

AMENDED

CONCESSION AGREEMENT

by and between

THE STATE OF ISRAEL

and

CARMELTON GROUP LTD.

dated

4 March, 1999

THIS Amendment to the CONCESSION AGREEMENT ("Amendment" and "Agreement" respectively) by and between the Government of Israel on behalf of the State of Israel ("State"), represented by the Accountant General, and Carmelton Group Ltd. a company duly incorporated under the laws of the State of Israel ("Concessionaire") dated 4.3.1999, is made as of July 20, 24.7.2005.

WHEREAS, The Ministers of Finance, Transportation and Construction and Housing of the State ("Promoters") initiated the design and construction of the Carmel Tunnels project, consisting of the Western Tunnels, the Eastern Tunnels, the Carmel Beach, the Rupin and the Kriyot (Checkpost) Interchanges;

WHEREAS, The Promoters wish to structure the Project as a Build-Operate Transfer project ("B.O.T.");

WHEREAS, The Promoters, pursuant to the approval of the Government, issued, on January 28, 1997, an Invitation For Bids for the finance, design, construction, maintenance, operation and transfer of the Project;

WHEREAS, The Concessionaire was selected pursuant to the Tender Process to execute the Project;

WHEREAS, The Concessionaire intends to perform the Project as a B.O.T Project in accordance with the provisions of this Agreement, including to finance, Design, Construct, Operate and Maintain the Project; and

WHEREAS, The State designated the Carmel Tunnels Authority ("CTA") to act on its behalf as set forth in this Agreement;

WHEREAS, The Concessionaire signed a financing agreement with Israel Discount Bank ("IDB") on March 31st, 1999 (the "Senior Debt Funding Agreement");

WHEREAS, Notwithstanding the dates specified in the Project Schedule, the Detailed Scheme was approved by the Haifa Town and Planning District Committee on October 23rd, 2001, the National Town and Planning Committee dismissed the appeals on the said decision on April 16th, 2002, and the Detailed Scheme was published in the official Gazette on January 23rd, 2003;

WHEREAS, During the Regulatory Delay, the parties signed Letters of Understanding and concurred to extend the Regulatory Delay until July 20th, 2005 (agreeing not to require a determination by the Disputes

¹ The preamble to the second amendment to the Concession Agreement, dated 10.1.2006, was not incorporated hereto.

Board on the matter);

WHEREAS, The parties reached an understanding regarding the consequences of the Regulatory Delay, in the absence of the issuance of a Notice of Termination, including the payment of compensation (pursuant to the provisions of Section 26.1.1 שגיאיה! מktor ההפניהם לא נמצאו and subject to the conditions set forth therein), and the waiver by the Concessionaire of all claims and/or demands against the CTA related to Regulatory Delay; other than claims and demands specifically stipulated in sections 2(i) – (iii) of the waiver issued by the Concessionaire on May 11, 22052005 as part of the request for Transfer of Equity and Change in Control as described herein;

WHEREAS, On May 11, 2005, The Initial Equity Participants issued a request for Transfer of Equity and Change in Control pursuant to the provisions of Section 23 of this Agreement, and a request to Change the Composition of the Project's Construction Contractor, and the CTA and the Ministers of Finance and Transportation approved the said requests; The request for Transfer of Equity and Change in Control is attached hereto as Annex AA, the CTA's approval is attached as Annex BB, the Ministers of Finance and Transportation approval is attached as Annex CC and the waiver, signed by the Concessionaire and the CTA is attached as Annex DD.

WHEREAS, Legal proceedingproceedings were initiated by the Concessionaire on 20th August, 2002 at the Tel Aviv District Court, docket number 2486/02, in relation to the enforcement of the Senior Debt Funding Agreement;

WHEREAS, The Tel-Aviv District Court ruled that IDB should provide finance in accordance with the Senior Debt Funding Agreement (the "District Court Judgment") and IDB subsequently filed to the Supreme Court an appeal against the District Court Judgment, Docket number 3976/04 (the "Appeal");

WHEREAS, Since the submission of the Appeal, the Concessionaire, the CTA and IDB have been concluding negotiations on the basis of their understanding in the principle of finance of the Project;

WHEREAS, The Concessionaire, IDB and Thethe CTA have agreed that subject to and upon the signature of the amendment to the Senior Debt Funding Agreement (the "Amended Senior Debt Funding Agreement"), the Concessionaire, IDB and the CTA will submit a request to the Supreme Court to legally validate the settlement agreement between them (the "Settlement Agreement"), that shall include the agreement to cancel the District Court Judgment, without any party admitting the other party's claims (but without refunding the court fees and legal expenses paid by IDB to the Concessionaire), and an undertaking by both the Concessionaire and IDB to fulfill their obligations under the Amended Senior Debt Funding Agreement. In addition, subject to and upon the

signature of the Amended amendment to the Senior Debt Funding Agreement the Concessionaire, and as part of the Settlement Agreement, the Concessionaire, IDB and the CTA will all sign a mutual waiver of claims in respect of each other regarding the finance of the Project in respect to the period up to the signature of the Amended amendment to the Senior Debt Funding Agreement.

WHEREAS, The Concessionaire specifically acknowledges that this Amendment is executed, inter alia, based on the draft amendment of the Senior Debt Funding Agreement and the understandings reached between all three parties as of the date of this Amendment.

Now therefore, intending to be legally bound hereby including the above recitals which are an integral part of this Agreement, the parties hereto agree as follows:

1. General and Definitions

- 1.1. The Concessionaire hereby undertakes to perform the Project as a B.O.T Project in accordance with the provisions of this Agreement, including to finance, Design, Construct, Operate and Maintain the Project
- 1.2. All terms used in this Agreement shall have the meaning ascribed to them herein or in Annex A.

1A. Condition Subsequent

In the event that the Concessionaire, IDB and The CTA shall fail to validate the settlement agreement between them Settlement Agreement and to sign a mutual waiver of claims in respect of each other regarding the finance of the Project as described above by the Deferred Date, then this Amendment shall be voidable, at the discretion of the CTA.

2. The Site

- 2.1. The relevant authorities shall have completed the acquisition or appropriation of the Site for the purposes of the Project and the State shall grant the Concessionaire with the right to Utilize the Site by the latest to occur of either: (i) 8 (eight) months following the Amendment Closing Date or (ii) upon satisfactory fulfillment by the Concessionaire of all the requirements detailed in subsections 10.1.1 through 10.1.7 of this Agreement and as evidenced in accordance with the provisions of Section 10.2 of this Agreement.

- 2.2. Following the acquisition or appropriation of the Site in accordance with the provisions of Section 2.1, the State shall hold the legal title to the area designated for the Interchanges and shall acquire the underground right to use and possess the area designated for the Tunnels.

The Concessionaire has and will have no rights of ownership, leasehold rights and any other rights under the Land Law 1969, or other property rights or other rights under any other laws or regulations with respect to the Site or the Project, other than the right to use the Site for the Construction, Operation and Maintenance of the Project and the levying of Toll Charges, all in accordance with the provisions of this Agreement (which shall be defined as the right to "Utilize the Site").

The right to Utilize the Site shall mean that the Concessionaire shall also have those powers granted under section 18 of the Land Law 1969.

- 2.3. Following the acquisition or appropriation of the Site but prior to the issuance of a Notice to Proceed, the CTA shall grant to the Concessionaire reasonable access to the available parts of the Site to the extent necessary to enable the Concessionaire to complete the Design of the Project, and, to the extent possible, shall grant to the Concessionaire reasonable access in accordance with the Revised Pr—oject Project Schedule.
- 2.4. The State shall grant to the Concessionaire the right to Utilize the Site or any part thereof concurrently with the issuance of a Notice to Proceed.
- 2.5. The Concessionaire shall not Transfer any or all of its rights to Utilize the Site under this Agreement except as provided in this Agreement. Any Transfer by the Concessionaire of any or all of its rights to Utilize the Site in a manner inconsistent with this Agreement shall be null and void and shall constitute a breach of this Agreement.
- 2.6. Subject to the provisions of this Agreement, during the Concession Period, the State will not Transfer the Site, or agree to Transfer or grant any rights or interests in the Site or any part thereof, in any manner which will restrict the Concessionaire's rights to Utilize the Site.
- 2.7. Termination of this Agreement shall cause termination of the Concessionaire's rights to Utilize the Site.
- 2.8. Without derogating from the foregoing and without modifying any duty or obligation of the State under Sections 2.1 through 2.7 and Sections 18 and 19, at the reasonable request of the Concessionaire and at the Concessionaire's sole expense, the State shall provide assistance to the Concessionaire in legal proceedings seeking to preserve the Concessionaire's right to Utilize the Site or seeking to defend claims against such right to Utilize the Site, in each case, where such assistance is necessary due to the State's rights in the Site.

3. Concessionaire's Obligations During the Pre-Construction Period

During the Pre-Construction Period, the Concessionaire shall carry out all of the following:

- 3.1. arrange to raise all Equity and debt financing for the Project and execute all Funding Agreements substantially in accordance with the principles set forth in the Financial Proposal and the Financing Schedule in a form approved by the CTA and furnish periodic Fund-Raising Reports to the CTA, all in accordance with the provisions of Section 5;
- 3.2. prepare and submit the Detailed Scheme for the approval of the CTA and the Relevant Planning Commission; prepare and submit a Final Design for the approval of the CTA; obtain all building and other permits required under the relevant legislation; and prepare and submit the Detailed Design for the approval of the CTA, in each case in accordance with the provisions of Annex F; and
- 3.3. to the extent not previously executed, execute the Design and Construction Contracts, in a form approved by the CTA in accordance with the provisions of Section 6. To the extent required, the Concessionaire shall execute any Management, Operation or Maintenance Contract and any Related Party Transaction in a form approved by the CTA in accordance with the provisions of section 6.

4. Shareholders Agreements

- 4.1. A copy of the Shareholders Agreement submitted in volume 2 of the Bid Documents as accepted by the Tender Committee pursuant to the Tender Process, is attached to this Agreement as Annex B ("Shareholders Agreements").

As of the Amendment Closing Date, an amendment to the Shareholders Agreement has been submitted and approved by the CTA and is attached to this Agreement in Annex B.

4.2. Amendments to Shareholders Agreement

Without derogating from the generality of the provisions of Section 23, if at any time following the execution of the Shareholders Agreement the Participants under the Shareholders Agreement propose a material change to the Shareholders Agreement, the Concessionaire shall submit to the CTA a copy of the amendment relating to such change prior to the execution thereof. For the purposes of this Agreement, any additional agreement governing the relationship of the Participants in connection with the Project shall be deemed to be an amendment to the Shareholders Agreement.

4.3. Approval Procedure for Amendments to Shareholders Agreement

The CTA shall approve or object to amendments to the Shareholders Agreement in accordance with the following approval procedure:

- 4.3.1. The CTA shall review all amendments to the Shareholders Agreement and shall either approve or object in writing to such as soon as is practicable and, where objection is made, the CTA shall specify the grounds for such objection.
- 4.3.2. The CTA will not unreasonably object to any amendments to the Shareholders Agreement.
- 4.3.3. Where the CTA has raised an objection to an amendment to the Shareholders Agreement, the CTA and the Concessionaire shall use their best efforts to resolve the issue within 14 days.
- 4.3.4. Where approval has been granted by the CTA, the applicable amendment to the Shareholders Agreement shall be attached to this Agreement in Annex B and shall thereafter constitute an integral part of this Agreement.

5. Project Financing

- 5.1. A copy of the letter of commitment issued by the Israel Discount Bank Ltd. for the provisions of senior bank debt facility to Carmelton Group Ltd. dated 28.7.98 (21918) (including all annexes thereto) and a supplementary letter dated 1.12.98 (25779) are attached to this Agreement as Annex C-1.

- 5.1A The Senior Debt Funding Agreement is attached to this Agreement as Annex C-3.

- 5.2. The Concessionaire shall obtain financing for the Project substantially in accordance with the principles set forth in the Financial Proposal and shall use all prudent and commercial endeavors to obtain such financing for the Project substantially in accordance with the Financing Schedule therein.

5.3. Fund-Raising Reports

- 5.3.1. Within 30 days following Closing, the Concessionaire shall prepare and submit, for the approval of the CTA, a written report setting out a summary of the endeavors it has taken, and the endeavors it proposes to take, in order to obtain the financing for the Project ("Fund-Raising Report") in accordance with the Financial Proposal and such Fund-Raising Report shall be attached to this Agreement as Annex C-2.

- 5.3.2. The Concessionaire shall submit an additional Fund-Raising Report to the CTA within 90 days of each previous

submission of a Fund-Raising Report, until all Funding Agreements have been signed and the conditions precedent set forth therein have been met.

- 5.3.3. The Concessionaire will attach to each Fund-Raising Report a statement identifying in detail material deviations from the Financial Proposal and Financing Schedule, or confirming that there are no material deviations from the Financial Proposal and Financing Schedule which have not been set forth in prior Fund-Raising Reports.
- 5.3.4. In addition to the submission of Fund-Raising Reports, the Concessionaire shall provide the CTA with information and documentation, including, when appropriate, drafts of Funding Agreements and material amendments thereto, in order to facilitate the approval procedure set forth in Section 5.5. Without limiting the generality of the foregoing, the Concessionaire shall submit to the CTA substantially final drafts of any offering memorandum circulated to Funders relating to the Project (including the exhibits thereto) not less than five business days prior to the issuance thereof and shall submit to the CTA the final version of any offering memorandum circulated to Funders relating to the Project (including the exhibits thereto) not later than five business days after the issuance thereof.

5.4. Funding Agreements

- 5.4.1. Drafts of Funding Agreements and Amendments - The Concessionaire shall submit, for the approval of the CTA, a Draft of each Funding Agreement and each amendment to a Funding Agreement which contains a material change to such Funding Agreement prior to the execution thereof.

- 5.4.2. Funding Agreements and Amendments - The Concessionaire shall submit to the CTA an authenticated copy of each of the Funding Agreements and each material amendment thereto within 2 business days of the date of execution thereof. The Concessionaire will attach to each Funding Agreement and each material amendment thereto submitted to the CTA a statement by the Concessionaire which shall confirm that such Funding Agreement or amendment does not differ in any material respect from the Draft thereof approved by the CTA.

5.5. Approval Procedure for Fund-Raising Reports, Drafts of Funding Agreements and Amendments to Funding Agreements

The CTA shall approve or object to all Fund-Raising Reports, Drafts of Funding Agreements and amendments to Funding Agreements (including any amendment to the Senior Debt Funding Agreement introduced prior to and/or following the Deferred Date, and including refinance) in accordance with the following approval procedure.

- 5.5.1. The CTA shall review all Fund-Raising Reports, Drafts of Funding Agreements and amendments to Funding Agreements, and shall either approve or object in writing to such as soon as is reasonably practicable and, where objection is made, the CTA shall specify the grounds for such objection. An amendment to the Senior Debt Funding Agreement shall be concluded and executed by a date to occur no later than 4 (four) months following the Amendment Closing Date, in compliance with the milestones set out in the Revised Project Schedule (the "Deferred Date"), and shall be attached to this Agreement as Annex C-4.

- 5.5.2. The CTA will not unreasonably object to Fund-Raising Reports, Drafts of Funding Agreements and amendments to Funding Agreements.

- 5.5.2a. Notwithstanding the foregoing, the CTA may condition its approval of amendments to the Funding Agreements (including refinance), on the reduction of the Revenue Guarantee, on the amendment of the terms and conditions for the repayment of the Royalties and/or on such other terms and conditions as it shall deem fit under the circumstances. For the avoidance of doubt, the following shall not be deemed to constitute "an amendment to the Funding Agreements" for the purpose of this Section:

- 5.5.2a.1 the amendment to the Senior Debt Funding Agreement to be executed by the Deferred Date;

- 5.5.2a.2 Secondary Debt, to the extent that such: (i) will be provided no later than 30 months as of the date of issuance of the Permit to Operate; (ii) will be in an amount not exceeding 10% of the total Project's cost (including interest) as set forth in the Base Case Financial Model attached hereto as Annex FF; and (iii) shall bear interest at a rate not exceeding the interest rate determined under the Senior Debt Funding Agreement.

For the avoidance of doubt, on the Deferred Date, Annex FF shall be replaced by the Base Case Financial Model which will constitute part of the Senior Debt Funding Agreement, provided, however, that the total Project's cost (including interest) as specified in

the Base Case Financial Model shall remain unchanged (or be reduced); and

5.5.2a.3 transfer of part of IDB's rights under the Senior Debt Funding Agreement and/or granting of participation rights in the Facility (as defined in the Senior Debt Funding Agreement) which will occur following the Deferred Date, provided that: **(i)** such transfer or granting of participation rights will not entail any amendment to the Senior Debt Funding Agreement (together with the amendment thereto executed by the Deferred Date), and provided further that such will be executed in accordance with and subject to Section 26.2 to the Senior Debt Funding Agreement; **and (ii)** such transfer or granting of participation rights will not entail amendments to the Senior Debt Funding Agreement (together with the amendment thereto executed by the Deferred Date), other than amendments which are required in order to facilitate the said transfer or granting of participation rights and which relate to the relationship between the Funders.

For the avoidance of doubt it is hereby clarified, that the provisions of this sectionSection shall not derogate from the provisions of Section 16.4.

5.5.3. Where the CTA has raised an objection to a Fund-Raising Report, Draft of a Funding Agreement or amendment to a Funding Agreement, the CTA and the Concessionaire shall use their best efforts to resolve the issue within 14 days.

5.5.4. Where approval has been granted by the CTA, the applicable Fund-Raising Report, Funding Agreement or amendment to Funding Agreement shall be attached to this Agreement in Annex C-1 or Annex C-2, as the case may be, and shall thereafter constitute an integral part of this Agreement. Any change to the Financial Proposal or Financial Schedule contained in any Fund-Raising Report approved by the CTA shall become an integral part of the Financial Proposal or Financing Schedule, as the case may be.

6. Design, Construction, Operation, Maintenance and Management Contracts

6.1. **Contracts**

6.2. Copies of term sheets of Contracts, Drafts of Contracts or Contracts submitted as part of the Concessionaire's Bid Documents as accepted by

the Tender Committee pursuant to the Tender Process are attached to this Agreement as Annex D. Copies of all other Contracts shall be attached to this Agreement as part of Annex D.

6.2.1. **Drafts of Contracts and Amendments** - The Concessionaire shall submit, for the approval of the CTA, a Draft of each Contract and each amendment to a Contract which contains a material change to such Contract prior to the execution thereof.

6.2.2. **Contracts and Amendments** - The Concessionaire shall submit to the CTA an authenticated copy of each Contract and each material amendment thereto within 2 business days of the date of the execution thereof. The Concessionaire will attach to each Contract and each material amendment thereto submitted to the CTA a statement by the Concessionaire which shall confirm that such Contract or amendment does not differ in any material respect from the Draft thereof approved by the CTA.

6.3. The Concessionaire shall provide the CTA with information and documentation, including, when appropriate, interim drafts of Contracts and material amendments thereto, in order to facilitate the approval procedure set forth in Section 6.4.

6.4. Approval Procedure for Drafts of Contracts and Amendments to Contracts

The CTA shall approve or object to all Drafts of Contracts and amendments to Contracts in accordance with the following approval procedure.

6.4.1. The CTA shall review all Drafts of Contracts and amendments to Contracts and shall either approve or object in writing to such as soon as is reasonably practicable and, where objection is made, the CTA shall specify the grounds for such objection.

6.4.2. The CTA will not unreasonably object to Drafts of Contracts or amendments to a Contract.

6.4.3. Where the CTA has raised an objection to a Draft of a Contract or amendment to a Contract, the CTA and the Concessionaire shall use their best efforts to resolve the issue within 14 days.

6.4.4. Where an approval has been granted by the CTA, the applicable Contract or amendment to a Contract shall be attached to this Agreement in Annex D and shall thereafter constitute an integral part of this Agreement.

6.5. Without derogating from the generality of the foregoing, the Concessionaire shall submit for the approval of the CTA, a list of potential tunnel excavation contractors, within 90 days following the Amendment Closing Date no later than February 15, 2006, together with letter of intent signed by each contractor, in a form to be agreed upon by the CTA and the Concessionaire, confirming the contractor's intention to participate in the Project. The Concessionaire shall submit, for the approval of the CTA, the subcontract with the selected tunnel excavation contractor, no later than April 15th, 2006 60 days prior to the issuance of the Notice To Proceed.

The CTA's response to requests submitted to it by the Concessionaire pursuant to the provisions of this Section 6.5, shall be provided within 14 business days following receipt thereof.

The subcontract with the tunnel excavation contractor, if approved, shall be attached to this Agreement in accordance with the provisions of this Section 6.

6.6. As of the Amendment Closing Date, an amendment to the Design and Construction Contract has been submitted and approved by the CTA and is attached to this Agreement as Annex D.

7. Project Management

7.1. The Management of the Project shall be carried out by the Concessionaire in accordance with the provisions of Annex E.

7.2. To the extent possible, the Concessionaire shall carry out all its obligations under this Agreement in Israel. For such purpose, the Concessionaire shall set up offices in Israel for the duration of the Concession Period and shall ensure that all executive officers of the Concessionaire (excluding directors of the Concessionaire), shall hold a valid residential visa in Israel, at least during the term of their office.

7.3. Without in any way derogating from the generality of the provisions of this Agreement, during the Concession Period the CTA shall be entitled to supervise, review, make decisions, determinations, and issue certificates or approvals concerning the Design and Construction of the Project, all in order to ensure Construction Completion in accordance with the provisions of this Agreement.

8. Revised Project Schedule

8.1. The Concessionaire shall fulfill its obligations under this Agreement in accordance with the provisions of the Revised Project Schedule, attached as Schedule IV of Annex E, including, *inter alia*, compliance with the applicable milestones set out in the Revised Project Schedule.

8.2. The updating and management of the Revised Project Schedule shall be carried out in accordance with the provisions of Annex E.

8.3. **Achievement of Commencement and Completion Dates**

8.3.1. In the event a Schedule Delay should occur during the Pre-Construction Period or Construction Period, the Concessionaire shall use its best efforts in order to achieve Commencement and Completion Dates.

8.3.2. The Concessionaire shall prepare and submit to the CTA, as soon as is reasonably practicable, but in any event within 35 days of the date of the commencement of a Schedule Delay, a Request for a Change Order setting forth a proposed recovery schedule demonstrating the Concessionaire's proposal to regain lost schedule progress and to achieve Commencement and Completion Dates ("Proposed Recovery Schedule").

8.3.3. The CTA shall review all Proposed Recovery Schedules and shall either approve or object to such within five business days after the submission thereof to the CTA.

8.3.4. Upon issuance of a Change Order by the CTA, a Proposed Recovery Schedule, including all modifications or amendments thereto introduced by the Concessionaire in compliance with the CTA's comments (hereinafter referred to as "Recovery Schedule"), shall be incorporated into the Revised Project Schedule.

8.4. **Schedule Delay due to Regulatory Delay²**

8.4.1. If a Regulatory Delay results in a Schedule Delay the Concessionaire shall submit to the CTA, as soon as is reasonably practicable, but in any event within 35 days of the date of commencement of the Schedule Delay, and the CTA shall, within 5 business days, issue a Change Order setting forth a proposed time extension of 480 days from the

² During the Regulatory Delay, the parties signed Letters of Understanding and concurred to extend the Regulatory Delay (agreeing not to require a determination by the Disputes Board on the matter). The parties reached additional understandings regarding the consequences of the Regulatory Delay, which include: (i) waiver of rights with respect to Sections 25.1 (Termination Due to Regulatory Delay), 26.1 (Compensation Following Termination Due to Regulatory Delay) and 8.8.2; and (ii) waiver by the Concessionaire of all claims related to the Regulatory Delay; and (iii) an understanding with respect to Section 26.1.1 (Compensation Due to Regulatory Delay); and (iv) an understanding with respect to Section 33.1.3. Without derogating from the exclusions to the Concessionaire's waiver as detailed in Annex DD, all of the foregoing are subject to the waiver by the Concessionaire of all claims and/or demands against the CTA related to Regulatory Delay as set forth in Annex DD.

Commencement of such Schedule Delay ("Regulatory Delay Grace Period").

8.4.1A If approval of the Detailed Scheme shall be obtained within the Regulatory Delay Grace Period, the Concession Period shall be extended pursuant to Section 33.1.1. If approval of the Detailed Scheme is not obtained within the Regulatory Delay Grace Period, the Concessionaire shall submit to the CTA, as soon as is reasonably practicable, but in any event no later than 30 days prior to the end of the Regulatory Delay Grace Period, a Request for Change Order setting forth a proposed time extension of 120 days from last day of the Regulatory Delay Grace Period ("Initial Regulatory Delay Grace Period").

8.4.2. Without limiting the rights of the CTA under Sections 25.1.1 and 25.1.2.1 and the rights of the Concessionaire under Section 25.1.2.2, concurrently with the submission of the Request for Change Order contemplated by Section 8.4.1A, the Concessionaire shall submit to the Disputes Board a request for a determination as to whether or not the cause of the Regulatory Delay was predominantly attributable to the Concessionaire, and the Disputes Board shall make such determination in its sole discretion.

8.4.3. Regulatory Delay Attributable to Concessionaire

8.4.3.1 If the Disputes Board determines that the cause of the Regulatory Delay was predominantly attributable to the Concessionaire, the CTA shall have no obligation to issue a Change Order to postpone or extend any of the dates of the Revised Project Schedule and may issue a Notice of Termination in accordance with Section 25.1.1. The CTA may, at its discretion, issue, within 45 days of the commencement of the Schedule Delay, the Change Order referred to in Section 8.4.1A and the Concessionaire shall pay to the CTA the sums of money set forth in Section 27.1.

8.4.4. Regulatory Delay Not Attributable to Concessionaire

8.4.4.1 If the Disputes Board determines that the cause of a Regulatory Delay was not predominantly attributable to the Concessionaire, the CTA shall, within five business days of such determination, issue the Change Order referred to in Section 8.4.1A.

8.4.4.2 If approval of the Detailed Scheme shall be obtained within the Initial Regulatory Delay Grace Period, the Concessionaire shall be entitled to compensation pursuant to Section 26.1.3. and the Concession Period

shall be extended pursuant to Section 33.1.1. If approval of the Detailed Scheme is not obtained within the Initial Regulatory Delay Grace Period, the Concessionaire may issue a Notice of Termination in accordance with Section 25.1.2 and shall be entitled to compensation pursuant to Section 26.1.1.

8.4.4.3 If the Concessionaire determines not to issue a Notice of Termination in accordance with Section 25.1.2, the Concessionaire shall submit no later than 30 prior to the end of the Initial Regulatory Delay Grace Period, a Request for a Change Order proposing a time extension of no more than 365 days from the last day of the Initial Regulatory Delay Grace Period ("Second Regulatory Delay Grace Period").

8.4.4.3A Concurrently with the submission of the Request for Change Order contemplated by Section 8.4.4.3, the Concessionaire shall submit to the Disputes Board a request for a determination as to whether or not the cause of the Regulatory Delay was predominantly attributable to the Concessionaire, and the Disputes Board shall make such determination in its sole discretion.

8.4.4.3B If the Disputes Board determines that the cause of the continuing Regulatory Delay was predominantly attributable to the Concessionaire the provisions of Section 8.4.3 shall apply. If the Disputes Board determines that the cause of the Regulatory Delay was not predominantly attributable to the Concessionaire, the CTA shall, within five business days of such determination, issue the Change Order referred to in Section 8.4.4.3.

8.4.4.4 If approval of the Detailed Scheme shall be obtained within the Second Regulatory Delay Grace Period, the Concessionaire shall be entitled to compensation pursuant to Section 26.1.3 and the Concession Period shall be extended pursuant to Section 33.1.1. If approval of the Detailed Scheme is not obtained within the Second Regulatory Delay Grace Period, either the Concessionaire or the CTA may issue a Notice of Termination in accordance with Section 25.1.2 and the Concessionaire shall be entitled to compensation pursuant to Section 26.1.1, unless otherwise agreed in writing by the parties.

8.5. Schedule Delay due to an Event of Force Majeure, the Discovery of an Archeological Finding or Hazardous Materials or Minerals or the Occurrence of a CTA Delay

8.5.1. If an Event of Force Majeure, the discovery of an Archeological Finding or Hazardous Materials or Minerals or a CTA Delay results in a Schedule Delay then, without limiting the rights of the parties under Section 25.3, the Concessionaire shall submit to the CTA, as soon as is reasonably practicable, but in any event within 35 days of the date of commencement of the Schedule Delay or the date of certification by the Disputes Board in accordance with Section 24.1.1 in the case of an Event of Force Majeure, the following Request for Change Orders:

8.5.1.1 a Request for Change Order setting forth a proposed time extension and the proposed course of Construction; and

8.5.1.2 a Request for Change Order setting forth a Proposed Recovery Schedule in order to rectify the effects of such event, discovery or CTA Delay if such rectification is physically possible, and the proposed course of Construction, including all costs thereof as determined in accordance with Section 26.3.3.

8.5.2. The CTA shall, within 75 days of the commencement of the Schedule Delay as described in Section 8.5.1, either (i) issue a Change Order contemplated by Section 8.5.1.1 allowing for a time extension which is reasonable under the circumstances and the Concession Period may be extended pursuant to Section 33.1.2 and, if the Schedule Delay was caused by the occurrence of a CTA Delay, the Concessionaire shall be entitled to compensation in accordance with the provisions of Section 26.3, or (ii) issue a Change Order contemplated by Section 8.5.1.2, which will specify the increase in the cost of Construction to rectify the effects of such event, discovery or CTA Delay, which shall be borne by the CTA in accordance with the provisions of Section 26.4.2.

8.6. Schedule Delay due to Reasons Other than Those Specified in Sections 8.4.1 and 8.5.1.

8.6.1. If reasons other than those specified in Sections 8.4.1 and 8.5.1 result in a Schedule Delay, the Concessionaire shall submit to the CTA, as soon as is reasonably practicable, but in any event within 35 days of the date of the commencement of the Schedule Delay, a Request for Change Order and the proposed course of Construction.

8.6.2. The CTA shall have no obligation to issue a Change Order to postpone or extend any of the dates of the Revised Project Schedule.

8.7. Any Change Order issued in accordance with the provisions of Sections 8.4, 8.5 or 8.6 shall become an integral part of the Revised Project Schedule.

8.8. Unauthorized Schedule Delay

8.8.1. In the event a Schedule Delay should occur and:

8.8.1.1 a Recovery Schedule or a Request for Change Order has not been requested by the Concessionaire within the periods specified in Sections 8.3.2, 8.4.1, 8.5.1, and 8.6.1, or

8.8.1.2 in the event Section 8.4.3 or 8.6 is applicable, a Request for Change Order acceptable to the CTA shall not have been submitted to, and accepted by, the CTA within 45 days of the date of commencement of such Schedule Delay;

such delay will be considered to be an unauthorized schedule delay ("Unauthorized Schedule Delay").

8.8.2. DELETED³

8.9. Delay in Acquisition or Appropriation of the Site⁴

8.9.1 If the State is unable to grant to the Concessionaire the right to Utilize the Site on the date specified in Section 2.1, the State shall have a period of up to 240 days from the date specified in Section 2.1. ("Initial Site Acquisition Grace Period") to satisfy the requirements of Section 2.1. The CTA may, on its own initiative, issue a Change Order giving effect to the Initial Site Acquisition Grace Period.

8.9.2 If the State grants to the Concessionaire the right to Utilize the Site within the Initial Site Acquisition Grace Period, the Concessionaire shall be entitled to compensation pursuant to Section 26.2.3, and the Concession Period shall be extended pursuant to Section 33.1.3. If the State shall not have granted to the Concessionaire the exclusive right to Utilize the Site within the Initial Site Acquisition Grace Period, the Concessionaire may issue a Notice of Termination in accordance with Section 25.2.1 and the Concessionaire shall be entitled to compensation pursuant to Section 26.2.1.

³ See footnote no. 1

⁴ As of the date of executing the Amendment, the Site Grace Periods have been fully exhausted.

8.9.3 If the Concessionaire determines not to issue a Notice of Termination in accordance with Section 25.2.1, the State shall have a period of up to 365 days from the last day of the Initial Site Acquisition Grace Period ("Second Site Acquisition Grace Period") to satisfy the requirements of Section 2.1. The CTA may, on its own initiative, issue a Change Order giving effect to the Second Site Acquisition Grace Period.

8.9.4 If the State grants to the Concessionaire the right to Utilize the Site within the Second Site Acquisition Grace Period, the Concessionaire shall be entitled to compensation pursuant to Section 26.2.3 and the Concession Period shall be extended pursuant to Section 33.1.3. If the State shall not have granted to the Concessionaire the exclusive right to Utilize the Site within the Second Site Acquisition Grace Period, either the Concessionaire or the CTA may issue a Notice of Termination in accordance with Section 25.2.1 and the Concessionaire shall be entitled to compensation pursuant to Section 26.2.1 unless otherwise agreed by the parties.

9. The Design of the Project

9.1. The Concessionaire shall prepare the Design of the Project in accordance with the provisions of Annex F.

10. Commencement of Construction - Notice To Proceed

10.1. A Notice To Proceed shall be issued by the CTA to the Concessionaire upon the Concessionaire's request to commence Construction of the Project, which request shall be submitted no later than 8 (eight) 10 (ten) months following the Amendment Closing Date ("Date of Request of NTP"), provided that the date of issuance of such Notice to Proceed shall be on or after the date on which the relevant authorities shall have completed the acquisition of the Site, and provided further that:

10.1.1. the Concessionaire shall have fulfilled all its obligations under Section 3;

10.1.2. the CTA shall have approved the Detailed Design in accordance with the provisions of Annex F;

Without derogating from the generality of Annex F, it is hereby emphasized that for the purposes of this Section, Detailed Design shall be deemed to mean the Detailed Design which is required for the execution of the Construction Works during the 6 months immediately following approval thereof.

10.1.3. all permits, licenses and governmental and municipal approvals required for the Construction of the Project shall have been obtained, and the Concessionaire shall have

delivered to the CTA a statement of the Concessionaire specifically listing each permit and governmental and municipal approval required and confirming that all such permits and governmental approvals have been obtained;

10.1.4. 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 CTA in accordance with the provisions of Section 20;

10.1.5. 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 CTA in accordance with the provisions of Section 21; and

10.1.6. the Independent Engineer shall have been appointed pursuant to Annex S.

10.1.7. the identity of the tunnel excavation contractor and the tunnel excavation subcontract shall have been approved by the CTA.

10.2. The CTA shall issue the Notice to Proceed referred to in Section 10.1 within 7 days of satisfactory fulfillment by the Concessionaire of the above requirements which shall be evidenced by a certificate to that effect issued by the Concessionaire to the CTA and not followed, within 30 days of receipt of such certificate, by a request from the CTA for further information or by a notice from the CTA of disagreement as to the satisfactory fulfillment of such requirements.

10.3. Concurrently with the issuance of the Notice to Proceed referred to in Section 10.1, the CTA shall provide to the Concessionaire the relevant permits issued by the Antiquities Authority necessary to commence Construction.

11. Construction of the Project

11.1. Construction of the Project and all quality assurance and quality control shall be carried out and managed by the Concessionaire in accordance with the provisions of Annex G.

12. Construction Period

12.1. The Concessionaire shall commence Construction of the Project upon the issuance of the Notice to Proceed no later than 8 (eight) 10 (ten) months following the Amendment Closing Date ("Construction Commencement Date").

12.2. The Concessionaire shall achieve Construction Completion of the Project within the latest of: (i) 60 (sixty) months from the Amendment Closing Date; or (ii) 52 (fifty two) months from the date of

Issuance/issuance of the Notice to Proceed ("Construction Completion Date").

12.3. The Commencement and Completion Dates may be extended in accordance with Sections 8.5, 8.6 and 33.

13. Construction Completion

13.1. Construction Completion and the Running in Period

13.1.1. Concessionaire shall submit the Running in Plan to the CTA 120 days prior to the anticipated Construction Completion of the Project or any part thereof (including any one Tunnel).

13.1.2. The Concessionaire shall attach to the Running in Plan "as made" drawings and maps of the Project according to the Project Design Documents as have been amended from time to time in accordance with the provisions of the Contract Documents.

13.1.3. The CTA shall have a period of 60 days to review the Running in Plan and shall either approve or object to such in writing within such 60-day period. The CTA will not unreasonably object to the Running in Plan. Without derogating from the generality of the provisions of Section 7, Annex G, where the CTA has raised an objection to the Running in Plan, the CTA and the Concessionaire shall use their best efforts to resolve the issue within 7 days.

13.1.4. The Concessionaire shall implement the Running in Plan for the duration of the Running in Period.

13.1.5. Upon completion of the implementation of the Running in Plan, the Concessionaire shall prepare and submit to the CTA a final report setting forth in detail the results and the conclusions derived from the implementation of the Running in Plan, including any of the following: defects or deficiencies in the Project Facilities, Project Utilities or any part thereof; failure of the Project or any part thereof to comply with the Project Design Documents; failure of the Project or any part thereof to comply with all safety requirements; readiness of the Project or any part thereof for its operation; and deviations of any installed equipment or materials from the requirements of the Project Design Documents.

13.1.6. Within 7 business days of receipt of the report contemplated by Section 13.1.5, the CTA and the Concessionaire shall meet and discuss their observations, such report and any recommendations, directions and instructions as to any

corrective action, should the CTA consider such corrective action to be necessary.

13.1.7. Minutes of the meeting will be recorded by the CTA and copies thereof will be distributed to the parties within 3 business days. The minutes shall contain all recommendations, directions, and instructions as to all necessary corrective actions. The minutes shall specify the corrective action which must be taken prior to issuance of a Permit to Operate and shall establish a schedule for the completion of all other corrective actions.

13.1.8. Following the meeting, the Concessionaire shall, at its own cost, correct such defects, deficiencies or deviations and otherwise comply with all other recommendations, directions and instructions in the minutes as to the methods of executing the above said corrections.

13.1.9. The Concessionaire shall complete all corrective action specified in the minutes referred to in Section 13.1.7 and shall notify the CTA. The CTA shall review all corrective action and shall either approve or object to such in writing as soon as is reasonably practicable following receipt of appropriate notification from the Concessionaire. Where objection is made, the CTA shall specify the grounds for such objection.

13.2. Permit to Operate

13.2.1. A Permit to Operate shall be issued by the CTA when:

13.2.1.1 The Concessionaire shall have completed all corrective actions required by the minutes referred to in Section 13.1.7 to be completed prior to the issuance of a Permit to Operate, and the CTA shall have approved such corrective actions;

13.2.1.2 all "as made" drawings of the Project or of the relevant part thereof shall have been submitted by the Concessionaire to the CTA;

13.2.1.3 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 CTA a statement specifically listing each such permit and governmental and municipal approval required and confirming that all have been obtained;

13.2.1.4 the CTA shall have approved the Operation Plan in accordance with the provisions of Annex H;

13.2.1.5 the CTA shall have approved the Maintenance Plan in accordance with the provisions of Annex H;

13.2.1.6 DELETED;

13.2.1.7 all Insurance Policies required to be obtained on or prior to the Operation Period shall have been obtained by the Concessionaire and approved by the CTA in accordance with the provisions of Section 20; and

13.2.1.8 all Bonds required to be obtained on or prior to the Operation Period shall have been furnished to, and approved by, the CTA in accordance with the provisions of Section 21.

13.3. The CTA shall issue a Permit to Operate the Project or any part thereof within 7 business days of satisfactory fulfillment by the Concessionaire of the above requirements which shall be evidenced by a certificate to that effect issued by the Concessionaire to the CTA and not followed, within 30 days of receipt of such certificate, by a request from the CTA for further information or by a notice from the CTA of disagreement as to the satisfactory fulfillment of such requirements. In the event the CTA shall request further information or issue a notice of disagreement, the Concessionaire shall comply with the instructions of the CTA. The CTA shall issue a Permit to Operate within 7 business days of satisfactory fulfillment by the Concessionaire of the CTA's requirements, as evidenced by a certificate to that effect issued by the Concessionaire to the CTA which is not followed by an additional request or notice of disagreement from the CTA.

14. Operation and Maintenance of the Project

14.1. The Project, including all Project Facilities, Project Utilities and all other permanent structures related to, or made use of in connection with the Project shall be operated and maintained by the Concessionaire in accordance with the provisions of Annex H.

14.2. Legal title to the Project (other than movable property of the Concessionaire which is not a component of the Project Facilities and Project Utilities or which is not otherwise essential for the Operation and Maintenance of the Project) shall be owned by the State.

15. Toll Collection

15.1. The Concessionaire is hereby granted the right to establish, subsequently modify, and collect Toll Charges for all classes of Vehicles utilizing the Project, subject to the provisions of the Toll Roads Law, any instruction issued in accordance thereto and the provisions of this

Agreement. The Concessionaire may change Toll Charges in respect of any class of Vehicles not more frequently than every 90 days.

15.2. Toll Charges will be collected in NIS.

15.3. Maximum Toll Charge

15.3.1. Toll Charges for any class of Vehicle established by the Concessionaire in accordance with the provisions of the Toll Roads Law and this Agreement shall not exceed the Maximum Toll Charge for such class of Vehicle as established from time to time.

15.3.2. The Maximum Toll Charge levied for a single passage through one of the Tunnels of all Vehicles other than a Public Vehicle or a Truck shall not exceed the Base Toll Charge; the maximum toll levied for a single passage through one of the Tunnels of a Public Vehicle shall not exceed three (3) times the Base Toll Charge; the maximum toll levied for a single passage through one of the Tunnels of a Truck shall not exceed five (5) times the Base Toll Charge (for each class of Vehicle, their "Maximum Toll Charge").

15.3.3. The Base Toll Charge, and accordingly the Maximum Toll Charge for each class of Vehicle established in accordance with the provisions of Section 15.3.2, shall be escalated in accordance with the provisions of Section 43.14 for each 3-month period ending March 31, June 30, September 30 and December 31, commencing on the date of issuance of the Permit to Operate.

15.3.4. The Base Toll Charge may be escalated by the Concessionaire at certain intervals or following the issuance of the Permit to Operate or by the CTA as set forth in Annex EE.

15.4. Change of Toll Charges

15.4.1. Subject to the provisions of Section 15.3:

15.4.1.1 Toll Charges set by the Concessionaire in accordance with the provisions of Section 15.4.1.2 can be set in relation to the distance traveled, and can vary during certain hours, on certain days or according to the type of Vehicle.

15.4.1.2 The Concessionaire may grant discounts or exempt Vehicles from paying Toll Charges, all according to uniform criteria determined by the Concessionaire provided that the criteria shall be published in such

manner as shall be determined by the Minister of Transportation.

15.4.1.2A The Concessionaire shall inform the CTA of the Toll Charges determined by it, including any criteria referred to in Sections 15.4.1.1 and 15.4.1.2 and each new Toll Charge at least 3 (three) weeks prior to its application and publication in accordance with the provisions of Section 15.4.1.3 .

15.4.1.3 The Concessionaire shall inform the general public of the criteria referred to in Section 15.4.1.2 and each new Toll Charge by publication in *Rashumot* and in such manner as shall be determined by the Minister of Transportation.

15.4.2 Subject to the provisions of this Section 15 and the provisions of Section 4 of Annex Y (Method of Determining Revenues from Tolls), the Concessionaire, at its own discretion, may modify all Toll Charges.

15.4.3 The Concessionaire shall collect Toll Charges for its own account.

15.5 Toll Charges for Certain Vehicles

15.5.1 Vehicles belonging to the Israel Defense Force and the Israel Police Force shall not be required to pay Toll Charges applicable to such Vehicles as they pass through the Project; however, such Toll Charges shall be periodically paid by the respective ministries. The method for implementing the foregoing shall be mutually agreed by the Concessionaire and the respective ministries. Such method shall ensure the minimum possible delay in the passage through the Project of such Vehicles.

15.5.2 Israel Police Force Vehicles designated for traffic control in the Tunnels shall be exempt from Toll Charges. The method for implementing the foregoing shall be mutually agreed by the Concessionaire and the applicable ministry.

15A. Revenue Guarantee

15A1. Annual Revenue Guarantee

At the end of each Calendar Year following the issuance of a Permit to Operate, the CTA shall provide the Concessionaire, during the Revenue Guarantee Period, with an annual Revenue Guarantee as set forth in Annex X in accordance with the terms and conditions specified therein ("Annual Revenue Guarantee"). Where a Concessionaire Termination Event shall have occurred, the CTA shall be entitled to reduce the payment of the Annual Revenue

Guarantee without issuing a Notice of Termination, according to the following provisions:

15A1.1 **Notice Period.** The CTA shall provide the Concessionaire with a written notice in accordance with the provisions of Section 25.5.2 requesting the Concessionaire to remedy the Concessionaire Termination Event within the period specified therein which shall be no less than 90 days following receipt of such notice ("Notice Period"). A copy of the notice shall be provided by the CTA to the Senior Debt Funders.

15A1.2 **Traffic Related Events.** In the event that the Concessionaire Termination Event has an adverse effect on traffic in one or more of the Tunnels ("Traffic Related Event"), and the Concessionaire will not remedy the Traffic Related Event within 45 days, for each day beyond the 45 days period during which the Traffic Related Event has not been remedied, the Annual Revenue Guarantee shall be reduced by 1/365 of the Annual Revenue Guarantee payment applicable to that year. For the removal of doubt, the CTA shall not be entitled to reduce the Annual Revenue Guarantee with respect to the first 45 days of the relevant Notice Period.

In the event that the duration of the Traffic Related Events which were not remedied by the Concessionaire exceeds an aggregate of 90 days, for each day beyond the 90 day period during which the Traffic Related Events have not been remedied, the CTA shall pay the Annual Revenue Guarantee which would have been paid had the Traffic Related Events not occurred. For the removal of doubt, the CTA shall not be entitled to reduce the Annual Revenue Guarantee with respect to 90 days in aggregate during which any Traffic Related Events have not been remedied.

15A1.3 **Other Concessionaire Termination Events; Remedy During the Notice Period.** in the event that the Concessionaire will remedy the Concessionaire Termination Event (other than a Traffic Related Event) within the Notice Period, following such remedy, the Concessionaire shall be entitled to the part of the Annual Revenue Guarantee payment which was due with respect to the Notice Period.

15A1.4 **No Remedy during the Notice Period.** In the event that the Concessionaire did not remedy the Concessionaire Termination Event (other than a Traffic Related Event) within the Notice Period, for each day beyond the Notice Period during which the Concessionaire Termination Event has not been remedied, the Annual Revenue Guarantee shall be reduced by 1/365 of the Annual Revenue Guarantee payment applicable to that year (provided, however, that the CTA shall not be entitled to exercise such right to reduce payment with respect to the Notice Period).

15A1.5 For the avoidance of doubt the provisions of this Section do not derogate from all other provisions of the Agreement, including the rights of the CTA pursuant to Sections 25.4, 25.5 and/or 27.3.

15A2 Revenue Sharing

In the event that during any Calendar Year following the issuance of the Permit to Operate, the Actual Revenues exceed the projected revenues as detailed in Annex X, the Concessionaire shall pay the CTA an amount equal to the applicable percentage of the Actual Revenues as set forth in Annex X ("Revenue Sharing").

15A3. Method of Determining Revenues from Tolls

For purposes of this Agreement, revenues from Toll Charges will be recorded in accordance with the provisions of Annex Y.

The provisions of Annex Y with respect to the number of traffic measuring devices are to be finalized within 120 days as of the Amendment Closing Date. In the absence of an agreed upon Annex Y within the 120-days period, the provisions of Annex Y as attached on the Amendment Closing Date shall apply.

15A4 Right to Offset

The CTA shall be entitled to offset any payment which it is entitled to receive from the Concessionaire pursuant to this Agreement from any payment due to the Concessionaire under this Agreement, provided, however, that the provisions of this Section will not grant rights which override, contradict or undermine the provisions of Section 16.3 (Order of Payments). A 30 (thirty) days' prior written notice of the intended offset will be provided by the CTA to the Concessionaire and to the Senior Debt Funders. Prior to exercising its right to offset under this Section and as a condition thereto, the CTA shall first collect any sums in question by way of forfeiture of any of the bank guarantees available to it pursuant to this Agreement (provided however that this order of collection of funds shall not be deemed to limit the amounts which the CTA is entitled to offset, exceeding the amount of any bank guarantees available to it pursuant to this Agreement).

16 Royalties

16.1 A copy of Section 4 of Volume 1 of the Bid Documents submitted in July 1998 relating to the payment of Royalties, as accepted by the Tender Committee pursuant to the Tender Process, is attached to this Agreement as Annex I ("Royalties Offer").

16.2 The amount of Royalties is NIS 217,669,000⁵ (two hundred and seventeen million six hundred and sixty nine thousand New Israeli Shekels), which shall be paid by the Concessionaire to the State as follows:

(i) NIS 28,500,000 (twenty eight million five hundred thousand New Israeli Shekels), in one single payment no later than 60 days following the issuance of a Notice to Proceed (the "First Royalty Payment").

(ii) the remaining amount shall be deemed to constitute State | Subordinated Debt of the Concessionaire. For the avoidance of doubt, the remaining amount shall be the amount of Royalties as set forth in Section 16.2 less the amount of the First Royalty Payment including interest at a rate equal to the Reference Rate plus the applicable Margin as of the first Drawdown Date, which shall be accruing as of 60 days following the issuance of a Notice to Proceed and until the "End Date" which will be the ~~the~~earlier of: (a) 50 (fifty) months thereafter; or (b) the date of issuance of a Permit to Operate ("State Subordinated Debt"). The CTA shall extend the End Date in the event that the CTA shall issue a Change Order pursuant to the provisions of section 7.1 of Annex G.

The State Subordinated Debt shall be repaid in accordance with the terms | and conditions set forth in this Section and Annex W.

The provisions of this Section are intended to replace the provisions of the Royalties Offer.

16.3 Order of Payment

Any payment and/or repayment by the Concessionaire shall be | allocated towards the following obligations of the Concessionaire in the following order:

16.3.1 Without derogating from the generality of the provisions of Section 2 of Part II of Annex X, payment of the State's Revenues (if applicable), pursuant to the Revenue Sharing mechanism.

16.3.2 Operating Costs as defined under the Senior Debt Funding Agreement; all up to an amount not to exceed the Operating Costs set forth in the Approved Budget; or the Operating Costs as specifically approved by the CTA pursuant to section 16.3A2(2).

16.3.3 Mandatory tax Payments

16.3.4 Revenue Guarantee Overpayments

16.3.5 the scheduled repayment under the Revised Senior Debt Funding Agreement, consisting only of Financing Principal, interest

⁵ See footnote no. 1

and Linkage Differential, and the scheduled Secondary Debt repayment consisting only of principal, linkage and interest not exceeding the Interest rate determined under the Revised Senior Debt Funding Agreement, pro rata between the Bank and the Secondary Debt Funders; the Scheduled repayment under the Senior Debt Funding Agreement consisting only of Financing Prival, interest and Linkage Differential (as such terms are defined in the Senior Debt Funding Agreement);

16.3.6 the scheduled payments into the Debt Service Reserve Account and the Major Maintenance Reserve Account in accordance with Clause 18.5 (Debt Service Reserve Account) and 18.6 (Major Maintenance Reserve Account) and the scheduled payments into the Secondary Debt debt service reserve, provided that the total amount of all such payments into the Secondary Debt debt service reserve shall not exceed the aggregate amount of the scheduled payments under section 16.3.5 above with respect to Secondary Debt, expected to accrue over the following six months.

Where there are insufficient funds to discharge all amounts due and payable by the Borrower under this paragraph 16.3.6, then the existing funds shall be applied pro rata between the reserve accounts; the scheduled payments into the Debt Service Reserve Account and the Major Maintenance Reserve Account, all in accordance with the provisions of the Senior Debt Funding Agreement and the Approved Budget.

16.3.7 schedule Secondary Debt repayments, if any, consisting only of principal, linkage and interest not exceeding the interest rate determined under the Senior Debt Funding Agreement and the Approved Budget; DELETED

16.3.8 all other payments fees and penalties payable pursuant to the Secondary Debt Funding Agreement; The scheduled payment into the Secondary Debt Service Reserve Account, all in accordance with the provisions of the Secondary Debt Funding Agreement, provided that the total amount in the Secondary Debt Service Reserve Account will not exceed NIS 5 millions. DELETED

16.3.9 the Scheduled Royalty Repayment consisting of principal, linkage and Interest Rate;

16.3.10 Senior Debt overdue payments (principal and default interest), if any, and Secondary Debt overdue payments (principal and default interest), if any, pro rata between the Bank and Secondary Debt Funders (provided, however, that: (i) during the first 4 (four) years of the Operation Period and; (ii) for a period of 2 (two) years prior to the end of the term of the Senior Debt Funding Agreement and until the end of this Concession Period; principal and default interest pursuant to the Senior Debt Funding Agreement shall be repaid before the Scheduled Royalty Repayment);

16.3.11 Secondary Debt overdue payments (principal and default interest), if any;

16.3.12 all other payments, fees and penalties payable pursuant to the Senior Debt Funding Agreement and the Secondary Debt Funding Agreement, pro rata between the Bank and Secondary Debt Funders;

16.3.13 all other payments fees and penalties payable pursuant to the Secondary Debt Funding Agreement;

16.3.14 all other payments including payments to Equity Participants (without derogating from the provisions of the Senior Debt Funding Agreement).

(“Order of Payment”)

16.3A1 In the event that the internal order of the payments payable pursuant to the provisions of sub-sections 16.3.5, 16.3.6, 16.3.7 and 16.3.8 above (as opposed to their order of priority with respect to any other payment pursuant to Section 16.3), under the Senior Debt Funding Agreement as amended by the Deferred Date shall differ from the order of such sub-sections pursuant to this Section 16.3, the internal order of the said sub-sections under this Section 16.3 shall be amended to mirror the order of such sub-sections as shall be determined under the Senior Debt Funding Agreement as amended by the Deferred Date. For the removal of doubt, the foregoing shall not be interpreted or inferred to imply any change to content of the provisions of sub-sections 16.3.5, 16.3.6, 16.3.7 and 16.3.8 above, nor to the order of their payment with respect to any other payment pursuant to the other sub-sections of this Section 16.3.

In the event that the payment pursuant to the provisions of sub-section 16.3.8 above shall be placed below sub-section 16.3.1016.3.10, under the Senior Debt Funding Agreement as amended by the Deferred Date, the order of the said sub-sections under this Section 16.3 shall be amended to mirror the order of such sub-sections as shall be determined under the Senior Debt Funding Agreement as amended by the Deferred Date.⁶

In the event that the internal order of the payments payable pursuant to the provisions of sub-sections 16.3.1016.3.10, 16.3.1116.3.11, 16.3.12 and 16.3.13 above (as opposed to their order of priority with respect to any and all other payment pursuant to Section 16.3), under the Senior Debt Funding Agreement as amended by the Deferred Date shall differ from the order of such sub-sections pursuant to this Section 16.3, the

⁶The order of payments in Section 16.3 of this version is already amended in order to mirror the order of payments as was determined under the revised and amended Senior Debt Funding Agreement.

internal order of the said sub-sections under this Section 16.3 shall be amended to mirror the order of such sub-sections as shall be determined under the Senior Debt Funding Agreement as amended by the Deferred Date. For the removal of doubt, the foregoing shall not be interpreted or inferred to imply any change to content of the provisions of sub-sections 16.3.1016.3.10, 16.3.1116.3.11, 16.3.12 and 16.3.13 above, nor to the order of their payment with respect to any other payment pursuant to the other sub-sections of this Section 16.3.

16.3A2 For purposes of this Section 16.3:

- 1) **"Scheduled Royalty Repayment"** shall be deemed to mean:
 - (i) during any given year, the Royalty Repayment scheduled to be made in accordance with the repayment schedule which is in effect during such year as per the provisions of Section 4.1 of Annex W (Royalty Repayment Schedule); ("Original Repayment Date"); and/or
 - (ii) repayment of any or all Royalty Repayments, which have not been made on their Original Repayment Date, which repayments have been rescheduled in accordance with the provisions of Section 4.2 of Annex W.

2) **"Approved Budget"** shall mean the budget for operations as specified in the Base Case Financial Model ("income statement" sheet, lines 40-54 inclusive) as approved by the CTA on the Amendment Closing Date, attached hereto as Annex FF, as shall be adjusted to reflect the actual number of Vehicles utilizing the Tunnels during the immediately preceding Calendar Year. Without derogating from the provisions of Section 5, on the Deferred Date, Annex FF shall be replaced by the Base Case Financial Model which will constitute part of the Senior Debt Funding Agreement, provided, however, that the budget for operations as specified in the Base Case Financial Model and the method of adjustment thereof shall remain unchanged.

Payment of actual Operating Costs in excess of the Operating Costs under the Approved Budget shall be subject to the approval of the CTA.

16.4 Without derogating from the generality of the foregoing, the Order of Payment shall apply to any and all repayments, including prepayments, partial payments and payments following termination of this Agreement.

Furthermore, without derogating from the provisions of section 16.7 in the event that Actual Revenues result in insufficient funds in accordance with the Order of Payments, then such insufficient funds shall be applied according to the above Order of Payment and not "pro rata".

Notwithstanding the foregoing, and without derogating from the provisions of Section 16.3.2, any Revenue Guarantee payment shall be made to the Revenue Account (as defined under the Senior Debt Funding Agreement)

and further allocated to the Senior Debt Funders and the Secondary Debt Funders, pro rata, according to their respective parts in the provision of funding for the Project by the Senior Debt Funders and the Secondary Debt Funders on the date of each Revenue Guarantee payment. In the event that the portion of the Senior Debt and the Secondary Debt shall constitute less than 10%-85% of total funding required for the execution of the Project, the Revenue Guarantee Line shall be reduced according to the following mechanism: $RRL = RL + (RL - 29,500,000) * ((X\% - 10\%) / 85\%)$; $RRL = 29,500,000 + (RL - 29,500,000) * ((X\% + S\%) / 85\%)$; RRL – shall mean the reduced Revenue Guarantee Line, RL – shall mean the Revenue Guarantee Line, X – shall mean the portion of the Secondary Debt from the total funding required for the execution of the Project, S – shall mean the portion of the Senior Debt from the total funding required for the execution of the Project.

16.5 The Concessionaire hereby confirms that, except as specifically stated herein, there are no other conditions, financial or otherwise, affecting the Royalties repayments (including, but not limited to, the existence of minimum cover ratios) under any of the Funding Agreements. For the avoidance of doubt, in the event of any conflict between the provision of Section 16.3 and any other provisions in any of the Funding Agreements, then, subject to the provisions of Section 16.3A1, the provisions of this Section shall prevail.

16.6 The provisions of this Section will apply with respect to any Substituting Entity approved by the CTA in accordance with the provisions of Section 31.

16.7 Without derogating from the generality of the foregoing or from the provisions of Annex W, failure by the Concessionaire to make a Royalty Repayment on the Original Repayment Date, by virtue of insufficient Actual Revenues which result in insufficient funds in accordance with the Order of Payments, shall not constitute a breach of the Concessionaire's obligations under the Agreement.

17 Transfer of the Project to the CTA

17.1 The Concession Period shall terminate on July 1923, 2040 subject to the approval of the Knesset's Economy Committee, and subject to earlier termination of this Agreement in accordance with the provisions of Section 2525 or to extension of the Concession Period in accordance with the provisions of Section 33.

In the event that the CTA shall not obtain the approval of the Knesset's Economy Committee, (and without derogating from the foregoing), the Concession Period shall terminate on March 3, 2039 and the CTA shall compensate the Concessionaire in an amount which equals to the expected free cash flow from the Project which would have been generated between March 3, 2039 and July 1923, 2040, based on the free cash flow generated during the immediately proceeding Calendar year.

The said amount shall be payable to the Concessionaire by the CTA upon termination of the Concession Agreement as provided herein.

17.2 Upon termination of this Agreement:

- 17.2.1 the provisions of this Agreement except Sections 16, 17, 18, 19, 21, 22.8, 25.8, 26, 27, 28, 29 and 42 shall cease to have any force or effect, including the rights of the Concessionaire to Utilize the Site and collect Toll Charges;
- 17.2.2 the Concessionaire shall relinquish and assign, free of cost, any interest in any property on the Site or in the Project (other than movable property of the Concessionaire which is not a component of the Project Facilities and Project Utilities or which is not otherwise essential for the Operation and Maintenance of the Project) to the CTA and shall convey such property free of all liens, liabilities and mortgages;
- 17.2.3 the CTA shall be entitled to enter the Site and take immediate operational control of the Project;
- 17.2.4 upon the request of the CTA, the Concessionaire shall assign free of costs all Contracts and Insurance Policies to the CTA;
- 17.2.5 the Concessionaire will settle all outstanding liabilities arising from the termination of Contracts not assigned to the CTA, with the approval of the CTA, or assign to the CTA, as directed by the CTA, all right, title and interest of the Concessionaire under the Contracts. In the event of assignment to the CTA, the CTA shall have the right to continue performance under such assigned Contracts pursuant to the provisions which have been approved by the CTA in accordance with the provisions of this Agreement;
- 17.2.6 the Concessionaire shall deliver and the CTA 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 and other documents prepared by or on behalf of the Concessionaire in connection with the Project;
- 17.2.7 subject to the provisions of Section 34.1, the Concessionaire shall assign or grant to the CTA and/or the State, in accordance with the direction of the CTA, a non-exclusive, irrevocable right to use in the State any intellectual or industrial property rights not then owned by the CTA and/or the State connected with the use and operation of the Project, free of cost;
- 17.2.8 the Concessionaire undertakes that all Contracts and other agreements executed by it shall include, waivers for the CTA and 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; and

- 17.2.9 the CTA may direct the Concessionaire to take such other reasonable action in order to give effect to the provisions of this Section 17, and the Concessionaire shall take such action as the CTA may direct it.

18 Responsibility of Concessionaire

- 18.1 The Concessionaire shall execute the Project in accordance with the Contract Documents at the Concessionaire's own cost and risk, raise all Equity and debt financing for the Project, and carry out the Design, Construction, Operation, Maintenance and Management until the end of the Concession Period in accordance with the provisions of the Contract Documents and without recourse to the CTA or the State, including the Promoters, except as expressly provided herein.
- 18.2 The Concessionaire shall be solely responsible, answerable and accountable for, and the CTA and the State, including the Promoters, their respective successors, assigns, officers, directors, agents, representatives and employees, shall not be responsible, answerable or accountable, in any manner for:
 - 18.2.1 any loss or damage that may occur to the Project or any part thereof;
 - 18.2.2 loss or damage to any of the materials and any equipment and other articles used or employed in the execution of the Design, use, Construction, Operation, Maintenance or Management of the Project; or
 - 18.2.3 any and all damages, liabilities, losses, costs, expenses (including attorney's fees), demands, claims, suits, proceedings whether civil or criminal (other than criminal acts of representatives of the State or the CTA), orders, judgments, penalties, fines and other sanctions arising out of, or in connection with, the Project, the Design, use, Construction, Operation, Maintenance or Management of the Project or any part thereof, or performance of this Agreement or breach thereof (including, any damage to property, death or injury to persons including users of the Project or third parties).

For the avoidance of doubt, the Concessionaire shall not be responsible for the payment of compensation to third parties in connection with the acquisition or appropriation of the Site under the Land Ordinance (Acquisition for Public Purposes) (פקודת הקרקעות רכשה לצרכי ציבור), or for the payment of compensation under Clause 197 of the Planning and Building Law 1965, which is claimed in respect to the L.O.S.

19 Indemnification

19.1 Indemnification by the Concessionaire

19.1.1 The Concessionaire shall defend, indemnify and hold harmless the CTA and the State, including the Promoters, their respective successors, assigns, officers, directors, agents, representatives and employees, from and against any and all damages, liabilities, losses, costs, expenses, demands, claims, suits, proceedings whether civil or criminal (but excluding criminal acts of representatives of the State or the CTA), orders, judgments, settlements, penalties, fines, arising from, or brought in connection with the Concessionaire's responsibility under Section 18, including legal fees incurred while defending against claims or to enforce Concessionaire's indemnification obligations hereunder, and including without limitation, claims arising out of, relating to or resulting from any of the following:

19.1.1.1 the performance by the Concessionaire, its employees, agents, officers, Subcontractors or any other Persons, of the Design, use, Construction, Operation, Maintenance or Management of the Project;

19.1.1.2 the failure of the Concessionaire, its employees, agents, officers, Subcontractors or any other Persons performing any part of the Design, Construction, Operation, Maintenance or Management of the Project, to comply with any applicable laws or regulations, including, without limitation, the L.O.S., the E.I.S. and the Detailed Scheme;

19.1.1.3 the use by the indemnified parties of trade secrets, patents, proprietary information, know-how, copyrights or inventions, arising out of the use of methods, processes, designs, information, or other items furnished or communicated to such indemnified parties in connection with the Contract Documents;

19.1.1.4 damage to property, death or injury to Persons, or any claim against the CTA or the State, including the Promoters arising out of, or in connection with, the Project, whether caused by negligence or otherwise, and all expenses relating thereto and including, without limitation, claims of users of the Project or third parties arising out of, and any action or inaction relating to, the Design, use, Construction, Operation, Maintenance or management of the Project; and

19.1.1.5 expenses incurred due to any lien filed, including all expenses incurred in discharging such lien.

For the avoidance of doubt, the Concessionaire shall not be responsible for the payment of compensation to third parties in connection with the acquisition or appropriation of the Site under the Land Ordinance (Acquisition for Public Purposes) (פרק ד' קניינויות כביש לרכי יבוכר), or for the payment of compensation under Clause 197 of the Planning and Building Law 1965, which is claimed in respect to the L.O.S.

19.1.2 The obligations imposed on the Concessionaire under this Section 19 shall not be construed to negate, abridge, or reduce other rights or obligations which would otherwise exist in favor of a party indemnified hereunder.

19.1.3 If any legal action is brought or any other proceedings ("Proceedings") are commenced against the CTA or the State, including the Promoters ("Authorities"), and the Authorities claim that they are entitled to be indemnified pursuant to this Agreement, then the Authorities may retain the services of attorneys on their behalf at the expense of the Concessionaire or may be represented, all or any of them by the State Attorney. The Concessionaire (if it is also a party to such Proceedings) shall coordinate its defense with the Authorities. Without derogating from the foregoing it is agreed that any settlement of such Proceedings requires the State's prior written consent.

19.1.4 If Proceedings are commenced as stated above against the Authorities and against the Concessionaire, the Concessionaire or the CTA (as the case may be) shall give the other notice of this immediately after becoming aware of such Proceedings.

19.1.5 If the CTA finds that the Concessionaire is not coordinating its defense with the Authorities in a proper manner or fails to defend diligently or if the CTA finds that representation should be by one of the Authorities or on its behalf, such Authority may retain the services of attorneys on its behalf and at the Concessionaire's expense or appoint the State Attorney who will represent them in the said Proceedings and may settle such Proceedings, provided that the Concessionaire gives its consent to such settlement in advance and in writing. The Concessionaire may not refuse to settle such Proceedings except on reasonable grounds. For the avoidance of doubt, the settling of such Proceedings by an Authority shall not relieve the Concessionaire of the obligation to indemnify as provided in this Agreement (including without limitation, legal fees and expenses incurred by any Authority for the purpose of enforcing the Concessionaire's indemnification obligations hereunder).

19.1.6 For the foregoing purposes of this Section 19.1, the Concessionaire shall provide a power of attorney for the Authorities on Closing so that their attorneys may represent the Concessionaire in said Proceedings.

19.2 Indemnification by the State

19.2.1 The State shall defend, indemnify and hold harmless the Concessionaire from and against any and all damages, liabilities, losses, costs, expenses, demands, claims, suits, proceedings, orders, judgments, settlements, penalties, fines and other sanctions including, without limitation, legal fees incurred while defending against claims or to enforce the State's indemnification obligations hereunder, arising out of, relating to or resulting from any of the following:

19.2.1.1 any claims for the payment of compensation to third parties in connection with the acquisition or appropriation of the Site under the Land Ordinance (Acquisition for Public Purposes) (פְּקֻדָּת הַקְּרֻעָה וְכִשְׁתָּה לְעָרֵי יִבּוּר), or for the payment of compensation under Clause 197 of the Planning and Building Law 1965, which is claimed in respect to the L.O.S.; and

19.2.1.2 any right of a third party created before the Concessionaire was granted the right to Utilize the Site by the State, as determined by a non-appealable determination of a court of competent jurisdiction, which restricts the Concessionaire's right to Utilize the Site and which would not constitute a grounds for termination of the Agreement pursuant to Section 25.6.

19.2.2 If any Proceeding is commenced against the Concessionaire with respect to which the Concessionaire may claim that it is entitled to indemnification under Section 19.2.1.1 or if any Proceeding is commenced by or against the Concessionaire with respect to which the Concessionaire may claim that it is entitled to indemnification under Section 19.2.1.2, the Concessionaire shall give the CTA notice thereof immediately after the commencement thereof or on becoming aware of such Proceeding.

19.2.3 The CTA shall assume the defense of any Proceeding with respect to which the Concessionaire may claim that it is entitled to indemnification under Section 19.2.1.1. The Concessionaire may not refuse to settle such Proceedings except on reasonable grounds.

19.2.4 The CTA may assume the defense or conduct of any Proceeding with respect to which the Concessionaire may claim that it is entitled to indemnification under Section 19.2.1.2. The Concessionaire shall bear the expense of such defense or conduct, subject to reimbursement by the CTA if the Concessionaire is determined to be entitled to indemnification pursuant to Section 19.2.1.2. The Concessionaire may not refuse to settle such Proceedings except on reasonable grounds.

19.2.5 For the foregoing purposes of this Section 19.2, the Concessionaire shall provide a power of attorney for the CTA and the State on Closing so that their attorneys may represent the Concessionaire in said Proceedings.

20 Insurance

20.1 Copies of the Insurance Policies that the Concessionaire is required to purchase and maintain during the Pre-Construction Period are attached to this Agreement as Annex J. Copies of the Insurance Policies that the Concessionaire is required to purchase and maintain during the Construction and the Operation Periods will be attached to this Agreement as Annex J, in accordance with the provisions of this Agreement.

20.2 The Concessionaire has purchased or will procure (as the case may be), at its own expense, Insurance Policies acceptable to the CTA, and shall maintain such Insurance Policies in full force and effect as specified herein:

20.2.1 during the Pre-Construction Period the Concessionaire shall maintain, at minimum, the Insurance Policies with the minimum coverage and minimum limits specified in Section 20.5.3;

20.2.2 during the Construction Period, the Concessionaire shall maintain, at minimum, the Insurance Policies specified in Sections 20.5.2 and 20.6, with the minimum coverage and minimum limits specified in Sections 20.5.4 and 20.6.2; and

20.2.3 during the Operation Period, the Concessionaire shall maintain, at minimum, the Insurance Policies specified in Sections 20.5 and 20.6, with the minimum coverage and minimum limits specified in Sections 20.5.5 and 20.6.2.

All relevant Insurance Policies procured by the Concessionaire shall be approved by the CTA in accordance with the provisions of Section 20.9 prior to Closing or the Amendment Closing Date or the issuance of a Notice to Proceed or a Permit to Operate, as the case may be.

20.3 The Concessionaire shall maintain the Insurance Policies on a par with the terms available in the international insurance market, with reliable insurers of adequate financial strength and experience.

20.4 The procurement of such Insurance Policies shall not be construed to limit the Concessionaire's liability under this Agreement, nor to satisfy the indemnification provisions and requirements hereunder. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Concessionaire from liability as to third parties in excess of such coverage, nor shall it preclude the Concessionaire from taking such other actions as are available to it under any other provision of this Agreement, or any provision of law.

20.5 Liability Insurance Policies

20.5.1 The Concessionaire has purchased or will procure (as the case may be) and maintain liability insurance policies which shall protect the Concessionaire, the CTA and the State, including the Promoters, against all claims described herein or injuries to Persons or loss or damage to property which may arise from or in connection with the Design, Construction, Operation, Maintenance or Management of the Project or any part thereof by the Concessionaire, any Designer, Contractor, Operator, Maintenance Contractor, Manager or Subcontractor, their respective employees, agents, representatives, anyone directly or indirectly employed by any of them, or anyone for whose acts they are liable.

20.5.2 Liability insurance policies shall include the following coverage as a minimum:

20.5.2.1 "general liability coverage", including physical third party injury or damage to Persons or property damage arising out of all activities including the preparation of the Detailed Scheme, Final Design and Detailed Design, Change Orders or out of any other service to be performed by the Concessionaire under this Agreement;

20.5.2.2 automobile liability, including coverage for owned, non-owned and hired vehicles;

20.5.2.3 worker's insurance as required by the laws of the State of Israel and an Employers Liability Policy ; and

20.5.2.4 specific design-build professional liability insurance protecting against any act, error or omission, including coverage for acts by the Concessionaire, any Designer, Contractor, Operator, Maintenance Contractor or Subcontractor, their respective employees, agents, representatives, anyone directly or indirectly employed by any of them, or anyone for whose acts they are liable; and coverage must apply to claims reported up to 5 years following the expiration of this Agreement.

20.5.3 During the Pre-Construction Period, the Concessionaire shall maintain professional liability insurance with limits of no less than \$5,000,000 per event and for the period the insurance policy is in force and effect.

20.5.4 During the Construction Period, the Concessionaire shall maintain limits of no less than the following:

20.5.4.1 general liability: the equivalent of \$40,000,000 per occurrence for bodily injury, property damage and for the period the Insurance Policy is in force and effect;

20.5.4.2 employers liability: the equivalent of \$20,000,000 per accident for bodily injury or professional sickness and for the period the Insurance Policy is in force and effect; and

20.5.4.3 Professional Liability Insurance of limits no less than \$20,000,000 per event and for the period the Insurance Policy is in force and effect, provided that such period shall be extended beyond the Construction Period and for a 5 year discovery period.

20.5.5 During the Operation Period, the Concessionaire shall maintain limits of no less than the following:

20.5.5.1 general liability: the equivalent of \$40,000,000 per occurrence for bodily injury and property damage, and for the period the Insurance Policy is in force and effect; and

20.5.5.2 employers liability: the equivalent of \$20,000,000 per accident for bodily injury or professional sickness, and for the period the Insurance Policy is in force and effect.

20.6 Property Insurance Policies

20.6.1 The Concessionaire shall procure and maintain property insurance which shall protect the interests of the Concessionaire, the CTA and the State, including the Promoters, against property loss.

20.6.2 Property Insurance coverage shall include "builders risk" insurance for the Construction Period, and a property policy for the Operation Period on a yearly basis, which shall cover all properties, real and personal, for "all risks" of physical loss or damage, including but not limited to the perils of earthquake, landslide or any other earth movement and flood for all buildings, structures, fixtures, materials, supplies, machinery, and equipment to be used in, or incidental to, the Construction of the Project, on the Site, off the Site or in transit, for the full replacement value of such properties; coverage shall be included for property of others in the care, custody or control of any insured for which such insured may be liable; required coverage shall include, but is not limited to:

20.6.2.1 foundations, including piling;

20.6.2.2 machinery accidents and operational testing;

20.6.2.3 plans, blueprints and Project Design Documents;

20.6.2.4 accidental loss arising out of faulty Construction Work or faulty materials;

20.6.2.5 physical damage directly arising out of design error or omission;

20.6.2.6 loss arising out of mechanical breakdown or electronic apparatus breakdown during the Operation Period; and

20.6.2.7 demolition and debris removal.

20.7 All Insurance Policies shall include or be endorsed to contain the following provisions:

20.7.1 a statement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits unless 60 days prior written notice has been submitted to the CTA;

20.7.2 for any claims related to the Project, the Concessionaire's Insurance Policy coverage shall be primary insurance with respect to the CTA and the State, including the Promoters; and any insurance or self insurance maintained by the CTA and the State, including the Promoters, for their respective members, directors, officers, employees, and agents shall be in excess of the Concessionaire's insurance and shall not contribute to it;

20.7.3 any failure on the part of the Concessionaire to comply with reporting provisions or other conditions of the Insurance Policies, any occurrence of a Concessionaire Termination Event, or any breach of warranty, any action or default of the Concessionaire or others, relating to the Project or any change in ownership or Control of the Concessionaire shall not affect coverage provided to the CTA and the State, including the Promoters;

20.7.4 the CTA and the State, including the Promoters shall be named in all Insurance Policies as additional insured parties with cross-liability clause;

20.7.5 the insurer under each Insurance policy shall waive any right of subrogation, set-off, counterclaim or any other deduction against the CTA or the State, including the Promoters; and

20.7.6 all insurance policies shall be issued on a worldwide jurisdiction basis.

20.8 Additional Insurance Requirements

20.8.1 Within 60 days of the beginning of each Fiscal Year, the Concessionaire shall submit to the CTA an acknowledgment signed by each insurance company issuing an Insurance Policy stating that: such Insurance Policy is valid; there are no delays in the premium payments; and there are no warnings concerning the

deletion, suspension, limitation, modification or termination of such Insurance Policy.

20.8.2 The expiration of any Insurance Policy for any reason shall be followed by a new Insurance Policy that corresponds with all the requirements related to the first Insurance Policy in accordance with the provisions of Section 20.9.2.

20.8.3 A failure of the Concessionaire to comply with the provisions of this Section would entitle the CTA or the State, including the Promoters to enter into an insurance policy in place of the Concessionaire and subsequently forfeit Bond or Bonds which are valid at the time.

20.8.4 Any deductibles or self-insured retentions must be declared to and approved by the CTA. At the request of the CTA, the insurer shall either reduce or eliminate such deductibles or self-insured retentions with respect to the CTA and the State, including the Promoters, or the Concessionaire shall procure a bond acceptable to the CTA, guaranteeing payment of losses and related investigation, claim administration and defense expenses.

20.8.5 There shall be no recourse against the CTA or the State, including the Promoters for payment of premiums or other amounts with respect thereto.

20.9 Approval of Insurance Policies

20.9.1 Insurance Policies - At least 60 days prior to the anticipated date of issuance of the Notice to Proceed and the anticipated date of issuance of the Permit to Operate, the Concessionaire shall furnish the CTA with all insurance cover notes required to be in effect as of the date of the Notice to Proceed or the date of the Permit to Operate, respectively, and any other information as may be necessary to enable the CTA to assess accurately the precise scope, extent, limits, exclusion and other terms of the Insurance Policies provided.

20.9.2 Renewal of Insurance Policies - At least 60 days prior to the expiration of any Insurance Policy, the Concessionaire shall furnish the CTA with such insurance cover notes as proposed to be renewed and any other information as may be necessary to enable the CTA to assess accurately the precise scope, extent, limits, exclusions and other terms of the Insurance Policies provided.

20.9.3 Amendments to an Insurance Policy - If at any time following the execution of an Insurance Policy, the Concessionaire and the relevant insurer propose a material change to such Insurance Policy, the Concessionaire shall submit to the CTA a copy of the first Draft of the amendment relating to such change and a copy of

each succeeding Draft within 2 days following the preparation and issue thereof.

20.9.4 The CTA shall review all Insurance Policies, renewal of Insurance Policies and amendments to an Insurance Policy submitted by the Concessionaire under Sections 20.9.1, 20.9.2 and 20.9.3, and shall either approve or object to such within 30 days of their submission.

20.9.5 Such approval or objection shall be made in writing and delivered to the Concessionaire, and where any objections are made, the CTA shall specify the grounds for such objections.

20.9.6 The CTA will not unreasonably withhold their approval of an Insurance Policy, renewal of an Insurance Policy or an amendment to an Insurance Policy submitted by the Concessionaire under Sections 20.9.1, 20.9.2 and 20.9.3. If, in the opinion of the CTA, an Insurance Policy either as submitted, or as it would be following any proposed amendment, does not conform to the requirements of this Agreement or to the best terms available in the international insurance market, the CTA shall notify the Concessionaire either of the changes to the aforementioned Insurance Policy that should be effected or that all or part of any proposed change would not be acceptable. If, in the opinion of the Concessionaire, the change required by the CTA, or the CTA's refusal to agree to an amendment would result in the Concessionaire being required to maintain insurance that is either:

20.9.6.1 not available; or

20.9.6.2 only available on substantially uneconomic terms,

then the dispute shall be referred to a mutually acceptable independent insurance expert, whose findings, in the absence of a manifest error, shall be binding upon the parties. Recognizing the importance of the insurance coverage that the Project requires, the parties will make every effort to expedite their actions hereunder. Should the parties fail to agree on the identity of such insurance expert, the Disputes Board shall appoint such expert upon the receipt of a written request submitted to it by either party.

20.10 Subject to Section 24.2, the proceeds of any claims under the property insurance policies referred to in Section 20.6 shall be applied to the repair or restoration of the Project, unless the proceeds thereof are insufficient for such repair or restoration in which case the CTA shall direct the Concessionaire as to how such proceeds shall be applied, subject to any security interest in such proceeds in favor of the Funders under the Funding Agreements, which security interest shall provide for such proceeds to be paid into a specified account to be agreed, from which they shall be applied ultimately toward the repair or restoration of the Project,

as directed by the CTA, and not toward repayment under the Funding Agreements.

21 Bonds

21.1 The Concessionaire shall provide the CTA with Bonds in accordance with the provisions of this Section 21.

21.2 All Bonds (other than the Shareholders Guarantee), furnished by the Concessionaire shall be provided by an Israeli commercial bank or by an overseas commercial bank from a country having diplomatic ties with the State, which is rated at least A2 by Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc. or the equivalent rating by another rating agency. The CTA reserves the right to demand confirmation of the overseas bank by an Israeli commercial bank.

21.3 Bonds Provided by Concessionaire to CTA at Closing:

21.3.1 Performance Bond - The Concessionaire shall provide at Closing a Performance Bond in an amount in NIS equivalent to \$5 million, in the form attached to this Agreement as Annex K. The Performance Bond will be valid until the issuance of a Notice to Proceed.

21.3.2 Shareholders Undertaking - Each Initial Equity Participant and, additionally, its Ultimate Parent, if the Participant's equity is less than 4 times its relative share of the Equity of the Concessionaire, shall provide at Closing an undertaking or a guarantee (as the case may be) of its respective obligation to contribute its pro-rata share of the aggregate Equity of the Concessionaire and to cause such funds to be invested in the Project in the form attached to this Agreement as Annex L. The Shareholders Undertaking will be valid until such Initial Equity Participant or its Ultimate Parent contributes its pro-rata share of the aggregate Equity of the Concessionaire and such funds are invested in the Project.

21.3.3 DELETED

21.4 Bonds Provided by Concessionaire to CTA at the End of the Pre-Construction Period:

21.4.1 Construction Performance Bond - Prior to the issuance of the Notice to Proceed, the Concessionaire shall provide a Construction Performance Bond in an amount in NIS equivalent to \$10 million, in the form attached to this Agreement as Annex N. The Construction Performance Bond will be valid from the date of issuance of the Notice to Proceed until Substantial Construction is attained by the Concessionaire and approved by the CTA.

21.4.2 **Second Construction Performance Bond** - Following attainment of Substantial Construction, the Concessionaire shall provide a Second Construction Performance Bond in an amount in NIS equivalent to \$3 million, in the form attached to this Agreement as Annex Q. The Second Construction Performance Bond will be valid until the issuance of a Permit to Operate.

21.5 Bonds Provided by Concessionaire to CTA at the End of the Construction Period:

21.5.1 **1st Operation and Maintenance Bond** - Prior to issuance of a Permit to Operate, the Concessionaire shall provide the 1st Operation and Maintenance Bond in an amount of NIS 20 million, in the form attached to this Agreement as Annex P. The 1st Operation and Maintenance Bond shall be valid until receipt and approval by the CTA of the Operation and Maintenance Bonds.

21.5.1A **Operation and Maintenance Bonds** - As of the third anniversary of the issuance of a Permit to Operate, the Concessionaire shall provide the Operation and Maintenance Bonds in an amount in NIS of 10 million, in the form attached to this Agreement as Annex P1.

21.5.1B Valid Operation and Maintenance Bond(s) will be in effect from the date of issuance of a Permit to Operate until the termination of the Concession Period. Each Operation and Maintenance Bond shall have a term of no more than 1 year. The Concessionaire shall provide substitute Operation and Maintenance Bonds in accordance with Section 21.8.1.

21.5.2 **Final Maintenance Bond** - The Concessionaire shall provide 4 years prior to the end of the Concession Period a Final Maintenance Bond in an amount in NIS equivalent to \$2 million, in the form attached to this Agreement as Annex Q. The Final Maintenance Bond shall be valid until six months following the end of the Operation Period.

21.6 Any changes to the forms of the Bonds attached hereto are subject to the approval of the CTA.

21.7 If a Bond is required to be valid for a period exceeding 3 years, such Bond may have a duration of not less than 3 years provided that the Concessionaire shall substitute for such Bond in accordance with Section 21.8.1 a Bond which meets all the relevant requirements of this Section 21.

21.8 Submission of Bonds - Procedure

21.8.1 If, 60 days prior to the expiration of a Bond, the Concessionaire has not completed all the obligations to be performed during the time period secured by that Bond, or if such period has been extended, the Concessionaire shall provide, at its own expense, a substitute Bond meeting the requirements of this Section 21 or extend the term of the Bond and notify the CTA of such extension.

21.8.2 Not less than 30 days prior to the expiration of the Performance Bond, the Concessionaire will furnish for the approval of the CTA the Construction Performance Bond.

21.8.3 Not less than 30 days prior to the expiration of the Construction Performance Bond, the Concessionaire will furnish, for the approval of the CTA, the Second Construction Performance Bond.

21.8.4 Not less than 30 days prior to the expiration of the Second Construction Performance Bond, the Concessionaire will furnish, for the approval of the CTA, the Operation and Maintenance Performance Bond.

21.8.5 If, for any reason a satisfactory Bond has not been substituted or its term not extended pursuant to this Section 21.8 by the Concessionaire, the CTA may collect funds under any existing Bond, and may further retain any such funds until the CTA has been satisfied that all undertakings to be performed during the time period secured by the Bond have been completed or until a satisfactory substituting Bond has been furnished.

21.8.6 The Concessionaire shall ensure that the Bonds submitted hereunder shall be valid and irrevocable for the full period provided therein and substituted pursuant to this Section 21.8. Upon replacement of any Bond, the CTA shall return it to the Concessionaire.

21.9 Approval of Bonds

21.9.1 The CTA shall review all Bonds submitted under Sections 21.3, 21.4, 21.5 and 21.8.1, and shall either approve or object in writing to such Bonds within 14 days and, where objection is made, the CTA shall specify the grounds for such objection.

21.9.2 The CTA will not unreasonably object to any Bond. Where the CTA objects to a Bond, the CTA and the Concessionaire shall use their best efforts to resolve the differences within 14 days. Where an agreement has been reached, the applicable Bond shall be attached to this Agreement in the applicable annex and shall thereafter constitute an integral part of this Agreement.

21.10 Forfeiture of Bonds

21.10.1 The CTA shall be entitled to collect on any Bond, Bonds or any part thereof:

21.10.1.1 following the Concessionaire's breach of any of its obligations under this Agreement;

21.10.1.2 upon the issuance of a Notice of Termination in accordance with the provisions of Sections 25.1.1 or 25.4;

21.10.1.3 in the event that the Concessionaire fails to pay the CTA or the State sums owed under, or fails to take action in accordance with, a Final Decision of the Disputes Board within the time period set forth in such Final Decision;

21.10.1.4 in accordance with the provisions of Section 21.8.5;

21.10.1.5 in accordance with the provisions of Section 20.8.3;

21.10.1.6 in accordance with the provisions of Sections 27.1, 27.2 and 27.3;

21.10.1.7 In the event the Concessionaire fails to make payments upon demand as provided in Sections 37.2.2.6 and 38.4.; and

21.10.1.8 in accordance with the provisions of Section 15A4.

The CTA shall not be entitled to collect on any Bond in an arbitrary or capricious manner or amounts which do not bear a reasonable relationship to the event giving rise to the right to collect on a Bond. In the event specified in Section 21.10.1.2, the entire amount of the Bonds may be collected.

21.10.2 Notwithstanding the foregoing (and excluding collection on the Bonds following the issuance of a Notice of Termination by the CTA which is rendered in accordance with the provisions of Section 25.5), 14 days prior to the collection on the Bonds, the CTA will issue a written notice to the Concessionaire, specifying the breach and its intention to collect on the Bonds. A copy of the said notice shall be furnished to the Funders.

21.10.3 Following collection on a Bond (and excluding collection following issuance of a Notice of Termination), the Concessionaire shall furnish the CTA with a new Bond in the amount of the collected Bond. In the event of partial collection on a Bond, the

Concessionaire shall furnish a supplementary Bond for the amount collected.

21.10.4 Should the Concessionaire fail to furnish a new or supplemental Bond as described above, the CTA may consider such failure as a Concessionaire Termination Event and may collect on all other existing Bonds.

21.10.5 Collection on a Bond or any part thereof under Section 21.10.1.1 or 21.10.1.6, shall not derogate from the CTA's right to terminate this Agreement, nor from its right to any remedy accorded by law or this Agreement or relieve the Concessionaire of its liabilities and undertakings under this Agreement including its liability to indemnify under this Agreement.

22 Reporting Obligations

22.1 The Concessionaire shall maintain at its office a complete set of all books and records prepared or employed by the Concessionaire in its management, scheduling, cost accounting and otherwise with respect to the Project. The Concessionaire shall grant the CTA access to such books and records as the CTA shall request in connection with the issuance of Change Orders, the resolution of disputes and such other matters as the CTA reasonably deems necessary for purposes of verifying compliance with this Agreement and all applicable law.

22.2 The Concessionaire shall make arrangements with respect to the installation and operation of an accounting and cost control system in accordance with generally accepted accounting practices in Israel. The Concessionaire shall authorize its auditors to communicate directly with the CTA at any time regarding the Concessionaire's accounts and operations and shall furnish to the CTA a copy of such authorization. All fees and expenses incurred by the Concessionaire's auditors shall be borne by the Concessionaire. Upon notice given to the Concessionaire, the CTA shall have the right to require that a firm of independent accountants conduct additional audits of the Concessionaire at the CTA's expense.

22.3 The Concessionaire shall, as soon as available but in any event within 180 days after the end of each Fiscal Year, furnish to the CTA:

22.3.1 two copies of the Concessionaire's complete financial statements for such Fiscal Year (which are in agreement with its books of account and prepared in accordance with accounting principles which are generally accepted in Israel and consistently applied), together with an audit report thereon, all in accordance with the requirements of the laws of Israel pertaining to accounting;

22.3.2 a copy of any management letter sent by the management of the Concessionaire or other communication sent by the auditors to the Concessionaire or to its management in relation to the

Concessionaire's financial, accounting and other systems, management and accounts;

22.3.3 a report by the auditors certifying that, based on its said financial, accounting and other systems, management and accounts, the Concessionaire was in compliance with its financial obligations under the Funding Agreements as of the end of the relevant Fiscal Year or, as the case may be, detailing any non-compliance; and

22.3.4 an analysis of the current projected cash flows of the Concessionaire for the then current Fiscal Year and for the following Fiscal Year.

22.4 The Concessionaire shall, as soon as available but in any event within 60 days of the end of the first six-month period of each Fiscal Year, furnish to the CTA two copies of the Concessionaire's complete financial statements for such six-month period (which are in agreement with its books of account and prepared in accordance with accounting principles which are generally accepted in Israel and consistently applied) and, if requested by the CTA, certified by an officer of the Concessionaire, all in accordance with the requirements of the laws of Israel pertaining to accounting.

22.5 The Concessionaire shall, as soon as available but in any event within 60 days of the end of each six-month period of each Fiscal Year, furnish to the CTA:

22.5.1 a report describing the current legal structure and composition of each Participant (The provisions of this Section do not derogate from the provisions of Section 23);

22.5.2 a statement describing in reasonable detail the performance of any Related Party Transaction during the period (The provisions of this Section do not derogate from the provisions of Section 6);

22.5.3 a report on the implementation and progress of the Project, containing such information as the CTA may reasonably require and disclosing any factors of which the Concessionaire is aware materially and adversely affecting, or which would be likely materially and adversely to affect, the carrying out of the Project;

22.5.4 a list of each of the creditors to which the Concessionaire owes a sum in excess of the equivalent of \$250,000 based on then prevailing exchange rates, including details as to the amount due to each of them, which list shall indicate any changes, as compared to the list previously submitted; and

22.5.5 a statement identifying the capital, Construction and Operation and Maintenance costs during that period.

22.6 The Concessionaire shall immediately report to the CTA details of any of the following events:

22.6.1 any charge, lien or attachment imposed on any of the Concessionaire's property, and any seizure thereof (The provisions of this Section do not derogate from the provisions of Section 30);

22.6.2 any transaction in respect of the shares of the Concessionaire of which the Concessionaire is aware (other than shares traded by the public, if any) (The provisions of this Section do not derogate from the provisions of Section 23); and

22.6.3 any factors materially and adversely affecting or which might materially and adversely affect the Concessionaire's business and operations or its financial condition, including a report of any litigation, threatened or pending which might impact the ability of the Concessionaire to fulfill its obligations under this Agreement, and any matter that might influence the validity of this Agreement or any matter that constitutes a substantial breach, including, without limitation, any possible Concessionaire Termination Event, the circumstances thereof, and possible results as viewed by the Concessionaire.

22.7 The Concessionaire shall provide to the CTA 14 days prior to its coming into force of each of the following:

22.7.1 a report regarding any change in its Articles of Association;

22.7.2 a report regarding any change in the constitution of its Board of Directors;

22.7.3 a report detailing any change in the Control of the Ultimate Parent;

22.7.4 a report relating to any material change in the Concessionaire's management or organizational structure or any other material change which might affect the fulfillment of the Concessionaire's obligations under the Contract Documents;

22.7.5 a report describing any of the Contracts or other material contracts to be executed by the Concessionaire; and

22.8 For a period of not more than 180 days following the termination of this Agreement for whatever reason, the Concessionaire shall retain in safe storage all such records as are referred to in this Section 22 which were in existence at the date of termination. Upon the expiry of such 180-day period, or such earlier date as may be agreed by the CTA and the Concessionaire, the Concessionaire shall deliver all such records (or where such records are required by legislation to remain with the Concessionaire or a Participant of the Concessionaire, copies thereof) to the CTA or to their order in such manner and at such location as the CTA

shall specify. The costs of retaining such records in safe storage and delivering the same to the CTA shall be borne by the Concessionaire.

23 Transfers of Equity and Changes in Control

23.1 Transfer of Equity or Change in Control

The Concessionaire shall not attempt, approve or otherwise authorize, and the Participants shall not undertake a Transfer of Equity of the Concessionaire to any Person, or change Control of the Concessionaire, without the prior written approval of the Ministers. In the event that a Participant's equity is less than 4 times its relative share of the Equity of the Concessionaire as set forth in Annex L, then the provisions of this Section 23.1 shall apply to any Transfer of Equity of such Participant or change in Control of such Participants if, as a result, the Ultimate Parent of such Participant shall cease, whether directly or indirectly, to have Control of such Participant.

23.2 Approval of Transfer of Equity and Change in Control

23.2.1 The Concessionaire shall submit, prior to any Transfer of Equity or change in Control of the Concessionaire or change in Control of a Participant contemplated by Section 23.1, a request to the Ministers. Such request shall include a description of the proposed Transfer of Equity, change in Control, the transferee and, if applicable, the amendment to a Shareholders Agreement in accordance with the provisions of this Section and Section 4.

23.2.2 The Ministers shall review the requests under Section 23.2.1, and shall either approve or object in writing to such request within 45 days following the receipt of such request.

23.2.3 During the Pre-Construction Period and the Construction Period and three years thereafter, the Ministers, at their sole discretion, may object to any Transfer of Equity or change in Control which requires approval under Sections 23.1.

23.2.4 From the end of the period specified in Section 23.2.3, the Ministers will not unreasonably refuse to grant approval to any Transfer of Equity or change in Control which requires approval under Section 23.1. In addition, it is hereby emphasized that grounds related to the financial ability of the purchaser or assignee and/or the fact that the purchaser or assignee is suspected of being involved in crime or hostile to the State and/or is a resident or a national of a country which does not have diplomatic relations with the State shall not be considered to be unreasonable grounds.

23.2.5 Any purported Transfer of Equity or change in Control in violation of this Section 23 shall be null and void and of no force and effect and shall constitute a Concessionaire Termination Event.

23.2.6 In the event of any Transfer of Equity or change in Control in the Concessionaire, the Concessionaire shall obtain and deliver to the Ministers, prior to the approval of such change by the Ministers, an undertaking in the form of the undertaking attached to this Agreement as Annex L (appropriately amended) signed by the recipient under such Transfer of Equity or change in Control.

23.2.7 In the event that the change in Control of a Participant shall result in a change in the Ultimate Parent, the Concessionaire shall obtain and deliver to the Ministers, prior to the approval of such change by the Ministers, an undertaking in the form of the undertaking attached to this Agreement as Annex L (appropriately amended) signed by the new Ultimate Parent or such Participant.

23.2.8 Without derogating from the foregoing, the Concessionaire undertakes to give notice of change of Control of the Ultimate Parents in the Participants listed in Annex L attached hereto.

23.3 Without derogating from the generality of this Section 23, the Ministers shall not refuse to grant their approval to the issue of Equity of the Concessionaire to the public in accordance with a prospectus within the Concession Period, provided that the public shall not hold more than 49% of the Equity of the Concessionaire.

23.4 For the avoidance of doubt, it is hereby clarified that this Section 23 does not derogate from Section 5(b) of the Toll Roads Law.

23.5 The Concessionaire's Articles of Association shall include all necessary provisions to give effect to all of the above mentioned limitations.

24 Force Majeure and Material Adverse Government Action

24.1 Notice of Force Majeure

24.1.1 Should a party to this Agreement be affected by an event which such party believes will be an Event of Force Majeure, it shall, within 20 days submit to the Disputes Board a request for certification of such event as an Event of Force Majeure ("Request for Certification of an Event of Force Majeure"), with a copy to the other party. The Disputes Board, at its sole discretion, shall certify or refuse to certify the said event as an Event of Force Majeure.

24.1.2 The affected party shall likewise immediately notify the other party when an Event of Force Majeure has ceased to exist.

24.2 Insured and Uninsured Events of Force Majeure

24.2.1 To the extent that the consequences of an event which, if it had not been insured, would have been deemed an Event of Force Majeure fall within the terms of the insurance coverage required by Section 20 and the insurance covers at least 80% of the required

sum for completion of the Project or restoration of the Project to an operational condition, the Concessionaire shall not be entitled to be released from performing its undertaking under this Agreement. In such case, the Concessionaire shall forthwith make the appropriate claims thereunder and shall apply the proceeds, subject to the CTA's approval in advance of the Proposed Recovery Schedule, for the completion of the Project or the restoration of the Project to an operational condition.

24.2.2 If the Concessionaire demonstrates to the reasonable satisfaction of the CTA that the consequences of an Event of Force Majeure do not fall within the terms of insurance coverage required by Section 20 then:

24.2.2.1 in the circumstances set forth in Section 25.3.1, either Party may terminate this Agreement, in the manner therein provided; or

24.2.2.2 if the circumstances set forth in Section 25.3.1 do not arise or do exist but neither party terminates this Agreement, the Concessionaire shall be obliged to reconstruct or restore the Project to operational condition subject to prior approval by the CTA for the Proposed Recovery Schedule for such reconstruction or restoration.

24.3 Effects of Force Majeure

24.3.1 Should the Event of Force Majeure prevent the performance of obligations of either party under this Agreement, then, subject to Section 24.2, the party claiming the Event of Force Majeure shall be excused from whatever performance is prevented thereby to the extent so affected. In such circumstances, the other party shall not be entitled to terminate this Agreement on the basis of such non-performance, except as provided in Section 25.3.1, provided that the party claiming the Event of Force Majeure shall have complied with the provisions of Section 24.1.

24.3.2 In the event that a party fails to submit a Request for Certification of an Event of Force Majeure in accordance with Section 24.1.1, such party shall be deemed to have waived its rights to claim that such an event is an Event of Force Majeure, unless the Disputes Board determines otherwise.

24.3.3 Neither party shall claim damages, penalties, interest or any other compensation from any other party due to the occurrence of an Event of Force Majeure, except when it leads to the termination of this Agreement and only pursuant to Section 26.7.

24.3.4 The provisions of this Section 24.3 shall not release the party claiming an Event of Force Majeure from obligations due, or compliance required, under this 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 excused from performing any obligation shall resume performance of such obligation under this Agreement when the effects of the Event of Force Majeure are removed or rectified.

24.3.5 The parties to this Agreement hereby agree that, to the extent possible, decisions concerning Force Majeure shall be directed towards the completion of Construction and the continued operation of the Project for the duration of the Concession Period.

24.3.6 If an event of Force Majeure occurs during the Construction Period, Sections 8.5 and 33.1.2 shall be applicable. If an Event of Force Majeure occurs during the Operation Period which results in a cessation of Operation of the Project, the Concession Period may be extended pursuant to Section 33.1.4.

24.4 Material Adverse Government Action

24.4.1 Should the Concessionaire be affected by an action which the Concessionaire believes to be a Material Adverse Government Action, the Concessionaire shall within 30 days of the occurrence of such action submit to the Disputes Board a request for certification of such action as a Material Adverse Government Action ("Request for Certification of a Material Adverse Government Action"), with a copy to the CTA. In its Request for Certification of a Material Adverse Government Action, the Concessionaire shall describe the said action and its likely impact on the Concessionaire. The Disputes Board, at its sole discretion, shall certify or refuse to certify the said action as a Material Adverse Government Action.

24.4.2 The CTA shall have 60 days from the date of receipt of the said certification of a Material Adverse Government Action issued by the Disputes Board to effect a remedy which restores the condition of the Concessionaire to the position it would have been in, had such action not occurred.

24.4.3 If the CTA will not affect such a remedy within the specified time period, then, within 30 days after the expiry of such specified period, the CTA and the Concessionaire shall consult with a view to reach a mutually satisfactory resolution to the situation.

24.4.4 The provisions of this Section 24.4 shall not release the Concessionaire from obligations due, or compliance required, under this Agreement prior to the occurrence of the Material Adverse Government Action, or the performance of obligations not affected by the Material Adverse Government Action. If the Disputes Board shall determine that the performance of an obligation is prevented

due to a Material Adverse Government Action, the Concessionaire shall resume performance of such obligation under this Agreement when the effects of the Material Adverse Government Action are removed or rectified.

25 Termination

25.1 **DELETED**

25.2 **Termination Due to Failure or Delay In Acquisition or Appropriation of the Site**

25.2.1 If the acquisition or appropriation of the Site shall not have been completed by the relevant authorities by the date specified in Section 2.1, and not within the Initial Site Acquisition Grace Period then the Concessionaire may issue to the CTA a Notice of Termination, or if applicable, the Second Site Acquisition Grace Period, then either the CTA or the Concessionaire may issue to the other party a Notice of Termination.

25.3 **Termination Due to Force Majeure, Archeological Findings, Hazardous Materials or Change in Circumstances**

25.3.1 If an Event of Force Majeure continues and renders the performance of all or substantially all of the obligations under this Agreement by one party or both parties to be impossible for a period of 180 consecutive days, following which period resumption of performance is impossible or, if the Disputes Board certifies pursuant to Section 24.1.1 that an Event of Force Majeure renders the performance of all or substantially all of the obligations under this Agreement by one party or both parties immediately impossible, then either the CTA or the Concessionaire may issue a Notice of Termination.

25.3.2 If the discovery of an Archeological Finding, Hazardous Materials or Minerals renders the performance of all or substantially all of the obligations under this Agreement by one party or both parties to be impossible for a period of 180 consecutive days, following which period resumption of performance is impossible, and the Disputes Board has so determined, then either the CTA or the Concessionaire may issue a Notice of Termination.

25.3.3 **DELETED**

¹ See footnote no. 1

25.4 **Termination by the CTA**

25.4.1 The CTA shall have the right to issue a Notice of Termination pursuant to Section 25.5 upon the occurrence of a Concessionaire Termination Event. The occurrence of any one of the following events or conditions shall constitute a Concessionaire termination event ("Concessionaire Termination Event"):

25.4.1.1 the Concessionaire failed to raise Equity in accordance with the provisions of the Financial Proposal and the Financial Schedule and the Shareholders Agreement;

25.4.1.2 the Concessionaire has failed to obtain financing for the Project substantially in accordance with the Financial Proposal and the Financial Schedule or in accordance with the Funding Agreements or amendments to Funding Agreements approved by the CTA;

25.4.1.3 the Concessionaire failed to execute Funding Agreements in a form approved by the CTA;

25.4.1.4 a Transfer of Equity of the Concessionaire or change in Control of the Concessionaire or a Participant without the approval of the Ministers in accordance with Section 23;

25.4.1.5 the Concessionaire has executed a Contract in a form not approved by the CTA in accordance with Section 6;

25.4.1.6 the Concessionaire sells, pledges, transfers, leases or otherwise disposes of the whole or any part of its respective undertakings pursuant to this Agreement or substantial properties or assets, by a single transaction or by a number of transactions, without obtaining prior approval of the CTA;

25.4.1.7 a Designer, a Contractor, an Operator, a Maintenance Contractor or a Manager carrying out a fundamental role in relation to the Project, sells, transfers, leases or otherwise disposes of, the whole or any part of its respective undertakings in respect of the Project, by a single transaction or by a number of transactions, without obtaining prior approval of both the Concessionaire and the CTA;

25.4.1.8 failure to make Royalty payments when due and/or Royalty Repayments in accordance with the provisions of Annex W and/or other failures other than permitted pursuant to Section [16.7](#);

25.4.1.9 the Concessionaire fails in any material respect to perform the Construction in accordance with the Contract Documents, or fails to comply with the provisions of Section 37;

25.4.1.10 an Unauthorized Schedule Delay;

25.4.1.11 the Concessionaire ceases to operate or maintain the Project for reasons other than those permitted under this Agreement;

25.4.1.12 the Concessionaire shall have become insolvent, or does not pay its significant debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of creditors;

25.4.1.13 liquidation, receiverships, or reorganization proceedings shall have been commenced by or against the Concessionaire, unless such proceedings are discharged within 60 days;

25.4.1.14 the Concessionaire fails to provide any Bond, or extension or replacement thereof, as required under Section 21;

25.4.1.15 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 10% of the outstanding indebtedness of the Concessionaire under the Funding Agreements and the Contracts unless, in the case of indebtedness under the Contracts, such failure is justified;

25.4.1.16 the Concessionaire fails to report a material Related Party Transaction in accordance with this Agreement or executes a material Related Party Transaction in a form not approved by the CTA;

25.4.1.17 The Concessionaire used the Site in a manner which is not consistent with the provisions of this Agreement.

25.4.1.18 any representation or warranty made by the Concessionaire in the Contract Documents or any certificate, schedule, instrument or other document delivered by the Concessionaire pursuant to the Contract Documents shall have been false or materially misleading when made; or

25.4.1.19 the Concessionaire commits a material breach of any obligation, representation or warranty contained in any of the Contract Documents.

25.5 Notice of Termination by the CTA

25.5.1 If a Concessionaire Termination Event shall have occurred, then in addition to all other rights and remedies available under this Agreement or by law, the CTA may terminate this Agreement by delivery of a Notice of Termination to the Concessionaire.

25.5.2 Notwithstanding the foregoing, prior to exercising its right to issue a Notice of Termination, the CTA will issue a written notice to the Concessionaire, specifying the Concessionaire Termination Event and requesting the Concessionaire to remedy the cause of such Concessionaire Termination Event within the period of time specified therein, which shall be no less than 90 days following receipt of such notice. In the event that the Concessionaire, in good faith, believes that the Concessionaire Termination Event can be cured, but not within the time period specified in such notice, then the matter of the period to cure shall be referred to the Disputes Board; provided, however, that in no event shall the period to cure the Concessionaire Termination Event, as determined by the Disputes Board, exceed 120 days following receipt of the first notice without the consent of the CTA.

25.5.3 A copy of the said notice will be issued by the CTA to Funders.

25.5.4 If a Concessionaire Termination Event is not remedied by the expiration of the period determined in accordance with Section 25.5.2, the CTA shall notify the Funders of such circumstance and provide the Funders with an opportunity to submit to the CTA within a 120-day period, a proposal for remedying the Concessionaire Termination Event or for a Substituting Entity in accordance with the provisions of Section 31.1. If the Funders submit such a proposal, the CTA shall approve or object to such proposal within 45 days of receipt thereof. Such approval or objection shall be made in writing and delivered to the Funders and the Concessionaire and, where an objection is made, the CTA shall specify the grounds for such objections. The CTA will not unreasonably object to any such proposal.

25.5.5 If the CTA approves the proposal, the Funders shall be required to give effect to the proposal within the time period specified in the proposal.

25.5.6 The CTA will be entitled to issue a Notice of Termination to the Concessionaire in the following circumstances:

- 25.5.6.1 if the Concessionaire Termination Event is not remedied by the Concessionaire by the expiration of the relevant period under Section 25.5.2 and there are no Funders;
- 25.5.6.2 if the Funders do not submit a proposal to remedy the Concessionaire Termination Event or for a Substituting Entity within the relevant period under Section 25.5.4;
- 25.5.6.3 if the CTA does not approve a proposal within the relevant period under Section 25.5.4; or
- 25.5.6.4 if the Concessionaire Termination Event has not been remedied in accordance with a proposal of the Funders approved by the CTA within the time period specified in such proposal.
- 25.5.6.5 if the Concessionaire Termination Event has not been remedied by the Substituting Entity within the period set forth in Section 31.1.7.

25.6 Termination by the Concessionaire

The Concessionaire shall have the right to terminate this Agreement upon the occurrence of any of the following events ("State Termination Event"):

- 25.6.1 If either the State or the CTA commits a material breach in complying with their obligations under this Agreement (other than a breach of Section 2.1), or a Material Adverse Government Action has been certified by the Disputes Board, following which the performance of all or substantially all of the Concessionaire's obligations under this Agreement is rendered impossible for a period of 180 consecutive days, or the Disputes Board, in the certificate issued by it in accordance with the provisions of Section 24.4.1, determines that a Material Adverse Government Action renders the performance of all or substantially of the Concessionaire's obligations under this Agreement immediately impossible. For the avoidance of doubt, should either the State or the CTA commit a material breach of this Agreement, or should a Material Adverse Government Action occur, following which the performance of the Concessionaire's obligations under this Agreement is delayed by a period which does not exceed the period specified in this Section 25.6.1, the Concessionaire shall not be entitled to terminate this Agreement.
- 25.6.1A If the State has failed to make payments due pursuant to Section 8 of Annex X Part I, within sixty (60) 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 Agreement, and

provided further that such notice shall not be issued by the Concessionaire: (i) before the time allowable to the CTA pursuant to the provisions of Section 15A3 has elapsed; and (ii) unless the aggregate sums overdue exceed 15,000,000 (fifteen million) NIS.

- 25.6.2 The State revokes the right granted to the Concessionaire to Utilize the Site, or grants any rights or interests in the Site in a manner which results in the material impairment of the Concessionaire's right to Utilize the Site.
- 25.6.3 Failure by the CTA to approve the substitution of the Concessionaire by any Substituting Entity which meets the requirements of Section 31.1.3, as determined by the Disputes Board, within 30 days following such determination of the Disputes Board.

25.7 Notice of Termination by the Concessionaire

25.7.1 If a State Termination Event shall have occurred, then in addition to all other rights and remedies available under this Agreement or by law, the Concessionaire may terminate this Agreement by delivery of a Notice of Termination to the CTA.

25.7.2 Notwithstanding the foregoing, prior to exercising its right to issue a Notice of Termination, the Concessionaire will issue a written notice to the CTA, specifying the State Termination Event and requesting the CTA to remedy the cause of such event within the period of time specified therein which shall be no less than 90 days following receipt of such notice. In the event that the CTA, in good faith, believes that the State Termination Event can be cured, but not within the time period specified in such notice, then the matter of the period to cure shall be referred to the Disputes Board; provided, however, that in no event shall the period to cure the State Termination Event, as determined by the Disputes Board, exceed 120 days following receipt of the first notice without the consent of the Concessionaire.

25.7.3 The State or the CTA shall use its best endeavors to remedy the State Termination Event within the relevant period of time under Section 25.7.2.

25.7.4 If a State Termination Event is not remedied by the expiration of the relevant period under Section 25.7.2, the Concessionaire may, upon the expiration of said period, terminate this Agreement by issuance of a Notice of Termination to the CTA.

25.8 Effects of Termination

25.8.1 Following the issuance of a Notice of Termination by either party, the provisions of Section 17.2 shall be applicable.

25.8.2 Termination During the Construction Period -
Upon the issuance of a Notice of Termination during the Construction Period, the parties shall, in addition to compliance with Section 17.2, comply with the provisions of this Section 25.8.2:

25.8.2.1 The Concessionaire will stop Construction as specified in the Notice of Termination.

25.8.2.2 If so ordered by the CTA, the Concessionaire will not, and shall cause the Contractor not to, place further Contracts or orders for materials, equipment, services or facilities, except such as is otherwise requested by the CTA.

25.8.2.3 The Concessionaire will provide the CTA with an inventory list of all materials previously produced, purchased or ordered from suppliers, intended to be used during the Construction Period but not yet used, including storage location and such other information as the CTA may require.

25.8.2.4 Upon the CTA's request, the Concessionaire shall remove such materials, equipment, tools and instruments used by, and any debris or waste materials generated by it during the Construction.

25.8.2.5 The CTA, without incurring any liability to the Concessionaire, but subject to the right of the Concessionaire to remove movable property of the Concessionaire (which is not an integral component of the Project Facilities or Project Utilities or which is not otherwise essential for the Operation and Maintenance of the Project as provided in Section 17.2.2) shall have the right either with or without the use of Concessionaire's materials, equipment, tools and instruments, to undertake the execution of the Construction from the Concessionaire and may enter into an agreement with another entity for the completion of Construction.

25.8.2.6 The CTA shall be entitled to take possession of all completed or partially completed drawings (including plans, elevations, sections, details and diagrams, specifications, records, information schedules, shop drawings and other documents) and other property at whatever stage such

drawings and other property are at upon the date of termination.

25.8.3 Concessionaire's Responsibility for Completed Construction -
Termination of this Agreement shall not relieve the Concessionaire of its contractual responsibilities for the Design and Construction completed prior to the date of termination, nor shall it relieve any third party of its liability for and concerning any claims arising out of the Construction performed prior to the date of issuance of the Notice of Termination.

25.9 If a party has the right, pursuant to this Section 25, to issue a Notice of Termination and such party does not issue such Notice of Termination within 180 days of the event or circumstances giving rise to such right, such party shall thereafter cease to have the right to issue a Notice of Termination based on such event or circumstance.

26 Compensation to Concessionaire

26.1 ~~DELETED~~

26.1.1 ~~DELETED~~

26.1.2 ~~DELETED~~

Compensation Due To Regulatory Delay⁸

26.1.3 In the event the Detailed Scheme is approved the Concessionaire shall be entitled to an amount of NIS 22,859,000 (twenty two million eight hundred fifty nine thousand New Israeli Shekels), which will be payable by the CTA to the Concessionaire 60 days following the issuance of a Notice to Proceed

26.1.4 ~~DELETED~~

26.2 Compensation Following Termination Due to Failure or Delay in Acquisition or Appropriation of the Site

26.2.1 Following the issuance of a Notice of Termination by either party in accordance with the provisions of Section 25.2.1, the Concessionaire shall request the Disputes Board to determine the amount of compensation ("Request for Compensation Upon Failure to Complete Acquisition or Appropriation of the Site") payable by the CTA subject to the provisions of Section 26.2.2.

⁸See footnote no.1

⁹See footnote no.1

26.2.2 Compensation under Section 26.2.1 shall be based on the following:

26.2.2.1 an amount equal to the reasonable costs (and any purchase tax paid) incurred by the Concessionaire in connection with the Project from the Closing until the date of issuance of the Notice of Termination, as shown in the accounts of the Concessionaire; and

26.2.2.2 an amount in NIS equivalent to \$500,000, based on the prevailing exchange rate at the time of payment.

Compensation Due to Failure or Delay in Acquisition or Appropriation of the Site

26.2.3 In the event the Site is acquired or appropriated following the issuance of one or more Change Orders by the CTA in accordance with Section 8.9.2 and Section 8.9.4, the Concessionaire shall request the Disputes Board to determine the amount of compensation ("Request for Compensation Following Delay in Acquisition or Appropriation of the Site") payable by the CTA subject to the provisions of Section 26.2.4.

26.2.4 Compensation under Section 26.2.3 shall be an amount equal to the reasonable incremental costs incurred by the Concessionaire in connection with the Project attributable to the delay in the acquisition or appropriation of the Site from the anticipated Construction Commencement Date to the date the State grants to the Concessionaire the right to Utilize the Site, as shown in the accounts of the Concessionaire.

26.3 Compensation for Unjustifiable Delay or Suspension (CTA Delay)

26.3.1 The Concessionaire shall be entitled to compensation in the event of a CTA Delay.

26.3.2 In the event of a CTA Delay, the Concessionaire shall request the Disputes Board to determine the amount of compensation ("Request for Compensation for Delay") payable by the CTA subject to the provisions of Section 26.3.3 or 26.3.4.

26.3.3 In the event that the CTA Delay occurs prior to the issuance of a Permit to Operate, compensation shall be based on the following:

26.3.3.1 the additional interest and fees incurred by the Concessionaire due to such delay to the extent that such interest and fees are incurred by the Concessionaire within the terms of the Funding Agreements as approved by the CTA; and

26.3.3.2 costs which are reasonably incurred as a direct and sole result of the CTA Delay, including the cost as determined in accordance with the principles contained in the Construction Contract, including, without limitation, those relating to costs incurred for delay and disruption (if any).

26.3.4 In the event that the CTA Delay occurs during the Operation Period, compensation shall be based on the profit lost by the Concessionaire due to the CTA Delay. For the avoidance of doubt, for the purpose of this Section 26.3.4 lost profit shall mean lost revenue less such costs saved by the Concessionaire during the CTA Delay based on the results of operations of the Concessionaire immediately prior to the CTA Delay.

26.4 Compensation Due to Changes of the Project Design Documents During the Pre-Construction Period and Construction Period; Compensation for Addition Operational Work and Additional Maintenance Work

26.4.1 In the event of a Change Order issued by the CTA in accordance with Section 7.1, Annex G, the Concessionaire shall request the Independent Engineer to determine, if not otherwise agreed by the parties, the amount of compensation ("Request for Compensation for Extra Work"), payable by the CTA subject to the provisions of Section 26.4.2.

26.4.2 Compensation under this Section 26.4 shall be based on the following:

26.4.2.1 costs which are reasonably incurred as a direct and sole result of the performance of the Extra Design Work or Extra Construction Work which is the subject of the Change Order, including the cost of the Extra Design Work or Extra Construction Work as determined in accordance with the principles contained in the Design Contract or Construction Contract, including, without limitation, those relating to costs incurred for delay and disruption (if any); and

26.4.2.2 to the extent the proper performance of the Extra Design Work or Extra Construction Work under Change Orders during the Construction Period is the direct cause of delays in the Commencement or Completion Dates which, in the aggregate, exceeds two months ("CTA Construction Delay"), compensation under this Section 26.4 shall also be based on the additional interest and fees incurred by the Concessionaire due to such delay to the extent that such interest and fees are incurred by the Concessionaire within

the terms of the Funding Agreements as approved by the CTA.

26.4.3 Notwithstanding any other provision of this Agreement, compensation shall not be payable by the CTA in respect of Extra Design Work or Extra Construction Work determined by the Independent Engineer to be necessary in order for the Project to be constructed or operated in a safe manner.

26.4.4 In the event the Disputes Board determines that the implementation of an Operation Change Order involves Additional Operational Work in accordance with the provisions of Section 3.14.7, Annex H, the Disputes Board shall concurrently determine the amount of compensation payable by the CTA, which shall be based on the costs which are reasonably incurred as a direct and sole result of the implementation of the Additional Operational Work, including, without limitation, those relating to costs incurred for delay and disruption, if any.

26.4.5 In the event the Disputes Board determine that the implementation of Maintenance Change Order involves Additional Maintenance Work in accordance with the provisions of Section 4.4.9, Annex H, the Disputes Board shall concurrently determine the amount of compensation payable by the CTA, which shall be based on the costs reasonably incurred as a direct and sole result of the implementation of the Additional Maintenance Work, including, without limitation, those relating to costs incurred for delay and disruption, if any.

26.5 Compensation Due to Material Adverse Government Action Which Does Not Constitute CTA Delay or Lead to Termination of this Agreement

26.5.1 Should a Material Adverse Government Action occur and be certified by the Disputes Board in accordance with the provisions of Section 24.4.1, and the effects of which do not render the performance of the Concessionaire's obligations under this Agreement to be impossible in accordance with the provisions of Section 25.6.1, nor does such Material Adverse Government Action constitute a CTA Delay, the Concessionaire shall request the Disputes Board to determine the amount of compensation ("Request for Compensation due to Material Adverse Government Action") payable by the CTA as shall be determined by the Disputes Board and will be based on the existing circumstances at the time.

26.5.2 The CTA, under the circumstances described in this Section 26.5, shall be entitled, at its discretion, to terminate this Agreement and to pay compensation pursuant to Section 26.8.

26.6 Compensation for Noncollection of Tolls

26.6.1 Noncollection of Toll Charges Pursuant to an Order issued in accordance with the provisions of Section 8 of the Toll Roads Law

26.6.1.1 In the event that the Minister of Defense, with the consent of the Ministers of Transport and Finance, instructs, by means of an order, that the use of the Project or any part thereof shall be free for all or some Vehicles in accordance with the provisions of Section 8 of the Toll Roads Law, the Concessionaire shall request the Disputes Board to determine, if not otherwise agreed by the parties, the amount of compensation ("Request for Compensation Pursuant to Section 8"), payable pursuant to the issue of the said order.

26.6.1.2 Compensation under this Section 26.6.1 shall be based on the following:

26.6.1.2.1 costs which are incurred as a direct and sole result of said order, less the costs saved by the Concessionaire during the period of time said order was in force; and

26.6.1.2.2 the additional interest and fees incurred by the Concessionaire due to the said order and due to any delay in the repayment of its debts to Funders to the extent that such interest and fees are incurred by the Concessionaire within the terms of the Funding Agreements as approved by the CTA.

26.6.2 Noncollection of Toll Charges Pursuant to an Order issued in accordance with the provisions of Section 9(b) of the Toll Roads Law

26.6.2.1 In the event that a Sub-district Commanding Officer of the Israel Police Force instructs, by means of an order, that the use of the Project or any part thereof, shall be free for all or some Vehicles in accordance with the provisions of Section 9(b) of the Toll Roads Law, the Concessionaire shall request the Disputes Board to determine, if not otherwise agreed by the parties, the amount of compensation ("Request for Compensation Pursuant to Section 9(b)"), payable pursuant to the issue of the said order.

26.6.2.2 Compensation under this Section 26.6.2 shall be based on the following:

26.6.2.2.1 the Toll Charge multiplied by the number of cars exempt from payment of the Toll Charge pursuant to said order which were utilizing the Project during the period of time the said order was in

force, less the costs saved by the Concessionaire during the period of time the said order was in force; and

26.6.2.2.2 the additional interest and fees incurred by the Concessionaire due to the said order and due to any delay in the repayment of its debts to Funders to the extent that such interest and fees are incurred by the Concessionaire within the terms of the Funding Agreements as approved by the CTA.

26.7 Compensation on Termination Due to Force Majeure, Discovery of Archeological Findings or Hazardous Materials

26.7.1 Following the issuance of a Notice of Termination by the CTA or the Concessionaire in accordance with the provisions of Section 25.3.1 or 25.3.2, the Concessionaire shall request the Disputes Board to determine the amount of compensation ("Request for Compensation Upon Termination due to Force Majeure or Certain other Events") payable by the CTA subject to the provisions of Section 26.7.2 or 26.7.3.

26.7.2 In the event that a Notice of Termination is issued by the CTA or the Concessionaire in accordance with the provisions of Section 25.3.1 or 25.3.2 prior to the issuance of a Notice to Proceed, compensation shall be payable based on an amount equal to the reasonable costs incurred by the Concessionaire in connection with the Project from Closing until the date of the relevant Notice of Termination, as shown in the accounts of the Concessionaire.

26.7.3 In the event that a Notice of Termination is issued by the CTA or the Concessionaire in accordance with the provisions of Section 25.3.1 or 25.3.2, following the issuance of a Notice to Proceed, compensation shall be payable: (a) subject to Section 26.11.4, based on an amount equal to the aggregate of all amounts payable by the Concessionaire under the Funding Agreements (other than Funding Agreements providing for the Equity of the Concessionaire and Subordinated Debt) as of the date of the relevant Notice of Termination, in the currency or currencies specified in the applicable Funding Agreement; or (b) at the discretion of the CTA, the CTA shall assume the payment obligations of the Concessionaire under the Funding Agreements (other than Funding Agreements providing for the Equity of the Concessionaire and Subordinated Debt) and, subject to Section 26.11.6, shall make the remaining interest and principal payments thereunder in accordance with the original amortization schedule for each such Funding Agreement, in each case ((a) and (b)), after deduction of any amounts actually received by the Funders prior to such date, including (i) proceeds of any claims under any insurance

policies, (ii) any amount outstanding to the credit of any debt service reserve accounts and (iii) any sums recovered as a result of enforcement of security by the Funders.

26.7.4 The sums calculated pursuant to this Section 26.7 shall be reduced by:

26.7.4.1 the amount of any funds received from Funders not applied for the purposes of the Project;

26.7.4.2 any amounts due to Funders as a result of any Funding Agreement or amendments to the Funding Agreements not approved by the CTA;

26.7.4.3 the Fair Market Value of the assets, including cash, owned by the Concessionaire or any of its subsidiaries as of the date of the relevant Notice of Termination, as shall be determined by the Disputes Board;

26.7.4.4 any obligation or liability of the Concessionaire arising as a result of a breach of any Funding Agreements (other than obligation or liability resulting from the Event of Force Majeure); and

26.7.4.5 interest, penalties, obligations or liabilities of the Concessionaire payable to the Funders under the Funding Agreements, which are payable as a result of failure by the Concessionaire to meet timely repayments to the Funders (other than failures due to the Event of Force Majeure).

26.7.5 The Concessionaire shall cause any sums recovered as the result of enforcement of security by Funders or under any insurance policies which were not paid as at the date of payment of compensation under this Section 26.7 to be paid to the CTA.

26.7.6 If the CTA assumes the payment obligations of the Concessionaire under the Funding Agreements pursuant to Section 26.7.3, all security interests granted in favor of the Funders by the Concessionaire in respect of the Project shall thereupon terminate. The Concessionaire shall ensure that the Funding Agreements contain provisions to enable the CTA to assume the payments obligations of the Concessionaire under the Funding Agreements pursuant to Section 26.7.3.

26.8 Compensation on Termination Due to State Termination Event

26.8.1 Following the issuance of a Notice of Termination by the Concessionaire to the CTA in accordance with the provisions of Section 25.7, the Concessionaire shall request the Disputes Board

to determine the amount of compensation ("Request for Compensation Upon Termination"), payable by the CTA subject to the provisions of Section 26.8.2 or 26.8.3.

26.8.2 In the event that Notice of Termination is issued by the Concessionaire in accordance with the provisions of Section 25.7, prior to the issuance of a Notice to Proceed, compensation shall be payable based on an amount equal to the reasonable costs incurred by the Concessionaire in connection with the Project from Closing until the date of the relevant Notice of Termination, as shown in the accounts of the Concessionaire.

26.8.3 In the event that Notice of Termination is issued by the Concessionaire in accordance with the provisions of Section 25.7, following the issuance of a Notice to Proceed, compensation shall be payable based on the following:

26.8.3.1 (a) subject to Section 26.11.5, an amount equal to the aggregate of all amounts payable by the Concessionaire under the Funding Agreements (other than Funding Agreements providing for the Equity of the Concessionaire and Subordinated Debt) as of the date of the relevant Notice of Termination, in the currency or currencies specified in the applicable Funding Agreement; or (b) at the discretion of the CTA, the CTA shall assume the payment obligations of the Concessionaire under the Funding Agreements (other than Funding Agreements providing for the Equity of the Concessionaire and Subordinated Debt) and, subject to Section 26.11.6, shall make the remaining interest and principal payments thereunder in accordance with the original amortization schedule for each such Funding Agreement, in each case ((a) and (b)), after deduction of any amounts actually received by the Funders prior to such date, including (i) proceeds of any claims under any insurance policies, (ii) any amount outstanding to the credit of any debt service reserve accounts and (iii) any sums recovered as a result of enforcement of security by the Funders;

26.8.3.2 an amount equal to all other liabilities and obligations of the Concessionaire to third parties arising out of, or in connection with, the Project which are in existence at the date of the relevant Notice of Termination;

26.8.3.3 an amount in respect of each ordinary share equal to the paid up capital of such share by the Participants. Such payments shall be reduced by the amount of any Dividends, distribution of profits or the return of capital made to the Participants; and

26.8.3.4 to such sums payable under Section 26.8.3.3 shall be added an amount which, after taking account of the timing and amount of all Dividends, distribution of profits or return of capital made in respect of each ordinary share, is required to give each ordinary share the lower of the following rates of return:

26.8.3.4.1 the rate of interest payable by the Government for long term Government Bonds;

26.8.3.4.2 the expected return on ordinary Equity, as demonstrated by the financial forecasts contained in the Financial Proposal, adjusted according to the actual return achieved, as agreed between the Concessionaire and the CTA or, failing such agreement, by the Disputes Board.

Such return shall be paid for the period from which each contribution of capital was made until the date of the relevant Notice of Termination;

26.8.3.5 an amount in respect of each class of outstanding Subordinated Debt equal to the outstanding principal amount thereof. Such payment shall be reduced by the amount of any interest payments made therefor in respect of such outstanding Subordinated Debt; and

26.8.3.6 to such sums payable under Section 26.8.3.5 shall be added an amount which, after taking account of the timing and amount of all interest payments made in respect of each outstanding class of Subordinated Debt, is required to give each outstanding class of Subordinated Debt the lower of the following rates of return:

26.8.3.6.1 the rate of interest payable by the Government for long term Government Bonds;

26.8.3.6.2 the expected return on such outstanding class of Subordinated Debt, as demonstrated by the financial forecasts contained in the Financial Proposal, adjusted according to the actual return achieved, as agreed between the Concessionaire and the CTA or, failing such agreement, by the Disputes Board.

Such return shall be paid for the period from which each outstanding class of Subordinated Debt was issued until the date of the relevant Notice of Termination.

26.8.4 The sums calculated pursuant to this Section 26.8 shall be reduced by:

- 26.8.4.1 the amount of any funds received from Funders not applied for the purposes of the Project;
- 26.8.4.2 any amounts due to Funders as a result of any Funding Agreement or amendments to the Funding Agreement terms not approved by the CTA;
- 26.8.4.3 any amounts due pursuant to any Contract or Related Party Transaction not approved by the CTA;
- 26.8.4.4 any amounts due under agreements not entered into at arm's length, or entered into not in the ordinary course of business, or under agreements providing for unreasonable compensation payable due to a State Termination Event or regarding any claim or potential claim against the CTA arising from or in connection with such termination;
- 26.8.4.5 the Fair Market Value of the assets, including cash, owned by the Concessionaire or any of its subsidiaries as of the date of the relevant Notice of Termination, as shall be determined by the Disputes Board;
- 26.8.4.6 any obligation or liability of the Concessionaire arising as a result of a breach of any Contract or any other contract relating to the Project, including all Funding Agreements (other than a breach resulting from a State Termination Event);
- 26.8.4.7 interest, penalties, obligations or liabilities of the Concessionaire payable to the Funders under the Funding Agreements, which are payable as a result of failure by the Concessionaire to meet timely repayments to the Funders (other than those failures resulting from a State Termination Event);
- 26.8.4.8 costs incurred by the Concessionaire and the Initial Equity Participants during the Tender Process;
- 26.8.4.9 any management fees not set forth in a Management Contract approved by the CTA in accordance with Section 6; and
- 26.8.4.10 any amount payable under Section 26.8.3.2 which (i) is paid directly to a third party by the State or the CTA or (ii) as to which the Concessionaire has previously received compensation from the CTA pursuant to this Agreement.

26.8.5 The Concessionaire shall cause any sums recovered as the result of enforcement of security by Funders or under any insurance policies which were not paid as at the date of payment of compensation under this Section 26.8 to be paid to the CTA.

26.8.6 If the CTA assumes the payment obligations of the Concessionaire under the Funding Agreements pursuant to Section 26.8.3.1, all security interests granted in favor of the Funders by the Concessionaire in respect of the Project shall thereupon terminate. The Concessionaire shall ensure that the Funding Agreements contain provisions to enable the CTA to assume the payment obligations of the Concessionaire under the Funding Agreements pursuant to Section 26.8.3.1.

26.9 Compensation on Termination Due to Concessionaire Termination Event

- 26.9.1 Following the issuance of a Notice of Termination by the CTA to the Concessionaire in accordance with the provisions of Section 25.5, the Concessionaire shall request the Disputes Board to determine the amount of compensation ("Request for Compensation Upon Termination due to Concessionaire Termination Event") payable by the CTA or the Concessionaire, as the case may be, subject to the provisions of Section 26.9.2 or 26.9.3.
- 26.9.2 In the event that Notice of Termination is issued by the CTA in accordance with the provisions of Section 25.5 prior to the issuance of a Notice to Proceed, compensation shall be payable from the Concessionaire to the CTA in an amount equal to all costs and expenses incurred by the State and the CTA in connection with the Project from Closing until the date of the relevant Concessionaire Termination Event.
- 26.9.3 In the event that Notice of Termination is issued by the CTA in accordance with the provisions of Section 25.5 following the issuance of a Notice to Proceed, compensation shall be payable by the CTA to the Concessionaire based on the following, subject to the limitations set forth in this Section 26.9:
- 26.9.3.1 subject to Section 26.11.4 and 26.11.6, an amount equal to the aggregate of all amounts payable by the Concessionaire under the Funding Agreements (other than Funding Agreements providing for the Equity of the Concessionaire and Subordinated Debt) as of the date of the relevant Notice of Termination, in the currency or currencies specified in the applicable Funding Agreement, after deduction of any amounts actually received by the Funders prior to such date, including (i) proceeds of any claims under any insurance policies, (ii) any amount

outstanding to the credit of any debt service reserve accounts and (iii) any sums recovered as a result of enforcement of security by the Funders;

26.9.3.2 an amount equal to all other liabilities and obligations of the Concessionaire to third parties arising out of, or in connection with, the Project which are in existence at the date of the relevant Notice of Termination;

26.9.3.3 an amount in respect of each ordinary share equal to the paid up capital of such share by the Participants (but only to the extent such paid up capital was actually invested in the Project). Such payments shall be reduced by the amount of any Dividends, distribution of profits or the return of capital made to the Participants; and

26.9.3.4 an amount in respect of each outstanding class of Subordinated Debt equal to the outstanding principal amount thereof (but only to the extent such principal amount was actually invested in the Project). Such payments shall be reduced by the amount of any interest payments made therefor in respect to such outstanding Subordinated Debt.

26.9.4 The sums calculated pursuant to this Section 26.9 shall be reduced by:

26.9.4.1 the amount of any funds received from Funders not applied for the purposes of the Project;

26.9.4.2 any amounts due to Funders as a result of any Funding Agreement or amendments to the Funding Agreements not approved by the CTA;

26.9.4.3 any amounts due pursuant to any Contract or Related Party Transaction not approved by the CTA;

26.9.4.4 any amounts due under agreements not entered into at arm's length, or entered into not in the ordinary course of business, or under agreements providing for unreasonable compensation payable due to a Concessionaire Termination Event or regarding any claim or potential claim against the CTA arising from or in connection with such termination;

26.9.4.5 the Fair Market Value of the assets, including cash, owned by the Concessionaire or any of its subsidiaries as of the date of the relevant Notice of Termination, as shall be determined by the Disputes Board;

26.9.4.6 any obligation or liability of the Concessionaire arising as a result of a breach of any Contract or any other contract relating to the Project, including all Funding Agreements;

26.9.4.7 interest, penalties, obligations or liabilities of the Concessionaire payable to the Funders under the Funding Agreements, which are payable as a result of failure by the Concessionaire to meet timely repayments to the Funders;

26.9.4.8 costs incurred by the Concessionaire and the Initial Equity Participants during the Tender Process;

26.9.4.9 any management fees not set forth in a Management Contract approved by the CTA in accordance with Section 6; and

26.9.4.10 all costs and expenses incurred, and damages suffered, by the State and the CTA in connection with the Project from the Closing to the date of the relevant Notice of Termination.

26.9.5 The Concessionaire shall cause any sums recovered as the result of enforcement of security by Funders or under any insurance policies which were not paid as at the date of payment of compensation under this Section 26.9 to be paid to the CTA.

26.9.6 In the event that a Notice of Termination is issued by the CTA in accordance with the provisions of Section 25.5 following the issue of a Notice to Proceed but prior to the issue of a Permit to Operate and a Substituting Entity is not appointed under either Section 31.1 or Section 31.2 and the CTA does not otherwise achieve Construction Completion, the CTA shall not be obligated to pay any compensation under this Section 26.9.

26.9.7 No compensation shall be payable by the CTA pursuant to this Section 26.9 unless Construction Completion has been achieved and then only out of profits generated from the Project.

26.9.8 In the event that a Substituting Entity shall have been appointed pursuant to Section 31.2 and shall have assumed the obligations of the Concessionaire under the Funding Agreements (other than Funding Agreements in respect of the Equity of the Concessionaire) compensation payable by the CTA to the Concessionaire pursuant to this Section 26.9 shall exclude the amounts specified in Section 26.9.3.1 and the deductions applicable to the Funding Agreements specified in Section 26.9.4 shall be disregarded.

26.10 Compensation Due to Material Adverse Changes to a Pre-Ruling

26.10.1 Should a Material Adverse Changes to a Pre-Ruling occur and be certified by the Disputes Board in accordance with the provisions of Section 35.6, and if, at the discretion of the Disputes Board the then existing circumstances so justify, the Disputes Board shall determine the amount of compensation payable to the Concessionaire by the CTA which shall be based on the existing circumstances at the time.

26.11 Additional Provisions Relating to Compensation

26.11.1 In connection with any NIS compensation payments pursuant to this Section 26, the Disputes Board will apply the Interest and Index Law 5721- 1961, as amended or replaced from time to time.

26.11.2 The parties agree that the only compensation payable to the Concessionaire by the CTA shall be such compensation as is specifically set forth in this Section 26. Subject to the provisions of Section 26.11.3, all other compensation under any applicable legislation is hereby specifically excluded.

26.11.3 In the event of a termination or a delay to the Project due to the outbreak of war or the discovery of any Archeological Findings, Concessionaire may be compensated under relevant Israeli legislation.

26.11.4 In the event that payments shall be made under the Funding Agreements pursuant to Section 26.7.3 (a) or 26.9.3.1, any prepayment premium, make-whole amount or similar payment required to be paid under a Funding Agreement by the CTA pursuant to Section 26.7.3 (a) or 26.9.3.1 shall (i) be payable only if the base or reference rate applicable under such Funding Agreement, had it been determined as of the date of payment of such prepayment premium, make-whole amount or similar payment (the "Current Base Rate") is lower than such base or reference rate actually in effect under such Funding Agreement as of the date of such payment (the "Applicable Base Rate"); and (ii) equal the net present value of all scheduled interest payments on the amount of principal to be repaid under such Funding Agreement, up to the scheduled date of repayment or the reset date of the base or reference rate whichever is earlier, assuming a rate of interest per annum equal to the difference between the Applicable Base Rate and the Current Base Rate. Such net present value shall be calculated in accordance with accepted financial practice and with a discount factor equal to the Current Base Rate.

26.11.5 In the event that the CTA assumes the payment obligations of the Concessionaire under the Funding Agreements pursuant to Section 26.8.3.1 (a), any prepayment premium make-whole amount or similar payment required to be paid under the Funding Agreement by the CTA pursuant to Section 26.8.3.1 (a) shall be equal to the prepayment premium, make-whole amount or similar payment calculated in accordance with the provisions of Section 26.11.4, plus a premium which shall be equal to

26.11.5.1 0.5 percent of the prepayment of any principal amount if prepayment is made during the first 16 years of the Concession Period;

26.11.5.2 0.3 percent of the prepayment of any principal amount if prepayment is made between years 16 - 20 of the Concession Period;

26.11.5.3 0.25 percent of the prepayment of any principal amount if prepayment is made between years 21 - 28 of the Concession Period;

26.11.5.4 if prepayment shall be made after year 28 no premium shall be paid.

26.11.6 In the event that the CTA assumes the payment obligations of the Concessionaire under the Funding Agreements pursuant to Section 26.7.3 (b), 26.8.3.1 (b) or 26.9.3.1, the rate of interest payable on obligations under each Funding Agreement shall be the base or reference rate applicable under such Funding Agreement on the date of assumption, which base or reference rate may be adjusted in accordance with the terms of such Funding Agreement, plus, in the event that the CTA assumes the payment obligations of the Concessionaire under the Funding Agreements pursuant to (i) Section 26.7.3 (b) or Section 26.9.3.1, zero; or (ii) Section 26.8.3.1 (b), an amount equal to the applicable Margin less 0.7 per cent.

26.11.7 Notwithstanding any other provision of this Section 26, in the event the Concessionaire and the CTA reach agreement as to the amount of compensation payable by the CTA pursuant to any provision of this Section 26, the determination of the amount of such compensation shall not be submitted to the Disputes Board or the Independent Engineer, as the case may be.

26.11.8 Payment of compensation by the CTA to the Concessionaire pursuant to this Agreement will be conditioned upon the Concessionaire's issuance of a specific release and waiver in a form to be agreed upon by the Parties.

27 Compensation to the CTA

27.1 Should the CTA issue one or more Change Orders in accordance with Section 8.4.3.2, the Concessionaire shall pay to the CTA the sum of the NIS equivalent of \$50,000 per month, based on the prevailing exchange rate on the last day of each month, for each month of time extension authorized by such Change Order or Change Orders.

27.2 Should, following an Unauthorized Schedule Delay which affects the Construction Completion Date, the CTA waive its right to issue a Notice of Termination, the Concessionaire shall pay to the CTA the following sums:

27.2.1 For months 4 - 6 of the Unauthorized Schedule Delay - the sum of the NIS equivalent of \$ 100,000 per month, based on the prevailing exchange rate on the last day of each month;

27.2.2 For months 7 - 12 of the Unauthorized Schedule Delay - the sum of the NIS equivalent of \$ 200,000 per month, based on the prevailing exchange rate on the last day of each month; and

27.2.3 For months 13 - 15 of the Unauthorized Schedule Delay - the sum of the NIS equivalent of \$ 300,000 per month, based on the prevailing exchange rate on the last day of each month.

27.3 Should the Concessionaire close the Project and such closure shall not be made pursuant to the provisions of this Agreement, or is made pursuant to the provisions of this Agreement but is subsequently determined not to be justified under the terms of this Agreement, the Concessionaire shall pay to the CTA the sum of the NIS equivalent of \$100,000 per month from the date of closure of the Project to the date on which it is reopened, based on the prevailing exchange rate on the last day of each month.

27.4 All amounts payable under Sections 27.1 and 27.2 as of the date of issuance of the Permit to Operate shall be aggregated as of such date, and shall be payable by the Concessionaire to the CTA in quarterly installments over a period which will not exceed five years commencing on the date of issuance of the Permit to Operate, and shall be indexed and shall bear interest in accordance with the provisions of the Interest and Index Law 5721-1961.

27.5 All amounts which become payable under Section 27.3 after the date of issuance of a Permit to Operate shall be payable by the Concessionaire to the CTA in quarterly installments over a period which will be agreed by the parties provided that such period shall not exceed two years commencing on the date such amounts become payable, and shall be indexed and shall bear interest in accordance with the provisions of the Interest and Index Law, 5721-1961.

27.6 Payments to be made by the Concessionaire to the CTA under the provisions of this Section 27 in respect of partial months shall be on a pro rata basis.

27.7 It is understood and agreed by the Concessionaire that any amounts payable under Sections 27.1, 27.2 and 27.3 are in the nature of liquidated damages payable without the need to prove any damages and that such sums are not manifestly unreasonable under the circumstances existing as of Closing.

28 Termination Reports

28.1 The Concessionaire shall ensure that not later than 90 days following the issue of Notice of Termination in accordance with the provisions of this Agreement, or following termination of the Concession Period, termination reports ("Termination Reports") shall be drawn up.

28.2 The Termination Reports shall be audited by the Concessionaire's auditors and shall have annexed thereto a report signed by the Concessionaire's auditors in respect of the amount of the deductions to be made pursuant to Sections 26.7.4, 26.8.4 and 26.9.4, which such report shall for the purpose of this paragraph be deemed to form part of the Termination Reports. Upon being drawn up, the Termination Reports shall be presented to the CTA and the Disputes Board for review.

28.3 In order to enable the CTA and the Disputes Board to review the Termination Reports, the Concessionaire will ensure that it keeps up to date and, following termination of this Agreement, makes available at all reasonable times to the CTA and the Disputes Board and their professional advisors all reasonably necessary books and records and all such professional advisors.

The Concessionaire will ensure that its auditors will cooperate with the CTA and the Disputes Board and their professional advisors with regard to such review.

29 Dispute Resolution

29.1 **Disputes Board**

29.1.1 Subject to the provisions of Section 29.2, all disputes, controversies or claims, arising out of, in relation to, or in connection with this Agreement or any breach thereof, which are not resolved amicably, or in accordance with the provisions of Section 29.2, shall be resolved in accordance with the provisions of Annex R. Final Decisions of the Disputes Board shall be binding on the parties.

29.1.2 In addition to the functions of the Disputes Board as set forth in Annex R, the Disputes Board is authorized to take such action

and make such determinations as are contemplated by this Agreement.

29.1.3 The members of the Disputes Board shall be bound by substantive law and shall give grounds for their decisions but shall not be bound by the laws of evidence and procedure.

29.2 Independent Engineer

29.2.1 All disputes between the Concessionaire and the CTA which are not resolved amicably with respect to (i) whether any aspect of the Design Work or the Construction Work undertaken at the direction of the CTA constitutes Extra Design Work or Extra Construction Work, (ii) whether any Extra Design Work or Extra Construction Work is necessary in order for the Project to be constituted and operated in a safe manner, (iii) the cost of Extra Design Work or Extra Construction Work, or (iv) the additional amount of time allowed to the Concessionaire to complete any aspect of the Construction Works, shall be resolved in accordance with the provisions of Annex S. Subject to the provisions of Section 29.2.2, final Decisions of the Independent Engineer shall be binding on the parties.

29.2.2 Either party shall be entitled to appeal on a decision of the Independent Engineer to the Disputes Board.

To the extent that disputes to be resolved by the Disputes Board in accordance with the provisions of Annex R involve any of the matters described in Section 29.2.1, the Independent Engineer shall provide evidence of its determinations to the Disputes Board in a timely manner.

29.3 Carmel Tunnels Authority

29.3.1 The CTA reserves the right: (i) to make such alterations, deviations, additions to, or deletions from, the Design of the Project (including to the Project Design Documents), or from the Construction of the Project, including the right to increase or decrease the quantity of any item or part of the Design or Construction; (ii) to request the Concessionaire to perform Extra Design Work or Extra Construction Work, as may be determined by the CTA to be necessary or advisable; and (iii) to issue any instruction, opinion, direction or evaluation with respect to any technical matter relating to the Project.

The Concessionaire shall be obliged to carry out any determination of the CTA as contemplated by this Section.

29.3.2 When exercising its discretion pursuant to this Agreement, the CTA shall take into consideration the Contract Documents (including the Project Design Documents). In the absence of any

reference in the Project Documents on the matter requiring a decision and/or if there is a dispute on the interpretation of the Contract Documents, the CTA shall make its decision or determination in accordance with accepted guidelines and professional standards in the field of engineering. The CTA shall provide written reasoning for its decisions.

29.4 It is hereby emphasized that the Disputes Board and the Independent Engineer shall not be bound by decisions, determinations or findings (factual or legal), which shall be made during the resolution of disputes between the Concessionaire and any party to any of the Contracts, nor shall such decisions, determinations or findings shall be admissible as evidence to the Disputes Board and the Independent Engineer.

29.5 The State may join as an interested party any proceedings connected to this Agreement to which the CTA is a party and the Concessionaire shall not oppose such joining.

30 Assignment and Security

30.1 Sub Contractors

30.1.1 Subject to the provisions of Section 6, the Concessionaire may enter into sub-contracts with the Designers, Contractors, Operator, Maintenance Contractor and Manager, in order to perform its obligation to perform the Design, Construction, Operation and Maintenance of the Project or any part thereof. For the purposes of this Section approval of any Contract in accordance with the provisions of Section 6 shall be deemed to mean approval of the sub-contracting of the Concessionaire's obligations as are set forth in such Contract, in accordance with the provisions of Section 5 of the Toll Roads Law. Such sub-contracts shall not relieve the Concessionaire of its responsibilities under this Agreement, and the Concessionaire shall be fully responsible for the acts and omission of the Designers, Contractors, Operator, Maintenance Contractor and Manager.

30.2 Assignment and Creation of Security by the Concessionaire

30.2.1 The Concessionaire shall not sell, transfer, lease or otherwise dispose of the whole or any part of its respective undertakings under this Agreement, the Shareholders Agreement, the Funding Agreements, the Contracts and the Insurance Policies, its properties or assets, whether by a single transaction or by a number of transactions, without obtaining the prior written approval of the CTA.

30.2.2 For the purpose of financing the Project, the Concessionaire, subject to the prior written approval of the CTA and subject to the provisions of this Agreement, may create security interests over or assign its rights and interests under or pursuant to this Agreement,

the Shareholders Agreement, the Contracts and the Insurance Policies to the Funders, including its rights in respect of the revenues derived from the Project. For the purposes of this Section 30.2.2, approval of the Funding Agreements in accordance with the provisions of Section 5 shall be deemed to mean approval of the security interests created thereby by the Ministers.

30.2.3 Any such security interests shall be only to ensure financing of the Project and not for any other purpose. Any security interest in the Equity of the Concessionaire shall include a provision to the effect that such security interest may be enforced only in a manner consistent with Section 23 and following receipt of approvals in accordance with the provisions thereof.

30.3 Assignment by the State

30.3.1 The State reserves the right to assign or transfer any of its rights or obligations hereunder to the CTA or any other duly designated authority appointed by the State or governmental entity, provided that: (i) any such assignment or transfer shall become effective only after the CTA and the assignee or transferee, as the case may be, have furnished written notice to the Concessionaire of the said assignment or transfer; (ii) any such assignment or transfer shall not adversely affect the rights or obligations of the Concessionaire; and (iii) the State shall remain the guarantor of all its obligations pursuant to Section 15A of this Agreement.

30.3.2 In the event of the CTA being dissolved or ceasing to have the power or authority to perform its obligations under this Agreement or for another reason the CTA is unable to fulfill its undertakings hereunder, the rights and obligations of the CTA under this Agreement shall, unless the provisions of Section 30.3.1 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.

31 Substituting Entity

31.1 Substitution by Funders

31.1.1 The parties to this Agreement acknowledge that a Substituting Entity may be substituted for the Concessionaire in the following circumstances:

30.1.1.1 following a Concessionaire Termination Event, and in accordance with the provisions of Section 25.4 and Section 25.5; and

30.1.1.2 following a termination event as defined under the Funding Agreements.

30.1.2 Within 120 days of the occurrence of an event as described in Section 31.1.1, a majority in interest of the Funders or their representatives shall notify the CTA of their intention to perform such substitution and shall furnish the CTA with such notice containing all necessary information as required under Section 31.1.3 as well as a proposal to cure the applicable event described in Section 31.1.1., provided that such applicable event is capable of cure.

30.1.3 With their notice, the Funders will be required to provide to the CTA satisfactory evidence regarding the Substituting Entity and demonstrate that:

30.1.3.1 the Substituting Entity is an Israeli Company;

30.1.3.2 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;

30.1.3.3 the Substituting Entity has the financial and technical capability sufficient to perform and assume the obligations of the Concessionaire under this Agreement;

30.1.3.4 the Substituting Entity has all the required authority, license status, professional ability, skill and capacity to perform all obligations under this Agreement and shall perform them in a manner consistent with the Contract Documents;

30.1.3.5 the Substituting Entity has the capability to undertake and to pay those financial obligations which the CTA are entitled to receive from the Concessionaire before or at the time of substitution; and

30.1.3.6 all of the beneficial owners of the Equity of the Substituting Entity, or Persons otherwise controlling the Substituting Entity, are established in or are citizens of states with whom the State has diplomatic relations.

30.1.4 The CTA shall review all information submitted by the Funders under Section 31.1.2 and 31.1.3, and shall either approve or object to the Substituting Entity within 45 days.

30.1.5 Such approval or objection shall be made in writing and delivered to the Funders and, where objection is made, the grounds for objection shall be specified.

30.1.6 The CTA will not withhold its approval to the substitution of the Concessionaire by any Substituting Entity which meets the requirements of Section 31.1.3.

30.1.7 Following the approval of the Substituting Entity by the CTA, the Substituting Entity shall, for the purposes of this Agreement, replace the Concessionaire and all rights, obligations and liabilities of the Concessionaire under this Agreement shall vest in the Substituting Entity; provided, however, that the Substituting Entity shall have a period not to exceed 120 days to cure the applicable event described in Section 31.1.1. In the event the Substituting Entity in good faith believes that the applicable event can be cured, but not within such 120 day period, then the matter of the period to cure shall be referred to the Disputes Board; provided, however, that in no event shall the period during which the Substituting Entity may cure the applicable event described in Section 31.1.1 exceed 180 days. In the event the Substituting Entity fails to cure such event within the period specified in this Section 31.1.7, Section 25.5.6.5 shall be applicable.

30.1.8 As an alternative to performing a substitution in accordance with the provisions of Section 31.1.1, the Funders may cause all of the Equity of the Concessionaire to be transferred to another entity. In such event, the provisions of Section 31.1.2 through 31.1.7 and 23 shall apply mutatis mutandis with respect to the approval of such entity as if it were a Substituting Entity, except that such other entity shall not replace the Concessionaire as a party to this Agreement.

30.2 **Substitution by the CTA**

30.2.1 If, under the circumstances contemplated by Section 31.1.1, no Substituting Entity is appointed pursuant to Section 31.1, the CTA shall have the right to continue this Agreement with a Substituting Entity, appointed in consultation with the Funders, provided that such Substituting Entity shall enter into agreements with the Funders (other than the Participants) on terms satisfactory to such Funders acting reasonably to repay any amounts outstanding under the Funding Agreements (other than Funding Agreements provided for investments in the Equity of the Concessionaire) and, under such circumstances, the provisions of Section 17 shall be applicable notwithstanding that this Agreement shall not have been terminated.

31 Substituting Entity

31.1 **Substitution by Funders**

31.1.1 The parties to this Agreement acknowledge that a Substituting Entity may be substituted for the Concessionaire in the following circumstances:

31.1.1.1 Following a Concessionaire Termination Event, and in accordance with the provisions of Section 25.4 and Section 25.5; and

31.1.2.2 Following a termination event as defined under the Funding Agreements.

31.1.2 Within 120 days of the occurrence of an event as described in Section 31.1.1, a majority in interest of the Funders or their representatives shall notify the CTA of their intention to perform such substitution and shall furnish the CTA with such notice containing all necessary information as required under Section 31.1.3 as well as a proposal to cure the applicable event described in Section 31.1.1, provided that such applicable event is capable of cure.

31.1.3 With their notice, the Funders will be required to provide the CTA satisfactory evidence regarding the Substituting Entity and demonstrate that:

31.1.3.1 the Substituting Entity is an Israeli Company;

31.1.3.2 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;

31.1.3.3 the Substituting Entity has the financial and technical capability sufficient to perform and assume the obligations of the Concessionaire under this agreement;

31.1.3.4 the Substituting Entity has all the required authority, license status, professional ability, skill and capacity to perform all obligations under this Agreement and shall perform them in a manner consistent with the Contract Documents;

31.1.3.5 the Substituting Entity has the capability to undertake and to pay those financial obligations which the CTA are entitled to receive from the concessionaire before or at the time of substitution; and

31.1.3.6 all of the beneficial owners of the Equity of the Substituting Entity or Persons otherwise controlling the Substituting Entity, are established in or are citizens of states with whom the State has diplomatic relations.

31.1.4 The CTA shall review all information submitted by the Funders under Section 31.1.2 and 31.1.3 and shall either approve or object to the Substituting Entity within 45 days.

31.1.5 Such approval or objection shall be made in writing and delivered to the Funders and, where objection is made, the grounds for objection shall be specified.

31.1.6 The CTA will not withhold its approval to the substitution of the Concessionaire by any Substituting Entity which meets the requirements of Section 31.1.3.

31.1.7 Following the approval of the Substituting Entity by the CTA, the Substituting Entity shall, for the purposes of this Agreement, replace the Concessionaire and all rights, obligations and liabilities of the concessionaire under this Agreement shall vest in the Substituting Entity; provided, however, that the Substituting Entity shall have a period not to exceed 120 days to cure the applicable event described in Section 31.1.1. in the event the Substituting Entity in good faith believes that the applicable event can be cured, but not within such 120 day period, then the matter of the period to cure shall be referred to the Disputes Board; provided, however, that in no event shall the period during which the Substituting Entity may cure the applicable event described in Section 31.1.1 exceed 180 days. In the event the Substituting Entity fails to cure such event within the period specified in this Section 31.1.7, Section 25.5.6.5 shall be applicable.

31.1.8 As an alternative to performing a substitution in accordance with the provisions of Section 31.1.1, the Funders may cause all of the Equity of the Concessionaire to be transferred to another entity. In such event, the provisions of Section 31.1.2 through 31.1.7 and 23 shall apply mutatis mutandis with respect to the approval of such entity as if it were a Substituting Entity, except that such other entity shall not replace the Concessionaire as a party to this Agreement.

31.2 Substitution by the CTA

31.2.1 if, under the circumstances contemplated by Section 31.1.1, no Substituting Entity is appointed pursuant to Section 31.1, the CTA shall have the right to continue this Agreement with a Substituting Entity, appointed in consultation with the Funders, provided that such Substituting Entity shall enter into agreements with the Funders (other than the Participants) on terms satisfactory to such Funders acting reasonably to repay terms satisfactory to such Funders acting reasonably to repay any amounts outstanding under the Funding Agreements (other than Funding Agreements provided for investments in the Equity of the Concessionaire) and, under provisions of Section 17 shall be applicable notwithstanding that this Agreement shall not have been terminated.

32 Representations, Warranties and Covenants

32.1 Concessionaire Representations, Warranties and Covenants

The Concessionaire represents, warrants and covenants as follows:

32.1.1 The Concessionaire is a limited company duly organized and validly existing under the laws of the State of Israel, has all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. The Concessionaire shall be a single purpose corporation throughout the Concession Period and shall not engage in any activities other than the execution of the Project. The Concessionaire shall not set up Subsidiaries of the Concessionaire without the prior approval of the CTA. The Concessionaire's Certificate of Incorporation, Memorandum of Association and Articles of Association duly certified, as in effect on the date hereof, are attached to this Agreement as Annex T. The Memorandum of Association and Articles of Association of the Concessionaire shall expressly provide that any amendment made to them shall require the written consent of the CTA.

32.1.2 The Concessionaire is comprised of: (i) Ashtrom Group Ltd. holding 55% of the Equity of the Concessionaire; and (ii) Housing and Construction Holdings Ltd. holding 45% of the Equity of the Concessionaire. The Concessionaire has no other Participants except for the Equity Participants and no undertaking has been given by the Concessionaire or the Equity Participants 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 Equity Participants to change the holdings of the Initial Equity Participants in the Concessionaire directly or indirectly, other than as is detailed in Annex AA and Annex B, this without derogating from the generality of the provisions of the Agreement and Annex BB. The Shareholders Agreements attached to this Agreement as Annex B are the only Shareholders Agreements.

32.1.3 The execution, delivery and performance of this Agreement by the Concessionaire has been duly authorized by all necessary action of its Initial Equity Participants.

32.1.4 The execution, delivery and performance of this Agreement will not result in a breach of or a default under the Shareholders Agreement of the Concessionaire, the Articles of Association or other material agreement or instrument to which the Concessionaire is a party and the Concessionaire is under no obligation which will prevent or otherwise obstruct the performance of this Agreement by the Concessionaire.

32.1.5 This Agreement constitutes the legal, valid and binding obligation of the Concessionaire, enforceable in accordance with its terms.

32.1.6 The Concessionaire has no knowledge that litigation is in effect against it or any of its Participants which would challenge the

authority of the Concessionaire to enter into this Agreement or to carry out its obligations under this Agreement.

32.1.7 The Concessionaire has and throughout the Concession Period shall have all required authority and license status to perform its obligations under this Agreement and shall perform them in a manner consistent with the Contract Documents.

32.1.8 The Concessionaire has evaluated the feasibility of performing all obligations under this Agreement, including the preparation and approval of the Detailed Scheme and the Construction Period, and has reasonable grounds for believing and does believe that such performance, including achievement of Commencement and Completion Dates, is feasible and practicable.

32.1.9 The Concessionaire has evaluated all factors that may reasonably be deemed to affect the carrying out of its obligations under this Agreement, including geological conditions, technical risks, traffic risks, political and environmental influences, and any other risk involved therein, and such other conditions that may reasonably be deemed to affect the progress or completion of the Project in accordance with this Agreement.

32.1.10 Concessionaire has examined, and is aware of, all future transportation and other development plans in the public domain as of the date of this Agreement, which are intended to be carried out in the Municipality of Haifa or within a reasonable proximity of the Project and shall not object, directly or indirectly, to the implementation of such plans. The Concessionaire agrees that this Agreement is not intended to, and does not, preclude the implementation, or in any way guarantee the implementation, of any such plans or the introduction or implementation of any new transportation or other development plans.

32.1.11 The Concessionaire has knowledge of all legal requirements in the State of Israel that must be followed for the execution of the Project. The Concessionaire shall abide by the various laws, codes and regulations as enacted by the State of Israel, and by any by-laws, codes and regulations enacted by the Municipality of Haifa. The Concessionaire shall comply with all environmental regulations and obtain all the necessary permits, in accordance with provisions of the various laws and regulations in order to finance, Design, Construct, complete, Operate and Maintain the Project. The Concessionaire shall be subject to any changes in any of the various laws, codes and regulations as introduced from time to time by the State of Israel, and to any changes in the various by-laws, codes and regulations as introduced from time to time by the Municipality of Haifa, should such changes be introduced during the Concession Period.

32.1.12 The Concessionaire shall employ good business practices and appropriate management techniques in the Design, Construction, Operation and Maintenance of the Project and shall conduct its commercial affairs in a manner consistent with good faith and fair dealing.

32.1.13 At all times during the Concession Period, including during the Construction Period and notwithstanding the existence of any dispute, the Concessionaire shall perform its obligations under this Agreement, in a diligent manner and without delay, and shall comply with all applicable provisions of the Contract Documents. In the event a dispute arises regarding such performance or direction, it shall be resolved in accordance with the provisions of this Agreement.

32.1.14 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.

32.2 State and CTA Representations, Warranties and Covenants

The State represents, warrants and covenants as follows:

32.2.1 This Agreement constitutes the legal, valid and binding obligation of the State, enforceable in accordance with its terms. The State has obtained all approvals required for it to execute, deliver and perform this Agreement, other than the approval of the Government of Israel and the relevant Committees of the Knesset. The legal opinion of the Legal Advisor to the Ministry of Finance is attached to this Agreement as Annex U.

32.2.2 The CTA was duly appointed and authorized by the State to implement and supervise the setting up of the Project including, but not limited to, collection of Toll Charges and performance of the Concessionaire's other undertakings under this Concession Agreement. The CTA shall be deemed to be acting for and on behalf of the State for the purposes of this Concession Agreement. Actions and obligations of the CTA under this Concession Agreement shall be deemed to be actions and obligations of the State.

The functions and powers of the CTA under this Concession Agreement shall be carried out through a number of authorized representatives whose identities will be given to the Concessionaire by the CTA from time to time.

32.2.3 The State shall provide, no later than the date of issuance of a Permit to Operate, and maintain, the connecting roads to the Project (as defined by Annex B5 of Part "B") in order to permit the convenient and safe flow of traffic to and from the Project.

32.2.4 Except as otherwise provided in this Agreement, during the Concession Period the CTA shall:

- 32.2.4.1 use reasonable efforts in order to assist the Concessionaire in its dealings with governmental authorities to the extent permitted by the law in connection with executing and implementing the Project in accordance with this Agreement; provided, however, that the CTA shall bear no liability whatsoever for any failures of the Concessionaire to obtain any desired result; and
- 32.2.4.2 use reasonable efforts in order to assist the Concessionaire to the extent permitted by the law to obtain those permits necessary for the Construction and Operation and Maintenance of the Project; provided, however, that the CTA shall bear no liability whatsoever for any failure of the Concessionaire to obtain any such permit nor shall the above be construed as permitting the Concessionaire to avoid complying with applicable laws.

33 Extension of Concession Period

33.1 The Concession Period shall be extended by the State in the following circumstances, to the extent, and subject to the limitations, set forth in this Section 33:

- 33.1.1 if the events contemplated by Section 8.4.1A, 8.4.4.2 or 8.4.4.4 occur, then the period of the extension shall be equal to the period from the commencement of the Regulatory Delay to the date of approval of the Detailed Scheme;
- 33.1.2 if the events contemplated by Section 8.5.2 occur and the achievement of any Commencement or Completion Date is impossible based on the existing circumstances, then the period of the extension shall be equal to the period from the commencement of the Schedule Delay to the date the circumstance giving rise to such Schedule Delay no longer adversely affects the Revised Project Schedule;

33.1.3 **DELETED¹⁰**

33.1.4 if the events contemplated by the second sentence of Section 24.3.6 occur, then the period of extension shall be equal to the period during which the Project shall have ceased Operations; and

33.1.5 If a CTA Construction Delay occurs, then the period of extension shall be equal to the period of the CTA Construction Delay.

33.2 The aggregate duration of all extensions of the Concession Period determined and accumulated in accordance with Section 33.1 shall not exceed 5 years.

33.3 The Concession Period shall not be extended until such time as the aggregate duration of all periods of extension determined in accordance with Sections 33.1.2 - 33.1.5 shall exceed 180 days, at which time the Concession Period shall be extended for all periods of extension determined and accumulated in accordance with Section 33.1.2 - 33.1.5 prior to such time, subject to Section 33.2, and thereafter this Section 33.3 shall cease to have any force or effect.

34 Intellectual Property

34.1 All drawings (including plans, elevations, sections, details and diagrams), specifications, records, information, plans, schedules, samples, shop drawings and other documents prepared by or on behalf of the Concessionaire in connection with the Project shall at all time be and remain the property of the State. All copies of the foregoing in written, graphic or other tangible form shall be delivered to the CTA at its request. The CTA and/or the State shall have, without the need to pay, a non-exclusive, irrevocable right to use, within the State, any intellectual or industrial property rights contained therein not then owned by the CTA and/or the State. All of the foregoing shall be used by the Concessionaire and its subcontractor(s) only for the purpose of performing their obligations and undertakings under this Agreement and may not be used for any other purpose without the prior written consent of the CTA.

34.2 The Concessionaire declares that it accepts responsibility for the fact that the execution of the Design, Construction, Operation and Maintenance of the Project will not involve any infringement of any patent or trade secret or know how or copyrights or any intellectual or industrial property rights belonging to any third party.

34.3 The Concessionaire shall hold harmless and indemnify the CTA from and against all claims, proceedings, damages, costs, charges and

¹⁰ See footnote no.1

expenses for or on account of infringement of any patent rights, design patent, trade marks or trade names or other intellectual or industrial property rights in respect of the Project and the Construction 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, trade marks or trade names or other intellectual or industrial property rights in respect of the Project and the Construction thereof.

35 Taxation

35.1 The Income Tax and Property Tax Commission issued a pre-ruling on the investment made by the Concessionaire as set forth in a letter dated 15th November 1995, as amended by a letter dated 22nd July 1997, attached to this Agreement as Annex V-1, and a pre-ruling regarding the depreciation as set forth in a letter dated 31st January, 1999, attached to this Agreement as Annex V-1A.

35.2 The Income Tax and Property Tax Commission issued a pre-ruling regarding the purchase tax to be paid by the Concessionaire as set forth in a letter dated 30th February 1996, attached to this Agreement as Annex V-2, and a pre-ruling regarding the property tax to be paid by the Concessionaire as set forth in a letter dated 27th August, 1997, attached to this Agreement as Annex V-2A.

35.3 The Customs and Value Added Tax Department issued a pre-ruling on the liability to V.A.T. in connection with the grant of this Agreement and in connection with the Transfer of the Project as set forth in a letter dated 29th May 1997, attached to this Agreement as Annex V-3.

35.4 This Agreement is exempt from Stamp Duty in accordance with the provisions of the Stamp Duty on Documents Law 1961 as set forth in a letter dated 28th May 1997, attached to this Agreement as Annex V-4.

35.5 Without derogating from the generality of any applicable law, rule or regulation, the execution of this Agreement by the Concessionaire shall be deemed to mean acceptance by the Concessionaire of the pre-rulings contained herein.

35.6 In the event that any of the pre-rulings described in Sections 35.1 through 35.4 shall be changed, and such change shall have a material adverse effect on the Concessionaire, the CTA 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 pre-rulings described in Sections 35.1 through 35.4 shall remain unchanged.

If, despite the efforts of the Concessionaire and the CTA, any of the pre-rulings described in Sections 35.1 through 35.4 shall be changed, and the Concessionaire shall believe that such change shall have a material adverse effect on it, the Concessionaire shall submit to the

Disputes Board a request to certify such a change as material adverse change to a pre-ruling ("Material Adverse Change to A Pre-ruling"). In the event the Disputes Board determines that the change in any of the pre-rulings described in Sections 31.5 through 35.4 shall have a material adverse effect on the Concessionaire, and if, at the discretion of the Disputes Board the then existing circumstances so justify, the Concessionaire shall be entitled to compensation pursuant to Section 26.10.

35.7 Without derogating from the provisions of this Agreement, it is hereby emphasized that any Tax imposed under any law, rule or regulation to the owner or possessor of land with regards to the Site shall be borne by the Concessionaire. If the State shall grant any rights to third parties as a result of which Taxes shall apply to the use of the Site, such Taxes will not be borne by the Concessionaire.

35.8 Subject to the provisions of this Section 35, any Tax imposed under any law, rule or regulation on the Concessionaire in relation to the execution, performance or fulfillment of its obligations and undertakings pursuant to this 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, rule or regulation.

35.9 Attached hereto as Annexes V-5 and V-6 are letters from the Municipality of Haifa concerning the applicability of the Betterment Levy and municipal taxes. Such letters are attached hereto for information purposes only. The State makes no representation or warranty with respect to the content of such letters and specifically disclaims any obligation in respect thereto.

36 Manpower

36.1 The Concessionaire's personnel shall, at all times, be under the Concessionaire's exclusive supervision and control and shall be employees of the Concessionaire and not of the CTA, the State or any other governmental entity. The Concessionaire shall pay all wages, salaries and other amounts due to its employees and shall be responsible for all reports and obligations with respect to them, including but not limited to social security tax, income tax, worker's compensation, employee benefits and similar matters.

36.2 The Concessionaire shall take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by its employees and take all reasonable care to ensure the preservation of peace and the protection of the public's safety and third party's property in the vicinity of the Project.

36.3 The Concessionaire shall cause all Contracts to contain provisions substantially identical to Sections 36.1 and 36.2 in favor of the CTA.

36.4 Engineers and Architects - The Concessionaire shall retain, or cause to be retained in connection with the Project, the services of architects and engineers who are licensed according to the laws of the State of Israel and, if the Concessionaire so determines, architects and engineers who are, in each case, licensed according to the laws of other jurisdictions, and who are professionally qualified to perform studies, investigations, tests, design and preparation of plans, specifications and estimates and in compliance with the provisions of all applicable legislation.

36.5 **Foreign Residents** - The Concessionaire may employ foreign residents, from time to time, subject to all relevant labor laws and regulations.

37 Health and Safety

37.1 The Concessionaire shall conform with all applicable occupational safety and health laws, regulations and ordinance during the Concession Period, including, without limitation, all occupational safety and health laws, regulations and ordinances applicable to the Construction or any part thereof.

37.2 **Public Safety**

37.2.1 It is the Concessionaire's responsibility to provide for the safety of the public, public traffic and property in the vicinity of the Site during the Concession Period.

37.2.2 Safety Devices -

37.2.2.1 Whenever the execution of the Project creates a condition hazardous to the public, to public traffic, or to property in the vicinity of the Site, the Concessionaire shall, at its own expense, furnish, erect, and maintain such fences, temporary railing, barricades, lights, signs, and other devices and take such other reasonable protective measures as are necessary to prevent accidents, damage or injury to the public or to property in the vicinity of the Site ("Safety Devices").

37.2.2.2 Safety Devices, erected and maintained by the Concessionaire, at its own expense, are in addition to any Traffic Control Devices which the Concessionaire is obliged to install under all applicable legislation, the L.O.S., the Detailed Scheme, the Interministerial General Specifications or other provisions of the Contract Documents.

37.2.2.3 The installation of Safety Devices shall conform to the requirements of the L.O.S., the Detailed Scheme, the Interministerial General Specifications and all applicable legislation as may be in force from time to time. The use

and operation of such Safety Devices shall conform to the requirements of the L.O.S., the Detailed Scheme, the Interministerial General Specifications, the Israeli Standards and all applicable legislation as may be in force from time to time.

37.2.2.4 Should the Concessionaire fail to furnish Safety Devices and to take protective measures in accordance with the provisions of Section 37.2.2.3 above, the CTA may direct the attention of the Concessionaire, in writing, to the existence of a hazard to the public. All necessary Safety Devices or other measures shall be furnished and installed by the Concessionaire, at its own expense, according to the CTA instructions and within such time as the CTA may direct it in their notice.

37.2.2.5 Should the CTA point out the inadequacy of the Safety Devices taken by the Concessionaire, such action on the part of the CTA shall not relieve the Concessionaire of its responsibility for public safety or abrogate its obligation to pay for such devices.

37.2.2.6 Should the Concessionaire fail to comply with the instructions of the CTA, or should the CTA be of the opinion that the installation of the required Safety Devices is urgent, the required Safety Devices may be procured and installed by the CTA, or by any other person directed by the CTA to perform such procurement and installation. All expenses incurred by the CTA for the purpose of procuring and installing Safety Devices shall be reimbursed by the Concessionaire upon the CTA's demand.

37.2.3 All materials and equipment used for the execution of the Project shall enter and leave the Site via such points of ingress and egress and crossovers as will be approved by the relevant authorities, upon request of the Concessionaire, which request shall be submitted in accordance with all applicable legislation. 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 traffic.

37.2.4 When leaving the Site and entering a roadway carrying public traffic, the Concessionaire's materials and equipment, whether empty or loaded, shall, in all cases, yield to public traffic.

37.2.5 No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic.

37.2.6 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.

37.2.7 Temporary facilities which could be hazardous to public safety if improperly designed, shall comply with design requirements specified in the Contract Documents for such facilities or, if none are specified, with standard design criteria or codes appropriate for the facility involved, Interministerial General Specifications or others.

38 Preservation of Property

38.1 Roadside trees, shrubs, and other plants, pole lines, fences, signs, markers and monuments, buildings and structures, irrigation lines, pipelines under or above ground, sewer and water lines, all roadway facilities, and any other improvements or facilities, within, or adjacent to, or above, the Site, which, according to the provisions of the Project Design Documents, are not intended to be removed ("Protected Plants and Structures"), shall be protected by the Concessionaire from injury or damage. The Concessionaire shall provide and install suitable safeguards to protect such Protected Plants and Structures from injury or damage in accordance with, as applicable, the L.O.S., the Detailed Scheme, the Interministerial General Specification, the Israeli Standards and the other provisions of the Contract Documents.

38.2 If such Protected Plants and Structures are injured or damaged during the Concession Period due to Construction, Operation, Maintenance or other work performed by the Concessionaire, the Protected Plants and Structures shall be replaced and restored at the Concessionaire's own expense, as soon as is reasonably practicable. The Protected Plants and Structures shall be replaced or restored to a condition as good as when the Concessionaire commenced Construction, Operation, Maintenance or such other work which has caused such injury or damage. The fact that any underground facility is not shown upon the Project Design Documents shall not relieve Concessionaire of its responsibility under this Section. It is the Concessionaire's responsibility to ascertain the location of such underground facilities which may be subject to damage during the Concession Period.

38.3 Should the CTA point out any damage caused to any such Protected Plants and Structures, the CTA may direct, in writing, the attention of the Concessionaire, to the damage and injury caused and the necessary repair works that need to be carried out. All necessary repair works shall be carried out by the Concessionaire, at its own expense, conforming with the instructions of the CTA, within such time as the CTA may direct it in its notice.

38.4 Should the Concessionaire fail to comply with the instructions of the CTA within the time specified in its notice, such repair works may be initiated by the CTA, or by any other person directed by the CTA. All

expenses incurred by the CTA for the purpose of performing such repair works shall be reimbursed by the Concessionaire upon the CTA's demand.

38.5 The Concessionaire shall not disturb any vegetation, trees, shrubs or plants, outside the Site. The Concessionaire shall be fined for every tree damaged outside the Site, such fines shall be determined to be determined according to the regulations of the Municipality of Haifa on this issue.

38.6 Any trees, shrubs or plants within the Site which are damaged during the Construction shall be replaced by the Concessionaire at its own expense. All such replacement planting shall be completed before the issuance of the Completion Certificate, and will be coordinated with the CTA.

39 Air Pollution Control

39.1 During the Concession Period, the Concessionaire shall comply with the relevant provisions of the L.O.S., the E.I.S., the Detailed Scheme and all air pollution control laws, regulations and ordinances, applicable to the Construction, Operation and Maintenance or any part thereof.

40 Water Pollution

40.1 During the Concession Period, the Concessionaire shall comply with the relevant provisions of the L.O.S., the E.I.S., the Detailed Scheme and all water pollution control laws, regulations and ordinances, applicable to the Construction, Operation and Maintenance or any part thereof.

41 Sound Control Requirements

41.1 During the Concession Period, the Concessionaire shall comply with the relevant provisions of the L.O.S., the E.I.S., the Detailed Scheme and all local sound control and noise level laws, regulations, and ordinances, applicable to the Construction, Operation and Maintenance or any part thereof.

42 Contract Documents

42.1 The following, hereby incorporated into this Agreement by reference, including all Annexes thereto, shall constitute an integral part of the Agreement and, for the purpose of the Agreement, shall be defined as "Contract Documents": Part "B," and the Bid Documents, including all amendments to such documents made after the date of submission as approved by the Promoters pursuant to the Tender Process, and all Change Orders issued hereof.

42.2 Order of Precedence

In the event of any conflict among the Contract Documents, this Agreement and all amendments hereto shall in all events prevail. The order of precedence set forth below shall apply with respect to the other Contract Documents:

42.2.1 Design standards and requirements set forth in the Contract Documents shall be subject to the following order of precedence:

First, those set forth in the Detailed Scheme and the L.O.S., then the E.I.S., then Part "B" as amended by the CTA pursuant to the Tender Process, then the Interministerial General Specifications, then Israeli Standards, then any applicable foreign standards and finally the Design Documents.

42.2.2 Construction related standards, specifications and requirements shall be subject to the following order of precedence:

First, those set forth in the Detailed Design, provided that any deviations from Part "B" or the Interministerial General Specifications contained in the Detailed Design shall take precedence over Part "B" or the Interministerial General Specifications to the extent that the CTA has delivered written approval to the Concessionaire including such deviations as exceptions, then Part "B," then the Interministerial General Specifications, then the Israeli Standards, then any applicable Foreign Standards and finally the Bid Documents.

42.3 Information Supplied; Disclaimer

42.3.1 The CTA and the State, including the Promoters, have made available to the Concessionaire information which they consider relevant for the Design and Construction of the Project, and have allowed the Concessionaire access to the Site for the purposes of inspection and testing.

42.3.2 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.

42.3.3 The CTA and the State, including the Promoters, do 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 understood and agreed 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 Contract Documents.

42.4 Project Related Information

The Concessionaire specifically acknowledges and agrees that:

42.4.1 any Project Related Information provided by the CTA and the State, including the Promoters, and contained in the Contract Documents, is preliminary in nature;

42.4.2 the Concessionaire may rely on the Project Related Information provided by the CTA and the State, including the Promoters, and contained in the Contract Documents, at its own risk;

42.4.3 the Concessionaire was obliged to ascertain whether there were any errors in the basic configuration set forth in the Project Related Information and to notify the CTA of any such defects prior to the submission of the Bid Documents, and has the continuing obligation to ascertain whether any such defects exist and to notify the CTA regarding any potential difficulties which might arise from such defects; and

42.4.4 the Concessionaire was obliged prior to the submission of the Bid Documents to verify all data contained in the Project Related Information and all other documents provided by the CTA for which such verification is appropriate, given the scope of the Concessionaire's responsibilities under the Contract Documents.

42.5 Design Tasks Carried Out by the CTA Regarding the Detailed Scheme

42.5.1 It is understood and agreed by the Concessionaire that the design tasks carried out by the CTA in order to assist the Concessionaire in the preparation and approval of the Detailed Scheme shall not, in any way, relieve the Concessionaire of its responsibility or risk, nor from its obligation to prepare and submit the Detailed Scheme for the approval of the CTA and the Relevant Planning Commission in accordance with the provisions of this Agreement and all relevant legislation, nor shall it relieve the Concessionaire of its responsibility to fulfill all its obligations under this Agreement in accordance with the provisions of the Detailed Scheme.

42.5.2 It is understood and agreed that the Concessionaire shall assume full responsibility for the Design, Construction, use, Operation and Maintenance of the Project, regardless of the fact that certain design tasks have been carried out by the CTA.

42.5.3 It is understood and agreed that the CTA and the State, including the Promoters, shall not be responsible or liable in any respect for any cost or expense which might be incurred by the Concessionaire during the Design, Construction, Operation or Maintenance of the Project, resulting from its compliance with the provisions of the Detailed Scheme or the design tasks carried out by the CTA.

42.5.4 It is understood and agreed that the CTA and the State, including the Promoters, shall not be responsible or liable in any respect for any default or error in the Detailed Scheme or the design tasks carried out by the CTA. Furthermore, the CTA and the State, including the Promoters, shall not be responsible or liable in any respect for any default or error, loss, damage or injury whatsoever suffered by the Concessionaire, its employees, agents, officers or Subcontractors or any other Persons for whom the Concessionaire may be legally or contractually responsible, by reason of any use of any information contained in the Detailed Scheme, or resulting from its compliance with the provisions of the Detailed Scheme or the design tasks carried out by the CTA.

42.6 General Disclaimer

42.6.1 The Concessionaire agrees that it has full responsibility for the Design, Construction, Operation and Maintenance of the Project, regardless of the fact that certain design work has already occurred, and certain instructions regarding the Design, Construction, Operation and Maintenance have been provided to it by the CTA and the State, including the Promoters.

42.6.2 The Concessionaire understands and agrees that the CTA and the State, including the Promoters, shall not be responsible or liable in any respect for any loss, damage or injury whatsoever suffered by the Concessionaire, its employees, agents, officers or Subcontractors or any other Persons for whom the Concessionaire may be legally or contractually responsible, by reason of any use of any information contained in the Contract Documents provided by the CTA and the State, including the Promoters, to the Concessionaire or forbearance in reliance thereon.

42.6.3 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 CTA or the State, including the Promoters, is the source of said information; and the Concessionaire is capable of conducting and entitled thereunder 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.

42.6.4 THE CTA AND THE STATE, INCLUDING THE PROMOTERS, DO NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE PROJECT RELATED INFORMATION AND OTHER INFORMATION CONTAINED IN THE CONTRACT DOCUMENTS WHICH IT HAS MADE AVAILABLE TO THE CONCESSIONAIRE IS EITHER COMPLETE OR ACCURATE.

43 Miscellaneous Provisions

43.1 The headings of the Sections and Annexes of this Agreement are for convenience only and shall not be deemed part of the Agreement or considered in construing the Agreement.

43.2 Entire Agreement, Language

43.2.1 This Agreement, together with the other Contract Documents, constitutes the entire and integrated agreement between the parties hereto and supersedes and nullifies all prior negotiations, representations, understandings and agreements, whether written or oral, with respect to the subject matter hereof.

43.2.2 Both Hebrew and English versions of the Concession Agreement shall be signed. The English version of the Concession Agreement shall govern, unless, in particular instances, one of the parties shall request otherwise. Following such request, the matter shall be referred to the Disputes Board to determine which of the versions govern in the particular instance.

43.3 Subcontractors

43.3.1 The Concessionaire shall be fully responsible for the acts and omissions of the Designer, the Contractor, the Operator, the Maintenance Contractor and any Subcontractors thereof.

43.3.2 The Concessionaire shall endeavor to cause the Designer, the Contractor, the Operator and any Maintenance Contractor to give preference to the retention of Israeli Subcontractors to the extent such Subcontractors are competitive in terms of quality of service and price.

43.4 Amendments

This Agreement may be amended only by way of a written instrument, duly executed by the parties.

43.5 Notices and Communications

43.5.1 All notices under this Agreement shall be in writing and (i) delivered by hand; or (ii) mailed postage prepaid by registered or certified mail; or (iii) faxed to the following addresses (or to such

other address as may from time to time be specified in writing by that party):

43.5.1.1 For the Concessionaire : Mr. Motti Sela
Property and Building Corp. Ltd.
14 Simtat Beit Hashoeva
Tel Aviv, 65814
Tel: 03-5672777
Fax: 03-5602551

43.5.1.2 For the State: Mr. David Gershonovich,
Deputy Accountant General, Ministry of Finance
1 Kaplan Street,
Jerusalem 91131
Tel: 02-5317558
Fax: 02-5317032

43.5.2 Any written notice shall be deemed given when so delivered personally or if sent by fax (with receipt acknowledged), 12 hours following transmission, or 5 days from the date of deposit of letter in an Israeli post office, or 14 days from the date of deposit in a post office outside of Israel.

43.6 Waiver

No failure by any party to insist upon the strict performance of any provision of this Agreement or to exercise any right or remedy hereunder, shall constitute a waiver of any such breach or any subsequent breach. Any party may waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect the remainder of this Agreement, and each and every provision hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

43.7 Relationship of Parties

43.7.1 The Concessionaire is an independent contractor and nothing contained in the Contract Documents shall be construed as constituting any relationship with the CTA other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between the CTA and the Concessionaire's employees.

43.7.2 Neither the Concessionaire nor any of its employees shall be deemed to be employees of the CTA. Except as otherwise specified in the Contract Documents, the Concessionaire has sole authority and responsibility to employ, discharge and otherwise control its employees. The Concessionaire has complete and sole

responsibility as a principal for its employees, agents, Subcontractors, suppliers and all other Persons that it hires in order to assist it in the performance of its obligations under this Agreement, and neither the Concessionaire nor any of its employees, agents, Subcontractors, suppliers and all other Persons that it hires in order to assist it in the performance of its obligations shall be deemed to be employees of the CTA.

43.8 Severability

43.8.1 The parties hereby agree, to the fullest extent permitted by applicable law, to defend and not to challenge the validity or enforceability of any of the terms of this Agreement.

43.8.2 The invalidity or unenforceability of any part or provision of this Agreement shall not affect the validity or enforceability of any other part or provision. Any invalid or unenforceable part or provision shall be deemed to be severed from this Agreement, and the Agreement shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable parts or provisions.

43.9 Third Party Beneficiary

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

43.10 Reports

43.10.1 Drafts, agreements, reports, Designs, specifications, estimates, calculations, sketches, whether technical or commercial, and other documents furnished by the Concessionaire (collectively referred to as "Reports") shall be of a quality acceptable by the CTA. The Concessionaire shall use its best efforts to cause documents to have a neat appearance, be titled, numbered, dated, indexed, be well organized, technically correct, and be signed by both originator and any checker.

43.10.2 Computer generated plans shall be submitted to the CTA in a file format required by the CTA and will be accompanied by paper copies.

43.10.3 Each plan sheet will be signed and stamped by the responsible design engineer registered in Israel, and each design shall be independently checked by a civil engineer registered in Israel, before being submitted to the CTA.

43.10.4 All Reports shall be submitted in 3 copies, edited and printed, signed by a person authorized by the Concessionaire to sign such Reports.

43.10.5 Each Report shall reflect all the true updated facts related to that Report.

43.10.6 The CTA may require a completion or re-edition of any Report already submitted to it, which requirement shall not unreasonably be imposed.

43.10.7 The Concessionaire shall furnish any documents and/or information upon the CTA's reasonable demand.

43.10.8 The Concessionaire shall maintain all Reports and any other relevant data for the Concession Period. The Reports will be made available by the Concessionaire for the CTA's inspection upon its demand.

43.11 Confidentiality

43.11.1 Both parties shall keep in confidence all Reports supplied to them by or on behalf of the other party, and shall not disclose the same in any manner otherwise than for the purposes of seeking financial assistance (whether by way of debt or equity) for the Concessionaire, or for the Construction or for the Operation or Maintenance of the Project, provided that nothing in this Section shall limit the CTA's right to use such documentation in circumstances where this Agreement has been terminated in accordance with the provisions of Section 25.

43.11.2 The foregoing obligation of confidentiality shall not apply to:

43.11.2.1 information which is now available to the public or which hereafter becomes available to the public through no fault of the recipient;

43.11.2.2 information which the recipient can show, by competent proof, to have been in the possession of an affiliate (being a company effectively controlled by the recipient or the recipient's holding company) or, in the case of the CTA, another governmental authority of the State before any direct or indirect disclosure to it hereunder;

43.11.2.3 information which the recipient hereafter receives from a third party not in violation of the provisions hereof;

43.11.2.4 information which the recipient is obliged to disclose as a matter of law so long as the recipient makes every reasonable effort to obtain confidential treatment by

the Person or entity to whom the information is disclosed; and

43.11.2.5 disclosure of the information for the purpose of seeking financial assistance (whether by way of debt or equity) for the Concessionaire, for the purpose of enabling any party to perform its obligations hereunder, or as may be required by the CTA or the Funders in connection with procuring a Substituting Entity.

43.12 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Israel. Without derogating from the provisions of Section 29, the applicable Courts in Haifa shall have sole jurisdiction with respect to any matter relating to the arbitration of disputes under this Agreement or this Agreement.

43.13 Coming into Force

This Agreement shall come into force following its approval by the Government.

43.14 Linkage

Unless otherwise specifically provided for under this Agreement, the amounts referred to in Sections 15.3.3, 16.2, 25.6.1A and 26.1.3 and Sections 3, 7 and 8.7 of Annex X Part I and in Annex X Part II, shall be linked to the CPI on the applicable date of payment or reference date ("Relevant Date") in accordance with the following:

43.14.1 If the CPI on the Relevant Date shall have risen in comparison to the Base CPI, each amount shall be increased at the rate of the increase of the CPI from the Base CPI to the CPI published immediately prior to the Relevant Date

43.14.2 If the CPI on the Relevant Date shall not have risen or shall have fallen in comparison to the Base CPI, each amount shall remain at their stated values, without any reduction.

43.15 V.A.T

V.A.T will be added to any payment made pursuant to this Agreement, to the extent applicable.

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

Signed for and on behalf of
The State of Israel

Signed for and on behalf of
Carmelton Group Ltd.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Annex A - Definitions

1. As used in the Concession Agreement the following terms shall have the following meaning:

1.1. **Accountant General** - shall mean the Accountant General of the State of Israel.

1.1A **Accountant General Interest Rate** - shall mean the rate of interest on the late transfer of money from the banking ~~system~~^{system}, as determined from time to time by the Accountant General, and as calculated in accordance with his guidelines.

In the event that such interest already includes a linkage element, then, whenever such interest is to be paid, no further linkage will be paid for that period for which such interest is to be paid. Where such interest does not already include a linkage element, then, whenever such interest is to be paid, linkage will be added for that period for which such interest is to be paid.

1.2A **Actual Revenues** - shall have the meaning set forth in Section 2 of Annex X

1.2. **Additional Maintenance Work** - shall have the meaning ascribed thereto in Section 4.4.9, Annex H.

1.2A **Actual Revenues** - shall have the meaning set forth in Section 2 of Annex X.

1.3. **Additional Operational Work** - shall have the meaning ascribed thereto in Section 3.14.7, Annex H.

1.3A **Advance Annual Revenue Guarantee Payment** - shall have the meaning set forth in Section 6.1 of Part I of Annex X.

1.4. **Agreement** - shall mean this Concession Agreement between the Government on behalf of the State of Israel, represented by the Accountant General and the Concessionaire, including all Annexes and amendments thereto.

1.4A **Amendment Closing Date** - shall mean the date of the amendment to the Agreement.

1.4B **Annual Revenue Guarantee** - shall have the meaning set forth in Section 15A1 of this Agreement.

1.4C **Annual Revenue Guarantee Payment** - shall have the meaning set forth in Section 6.1 of Part I of Annex X.

1.4D **Annual Report** - shall have the meaning set forth in Section 3.13.3.3.2 of Annex H.

- 1.5. Annual Safety Drill - shall mean the safety drill conducted by the Concessionaire in accordance with the provisions of the Operation Plan, realistically simulating an emergency in the Project, involving and activating all emergency services.
- 1.6. Antiquities Law - shall mean the Antiquities Law 1978, including all regulations thereto, as amended and supplemented.
- 1.6A. Appeal - shall have the meaning set forth in the Preamble of this Agreement.
- 1.6B. Approved Budget - shall have the meaning set forth in Section 16.3A2(2) of this Agreement.
- 1.7. Archeological Findings - shall have the meaning ascribed thereto in the Antiquities Law.
- 1.7A. Base CPI - shall mean the CPI published on 15 February 2005 (100 points, 2002 average = 100).
- 1.7B. Base Interest Rate - shall have the meaning set forth in Section 2 of Annex W.
- 1.8. Base Toll Charge - shall mean 5 NIS (including VAT), as escalated in accordance with Sections 15 and 43.14 of this Agreement.
- 1.9. Bid Documents - shall mean all documents as described by Section 14 of Part "A" to the I.F.B. and any supplemental documents submitted by the Concessionaire to the Tender Committee, as accepted by the Tender Committee pursuant to the Tender Process.
- 1.10. Bi-Monthly Design Meeting - shall mean the meeting described in Section 3.5.1, Annex E.
- 1.11. Bond or Bonds - shall mean the bonds described in Section 21 of this Agreement.
- 1.12. B.O.T. - shall mean build - operate - transfer.
- 1.12A. Calendar Year - shall mean a period commencing on January 1st and concluding on December 31st.
- 1.13. Carmel Beach Interchange - shall mean the interchange located at the southern approaches to Haifa on rolling terrain near the Carmel beach at the western portal of the Western Tunnels as indicated in the L.O.S.
- 1.14. Carmel Beach Site - shall mean the site described in Section 4.1.5, Annex G.
- 1.15. Carmel Tunnels Authority or CTA - shall mean the authority consisting of the Division of Infrastructure and Development, Ministry of Transportation, and a representative of the Accountant General,

Ministry of Finance, or any another Person appointed by the State to act on its behalf as set forth in this Agreement, as the Concessionaire shall be informed by the Ministers from time to time.

- 1.16. Change in Circumstance - shall have the meaning set forth in Section 25.3.3 of this Agreement.
- 1.17. Change Order - shall mean a written change issued by the CTA to the Concessionaire as described in Section 7, Annex G.
- 1.18. Claim - shall have the meaning ascribed thereto in Section 4.4, Annex R.
- 1.19. Closing - shall mean the date of this Agreement.
- 1.20. Commencement and Completion Dates - shall mean the Construction Commencement Date and the Construction Completion Date.
- 1.21. Concession - shall mean the concession awarded to the Concessionaire by the Government on Closing.
- 1.22. Concessionaire - shall mean Carmelton Group Ltd., a newly formed corporation, duly incorporated under the provisions of the Companies Ordinance [New Version] (1983), which was selected by the Tender Committee pursuant to the Tender Process to execute the Project, and granted the Concession by the Government.
- 1.23. Concessionaire Cost Estimate - shall mean the cost estimate described in Section 7.1, Annex E.
- 1.24. Concessionaire's Management Team - shall mean the management team appointed by the Concessionaire in accordance with Section 2.4, Annex E during the Pre-Construction Period and the Construction Period.
- 1.25. Concessionaire Termination Event - shall mean those events described in Section 25.4.1 of this Agreement.
- 1.26. Concession Period - shall mean a period of 35 years, commencing on the Amendment Closing Date subject to the provisions of Section 17.117.1, subject to extension or termination in accordance with the provisions of this Agreement.
- 1.27. Condition or Finding - shall mean the condition or finding described in Section 5.2.1, Annex G.
- 1.28. Construction (or Construction Work) - shall mean the works to be executed in relation to the design, construction and completion of the Project in accordance with this Agreement, including but not limited to all design, engineering, procurement, construction, labor, management and supervision, quality control assurance, technical, professional and other services, and procurement of all equipment,

systems and materials as required by the Contract Documents or otherwise necessary or appropriate in order to achieve Construction Completion of the Project.

1.29. Construction Commencement Date - shall mean the date set in Section 12.1 of this Agreement.

1.30. Construction Completion - shall mean completion of Construction of the Project in accordance with the requirements of the Contract Documents as evidenced by issuance of a Permit to Operate in accordance with Section 13.2 of this Agreement.

1.31. Construction Completion Date - shall mean the date set forth in Section 12.2 of this Agreement.

1.32. Construction Contracts - shall mean those contracts entered into between the Concessionaire and the respective Contractors for the execution of all Construction Work.

1.33. Construction Log - shall mean the log described in Section 11.1, Annex G.

1.34. Construction Performance Bond - shall mean the bond described in Section 21.4.1 of this Agreement, in the form attached to this Agreement as Annex N.

1.35. Construction Period - shall mean the period required for Construction Completion as set forth in the Revised Project Schedule which shall not exceed the period set forth in Section 12.2 of the Agreement (unless shall be extended pursuant to Section 12.3 of the Agreement).

1.36. Construction Quality Assurance and Control Plan (CQACP) - shall mean the quality assurance described in Section 6.1, Annex E and attached to Annex E as Schedule IV.

1.37. Construction Site (or Construction Sites) - shall mean the sites described in Section 4.1, Annex G.

1.38. Consumer Price Index (CPI) - shall mean the Consumer Price Index published from time to time by the Central Bureau of Statistics.

1.39. Contract Documents - shall mean the documents described in Section 42.1 of this Agreement.

1.40. Contractors - shall mean the parties to the Construction Contracts, excluding, the Concessionaire.

1.41. Contracts - shall mean Design Contracts, Construction Contracts, Operation Contracts, Maintenance Contracts, Management Contracts and Related Party Transactions.

1.42. Control - shall have the meaning ascribed thereto in the Toll Roads Law.

1.42A. CPI - shall mean the Israeli Consumer ~~price~~Price Index published from time to time by the Israeli Central Bureau of Statistics. If the CPI ceases to exist or becomes unavailable, the CTA and the Concessionaire shall agree to a substitute index that reasonably measures inflation within Israel. The CPI on any applicable date shall mean the known CPI on the morning of such date.

1.43. Critical Path Activity - shall mean a critical path activity shown on the ~~Revised~~revised Project Schedule.

1.44. CTA Construction Delay - shall mean the delay described in Section 26.4.2.2 of this Agreement.

1.45. CTA Delay - shall mean the occurrence of any one or more of the following for a time period which exceeds 60 consecutive days:

- (i) failure of the CTA to comply with Sections 10.2 or 13.3 of this Agreement;
- (ii) the CTA suspends Construction in accordance with the provisions of Section 8, Annex G, or operation of the Project under the provisions of Section 3.10.2, Annex H, and the Disputes Board finds that such suspension was not justified under the terms of this Agreement; or
- (iii) the State or the CTA commits, without justifiable cause, a material breach in complying with its obligations under this Agreement, or a certified Material Adverse Government Action occurs, following which the performance of the Concessionaire's obligations under this Agreement are delayed by a period which does not exceed the period specified in Section 25.6.1 of this Agreement.

1.46. CTA Generated Float - shall have the meaning set forth in Section 5.7.2, Annex E.

1.47. CTA Monitoring Team - shall mean the monitoring team appointed by the CTA in accordance with Section 2.5, Annex E, to monitor compliance with the Agreement by the Concessionaire on behalf of the CTA during the Pre-Construction Period and Construction Period.

1.47A. Date of Request of NTP - shall have the meaning set forth in Section 10.1 of this Agreement.

1.47B. Deferred Date - shall have the meaning set forth in Section 5.5.1 of this Agreement.

1.48. Design (or Design Work) - shall mean the works to be executed in relation to the design of the Project in accordance with this Agreement, including, without limitation, the preparation of the Final Design,

Detailed Scheme and Detailed Design, in accordance with the provisions of Annex F.

1.49. Designer(s) - shall mean the parties to the Design Contracts, excluding the Concessionaire.

1.49A Design and Construction Contract - shall have the meaning set forth in Section 6.6 of this Agreement.

1.50. Design Contracts - shall mean all those contracts entered into between the Concessionaire and the respective Designers for the performance of all Design Work.

1.51. Design Documents - shall have the meaning set forth in Section 3.4.3.4, Annex F.

1.52. Design Quality Assurance and Control Plan (DQACP) - shall mean the quality assurance described in Section 6.1, Annex E and attached to Annex E as Schedule IV.

1.53. Design Report - shall mean a general report and a report for each Engineering Discipline, each consisting of the following:

- 1.53.1. a problem definition relating to the issues and the subject matter of the design;
- 1.53.2. relevant data to be used during the design process;
- 1.53.3. design principles, method standards and basic assumptions to be implemented during the design process;
- 1.53.4. analysis, calculations, diagrams and solution description - on the background of the alternative solutions evaluated;
- 1.53.5. considerations for choosing the preferred alternative; and
- 1.53.6. preliminary or final or detailed engineering solution for the preferred alternative.

1.54. Detailed Design - shall mean the detailed design of the Project prepared by the Concessionaire in accordance with the provisions of Section 3.5, Annex F and approved by the CTA in accordance with Section 4.3, Annex F.

1.55. Detailed Scheme - shall mean the detailed scheme prepared by the Concessionaire in accordance with the provisions of Section 3.3, Annex F and approved by the CTA and the Relevant Planning Commission in accordance with Sections 4.1 and 5, Annex F.

1.56. Disputes Board - shall mean the disputes settlement board established in accordance with the provisions of Section 2, Annex R.

1.56A District Court Judgment - shall have the meaning set forth in the Preamble of this Agreement.

1.57. Dividends - shall mean (i) the declaration or payment of any dividend by the Concessionaire or the making of any distribution (including interest) on its capital stock (which includes any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in, however designated, corporate stock of the Concessionaire) or to the holders of its capital stock, of cash or other assets or property, (ii) the making of any loan or similar advance by the Concessionaire to any holder of its capital stock, (iii) the purchase, redemption or other acquisition or retirement for value of any capital stock of the Concessionaire or (iv) any other distribution of profit.

1.58. Dollar (\$) - shall mean the lawful currency of the United States of America from time to time.

1.59. Draft or Drafts - shall mean drafts of contracts and agreements and shall include all memoranda of understanding or any other working agreements between the Concessionaire and the respective party or parties and such data, estimates and calculations as are necessary for an understanding thereof.

1.59A Drawdown Date - shall have the meaning set forth in the Senior Debt Funding Agreement.

1.59B Drawing - shall have the meaning set forth in the Senior Debt Funding Agreement.

1.60. Eastern Tunnels - shall mean a 1.6 km long twin tunnel scheme, each tunnel having at least two lanes of one way traffic, connecting the Kriyot (Checkpost) Junction area and Mount Carmel as indicated in the L.O.S. These Tunnels will be accessed through the Kriyot (Checkpost) Interchange in the east and the Rupin Interchange on Mount Carmel.

1.61. Eastern Tunnels Site - shall mean the site described in Section 4.1.2, Annex G.

1.61A End Date - shall have the meaning set forth in Section 16.2 of this Agreement.

1.62. Engineering Discipline (or Engineering Disciplines) - shall have the meaning set forth in Section 3.2, Annex E.

1.63. Environmental Impact Statement (E.I.S.) - shall mean the Environmental Impact Statement prepared pursuant to the L.O.S. as incorporated into the L.O.S. approved by the Relevant Planning Commission.

1.64. Equipment Inspection - shall have the meaning set forth in Section 4.6.2, Annex H.

1.65. Equipment List - shall have the meaning set forth in Section 4.6.1, Annex H.

1.66. Equity - shall mean and include (i) any and all shares, interests, participations or other equivalents of or interests in (however designated) corporate stock, including, without limitation, shares of preferred or preference stock, or (ii) all partnership interests (whether general or limited) in any Person which is a partnership, or (iii) all membership interests or limited liability company interests in any limited liability company or (iv) all equity or ownership interests in any Person of any other type.

For the avoidance of doubt, for the purpose of Section 26 of the Agreement, Equity shall mean to include Shareholders None.

1.67. Equity Participant - shall mean any shareholder of the Concessionaire who is not an Initial Equity Participant.

1.68. Event of Force Majeure - shall mean an event certified by the Disputes Board, in accordance with the provisions of Section 24.1.1 of this Agreement.

1.69. Extra Construction Work - shall mean any Construction Work which at the time of any Change Order or Request for Information in respect thereof is not included in the Contract Documents.

1.70. Extra Design Work - shall mean any Design Work which at the time of the Change Order or Request for Information in respect thereof is not included in the Contract Documents.

1.71. Extra Maintenance Work - shall mean any Maintenance Work which at the time of any Request for Maintenance Change Order in respect thereof is not included in the Final Maintenance Plan.

1.72. Final Decision - shall mean each final award or decision by the Disputes Board or the Independent Engineer in accordance with the provisions of Annex R and Annex S.

1.73. Final Design - shall mean the final design prepared by the Concessionaire in accordance with the provisions of Section 3.4, Annex F and approved by the Relevant Planning Council and the CTA in accordance with Sections 4.2, Annex E.

1.74. Final Maintenance Bond - shall mean the bond described in Section 21.5.2 of this Agreement, attached to this Agreement as Annex Q.

1.75. Fair Market Value - shall mean the sale price on market terms between a willing vendor and a willing purchaser (who are unrelated).

1.76. Final Maintenance Inspection - shall mean the inspection described in Section 4.7.1, Annex H.

1.77. Final Maintenance Plan - shall mean a maintenance plan adopted by the Concessionaire and approved by the CTA in accordance with Section 4.7, Annex H.

1.77A. Financial Closing - shall mean the date of the approval of the Funding Agreements by the CTA in accordance with the provisions of the Concession Agreement.

1.78. Final Monthly Schedule Updated Submittal - shall have the meaning set forth in Section 5.8.3, Annex E.

1.79. Financial Proposal - shall mean the proposal set forth in Volume 4 of the Bid Documents submitted in July 1998 of the Bid Documents as accepted by the Tender Committee pursuant to the Tender Process, as amended from time to time in accordance with the provisions of this Agreement.

For the purpose of this definition a Financial Proposal shall include the summary of the financing structure, financial forecasts and the plan and schedule for raising finance and execution of all Financial Agreements.

1.80. Financing Schedule - shall mean the time schedule for financing the Project as set forth in the Financial Proposal, as amended from time to time in accordance with the provisions of this Agreement.

1.80A. First Royalty Payment - shall have the meaning set forth in Section 16.2 of this Agreement.

1.81. Fiscal Year - shall mean the same calendar year commencing on January 1 and ending on December 31.

1.82. Float - shall have the meaning set forth in Section 5.7.1, Annex E.

1.83. Force Majeure - shall mean events beyond the reasonable control of either party to this Agreement, which constitute exceptional and unforeseeable circumstances including war and terrorist activities, which, despite the exercise of diligent efforts, such party was unable to prevent, limit or minimize and which:

1.83.1. cause material and unavoidable physical damage or destruction to the Project; or

1.83.2. materially delay the scheduled performance of any Critical Path Activity, Major Activity or Construction Completion Date or Construction Commencement Date of the Project; or

1.83.3. materially interrupt the full and regular operation of the Project including, without limitation, its toll collection facilities or functions.

For the avoidance of doubt, the following events (but not only these events) shall be specifically excluded from the definition of the term Force Majeure (and this list does not derogate from the fact that these events are not Force Majeure even by their nature and according to the foregoing definition of Force Majeure):

1.83.4. shortage of materials or employees except a national general shortage declared by an order of the Government;

1.83.5. strikes, labor disputes, boycott lock-outs or other similar occurrences;

1.83.6. inclement weather and other material disturbances which are foreseeable;

1.83.7. physical conditions or obstacles (both above the ground or underneath it) encountered in the course of the Construction Work or otherwise;

1.83.8. 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 Agreement;

1.83.9. any event covered by insurance or which the Concessionaire was obliged to insure against pursuant to Section 20 of this Agreement above in sums which cover at least 80% of repairing the damage; and

1.83.10. any other event the consequences of which are specifically provided for in this Agreement (including without limitation any event provided for in Section 5.3 of Annex G of this Agreement) which otherwise would constitute Force Majeure as defined above.

1.84. Funders - shall mean any Person providing finance for or security for financing the Project under the Funding Agreements.

1.85. Funding Agreements - shall mean those agreements entered into between the Concessionaire and the respective Funders for the provision of finance or securing finance for the Project in accordance with Section 5 of this Agreement and approved by the CTA in accordance with Section 5.5 of this Agreement, as amended from time to time during the Concession Period in accordance with the provisions of this Agreement.

1.86. Fund-Raising ReportFunding Agreements - shall mean a report as described those agreements entered into between the Concessionaire and the respective Funders for the provision of finance or securing finance for the Project in accordance with Section 5.3 of this Agreement and attached to approved by the CTA in accordance with Section 5.5 of this Agreement as Annex C-2, as amended from time to time during the Concession Period in accordance with the provisions of this Agreement..

1.87. Government - shall mean the Government of the State of Israel.

1.87A Grace Period - shall have the meaning set forth in Section 4.2.2 of Annex W.

1.88. Hazardous Materials - shall mean any substance, product, waste or other material which is or becomes listed under the Hazardous Materials Law - [1993]; and any substance, product, waste or other material of any nature whatsoever which may give rise to liability under the above Law or under any statutory or common law theory based on negligence, tort, nuisance or strict liability or under any reported decision of the of the Israeli Supreme Court; and petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles.

1.89. Independent Engineer - shall mean the independent engineer appointed in accordance with the provisions of Section 2.1, Annex S.

1.90. Independent Engineer Tenure - shall have the meaning ascribed to such term in Section 3.4, Annex S.

1.91. Initial Equity Interests - shall mean the shareholding of each Initial Equity Participant in the Concessionaire, as acquired by such Initial Equity Participant in accordance with the provisions of the Financial Proposal and the Shareholders Agreement..

1.92. Initial Equity Participants - shall mean those shareholders of the Concessionaire, as approved by the CTA pursuant to the Tender Process, which are (i) Ashtrom Properties Ltd.; (ii) Dragados Y Construcciones S.A.; (iii) FIBI Holdings Co. Ltd.; and (iv) Property and Building Corporation Ltd..

1.93. Initial Regulatory Delay Grace Period - shall have the meaning set forth in Section 8.4.4.1A of this Agreement.

1.94. DELETED

1.95. Insurance Policies - shall mean the policies described in Volume A-2 (Box No. 1) of the Bid Documents submitted in December 1997, as accepted by the Tender Committee pursuant to the Tender Process, specifying all insurance policies the Concessionaire undertakes to

procure, including all liability and property insurance policies and attached to this Agreement as Annex J.

1.95A Interest Rate - shall have the meaning set forth in Section 2 of Annex W.

1.96. Interested Party - shall have the meaning ascribed to such term in the Securities Law 5728-1968.

1.97. Interministerial General Specifications - shall mean the Interministerial General Specifications published by the Ministry of Defense, and all amendments thereto.

1.98. Invitation for Bids (I.F.B.) - shall mean the Invitation for Bids and all addenda and Annexes thereto issued by the Tender Committee.

1.99. Judge - shall have the meaning set forth in Section 3.1, Annex R.

1.100. Kriyot (Checkpost) Interchange - shall mean the interchange located at Haifa Bay on flat terrain at the eastern portal of the Eastern Tunnels as indicated in the L.O.S.

1.101. Kriyot Site - shall mean the site described in Section 4.1.1, Annex G.

1.102. Local Outline Scheme (L.O.S.) - shall mean the Carmel Tunnels local outline scheme 1975 on.

1.103. Maintenance (or Maintenance Work) - shall mean the works to be executed in relation to the maintenance of the Project, including all works specified in the Final Maintenance Plan or otherwise necessary or appropriate to maintain the Project.

1.104. Maintenance Change Order - shall mean a written change to the Final Maintenance Plan issued by the CTA to the Concessionaire as described in Section 4.4.3, Annex H.

1.105. Maintenance Contractor - shall mean the parties to the Maintenance Contracts, excluding the Concessionaire.

1.106. Maintenance Contracts - shall mean those contracts entered into between the Concessionaire and the respective Maintenance Contractor(s) for the Maintenance of the Project.

1.107. Maintenance Plan - shall mean the maintenance plan adopted by the Concessionaire in accordance with the provisions of Section 4.3.2, Annex H, and approved by the CTA in accordance with the provisions of Section 4.3, Annex H.

1.108. Major Activity - shall mean any activity the duration of which exceed three months; or any activity the monetary value of which exceeds 750,000 NIS; or any activity of special importance to the Project (even

though the duration of which does not exceed three months, nor does its monetary value exceed 750,000 NIS).

1.109. Management - shall mean the works to be executed in relation to the management of the Project in accordance with this Agreement or otherwise necessary or appropriate to manage the Project.

1.110. Management Contract - shall mean those contracts entered into between the Concessionaire and the respective Managers for the Management of the Project in accordance with this Agreement.

1.111. Manager - shall mean the parties to the Management Contracts, excluding the Concessionaire.

1.112. Margin - shall mean, with respect to any Funding Agreement at any time, the component of the rate of interest payable at such time in excess of the base or reference rate at such time under such Funding Agreement.

1.113. Material Adverse Change to a Pre-Ruling - shall have the meaning ascribed thereto in Section 35.6.

1.114. Material Adverse Government Action - shall mean the introduction or application of any law, regulation, rule, ordinance, statute or administrative orders in Israel which: (i) discriminates directly against the Concessionaire and/or other Toll Road Concessionaire; (ii) detrimentally affects the rights granted under this Agreement; and (iii) materially adversely affects the economic position of the Concessionaire.

Such action shall not be considered Material Adverse Government Action where such action is carried out under the L.O.S, the Detailed Scheme or any building permits, or in response to any act or omission on the part of the Concessionaire which is illegal (other than an act or omission rendered illegal by virtue of such action) or in violation of agreements to which the Concessionaire is party. For the avoidance of doubt, it is understood that the levy or the increase of taxes, charges or other payments of general application which are not directed towards the Concessionaire shall not be deemed to constitute Material Adverse Government Action.

1.115. Maximum Toll Charge - shall have the meaning set forth in Section 15.3 of this Agreement.

1.116. Minerals - shall have the meaning ascribed to it under the Mines Ordinance.

1.117. Ministers - shall mean the Minister of Finance and the Minister of Transportation.

- 1.117A Missed Payment - shall have the meaning set forth in Section 4.2.3 of Annex W.
- 1.118. Monthly Construction Meeting - shall have the meaning set forth in Section 4.7.3, Annex E.
- 1.119. NIS - shall mean the lawful currency of the State of Israel from time to time.
- 1.120. Notice of Termination - shall mean the notice of termination issued by the CTA to the Concessionaire in accordance with Sections 25.3.1, 25.3.2, 25.4 or 25.5 of this Agreement or the notice of termination issued by the Concessionaire to the CTA in accordance with Sections 25.3 or 25.6 of this Agreement.
- 1.121. Notice to Proceed - shall mean a notice issued by the CTA to the Concessionaire in accordance with Section 10 of this Agreement.
- 1.121A Notice Period - shall have the meaning set forth in Section 15A1.
- 1.122. Office - shall mean the office described in Section 6, Annex G.
- 1.123. Operation - shall mean the works to be executed in relation to the operation of the Project in accordance with this Agreement, including all works specified in the Operation Plan or otherwise necessary or appropriate to operate the Project.
- 1.124. Operation and Maintenance Performance Bond - shall mean the bond described in Section 21.5.1 of this Agreement, and attached to this Agreement as Annex P.
- 1.125. Operation Change Order - shall mean a written change to the Final Operation Plan issued by the CTA to the Concessionaire as described in Section 3.14.5, Annex H.
- 1.126. Operation Contract - shall mean the contract entered into between the Concessionaire and the Operator for the Operation of the Project.
- 1.127. Operation Period - shall mean the period commencing on the issuance of a Permit to Operate and terminating on the expiry of the Concession Period.
- 1.128. Operation Plan - shall mean an operation plan adopted by the Concessionaire and approved by the CTA in accordance with Section 3.1.4, Annex H.
- 1.129. Operator - shall mean the party to the Operation Contract, excluding the Concessionaire.
- 1.129A Original Repayment Date - shall have the meaning set forth in Section 16.3 of this Agreement.

- 1.130. Participant - shall mean an Initial Equity Participant or an Equity Participant.
- 1.131. Performance Bond - shall mean the bond described in Section 21.3.1 of this Agreement, and attached to this Agreement as Annex K.
- 1.132. Permit to Operate - shall mean the permit granted by the CTA to the Concessionaire in accordance with Section 13.2 of this Agreement.
- 1.133. Person - shall mean any individual, corporation, company, voluntary association, partnership, trust, or unincorporated organization.
- 1.134. Pre - Construction Period - shall mean the period commencing on Closing and terminating on the issue of a Notice to Proceed.
- 1.135. Preliminary Design - shall mean the preliminary design described in Section 3.2, Annex F, and attached to Annex F as Schedule I.
- 1.136. Preliminary Maintenance Plan - shall mean the plan described in Section 4.2.1, Annex H and attached to Annex H as Schedule IV.
- 1.137. Project - shall mean the Western Tunnels, the Eastern Tunnels, the Carmel Beach Interchange, the Rupin Interchange, the Kriyot (Checkpost) Interchange, as defined by the L.O.S. including all Project Facilities, Project Utilities, equipment, systems and sub-systems thereof.
- 1.138. Project Design Documents - shall have the meaning set on Section 2.1, Annex G.
- 1.139. Project Facilities - shall mean but shall not be limited to all transportation and traffic, roads, Tunnels, bridges, electricity, lighting, communications, ventilation, buildings, control, Toll Collection Facilities, environment and landscaping and any systems and sub-systems thereof.
- 1.140. Project Related Information - the information contained in Part "B" to the extent that it sets forth the basic configuration of the Project (that is, the general geometry of the Project, the typical sections, the number of lanes, the location of the toll facilities and interchanges, the types of toll facilities and interchanges, the types of toll facilities, and the size, type and location of bridges) or includes design recommendations or otherwise defines the physical characteristics of the Project upon which design is to be based, including without limitation the Conceptual Design attached to Part "B" as Appendix B5, photogrametric surveys, traffic data and information and geological surveys.
- 1.141. Project Schedule - shall mean the schedule described in Section 5.1, Annex E, and attached to that Annex as Schedule III.

- 1.142. Project Specifications - shall mean the specifications set forth in Part "B".
- 1.143. Project Utilities - shall mean type A utilities and type B utilities as defined in Part "B".
- 1.144. Promoters - The Ministers of Finance, Transportation and Construction and Housing of Israel, and all designated representatives thereof.
- 1.145. Proposed Recovery Schedule - shall mean the proposed recovery schedule described in Section 8.3.2 of this Agreement.
- 1.146. Protected Plants and Structure - shall have the meaning set forth in Section 38.1 of this Agreement.
- 1.147. Protesting Party - shall mean the party described in Section 4.5.1, Annex R.
- 1.148. Public Vehicle - shall have the meaning ascribed to it in the Traffic Ordinance (New Version) 5721-1961, including a bus, a mini-bus, and a camper, provided that such vehicles are capable or being used for the transportation of at least 10 passengers in addition to the driver of such vehicle.
- 1.149. Quality Assurance and Control Plan (QACP) - shall mean the quality assurance described in Section 6.1, Annex E and attached to Annex E as Schedule IV.
- 1.149A Quarter - shall mean a three month period ending on either March 31, June 30, September 30 or December 31 of any given year.
- 1.149B Quarterly Report - shall have the meaning set forth in Section 3.13.3.1 of Annex H.
- 1.150. Recovery Schedule - shall mean the Proposed Recovery Schedule as approved by the CTA in accordance with the provisions of Section 8.3.4 of this Agreement.
- 1.151. Recovery Service - shall mean the recovery services provided by the Concessionaire as part of the Operation Plan in accordance with the provisions of Section 3.4, Annex H.
- 1.151A Reference Rate - shall have the meaning set forth in the Senior Debt Financing Agreement.
- 1.152. Registered Capital - shall mean the registered capital of the Concessionaire registered with the Registrar of Companies, as may change from time to time.
- 1.153. Regulatory Delay - shall mean the lack of approval of the Detailed Scheme by 2.11.1999.

- 1.153A. Regulatory Delay Grace Period - shall have the meaning set forth in Section 8.4.1 of this Agreement.
- 1.154. Related Party - shall have the meaning ascribed to the term Interested Party in Section 1 of the Securities Law 5728-1968.
- 1.155. Related Party Transaction - shall mean any transaction relating to the Project in which the Concessionaire, any Subsidiary of the Concessionaire, or the other party to a Contract, leases, transfers or otherwise disposes of any of its properties or assets to, or purchases any property or assets from, provides services to, or enters into any contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, a Related Party (other than the original contracts hereunder with the Concessionaire or a Subsidiary of the Concessionaire).
- 1.156. Relevant Planning Commission - shall mean the relevant planning commission according to the Planning and Building Law, 5725-1965.
- 1.157. Reports - shall have the meaning set forth in Section 43.10 of this Agreement.
- 1.156A Relevant Date - shall have the meaning set forth in Section 43.14 of this Agreement.
- 1.156B Reported Data - shall have the meaning set forth in Section 3.13.3.2 of Annex H.
- 1.158. Request for Certification of a Material Adverse Government Action - shall mean the request as described in Section 24.4.1 of this Agreement.
- 1.159. Request for Certification of an Event of Force Majeure - shall mean the request as described in Section 24.1.1 of this Agreement.
- 1.160. Request for Change Order - shall mean the request for the introduction of a Change Order as described in Section 7.2, Annex G.
- 1.161. Request for Compensation Following Delay in Acquisition or Appropriation of the Site - shall mean the request as described in Section 26.2.3 of this Agreement.
- 1.162. Request for Compensation due to Material Adverse Government Action - shall mean the request as described in Section 26.5.1 of this Agreement.
- 1.163. DELETED
- 1.164. Request for Compensation for following Regulatory Delay - shall mean the request as described in Section 26.1.3.2 of this Agreement.

- 1.165. Request for Compensation for Extra Work - shall mean the request as described in Section 26.4.1 of this Agreement.
- 1.166. Request for Compensation Pursuant to Section 8 - shall mean the request described in Section 26.6.1.1 of this Agreement.
- 1.167. Request for Compensation Pursuant to Section 9(b) - shall mean the request described in Section 26.6.2.1 of this Agreement.
- 1.168. Request for Compensation Upon Failure to Complete Acquisition or Appropriation of Site - shall mean the request as described in Section 26.2.1 of this Agreement.
- 1.169. Request for Compensation Upon Termination - shall mean the request as described in Section 26.8.1 of this Agreement.
- 1.170. Request for Compensation Upon Termination due to Concessionaire Termination Event - shall mean the request as described in Section 26.9.1 of this Agreement.
- 1.171. Request for Compensation Upon Termination due to Force Majeure - shall mean the request as described in Section 26.7.1 of this Agreement.
- 1.172. Request for Information Compensation Upon Termination Following Regulatory Delay - shall mean the information requested by the CTA from the Concessionaire request as described in accordance with Section 726.1.4, Annex G.1 of this Agreement.
- 1.173. Request for Information - shall mean the information requested by the CTA from the Concessionaire in accordance with Section 7.1.4, Annex G.
- 1.174. Request for Maintenance Change Order - shall mean the request as described in Section 4.4.3, Annex H.
- 1.175. Request for Operation Change Order - shall mean the request for the introduction of a Operation Change Order as described in Section 3.14.3, Annex H.
- 1.175A Revenue Guarantee Payments - shall mean the Advance Annual Revenue Guarantee Payment, the Annual Revenue Guarantee Payment and the Revenue Guarantee Overpayments.
- 1.175B Revenue Guarantee Period - shall commence on the date of issuance of a Permit to Operate and shall conclude concurrently with the Senior Debt Funding Agreement, subject to the provisions of Sections 5.5.2 and 5.5.2a of this Agreement.
- 1.175C Revenue Guarantee Overpayments - shall have the meaning set forth in Section 6 of Annex X.

- 1.175D Revised Project Schedule - shall mean the schedule described in Section 5.1A, Annex E, and attached to that Annex as Schedule IV.
- 1.175E Revenue Sharing - shall have the meaning set forth in Section 15A2 of this Agreement.
- 1.175F Revenue Guarantee Line - shall have the meaning set forth in Section 3 of Annex X.
- 1.176. Royalties - shall have the meaning set forth in Section 16.2 of this Agreement.
- 1.177. Royalties Offer - shall have the meaning described in Section 16.1 of this Agreement and attached to this Agreement as Annex I.
- 1.178. Deleted.
- 1.179. Running in Period - shall mean the period suggested by the Concessionaire in the Running in Plan, as approved by the CTA in accordance with the provisions of Section 13.1 of this Agreement, including the period required for all corrective action taken by the Concessionaire in accordance with the provisions of Section 13.1.8 of this Agreement.
- 1.180. Running in Plan - shall mean the running in plan prepared by the Concessionaire and approved by the CTA, all in accordance with the provisions of Section 13.1 of this Agreement. The Running in Plan shall consist of all methods, tests and procedures which the Concessionaire is required to perform in order to ensure that all Project Facilities and Project Utilities are fit for their intended purpose and are fully operational. The Running in Plan shall include Concessionaire's proposed Running in Period.
- 1.181. Rupin Interchange - shall mean the central interchange located on Mount Carmel in the vicinity of residential neighborhoods as indicated in the L.O.S.
- 1.182. Rupin Site - shall mean the site described in Section 4.1.3, Annex G.
- 1.183. Safety Devices - shall have the meaning set in Section 37.2.2.1 of this Agreement.
- 1.184. Safety Officer - shall mean the officer appointed by the Concessionaire in accordance with the provisions of Section 4.2.9, Annex G.
- 1.185. Schedule Delay - shall mean (I) with respect to the Pre-Construction Period or Operation Period, a delay in the performance of a Critical Path Activity or a Major Activity for a period which exceeds 15 days; or (ii) with respect to the Construction Period, a delay in the performance of a Critical Path Activity or a Major Activity for a period which exceeds the greater of:

- (a) 25 days in the aggregate, or
- (b) a number of consecutive days which, in the aggregate, equals 4% of the remaining days until the Construction Completion Date as determined from time to time.

The date of commencement of a Schedule Delay shall be deemed to be the date on which a delay becomes a Schedule Delay as so defined.

1.186. Schedule Progress Meeting - shall have the meaning set forth in Section 5.8.1, Annex E.

1.187. Schedule Progress Summary - shall mean the progress summary described in Section 5.8.2, Annex E.

1.187A Scheduled Royalty Repayments - shall have the meaning set forth in Section 16.3 of this Agreement

1.188. Second Construction Performance Bond - shall mean the bond described in Section 21.4.2 of this Agreement, attached to this Agreement as Annex O.

1.189. Second Regulatory Delay Grace Period - shall have the meaning set forth in Section 8.4.4.3 of this Agreement.

1.189A. Secondary Debt - shall mean a loan or any other provision of funds to the Concessionaire by any financial institution, whereother than the loan or the provisions of funds is, by Senior Debt Funders, its terms having been approved by the CTA in accordance with the provisions of this Agreement, excluding however State Subordinated Debt, Shareholders Loans and investment in paid up Equity or any other provision of funds by any or all Equity Participants or any Related Party herein thereto.

1.189B Secondary Debt Funders - [to be completed]

1.190. DELETED

1.190A Semi-Annual Actual Revenues - shall have the meaning set forth in Section 7 of Annex ~~x~~ Part I of this Agreement.

1.190B Semi-Annual Report - shall have the meaning set forth in Section 3.13.3.3.1 of Annex H.

1.190C Senior Debt - shall mean a loan or any other provision of funds to the Concessionaire by the Senior Debt Funders, its terms having been approved by the CTA in accordance with the provisions of this Agreement, excluding however Secondary Debt, State Subordinated Debt, Shareholders Loans and investment in paid up Equity or any other provision of funds by any or all Equity Participants or any Related Party thereto.

1.190D Senior Debt Funders - Israel Discount Bank Ltd.

1.190E Senior Debt Funding Agreement - shall mean the agreement for the provision of Senior Debt as approved by the CTA in accordance with the provisions of the Agreement, as amended from time to time during the Concession Period in accordance with the provisions of the Agreement.

1.190F Settlement Agreement - shall have the meaning set forth in the Preamble of this Agreement.

1.191. Shareholders Agreements - shall mean all relevant agreements governing the relationship among the Participants including the agreements attached to this Agreement as Annex B.

1.192. Shareholders Guarantee - shall mean the guarantee described in Section 21.3.2 of this Agreement, attached to this Agreement as Annex L.

1.192A. Shareholders Loan - shall mean a loan or any other provision of funds to the Concessionaire by the Initial Equity Participants or Equity Participants (other than an investment in paid up Equity).

1.193. Site - shall mean the area designated by the L.O.S. for the execution of the Project.

1.194. State - shall mean the Government of Israel on behalf of the State of Israel.

1.194A State's Revenues - shall have the meaning set forth in Section 1.4 of Part II of Annex X.

1.194B. State Subordinated Debt - shall have the meaning set forth in Section 16.2 of this Agreement.

1.195. State Termination Event - shall mean those events described in Section 25.6 of this Agreements.

1.196. Subcontractor(s) - shall mean any Person with whom a Designer, a Contractor, the Operator or a Maintenance Contractor has entered into any subcontract to perform any part of the Design, Construction, Operation and Maintenance or to provide any materials, equipment or supplies (and any other person with whom any Subcontractor has further subcontracted any part of the work).

1.197. Subcontracts - shall mean any contracts entered into by the a Designer, a Contractor, the Operator or a Maintenance Contractor and the respective Subcontractors, for the performance of any part of the Design, Construction, Operation and Maintenance or for the supply of any materials, equipment, services or facilities (and any other person

with whom any Subcontractor has further subcontracted any part of the work).

1.197A. Subordinated Debt - shall mean a loan or any other provision of funds to the Concessionaire pursuant to any Funding Agreements other than the Senior Debt Funding Agreement and which is subordinate in its terms to the terms of the Senior Debt Funding Agreement.

1.198. Subsidiary - shall mean, with respect to any Person, any corporation, company, association or other business entity of which the majority of the issued and outstanding stock or equivalent thereof having ordinary voting power (irrespective of whether or not at the time stock or the equivalent thereof of any class or classes of such corporation, association or other business entity shall or might have voting power upon the occurrence of any contingency) is, at the time as of which any determination is being made, owned or controlled by such Person or by one or more Subsidiaries of such Person or by such Person and/or one or more Subsidiaries of such Person.

1.199. Substantial Construction - shall mean the point in time, determined by the CTA based on the Revised Project Schedule, at which the cost of the Construction Works completed exceeds the equivalent of \$15 million.

1.200. Substitute Board - shall mean all Substitute Members appointed in accordance with the provisions of Section 3.6, Annex R, acting for the Disputes Board in accordance with the provisions of Section 3.10, Annex R.

1.201. Substitute Member - shall have the meaning set forth in Section 3.6, Annex R.

1.202. Substituting Entity - shall mean the entity which is substituted for the Concessionaire in accordance with the provisions of Section 31 of this Agreement.

1.203. Tax - shall mean to include levies, fees or any other compulsory payment.

1.204. Tender Committee - shall mean the committee appointed by the Accountant General in accordance with the provisions of the Mandatory Tenders Regulations 5753 - 1993, in order to control and manage the Tender Process.

1.205. Tender Process - shall mean the tender process commencing with the issuance of the Pre-Qualification Documents and terminating upon the Closing.

1.206. Tenure - shall have the meaning ascribed thereto in Section 3.8, Annex R.

1.207. Termination of Independent Engineer Tenure - shall have the meaning ascribed thereto in Section 3.5, Annex S.

1.208. Termination of Tenure - shall have the meaning ascribed thereto in Section 3.9, Annex R.

1.209. Termination Reports - shall mean the reports described in Section 28 of this Agreement.

1.210. Three Interchanges - shall mean the Carmel Beach Interchange, the Kriyot (Checkpost) Interchange and the Rupin Interchange.

1.211. Toll Charges - shall mean amounts levied by the Concessionaire on Vehicles utilizing the Project, which shall be established in accordance with the provisions of this Agreement.

1.212. Toll Collection Facilities - shall mean all facilities designed and installed by the Concessionaire in accordance with the provisions of the Contract Documents for the collection of Toll Charges.

1.213. Toll Roads Law - shall mean the Toll Roads (Carmel Tunnels) Law, 5755-1995.

1.214. Traffic Control Devices - shall mean the devices contemplated by Section 3.2.4, Annex H.

1.215. Transfer - shall mean any sale, assignment, transfer, gift, or any other disposition in any manner whatsoever, including any pledge, hypothecation, mortgage, foreclosure or the creation of any encumbrance of whatever nature.

1.216. Truck - shall have the meaning ascribed to the term "Commercial Vehicle" or "Working Vehicle" in the Traffic Ordinance (New Version) 5721-1961, and provided that the overall permitted weight of such vehicle exceeds 4,000 kg.

1.217. Tunnel or Tunnels - shall mean the Western Tunnels or the Eastern Tunnels or both the Western Tunnels and the Eastern Tunnels, as the case may be.

1.218. Ultimate Parent - shall mean, at the date of Closing, the Initial Equity Participants, which are detailed in Annex L, as amended from time to time in accordance with the provisions of this Agreement. An Ultimate Parent is the first Person above a Participant in the corporate ownership chain whose equity is 4 times greater than its indirect share of the Concessionaires' share capital.

1.219. Unauthorized Schedule Delay - shall mean any delay as described in Section 8.8.1 of this Agreement.

1.220. Utilize the Site - shall have the meaning ascribed to such term in |
Section 2.2 of the Agreement.

1.221. Vehicles - shall have the meaning ascribed to the term Motor Vehicle in |
the Traffic Ordinance (New Version) 5721-1961, excluding vehicles
which are differently defined under this Agreement.

1.222. Weekly Construction Meeting - shall have the meaning set forth in |
Section 4.7.1, Annex E.

1.223. Western Tunnels - shall mean a 3.1 km long twin tunnel scheme, each |
tunnel having at least two lanes of one way traffic, connecting Mount
Carmel and Haifa's southern approaches (Carmel beach area) as
indicated in the L.O.S. These Tunnels will be accessed through the
Carmel Beach Interchange in the west and the Rupin Interchange.

1.224. Western Tunnels Site - shall mean the site described in Section 4.1.4, |
Annex G.

1.225. Terms which have not been defined in this Annex or in any other Annex |
or Section of this Agreement shall have the meaning ascribed to them
in the relevant body of Israeli legislation. Terms which have not been
defined in this Annex or in a relevant body of such legislation which
have a well-known technical or construction industry meanings, are
deemed to be used in accordance with such recognized meanings. In
the event of a conflict among the definitions, the order of precedence
shall be as follows: first, definitions in the Toll Roads Law, then
definitions in the Contract Documents, then definitions in the relevant
body of Israeli legislation, and finally well known technical or
construction industry meanings.

1.226. In this Agreement, where appropriate, the singular includes the plural |
and vice versa; references to statutes or regulations include all
statutory or regulatory provisions and conditions, amending or
replacing the statute or regulation referred to; the words "including",
"includes" and "include" shall be deemed to be followed by the words
"without limitation", unless otherwise indicated; references to Sections,
Parts or Annexes are to this Agreement, unless otherwise indicated;
reference to "days" and "years" shall mean calendar days and years
unless otherwise specified; references to "business days" shall mean
Sundays through to Thursdays excluding all National Holidays, and
references to persons include their respective permitted successors
and assigns and, in the case of Government officials, persons
succeeding to their respective functions and capacities.