

APPENDIX K

DISPUTE RESOLUTION

[The Provisions of this Appendix and the Dispute Resolution procedures set forth herein are all subject to the approval of the Ministry of Justice]

1. DEFINITIONS

All terms used in this Appendix shall have the definitions ascribed to them herein or in Appendix A (*Definitions*).

2. AMICABLE SETTLEMENT

Any controversies or claims including breach, termination or other claims relating to validity, arising out of, in relation to, or in connection with this Concession Agreement, shall be settled amicably between the Parties, by means of consultation or negotiation. Such amicable attempt to settle any dispute or difference shall be deemed to have failed as soon as either Party so notifies the other in writing.

3. THE INDEPENDENT EXPERT

3.1. The Independent Expert; General

3.1.1. Any controversies or claims which are not resolved amicably with respect to the Construction Phase, including, *inter alia*, controversies with respect to (i) whether any aspect of the Construction Works undertaken at the direction of the State constitutes Works, which are not part of the Concessionaire's scope of work; (ii) whether the performance of any additional Work is necessary in order for the Project to be constructed or operated in a safe manner or is otherwise required in order to remedy a breach, act, omission or other failure of the Concessionaire to comply with the provisions of this Concession Agreement; (iii) the extent of the Direct Cost and any other payment the Concessionaire is entitled to pursuant to the various provisions of the Concession Agreement; or (iv) the additional time allowable to complete any aspect of the Construction; shall be referred to and resolved by the Independent Expert.

3.1.2. Subject to the provisions of Section 3.1.3 below, decisions of the Independent Expert shall be binding on the Parties.

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- 3.1.3. Either Party shall be entitled to appeal on a decision of the Independent Expert to the Arbitrators within thirty (30) days following the issuance thereof.
- 3.1.4. To the extent that disputes to be resolved by the Arbitrators in accordance with the provisions of Section 4 (*Arbitration*) involve any of the matters described in Section 3 (*The Independent Expert*), or in the event of an appeal in accordance with the provision of Section 3.1.3, the Arbitrators may request the Independent Expert to provide evidence supporting its determinations (including protocols and statements submitted to the Independent Expert).
- 3.1.5. The Independent Expert shall not be entitled to grant temporary or mandatory injunctive relief, but shall be entitled to issue time extensions and order all other measures which it might consider necessary.

3.2. Appointment

- 3.2.1. No later than sixty (60) days prior to the Financial Closing, the Parties shall mutually appoint the Independent Expert ("**Independent Expert**"), by signing the Letter of Appointment attached to the Concession Agreement as Appendix K2 (*Letter of Appointment of the Independent Expert*). The Independent Expert shall be a civil engineer registered in Israel with, at least, fifteen (15) years of experience in the engineering field.
- 3.2.2. A list containing the names of three candidates from which the Independent Expert will be selected will be furnished by each Party to the other no later than ninety (90) days prior to the Financial Closing. Within twenty-one (21) days after the receipt of the said list, each Party shall inform the other of the name of the candidate acceptable to it.
- 3.2.3. Should the Parties fail to agree on the identity of the Independent Expert for the within the time period specified in sub-Section 3.2.2 above, the Independent Expert shall be appointed by the Chairman.
- 3.2.4. Before the Independent Expert is appointed, the prospective Independent Expert shall submit a complete disclosure statement for the approval of the Parties. Each statement shall include a resume of experience and a declaration describing all past, present and anticipated or planned future relationships of the prospective Independent Expert to the Project and with all parties involved in this Concession Agreement and confirming the absence of any conflict of interest.
- 3.2.5. The Independent Expert shall hold his position for a term of five (5) years ("**Tenure**"). No later than sixty (60) days prior to the end of the Tenure of the Independent Expert, the Parties may mutually agree to renew the Tenure of the Independent Expert for an additional Tenure. Should the Parties fail to agree upon the renewal

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of the Tenure of the Independent Expert, his replacement shall be appointed in a manner consistent with the provisions of this Appendix K (*Dispute Resolution*) and of the Concession Agreement.

3.3. Conduct of Hearings

3.3.1. This Section 3.3 (*Conduct of Hearings*) shall be valid during the Construction Period solely.

3.3.2. The Independent Expert shall operate under the arbitration rules of procedure specified in the Arbitration Law, 1968. All proceedings held before the Independent Expert shall be subject to the provisions of the Concession Agreement and substantive laws of the State of Israel (but shall not be bound by all other laws of evidence and procedure).

3.3.3. Claims

- a. All claims arising out of a single act or omission or set of circumstances shall be considered a single claim ("**Claim**"). All damages and time extensions arising out of that act or omission or set of circumstances shall be considered as a single Claim, and all such matters existing and known, but not included in the stated Claim within a period of ten (10) days after the initial filing, shall be deemed waived.
- b. Before a Party shall have the right to submit a dispute to the Independent Expert, it must first comply with the procedures set forth in this Section 3.3.3 (*Conduct of Hearing - Claims*).
- c. If a Party objects to any decision, action or omission of the other Party ("**Protesting Party**"), it may file a written protest with the other Party, stating clearly the basis for the objection.
- d. The other Party will consider the written protest and make its decision on the basis of the pertinent provisions of the Contract Documents, together with the facts and circumstances leading to the dispute ("**Decision**").
- e. In the event that the Protesting Party does not concur with the Decision it may submit a Claim to the Independent Expert in accordance with the provisions of this Appendix K (*Dispute Resolution*) and the Concession Agreement, provided however that in the event the Decision relates to the Construction Phase, the Concessionaire shall be entitled to submit such matter to the Independent Expert solely within six (6) months from the receipt of the respective Decision. This section 3.3.3 (*Conduct of Hearing - Claims*) shall be deemed as a separate written agreement between the Parties, for the purpose of Section 19 of the Statute of Limitation, 1958.

This Appendix is pending approval of the Ministry of Justice

- f. The Claim shall be submitted by delivery of written notice, describing the dispute to the other Party and to the Independent Expert.
- g. The Independent Expert shall commence proceedings within fourteen (14) days after receiving the Claim, however, a different date may be set by the Independent Expert, taking into consideration the particular circumstances and the time required to prepare detailed documentation.

3.3.4. The Award

The decision shall be issued by the Independent Expert within four (4) weeks following completion of the hearing or other procedure conducted in accordance with the provisions of this section. The Independent Expert shall be required to explain the reasons for his decisions in writing and issue a copy to all participating Parties.

3.4. Termination of Tenure

- 3.4.1. The engagement of the Independent Expert may be terminated at any point in time by mutual agreement of the Parties and following the issuance of a thirty (30) days prior written notice by the Parties to the Independent Expert, or by virtue of the Independent Expert tendering its resignation ("**Termination of Independent Expert Tenure**").
- 3.4.2. In the event of the death or resignation of the Independent Expert during the course of the proceedings, a replacement for the Independent Expert shall be appointed or selected pursuant to the procedures provided for in this Appendix K (*Dispute Resolution*).
- 3.4.3. In the event that the Independent Expert fails to act or is *de-jure* or *de-facto* incapable of performing his functions, the procedure specified in Sections 3.4 (*Termination of Tenure*), and Sections 3.2 (*Appointment*) shall apply.
- 3.4.4. Replacement of the Independent Expert
 - a. The replacement for the Independent Expert shall be appointed by mutual agreement of the Parties no later than twenty-one (21) days following the Termination of Independent Expert Tenure. Should the Parties fail to agree upon the appointment of the replacement following the Termination of Independent Expert Tenure, such replacement shall be appointed in a manner consistent with the provisions of this Appendix K (*Dispute Resolution*) and of the Concession Agreement.
 - b. If, under the provision of this sub-Section 3.4.4 (*Replacement of the Independent Expert*) the Independent Expert is replaced, the replacement Independent Expert may decide if the hearing held previously shall be repeated before him, whether fully or partially.

4. ARBITRATION

4.1. Arbitration; General

- 4.1.1. All disputes, controversies or claims including breach, termination or other claims relating to validity, arising out of, in relation to, or in connection with the Concession Agreement, which are not resolved amicably, or referred for resolution by the Independent Expert in accordance with the provisions of Section 3 (*The Independent Expert*), shall be resolved by the Arbitrators.
- 4.1.2. In the event the Parties disagree whether the issue in dispute relates to the Construction Phase and should be referred to the Independent Expert or whether the dispute relates to other matters, and should be referred to the Arbitrators, such dispute as to the nature of the matter in dispute shall be referred to the Chairman alone, who shall be entitled to decide to which forum such dispute shall be referred to.
- 4.1.3. Without derogating from any other authority granted to the Arbitrators pursuant to this Appendix K (*Dispute Resolution*) or pursuant to the Concession Agreement, the Arbitrators are authorized to take such action and make such determinations as are contemplated by this Concession Agreement; without derogating from the generality of the foregoing, the Arbitrators shall be entitled to order the payment of compensation and set the amounts thereof in accordance with the provisions of the Concession Agreement.

4.2. Appointment

- 4.2.1. The Arbitrators shall be a panel of three (3): Chairman, engineer and economist. The Arbitrators shall be appointed by signing the Letter of Appointment attached to the Concession Agreement as Appendix K2 (*Letter of Appointment of the Arbitrators*).
Prior to the Financial Closing, the Parties shall appoint the Chairman of the Arbitrators. The Chairman shall be a former Israeli District Court Judge ("**Chairman**").
- 4.2.2. A list containing the names of three (3) candidates from which the Chairman will be selected, will be furnished by each Party to the other, no later than ninety (90) days prior to the Financial Closing. Within fourteen (14) days following receipt of the said list, each Party will inform the other of the name of the candidate acceptable to it.
- 4.2.3. Should the Parties fail to agree on the identity of the Chairman within the time period specified in Section 4.2.2, the Parties shall refer the matter to the President of the District Court in Jerusalem who shall nominate the Chairman.
- 4.2.4. A list containing the names of at least three (3) engineers and three (3) economists from which the other members of the Arbitration

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panel will be selected will be furnished by each Party to the other, following the appointment of the Chairman, and in any event no later than fourteen (14) days thereafter. Within twenty-one (21) days following receipt of the said list, each Party will inform the other of the name of one engineer and one economist acceptable to it.

- a. The economist shall be: (i) with at least a bachelor's degree in economics or in accounting or in business administration, and (ii) experienced in the economic field ("**Economist**").
- b. The engineer shall be a civil engineer registered in Israel with, at least, fifteen (15) years of experience in the engineering field ("**Engineer**").

4.2.5. Should the Parties fail to agree on the identity of the Engineer or the Economist within the time period specified in Section 4.2.4, the Parties shall refer the matter to the President of the District Court in Jerusalem who shall nominate such members.

4.2.6. Before the Arbitrators are appointed, the prospective Arbitrators shall submit a complete disclosure statement for the approval of the Parties. Each statement shall include a resume of experience and a declaration describing all past, present and anticipated or planned future relationships of prospective Arbitrators to the Project and with all parties involved in this Concession Agreement and confirming the absence of any conflict of interest.

4.2.7. All Arbitrators shall be Israeli citizens or Israeli residents.

4.2.8. Each Arbitrator shall hold his position for a term of five (5) years ("**Tenure**"). No later than sixty (60) days prior to the end of the Tenure of each Arbitrator, the Parties may mutually agree to renew the Tenure of each Arbitrator for an additional Tenure. Should the Parties fail to agree upon the renewal of the Tenure of any Arbitrator, his replacement shall be appointed in a manner consistent with the provisions of this Concession Agreement.

4.3. Conduct of Hearings

4.3.1. Substantive Law

- a. The Arbitrators shall operate under the arbitration rules of procedure specified in the Arbitration Law, 1968.
- b. The Arbitration proceedings shall be subject to the provisions of the Concession Agreement and to the substantive laws of the State of Israel (but shall not be bound by all other laws of evidence and procedure).
- c. The parties to a dispute shall be entitled to apply to the competent court for the rescission of the decision of the Arbitrators solely for the existence of any of the causes listed in the Arbitration Law, 1968, for revocation of an

This Appendix is pending approval of the Ministry of Justice

Arbitration ruling, including for the cause listed in Section 29B(a) of the Arbitration Law, 1968 (amendment no. 2).

4.3.2. Claims

- a. All claims arising out of a single act or omission or set of circumstances shall be considered a single claim ("**Claim**"). All damages and time extensions arising out of that act or omission or set of circumstances shall be considered as a single Claim, and all such matters existing and known, but not included in the stated Claim within a period of ten (10) days after the initial filing, shall be deemed waived.
- b. Before a Party shall have the right to submit a dispute to the Arbitrators, it must first comply with the procedures set forth in this Section 4.3.2 (*Conduct of Hearing - Claims*).
- c. If a Party objects to any decision, action or omission of the other Party ("**Protesting Party**"), it may file a written protest with the other Party stating clearly the basis for the objection, provided however, that in the event that the decision relates to the Construction Phase such protest should be submitted within thirty (30) days after the Protesting Party first becomes aware of the decision, action or omission.
- d. The other Party will consider the written protest and make its decision on the basis of the pertinent provisions of the Contract Documents, together with the facts and circumstances leading to the dispute ("**Decision**"). In the event that the decision relates to the Construction Phase, the Decision will be furnished in writing to the Protesting Party within thirty (30) days after receipt of the Protesting Party's written protest.
- e. In the event that the Protesting Party does not concur with the Decision it may submit a Claim to the Arbitrators in accordance with the provisions of this Appendix K (*Dispute Resolution*) and the Concession Agreement, provided however that in the event the Decision relates to the Construction Phase the Concessionaire shall be entitled to submit such matter to the Arbitrators solely within six (6) months as of the date of the Decision. This section 4.3.2 (*Conduct of Hearing – Claims*) shall be deemed as a separate written agreement between the Parties, for the purpose of Section 19 of the Statute of Limitation, 1958.
- f. The Claim shall be submitted by delivery of written notice, describing the dispute to the other Party and to the Arbitrators.
- g. The Arbitrators shall commence proceedings within fourteen (14) days after receiving the Claim, however, a different date may be set by the Arbitrators, taking into consideration the

This Appendix is pending approval of the Ministry of Justice

particular circumstances and the time required to prepare detailed documentation.

- h. Following an agreement by the Parties, or in accordance with a specific instruction of the Concession Agreement, a specific issue may be resolved by the Chairman alone, who shall be entitled to consult with the other Arbitrators.

4.3.3. The Award

- a. The decision shall be issued by the Arbitrators within four (4) weeks following completion of the hearing or other procedure conducted in accordance with the provisions of this section. The Arbitrators shall be required to explain the reasons for their decisions in writing and issue a copy to all participating Parties.
- b. When there are three Arbitrators, any award or decision of the Arbitrators shall be made by a majority of the Arbitrators. In case there is no majority opinion, the Chairman's opinion shall prevail.
- c. Question with respect to procedure, and in the event the Claim is referred to the Chairman alone pursuant to the provisions of Sections 4.3.2h. and with respect to disputes according to Section 4.1.2, the Chairman shall decide alone.

4.4. Termination of Tenure

- 4.4.1. The Tenure of each Arbitrator may be terminated at any point in time by mutual agreement of the Parties and following the issuance of a thirty (30) days prior written notice by the Parties to such member, or by virtue of such member tendering his resignation ("**Termination of Tenure**").
- 4.4.2. In the event of the death or resignation of a member of the Arbitrators (in this Section 4.4.2 the "**Arbitrator**") during the course of the arbitral proceedings, a Substitute Member shall be appointed or selected pursuant to the procedures provided for in this Appendix K (*Dispute Resolution*), applicable to the appointment or selection of the Arbitrator being replaced.
- 4.4.3. In the event that an Arbitrator fails to act or is *de-jure* or *de-facto* incapable of performing his functions, the procedure specified in Sections 4.4 (*Termination of Tenure*) and Section 4.2 (*Appointment*) shall apply.
- 4.4.4. Replacement of the Arbitrators
 - a. The replacement for such member shall be appointed by mutual agreement of the Parties no later than twenty-one (21) days following the Termination of Tenure. Should the Parties fail to agree upon the appointment of the replacement following the Termination of Tenure, such replacement shall

This Appendix is pending approval of the Ministry of Justice

be appointed in a manner consistent with the provisions of this Appendix K (*Dispute Resolution*) and of the Concession Agreement.

- b. If the Chairman is replaced, any hearing held previously shall be repeated; if any other Arbitrator is replaced, such prior hearing may be repeated, fully or partially, at the discretion of the Arbitrators.

5. GENERAL PROVISIONS RELATING TO THE RESOLUTION OF DISPUTES

5.1. Authorization of the Dispute Resolution Mechanism - Exclusions

Notwithstanding the provisions of Sections 3.1 (*The Independent Expert; General*) and 4.1 (*Arbitration; General*), the following issues shall be referred to the competent court and not to the Dispute Resolution Mechanism:

- 5.1.1. Any dispute relating to the execution of the State's administrative right to terminate the Concession Agreement for reasons of public interest, as established under Law (the above shall not derogate from any of the Parties' other rights and obligations under the Concession Agreement);
- 5.1.2. All disputes, controversies or claims relating to the execution of any Governmental Authority vested to the State in accordance with the Law; however:
 - a. Disputes relating to remedies under Section 17 (Discriminatory Action) to the Concession Agreement; or
 - b. Disputes relating to remedies under Appendix F (Change order) to the Concession;

shall be referred to the Dispute Resolution Mechanism.

For the purpose of this Section 5.1, the term Governmental Authority shall include, *inter alia*, administrative decisions of Relevant Authorities and any alleged governmental promises.

5.2. Approval of the Attorney General

In accordance with Section 5 to Attorney General Guideline no. 6.1205 regarding the resolution of disputes to which the State is a party by means of arbitration, the foregoing shall apply:

- 5.2.1. The referral of disputes to arbitration in accordance with a contractual provision requires the approval of the relevant Ministry's Legal Advisor, following consultation with the State Attorney.
- 5.2.2. As part of its decision and as a pre-condition for its approval, the Ministry's Legal Advisor shall determine whether the relevant

This Appendix is pending approval of the Ministry of Justice

dispute is subject to the contractual arbitration mechanism. The foregoing shall not derogate from the Concessionaire's right to claim that the dispute is subject to the contractual arbitration mechanism, and it may refer such claim to any competent court or tribunal.

5.3. Continuing Performance

At all times during the course of the dispute resolution process, the Parties shall continue performing their obligations under this Concession Agreement in a diligent manner and without delay, and shall be subject to all applicable provisions of this Concession Agreement.

5.4. Cooperation

All parties to any dispute resolution procedures held in accordance with the provisions of this Concession Agreement shall cooperate with the Independent Expert, the Arbitrators and with each other, in order to conclude all disputes in an efficient and expeditious manner.

5.5. Allocation of Costs

5.5.1. The Parties shall initially share equally in all costs and expenses incurred by the Arbitrators or by the Independent Expert pursuant to the fulfillment of their obligations set forth herein.

However, the Arbitrators and the Independent Expert may award one of the Parties its expenses, including, without limitation, reasonable attorney's fees, expert fees, which expenses shall be borne by the losing Party.

If either Party refuses to pay its share of the costs of the proceedings at the time required, then the other Party may do so, in which event that Party will be entitled to recover the amount due, with interest at the maximum rate permitted by law, even if that Party is the prevailing Party. The Arbitrators and the Independent Expert shall include such costs in their final decision.

5.5.2. Upon submission of a Claim to the Dispute Resolution Panel and as a condition precedent to the hearing thereof, the Protesting Party shall submit to the Chairman of the Dispute Resolution Panel an unconditional bank guarantee, in favor of the counterparty, in an amount equal to 1% of the amount claimed (the "Guaranteed Amount"). Notwithstanding the foregoing, the State shall be entitled to issue a letter of undertaking with respect to the Guaranteed Amount, in lieu of a guarantee.

5.5.3. The guarantee or letter of undertaking referred to in Section 5.5.2 above shall be held by the Chairman and may serve for covering the expenses incurred in relation to the dispute resolution process of such Claim. The guarantee or letter of undertaking shall be returned to the protesting party, transferred to the counterparty or to the Dispute Resolution Panel, in whole or in part, all as shall be determined by the Dispute Resolution Panel, in accordance with its

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decision regarding the allocation of the costs incurred in relation to such Claim, as set forth herein above.

5.6. Seat of Arbitration

The Arbitration proceedings and the proceedings before the Independent Expert shall take place in Israel.