

This Appendix is pending approval of the Ministry of Justice

APPENDIX K1

Letter of Appointment for the Independent Expert

Date: _____

To: *[Insert name of Independent Expert]*

Letter of Appointment

You are hereby appointed by the undersigned as the Independent Expert (hereinafter in this Letter of Appointment: the “**Expert**”) as per the Concession Agreement, signed between the State of Israel (hereinafter: the “**State**”) and _____ *[insert name of Concessionaire]* (hereinafter: the “**Concessionaire**”; the State and the Concessionaire are hereinafter collectively referred to as the “**Parties**” and individually as the “**Party**”), as follows:

(All capitalized terms used in this Letter of Appointment, and not defined or modified herein, shall have the same meaning as set forth in the Concession Agreement.)

1. Term of Appointment

Your appointment shall come into effect on _____ *[insert date]* for a period of five (5) years or as may be renewed or earlier terminated in accordance with the provisions of Appendix **K** (*Dispute Resolution*) to the Concession Agreement, which is attached hereto and forms an integral part of this letter of appointment (hereinafter: “**Tenure**”).

2. Disputes between the Parties

2.1. You are hereby entitled to hear any matter referred to you during the Term of Appointment in accordance with the provisions of the Concession Agreement, even if proceedings continue after the end of the Term of Appointment.

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- 2.2. The procedures, schedules and conduct of hearing of disputes and the decisions of the Independent Expert shall be performed by you in accordance with the provisions of the Concession Agreement and Appendix K (*Dispute Resolution*) thereto and the rules of procedure specified in the Arbitration Law, 1968.

3. Powers and Duties

- 3.1. Your powers and duties as the Independent Expert shall be in accordance with the provisions of the Concession Agreement and Appendix K (*Dispute Resolution*) thereto.
- 3.2. Without derogating from the generality of Section 3.1 above:
 - 3.2.1. You shall resolve any controversies or claims with regard 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 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.
 - 3.2.2. You are hereby entitled to award extension of time with respect to matters referred to you.
 - 3.2.3. You are not authorized to issue temporary and mandatory injunctive relief.
 - 3.2.4. You will give notice of your decision, in writing to all the Parties, within four (4) weeks following the completion of the hearing, or

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other procedure conducted by you. Your decision will state that it is made pursuant to Section 3.3.4 (*The Award*) of Appendix K (*Dispute Resolution*), will be binding on the Parties, subject to the Parties' rights to appeal before the Arbitrators pursuant to Section 3.1.3 of Appendix K (*Dispute Resolution*).

3.2.5. You are required to set forth the reasoning for your decisions in proceedings over which you preside, you shall make your decision in accordance with the provisions of the Concession Agreement, shall be bound by substantive law, but you shall not be bound by the other laws of evidence and procedure (except as specified in Section 2.2 hereinabove).

4. Independence and lack of conflict of interests

In order to ensure that there be no suspicion of partiality between the Concessionaire and the State, dependence on either of the Parties or conflict of interests, unless otherwise specified herein or in the Concession Agreement, you are obligated to avoid any contact with the Concessionaire and with any holder of more than five percent (5%) of shares in the Concessionaire or anyone on its behalf (including, inter alia, Subcontractors), with the Implementing Authority or with any Relevant Authority having a direct connection with the matter in dispute, or anyone on their behalf, for the term of your appointment and for 3 years thereafter.

5. Fiduciary Duty

Your appointment is entailed with a fiduciary duty to all Parties referring any dispute for your resolution.

6. Fee

Your fee will be paid by the Concessionaire and the State, in equal parts.

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7. Incorporation of provisions of the Concession Agreement and Appendix K (Dispute Resolution)

Without derogating from any of the above, this Letter of Appointment hereby incorporates all relevant provisions of the Concession Agreement and Appendix K (*Dispute Resolution*), attached hereto. Such provisions shall oblige you, where and as applicable, and you shall act in accordance therewith.

Upon your acceptance of this appointment we, the State and the Concessionaire, hereby accept the authorities and powers granted to you by this Letter of Appointment and we are obliged to any of your decisions made in accordance with this Letter of Appointment and the Concession Agreement (including Appendix K (*Dispute Resolution*)).

Concessionaire

State

By signing hereunder I accept my appointment as the Independent Expert and undertake to act in accordance with this Letter of Appointment and the Concession Agreement (including Appendix K (*Dispute Resolution*)) and I am obliged to all duties and restrictions set forth therein.

Name : _____

Signature: _____