, which constitute exceptional circumstances, which should not have been foreseen by such Party and not caused by an act or omission of such Party, which, despite the exercise of diligent efforts, such party was unable to prevent including acts of war (whether a war was declared or not) and terrorist activities, and which:

- a) cause material physical damage or destruction to the Project; or
- b) materially delay the scheduled performance of any Major Activity or Construction Completion Date; or
- c) materially interrupt the Operation of the Project.

18.1.2 Provided that where the State or the Concessionaire were able to limit or minimize the implications of the above detailed events, such events shall constitute Force Majeure only to the extent of the implication which the State or the Concessionaire could not limit or minimize.

18.1.3 For the avoidance of doubt, the following events (without limitation) shall be expressly excluded from the definition of the term Force Majeure (the following list should not be construed as

acknowledgement of the listed events as Force Majeure events, and does not derogate from the fact that these events are not Force Majeure even by their nature and according to the foregoing definition):

- a) shortage of materials or employees except a national general shortage declared by an order of the Government;
- b) strikes, labor disputes, boycott lock-outs or other similar occurrences, against the Concessionaire or any party to a Project Agreement, contractor or subcontractor, which are not part of a national general strike;
- c) inclement weather and other material disturbances which are foreseeable.
- d) physical conditions or obstacles (both above the ground or underneath it) encountered in the course of the Project or otherwise; excluding such physical conditions or obstacles which are a direct result of events which if not for this sub-section (d) would qualify as a Force Majeure, to be determined at the State's sole discretion.
- e) suspension, termination, interruption, denial or failure to obtain or renew any permit, license, consent or approval which is required for the carrying out of the Concessionaire's obligations under this Concession Agreement; and
- f) any other event the consequences of which are expressly provided for in this Concession Agreement (including Ground Condition and Finding), which otherwise would constitute Force Majeure as defined above.
- g) breach or non compliance with any and all Laws (including environmental laws), and without derogating from the foregoing, any suspension of the Works in accordance with an order of any Relevant Authority, or ruling of a competent court, resulting from the incompletion of the Concessionaire with any requirement to submit or renew any application, request or any other document required to be submitted by the Concessionaire in accordance with applicable Law.

18.2 Notice of Force Majeure

- 18.2.1 Should a Party to this Concession Agreement be affected by an event which such Party believes to be an "Event of Force Majeure", it shall, as soon as is reasonably practicable and within fourteen (14) days as of the date of the occurrence of the event, submit to the Dispute Resolution Panel a request for certification of such event as an Event of Force Majeure, with a copy to the other Party in accordance with Appendix K (*Dispute Resolution*).
- 18.2.2 Within seven (7) days as of receipt of a Party's request, the Dispute Resolution Panel shall make its determination in the matter referred to it.

- 18.2.3 In the event that a Party fails to submit a request for certification of an Event of Force Majeure in accordance with this Section 18.2, such Party shall be deemed to have waived its rights to claim that such an event is an Event of Force Majeure, unless the Dispute Resolution Panel determine otherwise.
- 18.2.4 The affected Party shall likewise immediately notify the other Party when an event which it believes to be an Event of Force Majeure has ceased to exist.

18.3 Effects of an Event of Force Majeure; Continuance of Performance

- 18.3.1 The Parties hereby agree that, to the extent possible, decisions concerning Force Majeure shall be directed towards the completion of Construction and the continued Operation and Maintenance of the Project for the duration of the Concession Period.
- 18.3.2 However, as long as the Event of Force Majeure or effects thereof prevent the performance of obligations of either Party under this Concession Agreement, the Party claiming the Event of Force Majeure shall be exempted from whatever obligations performance thereof is prevented thereby, to the extent so affected. Under such circumstances, the other Party shall not be entitled to terminate this Concession Agreement on the basis of such non-performance; however, such other Party shall be excused from the performance of its counter-obligations under this Concession Agreement, to those from which the first Party is exempted.
- 18.3.3 The provisions of this Section 18.3 (*Effects of an Event of Force Majeure*) shall not release the Party claiming an Event of Force Majeure from obligations due, or compliance required, under this Concession Agreement prior to the occurrence of the Event of Force Majeure, or the performance of obligations not affected by the Event of Force Majeure. A Party exempted from performing any obligation shall resume performance of such obligation under this Concession Agreement when the effects of the Event of Force Majeure are removed or rectified.

18.4 Effects of Force Majeure; FM Delay

- 18.4.1 In the event that the Event of Force Majeure causes: (i) a delay of the Construction Completion Date as set forth in the Basic Schedules (for the removal of doubt after the project main buffer and all other buffers which were integrated into the Basic Schedule, in accordance with the provisions of Appendix 11B (*Schedules*) of Volume 11 (*Design, Construction and Quality Control*) have been fully exhausted) or (ii) a suspension of the Operation of the Project or any Section of the Toll Road (each an "**FM Delay**"); and if not otherwise agreed by the Parties, the Concessionaire shall request the Dispute Resolution Panel to determine the remedies to the Concessionaire, which shall be based on the following remedies:
- a) **Amendment of the Basic Schedules.** The Project Schedule shall be adjusted so that the Concessionaire will not be in breach of its obligations pursuant to this Concession Agreement, in accordance

with the provisions of Appendix 11B (*Schedules*) of Volume 11 (*Design, Construction and Quality Control*);

- b) **Direct Costs.** The Direct Costs incurred by the Concessionaire as a result of the FM Delay;
- c) **Delay in Construction or Operation of the Project:**

In the event of delay following the issuance of Notice to Proceed and before the issuance of the Permit to Operate; and which caused a delay in the Project's Construction Completion Date (for the removal of doubt after the project main buffer and all other buffers which were integrated into the Basic Schedule, in accordance with the provisions of Appendix 11B (*Schedules*) of Volume 11 (*Design, Construction and Quality Control*) have been fully exhausted) and without derogating from the generality of the foregoing: the Concessionaire shall be entitled, for the duration of the delay in the Project Construction Completion Date as a result of the FM Delay, to sixty five percent (65%) of the Adjusted Total Target Income, in lieu of the payments which the Concessionaire would have been entitled to receive had it not been for the FM Delay, for the duration of the Delay which exceeds sixty (60) days in aggregate. For the removal of doubt, in such event the Actual Toll Revenue Payment (if any) shall not be deducted from the Adjusted Total Target Income and the Toll Revenue Guarantee shall also not be taken into account.

In the event the FM Delay occurred following issuance of a Permit to Operate, and without derogating from the foregoing, the Concessionaire shall be entitled, for the duration of the FM Delay:

- (iii) In the event that the FM Delay applied to the Operation of both Sections of the Highway (i.e. both Section 7 and Section 3): the Concessionaire shall be entitled to seventy five percent (75%) of the Adjusted Total Target Income, in lieu of the payments which the Concessionaire would have been entitled to receive had it not been for the FM Delay. For the removal of doubt, in such event the Adjusted Toll Revenue Payment (if any) shall not be deducted from the Adjusted Total Target Income. For the removal of doubt, in such event the Toll Revenue Guarantee shall not be taken into account.
- (iv) In the event that the FM Delay applied only to Operation of only one Section of the Highway (i.e. either Section 7 or Section 3) the Concessionaire shall be entitled to eighty (80%) of the Adjusted Total Target Income, in lieu of payments which the Concessionaire would have been entitled to receive had it not been for the FM Delay. In such event the Adjusted Actual Toll Revenue Payments shall be deducted from the Adjusted Total Target Income. For the removal of doubt, in such

event the Toll Revenue Guarantee shall not be taken into account.

- d) **No Multiple Compensation.** Without derogating from the generality of the foregoing, it is hereby clarified that in no event shall the Concessionaire be entitled to multiple compensation;
- e) **Terms of Payment.** In the event that the FM Delay occurred during the Construction Phase: (i) compensation in accordance with the provisions of subsection 18.4.1b) above shall be paid to the Concessionaire at the end of each ninety (90) days period of the FM Delay, accumulated until such time; (ii) payments pursuant to the provisions of subsection 18.4.1c) will be made to the Concessionaire, in accordance with the terms of payment set forth in Section 4.7 (*Payments*) above for the applicable payment for which the compensation is being paid and in accordance with the provisions of Appendix D2 (*Payment Procedure*).

18.5 Effects of the Event of Force Majeure; Reinstatement of the Project

- 18.5.1 **The Reinstatement Program.** In the event that the Event of Force Majeure causes physical damages to the Project, or any material part thereof, the Concessionaire will submit a Program, as defined below, to the approval of the State.
- 18.5.2 **"A Program"**, shall mean for the purpose of this Section, either: (i) implementation of the Design and Construction required for the completion of the Construction of the Project (or any part thereof), for the avoidance of doubt, excluding Design and Construction tasks which should have been carried out by the Concessionaire regardless of the occurrence of an Event of Force Majeure; or (ii) reinstatement of the Project to an operational condition ("**Reinstatement of the Project**"), in accordance with the procedures set forth in Appendix F (*Change Order*), in the applicable changes. The finally approved plan for Reinstatement of the Project shall be referred to as the "**Reinstatement Program**".
- 18.5.3 **The Reinstatement Cost.** The cost of Reinstatement of the Project will be determined as part of the Reinstatement Program (the "**Reinstatement Costs**"), and approved by the State in accordance with the procedures set forth in Appendix F (*Change Order*), in the applicable changes.
- 18.5.4 **Reinstatement Cost; Sufficiency of Available Insurance Proceeds and Concessionaire's Deductible.** In the event that the sum of the Available Insurance Proceeds together with an additional sum of 40,000,000 NIS (Forty Million NIS) which shall be added as a Concessionaire's deductible is higher than the Reinstatement Cost, the Concessionaire will implement the Reinstatement Program in accordance with the provisions thereof and the applicable provisions of the Concession Agreement, and for this purpose, shall forthwith make the appropriate claims under the relevant insurance policies and shall

apply the proceeds of the insurance policies and the Concessionaire's Deductible.

- 18.5.5 **Reinstatement Cost; Insufficiency of Available Insurance Proceeds and Concessionaire's Deductible.** In the event that the sum of the Available Insurance Proceeds together with an additional sum of Forty Million NIS (NIS 40,000,000) which shall be added as a Concessionaire's deductible is lower than the Reinstatement Cost, then the State, at its sole discretion, will decide whether: (i) to require the Reinstatement of the Project by the Concessionaire; or (ii) to terminate this Concession Agreement.
- 18.5.6 **Payment of Reinstatement Cost by the State.** In the event that the State decides to require the Reinstatement of the Project by the Concessionaire, the Concessionaire will implement the Reinstatement Program in accordance with the provisions thereof and the applicable provisions of this Concession Agreement, and the State shall bear that part of the sum of the Reinstatement Cost in excess of any Available Insurance Proceeds and the Concessionaire's Deductible. Under such circumstances, the Concessionaire shall forthwith make the appropriate claims under the relevant insurance policies and shall apply the proceeds of the Insurance Policies and the Concessionaire's Deductible for the purpose of implementing the Reinstatement Program. The said part of the Reinstatement Cost will be borne by the State and will be paid to the Concessionaire in accordance with the payment terms and in accordance with the milestones detailed in the Reinstatement Program (as approved by the State).
- 18.5.7 **Remedies due to FM Delay.** In the event of a FM Delay, either pursuant to the effects of an Event of Force Majeure or the implementation of the Reinstatement Program, the Concessionaire shall be entitled also to the remedies in accordance with the provisions of Section 18.4 (*Effects of an Event of Force Majeure; FM Delay*).
- 18.5.8 **Termination Due to Force Majeure.** In the event that the State decides not to require the Reinstatement of the Project by the Concessionaire and decides to terminate this Concession Agreement, the State will issue a notice to this effect (the "**State's Notice**"), the following shall apply:
- a) In the event the State's Notice was issued prior to the 15th anniversary of the date of issuance of Permit to Operate, the Concessionaire shall be entitled to reinstate the Project (in accordance with the provisions of Section 18.5 (*Effects of the Event of Force Majeure; Reinstatement of the Project*)), in the applicable changes, excluding the provisions of Section 18.5.6 (*Payment of Reinstatement Cost by the State*); where the Concessionaire has not elected to reinstate the Project within ninety (90) days of the State's Notice, the Concession Agreement shall be terminated and the provisions of Section 18.6 (*Termination due to Force Majeure - Compensation*) below will apply.
 - b) In the event the State's Notice was issued following the 15th anniversary of the date of issuance of Permit to Operate, the State's

Notice will be deemed a notice of Termination, the Concession Agreement shall terminate and the provisions of Section 18.6 (*Termination due to Force Majeure - Compensation*) below will apply.

18.6 Termination due to Force Majeure

18.6.1 Notice of Termination - Event of Force Majeure

- a) If the Dispute Resolution Panel certifies that the effects of an Event of Force Majeure (including any ramifications thereof, FM Delay and any reinstatement) continued for a period of over:
 - i. an aggregate of two hundred and seventy (270) days during the Construction Phase; or
 - ii. an aggregate of two hundred and seventy (270) days during twenty four (24) consecutive months during the Commercial Operation Phase; or
 - iii. prior to the expiry of the periods specified in subsections (a)(i) and (a)(ii), that the effects of an Event of Force Majeure (including any ramifications thereof, FM Delay and any reinstatement) are expected to last for a longer period;

then either the State or the Concessionaire may issue a Notice of Termination, within sixty (60) days from the declaration of the event as an Event of Force Majeure in accordance with the above.

- b) The Notice of Termination issued pursuant to: (i) Section 18.6 (*Termination due to Force Majeure*); or (ii) Section 18.7.2 (*Application of the Insurance Proceeds in the event of a Low LLCR*) shall enter into effect within twenty one (21) days as of the date of issuance thereof. A copy of the Notice of Termination (if issued by the State) will be issued to the Senior Debt Finance Providers.

18.6.2 Termination Due to Force Majeure - Compensation

- a) In the event that a Notice of Termination is issued in accordance with the provisions of Section 18.6.1 (*Notice of Termination - Event of Force Majeure*) the Concessionaire shall request the Dispute Resolution Panel to determine the amount of compensation payable by the State, which compensation shall be equal to the Balance of the Senior Debt as of the Termination Date.
- b) **Assumption of Balance of Senior Debt.** At the discretion of the State, in lieu of payment of the Balance of the Senior Debt pursuant to this Section 18.6.2 (*Termination Due to Force Majeure - Compensation*), the State may assume the repayment of the Balance of the Senior Debt in accordance with the terms and conditions set out in Section 27.5 (*Assumption of Balance of Senior Debt*) and Appendix H (*Terms for the Assumption of Senior Debt*). The State shall notify the Senior Debt Finance Providers of its decision between the alternatives within sixty (60) days following the Termination Date.

- c) **Termination Due to Force Majeure; Compensation - Schedule.** Payment of compensation pursuant to Section 18.6.2 (*Termination Due to Force Majeure - Compensation*), or the first payment pursuant to Section 18.6.2b) (*Assumption of Balance of Senior Debt*), will be made within ninety (90) days following the Termination Date.
- d) **Termination Due to Force Majeure; Compensation - Interest.** Compensation pursuant to this Section 18.6.2 (*Termination Due to Force Majeure - Compensation*) will be calculated in accordance with all applicable provisions of this Concession Agreement as of the Termination Date, and as of such date until the payment thereof, and will bear interest at the rate specified under the relevant provision of Appendix H (*Terms for the Assumption of Senior Debt*).

18.7 Events of Extreme Damage

18.7.1 Determination of the LLCR.

- a) Notwithstanding the provisions of Sections 18.4 (*Effects of an Event of Force Majeure; FM Delay*) and 18.5 (*Effects of the Event of Force Majeure; Reinstatement of the Project*), if an event of Force Majeure occurred during the Commercial Operation Phase, the Concessionaire may request the Independent Expert to determine, within thirty (30) days following the occurrence of the Event of Force Majeure, whether the following aggregate conditions shall have occurred:
 - i. the Concessionaire has fully complied with all of the requirements of the Concession Agreement relating to insurance, including the provisions of Appendix G (*Insurance*), or, if the Concessionaire failed to fully comply with such requirements, that such failure has not prevented the Concessionaire from recovering all insurance proceeds due to be payable thereto under this Concession Agreement by virtue of the Event of Force Majeure; and
 - ii. The Reinstatement Cost exceeds an amount of 1,000,000,000 NIS (One Billion NIS).
- b) In the event that the Independent Expert determined that the conditions set forth in subsection 18.7.1a) above have been fulfilled, the State shall appoint, within sixty (60) days following such determination, a reputable international auditing firm or investment bank, for the purposes of calculating the LLCR. The auditing firm, or international investment bank, shall be nominated following consultation with the Concessionaire and the Senior Debt Finance Providers (the "**Evaluator**"). Within sixty (60) days of the date of its appointment, the Evaluator shall determine the pre-Event of Force Majeure LLCR and the post-Event of Force Majeure LLCR.
- c) "**Loan Life Cover Ratio**" ("**LLCR**") shall mean the ratio of:

- i. The Projected Free Cash Flow until the final maturity date pursuant to the Senior Debt Financing Agreements (calculated in accordance with Section 26.6 (*Fair Market Value*), *mutatis mutandis*) (provided that for purposes of the post- Event of Force Majeure LLCR, the insurance proceeds payable to the Concessionaire in connection therewith and the required costs of restoration of the Project, shall also be taken into account), capitalized at the weighted average effective interest rate actually in effect under the Long Term Senior Debt Financing Agreements (namely, taking into account the Hedging Agreements if any) (which shall be calculated based on the Long Term Senior Debt Financing Agreements Debt Composition on the date of calculation of the LLCR); to
- ii. The Balance of the Senior Debt on the date of calculation of the LLCR, excluding the Senior Debt Deductions relating to the insurance proceeds payable to the Concessionaire in connection with the Event of Force Majeure;
- d) Based on the Concessionaire's most updated Financial Model prior to the Event of Force Majeure and following the Event of Force Majeure, as the case may be.

18.7.2 Application of the Insurance Proceeds in the event of a Low LLCR

- a) In the event the Evaluator determined that the post-Event of Force Majeure LLCR is lower than the lower of: (i) the pre-Event of Force Majeure LLCR; or (ii) 1.05, the Senior Debt Finance Providers shall have the right to instruct the Concessionaire, within thirty (30) days following the determination of the Evaluator, to apply the insurance proceeds for repayment of the outstanding senior debt, up to an amount equal to the Balance of the Senior Debt true to the date of the calculation of the LLCR, excluding the Senior Debt Deductions relating to the insurance proceeds payable to the Concessionaire in connection with the Event of Force Majeure ("**Finance Providers' Notice**").
- b) In the event that following the issuance of the Finance Providers' Notice and implementation thereof by the Concessionaire, surplus insurance proceeds remained (the "**Surplus**"), the following will apply:
 - i. In the event the Finance Providers' Notice was issued prior to the twentieth (20th) anniversary of the date of issuance of the Permit to Operate, the Concessionaire shall be entitled to apply the Surplus for the reinstatement of the Project (which reinstatement shall be in accordance with the provisions of Section 18.5 (*Effects of the Event of Force Majeure; Reinstatement of the Project*), with the applicable changes); where the Concessionaire has not elected to reinstate the Project within ninety (90) days of the Finance Providers' Notice, the Surplus will be paid to the State and the Concession Agreement shall be terminated.

- ii. In the event the Finance Providers' Notice was issued following the twentieth (20th) anniversary of the date of issuance of the Permit to Operate, the Surplus will be paid to the State and the Concession Agreement shall be terminated.
- c) In the event that following the issuance of the Finance Providers' Notice and implementation thereof by the Concessionaire, no Surplus remained, the following will apply:
 - i. In the event the Finance Providers' Notice was issued prior to the twentieth (20th) anniversary of the date of issuance of Permit to Operate, the Concessionaire shall be entitled to reinstate the Project (in accordance with the provisions of Section 18.5 (*Effects of the Event of Force Majeure; Reinstatement of the Project*), in the applicable changes, excluding the provisions of Section 18.5.6 (*Payment of Reinstatement Cost by the State*); where the Concessionaire has not elected to reinstate the Project within ninety (90) days of the Finance Providers' Notice, the Concession Agreement shall be terminated, such termination shall be deemed termination as a result of an Event of Force Majeure, and the provisions of Section 19.6 (*Termination Due to Force Majeure - Compensation*) shall apply.
 - ii. In the event the Finance Providers' Notice was issued following the twentieth (20th) anniversary of the date of issuance of Permit to Operate, the Concession Agreement shall be terminated, such termination shall be deemed termination as a result of an Event of Force Majeure, and the provisions of Section 19.6 (*Termination Due to Force Majeure - Compensation*) shall apply.

19. TERMINATION BY THE STATE

19.1 Termination Related to the Concessionaire or to the Project

- 19.1.1 Without derogating from all other rights and remedies available to it under this Concession Agreement or under Law, the State shall have the right to terminate this Concession Agreement, by issuing a Notice of Termination pursuant to this Section 19 (*Termination by the State*), upon the occurrence of any one of the following events:
- a) The Concessionaire failed to achieve Financial Closing within twelve (12) months as of the Signature Date;
 - b) The Concessionaire fails to obtain a Construction Completion Certificate for the Project within six (6) months following the Construction Completion Date or any extension to such date issued in accordance with the provisions of this Concession Agreement;
 - c) An Unauthorized Schedule Delays shall have occurred for a period of forty (40) consecutive days or for a period of sixty (60) days in aggregate within any twelve (12) months period;

- d) the Concessionaire ceases to Operate or Maintain the Project for reasons other than those permitted under this Concession Agreement;
- e) a court makes an order for the liquidation of the Concessionaire, or a resolution for a voluntary liquidation of the Concessionaire is passed, except for the purposes of merger or reconstruction on terms approved in advance and in writing by the State;
- f) liquidation, receiverships, or reorganization proceedings shall have been commenced by or against the Concessionaire, unless such proceedings are discharged within sixty (60) days;
- g) the Concessionaire shall have become insolvent, or does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of creditors, or failure of the Concessionaire to discharge when due, whether at maturity, by acceleration or otherwise, or on lawful demand, any indebtedness of the Concessionaire the sum of which by itself or in the aggregate exceeds the sum of eighty million NIS (NIS 80,000,000) (linked to the CPI from the Signature Date until the date of the Concessionaire's failure to discharge thereof) unless, in the case of indebtedness under the Project Agreements, such failure is justified in the opinion of the State or the Dispute Resolution Panel;
- h) the Concessionaire or any Subsidiary thereof fails to report any Related Party Transaction for a period exceeding six (6) months from the date of the transaction or enters into a Related Party Transaction without the State's approval contrary to the terms of this Concession Agreement;
- i) the Concessionaire or any Subsidiary fails to comply with the reporting requirements as set forth in Section 10.3 (*Reporting and Meeting Obligations*) and in Appendix J (*Reports and Meeting Obligations*) above for a period exceeding six (6) months or does not report any event where under the Securities Law, they were obliged to give immediate report of such event;
- j) the Concessionaire failed to inject the Equity of the Concessionaire or place the amounts of the loans pursuant to the Shareholders Commitments or the Shareholders Loans or any one of them are in material default of their undertaking to provide for the Equity of the Concessionaire in the amounts and on the dates contemplated therein, and such default has not been remedied within a reasonable cure period under the Shareholder Agreement;
- k) any representation or warranty made by the Concessionaire in this Concession Agreement or any certificate, schedule, instrument or other document delivered by the Concessionaire pursuant to this Concession Agreement shall have been false or materially misleading when made;
- l) the Concessionaire commits a persistent breach of its obligations under the Project Agreements for more than sixty (60) days which

materially adversely impact upon the overall performance of its obligations;

- m) the Concessionaire commits a Material Breach of any undertaking, obligation, representation or warranty contained in any of the Contract Documents;
- n) the Concessionaire is in default of any material undertaking, obligation, representation or warranty, contained in any of the Project Agreements;
- o) The Concessionaire is either in default, or upon the giving of notice, the expiry of a cure period, the making of any determination under the Concession Agreement, or any combination of the foregoing, will be in default (including potential anticipatory default under Law); of any undertaking, obligation, representation or warranty, contained in any of the Contract Documents (excluding the Project Agreements).
- p) The Concessionaire is subject to payment adjustments and Liquidated Damages which exceed the amount of fifteen million NIS (15,000,000 NIS), during a period of twelve (12) months;
- q) The Concessionaire has entered into Refinance agreements without the prior approval of the State.

19.2 Notice of Termination by the State

- 19.2.1 Prior to exercising its right to issue a Notice of Termination, the State will issue a written notice to the Concessionaire, specifying the Concessionaire's event of default and requesting the Concessionaire to remedy the cause of such event of default within the period of time specified therein, which shall be no less than thirty (30) days following receipt of such notice ("**Initial Notice**" and "**Cure Period**", respectively).
- 19.2.2 In the event that the Concessionaire, in good faith, believes that the event of default can be cured, but not within the time period specified in such notice, then the matter of the Cure Period shall be referred to the Dispute Resolution Panel; provided, however, that in no event shall the Cure Period of the event of default, as determined by the Dispute Resolution Panel, exceed forty-five (45) days in addition to the cure period prescribed under the Initial Notice, without the consent of the State.
- 19.2.3 Following the determination of the Dispute Resolution Panel, the State shall issue a revised Initial Notice.
- 19.2.4 A copy of the Initial Notice will be issued by the State to the Senior Debt Finance Providers.

19.3 Termination of the Concession Agreement

- 19.3.1 The State will be entitled to issue a notice of termination to the Concessionaire which shall be effective within seven (7) days following issuance of such notice (the "**Notice of Termination**") if the event of

default is not remedied by the expiration of the Cure Period and a Substituting Entity has not been appointed by the Senior Debt Finance Providers nor by the State under Section 28 (*Substituting Entity*) herein.

- 19.3.2 A copy of the Notice of Termination will be issued by the State to the Senior Debt Finance Providers.

19.4 Effects of Termination by the State

- 19.4.1 Following the issuance of a Notice of Termination by the State to the Concessionaire in accordance with the provisions of Section 19.2 (*Notice of Termination by the State*), each Party may request the Dispute Resolution Panel to determine the amount of compensation payable by the State or by the Concessionaire, as the case may be, subject to the provisions set forth in this Section 20.4 (*Effects of Termination by the State*).
- 19.4.2 **Termination prior to the issuance of the Notice to Proceed.** In the event that the Notice of Termination is issued by the State, prior to the issuance of the Notice to Proceed, the Concessionaire shall compensate the State for all costs, damages and reasonable expenses incurred by the State in connection with the Project. For the removal of doubt it is hereby emphasized that such costs and expenses will include, *inter alia*, costs and expenses incurred by the State due to Early Works (if applicable), all additional costs and expenses incurred by the State and the Implementing Authority (or expected to be incurred by the State and the Implementing Authority) in connection with the replacement of the Concessionaire by a third party, including as a result of changes in the market conditions, differences in the construction prices, and delay in the Project implementation.
- 19.4.3 **Termination following the issuance of the Notice to Proceed but Prior to the Issuance of the Permit to Operate.** In the event that the Notice of Termination is issued by the State, following the issuance of the Notice to Proceed but prior to the issuance of the Permit to Operate, the Concessionaire shall compensate the State for all costs, damages and expenses incurred by the State with respect to the Project. For the removal of doubt it is hereby emphasized that such costs and expenses include, *inter alia*, costs and expenses incurred by the State due to Early Works (if applicable), all additional costs and expenses incurred by the State and the Implementing Authority in connection with the replacement of the Concessionaire by a third party (or expected to be incurred by the State and the Implementing Authority), including as a result of changes in the market conditions, differences in the construction prices, and delay in Project implementation.
- 19.4.4 Under the circumstances described in Section 19.4.3 (*Termination following the issuance of the Notice to Proceed but Prior to the Issuance of the Permit to Operate*), upon construction completion and Operation of the Project, the State will reimburse the Concessionaire for the actual costs which are deemed necessary and reasonable incurred by the Concessionaire with respect to the Construction of the Project, excluding any profits, and after setting off compensation to the State, as described above, and, in the case the State has exercised its

right under Section 28.2 (*Substitution by the State (step in)*), after deducting the Concessionaire's obligations under the Financing Agreements assumed by the State pursuant to the provisions of Section 28.2 (*Substitution by the State (step-in)*). The sums payable by the State to the Concessionaire under this Section shall not exceed the Balance of the Senior Debt until the date of issuance of the Notice of Termination.

19.4.5 If Construction Completion and Operation of the Project has not occurred within one (1) year of the date set thereto in the Basic Schedule, or from the date of entry into force of the Notice of Termination, the later to occur, the reimbursement described under subsection 19.4.4 above shall be made one (1) year after the date set in the Basic Schedules for the Construction Completion and the compensation to which the State shall be entitled shall be determined on the basis of damages, costs and expenses suffered to such date of reimbursement and on the basis of a bona fide estimate by the State of such further damages, costs and expenses which are foreseen after such date for reimbursement.

19.4.6 **Termination following the Issuance of the Permit to Operate.** In the event that the Notice of Termination is issued by the State, following the issuance of the Permit to Operate, subject to the provisions of this Section 19.4.6 (*Termination following the Issuance of the Permit to Operate*), the Concessionaire shall request the Dispute Resolution Panel to determine the amount of compensation payable by the State, which shall be based on the lesser of the following two sums:

- a) The Fair Market Value of the Project determined pursuant to the provisions of Section 26 (*Fair Market Value*) below as stated in the Final Determination; or
- b) The Balance of the Senior Debt as of the Termination Date;
- c) The sums calculated pursuant to the provisions of Section 19.4.6 a) or Section 19.4.6 b) above, will be deducted by all costs and expenses incurred, and damages suffered, by the State and the Implementing Authority with respect to the Project. For the removal of doubt it is hereby emphasized that such costs and expenses include, *inter alia*, additional costs and expenses incurred by the State and the Implementing Authority in connection with the replacement of the Concessionaire by a third party (or expected to be incurred by the State), including as a result of changes in the market conditions and differences in the construction prices, and delay in Project implementation.
- d) In the event that the sums calculated pursuant to the provisions of this Section 19.4.6 (*Termination following the Issuance of the Permit to Operate*), are negative, the Concessionaire shall pay such sums to the State.

19.5 Termination by the State; Assumption of Balance of Senior Debt

At the discretion of the State, in lieu of the payment of the Balance of the Senior Debt pursuant to Section 19.4.6b) above, the State may assume the repayment of the Balance of the Senior Debt, in accordance with the terms and conditions set

out in Section 19.527.5 (*Assumption of Balance of Senior Debt*) and Appendix H (*Terms for the Assumption of Senior Debt*).

19.6 Payment by the State - Compensation

19.6.1 **Schedule.** Payment of compensation pursuant to Section 19.4 (*Effects of Termination by the State*) above or the first payment pursuant to Section 19.5 (*Termination by the State; Assumption of Balance of Senior Debt*) above, subject to the determination of the State in accordance with Section 19.5 (*Termination by the State; Assumption of Balance of Senior Debt*) above, will be made within ninety (90) days following the date of issuance of the Final Determination.

19.6.2 **Interest and Adjustment.** Compensation pursuant to Section 19.4.6 (*Termination Following the Issuance of the Permit to Operate*) will be calculated in accordance with all applicable provisions of this Concession Agreement as of the Termination Date, and will be linked as of such date and until payment thereof to a basket of the different indices set forth in the Long Term Senior Debt Financing Agreements, based on the Long Term Senior Debt Financing Agreements Debt Composition on the Termination Date, but will bear no interest differentials as of such date until the date specified in Section 19.6.1 (*Schedule*) above.

20. TERMINATION BY THE CONCESSIONAIRE

20.1 Termination of the Concession Agreement by the Concessionaire

Without derogating from all other rights and remedies available to it under this Concession Agreement, the Concessionaire shall have the right to terminate this Concession Agreement, by issuing a Notice of Termination pursuant to this Section 20.1 (*Termination of the Concession Agreement by the Concessionaire*), upon the occurrence of any one of the following events:

20.1.1 The State has failed to make payments due within seventy five (75) days of receipt of written notice from the Concessionaire that such payment is overdue and such sums are not the subject matter of a dispute in accordance with the provisions of this Concession Agreement, provided that such notice shall not be issued by the Concessionaire unless the sums overdue exceed eighty million NIS (NIS 80,000,000) (not including VAT, interest and linkage differentials);

20.1.2 A Discriminatory Action occurred and the provisions of Section 17.3 (*Discriminatory Action; Termination*) above, were met, subject to the fulfillment of all of the terms and conditions therein; or

20.1.3 A Delay for purposes of Section 7.7.1d) (*Mutual Right to Terminate*) above has occurred and the conditions specified therein were met.

20.2 Notice of Termination by the Concessionaire

Prior to exercising its right to issue a Notice of Termination, the Concessionaire will issue a written notice to the State, specifying the event of default and

requesting the State to remedy the cause of such event of default within the period of time specified therein, which shall be no less than thirty (30) days following receipt of such notice ("**Initial Notice**" and "**Cure Period**", respectively). In the event that the State, in good faith, believes that the event of default can be cured, but not within the time period specified in the Initial Notice, then the matter of the Cure Period shall be referred to the Dispute Resolution Panel; provided, however, that in no event shall the cure period of the event of default, as determined by the Dispute Resolution Panel, exceed forty-five (45) days in addition to the Cure Period prescribed under the Initial Notice, without the consent of the Concessionaire. Following the determination of the Dispute Resolution Panel, the Concessionaire shall issue a revised Initial Notice.

20.3 Termination of the Concession Agreement

The Concessionaire will be entitled to issue a notice of termination to the State which shall be effective within seven (7) days following receipt of such notice ("**Notice of Termination**") if the event of default is not remedied by the expiration of Cure Period.

20.4 Effects of Termination by the Concessionaire

20.4.1 Following the issuance of a Notice of Termination by the Concessionaire to the State in accordance with the provisions of Section 20.3 (*Termination of the Concession Agreement*), the Concessionaire shall request the Dispute Resolution Panel to determine the amount of compensation payable by the State, subject to the provisions of this Section 20.4 (*Effects of Termination by the Concessionaire*).

20.4.2 **Termination prior to issuance of a Notice to Proceed.** In the event that Notice of Termination is issued by the Concessionaire prior to the issuance of a Notice to Proceed, the State shall compensate the Concessionaire for all Direct Costs incurred by the Concessionaire in connection with the Project from the Signature Date until the Termination Date, excluding for Direct Costs related to Early Works (if applicable). In addition, the Concessionaire will receive a sum of three million NIS (NIS 3,000,000).

20.4.3 **Termination following issuance of a Notice to Proceed but prior to the Issuance of the Permit to Operate.** In the event that a Notice of Termination is issued by the Concessionaire following the issuance of a Notice to Proceed but prior to the issuance of the Permit to Operate, compensation to the Concessionaire shall be based on the total sum of the following:

- a) The Balance of the Senior Debt as of the Termination Date;
- b) The Balance of the Subordinated Debt as of the Termination Date;
- c) An amount equal to the principal and interest (provided that such interest shall not exceed the Appropriate Yield) owed by the Concessionaire under the Shareholders Loans as of the Termination Date, in accordance with the original repayment schedule, deducted by the Deductions; and

- d) An amount equal to the paid up share capital of the Concessionaire as of the Termination Date together with the Appropriate Yield, deducted by any Distributions carried out prior to the Termination Date, provided that such amount, following deduction, is equal to or higher than zero (0).

20.4.4 **Termination following issuance of the Permit to Operate.** In the event that a Notice of Termination is issued by the Concessionaire following the issuance of the Permit to Operate, compensation to the Concessionaire shall be based on the higher of the following two sums:

- a) The Fair Market Value of the Project determined pursuant to the provisions of Section 26 (*Fair Market Value*) as stated in the Final Determination; or
- b) The total sum of the following:
 - i. The Balance of the Senior Debt as of the Termination Date;
 - ii. The Balance of the Subordinated Debt as of the Termination Date;
 - iii. An amount equal to the principal and interest (provided that such interest shall not exceed the Appropriate Yield) owed by the Concessionaire under the Shareholders Loans as of the Termination Date, in accordance with the original repayment schedule, deducted by the Deductions; and
 - iv. An amount equal to the paid up share capital of the Concessionaire as of the Termination Date together with the Appropriate Yield, deducted by any Distributions carried out prior to the Termination Date, provided that such amount, following deduction, is equal to or higher than zero (0).

20.5 Termination by the Concessionaire; Assumption of Balance of Senior Debt

At the discretion of the State, in lieu of payment of the Balance of the Senior Debt pursuant to Sections 20.4.3a) or 20.4.4b)i above, the State may assume the repayment of the Balance of Senior Debt, in accordance with the terms and conditions set out in Section 27.5 (*Assumption of Balance of Senior Debt*) and Appendix H (*Terms for the Assumption of Senior Debt*), or at the discretion of the State, in lieu of payment of the amounts set forth under Sections 20.4.3b) and 20.4.3c) or 20.4.4b)ii and 20.4.4b)iii, assume such payments under terms and conditions to be agreed between the parties involved.

The State shall notify the Senior Debt Finance Providers of its decision between the alternatives within sixty (60) days following the Termination Date.

20.6 Payment by the State; Compensation

20.6.1 Schedule.

- a) Payment of compensation pursuant to Section 20.4 (*Effects of Termination by the Concessionaire*) above or the first payment pursuant to Section 20.5 (*Termination by the Concessionaire; Assumption of Balance of Senior Debt*) above (subject to the determination of the State in accordance with Section 20.5

(Termination by the Concessionaire; Assumption of Balance of Senior Debt) above, will be made within ninety (90) days following the Termination Date.

- b) The remaining compensation payable pursuant to the provisions of Section 20.4.4 *(Termination following issuance of the Permit to Operate)* above, shall be paid within thirty (30) days following the date of issuance of the Final Determination.

20.6.2 **Interest.** Compensation pursuant to Sections 20.4.3 *(Termination Following Issuance of a Notice to Proceed But Prior to the Issuance of a Permit to Operate)* and 20.4.4 *(Termination Following Issuance of the Permit to Operate)* above will be calculated in accordance with all applicable provisions of this Concession Agreement as of the Termination Date, and as of such date until the payment thereof, shall bear interest at the rate specified under the relevant provisions of Appendix H *(Terms for the Assumption of Senior Debt)*.

21. REHABILITATION OF THE PROJECT

21.1 Prior to the End of the Concession Period

- 21.1.1 Thirty (30) months prior to the end of the Concession Period, the Concessionaire shall implement the Approved Final Maintenance Plan, and if so determined, execute the Rehabilitation Works in accordance with the provisions of Volume 12 *(Operation and Maintenance)*.
- 21.1.2 Without derogating from the generality of the foregoing or from the State's rights and remedies under this Concession Agreement or under any Law, and notwithstanding the provisions of the Concession Agreement, the Actual State Periodic Payments payable to the Concessionaire for the last six (6) months period of this Concession Agreement will be paid to the Concessionaire within thirty (30) days as of the later of: (i) completion of the rehabilitation of the Project, to the State's satisfaction, by the appointed date thereto; or (ii) the end of the Concession Period, subject to the fulfillment of all the Concessionaire's obligations.

21.2 Following Termination Notice

- 21.2.1 As provided in Sections 16.3 *(Termination for Convenience)*, 20.4.3 *(Termination Following Issuance of a Notice to Proceed but Prior to the Issuance of the Permit to Operate)*, or 19.4.6 *(Termination Following the Issuance of the Permit to Operate)* above, following issuance of Notice of Termination the Auditor shall carry out an inspection of the Project.
- 21.2.2 In the event that the inspection reveals that the Project fails to meet the requirements the Concession Agreement, any of the requirements of Volume 12 *(Operation and Maintenance)* or of any other of the Contract Documents, any amount of compensation payable to the Concessionaire shall be reduced by an amount equal to the estimated costs of the Rehabilitation Works required in order to bring the Project to meet requirements of Volume 12 *(Operation and Maintenance)* and

any other requirements of the Contract Documents. Nothing in the above shall be construed as derogating from the State's rights to collect such costs from the Concessionaire in any other manner.

22. TRANSFER FOLLOWING TERMINATION

22.1 Termination of the Concession Agreement

Upon termination thereof, the provisions of this Concession Agreement, excluding Sections: 18.6 (*Termination due to Force Majeure*), 19.4 (*Effects of Termination by the State*), 20.4 (*Effects of Termination by the Concessionaire*), 22 (*Transfer Following Termination*); 24 (*Liability of the Concessionaire*); 27 (*General Provisions Relating to the Determination of the Amount of Senior Debt*), 29 (*Bonds*), 31 (*Intellectual Property*), 32 (*Dispute Resolution*) and Appendix K (*Dispute Resolution*); 33 (*Governing Law and Jurisdiction*), 34.9 (*Rights and Remedies*), 34.10 (*Linkage*), 34.11 (*General Provisions Relating to Remedies*), 34.14 (*Dates and Waivers*), 34.15 (*Confidentiality*), 34.16 (*Severability of Obligations*) and Appendix J (*Reports and Meeting Obligations*) and any other Section which by its terms is intended to survive termination of the Concession Agreement shall cease to have any force or effect, including the Right to Utilize the Site.

22.2 Transfer of the Site

Following termination of the Concession Period, the Site will be transferred to the State; without derogating from the generality of the foregoing:

- 22.2.1 The State shall be entitled to enter the Site; for that purpose, the date in which the State instructed the Concessionaire to evacuate the Site shall be deemed as the "Possession Date" ["יום התפיסה"] for purposes of Section 18 to the Land Law 1969;
- 22.2.2 The Concessionaire shall relinquish and assign, free of cost, any interest in the Site, to the State, or to whom it shall request, and then shall have no Right to Utilize the Site.

22.3 Transfer of the Project and Other Assets

- 22.3.1 Upon the Termination Date or the end of the Concession Period, the Project, and all other assets of the Concessionaire, will be transferred to the State; without derogating from the generality of the foregoing, the Concessionaire shall relinquish and assign, free of cost, any interest in any immovable property and in any movable property which are for the purposes of the Project under this Concession Agreement (other than movable property of the Concessionaire which is not a component of the Project or which is not otherwise essential for the Operation and Maintenance of the Project), to the State. Such assets shall include the HOMC, whether it is within the boundaries of the Site provided by the State to the Concessionaire or whether the HOMC is located elsewhere.
- 22.3.2 Without derogating from the generality of the foregoing:
 - a) the State will be entitled to request the Concessionaire to remove from the Site or the Project any assets, including temporary assets, materials and equipment.

- b) the Concessionaire shall deliver and the State shall be entitled to take possession, free of cost, of any or all drawings (including plans, elevations, sections, details and diagrams), specifications records, information, plans, schedules, samples, shop drawings, as-made plans, O&M manuals and other documents prepared by or on behalf of the Concessionaire in connection with the Project, including in magnetic, digital and electronic media;
- c) the Concessionaire shall deliver to the State and shall relinquish interest in all assets of the Concessionaire, including savings and cash (excluding the Concessionaire's shares, and excluding - in the event of termination of the Concession Agreement - if such amounts have been deducted from the compensation payable to the Concessionaire pursuant to this Concession Agreement);
- d) upon the request of the State, the Concessionaire shall assign free of costs all Project Agreements, Insurance Policies and warranty certificates to the State or to whom it shall direct;

The provisions of this Section (d) shall not apply to: (i) contractual rights of the Concessionaire to payments the cause of which has arisen prior to the Termination Date or prior to the end of the Concession Period and (ii) performance securities and Insurance Policies enforceable due to events which occurred prior to the Termination Date or prior to the end of the Concession Period; and provided that in the event of termination of the Concession Agreement, their relevant amounts have been deducted from the compensation payable to the Concessionaire pursuant to this Concession Agreement.

- e) the Concessionaire shall assign or grant to the State, in accordance with the instruction of the State, a non-exclusive, irrevocable right to use any intellectual property rights or industrial property rights or any other intellectual property rights, trademarks, logos, brand name and not then owned by the State connected with the use and Operation and Maintenance of the Project, free of cost;
- f) the Concessionaire undertakes that all Project Agreements and other agreements executed by it shall include waivers for the State from any party, including the Concessionaire, who may claim moral rights in any plan, design or other work incorporated in the Project, which could have the effect of preventing any changes or modifications of any part of the Project;

22.4 Third Party Rights

Upon the Termination Date or the end of the Concession Period, the following will apply:

- 22.4.1 All assets and rights transferred to the State pursuant to Section 22.3 (*Transfer of the Project and Other Assets*) above shall be transferred free of any and all third party rights (including the Concessionaire), charges, liens, liabilities and mortgages; without derogating from the generality of the foregoing, removal and transfer of any charges, liens,

liabilities and mortgages will be subject to coordination between the Senior Debt Finance Providers and the State, provided that such collateral and securities have been approved by the State in accordance with the provisions of this Concession Agreement, prior to their creation.

- 22.4.2 The Concessionaire will settle all outstanding liabilities arising from assets and arising from rights transferred to the State pursuant to Section 22.3 (*Transfer of the Project and Other Assets*) above, pertaining to the period prior to the date of transfer thereof. Without derogating from the generality of the foregoing, the Concessionaire will compensate the State, a new Operator or Concessionaire, or anyone on their behalf, for any damage, loss, claim or costs due to such liabilities not being settled by the Concessionaire.

22.5 Transfer to the State - General Provisions

Without derogating from the provisions of this Section 22.5 (*Transfer to the State – General Provisions*), upon transfer of the Project to the State, the following provisions will apply:

- 22.5.1 The State may direct the Concessionaire to take such other reasonable action in order to give effect to the provisions of this Section 22 (*Transfer following Termination*), and the Concessionaire shall take such action as the State may direct it; without derogating from the generality of the foregoing, the Concessionaire shall take all reasonable steps and measures and cooperate fully with the State and any one on its behalf so that continuation of the Construction or Operation of the Project is achieved with the minimum disruption and so as to prevent or mitigate any inconvenience or risk to health and safety.
- 22.5.2 In the event of an appointment of a Substituting Entity by the State, the State will be entitled to instruct the Concessionaire to transfer to the Substituting Entity (or anyone on its behalf) the assets and rights specified in Section 22.3 (*Transfer of the Project and Other Assets*) above, or any part thereof;
- 22.5.3 Transfer of any amount due to the Concessionaire in accordance with the provisions of this Concession Agreement following termination thereof, will be delayed until completion of the Concessionaire's obligations under Section 22.3 (*Transfer of the Project and Other Assets*) above, including (i) upon the end of the Concession Period - successful performance of the Approved Final Maintenance Plan and successful completion of any subsequent Rehabilitation Works, as shall be approved by the State, or (ii) upon the termination of this Concession Agreement successful performance of the final inspection pursuant to Section 26.6 (*Affirmation of Fair Market Value*); as shall be approved by the State.
- 22.5.4 The Concessionaire hereby undertakes that following the termination of the Concession Contract or following the elapse of the Concession Period and upon the State's instruction it shall take all steps and measures necessary to dissolve the company within the period

prescribed within the State's notice, which shall not exceed two (2) years.

- 22.5.5 The Concessionaire hereby nominates the State, upon the Termination Date or the end of the Concession Period, to perform, by itself, through the Implementing Authority all actions under this Section 22.5 (*Transfer to the State - General Provisions*), and undertakes to execute any document requested for such purpose;
- 22.5.6 The Concessionaire shall ensure that the Project Agreements shall contain provisions to enable the implementation of the provisions of this Section 23.5 (*Transfer to the State - General Provisions*).

23. THE CONCESSIONAIRE'S FINANCING OBLIGATION

23.1 Financing of the Construction and Operation of the Project

- 23.1.1 The Concessionaire shall engage in the Financing Agreements required for the performance of its obligations pursuant to this Concession Agreement. The Concessionaire shall ensure that all Financing Agreements that it shall sign shall include confirmation by the party to the agreement that said party acknowledges and agrees to all provisions of this Concession Agreement that are applicable to the Financing Agreements, as well as the ramifications of those provisions.
- 23.1.2 The Financing Agreements shall be submitted for the approval of the State, while taking into account the dates stipulated in this Concession Agreement, in order to ensure the Concessionaire's compliance therewith. The signed Financing Agreements, which have been approved by the State, shall be attached to this Concession Agreement as part of the Project Agreements, to be attached hereto as Exhibit 11 (*The Financing Agreements*).
- 23.1.3 The Financing Agreements shall be based on the principles presented by the Concessionaire within the framework of its Winning Bid. The aforesaid shall not, in any way whatsoever, derogate from the State's sole discretion in relation to approval of the aforesaid agreements, including with respect to the identity of the parties to the Financing Agreements.
- 23.1.4 It is hereby clarified, and the Concessionaire hereby agrees, that no amendments whatsoever shall be made to the Financing Agreements without the prior, written, express approval thereof by the State. Furthermore, any approval given as aforesaid shall not, in any way whatsoever, release the Concessionaire from fulfilling its obligations with respect to financing of the Project in accordance with the provisions of this Concession Agreement. Amendments made without State approval shall be regarded as a Material Breach by the Concessionaire.
- 23.1.5 Without derogating from the generality of any other provision, any amendment to the repayment terms or to the repayment schedule in the Financing Agreements, as well as any specific implementation of any general provision in any said agreement and termination of any

agreement or waiver of the provisions thereof, shall also be deemed an amendment to the Financing Agreements.

- 23.1.6 Without derogating from the generality of any other provision, and without derogating from the State's discretion, the State shall be allowed to make its Approval of any correction, amendment or revision of the Financing Agreements, conditional upon a revision (including reduction) of the payments being paid pursuant to this Concession Agreement, of the rates of interest and rates of capitalization prescribed in this Concession Agreement, conditional upon the receipt of data and documents from the Concessionaire in relation thereto, including an updated financial model, and any other subject at the State's discretion.

23.2 Refinancing

23.2.1 Refinance Gain

Without derogating from the generality of Section 9.2 (*Grounds for Disapproval of a Final Draft or an Amendment to a Project Agreement*) of Appendix B1 (*Execution of Project Agreements*), in the event that the Concessionaire proposes a Refinance that is part of the applicable Financing Agreements as approved by the State, the State shall be entitled to receive:

- (i) 40% of any Refinance Gain up to thirty million NIS (30,000,000 NIS) (for the removal of doubt, based on the aggregate of all Refinance Gains resulting from previous Refinances); or
- (ii) 60% of any Refinance Gain between thirty million NIS (30,000,000 NIS) to sixty million NIS (60,000,000 NIS) (for the removal of doubt, based on the aggregate of all Refinance Gains resulting from previous Refinances); or
- (iii) 70% of any Refinance Gain exceeding sixty million NIS (60,000,000 NIS) (for the removal of doubt, based on the aggregate of all Refinance Gains resulting from previous Refinances);

Without derogating from the generality of the foregoing, in the event that the Shareholders are expected to directly or to indirectly benefit from a proposed Refinance (in addition to the Refinance Gain), or in the event a proposed Refinance may increase the State's liabilities under this Agreement, the State may condition its approval for such proposed Refinance on (i) receiving more than the percentage of the Refinance Gain indicated above; or (ii) on receiving all amounts the State is exposed to as a direct result of the implications of such Refinance on the State's liabilities pursuant to this Concession Agreement.

- 23.2.2 The State shall have the right to choose the method of receiving its share of the Refinance Gain whether as a single payment by the Concessionaire, a reduction to the Actual State Periodic Payments over the remaining Contract Period, or any combination of the above.

23.2.3 Determination of the Refinance Gain

The Refinance Gain shall be determined by the State in accordance with the following provisions; for purposes of approval thereof by the State, the Concessionaire shall provide the Implementing Authority with full details of any proposed Refinance, including a copy of the proposed amended Financing Agreement and the proposed financial model relating thereto.

- (1) **"Refinance Gain"** shall mean an amount equal to the higher of (i) zero (0); and (ii) $[A-B-C-D+E]$.
- (2) **"A"** - the lower of: (i) the outstanding balance of debt under the Financing Agreement and (ii) the refinanced amount under the Amended Financing Agreement.
- (3) **"B"** - the net present value of all expected repayments (principal and interest) based on the following assumptions:
 - i. Principal payments payable according to the Amended Financing Agreements provided that such do not exceed the amount as determined in "A";
 - ii. Interest, which will be calculated with respect to the abovementioned principal payments, using the margin under the Amended Financing Agreements, plus the Base Refinance Interest Rate.
 - iii. The net present value for purposes of "B" shall be calculated using a discount rate equal to the Base NPV Rate plus the margin stipulated under the Financing Agreement.
- (4) **"C"** - any commissions, fees, prepayment premium, make-whole amount or similar payment paid (or to be paid), by the Concessionaire, under the Financing Agreement as a result of the Refinance, as approved by the State.
- (5) **"D"** - the net present value of any remaining commissions and fees to be paid by the Concessionaire under the Amended Financing Agreement, as will be approved by the State.
- (6) **"E"** - the net present value of any remaining commissions, fees, prepayment premium, make-whole amount or similar payment which would have been paid by the Concessionaire under the Financing Agreement in the event no Refinance is made.
- (7) The net present value for purposes of "D" and "E" shall be calculated using a discount rate equal to the Base NPV Rate plus the margin stipulated under the Financing Agreement.
- (8) For the removal of doubt, increased tax payments due to Refinance shall not be deducted from the Refinance Gain.

- (9) **"Financing Agreement"** - shall be deemed to mean a Financing Agreement as approved by the State on any applicable date prior to the date of the Refinance; and
- (10) **"Amended Financing Agreement"** shall be deemed to mean the amendment to a Financing Agreement, approved by the State on the date of the Refinance.
- (11) **"Base Refinance Interest Rate"** shall be deemed to mean:
 - i. In the event the Refinance occurred prior to or at the Determining Date - the Reference Long Term CPI Interest Rate, the Reference Long Term Nominal Interest Rate, the Reference Long Term Euro Interest Rate or the Reference Long Term USD Interest Rate, as applicable; and
 - ii. In the event the Refinance occurred following the Determining Date - the effective interest rate under the Amended Financing Agreements (excluding margin) taking into account the applicable interest pursuant to any hedging agreements.
- (12) **"Base NPV Rate"** shall be deemed to mean:
 - i. In the event the Refinance occurred prior to or at the Determining Date - the Reference Long Term CPI Interest Rate, the Reference Long Term Nominal Interest Rate, the Reference Long Term Euro Interest Rate or the Reference Long Term USD Interest Rate, as applicable; and
 - ii. In the event the Refinance occurred following the Determining Date - the effective interest rate under the Financing Agreements (excluding margin) taking into account the applicable interest pursuant to any hedging agreements.

23.3 The State's Release from Liability.

For the avoidance of doubt, it is hereby clarified that any approval, remark, instruction or any form of consent by the State in relation to any matter pertaining to the financing of the Project, including, but not limited to, all the aforesaid, shall not be construed as imposing any liability whatsoever on the State in relation to the financing or absence of financing of the Project, whether in whole or in part, and the Concessionaire hereby waives any such claim and any such action against the State.

24. LIABILITY OF THE CONCESSIONAIRE

24.1 Liability of the Concessionaire

- 24.1.1 Without derogating from the provisions of this Concession Agreement (including the provisions of Section 24.3 (*Indemnification by the State*), and from the Concessionaire's liability under Law, and unless explicitly

provided otherwise in this Concession Agreement, the Concessionaire shall bear full and sole responsibility and liability and shall be accountable for any and all damage (whether directly or indirectly and whether by action or omission), loss, expense, costs or harm ("**Damage**"), caused to (i) the State, the Implementing Authority, the Tender Committee and any other Relevant Authority, their respective successors, assignees, officers, directors, agents, representatives and employees (the "**Authority/ies**") and to (ii) any third party (including the Subcontractors and any other Person acting on behalf of the Concessionaire); arising out of, or in connection with the Project, or with the performance or non performance by the Concessionaire of its rights and obligations under this Concession Agreement or breach thereof, (including, *inter alia*, acts or omissions of the Concessionaire's employees, agents or subcontractors, of any tier and Major Subcontractors, in their capacity as such), including but not limited to the following:

- a) Death or personal injury;
- b) Loss or damage to any property (including, *inter alia*, the Highway, the Associated Facilities, the Miscellaneous Structures, agricultural ways and corps, Utilities);
- c) Loss or damage to any materials and any equipment and other articles used or employed in the execution of the Design, Construction, Operation and Maintenance or Management of the Project and transfer thereof to the State;
- d) Loss or damage caused to the Project or caused with respect to its Design, finance, Construction, Operation, Maintenance or use, or any part thereof; or
- e) Any damage caused due to an infringement of patent rights, sample, commercial secret, knowledge, copyright or any other intellectual property right, resulting from or concerned with the Project, and all damages related thereto;

but, excluding pursuant to criminal acts of representatives of the Authorities.

24.2 Indemnification

24.2.1 Indemnification by the Concessionaire; General

The Concessionaire shall hold harmless and fully indemnify the State, the Implementing Authority and the Authorities, from and against any and all damages, liabilities, demands, claims, suits, proceedings (civil or criminal), charges, orders, judgments, penalties, compensation, costs, expenses and any other remedies asserted against the State, the Implementing Authority or against any other Authority and against any person acting on their behalf, in connection with the Concessionaire's responsibilities under Section 24.1 (*Liability of the Concessionaire*), and for all costs and expenses arising out of or related to any of the aforesaid.

The Concessionaire shall hold harmless and indemnify the State for and against all damages incurred by the State in acquiring rights to exploit Intellectual Property in connection with the Project, to which the State is entitled under Section 31 (*Intellectual Property*) below and for any Damages incurred by the State should the State not be able to receive such rights.

24.2.2 Indemnification by the Concessionaire; Proceedings

- a. If proceedings are initiated against any Authority, and the Authority claims that it is entitled to be indemnified by the Concessionaire pursuant to this Concession Agreement or pursuant to any Law, the Implementing Authority will issue the Concessionaire a notice to this effect as soon as reasonably practicable, and in any event no later than thirty (30) days as of the date a notice of the Proceedings was delivered to the Implementing Authority.

The lack of such notice (or late delivery thereof) will not derogate from the Authorities' right to indemnification by the Concessionaire, to the extent such lack of notice (or late delivery thereof) does not deprive the Concessionaire of its rights.

In this Concession Agreement "Proceedings" shall mean including demands, claims, suits and legal proceedings (whether civil or criminal, but excluding criminal acts of representatives of the Authorities), and whether such are negotiated, arbitrated, mediated or litigated), orders, judgments, penalties or fines.

- b. Following receipt of the Implementing Authority's notice, in the event the Concessionaire is not already a party to the Proceedings, the Concessionaire will be entitled to submit a request to join the Proceedings.

In the event that the Concessionaire did not submit a request to join the Proceedings, or that the Concessionaire's request to join the Proceedings was denied, the Implementing Authority will acknowledge the Concessionaire about negotiations and about the defense in the Proceedings.

- c. It is hereby clarified that the Concessionaire's request pursuant to this Section 24.2.2 (*Indemnification by the Concessionaire; Proceedings*) will not be construed as an admission on its behalf in the Authorities' right to indemnification or as derogating from the Concessionaire's rights to indemnification from the State, in accordance with Section 24.3 (*Indemnification by the State*).

24.3 Indemnification by the State

24.3.1 Participation of the State

- a. In the event Proceedings are initiated, and:
 - (i) the cause of action arises from actions or omissions committed by the Concessionaire acting on the direct instruction of the State, or acting in compliance with an explicit provision of the Concession Agreement, which instruction or provision affords the

Concessionaire no opportunity to exercise any independent discretion, and the Concessionaire, in effect did not exercise any independent discretion; and

- (ii) the cause of action does not arise from the breach by the Concessionaire of any of its undertakings pursuant to this Concession Agreement or its obligations pursuant to any Law,

and in view of the above, the Concessionaire will claim that it is entitled to indemnification from the State, the Concessionaire will provide the Implementing Authority a notice to this effect as soon as reasonably practicable immediately following the commencement of or receipt of a copy of such Proceedings, and in any event no later than thirty (30) days as of the date of a notice of the Proceedings was delivered to the Concessionaire (in this section "**Request for Indemnification**").

- b. In the event that the Proceedings are initiated against the Concessionaire and the Concessionaire issues the Implementing Authority with a Request for Indemnification, the Implementing Authority will be entitled to submit a request to join the Proceedings.
- c. In the event the Implementing Authority did not submit a request to join the Proceedings, or that the Implementing Authority's request to join the Proceedings was denied, the Concessionaire will enable the Implementing Authority to manage the negotiations and the defense of the Proceedings the subject matter of the Concessionaire's Request for Indemnification (in this Section, the "**Claim**"), as shall be determined by the Implementing Authority.

24.3.2 Indemnification by the State

In the event that compensation was granted to the plaintiff with respect to a Claim:

- a. In the event that the Implementing Authority was a party to Proceedings which were litigated, the Implementing Authority will be entitled to request that the matter of allocation of liability between the Concessionaire and the State concerning the Claim will be determined by the Arbitrators, in accordance with the provisions of Appendix K (*Dispute Resolution*) of this Concession Agreement.

In the event the Implementing Authority did not issue such a request, the matter of allocation of liability between the Concessionaire and the State concerning the Claim will be determined by the applicable tribunal in which the Proceedings took place, notwithstanding the provisions of Appendix K (*Dispute Resolution*) of this Concession Agreement.

In the event that the matter of allocation of liability between the Concessionaire and the State concerning the Claim, was not determined by either the Arbitrators or the applicable tribunal in which the Proceedings took place, the Concessionaire shall be entitled to request that the matter of allocation of liability between the Concessionaire and the State shall be determined by the

Arbitrators, in accordance with the provisions of Appendix K (*Dispute Resolution*) of this Concession Agreement.

- b. In the event that the Implementing Authority was not a party to Proceedings which were litigated, or in the event compensation is payable to a third party pursuant to negotiations carried out with respect to a Claim, then the matter of allocation of liability between the Concessionaire and the State concerning the Claim will be determined by the Arbitrators, in accordance with the provisions of Appendix K (*Dispute Resolution*) of this Concession Agreement.
- c. In the event the Arbitrators or the applicable tribunal, as the case may be, determined that the conditions stipulated in Section 24.3.1 (*Participation of the State*) were met, then, notwithstanding the provisions of Section 24.1 (*Liability of the Concessionaire*) and 24.2 (*Indemnification by the Concessionaire*), the State will be liable for any compensation ruled in favor of the plaintiff for the claims (or any part thereof), with respect to which the conditions stipulated in Section 24.3.1 (*Participation of the State*) were determined to have been met, deducting an aggregated sum, during the Contract Period, of twenty million NIS (20,000,000 NIS).
- d. For the removal of doubt it is hereby clarified that in the event the Arbitrators or the applicable tribunal, as the case may be, determined that any of the conditions stipulated in Section 24.3.1 (*Participation of the State*) was not met, then, the provisions of Section 24.1 (*Liability of the Concessionaire*) and 24.2 (*Indemnification by the Concessionaire*), will apply.

24.3.3 Claims by the State

In the event the conditions stipulated in Section 24.3.1 (a) (i)-(ii) are met with respect to certain Proceedings, the Concessionaire shall not be obliged to indemnify the State or the Implementing Authority for any damage, loss, cost or expense suffered thereby pursuant to such Proceedings, nor will the Concessionaire be obliged to indemnify the State or the Implementing Authority for any damage, loss, cost or expense suffered thereby pursuant to such Proceedings initiated by the State or the Implementing Authority.

24.4 No Settlement Without Approval

The Concessionaire will not reach a settlement concerning the Proceedings without the prior written approval of the State.

The State and the Implementing Authority (or any one of them) may reach a settlement concerning Proceedings, subject to the Concessionaire's prior notice. The Concessionaire shall not unreasonably object to a proposed settlement. For the removal of doubt, it is hereby clarified that settlement of Proceedings by the State and the Implementing Authority (or any one of them) shall not relieve the Concessionaire from any indemnification obligation pursuant to this Concession Agreement or pursuant to any Law (including, *inter alia*, legal expenses, legal fees and expenses incurred for purposes of enforcing the Concessionaire's indemnification obligations pursuant to this Concession Agreement), except as agreed in the settlement.

24.5 Indemnification; Terms of Payment

Each Party shall provide indemnification pursuant to this Section 24 (*Liability of the Concessionaire*) within the time specified in the notice requiring indemnification and provided such period is not less than thirty (30) Days after the dispatch of such notice.

25. INSURANCE

- 25.1 The Concessionaire shall obtain and maintain all insurances required for the Project, both with respect to the Construction Phase and the Commercial Operation Phase.
- 25.2 Without derogating from the generality of the above, the Concessionaire shall be required to obtain and maintain, at least, the Insurance Policies in accordance with the provisions of Appendix G (*Insurance*).
- 25.3 In the event that under specific circumstances the Concessionaire is entitled (or should have been entitled, pursuant to the provisions of subsection 25.2 above and of Appendix G (*Insurance*)), to any insurance proceeds, the amount of any compensation payable to the Concessionaire under this Concession Agreement under such circumstances, shall be reduced respectively, including for purpose of avoiding double compensation.

26. FAIR MARKET VALUE

26.1 Appointment of Auditor

- 26.1.1 The Notice of Termination issued pursuant to Sections 19.4.6 (*Termination Following the Issuance of the Permit to Operate*), 19.4.3 (*Termination following issuance of a Notice to Proceed but prior to the Issuance of the Permit to Operate*); or 16.3 (*Termination for Convenience*), as the case may be, shall include a list containing the names of at least three (3) reputable international financial services firms from which the Auditor will be selected (“**Auditor**”).
- 26.1.2 Within thirty (30) days following receipt of the said list, the receiving Party will inform the other Party of the name of the international auditing firm or financial consultants firm acceptable to it.
- 26.1.3 Should the Parties fail to reach an agreement with respect to the Auditor, the matter shall be referred to the Dispute Resolution Panel which shall assume the responsibility of appointing the Auditor.

26.2 The Inspection

- 26.2.1 Upon the Termination Date, or upon issuance of a Notice of Termination in the event of termination under Sections 16.3 (*Termination for Convenience*), the Auditor, together with experts on its behalf, shall conduct inspections and tests to demonstrate the completeness, maintainability and operability state of the Project and other applicable performance indicators of the Project. The inspection shall be completed within thirty (30) days following its commencement.

- 26.2.2 The Parties shall be entitled to express their views and submit to the Auditor relevant information, in accordance with such procedural guidelines as shall be determined by the Auditor.

26.3 Determining the Fair Market Value

- 26.3.1 Following completion of the inspection described in Section 26.2 (*The Inspection*) above, the Auditor shall determine the Fair Market Value of the Project, calculated in nominal terms, on the basis of the nominal Projected Free Cash Flow of the Project, discounted in accordance with the provisions of Section 26.4 (*Discount Rate*) below.
- 26.3.2 The Projected Free Cash Flow of the Project shall be based on the nominal projected operating free cash flow as of the date of the Auditor's determination, until the originally designated termination date of the Concession Period, taking into account the rights and obligations of the Concessionaire under this Concession Agreement, but also taking into account the circumstance which lead to the termination thereof, and the condition of the Project as revealed by the inspection conducted by the Auditor in accordance with the provisions of Section 26.2 (*The Inspection*) above.
- 26.3.3 In determining the Projected Free Cash Flow of the Project, the Auditor shall take into account, *inter alia*:
- a) the aggregate of all Project operating revenues;
 - b) the aggregate of all capital costs, including such costs related to the condition of the Project as revealed by the inspection conducted by the Auditor in accordance with the provisions of Section 26.2 (*The Inspection*) above;
 - c) operating and maintenance costs, including such costs related to the condition of the Project as revealed by the inspection conducted by the Auditor in accordance with the provisions of Section 26.2 (*The Inspection*) above, and including costs to be deducted pursuant to Section 21.2 (*Following Termination Notice*) as the case may be;
 - d) any payments, including Liquidated Damages, reductions from the Period Payments, compensation and other liabilities of the Concessionaire with respect to the Project, towards the State or any third party, excluding its obligations under the Financing Agreements;
 - e) the rights and obligations of the Concessionaire until the original end of the Concession Period; and
 - f) tax obligations and liabilities.
- 26.3.4 The projected free cash flow of the Project will be determined in NIS (the "**Projected Free Cash Flow of the Project**" or the "**Projected Free Cash Flow**").

26.4 Fair Market Value; Discount Rate

26.4.1 The fair market value of the Project shall be determined by discounting the Projected Free Cash Flow at the Long Term Nominal NIS Interest Rate on the Termination Date plus:

- a) 2% - for the purpose of Section 16.3 (*Termination for Convenience*), or for the purpose of Section 20.4.4 (*Termination by the Concessionaire; Termination Following Issuance of the Permit to Operate*).
- b) 3% - for the purpose of Section 19.4.6 (*Termination by the State; Termination Following the Issuance of the Permit to Operate*)

(the "**Fair Market Value of the Project**" or the "**Fair Market Value**").

26.5 Announcement of Fair Market Value

Upon its completion of the Audit, the Auditor shall announce the Fair Market Value and all related findings to the Parties (the "**Initial Determination**").

26.6 Affirmation of the Fair Market Value

26.6.1 Following the Transfer of the Project to the State, the Auditor shall inspect the Project in order to affirm the Fair Market Value stated in the Initial Determination, or, if Transfer of the Project to the State shall have occurred prior to the Initial Determination, in order to determine the Fair Market Value.

26.6.2 The Parties shall be entitled to express their views and submit to the Auditor relevant information, in accordance with such procedural guidelines as shall be determined by the Auditor.

26.6.3 It is hereby clarified that affirmation of the Fair Market Value may result in an increase or decrease thereto.

26.6.4 The Auditor shall notify the Parties of its findings no later than thirty (30) days following the Transfer of the Project to the State ("**Final Determination**").

27. GENERAL PROVISIONS RELATING TO THE DETERMINATION OF THE AMOUNT OF SENIOR DEBT

27.1 Make-whole Payment

27.1.1 **Make-whole Payment Following Termination Due to an Event of Force Majeure.** Notwithstanding anything to the contrary in the Financing Agreement or any other Project Agreement providing for finance in a fixed rate basis, in the event that payments shall be made under the Financing Agreements pursuant to Section 18.6 (*Termination due to Force Majeure*) above, any prepayment premium, make-whole amount or similar payment (including changes to the interest rate under the Financing Agreements) required to be paid under a Financing Agreement, by the State pursuant to Section 18.6 (*Termination due to Force Majeure*) shall be equal to the difference (if positive) between (a) the expected repayments of the principal and interest under the applicable Senior Debt Financing Agreements on the prepayment date,

each discounted at a rate equal to the Long Term CPI Interest Rate, the Reference Long Term Nominal NIS Interest Rate, the Long Term USD Interest Rate, the Long term Euro Interest Rate (as applicable) true to the prepayment date; plus Applicable Margin under the applicable Senior Debt Financing Agreement for each respective expected repayment; and (b) the total outstanding Senior Debt on the prepayment date.

- 27.1.2 **Make-whole Payment Following Termination by the Concessionaire Due to an Event of Default by the State or Termination by Convenience.** Notwithstanding anything to the contrary in the Financing Agreement or any other Project Agreement providing for finance in a fixed rate basis, in the event that payments shall be made under the Financing Agreements pursuant to Section 16.3 (*Termination for Convenience*) above, or Section 20.4 (*Effects of Termination by the Concessionaire*), any prepayment premium, make-whole amount or similar payment required to be paid under a Financing Agreement by the State pursuant to such Section 16.3 (*Termination for Convenience*) above, Section 19.4.3 (*Termination Following Issuance of a Notice to Proceed But Prior to the Issuance of the Permit to Operate*) or Section 19.4.6 (*Termination following issuance of the Permit to Operate*) shall be equal to the difference (if positive) between (a) the expected repayments of the principal and interest under the applicable Senior Debt Financing Agreement on the prepayment date, each discounted at a rate equal to the Long Term CPI Interest Rate, the Reference Long Term Nominal NIS Interest Rate, the Long Term USD Interest Rate, the Long Term Euro Interest Rate (as applicable), true to the prepayment date, plus (ii) the Applicable Margin under the applicable Senior Debt Financing Agreement for each respective expected repayment, minus (iii) 0.5%; and (b) the total outstanding Senior Debt on the prepayment date.
- 27.1.3 **Make-whole Payment Following Termination by the State Due to an Event of Default by the Concessionaire.** In the event that payments shall be made under the Financing Agreements pursuant to Section 19.4.6 (*Termination Following the Issuance of the Permit to Operate*), the State shall not be required to pay any prepayment premium, make-whole amount, penalty, early repayment charge or similar payment required to be paid under a Financing Agreement.
- 27.1.4 In the event that Make-whole Payment calculated in accordance with the provisions of Sections 27.1.1 (*Make-Whole Payment Following Termination Due to an Event of Force Majeure*) and 27.1.2 (*Make-Whole Payment Following Termination by the Concessionaire Due to an Event of Default by the State or Termination for Convenience*) above, is negative, it shall be deemed Zero (0).

27.2 Mark To Market Payment

- 27.2.1 In the event that hedging arrangements were made pursuant to the Senior Debt Financing Agreements or any other Project Agreement, providing for finance on a floating rate basis (and without derogating from the term "**Balance of Senior Debt Deductions**"), then,

notwithstanding any prepayment premium, make-whole amount, mark-to-market amount or similar payment payable pursuant to any such Senior Debt Financing Agreement, to payments made by the State pursuant to Sections 16.3 (*Termination for Convenience*), 18.6 (*Termination Due to Force Majeure*) and 20.4 (*Effects of Termination by the Concessionaire*), the State will add only the Mark to Market Payment.

- 27.2.2 The Mark to Market Payment will be calculated, based on the following formula:

$$MTM = \sum_{t=1}^T \frac{X_t * \left(\frac{SR - r_t}{4} \right)}{\prod_{i=1}^t \left(1 + \frac{r_i}{4} \right)}$$

Where:

MTM = the Mark to Market Payment

SR = the applicable currency's Reference Long/Short Term interest rate calculated in accordance with the provisions of Sections 2 (*Short Term Interest Rate Adjustment of the Base One-off Payment*) and 3 (*Long Term Interest Rate Adjustment of the Base Total Target Income*) of Appendix D (*Adjustment of Payments*), on the Determining Date. In the event that the prepayment date occurred prior to the Determining Date, for the purposes of calculating the applicable SR in accordance with the provisions of Sections 2 (*Short Term Interest Rate Adjustment of the Base One-off Payment*) and 3 (*Long Term Interest Rate Adjustment of the Base Total Target Income*) of Appendix D (*Adjustment of Payments*), the Determining Date will be deemed to be prepayment date.

rt, ri = the forward rates for the applicable three months period (“t” or “i”) as quoted from Bloomberg IRSB screen using SWPM function (“reset rates”), at the prepayment date.

T = the number of remaining quarters “t” until repayment of the Senior Debt as of the last repayment made prior to the prepayment date.

Xt = the expected outstanding Senior Debt at the beginning of period “T” under the applicable Senior Debt Financing Agreement (where X1 = the outstanding Senior Debt on the prepayment date).

- 27.2.3 In the event the Mark to Market Payment calculated in accordance with the provisions of subsection 27.2.2 above is negative, it will still be added (as a negative figure) to any payments made pursuant to Sections 16.3 (*Termination for Convenience*), 18.6 (*Termination Due to Force Majeure*) and 20.4 (*Effects of Termination by the Concessionaire*), and will in effect be reduced therefrom.

27.2.4 **No Payments Following Termination by the State Due to an Event of Default by the Concessionaire.** In the event that payments shall be made under the Senior Debt Financing Agreements pursuant to Section 19.4.6 (*Termination Following the Issuance of the Permit to Operate*), the State shall not be required to pay any prepayment premium, make-whole amount, mark to market amount, penalty, early repayment charge or similar payment required to be paid under a Senior Debt Financing Agreement.

27.3 Compensation by the State following Partial Repayments by the Concessionaire to the Finance Providers

27.3.1 **Compensation by the State following Partial Repayments by the Concessionaire to the Senior Debt Finance Providers.** In the event that prior to the Termination Date the Concessionaire has under-paid any repayment under the Senior Debt Financing Agreements, in determining the Balance of Senior Debt (if payable), all partial payments made by the Concessionaire under the Senior Debt Financing Agreements will be deemed to have been allocated in accordance with the following order of payments:

- a) First, in payment of Interest (including linkage differentials in relation thereof);
- b) Secondly, in payments of the principal (including linkage differentials in relation thereof);
- c) Thirdly, in payment of any unpaid fees (including, without limitation, Commitment Fees and other fees) and expenses; and
- d) Fourthly, in payment of any other amounts payable as a result of a failure of the Concessionaire under the Senior Debt Financing Agreements, including default interest (including linkage differentials in relation thereof), penalties, prepayment fees, costs and losses relating to hedging arrangements, and any other such obligations or liabilities of the Concessionaire.

27.3.2 **Compensation by the State following Partial Repayments by the Concessionaire under the Subordinated Debt Financing Agreements and Shareholders Loan.** In the event that prior to the Termination Date the Concessionaire has under-paid any repayment under the Subordinated Debt Financing Agreements and Shareholders Loans, in determining the amount of compensation payable (if payable) by the State to the Concessionaire pursuant to the termination of the Concession Agreement, all partial payments made by the Concessionaire under the Subordinated Debt Financing Agreements and/or Shareholders Loans, will be deemed to have been allocated in accordance with the following order of payments:

- a) First, in payment of Interest (including linkage differentials in relation thereof);
- b) Secondly, in payments of the principal (including linkage differentials in relation thereof); and

- c) Thirdly, in payment of any other amounts payable as a result of a failure of the Concessionaire under the Subordinated Debt Financing Agreements or Shareholders Loans, including penalties, prepayment fees, and any other such obligations or liabilities of the Concessionaire.

27.4 Actions Following Notice of Termination

- 27.4.1 Any action of the Concessionaire following the date of issuance of the Notice of Termination which might affect the amount of compensation payable under this Concession Agreement or the rights and obligations of the State in connection with termination of the Concession Agreement, shall be subject to the approval of the State. Any such actions which have not been approved by the State shall be null and void for purposes of this Concession Agreement.
- 27.4.2 Upon termination of the Concession Agreement and the payment or assumption by the State of the payment obligations under the Senior Debt Financing Agreement pursuant to this Agreement (the earliest to occur), all security interests granted in favor of the Finance Providers by the Concessionaire in respect of the Project shall thereupon terminate.

27.5 Assumption of the Balance of Senior Debt

- 27.5.1
 - a) In the event that the State assumes the Balance of Senior Debt pursuant to Section 16.3 (*Termination for Convenience*) above, Section 18.6 (*Termination Due to Force Majeure*) above, Section 19.4.6 (*Termination Following the Issuance of the Permit to Operate*) above, Section 20.4 (*Effects of Termination by the Concessionaire*) above or Section 28.2 (*Substitution by the State (step in)*) herein, the repayment by the State to the Finance Providers shall be made in accordance with the conditions set forth in Appendix H (*Terms for the Assumption of Senior Debt*).
 - b) In the event of assumption by the State of the Balance of Senior Debt under the Senior Debt Financing Agreements which require hedging arrangements, the State shall have the option to assume also the hedging arrangements. If the State assumes the hedging arrangements, the conditions set forth in Appendix H1 (*Terms for the Assumption of Hedging Agreements ISDA Schedule*) shall apply. If the State shall not assume the hedging arrangements, the State shall pay the applicable payment pursuant to Section 27.2 (*Mark to Market Payment*) (as the case may be).
- 27.5.2 **Transfer of the Project.** For the avoidance of doubt, the Project shall be transferred along with any assumption of the Senior Debt to the State.

28. SUBSTITUTING ENTITY

28.1 Substitution by Senior Debt Finance Providers

28.1.1 Substitution by the Senior Debt Finance Providers

The Parties acknowledge that the shares of the Concessionaire may be transferred to third parties or a substituting entity may be appointed as the Concessionaire in the following circumstances:

- a) Following the issuance of an Initial Notice by the State in accordance with the provisions of Section 20.3 (*Termination of the Concession Agreement*) above, and after the Cure Period has elapsed; or
- b) Following an acceleration event as defined under the Senior Debt Financing Agreements.

(a "**Substituting Entity**").

28.1.2 Method of Appointment

Within ninety (90) days of the occurrence of an event as described in Section 28.1(*Substitution by Senior Debt Finance Providers*), a majority in interest of the Senior Debt Finance Providers or their representatives shall notify the Minister of Finance through the Implementing Authority of their intention to perform such substitution and shall furnish the Implementing Authority with such notice containing all necessary information as required under this Section 28.1.2 (*Method of Appointment*), as well as a proposal to cure the applicable event of default.

With their notice, the Senior Debt Finance Providers will be required to provide the Implementing Authority with information regarding the Substituting Entity (including such information as was required from the Concessionaire and its Shareholders prior to the execution of this Concession Agreement), and including satisfactory evidence demonstrating that:

- a) The Substituting Entity (including Interested Parties therein, or directors or managers thereof), is not suspected of being involved in a criminal activity;
- b) The Substituting Entity (including Interested Parties therein, or directors or managers thereof), is not a resident or national of a country which does not have diplomatic relations with the State of Israel or which conducts significant part of its business in such countries;
- c) The Substituting Entity is legally and validly constituted and is entitled to enter into such agreements as may be required in order to give effect to such substitution;
- d) The Substituting Entity has all the required authority, license status, professional ability, skill and capacity to perform all its obligations under this Concession Agreement and shall perform them in a manner consistent with the Contract Documents; and
- e) In the event of substitution for the Concessionaire:

- i. The Substituting Entity is a sole purpose Israeli company;
- ii. The Substituting Entity has the financial and technical-engineering capabilities sufficient to perform and assume the obligations of the Concessionaire under this Concession Agreement; or, in the event the shares of the Concessionaire are transferred to third parties - such third parties have the financial capability sufficient to perform and assume the obligations of the Shareholders under this Concession Agreement;
- iii. The Substituting Entity has the capability to undertake and to pay those financial obligations of the Concessionaire before or at the time of substitution; and
- iv. The Substituting Entity agrees to accept all liabilities, obligations and responsibilities of the Concessionaire pursuant to the Concession Agreement; or, in the event the shares of the Concessionaire are transferred to third parties – such third parties agree to accept all liabilities, obligations and responsibilities of the Shareholders pursuant to the Shareholders Agreement.

("Request for the Appointment of a Substituting Entity").

28.1.3 Approval by the Minister of Finance

The Minister of Finance shall review all the information submitted to the Implementing Authority by the Senior Debt Finance Providers under Section 28.1.2 (*Method of Appointment*), and shall either approve or object to the Request for the Appointment of a Substituting Entity within sixty (60) days. Such Approval or objection shall be made in writing and delivered to the Finance Providers and, where objection is made, the grounds for objection shall be specified.

The Minister of Finance shall not unreasonably withhold its approval to a Request for the Appointment of a Substituting Entity which meets the requirements of Section 28.1.2 (*Method of Appointment*). However, should the Minister of Finance reject the request for the Appointment of a Substituting Entity, the Senior Debt Finance Providers shall be entitled to furnish the Minister of Finance through the Implementing Authority with a revised Request for the Appointment of a Substituting Entity. The provisions of this Section 28.1.3 (*Approval by the Minister of Finance*) shall apply with respect to each Request for the Appointment of a Substituting Entity resubmitted, provided that all such Requests for the Appointment of a Substituting Entity will be submitted within ninety (90) days as of the date of rejection by the Minister of Finance of the original Request for the Appointment of a Substituting Entity.

28.1.4 Substitution of the Concessionaire

Following the approval of the Substituting Entity by the Minister of Finance, the Substituting Entity shall, for the purpose of this Concession Agreement, replace the Concessionaire and all rights, obligations and liabilities of the

Concessionaire under this Concession Agreement shall vest in the Substituting Entity.

28.1.5 General Provisions Relating to Substitution by Senior Debt Finance Providers

- a) The Concessionaire shall ensure that binding provisions, giving effect to the provisions of this Section 28 (*Substituting Entity*), are included in all Senior Debt Finance Agreements.
- b) Nothing in the provisions of this Section 28 (*Substituting Entity*), shall be deemed as derogating from any of the State's rights and remedies under this Concession Agreement and under any Law to pursue any claim against the original Concessionaire.

28.2 Substitution by the State (step in)

28.2.1 If, under the circumstances contemplated in Section 28.1.1a), no Substituting Entity is appointed pursuant to Section 28.1.2 (*Method of Appointment*), the State shall have the right to continue this Concession Agreement with a Substituting Entity, appointed in consultation with the majority of the Senior Debt Finance Providers, provided that such Substituting Entity shall enter into agreements with the Senior Debt Finance Providers (other than the Shareholders), on terms satisfactory to such Finance Providers acting reasonably to repay any amounts outstanding under the Senior Debt Financing Agreements (other than Financing Agreements provided for investments in the Equity of the Concessionaire), and provided further that the Finance Providers will not unreasonably refuse to accept a Substituting Entity provided by the State.

28.2.2 If the State assumes the payment obligations of the Concessionaire under the Financing Agreements pursuant to this Section 28.2 (*Substitution by the State (Step In)*), all security interests granted in favor of the Senior Debt Finance Providers by the Concessionaire in respect of the Project shall thereupon terminate. The Concessionaire shall ensure that the Senior Debt Financing Agreements contain provisions to enable the State to assume the payment obligations of the Concessionaire under the Senior Debt Financing Agreements pursuant to this Section 28.2 (*Substitution by the State (Step In)*).

28.3 Termination of the Concession Agreement

If, under the circumstances contemplated by Section 28.1 (*Substitution by Senior Debt Finance Providers*) above, no Substituting Entity is appointed, and the State does not exercise its right pursuant to Section 28.2 (*Substitution by the State (step in)*) above, the State has the right to terminate this Concession Agreement in accordance with the provisions of Section 19 (*Termination by the State*) above.

29. BONDS

29.1 General

All Bonds shall be independent, irrevocable, and autonomous bank guarantees.

29.2 The Performance Bond

At least ten (10) days prior to the Signature Date, the Concessionaire shall provide the State, with a Performance Bond in an amount of fifty million NIS (NIS 50,000,000), in the form attached to this Concession Agreement as Appendix I1 (the "**Performance Bond**").

The Performance Bond will be valid until the issuance of a Notice to Proceed.

29.3 The Early Works Bond

- 29.3.1 For the purposes of Section 9.2 (*Early Works*) above, the Concessionaire shall provide the State with an Early Works Bond in the amount of Thirty Five million NIS (NIS 35,000,000) in the form attached to this Concession Agreement as Appendix I2 (the "**Early Works Bond**").
- 29.3.2 The Early Works Bond shall be valid until the issuance of the Notice to Proceed in accordance with Section 9.4 (*Notice to Proceed*) above.
- 29.3.3 The State will not be entitled to collect on the Early Works Bond for any default by the Concessionaire not related to the Early Works.
- 29.3.4 The above shall not derogate from the State's rights with respect to any of the other Bonds, including the right to collect on such Bonds to cover costs, damages and expenses incurred thereby for failure by the Concessionaire to meet its obligations under the Contract Documents.

29.4 The Construction Performance Bond

- 29.4.1 Prior to the issuance of the Notice to Proceed, the Concessionaire shall provide the State with a Construction Performance Bond in an amount of one hundred and twenty five million NIS (NIS 125,000,000), in the form attached to this Concession Agreement as Appendix I3 (the "**Construction Performance Bond**"). The Construction Performance Bond will be valid from the date of issuance of the Notice to Proceed and until three (3) months following the issuance of the Permit to Operate.
- 29.4.2 Provided that the Construction Performance Bond, or any part thereof, was not called for by the State, the Concessionaire shall be entitled to a reduction of the amount of the Construction Performance Bond, by the applicable Reduction Amount, as set forth in the following table:

<u>Reduction Amount of the Construction Performance Bond</u>	
<u>Milestone</u>	Reduction Amount (NIS)
Issuance of a license for the Partial Operation of a Section of the Highway	Fifty million NIS (50,000,000 NIS)

29.5 The Operation and Maintenance Bond

- 29.5.1 Prior to issuance of the Permit to Operate, the Concessionaire shall provide the State with an Operation and Maintenance Bond in an amount of __ thirty five million NIS (35,000,000 NIS), __ seventy

million NIS (70,000,000 NIS) *[as shall be selected by the Concessionaire in accordance with the provisions of Tender Form B (The Bid Letter)]* linked to the CPI as of the Bid Submission Date, in the form attached to this Concession Agreement as Appendix I4 (the "**Operation and Maintenance Bond**").

- 29.5.2 At the elapse of the first three (3) years from the date of issuance of the Permit to Operate, and provided that the Operation and Maintenance Bond, or any part thereof, was not called for by the State, prior to such date, the Concessionaire shall be entitled to a reduction in the amount of the Operation and Maintenance Bond, by ____fifteen million NIS (15,000,000 NIS) *[in the event the Concessionaire selected the option to provide the initial Operation and Maintenance Bond in the sum of thirty five million NIS]* , ____ thirty million NIS (30,000,000 NIS) *[in the event the Concessionaire selected the option to provide the initial Operation and Maintenance Bond in the sum of seventy million NIS]* linked to the CPI as of Bid Submission Date.
- 29.5.3 The Operation and Maintenance Bond will be valid from the date of issuance of the Permit to Operate and until the submission of the Final Maintenance Bond, unless the provisions of subsection 29.6.2 below apply, in which case the Operation and Maintenance Bond will be valid for the term indicated in subsection 29.6.2 below.

29.6 The Final Maintenance Bond

- 29.6.1 Three (3) years prior to the end of the Concession Period (the "**Date of Final Maintenance Bond Submission**") the Concessionaire shall provide the State with a Final Maintenance Bond in an amount of ____ one hundred million NIS (100,000,000 NIS) ____ two hundred million NIS (200,000,000 NIS) *[as shall be selected by the Concessionaire in accordance with the provisions of Tender Form B (The Bid Letter)]*, linked to the CPI as of the Bid Submission Date, in the form attached to this Concession Agreement as Appendix I5 (the "**Final Maintenance Bond**").
- 29.6.2 Every six (6) months following the end of the Concession Period, and provided that the Final Maintenance Bond, or any part thereof, was not called for by the State, prior to such date, the Concessionaire shall be entitled to a reduction of the amount of the Final Maintenance Bond, by fifteen NIS (15,000,000 NIS), linked to the CPI as of Bid Submission Date.
- 29.6.3 The Final Maintenance Bond shall be valid from the Date of the Final Maintenance Bond Submission and until the end of twenty four (24) months following the end of the Commercial Operation Phase. The Final Maintenance Bond shall also serve to secure the performance of the Concessionaire's obligations with respect to the Transfer of the Project to the State at the end of the Concession Period.

29.7 Submission of Bonds

- 29.7.1 All Bonds furnished by the Concessionaire shall be provided either:

- a) by a major Israeli bank, Israeli financial commercial entity which is rated (long term issuer rating) at least AA- by Standard & Poor's Rating Services a division of the McGraw-Hill Companies, Inc., or Aa3 by Moody's or the equivalent rating by another reputable rating agency to be approved by the State.

or

- b) by an overseas bank from a country having diplomatic relations with the State, which is rated (long term issuer international rating) at least A- by Standard & Poor's Rating Services a division of the McGraw-Hill Companies, Inc., or A3 by Moody's or the equivalent rating by another reputable rating agency to be approved by the State.

The identity of the Bond provider is to be approved by the State in advance.

29.7.2 The State reserves the right to:

- a) demand confirmation of the Bond provider by an Israeli bank; and
- b) periodically confirm the rating of the Bond provider; and in the event of an adverse change in the rating of such Bond provider - to demand that the Concessionaire replace the Bond with a new Bond, within no more than fourteen (14) days as of the receipt of the State's demand (the "**New Bond**"). The provider of the New Bond will be approved in advance by the State.

29.7.3 All Bonds will be subject to Israeli Law.

29.7.4 If a Bond is required to be valid for a period of more than three (3) years, such Bond may have a duration of not less than three (3) years, and the Concessionaire shall provide, at its expense, a substitute Bond valid for the remaining period, and meeting the requirements of this Section 29 (*Bonds*) or extend the term of the Bond and notify the State of such extension.

29.7.5 If, sixty (60) days prior to the expiration of a Bond, the Concessionaire has not completed all of its obligations to be performed during the time period secured by the respective Bond, or if the period for executing such obligations has been extended, the Concessionaire shall provide, at its own expense, a substitute Bond valid for the extended period and meeting the requirements of this Section 29 (*Bonds*) or extend the term of the Bond and notify the State of such extension.

29.7.6 If, for any reason a satisfactory Bond has not been provided or the term of the Bond has not been extended pursuant to this Section 29.7 (*Submission of Bonds*) by the Concessionaire, the State may forfeit funds from any existing outstanding Bond, and may further retain any such funds until the State has been satisfied that all obligations to be performed during the time period secured by the Bond have been completed or until a satisfactory substituting Bond has been furnished.

- 29.7.7 Subject to the State's prior written approval, the Concessionaire may submit up to four (4) bonds amounting to the total sum of any one of the Bonds, provided that each Bond will be issued in the form of the applicable Bond (the "**Bonds**"), except for the Amount of the Guarantee. For the removal of doubt it is hereby clarified that State's consent to the Concessionaire's request will not be construed or inferred as derogating from the State's rights pursuant to the Contract Documents, or as affecting in any way, limiting or imposing any obligation whatsoever, on the ability to forfeit on any or all of the Bonds issued herewith, and in particular shall not be construed as derogating from the State's rights pursuant to this Section 29.7 (*Submission of Bonds*) and 29.8 (*Forfeiture of Bonds*). In addition, such consent will not be deemed to obligate the State to forfeit on such Bonds together or pro-rata to their respective share of the amount of the applicable Bond.
- 29.7.8 Without derogating from the generality of the provisions of this Section 29 (*Bonds*), the Bonds may be submitted on behalf of the Concessionaire or by a Shareholder thereof.

29.8 Forfeiture of Bonds

- 29.8.1 The State shall be entitled to forfeit any Bond, Bonds or any part thereof in any of the following events:
- a) following the Concessionaire's breach of any of its obligations under this Concession Agreement;
 - b) in accordance with the provisions of Section 34.6 below (*Right to Setoff*);
 - c) upon the issuance of a Notice of Termination, in accordance with the provisions of Section 19 (*Termination by the State*) above;
 - d) in accordance with the provisions of Section 29.7 (*Submission of Bonds*).
- 29.8.2 Notwithstanding the foregoing (and excluding forfeiture of the Bonds following the issuance of a Notice of Termination or pursuant to the provisions of Section 29.7 (*Submission of Bonds*) above), seven (7) days prior to the forfeiture of each of the Bonds, the State will issue a written notice to the Concessionaire, specifying the breach and its intention to forfeit each such Bond. A copy of the said notice shall be furnished to the Senior Debt Finance Providers.
- 29.8.3 Immediately following forfeiture of the any of the following Bonds:
- a) The Early Works Bond
 - b) The Construction Performance Bond;
 - c) The Operation and Maintenance Bond;
 - d) The Final Maintenance Bond;
- the Concessionaire shall furnish the State with a new Bond in the amount of the forfeited Bond, *provided however*, that the total amount of renewals of each Bond will not exceed double the amount thereof. In

the event of a partial forfeit on a Bond, the Concessionaire shall furnish a supplementary Bond for the amount collected, provided that the total amount of the renewals of each such Bond will not exceed two (2) times the amount thereof.

For the removal of doubt, the examination whether the Concessionaire has exhausted its obligation to renew any Bond, shall be done regardless the number of separate Bonds the Concessionaire has provided, in accordance with the provisions of Section 29.7.7 above, for the fulfillment of its obligations to supply any of the Bonds.

Notwithstanding the aforesaid, the provisions of this Section 29.8.3 shall not apply with respect to any Bond, the Concessionaire has selected in Tender Form B (*The Bid Letter*) the option to provide the State in advance with double the amount set forth in this Section 29 (*Bonds*), in lieu of its obligation to renew the Bond, and with respect to which the Concessionaire has actually provided the State with a Bond in double the amount.

- 29.8.4 Should the Concessionaire fail to furnish a new or supplemental Bond under the circumstances that it is obliged to such renewal the State may consider such failure as an event of default and may collect on all other valid Bonds. In addition and without derogating from the foregoing, the State may withhold any sum due to the Concessionaire from the State, until the Concessionaire fully complies with his obligation to renew such Bond or until the State has a withheld sum in the amount of the required renewed Bonds.
- 29.8.5 Collection on a Bond or any part thereof under this Section 29.8 (*Forfeiture of Bonds*), shall not derogate from the State's right to terminate this Concession Agreement, nor from its right to any remedy accorded by Law or this Concession Agreement or relieve the Concessionaire of its liabilities and undertakings including its liability to indemnify under this Concession Agreement. Without derogating from the generality of the foregoing, with respect to the Performance Bond, an amount of thirty million NIS (NIS 30,000,000), shall be considered as liquidated damages incurred by the State as a result of breach by the Concessionaire during the Development Phase.

30. TAXATION

[THE PROVISIONS OF THIS SECTION WILL BE UPDATED ACCORDING TO THE PRE-RULING RECEIVED FROM THE TAX AUTHORITIES DURING THE TENDER PROCESS]

30.1 Tax Pre Rulings

- 30.1.1 The State is in the process of obtaining pre rulings from the Income Tax and Property Tax Commission with respect to this Project. Upon the receipt of such pre rulings (the "**Tax Pre Rulings**") they shall be attached hereto as Exhibit 6 (*Tax Pre-Rulings*) and constitute an integral part hereof.

- 30.1.2 Without derogating from the generality of any applicable Law, rule or regulation, the execution of this Concession Agreement by the Concessionaire shall be deemed to mean acceptance by the Concessionaire of all Tax Pre-Rulings provided with respect to the Project.

30.2 Value Added Tax

- 30.2.1 Value Added Tax shall be added to any payment made by the State to the Concessionaire under this Concession Agreement, to the extent applicable.
- 30.2.2 Value Added Tax will be added to any payment made by the Concessionaire to the State under this Concession Agreement and shall be borne by the Concessionaire, to the extent applicable.

30.3 Betterment Tax

Without derogating from the generality of Section 30.5 below (*General Provisions Relating to Taxation*), it is hereby clarified that any Betterment Tax imposed on the Concessionaire with respect to the Site (if any), and compensation under Section 197 to the Zoning and Planning Law 1965 (if any), will be borne by the State.

30.4 Mandatory Payments with respect to the Site

Subject to Section 30.5.2 herein below, The Concessionaire accepts any obligations for payment of mandatory payment with respect to the Site and with respect to any and all supervision fees and any other costs imposed on the Concessionaire by any Relevant Authority or utility owner, including, *inter alia*, any levies, fees, taxes, etc.

30.5 General Provisions Relating to Taxation

- 30.5.1 In the event that any of the Tax Pre Rulings are changed, and such change shall have a material adverse effect on the Concessionaire, the State shall, if requested by the Concessionaire and if the then existing circumstances so justify, support efforts of the Concessionaire to obtain the consent of the relevant authorities so that the changed pre-ruling/s shall remain unchanged.
- 30.5.2 Without derogating from the provisions of this Concession Agreement, it is hereby emphasized that any tax imposed under any Law, rule or regulation to the possessor of land with regards to the Site shall be borne by the Concessionaire. Notwithstanding the foregoing, and without derogating from the provisions of Section 17.1.4 (c) to this Concession Agreement, in the event that municipal tax (denoted in Hebrew as ארנונה) is imposed on the Concessionaire with respect to the carriageway of the Highway, then the Concessionaire shall be entitled to reimbursement of the costs incurred by it. The reimbursement payments shall be added by the Implementing Authority to the Actual State Periodic Payments, due to the Concessionaire, preceding the actual payment borne by the Concessionaire. For the removal of doubt it is hereby clarify that the municipal tax shall not constitute a Change or Discriminatory Action, and the provisions of Sections 17 (*Discriminatory Action*) or Appendix F (*Change Order*) of this Concession Agreement shall not apply with respect thereto.

- 30.5.3 Subject to the provisions of Section 30.1 (*Tax Pre Rulings*) above, any tax imposed under any Law on the Concessionaire in relation to the execution, performance or fulfillment of its obligations and undertakings pursuant to this Concession Agreement, or in connection with the receipt or exercise of any right granted to the Concessionaire herewith, and any tax which is imposed under any law, rule or regulation to the Site or the Project or any part thereof shall apply to the Concessionaire and shall be paid by the Concessionaire in accordance with the provisions of the applicable Law.
- 30.5.4 For the purpose of this Section 30 (*Taxation*), the term "tax" shall include levies, fees and other compulsory payments.

31. INTELLECTUAL PROPERTY

- 31.1 The State shall have unlimited irrevocable ownership and the exclusive right of use with respect to all documents, drawings (including plans, elevations, sections, details and diagrams), specifications, records, plans, schedules, samples, shop drawings and other documents prepared by or on behalf of the Concessionaire specifically for the Project and all intellectual property rights therein.
- 31.2 All copies of the foregoing, in any form or media, including without limitation, written, graphic or other tangible form, in magnetic, digital and electronic media, shall be delivered to the State promptly upon its creation.
- 31.3 The Concessionaire shall ensure at its own expense, that the State will have, a paid-up, unlimited, irrevocable, non-exclusive licenses to use, without prior conditions, both during the Contract Period and thereafter without limitation as to duration solely for the purposes of the Project or in connection therewith, of any and all intellectual property, including without limitation know-how, patent rights and copyrights, owned, in the possession of, or used by the Concessionaire or by any of its contractors or by any entity selling products or performing services in connection with the Project including, without limitation, the Toll System and any component necessary for the proper operation thereof.
- 31.4 The State shall be entitled to use any information related to the Project for the purpose of the further development of toll roads in general, and specifically electronic toll roads and future sections of Cross Israel Highway, for ensuring inter-connectivity between the Project and other roads and toll roads in the State, as well as decision making related thereto, the setting of policy or any other activities or decisions in the State's capacity as a sovereign authority.
- 31.5 The Concessionaire declares and warrants that the Project, including the execution of the Design, Construction and Operation of the Project will not involve any infringement of any intellectual property right of any third party, including without limitation, patents, designs, trade secrets, knowhow and copyrights. Should any such infringement be alleged, the Concessionaire shall do whatever is necessary to obtain, for its account, a license covering the Project.
- 31.6 The Concessionaire, on its own behalf and on behalf of its employees, Sub-Contractors and suppliers, their affiliates and any other Person, acting on their behalf, hereby agrees and warrants that it shall not seek, obtain or enforce injunctive relief of any type, based in whole or in part on Intellectual Property

rights, against the State or any person or other entity acting on its behalf, in connection with toll road related projects in the State.

The foregoing shall not operate to prevent the Concessionaire, on its own behalf and on behalf of its employees, Sub-Contractors and suppliers, their affiliates and any other person acting on their behalf, from seeking, obtaining or enforcing any right to receive payment based in whole or in part on the aforesaid Intellectual Property rights from the State or any person or other entity acting on its behalf, in respect of toll road related projects in the State, other than the Project and aspects of other toll road related projects which are required for efficient interconnectivity of the various toll road projects with the Project, the possibility of back-up and uniformity of systems, including without limitation, tolling system, traffic and other monitoring equipment and systems, fire protection systems and other systems related to any of the aforesaid.

The Concessionaire shall ensure that provisions reflecting the aforesaid shall be incorporated in all Project Agreements.

- 31.7 The Concessionaire shall hold harmless and indemnify the State from and against all claims, proceedings, damages, costs, charges and expenses, including all legal expenses for or on account of alleged infringement of any Intellectual Property Rights, including, without limitation, patents, designs, trademarks, copyright, knowhow in respect of the Project and the Design, Construction and Operation thereof. Except where otherwise specified, the Concessionaire shall pay all the royalties, damages and compensation, in respect of any use of any patent rights, design patent, trademarks or trade names or other intellectual or industrial property rights in respect of the Project and the Construction thereof.

32. DISPUTE RESOLUTION

- 32.1 The provisions of the Dispute Resolution under this Section 32 (*Dispute Resolution*) and under Appendix K (*Dispute Resolution*) are subject to the approval of the Ministry of Justice and shall be provided to the Bidders during the Tender Process.
- 32.2 Reference is made to Appendix K (*Dispute Resolution*) to this Concession Agreement.
- 32.3 The provisions of this Section 32 (*Dispute Resolution*) and under Appendix K (*Dispute Resolution*) will apply only after the Financial Closing.

33. GOVERNING LAW AND JURISDICTION

33.1 Governing Law

This Concession Agreement, its interpretation and the rights and obligations of the Parties hereunder and any matter arising in connection with the above shall be governed by the Laws of the State of Israel.

33.2 Jurisdiction

Without derogating from Section 32 (*Dispute Resolution*) above, the competent court of Jerusalem shall have exclusive jurisdiction with regard to any matter relating to the Contract Documents.

34. MISCELLANEOUS

34.1 Authorization to Commit

The signatories on this Concession Agreement for and on behalf of the State, hereby declare that the expenses and authorizations to commit to the execution of the Concession Agreement, with the exception of any obligations that are pursuant to Section 6(c) of the Budget Foundations Law (1985), were budgeted in the current annual Budget Law in accordance with _____ [*to be completed upon the Signature Date*].

34.2 Business Day

Whenever a date which is not a bank business day or a Work Day, is set for carrying out a payment in accordance with the Concession Agreement, the time of executing the payment shall be postponed to the first Work Day after such date.

34.3 Date of Payment Execution

The date for executing any payment in accordance with the Concession Agreement, and for which no specific date has been set within the Concession Agreement, shall be 45 days from the time grounds for payment have been established, subject to the approval of the State.

34.4 Penalty Interest

Tardiness in the execution of payments which are not under dispute or for which there is an obligation to execute payment once such dispute has been settled, shall attain for the Concessionaire or the State with a right for the payment of penalty interest, at the rate of the Accountant General Interest, due to any delay in executing the payment.

34.5 Agreed Compensation

The agreed compensations which have been fixed in the Concession Agreement in favor of the State are compensations which have been evaluated in advance by the Concessionaire after considering the expected damages to the State due to an event generating the payment of the agreed compensation.

34.6 Right to Setoff

Without prejudice to its rights under this Concession Agreement, any of the other Contract Documents and the Law, the State shall be entitled to setoff from any amount payable to the Concessionaire under this Concession Agreement and under any of the other Contract Documents.

34.7 State Approvals and Authorizations

34.7.1 Any reference under this Concession Agreement to any approval or consent of the State, shall be read at all times as 'prior written' approval

or consent. In addition the use of the words “the State shall” anywhere in the Contract Documents shall be interpreted at all times as “the State may at its sole discretion”. Where the term “the State shall approve” is used in the Contract Documents, such approval may be provided, denied or conditioned, at the State's sole discretion. At any time the Concessionaire applies to the State with a request for Approval, it shall specifically refer within its application to the specific section in this Concession Agreement or else where in the Contract Documents according to which the Approval is requested. In addition, the Concessionaire shall specifically state within its application the timeframe allocated in this Concession Agreement or else where in the Contract Document for the State to respond. An application which shall not include the aforesaid details shall not be construed as a formal request and the provisions with respect to the State's response shall not apply with respect to such application. Furthermore, the Concessionaire shall not make any claim, suit or action against the State with respect to the exercise of its discretion, or its implications, whether technical, legal, financial, or otherwise in connection with decisions made under this Concession Agreement.

- 34.7.2 The receipt of authorization or Approval from the State for actions of the Concessionaire in accordance with the Concession Agreement shall not derogate the Concessionaire’s responsibility in accordance with the Concession Agreement or in accordance with the Law.
- 34.7.3 The authorization of the State for actions of the Concessionaire in accordance with the Concession Agreement shall not be interpreted as a waiver of or rendering redundant the requirement for authorization of the State in regard to similar future actions of the Concessionaire.
- 34.7.4 The Concessionaire shall not change any document approved by the State without first receiving State authorization for such change.

34.8 Language

The binding version of this Concession Agreement shall be solely in English. Any correspondence between the State and the Concessionaire, as well as meetings and discussions between the State and the Concessionaire shall solely be in English, unless the State determines otherwise.

34.9 Rights and Remedies

The obligations and commitments imposed in accordance with the Concession Agreement and the rights and remedies set forth herein, shall be in addition to and not a limitation on the obligations, commitments, rights and remedies imposed or establish by Law, unless such right or obligation, or right to remedy has specifically been limited as such in the Concession Agreement.

34.10 Linkage

Unless otherwise specified, all of the sums stated in NIS in the Contract Documents (including the sums specified in Section 29 (*Bonds*)) shall be linked to the CPI from the Base CPI.

34.11 General Provisions Relating to Remedies

34.11.1 **Duty to Mitigate.** The Concessionaire's entitlement for remedies from the State pursuant to the provisions of this Concession Agreement, is subject to the Concessionaire's duty to mitigate (and cause any other Person on its behalf to mitigate) any delays and any increase of costs.

34.11.2 **General Provisions Relating to Delay.** Unless otherwise specifically detailed in the Concession Agreement, the period of a Delay or FM Delay, will not include any period of delay to Project (or any part thereof), which would have occurred regardless of the applicable Delay or FM Delay.

34.11.3 **No Double Compensation.** The Concessionaire shall not be doubly compensated for components which are included under more than one of the various remedies, available to the Concessionaire pursuant to the applicable provisions of the Concession Agreement, or in one of the provisions of the Concession Agreement.

Should the State determine, in its sole discretion, that any of the compensation mechanisms set forth herein may entitle the Concessionaire to multiple compensation for a certain cause or event, whether in full or in part, the State shall be entitled, subject to providing detailed reasoning thereto, to deduct any part of such compensation in order to prevent any multiple compensation. Should the Concessionaire wish to dispute such reasoned decision of the State, it shall be entitled to do so in accordance with Section 32 herein (*Dispute Resolution*).

34.11.4 **Monetary Deductions and Liquidated Damages.** In the event that in accordance with the provisions of the Concession Agreement, the Concessionaire is liable with respect to the same event to monetary deductions and to Liquidated Damages, then the Concessionaire shall not be liable to multiple deductions and Liquidated Damages, but rather shall be only liable to the higher of them.

34.11.5 **Limitation of Remedies under the Concession Agreement.** The remedies provided pursuant to the various provisions of the Concession Agreement, shall be exhaustive and in full satisfaction of all the Concessionaire's claims with respect to the applicable claim, and other than explicitly provided in this Concession Agreement, the Concessionaire shall not be entitled to any other relief, remedy, compensation or extensions in connection therewith from the State, the Implementing Authority or anyone on their behalf.

34.11.6 **Residual Compensation.** The following shall be reduced from monetary compensation determined pursuant to this Concession Agreement:

- a) Any entitlement to compensation under Law; and
- b) Any entitlement to insurance proceeds (including in accordance with the terms of the insurance coverage under Law (including the Property Tax and Compensation Fund Law 1961)).

34.12 Execution of Payments

In the event of a dispute regarding the amount which the Concessionaire or the State is entitled to receive from the other Party, the sum which is not under dispute shall be paid within forty five (45) days of the date when that amount has been confirmed, and non-payment of the increment until such time as the dispute has been resolved shall not be interpreted as breach of the obligation to pay the increment. The date of payment of the increment shall be within forty five (45) days of the day when the dispute has been settled in accordance with the provisions of Appendix K (*Dispute Resolution*).

34.13 Commitment means Obligation

Wherever the Concession Agreement uses language of responsibility or commitment regarding the Concessionaire, the phrase shall have the same validity and meaning as of when language of obligation is being used. The imposition of an obligation on the Concessionaire in the Concession Agreement means the Concessionaire will bear all financial expenses involved in the execution of the obligation.

34.14 Dates and Waivers

- 34.14.1 In any event where a Party to the Concession Agreement shall not insist on the exact and entire fulfillment of a provision in the Concession Agreement, or not implement a right or remedy which they are entitled to in accordance with the Concession Agreement, such action shall not be interpreted as a waiver regarding the specific issue or as a waiver regarding future breaches.
- 34.14.2 No provision in the Concession Agreement shall be considered as having been waived by one of the Parties, unless the waiver is specific, in writing and signed by the waiving Party. If such waiver has been exercised the waiver shall not be interpreted as a waiver concerning similar or different issues unless it is so stated explicitly.
- 34.14.3 A payment that is made by one Party to the other of any sum such Party is entitled to receive pursuant to the Concession Agreement, whilst being aware of a breach of the Concession Agreement by the Party receiving such payment, shall not be interpreted as a waiver of remedies which a Party is entitled to due to the aforementioned breach, or as creating any preclusion by the paying Party from seeking remedy for the said breach.

34.15 Confidentiality

Information and data which the Concessionaire shall receive as a result of this Concession Agreement or as a result of the performance thereof shall be maintained by the Concessionaire in confidence and shall not be used by the Concessionaire for any purpose other than the performance of this Concession Agreement or be disclosed by it to any third party except on a strictly "need to know" basis. This obligation of the Concessionaire shall not apply or shall cease to apply, as the case may be, to information which:

- 34.15.1 is in the public domain at the Signature Date as can be entered through publications; or

34.15.2 subsequently becomes in the public domain through no breach of the Concessionaire or its obligations hereunder.

34.16 Severability of Provisions

If any part or parts of this Concession Agreement shall be declared or held invalid or unenforceable by competent courts, the other parts hereof shall not thereby be affected or impaired, but shall remain in full force and effect. Following any such holding, the Parties shall negotiate in good faith new provisions to restore, as best as possible, the original intent and effect of this Concession Agreement.

34.17 Relationship of the Parties

The Concessionaire is an independent Contractor and nothing contained in this Concession Agreement shall be construed as constituting any relationship with the State other than that of Independent Contractors, nor will it be construed as creating any relationship whatsoever between the State and any employees, contractors, representatives or agents of the Concessionaire.

34.18 Third Party Beneficiary

This Concession Agreement is intended for the sole and exclusive benefit of the parties hereto and the State and, to the extent expressly set forth in this Concession Agreement, the Senior Debt Finance Providers, and shall not create a contractual relationship with, or a cause of action in favor of, any other third party.

34.19 Amendment

This Concession Agreement may only be amended or modified by a written instrument signed by both Parties. The requirement for a written instrument is a material and essential requirement, and any amendments or modifications to the Concession Agreement without a written instrument signed by both Parties are null and void.

34.20 Notices to the Concessionaire

34.20.1 Any notice or request required or permitted to be given under this Concession Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, e-mail, facsimile to the Party to which it is required or permitted to be given at the Party's address as specified below or at such other address as such Party shall have designated by notice to the Party giving such notice or making such request.

34.20.2 Any notice sent by post addressed to the Party at the address given below or subsequently designated by notice by the said Party, shall be deemed to have been received by the addressee seven (7) days after posting, inclusive of the date of posting.

34.20.3 Furthermore, any notices sent by the Concessionaire to the State, which have not been delivered at hand or by registered mail, shall not be deemed to have been received by the State unless the State has acknowledged its receipt by written notice to the Concessionaire,

34.20.4 The foregoing shall not derogate from the Concessionaire's obligation to ascertain the State's receipt of any and all of its notices.

For The State

For the Concessionaire

The Implementing Authority on
behalf of the State

E-mail Address:

Facsimile No:

With a copy to:

E-mail Address:

Facsimile No:

A communication or notice sent by registered mail addressed aforesaid shall be deemed to have been received by the addressee seven (7) days after posting thereof inclusive of the day of posting.

34.21 Notices to the Senior Debt Finance Providers

In the event the State is obligated pursuant to the provisions of the Concession Agreement to give notice to the Senior Debt Finance Providers, such communication shall be carried out through the Senior Agent, and any act made towards it or by it, as the case may be, shall be considered, for purposes of this Agreement, as an act made towards or by each of the Senior Debt Finance Providers.

IN WITNESS THEREOF the parties have executed this Concession Agreement on the day and date first herein written:

Signed for and on behalf of

Signed for and on behalf of

The State of Israel
Accountant General

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Senior Deputy to the Accountant General

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____