

EXECUTION COPY

DATED 28 January 2011

NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED

- and -

TRANSJAMAICAN HIGHWAY LIMITED

AMENDED AND RESTATED CONCESSION AGREEMENT
in respect of
the Highway 2000 Project
in Jamaica

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THIS AMENDED and RESTATED CONCESSION AGREEMENT is made on 28 January 2011

BETWEEN:

NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED a company wholly owned by the Government of Jamaica (the "**Grantor**"); and

TRANSJAMAICAN HIGHWAY LIMITED (a company duly registered under the Jamaican Companies Act), particulars of which are set out in Schedule 1 (the "**Developer**").

WHEREAS:

- (A) The Grantor is a limited liability company duly incorporated under the Companies Act of Jamaica having its registered office at 11A Oxford Road, Kingston 5 in the Parish of St. Andrew, Jamaica.
- (B) The Grantor wishes to make arrangements for the implementation of the Highway 2000 Project and has invited companies to tender for a single contract to design, construct, operate, maintain and finance the Toll Road (the "**Project**").
- (C) In response to a Request for Proposals dated June, 2000, Bouygues Travaux Publics ("**Bouygues**") submitted to the Grantor a proposal for the Project dated 15th February, 2001.
- (D) The Grantor appointed Bouygues as preferred bidder on 27th June, 2001 by entering into the preferred bidder appointment dated on that date.
- (E) As of 21st November 2001, the Grantor and the Developer have entered into a concession agreement (the "**Original Concession Agreement**") whereby the Developer agreed to finance, design, build, operate and maintain the Project on terms and conditions set out in the Original Concession Agreement.
- (F) The Original Concession Agreement has been amended by the Grantor and the Developer by (a) the Closing Agreement dated 22nd February, 2002, (b) by the FC 1A Closing Agreement dated 13th February 2004, (c) the Toll Subsidy Compensation Agreement dated 8th August, 2006, (d) the Portmore Causeway Delay Compensation Agreement dated 8th August, 2006, (e) the Amending Agreement dated 27th July, 2007, (f) the Tolling Policy Agreement dated 17th June, 2008, (g) the Deed of Subordination dated 11th February 2004 and (h) the Initial Phase 1B Long Stop Extension dated 30th June 2009 (the "**Original Concession Amendments**").
- (G) The obligations of the Grantor under the Grantor Documents are guaranteed by the Government of Jamaica pursuant to the Government Guarantee.
- (H) In connection with the implementation of the Phase 1B, the Parties have entered into an amended and restated agreement dated _____ 2011 (the "**Amended and Restated Agreement**" or the "**Agreement**"), and wish to amend and restate the Original Concession Agreement to read as set forth herein.
- (I) For the implementation of the part of the Toll Road formerly known as the "Phase 1B" (between Sandy Bay and Williamsfield), the Parties have agreed to split such part into two new phases, respectively named and defined in this Agreement as Phase 1B and Phase 1C.

NOW, THEREFORE, in consideration of the mutual covenants and promises described below the Grantor and the Developer agree as follows:

1. INTERPRETATION

1.1 In this Agreement in addition to the terms defined elsewhere in this Agreement:

"Actual Tolloed Level" has the meaning it is given in Schedule 15 (Tolling Policy);

"Affiliate" means, in relation to any person, a person that controls, is controlled by or is under common control with such person. As used in this definition the terms "control", "controlled by" or "under common control with" shall mean ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of such person or the power to direct the management or policies of such person, whether by operation of law, by contract or otherwise;

"Agreed Bank" means a bank which is at all times rated at least AA by S&P or Aa2 by Moody's;

"Agreed Form" means, in relation to any document, the form of that document agreed by the Parties;

"Amended Corridor" means the Corridor as amended to reflect the Reviewed Design Documentation;

"Archaeological Finds" means antiquities, fossils, coins, articles of value, precious minerals, and other remains of archaeological or cultural interest discovered on a Site;

"Base Case" means the base case financial projections as calculated from time to time by the Financial Model;

"Bridging Bank" means the bank providing funds with respect to the Early Project;

"Bridging Financing Agreements" means:

- (a) the Bridging Loan Agreement, the Early Project Intercreditor Agreement and any other financing agreements entered into (or to be entered into) for Early Financial Close with the approval of the Grantor, not to be unreasonably withheld or delayed; and
- (b) any hedging agreement entered into by the Developer before Financial Close 1A with the prior written consent of the Grantor, which consent will not be unreasonably withheld or delayed if that hedging agreement complies with the Hedging Policy, and operated in accordance with the Hedging Policy,

as such agreements may be amended from time to time in accordance with Clause 33.6 (Transfers and Amendments), but shall not include any agreement under which finance is provided to the Developer by a shareholder or any Affiliate of a shareholder of the Developer;

"Bridging Loan" means a term loan of US\$ 45,000,000 made by the Bridging Bank to the Developer on the terms of the Bridging Loan Agreement;

"Bridging Loan Agreement" means the loan agreement to be entered into between the Bridging Bank and the Developer pursuant to which the Bridging Loan is made available to the Developer;

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are open for banking business in Kingston;

"Capped Toll Level" has the meaning it is given in Schedule 15 (Tolling Policy);

"Change of Law" means after the 21st November 2001 the introduction, amendment, modification or repeal of, or any change in the established practice of the administration of, any Statutory Requirement or Required Consent having effect in Jamaica or any part of it and which is binding upon either of the Parties including:

- (i) any change in the interpretation of applicable legislation made by an order or judgment of Jamaica's final appellate court,
- (ii) the introduction of conditions to Required Consents which have not been hitherto required as a matter of established practice of the administration of that Required Consent,
- (iii) the introduction of any Statutory Requirement or Required Consent controlling the convertibility or transferability of Jamaican Dollars,

but for the avoidance of doubt, **does not include:**

- (a) the entry into force after the 21st November 2001 of any Statutory Requirement or Required Consent in existence but not in force at the 21st November 2001; or
- (b) the grant or issue of any Required Consent;
- (c) the performance or exercise by any statutory or other governmental body of any function or discretion pursuant to any of its functions under applicable law;
- (d) the circumstances set out in paragraph 7.1 of Schedule 15; or
- (e) the coming into force of the Toll Roads Bill as an Act of the Parliament of Jamaica and/or any regulations promulgated thereunder, to the extent that this legislation and regulations substantially reflects the Toll Roads Principles set out in the Implementation Agreement;

"Change of Law Variation" means a Variation agreed between the Parties or determined by the Expert to be necessary, in each case in accordance with Clause 20.2 (Change of Law), as a consequence of a Change of Law which is not a Qualifying Change of Law;

"Common Terms Agreement" has the meaning given to it in Clause 27.1 (c) (i) (Termination by the Developer);

"Compensation Amount" means a payment made by the Grantor to the Developer of such amount as is calculated in accordance with Clause 40.3 as being necessary to place the Developer in the same Financial Position that it would have been in had the relevant Compensation Amount Event not occurred;

"Compensation Amount Event" means an event described in Clause 19.6 (Grantor Variations), Clause 20.3 (Qualifying Change of Law), Clause 25.6 (Breach by Grantor,

Qualifying Force Majeure or Prolonged Force Majeure) which gives rise under those Clauses to an entitlement for the Developer to receive an amount of Compensation Amount;

"Competent Authority" includes, the Toll Regulator, any court of competent jurisdiction and any local, national or supranational agency, inspectorate, department, local authority, minister, ministry, official or public or statutory person (whether autonomous or not) in or of the State or any political subdivision thereof and any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government;

"Competent Authority Consents" means the consents listed in Schedule 6;

"Completion Certificate" means the certificate issued by the Grantor's Representative pursuant to Clause 16 confirming that the conditions precedent to the completion and opening of one or more Sections of the Toll Road as set out in Schedule 10 (Conditions Precedent and Conditions Subsequent) have been satisfied;

"Concession" means the rights and obligations acquired and assumed by the Developer under this Agreement;

"Concession Award Date" means the 21st November 2001;

"Concession Period" means the period specified in Clause 4 (Concession Period) (as that period may be extended pursuant to Clause 4.2) and for the avoidance of doubt ending upon the expiry or termination of this Agreement;

"Concession Specification" means the specification for the construction, operation and maintenance of the Toll Road, incorporating the Core Requirements, the Technical Specifications, the Required Consents, the Reviewed Design Documentation, the Reviewed Quality Documentation, the Developer's Timetable, and the Outline Design, for and in relation to the Toll Road. For the purposes of this definition, in the event of any conflict between the Grantor's Core Requirements on the one hand and the Developer's Concession Responsibilities on the other, the former shall prevail;

"Construction Contract" means the construction contracts in respect of Phase 1 between the Developer and the Contractor, in the Agreed Form;

"Construction Phase" means collectively or individually the Early Project Construction Phase, the Phase 1A Construction Phase and the Phase 1B Construction Phase;

"Construction Timetable" means the construction timetable, based on the Developer's Timetable as submitted by the Developer pursuant to Schedule 10 (Conditions Precedent and Conditions Subsequent), as the same may be amended or revised in accordance with Clause 14 (Timetable) or extended pursuant to Clause 12 (Time for Completion);

"Construction Warranty" means the warranty agreement to be entered into between the Grantor and the Contractor in respect of the Construction Contract and relating to certain obligations of the Contractor;

"Construction Works" means the Early Studies, the Early Project Construction Works, the Phase 1A Construction Works and the Phase 1B Construction Works;

"**Contractor**" means Bouygues Travaux Publics or any replacement thereof appointed to carry out the Construction Works in accordance with Clause 35.2 (Sub-Contractors);

"**Contractor's Equipment**" means all appliances or things of whatsoever nature required for the purposes of the construction of the Toll Road but does not include Contract Plant, materials and other things intended to form or forming part of the Toll Road;

"**Contract Plant**" means machinery, computer hardware and software, apparatus, materials, articles and things of all kinds to be provided under this Agreement and intended to form or forming part of the Toll Road and/or for the purposes of operating and maintaining the Toll Road;

"**Core Design and Construction Requirements**" means the specified requirements for the design and construction of the Toll Road, as set out in Part 1 of Schedule 2 (Core Requirements);

"**Core O&M Requirements**" means the specified requirements for the operation and maintenance of the Toll Road, as set out in Part 2 of Schedule 2 (Core Requirements);

"**Core Requirements**" means the Core Design and Construction Requirements and the Core O&M Requirements as the same may be amended from time to time by a Grantor Variation;

"**Corridor**" means the corridor of land of 100 metres in width centred on the projected line of the Toll Road as shown in the Outline Design;

"**Cost Centre**" means each cost centre as described in Clause 24A;

"**Custodian**" means the person appointed as Custodian by the parties under the Custody Agreement;

"**Custody Agreement**" means the agreement in Agreed Form for the custody of the Financial Model between the Grantor, the Developer and the Custodian;

"**Delay Events**" has the meaning given to it in Clause 12.2 (Time for Completion);

"**Design and Construction Specification**" means the technical standards and design and construction specifications for the Toll Road as set out in Part 1 of Schedule 3, that the Parties agree, as at the date hereof, satisfy the Core Requirements;

"**Design Documentation**" means preliminary and detailed design drawings, diagrams, details, documents, specifications, samples, models or information (including calculations, logic or sequence overview diagrams and functional design specifications for computer software) and all amendments and revisions thereto prepared by the Developer in connection with the design of the Toll Road;

"**Design for Approval**" means the design to be developed from the Outline Design in respect of each Phase or Section of the Construction Works so as to allow Detailed Design of that Phase or Section to be effected in accordance with the Concession Specification and so as to obtain the Competent Authority Consents as set out in Schedule 6;

"Detailed Design" means the detailed design to be developed from the Design for Approval in respect of each part of a Phase or Section of the Construction Works so as to allow construction of that part in accordance with the Concession Specification;

"Developer's Concession Responsibilities" means the Technical Specifications and the Outline Design as may be amended from time to time by a Developer Variation;

"Developer Senior Debt" means the Developer Senior Early Project Debt, the Developer Senior Phase 1A Debt and the Developer Senior Phase 1B Debt;

"Developer Senior Early Project Debt" means all amounts outstanding at the date of termination of this Agreement including interest accrued as at that date, from the Developer to the Bridging Bank or the Hedging Counterparty under the Bridging Financing Agreements, to the extent that such amounts have been expended solely for the purposes of fulfilling the Developer's obligations under this Agreement in respect of the Early Project or in hedging floating interest rates under the Bridging Loan Agreement, less:

- (i) all cash held by the Developer at the Termination Date;
- (ii) any insurance or bond proceeds to the extent not forming part of the aforementioned cash balances irrevocably received by the Developer at the Termination Date; and
- (iii) any sums irrevocably received from third parties as at the Termination Date to the extent not forming part of the aforementioned credit balances;

"Developer Senior Phase 1A Debt" means all Developer Senior Phase 1A Initial Debt outstanding as of the date of termination of this Agreement, including interest accrued thereon as at that date, and all amounts owed by the Developer to the Lenders or any Hedging Counterparty under the Phase 1B Financing Agreements as at the date of termination of this Agreement or arising due to a prepayment of loans extended under the Phase 1B Financing Agreements as a result of such termination, including the principal amount of the loans extended thereunder, interest accrued thereon as at that date and all other amounts payable in respect thereof by the Developer to the Lenders or the Hedging Counterparty such as costs of early termination and other breakage costs, to the extent that such principal amount amounts have been expended solely for the purposes of (a) fulfilling the Developer's obligations under this Agreement in respect of Phase 1A or (b) refinancing the Developer Senior Phase 1A Initial Debt, less:

- (i) all cash held by the Developer at the Termination Date;
- (ii) any insurance or bond proceeds to the extent not forming part of the aforementioned cash balances irrevocably received by the Developer at the Termination Date; and
- (iii) any sums irrevocably received from third parties as at the Termination Date to the extent not forming part of the aforementioned credit balances;

except to the extent any such amount described in sub-clause (i), (ii) or (iii) above is applied to determine the amount of the Developer Senior Phase 1A Debt;

"Developer Senior Phase 1A Initial Debt" means all amounts outstanding, including interest accrued thereon, owed by the Developer under the Trust Deed, dated 27th February 2004, between the Developer and RBTT Trust Limited, and each bond issued thereunder;

"Developer Senior Phase 1B Debt" means all amounts outstanding at the date of termination of this Agreement or arising due to a prepayment of loans extended under the Phase 1B Financing Agreements as a result of such termination owed by the Developer to the Lenders or the Hedging Counterparty under the Phase 1B Financing Agreements (other than Developer Senior Phase 1A Debt), including principal amount of the loans extended thereunder, interest accrued as at that date and all other amounts payable by the Developer to the Lenders or the Hedging Counterparty under the Phase 1B Financing Agreement such as costs of early termination and other breakage costs to the extent that the funds disbursed under the Phase 1B Financing Agreements have been expended solely for the purposes of fulfilling the Developer's obligations under this Agreement or in hedging floating interest rates under the Phase 1B Financing Agreement or refinancing the Developer Senior Phase 1A Initial Debt, less:

- a. all cash held by the Developer at the Termination Date;
- b. any insurance or bond proceeds to the extent not forming part of the aforementioned cash balances irrevocably received by the Developer at the Termination Date; and
- c. any sums irrevocably received from third parties as at the Termination Date to the extent not forming part of the aforementioned credit balances;

except to the extent any such amount described in sub-clause (a), (b) or (c) above is applied to determine the amount of the Developer Senior Phase 1B Debt;

"Developer's Representative" means the person appointed by the Developer in accordance with the provisions of Clause 37 (Developer's Representative);

"Developer's Timetable" means the timetable identifying the order in which the Developer intends to carry out the investigations, design, construction, commissioning, testing, operation, maintenance and related works appearing in the Concession Specification set out in Schedule 4 (Developer's Timetable) as the same may be amended or revised with the approval of the Grantor's Representative in accordance with Clause 14 (Timetable) or extended pursuant to Clause 12 (Time for Completion);

"Developer Variation" means any change to the Developer's Concession Responsibilities whether by addition, modification, omission or otherwise, made in accordance with Clause 19A of this Agreement;

"Disbursement" has the meaning determined in the GPD Loan Agreement;

"Early Financial Close" means the date on which bridging financing made available to the Developer in respect of the Early Project Construction Works becomes unconditional pursuant to the Bridging Loan Agreement;

"Early Project" means that part of the Toll Road comprising the dualisation of Old Harbour Bypass and the construction of the section of the Toll Road from Kingston to Sandy Bay as more particularly described in Schedule 3 (Specification);

"Early Project Construction Phase" means the period of time commencing on the Effective Date and ending on the Early Project Handover Date;

"Early Project Construction Works" means all the work concerning the detailed design, specification, construction and completion of the Early Project in accordance with the provisions of this Agreement;

"Early Project Cost" means the overall cost of the Early Project;

"Early Project Final Completion Certificate" means the Final Completion Certificate issued in respect of Early Project;

"Early Project Handover Date" means the date of issue by the Grantor's Representative of the Early Project Final Completion Certificate;

"Early Project Intercreditor Agreement" means the Deed of Subordination and the Deed of Postponement between Royal Merchant Bank & Finance Company Limited, the Developer and the Grantor both dated the 22nd day of February, 2002;

"Early Project Land Documents" means the licences, leases, sub-leases, schedules and other agreements in the Agreed Form as listed in Part 1A of Schedule 9 (Land Documents) to be entered into by the Grantor and the Developer pursuant to Clause 7 (Land issues and other Grantor obligations);

"Early Project Sites" means:

- (a) that part of the Corridor required for the construction of the Early Project;
- (b) any additional land required for the construction of interchanges in the Early Project as reflected in the Reviewed Design Documentation; and
- (c) such other sites required for the construction of the Early Project as may be acquired pursuant to Clause 7.2;

"Early Studies" means the Design for Approval and the environmental impact assessment performed for the purpose of constructing the Toll Road between Kingston and Sandy Bay, the traffic studies performed for the purposes of Phase 1, and all due diligence performed in order to reach Early Financial Close;

"EFC Developer Conditions Subsequent" means the conditions subsequent set out in Part 2 of Schedule 10 (Conditions Precedent and Conditions Subsequent) and any Effective Date Condition Precedent which becomes an EFC Condition Subsequent by the operation of Clause 2.2;

"EFC First Payment" shall have the meaning ascribed thereto in Schedule 19, 1.2.1 (b);

"EFC Grantor Conditions Subsequent" means the conditions subsequent set out in Part 4 of Schedule 10 (Conditions Precedent and Conditions Subsequent);

"EFC Joint Conditions Subsequent" means the conditions subsequent set out in Part 3 of Schedule 10 (Conditions Precedent and Conditions Subsequent);

"EFC Long Stop Date" means 12th March 2002;

"Effective Date" means the date this Agreement becomes unconditional in accordance with Clause 2.1 (Conditions Precedent and Effective Date);

"Effective Date Conditions Precedent" means the conditions subsequent listed in Part 1 of Schedule 10 (Conditions Precedent and Conditions Subsequent);

"Emergency Services" means the police, ambulance, medical, fire, civil defence, military and other emergency services of the State;

"Environmental Documentation" means the environmental documentation to be developed from the strategic environmental assessment (the "SEA") in accordance with the procedures and requirements of the relevant Parish Councils and the Natural Environmental and Planning Authority under the Environmental Permit and License (P&L) System including, inter alia, environmental impact assessments and an environmental management plan;

"Estimated Capital Cost" means, in relation to a Grantor Variation or a Qualifying Change of Law Variation, the estimated capital cost of that Grantor Variation or Qualifying Change of Law Variation as agreed between the Parties, or determined by the Expert;

"Estimated Operating Cost" means, in relation to a Grantor Variation or a Qualifying Change of Law Variation, the estimated increase or reduction in operating costs for each year remaining in the Concession Period due to that Grantor Variation or Qualifying Change of Law Variation, as agreed by the Parties or determined by the Expert;

"Existing Road Section" means each of the following sections of the Toll Road to be leased to the Developer by the Grantor in accordance with this Agreement and the Leases (in the Agreed Form):

- (a) Portmore Causeway;
- (b) Old Harbour Bypass; and
- (c) Melrose Bypass,

as more specifically set out in the Core Requirements;

"Existing Road Transfer Date" means, in relation to each Existing Road Section, the date on which the Land Documents leasing the land comprising such Existing Road Section are executed by the Grantor;

"Expansion Schemes" means the future upgrades and additional lanes to be made or added to the Toll Road as set out in Part 1 of Schedule 17;

"Expansion Scheme Trigger Event" means the trigger events applicable to each of the Expansion Schemes as set out in Part 2 of Schedule 17;

"Expert" means an expert appointed under Clause 47 (Expert Determination);

"Expiry Date" shall have the meaning given in Clause 4.1 (Concession Period);

"Final Completion Certificate" has the meaning given to it in Clause 16.10 (Construction Completion);

"Financial Close 1A" means the date on which financing on terms reflected in the Financial Model, or such other terms as the Parties may agree, is made available to the Developer in respect of the Phase 1A Construction Works becomes unconditional;

"FC1A Developer Conditions Subsequent" means the conditions listed in Schedule 10 Part 5;

"**FC1A Grantor Conditions Subsequent**" means the conditions listed in Schedule 10 Part 6;

"**FC1A Joint Conditions Subsequent**" means the conditions listed in Schedule 10 Part 7;

"**FC1A Long Stop Date**" means 28th February 2004 or such later date (not being later than Friday 2nd April 2004) as either NEPA issues the environmental permit referred to in item 1 of Schedule 6 to the Concession Agreement with respect to the Phase 1A (the "**NEPA Permit**") or (if NEPA issues a comfort letter with respect to the NEPA Permit, which is in a form satisfactory to the Developer and RBTT Trust Limited) RBTT Trust Limited confirms in writing that it will treat such letter as satisfying the condition precedent in clause 5.02.04 of the Trust Deed dated 11th February 2004 made between the Developer and RBTT Trust Limited so that the Developer is able to make Drawdowns from the Deposit Account (as defined in said Trust Deed).

"**Financial Close 1B**" means the date on which financing on terms reflected in the Financial Model, or such other terms as the Parties may agree, is made available to the Developer under the Phase 1B Financing Agreements for the financing of the Phase 1B Construction Works and the refinancing of the Developer Senior Phase 1A Initial Debt;

"**FC1B Developer Conditions Subsequent**" means the conditions listed in Schedule 10 Part 8;

"**FC1B Grantor Conditions Subsequent**" means the conditions listed in Schedule 10 Part 9;

"**FC1B Joint Conditions Subsequent**" means the conditions listed in Schedule 10 Part 10;

"**FC1B Long Stop Date**" has the meaning set out in Clause 2.4 (Conditions Subsequent regarding Financial Close 1B);

"**Financial Model**" means the financial model provided by the Developer and agreed by the Grantor and as amended from time to time in accordance with Clause 40.3, embodied in its financial model software setting out the basis on which the financing of the Project and/or the costs and revenues from the Project have been calculated by the Developer (including without limitation the assumptions used, the cell logic network for the financial model software and any accompanying documentation necessary to operate the financial model), whether embodied on tape, disk or other electronic storage medium;

"**Financial Position**" in relation to the Developer, includes, without limitation, the Developer's capacity, immediately before the relevant event, to make payments when due under the Financing Agreements and to pay dividends that will enable the Shareholders to achieve the Internal Rate of Return as and when forecasted in the Financial Model;

"**Financing Agreements**" means the Bridging Financing Agreements, the Phase 1A Financing Agreements, and the Phase 1B Financing Agreements;

"**Fixed Cost Centre**" shall have the meaning ascribed thereto in Schedule 19, 1.1.1;

"**Fixed Cost Centre Task**" means a task set out in the Schedule of Tasks;

"**Force Majeure Event**" means any event or circumstances (or combination of events and/or circumstances) beyond the reasonable control or not due to the misconduct of the affected Party (or any of its subcontractors in the case of the Grantor, or Material Subcontractors in

the case of the Developer) and which the affected Party could not reasonably foresee at the date of the signing of this Agreement or reasonably provide against which:

- (a) causes material and unavoidable physical damage or destruction to the Toll Road or, without limitation, its toll facilities or functions;
- (b) materially delays the scheduled time of completion of the Toll Road without opportunity to otherwise repair the schedule; or
- (c) materially interrupts the full and regular operation of all or any material portion of the Toll Road, including, without limitation, its toll collection facilities or functions,

and which has a materially adverse impact on the Financial Position of the Developer, including (but without limitation) any of the following occurring in Jamaica if the affected Party could not reasonably foresee them at the date of the signing of this Agreement or reasonably provide against them and they have the effects set out in paragraphs (a), (b) or (c) above:

- (1) war, civil war, armed conflict or terrorism;
- (2) riot or civil commotion or actions of Protestors (other than the use by Protestors of stationary vehicles or other obstacles in the Toll Road as part of their protest **except** where in the reasonable opinion of the Developer's Representative, due to the security situation, the removal of such vehicles or obstacles by the Developer would risk physical injury to members of the Developer's or any of its subcontractors' staff);
- (3) any nationwide (i) official or unofficial strike; (ii) lockout; (iii) go-slow; or (iv) other dispute, or any such dispute which generally affects the road network in Jamaica or a significant sector of it;
- (4) earthquake, tidal wave, hurricane, tornado, or landslide (except collapse of the Construction Works or landslide within the Sites);
- (5) fire, explosion, lightning, storm, tempest, flood, earthquakes or other act of God;
- (6) any epidemic or plague; or
- (7) expropriation, sequestration or requisition (by a single or a series of events) of any part of the Toll Road, the Contract Plant, the Construction Works, or the Contractor's Equipment by the Government of Jamaica;

PROVIDED THAT:

- (i) such event shall not constitute a Force Majeure Event hereunder to the extent that it could have been prevented or overcome by the affected Party through the exercise of such diligence and reasonable care as would be exercised by a prudent person under similar circumstances; and
- (ii) none of the following events shall constitute a Force Majeure Event:
 - (A) strikes by employees of (1) the Developer, (2) the Contractor and/or its subcontractors, (3) the Operator and/or its subcontractors or (4) any other company undertaking any part of the operation and maintenance of the Toll Road (unless the strike also generally affects the road network in Jamaica or a significant sector of it; or the strike was caused by the actions of the State acting in a discriminatory manner);
 - (B) geotechnical and ground risks other than the discovery of Ground Contamination, or ground conditions that could not have been foreseen by an experienced contractor or Archaeological Finds at the Sites; and

- (C) machinery breakdown (excluding any machinery breakdown which occurs as a result of another Force Majeure Event);

"**GCT**" means general consumption tax as provided for in the General Consumption Tax Act;

"**Good Engineering and Operating Practices**" means the standards, practices, methods and procedures conforming to all applicable laws and that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced contractor, engineer or operator, as the case may be, engaged in the same or similar type of undertaking under the same or similar circumstances;

"**Government Guarantee**" means the parliamentary guarantee of the Grantor's obligations under this Agreement in the Agreed Form dated on or about the 21st November 2001 given by the Government of Jamaica in favour of the Developer;

"**GPD Loan Agreement**" means the loan agreement of 21st November 2001 between the Grantor and the Developer pursuant to which the Grantor agrees to make certain loans available to the Developer on a basis which is subordinated to the rights of the Lenders under the Financing Agreements and which shall be terminated on or about the Financial Close 1B;

"**GPD Monthly Amount**" means the amount of Grantor Procured Debt that must be paid in accordance with the monthly invoices;

"**Grantor Documents**" means this Agreement, the Implementation Agreement, the GPD Loan Agreement, the Construction Warranty, the Head Lease, the Leases, the Shareholders Equity Undertaking, the Grantor Working Capital Reserve Agreement, the Custody Agreement, the O&M Warranty, the Initial Phase 1A Intercreditor Agreement, the Subordinated Debt Agreement, the NROCC Direct Agreement, the NROCC Funding Agreement, the Grantor Put Option Agreement and the Loan Conversion Agreement;

"**Grantor EFC Letter of Credit**" means a letter of credit of a face amount equal to the Grantor Working Capital Reserve and the Grantor Early Project Commitment (as defined in the GPD Loan Agreement) less the amount of the Preliminary Payment in the Agreed Form;

"**Grantor FC1A Letter of Credit**" means a letter of credit of a face amount equal to the Grantor Working Capital Reserve in the Agreed Form;

"**Grantor Procured Debt**" means the funds provided by the Grantor to the Project through the GPD Loan Agreement;

"**Grantor's Proportion**" means with respect to a payment, the proportion of that payment payable by the Grantor pursuant to Schedule 19, Item 1.2.3;

"**Grantor's Representative**" means the person appointed by the Grantor in accordance with Clause 36 (Grantor's Representative);

"**Grantor Termination Notice**" has the meaning given to it in Clause 28.1 (Grantor Termination);

"**Grantor Variation**" has the meaning given to it in Clause 19.1 (Grantor Variations);

"Grantor Working Capital Reserve" means the amount of the commitment of the Grantor to lend established under the Grantor Working Capital Reserve Agreement;

"Grantor Working Capital Reserve Agreement" means the Agreement between the Grantor and the Developer dated as of Early Financial Close under which the Grantor agrees to provide a working capital facility to the Developer of up to US\$3,500,000 from Early Financial Close and up to US\$10,000,000 from Financial Close 1A on terms which are subordinated by the Subordination Agreement to the rights of the Lenders under the Financing Agreements and which shall be terminated on or about the Financial Close 1B;

"Ground Contamination" means the presence of any polluting or toxic substance, material or waste in, on or under the Sites which is injurious to plant or animal life and which is subject to regulation under the Natural Resources Conservation Authority Act of Jamaica;

"Handover Date" means, in relation to each Section, the date of issue by the Grantor's Representative of the Completion Certificate for that Section;

"Head Lease" means the lease in the Agreed Form by which the Commissioner of Lands leases the land for the Sites to the Grantor for the purpose of subleasing that land to the Developer;

"Hedging Counterparty" means a counterparty to the Developer under any hedging agreement entered into with the agreement of the Grantor pursuant to the Hedging Policy;

"Hedging Policy" means the policy agreed between the Grantor and the Developer for the hedging by the Developer of floating rate hedging risk as set out in Schedule 13 (Hedging Policy);

"Implementation Agreement" means the agreement of today's date between the Government of Jamaica and the Developer under which the Government of Jamaica agrees to procure that the Developer is granted the necessary rights to collect Tolls from users of the Toll Road and/or to perform its obligations under this Agreement;

"Independent Engineer" means the engineer jointly appointed by the Developer and the Lenders under the Financing Agreements pursuant to the Construction Contract;

"Independent Engineer Monitoring Services Agreement" means the agreement to be concluded with the Independent Engineer;

"Indexed" means increased on each anniversary of the 21st November 2001 in line with the index specified in paragraph 1 of Schedule 20;

"Indicative Payment Schedule" means the schedule set out in Schedule 19;

"Initial Toll Levels" means the initial Toll Levels set out in paragraph 4 of the Tolling Policy;

"Insolvency Event" means the occurrence of any of the following events:

- (a) a petition is presented (which is not discharged within 14 days or such other time as such period is extended by a court of competent jurisdiction) or an order is made or a resolution is passed for the winding-up or dissolution of the Developer;

- (b) the Developer becomes insolvent or is deemed unable to pay its debts within the meaning of the Companies Act of Jamaica or stops or threatens to stop making payments generally or declares a moratorium on all or any part of its debts;
- (c) any preparatory or other steps are taken by any person to appoint an administrative or other receiver or similar official over the Developer or any of its property or assets;
- (d) the Developer entering into any compromise or arrangement with any of its creditors which, in the reasonable opinion of the Grantor, jeopardises the ability of the Developer to complete or operate and maintain the Toll Road; or
- (e) anything analogous to any of the above stated events occurs in respect of the Developer in any other jurisdiction or any Affiliate of the Developer which, in the reasonable opinion of the Grantor, jeopardises the ability of the Developer to complete the Toll Road;

"**Insurance Certificates**" means certificates evidencing the entry into the insurance policies required pursuant to Clause 42 (insurance) hereof;

"**Intellectual Property Rights**" means all rights in inventions, patents, copyrights, design rights, trademarks and trade names, service marks, trade secrets, know-how and other intellectual property rights (whether registered or unregistered) and all applications for any of them, anywhere in the world;

"**Initial Phase 1A Intercreditor Agreement**" means the FC1A Deed of Subordination and the Deed of Postponement dated 13th February, 2004 made between the Developer, the Grantor and RBTT Trust Limited;

"**Internal Rate of Return**" or "**IRR**" means the value that solves the following equation:

$$\sum_{i=0}^{i=N} \frac{-K_i + D_i}{(1 + IRR)^i} = 0$$

where:

- (a) 0 is the reference period;
- (b) N is the period in which IRR is calculated;
- (c) K_i is the equity amount disbursed by the Shareholders in year i in equivalent US Dollars at the date of payment; and
- (d) D_i is the amount of Shareholder's distributions received by them in year i in equivalent US Dollars at the date of payment.

Where the IRR is described as "nominal", the calculation of the IRR shall take into account the K_i and D_i flows in nominal terms;

Where the IRR is described as "real", the calculation of the IRR shall take into account K_i and D_i flows which have been discounted on the basis of the US CPI rate documented by the US Bureau of Labor Statistics; and

Where the IRR is described as "before tax", the calculation of the IRR shall take into account K_i and D_i flows before corporate tax or withholding tax of any kind on dividends, while an IRR described as "after tax" shall take into account K_i and D_i flows net of any corporate tax or withholding tax of any kind on Shareholder's distributions

For the purposes of calculating the IRR component of any termination sum under Clause 31 of this Agreement,

- (a) " K_i " shall mean the equity amount which has been disbursed at the date of payment of that Termination Sum in accordance with the Grantor Documents; and
- (b) the IRR takes the value given in Schedule 12;

"**Jamaican Dollars**" and "**Jam\$**" means the lawful currency from time to time of the State;

"**Land Documents**" means the master lease described in Part 1 of Schedule 9 (Land Documents), the Early Project Land Documents, the Phase 1A Land Documents, and the Phase 1B Land Documents;

"**Latest Time for Early Project Completion**" means the date falling twelve months after the Time for Early Project Completion;

"**Latest Time for Phase 1A Completion**" means the date falling twelve months after the Time for Phase 1A Completion;

"**Latest Time for Phase 1B Completion**" means the date falling twelve months after the Time for Phase 1B Completion;

"**Leases**" means the leases, the schedules and the sub-leases listed in Schedule 9;

"**Lender**" means any person providing finance to the Developer under any Financing Agreement (but for the avoidance of doubt shall not include any shareholder or Affiliate of any shareholder of the Developer unless that shareholder is a Lender Shareholder);

"**Lender Shareholders**" means International Financing Corporation and Société de Promotion et de Participation pour la Coopération Economique, S.A.;

"**Lenders' Agent**" means the agent for the Lenders appointed under the terms of the Financing Agreements;

"**Loan Agreements**" mean the loan agreements entered into between the Developer and the Lenders dated on or about the date of this Agreement;

"**Loan Conversion Agreement**" means the agreement of that name entered into by the Grantor, and the Developer dated on or about the date of this Agreement;

"**Material Sub-contractor**" means any sub-contractor (whether or not employed directly by the Developer) that has responsibility for not less than 10% of the Construction Works or the O&M Works;

"**Modification**" means:

- (a) a Grantor Variation;
- (b) a Qualifying Change of Law Variation;
- (c) a Change of Law Variation; or
- (d) a Developer Variation,

and a Modification shall be deemed to be "**made**" on the date on which it is agreed between the Parties or determined by an Expert to be required;

"**Monthly Statement**" has the meaning given in Clause 24A.1 (b);

"**Moody's**" means Moody's Investors Services Limited;

"**Mount Rosser Bypass Project**" means the design, construction, operation, financing and maintenance of the Mount Rosser bypass, which has been included in the scope of this Agreement, as a section of Phase 1A, in accordance with the variation order dated April 24, 2007, n°127 (as amended by the variation orders n°129 and 132) and with the variation order n°152 dated 13th January 2011;

"**NRCA**" means the Natural Resources Conservation Authority;

"**NROCC Direct Agreement**" means the agreement dated on or about the date of this Agreement between the Grantor, the Developer and the Lenders pursuant to which the Grantor agrees to make provide the Lenders with certain rights regarding Phase 1B;

"**NROCC Funding Agreement**" means the agreement dated on or about the date of this Agreement between the Grantor, the Developer and the Lenders pursuant to which the Grantor agrees to make certain contributions available to the Developer regarding Phase 1B;

"**NWA**" means the National Works Agency;

"**O&M Contract**" means the operation and maintenance contract in respect of the Toll Road between the Operator and the Developer, in the Agreed Form;

"**O&M Specification**" means the technical standards and operation and maintenance specification set out in Part 2 of Schedule 3 and in Schedule 21 (Technical Standards) that the Parties agree, as at the date hereof, satisfy the Core Requirements;

"**O&M Term Sheet**" means a term sheet agreed by the Operator and the Developer and in the Agreed Form setting out the principal commercial terms of the O&M Contract;

"**O&M Warranty**" means the warranty agreement to be entered into between the Grantor and the Operator and relating to certain obligations of the Operator;

"**O&M Works**" means the design planning and execution of all works and functions associated with the operation, repair and maintenance of the Toll Road and its facilities;

"**Operator**" means a company having Bouygues Travaux Publics (together with any affiliate or parent company) as a shareholder holding not less than 49 % of the issued ordinary shares or any replacement thereof appointed in accordance with Clause 35.3 (Sub-Contractors) for the operation and maintenance of the Toll Road;

"**Outline Design**" means the design as set out in Schedule 22 that the Parties agree, as at the date hereof, satisfies the Core Requirements;

"**Party**" means a party to this Agreement;

"**Payment Schedule**" means the Schedule set out in Part 2 of Schedule 19;

"**Penalty Points**" means points awarded pursuant to Clause 17 (Operation and Maintenance);

"**Performance Bond**" means each of the on-demand bonds in the Agreed Form issued by an Agreed Bank and provided to the Developer and assigned to the Grantor and the Lenders by the Contractor and by the Operator;

"**Permitted Security Interest**" means:

- (a) any lien arising by operation of law in the ordinary course of business and securing amounts not more than 30 days overdue; and
- (b) any security interest arising under the Financing Agreements;

"**Phase**" means

- (a) if Financial Close 1A is not achieved, the Early Project and
- (b) if Financial Close 1A is achieved, Phase 1A and,
- (c) if the Phase 1B Commencement Notice has been given, Phase 1B, and
- (d) if the Phase 1C Commencement Notice has been given, Phase 1C;

"**Phase 1**" means Phase 1A, Phase 1B and Phase 1C;

"**Phase 1A**" means that part of the Toll Road comprising the Early Project, the tolling and dualisation of Portmore Causeway and the Dyke Road as more particularly described in Schedule 3 (Specification);

"**Phase 1A Construction Phase**" means the period of time commencing on the Effective Date and ending on the Phase 1A Handover Date;

"**Phase 1A Construction Works**" means all the work concerning the detailed design, specification, construction and completion of Phase 1A in accordance with the provisions of this Agreement;

"**Phase 1A Final Completion Certificate**" means the Final Completion Certificate issued in respect of Phase 1A;

"**Phase 1A Financing Agreements**" means:

- (a) the financing agreements entered into (or to be entered into) for Phase 1A or the refinancing of the Developer Senior Phase 1A Initial Debt with the approval of the Grantor, not to be unreasonably withheld or delayed; and
- (b) any hedging agreement entered into by the Developer with the prior written consent of the Grantor, not to be unreasonably withheld or delayed if that hedging agreement complies with the Hedging Policy, and operated in accordance with the Hedging Policy,

as such agreements may be amended from time to time in accordance with Clause 33.6 (Transfers and Amendments), but shall not include any agreement under which finance is provided to the Developer by a shareholder or any Affiliate of a shareholder of the Developer unless the shareholder is a Lender Shareholder;

"Phase 1A Handover Date" means the date of issue by the Grantor's Representative of the Phase 1A Final Completion Certificate;

"Phase 1A Land Documents" means the licences, leases, sub-leases, schedules and other agreements in the Agreed Form as listed in Part 1B of Schedule 9 (Land Documents) to be entered into by the Grantor and the Developer pursuant to Clause 7 (Land issues and other Grantor obligations);

"Phase 1A Sites" means:

- (a) that part of the Corridor required for the construction of Phase 1A;
- (b) any additional land required for the construction of interchanges in Phase 1A as reflected in the Reviewed Design Documentation; and
- (c) such other sites required for the construction of Phase 1A as may be acquired pursuant to Clause 7.2;

"Phase 1B" means that part of the Toll Road between Sandy Bay and May Pen as more particularly described in Schedule 3;

"Phase 1B Commencement Date" means the date for the commencement of the Phase 1B Construction Works;

"Phase 1B Commencement Notice" has the meaning it is given in Clause 6.1 (Phase 1B Construction);

"Phase 1B Construction Phase" means the period of time commencing on the Phase 1B Commencement Date and ending on the Phase 1B Handover Date;

"Phase 1B Construction Works" means all the work concerning the detailed design, specification, construction and completion of the Phase 1B of the Toll Road (including the Phase 1B Early Works) in accordance with the provisions of this Agreement;

"Phase 1B Early Works" means the early works related to Phase 1B as described in the variation order n°152 dated 13th January 2011 and included in the Phase 1B Construction Works;

"Phase 1B Final Completion Certificate" means the Final Completion Certificate issued in respect of Phase 1B;

"Phase 1B Financing Agreements" means:

- a. the financing agreements, including but not limited to the Common Terms Agreement, the Loan Agreements, the NROCC Direct Agreement, the NROCC Funding Agreement and the Loan Conversion Agreement, entered into (or to be entered into) for financing Phase 1B and the refinancing of the Developer Senior Phase 1A Initial Debt with the approval of the Grantor, not to be unreasonably withheld or delayed; and

- b. any hedging agreement entered into (or to be entered into) by the Developer with the prior written consent of the Grantor not to be unreasonably withheld or delayed if that hedging agreement complies with the Hedging Policy and operated in accordance with the Hedging Policy;

as such agreements may be amended from time to time in accordance with Clause 33.6 (Transfers and Amendments), but shall not include any agreement under which finance is provided to the Developer by a shareholder or any Affiliate of a shareholder of the Developer unless the shareholder is a Lender Shareholder;

"Phase 1B Handover Date" means the date of issue by the Grantor's Representative of the Phase 1B Final Completion Certificate;

"Phase 1B Land Documents" means the licences, leases, sub-leases, schedules and other agreements in the Agreed Form as listed in Part 1C of Schedule 9 (Land Documents) to be entered into by the Grantor and the Developer pursuant to Clause 7 (Land issues and other Grantor obligations);

"Phase 1B Long Stop Date" has the meaning set out in Clause 6.1 (Phase 1B Construction);

"Phase 1B Sites" means:

- (a) that part of the Corridor required for the construction of Phase 1B;
- (b) any additional land required for the construction of interchanges in Phase 1B as reflected in the Reviewed Design Documentation; and
- (c) such other sites required for the construction of Phase 1B as may be acquired pursuant to Clause 7.2;

"Phase 1C" means that part of the Toll Road between May Pen and Williamsfield as more particularly described in Schedule 3;

"Phase 1C Commencement Notice" has the meaning given to it in Clause 6.4;

"Phase 1C Constructions Works" means all the work concerning the detailed design, specification, construction and completion of the Phase 1C of the Toll Road in accordance with the provisions of this Agreement;

"Phase 1C Long Stop Date" means 12 months after the issuance of the Phase 1B Commencement Notice;

"Phase 2" means Phase 2A and Phase 2B;

"Phase 2A" means all the work concerning the detailed design, specification, construction, completion, operation and maintenance of a toll road extending between Bushy Park Junction and Ocho Rios;

"Phase 2B" means all the work concerning the detailed design, specification, construction, completion, operation and maintenance of a toll road extending between Williamsfield and Montego Bay, with the exception of the Montego Bay bypass;

"Phase 2B Commencement Notice" has the meaning given to it in Clause 6.3;

"Preliminary Payment" shall have the meaning ascribed thereto in Schedule 19, 1.21;

"Preliminary Tolloed Section" means the Section as described in Schedule 3A (Preliminary Tolloed Section);

"Prohibited Act" means:

- (a) offering, giving or agreeing to give to any servant of the Grantor or the Government any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Grantor; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Grantor;
- (b) entering into this Agreement or any other contract with the Grantor in connection with which commission has been paid or has been agreed to be paid by the Developer or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Grantor;
- (c) committing any offence:
 - (i) under the Corruption Prevention Act 2000; or
 - (ii) under any Statutory Requirement creating offences in respect of fraudulent acts; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Grantor or the State;

"Project Agreements" means the Construction Contract and the O & M Contract;

"Prolonged Force Majeure Event" shall have the meaning given in Clause 26.5 (Force Majeure);

"Protestor" means any person engaged in protest action against the construction or operation of the Project or against the construction or operation of tolled highways generally;

"Put Option Agreement" means the agreement of that name entered into by the Grantor, the Developer and the Sponsor and Autoroutes du Sud de la France dated on or about the date of this Agreement as amended and restated;

"Qualifying Change of Law" means a Change of Law if and to the extent that it is:

- (a) the introduction of, or a change in, (and not merely the expiry by effluxion of time of an exemption relating to) a Tax imposed by reference to, or which has effect solely and specifically in relation to, the specific activity carried on by the Developer in its capacity as developer, builder, owner or operator of a toll road (or on its income as such) (and for these purposes a change by any Commissioner appointed pursuant to the Revenue

Administration Act of Jamaica (or any other competent taxing authority) of any published practice, guideline or instruction in relation to any such Tax shall constitute a change in such a Tax);

- (b) the introduction of any Statutory Requirement or Required Consent controlling the convertibility or transferability of Jamaican Dollars,
- (c) a Change of Law (other than one relating to Tax) the terms of which apply expressly to or which has effect specifically in relation to:
 - (i) the Developer and not other firms;
 - (ii) the design, construction, operation, maintenance or financing of the Toll Road and not other roads; or
 - (iii) the design, construction, operation, maintenance or financing of toll roads and not other roads,

but excluding:

- (A) any Change of Law that arises as a result of breach by the Developer of any of its obligations under this Agreement or the Land Documents;
- (B) any amendment or renewal of an existing, or issue of a new, Required Consent except to the extent due to:
 - (i) a Qualifying Change of Law relating to a Statutory Requirement; or
 - (ii) a change of policy of a Competent Authority which, if it were a Change of Law, would be a Qualifying Change of Law;
- (C) any amendment or renewal of an existing, or issue of a new, Required Consent required as a consequence of a Modification to the extent that it has been compensated for by the payment of or an adjustment to, the Compensation Amount as a result of the Modification; and
- (D) any Change of Law relating to a Required Consent which is due to:
 - (i) a Change of Law relating to a Statutory Requirement which itself would not be a Qualifying Change of Law; or
 - (ii) a change of a policy of a Competent Authority which, if it were a Change of Law, would not be a Qualifying Change of Law;

"Qualifying Change of Law Variation" means a Variation agreed between the Parties or determined by the Expert to be necessary, in each case in accordance with Clause 20.2 (Change of Law), as a consequence of a Qualifying Change of Law;

"Qualifying Force Majeure Event" means a Force Majeure Event arising directly from:

- (a) the discovery of any Ground Contamination or Archaeological Finds at the Sites;
- (b) delay without good reason in the importation of equipment and materials at Jamaican customs and provided that such delay is not due to any failure of the Developer or its sub-contractors to follow the relevant importation regulations and procedures or due to any breach of contract or negligence on the part of the Developer or its sub-contractors;
- (c) delay without good reason in the issue of any Required Consent and provided that such delay is not due to any failure of the Developer, the Contractor, the O&M

Contractor or any of their or its sub-contractors to follow the relevant regulations and procedures or due to any breach of contract or negligence on the part of the Developer or its sub-contractors;

- (d) delay or inability of the Developer without good reason to obtain work permits for foreign employees and provided that such delay is not due to any failure of the Developer or its sub-contractors to follow the relevant work permit application procedures or due to any breach of contract or negligence on the part of the Developer or its sub-contractors;
- (e) events required to be insured against pursuant to Clause 42 (Insurance) which although insurable on the Concession Award Date cease to be insurable on reasonable commercial terms during the Concession Period, other than as a result of any act or omission on the part of the Developer or its sub-contractors;
- (f) failure of the police, after a request for assistance to control Protestors, to take appropriate action to do so within 7 days of that request; and
- (g) expropriation, sequestration or requisition (by a single or a series of events) of any part of the Toll Road, the Contract Plant, the Construction Works, or the Contractor's Equipment by the Government of Jamaica;

"Quality Documentation" means the quality manuals, quality plans, quality procedures, calibration, sample, trial, inspection and test plans, work instructions or like documentation, as appropriate, which describe and define a quality management system under the quality management plan for the design, construction, operation and management of the Toll Road in accordance with the Concession Specification and include the health and safety management plan and the environmental management plan as set out in Schedule 5;

"Rate of Exchange" means the weighted average rate of exchange for the purchase of US Dollars in Jamaica with Jamaican Dollars with respect to the relevant day published by the Bank of Jamaica (or in the event the Bank of Jamaica does not publish this rate, such other rate as the Government of Jamaica may advise the parties to this Agreement is used for the purchase of US Dollars with Jamaican Dollars by commercial parties, shall be applicable);

"Reference Rate" means the interest rate set out in paragraph 2 of Schedule 20;

"Related Dispute" has the meaning given in Clause 49;

"Related Contract" has the meaning given in Clause 49;

"Relocation Schedule" has the meaning given in Clause 8.1;

"Remedial Period" has the meaning given in Clause 17.4(b);

"Request for Proposals" means the request for proposals dated June 2000 as reissued by the Grantor in December 2000;

"Required Consents" means all consents, licences, authorisations, permissions, approvals and permits of any Competent Authority which are necessary for the construction or operation of the Toll Road or for the performance of any of the Developer's obligations under this Agreement, including the Competent Authority Consents;

"Reviewed Design Documentation" means the draft or revised design information, drawings and manuals submitted to the Grantor and returned to the Developer marked as "reviewed without comments" in accordance with Clause 13.2 (Design Information, Drawings);

"Reviewed Quality Documentation" means the draft or revised Quality Documentation submitted to the Grantor and returned to the Developer marked as "reviewed without comments" in accordance with Clause 13A.2 (Quality Documentation);

"S&P" means Standard & Poor's Rating Services, a division of the McGraw-Hill Companies Inc;

"Schedule of Tasks" means the schedule as defined in the Construction Contract;

"Secondary Developments" means construction works of any kind on the Sites which are not included in the Project and which are intended to facilitate the use of the Toll Road, including, without limitation, the provision of petrol stations and ancillary services, or which relate to electricity and telecommunications cables and fibre optics;

"Section" means each part of the following stand alone portions of the Toll Road which can be operated prior to completion of the whole phase:

- a. as part of the Early Project:
 - Old Harbour Bypass,
 - Kingston to Spanish Tow,
 - Spanish Town to Bushy Park, and
- b. as part of Phase 1A:
 - Portmore Causeway, and
- c. as part of Phase 1B:
 - Sandy Bay to May Pen, and
- d. as part of Phase 1C:
 - May Pen to Williamsfield;

"Shareholders" means the Sponsor, Autoroute du Sud de la France and the other shareholders of the Developer;

"Shareholder Contribution Amount" means the amount equal to the aggregate of all amounts paid by the Shareholders to the Developer by way of subscription for shares in the capital of the Developer less any amount paid to the Shareholders in reduction of the capital of the Developer;

"Shareholders EFC Letter of Credit" means a letter of credit of a face amount equal to the Shareholders Early Project Commitment (as defined in the Shareholder Equity Undertaking) less the amount of the Preliminary Payment in the Agreed Form;

"Shareholders Equity Undertaking" means the undertaking dated on or about the 21st November 2001 between the Sponsor, the Developer and the Grantor relating to the subscription of equity in and/or the advance of money to, the Developer;

"Shareholders FC1A Letter of Credit" means a letter of credit of a face amount equal to the Shareholders FC1A Commitment in the Agreed Form;

"Sites" means the Early Project Sites, the Phase 1A Sites and the Phase 1B Sites;

"Snagging Matters" means minor items of outstanding work which would not materially impair the use and enjoyment of the Toll Road or its maintenance and operation by the Developer;

"Snagging Notice" means a notice to be issued by the Grantor's Representative in accordance with Clause 16.5 (Construction Completion);

"Sponsor" means Bouygues Travaux Publics;

"State" means Jamaica;

"Statutory Requirements" means all applicable statutes, laws, regulations, rules, by-laws, guidelines, standards, proclamations, schemes, notifications, directions, notices, forms or orders and any other requirements from time to time having the force of law;

"Step-In Security Agreement" means the agreement between the Grantor and the Developer by which the Developer grants the Grantor security over the Developer's rights and obligations under this Agreement and the Project Agreements, subordinated to the rights of the Lenders under the Financing Agreements;

"Subordination Agreement" means the Deed of Subordination, dated 11th February 2004, among the Developer, the Grantor, RBTT Trust Limited, as amended and restated on or about the date of this Agreement to, among other things, include the Lenders under the Phase 1B Financing Agreements;

"Subordinated Debt Agreement" means the agreement between the Developer and the Grantor pursuant to which the Developer agrees to repay the development costs (including, but not limited to, amounts paid to acquire land necessary to construct the Project, preliminary design and development work during the tender process and costs associated with the Grantor's consultants on the Project) to the value of US\$20,000,000 incurred by the Grantor in connection with the Project;

"Subsequent Contribution" has the meaning given to it in the Loan Conversion Agreement;

"Substitute Conditions" has the meaning given to it in the NROCC Direct Agreement;

"Tax" means any kind of tax, duty, levy, charge, contribution, impost or any similar charge, whether or not similar to any in force at the 21st November 2001 and whether imposed by a local, municipal, governmental, state, federal or other body or authority in Jamaica or elsewhere;

"Technical Specifications" means the Design and Construction Specification and the O&M Specification as described in Schedule 3;

"Termination Date" means any date of termination of this Agreement in accordance with Clauses 26.6 (Force Majeure), 27.2 (Termination by Developer), 28.3 (Termination by Grantor) and 29 (Bankruptcy and Insolvency);

"Time for Early Project Completion" means the date falling on the earlier of 33 months after the Effective Date or 31 months from Early Financial Close, subject to any extensions of time permitted under Clause 12.2 (Time for Completion);

"Time for Completion" means the Time for Early Project Completion, the Time for Phase 1A Completion or the Time for Phase 1B Completion as the case may be;

"Time for Phase 1A Completion" means the date falling 27 months after Financial Close 1A, subject to any extensions of time permitted under Clause 12.2 (Time for Completion);

"Time for Phase 1B Completion" means the date falling 19 months after Financial Close 1B, subject to any extensions of time permitted under Clause 12.2 (Time for Completion);

"Time Related Cost Centre" shall have the meaning ascribed thereto in Schedule 19, 1.1.2;

"Toll Levels" means the levels of Tolls the Developer is entitled to charge in accordance with Clause 22 (Toll Revenues) and the Tolling Policy;

"Toll Regulator" means the Chief Executive Officer of the National Works Agency or such other entity as the Minister of Transport and Works may nominate as the entity responsible for the regulation of Tolls;

"Toll Revenues" means the revenues earned by the imposition of Tolls on users of the Toll Road;

"Tolling Authority" means, when enacted into law, the authority responsible for the regulation of Tolls on users of the Toll under the Toll Roads Bill;

"Toll Road" means the road to be designed, constructed, operated and maintained by the Developer in accordance with the terms of this Agreement;

"Toll Roads Bill" means the Bill to be laid before the Parliament of Jamaica which will set out the legal framework applicable to the construction, operation and maintenance of Toll Roads in Jamaica;

"Tolling Policy" means the tolling policy set out in Schedule 15;

"Tolls" means the tolls charged to users of the Toll Road in accordance with Clause 22 (Toll Revenues);

"US\$", **"US Dollars"** and **"USD"** means the lawful currency for the time being of the United States of America;

"US Dollar Amount" means that part of a Disbursement denominated in US Dollars;

"Utilities" means water, wastewater, electricity, irrigation and telecommunications and where the context so requires, conduits, pipes, cables, transmission lines and other infrastructure relating to the supply or transmission of the same;

"Variable Cost Centre" shall have the meaning ascribed thereto in Schedule 19, 1.1.3;

"Variation" means any change to the Concession Specification whether by addition, modification, omission or otherwise made in accordance with this Agreement.

- 1.2 Where the context requires words importing the singular shall include the plural and vice versa.
- 1.3 Where the context requires words importing persons shall include firms and corporations.
- 1.4 A reference in this Agreement to any Clause, paragraph, Schedule or part is, except where it is expressly stated to the contrary, a reference to such clause, paragraph, schedule or part of this Agreement.
- 1.5 Headings are for convenience of reference only.
- 1.6 Each reference to this Agreement or to any other document, contract or agreement shall include a reference to each permitted variation of, or supplement to, this Agreement and such other document, contract or agreement as amended, varied, supplemented or novated from time to time.
- 1.7 Each reference to this Agreement refers to this Agreement together with the Schedules hereto.
- 1.8 References to any statute or statutory provision shall include any statute or statutory provision which amends or replaces or has amended or replaced it and shall include any subordinate legislation made under any such statute.
- 1.9 A person includes its successors and permitted assignees or transferees.
- 1.10 In the event of any conflict between any provision of this Agreement (other than the Schedules) and the Schedules, the provisions of this Agreement (other than the Schedules) shall prevail over the Schedules.
- 1.11 For the purposes of this Agreement, a month shall mean a calendar month and a year shall mean a calendar year.
- 1.12 Any reference in this Agreement to the "termination" of this Agreement shall, where the context so permits, include the expiry of this Agreement pursuant to Clause 4.1 (Concession Period) and the verb "terminate" shall be construed accordingly.

1A. CERTAIN GENERAL ACKNOWLEDGMENTS

The Parties hereby acknowledge that:

- (a) the EFC Developer Conditions Subsequent, the EFC Grantor Conditions Subsequent and the EFC Joint Conditions Subsequent were satisfied prior to the EFC Long Stop Date;
- (b) the FC1A Developer Conditions Subsequent, the FC1A Grantor Conditions Subsequent and the FC1A Joint Conditions Subsequent were satisfied prior to the FC1A Long Stop Date;
- (c) the Early Project Construction Works were completed, and the Early Project Handover date occurred, within the Time for Early Project Completion;

- (d) the Preliminary Tolled Section was completed within the Time for Preliminary Phase 1A Completion;
- (e) the Phase 1A Constructions Works were completed, and the Phase 1A Handover Date occurred, within the Time for Final Phase 1A Completion; and
- (f) the Developer was authorized to collect tolls on the Portmore Causeway by the Time for Preliminary Phase 1A Completion,

in each case, in accordance with the Original Concession Agreement (as amended by the Original Concession Amendments).

1B. CERTAIN ACKNOWLEDGEMENTS REGARDING PHASE 1B EARLY WORKS

The Parties hereby acknowledge and agree that:

- (a) the Phase 1B Early Works shall be performed by Bouygues TP and paid for by the Grantor in accordance with the terms and conditions of the variation order n°152 dated 13th January 2011; and
- (b) the Phase 1B Early Works, when completed, will be incorporated herein and deemed part of the Phase 1B Construction Works.

1C CERTAIN ACKNOWLEDGEMENTS REGARDING THE MOUNT ROSSER BYPASS PROJECT

The Parties hereby acknowledge and agree that the Mount Rosser Bypass Project is excluded from the scope of Construction Works pursuant tot he deed of release entered into between the Grantor and the Developer, dated on or about the date hereof, and the Developer shall have no further obligations with respect to the Mount Rosser Bypass Project.

2. CONDITIONS PRECEDENT, EFFECTIVE DATE, CONDITIONS SUBSEQUENT AND FINANCIAL CLOSES 1A AND 1B

2.1 Conditions Precedent to Effective Date

Intentionally Omitted.

2.2 Conditions Subsequent regarding Early Financial Close

In the event that:

- (a) any of the EFC Developer Conditions Subsequent have not been satisfied by the Developer or been waived by the Grantor;
- (b) any of the EFC Grantor Conditions Subsequent have not been satisfied by the Grantor or been waived by the Developer; or
- (c) any of the EFC Joint Conditions Subsequent have not been satisfied,

on or before the EFC Long Stop Date this Agreement shall be terminable by written notice given to the other Party by the Grantor in the case of paragraph (a) above; by the Developer in the case of paragraph (b) above; and by either party in the case of paragraph (c) above.

2.3 Conditions Subsequent regarding Financial Close 1A

In the event that:

- (a) any of the FC1A Developer Conditions Subsequent have not been satisfied by the Developer or been waived by the Grantor;
- (b) any of the FC1A Grantor Conditions Subsequent have not been satisfied by the Grantor or been waived by the Developer;
- (c) any of the FC1A Joint Conditions Subsequent have not been satisfied or waived by both Parties

on or before the FC1A Long Stop Date this Agreement shall be terminable with effect from the Time For Early Project Completion by written notice given to the other Party by the Grantor in the case of paragraph (a) above; by the Developer in the case of paragraph (b) above; and by either Party in the case of paragraph (c) above.

2.4 Conditions Subsequent regarding Financial Close 1B

In the event that the Phase 1B Commencement Notice has been issued and:

- (a) any of the FC1B Developer Conditions Subsequent have not been satisfied by the Developer or been waived by the Grantor;
- (b) any of the FC1B Grantor Conditions Subsequent have not been satisfied by the Grantor or been waived by the Developer;
- (c) any of the FC1B Joint Conditions Subsequent have not been satisfied or waived by both Parties

on or before 28th February 2011 (or such later date as the Parties may agree) (the "**FC1B Long Stop Date**") this Agreement shall be terminable with respect to Phase 1B by written notice given to the other Party, by the Grantor in the case of paragraph (a) above; by the Developer in the case of paragraph (b) above; and by either Party in the case of paragraph (c) above.

3. REPRESENTATIONS AND WARRANTIES

3.1 The Developer represents and warrants to the Grantor that (subject, in the case of paragraphs (a), (b), (d), (e) and (f) and (i) below, with respect to the matters covered by the Toll Roads Bill, to the entry into force of that Bill as an Act of the Parliament of Jamaica):

- (a) it is a private company incorporated under the Companies Act of Jamaica duly organised, validly existing and in good standing under the laws of Jamaica, and has the necessary power and authority to enter into and perform its obligations under this Agreement;
- (b) this Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with the terms hereof except as such enforceability may be limited by laws affecting the rights of creditors generally;
- (c) there are no actions, suits or proceedings pending or, to the Developer's knowledge, threatened, against or affecting the Developer before any court or administrative body or arbitral tribunal that, if decided adversely, could have a material adverse effect on the ability of the Developer to meet and to carry out its obligations under this Agreement;
- (d) the execution, delivery and performance by the Developer of this Agreement have been duly authorised by all requisite corporate action, and will not contravene any

provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound;

- (e) in the entering into of this Agreement by the Developer, the Developer or any Affiliate, agent, officer or employee thereof has not committed any Prohibited Act;
 - (f) all acts, conditions and things required to be done, fulfilled and performed in order:
 - (i) to enable the Developer lawfully to enter into, exercise the Developer's rights under, and perform and comply with the obligations expressed to be assumed by the Developer in, this Agreement; and
 - (ii) to ensure that the obligations expressed to be assumed by the Developer in this Agreement are legal, valid, and binding,

have been done, fulfilled and performed;
 - (g) the Project Agreements have been, or when entered into will be, duly executed by the Developer and the relevant counterparties and when entered into, will be binding in accordance with their terms;
 - (h) it has not taken any corporate action or any other steps nor have any legal proceedings been started or (to the best of its knowledge and belief) threatened in writing against it for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues;
 - (i) its execution of this Agreement and its exercise of its rights and performance of its obligations hereunder do not:
 - (i) conflict with any agreement, mortgage, bond or other instrument or treaty to which it is a party or which is binding upon it or any of its assets;
 - (ii) conflict with its constitutive documents and rules and regulations; or
 - (iii) conflict with any applicable law, regulation or official or judicial order of Jamaica;
 - (j) Bouygues Travaux Publics was on the 21st November 2001 the sole beneficial owner of the equity in the Developer issued to it free of all liens, charges, encumbrances or other third party rights. All of the issued and allotted share capital of the Developer on the 21st November 2001 was held by the Bouygues Travaux Publics;
 - (k) Bouygues Travaux Publics has the resources to provide the equity under the Shareholders Equity Undertaking in due time under the Shareholders Equity Undertaking.
- 3.2 The Developer acknowledges that the Grantor has entered into this Agreement in reliance on the representations and warranties made by the Developer herein.
- 3.3 The Grantor represents and warrants to the Developer that (subject, in the case of paragraphs (a), (b), (d), (e) and (g) below, with respect to the matters covered by the Toll Roads Bill, to the entry into force of that Bill as an Act of the Parliament of Jamaica):
- (a) it is a private company incorporated under the Companies Act of Jamaica duly organised, validly existing and in good standing under the laws of Jamaica, and has the necessary power and authority to enter into and perform its obligations under this Agreement;

- (b) this Agreement constitutes the legal, valid and binding obligation of the Grantor, enforceable against the Grantor in accordance with the terms hereof except as such enforceability may be limited by laws affecting the rights of creditors generally;
 - (c) there are no actions, suits or proceedings pending or to the Grantor's knowledge, threatened, against or affecting the Grantor before any court or administrative body or arbitral tribunal that, if decided adversely, could have a material adverse effect on the ability of the Grantor to meet and to carry out its obligations under this Agreement;
 - (d) the execution, delivery and performance by the Grantor of this Agreement have been duly authorised by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound;
 - (e) all acts, conditions and things required to be done, fulfilled and performed in order:
 - (i) to enable the Grantor lawfully to enter into, exercise the Grantor's rights under, and perform and comply with the obligations expressed to be assumed by the Grantor in, this Agreement; and
 - (ii) to ensure that the obligations expressed to be assumed by the Grantor in this Agreement are legal, valid, and binding (including but without limitation fulfilment of the requirements of Jamaican law concerning public procurement),
 have been done, fulfilled and performed;
 - (f) it has not taken any corporate action or any other steps nor have any legal proceedings been started or (to the best of its knowledge and belief) threatened in writing against it for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues;
 - (g) its execution of this Agreement and its exercise of its rights and performance of its obligations hereunder do not:
 - (i) conflict with any agreement, mortgage, bond or other instrument to which it is a party or which is binding upon it or any of its assets;
 - (ii) conflict with its constitutive documents and rules and regulations; or
 - (iii) conflict with any applicable law, regulation or official or judicial order of Jamaica;
 - (h) it has a valid title sufficient to grant the rights conferred by the Land Documents; and
 - (i) it has the resources to provide the loans under the GPD Loan Agreement in due time under the GPD Loan Agreement.
- 3.4 The Grantor acknowledges that the Developer has entered into this Agreement in reliance on the representations and warranties made by the Grantor herein, and in reliance on the undertakings of the Government under the Implementation Agreement and the Government Guarantee.

4. CONCESSION PERIOD

- 4.1 The Concession Period shall commence on the Concession Award Date and shall, subject to Clause 4.2, end on the date which is thirty-five years after the Concession Award Date (the

"Expiry Date") unless terminated earlier by mutual agreement or in accordance with the express terms of any other provision of this Agreement.

- 4.2 The period of thirty-five years referred to in Clause 4.1 shall be automatically extended by:
- (a) any period of extension granted to the Developer under Clause 12.2 (Time for Completion);
 - (b) any period during which the Developer was unable to operate a material part of the Toll Road resulting in a material reduction in revenues due to a breach by the Grantor of its obligations under this Agreement or any Force Majeure Event; and
 - (c) any period of time after EFC Long Stop Date by which the entry into force of the Toll Roads Bill as an Act of the Parliament of Jamaica has been delayed.

provided that no day of delay may be counted more than once in calculating any extension.

5. GENERAL AND CONSTRUCTION OBLIGATIONS

- 5.1 From the Effective Date, the Developer shall have the right and obligation at its cost, with due care and diligence and in accordance with Good Engineering and Operating Practices, to carry out the Early Studies.
- 5.1A From Early Financial Close, the Developer shall have the right and obligation at its cost, with due care and diligence and in accordance with Good Engineering and Operating Practices, to design, build, operate, partially finance and maintain the Early Project subject to and in accordance with the provisions of this Agreement.
- 5.1B From Financial Close 1A, the Developer shall have the right and obligation at its cost, with due care and diligence and in accordance with Good Engineering and Operating Practices, to design, build, operate, partially finance and maintain the Early Project and the balance of the Phase 1A of the Toll Road not included in the Early Project subject to and in accordance with the provisions of this Agreement. It is agreed between the Parties that the Mount Rosser Bypass Project is now expressly excluded from this Agreement, in accordance with the deed of release to be entered into by and between *inter alia* the Grantor and the Developer on or around the date of this Agreement.

As a consequence thereof, the Grantor acknowledges and agrees that the Developer shall be fully, unconditionally and irrevocably released in respect of any and all obligations whatsoever with respect to the Mount Rosser Bypass Project.

- 5.1C From Financial Close 1B, the Developer shall have the right and obligation at its cost, with due care and diligence and in accordance with Good Engineering and Operating Practices, to design, build, operate, partially finance and maintain Phase 1B of the Toll Road subject to and in accordance with the provisions of this Agreement.
- 5.2 The Developer shall ensure that the Construction Works are carried out in accordance with the Concession Specification.
- 5.3 The Developer warrants that the Toll Road, constructed in accordance with the Developer's Concession Responsibilities and the Reviewed Design Documentation and operated and maintained in accordance with the Developer's Concession Responsibilities, shall meet the Core Requirements.

- 5.4 The Developer shall perform its obligations under this Agreement at its own risk and without recourse to the State or other public funds or guarantees now or in the future, save as expressly provided in this Agreement.
- 5.5 The Developer shall use all reasonable endeavours to ensure that the construction of the Toll Road will not cause any major disruption to existing traffic.
- 5.6 The Developer will, to the maximum extent reasonably and economically possible, use, and procure that its sub-contractors use, labour, technical expertise, products and materials produced or originating in Jamaica.
- 5.7 Should a payment of a loan under the GPD Loan Agreement, the Grantor Working Capital Reserve Agreement or the NROCC Funding Agreement be delayed, the Developer shall have the right to suspend the Construction Works for so long as the payment remains outstanding, after providing five (5) Business Days prior written notice.
- 5.8 The Developer shall ensure that no change is made to the general nature or scope of the business of the Developer from that carried on as at the 21st November 2001, and shall not engage in any business or activities other than the business and activities envisaged by this Agreement.
- 5.9 The Developer shall use all reasonable efforts to execute the Bridging Loan Agreement and carry out any actions on the Developer's part required to make the provisions of the Bridging Loan Agreement unconditional before the EFC Long Stop Date.

6. PHASE 1B CONSTRUCTION AND PHASE 2B RIGHT OF REFUSAL

- 6.1 The Parties acknowledge and agree that from the date of entering into this Agreement, the Phase 1B Early Works shall be incorporated herein, and form part of the scope of Phase 1B Construction Works.
- 6.2 At any time prior to 28th February 2011 (or by such later date as the Grantor may agree) (the "**Phase 1B Long Stop Date**") the Developer may issue a notice (the "**Phase 1B Commencement Notice**") informing the Grantor that it will start to design, build, operate and maintain Phase 1B. The Developer agrees to use all reasonable efforts to issue the Phase 1B Commencement Notice prior to the Phase 1B Long Stop Date.
- 6.3 If the Developer fails to issue the Phase 1B Commencement Notice by the Phase 1B Long Stop Date, the Developer shall cease to have any exclusive rights or obligations with respect to the development of Phase 1B and the Grantor shall be entitled to award that phase of the Project to another person after competitive bidding or bilateral negotiation as it sees fit.
- 6.4 The Developer shall have no right of refusal with respect to Phase 2A. On or before the Phase 1C Long Stop Date, the Developer may however issue a notice (the "**Phase 2B Commencement Notice**") informing the Grantor that it is willing to enter into a concession agreement with respect to Phase 2B. If the Phase 2B Commencement Notice has not been issued by the Phase 1C Long Stop Date or if the corresponding concession agreement has not been entered into within 3 months of the Phase 1C Long Stop Date, the Grantor may award Phase 2B to such persons as the Grantor in its absolute discretion may select.

For the avoidance of doubt, this Agreement shall not be terminated in the event that the Developer does not issue the Phase 2B Commencement Notice.

- 6.5 The Developer may issue a notice (the “**Phase 1C Commencement Notice**”) informing the Grantor that it will start to design, build, operate and maintain Phase 1C. The Developer shall use all reasonable efforts to issue the Phase 1C Commencement Notice prior to the Phase 1C Long Stop Date.

The Parties hereby confirm their intention to amend this Agreement prior to the issuance of the Phase 1C Commencement Notice in such manner as to duplicate all references to Phase 1B, the duplicated provisions applying to Phase 1C mutatis mutandis, subject all reasonable adjustments and carve-outs, including Clauses 2.4 (Conditions Subsequent regarding Financial Close 1B), 6.1, 6.2 and 6.3 (Phase 1B Construction and Phase 2 Right of Refusal) of this Agreement which shall not apply to Phase 1C.

Within 6 months from the date of the Phase 1B Commencement Notice, the Grantor shall, at the Grantor’s discretion, pay to the Developer an amount of USD 1,700,000 in consideration of design to be performed by the Developer in respect of Phase 1C, such amount to be reasonably sustained by a scope of design tasks to be submitted by the Developer to the Grantor. For the avoidance of any doubt, any failure for the Grantor to pay such amount shall not constitute a Grantor’s default under clause 27.

For the avoidance of doubt, this Agreement shall not be terminated in the event that the Developer does not issue the Phase 1C Commencement Notice.

7. LAND ISSUES AND OTHER GRANTOR OBLIGATIONS

- 7.1 The Grantor shall procure that the Developer and its subcontractors shall have such access to the Sites prior to the relevant dates for delivery of the Sites as set out in Schedule 8 (Land Delivery Schedule) during normal working hours, on reasonable notice, as will be sufficient for the survey and design requirements of the relevant part of the Toll Road.
- 7.2 The Grantor undertakes to lease the land for the Sites to the Developer in accordance with the Land Delivery Schedule set out in Schedule 8 (Land Delivery Schedule) hereof, at its expense and liability. The Developer shall not be responsible for payment of compensation in connection with the acquisition of the Sites. To the extent that the Amended Corridor differs from the Corridor, the Developer may request that the Grantor acquire at the Grantor's cost any additional land which the Developer requires for the construction of the Early Project Construction Works, the Phase 1A Construction Works, or the Phase 1B Construction Works, as the case may be, and the Grantor shall make all reasonable efforts to obtain the same in sufficient time so as not to delay the progress of the Construction Works.
- 7.3 Subject to the provisions of Clause 7.2 above, the Developer will be solely responsible for acquiring or leasing any land required for the construction, operation or maintenance of the Toll Road other than the Sites.
- 7.4 Commencing on and/or after the date of Early Financial Close, the Grantor shall execute the Early Project Land Documents and deliver each of the Early Project Sites to the Developer with vacant possession thereof for the purposes of implementing this Agreement on the dates set out in the delivery schedule agreed by the Grantor and the Developer and set forth in Schedule 8 (Land Delivery Schedule). The Grantor shall inform the Developer in writing of the date of delivery of any part and/or parts of the Early Project Sites, whether the delivery date is as set forth in Schedule 8 (Land Delivery Schedule) or if it is prior to or after such date.

- 7.5 Commencing on and/or after the date of Financial Close 1A, the Grantor shall execute the Phase 1A Land Documents and deliver each of the balance of the Phase 1A Sites to the Developer which have not already been delivered to the Developer under Clause 7.4, with vacant possession thereof for the purposes of implementing this Agreement on the dates set out in the delivery schedule agreed by the Grantor and the Developer and set forth in Schedule 8 (Land Delivery Schedule). The Grantor shall inform the Developer in writing of the date of delivery of any part and/or parts of the Phase 1A Sites, whether the delivery date is as set forth in Schedule 8 (Land Delivery Schedule) or if it is prior to or after such date.
- 7.6 Commencing on the date of Financial Close 1B, the Grantor shall execute the Phase 1B Land Documents and deliver each of the Phase 1B Sites to the Developer with vacant possession thereof for the purposes of implementing this Agreement on the dates set out in the delivery schedule agreed by the Grantor and the Developer and set forth in Schedule 8 (Land Delivery Schedule). The Grantor shall inform the Developer in writing of the date of delivery of any part and/(or) parts of the Phase 1B Sites, whether the delivery date is the Phase 1B Commencement Date or if it is prior to or after such date.
- 7.7 Subject to any provision to the contrary herein, the Developer shall be responsible, at its own cost and risk, for the removal of all structures, buildings and other impediments hindering construction on the relevant part(s) of the Sites. Furthermore, the Developer shall be responsible for the costs of any diversions to and re-routing of roads not forming part of the Toll Road but which it deems to be necessary for the Construction Works.
- 7.8 In the event of inconsistency between the terms of any of the Land Documents and this Agreement the terms of this Agreement shall prevail. Subject as aforesaid both Parties undertake to comply with their obligations under the Land Documents.
- 7.9 In the event that the Concession Period is extended in accordance with this Agreement the Grantor and the Developer will as soon as reasonably practicable following agreement of such extension execute variations of such of the Leases as are required recording that the date of expiry of the Lease(s) will correspond with the date of the expiry of the Concession Period.
- 7.10 All disputes or differences arising out or relating to the Land Documents, their interpretation or any breach thereof shall be determined in accordance with Clause 48 (Disputes).
- 7.11 All agreements and other arrangements made by the Developer with another person under which rights to use, occupy, share or exploit land or other property of the Developer are granted shall be for a term no longer than the remaining term of this Agreement and shall include provisions enabling them to be terminated or transferred to the Grantor and/or to any nominee of the Grantor in the event that this Agreement is terminated prior to expiry of its term.
- 7.12 For the avoidance of doubt, the Developer shall be responsible for any remedial or other works required as a result of any defects in the Existing Road Sections. All costs of and associated with any defect in the Existing Road Sections (including without limitation any latent defect). and any remedial or other works in respect thereof shall be borne by the Developer.
- 7.13 It is agreed between the Parties that should the Developer and the Material Subcontractors not be relieved from import duties on buildings materials (including cement) and construction equipment, corresponding amounts to the import duties paid will be refunded

by the Grantor either directly concerning the Developer or indirectly through the Developer concerning the Material Subcontractors, provided that the Developer is not finally declared by the Anti-Dumping Commission as being knowingly engage in dumping practices concerning the said materials or equipment.

- 7.14 In the event that any Tolling Authority under applicable law imposes some measures in the exercise of its duties in excess of the Developer's obligation under this Agreement, the Developer shall be relieved of its said obligations to the extent that it complies with the requirement of the Competent Authority.

8. UTILITIES PROVISIONS

- 8.1 Schedule 7 sets forth a schedule of milestones for the clearance, relocation and diversion of Utilities (a "Relocation Schedule") affecting the Construction Works or necessary to operate the Toll Road which is indicative only. The Developer shall be responsible for the scheduling, co-ordination and supervision of the clearance of those Utilities from the Sites to alternative locations by liaison with the authorities, companies or public works contractors responsible for those Utilities (each a "**Utility Company**"). In particular the Developer shall (with the assistance of the Grantor) seek to obtain before the commencement of the Early Project Construction Works, the Phase 1A Construction Works, or the Phase 1B Construction Works, between the Effective Date and either Early Financial Close, Financial Close 1A or Financial Close 1B the agreement of all the relevant Utility Companies to a firm Relocation Schedule with respect to the Utilities located within the Early Project Sites, the Phase 1A Sites and the Phase 1B Sites respectively. Upon reaching agreement on a firm Relocation Schedule (and with the agreement of the Grantor) the agreed Relocation Schedule (the "Agreed Schedule") shall be substituted for Schedule 7. If any Utility Company fails to carry out the necessary work to effect the clearance of those Utilities from the Sites to alternative locations in accordance with the timetable set out in the Agreed Schedule for reasons other than a failure by the Developer to fulfil its responsibilities under this Clause 8.1, then (provided the Developer shall first have consulted with the Grantor and given the Grantor 30 days to require the Utility Company to commence the work) the Developer shall be entitled to make a proposal to the Grantor's Representative for a Developer Variation for the increase in cost and time arising from that failure. These costs will be borne by the Grantor, who will also grant to the Developer the necessary extensions of time.
- 8.2 Except to the extent that the Developer is responsible for any failure by a Utility Company to carry out clearance of Utilities by the milestones set out in Schedule 7, the Grantor shall bear all the costs of relocation of Utilities.
- 8.3 The Developer shall not be responsible for maintenance of the Utilities required to be retained in, on, over, under or through the Sites.
- 8.4 Nothing in this Agreement or in the Land Documents shall limit or restrict the right of the Grantor or any Utility Company to gain access to or to use the infrastructure applicable to Utilities which is situated in, on, over, under or through the Sites and which is not to be cleared pursuant to this Clause 8. In respect thereof, and after being given reasonable notice (except in the case of an emergency), the Developer shall afford to contractors, agents or employees of the Grantor or of the relevant Utility Company, the right to enter the Sites in connection with the maintenance of such infrastructure.
- 8.5 The Grantor shall, and shall procure that any Utility Company or the contractors, agents or employees referred to in Clause 8.4 above, will, in exercising the rights described in Clause

8.4 above, comply at all times with any relevant health and safety requirements at the Sites and not cause any disruption or unnecessary interference or disturbance to the Construction Works or the operation of the Toll Road.

9. OWN ENQUIRIES

- 9.1 Notwithstanding any reports, data or opinions made available to it, or used to obtain Required Consents, the Developer shall be deemed to have satisfied itself as to the suitability of the property and facilities to which it will acquire rights and the nature and extent of the risk assumed by it in relation to the Concession and shall be deemed to have gathered all information necessary to perform its obligations under this Agreement including information as to the nature, location and condition of the property (including hydrological, geological, geotechnical and sub-surface conditions), local conditions and facilities, and obligations assumed as a result of Required Consents and Statutory Requirements.
- 9.2 The Developer shall not in any way be relieved from any obligation under this Agreement, nor shall it be entitled to claim against the Grantor on grounds that any information whether obtained from the Grantor or otherwise (including information made available by the Grantor with the exception of the information contained in the representations and warranties made by the Grantor in Clause 3.3 (Representations and Warranties) hereof) be incorrect or insufficient (whether or not contained in the Core Requirements or any other part of the Concession Specification) and shall make its own enquiries as to the accuracy and adequacy of such information.
- 9.3 The Developer hereby confirms and agrees that if any person on its behalf uses any information provided by the State or the Grantor or any other department, office or agency of the State or any of their respective advisers whether before or after signature of this Agreement in any manner, such use will be made on the basis of the assumption that the Developer and not the State or the Grantor or any other department, office or agency of the State or their advisers is responsible for producing the information and that it is complete, correct and accurate.

10. ARCHAEOLOGICAL FINDS AND CONTAMINATED LAND

- 10.1 As between the Grantor and the Developer, any Archaeological Finds shall be deemed to be the property of the Grantor.
- 10.2 The Developer shall inform the Grantor's Representative forthwith upon the discovery of any Archaeological Finds, and comply with the directions of the Grantor's Representative in relation to the removal or disposal of such Archaeological Finds, and if so directed by the Grantor's Representative shall allow the Grantor to enter the relevant Site for the purposes of such removal or disposal.
- 10.3 The Developer shall not attempt to remove any Archaeological Find without the Grantor's Representative's sanction and shall procure that its employees and sub-contractors shall neither remove nor damage such Archaeological Finds.
- 10.4 In the event that the relevant Archaeological Find cannot be moved, or that it is inappropriate that it be moved, then the Developer shall allow the Grantor or any Competent Authority to carry out any investigation which they deem is appropriate in connection with its or their statutory duties or which is otherwise required by law.

10.5 The Developer shall be responsible for dealing in accordance with the Statutory Requirements with any Ground Contamination encountered in the carrying out of the Construction Works.

10.6 The provisions of this Clause 10 shall not affect the rights or obligations of either Party under any Statutory Requirement or Required Consent.

11. STATUTORY REQUIREMENTS AND REQUIRED CONSENTS

11.1 The Developer shall at its own cost (but without prejudice to its rights under Clause 20.3 (Change of Law)) carry out its obligations under this Agreement so as to comply at all times with all Statutory Requirements and Required Consents (including those introduced after the 21st November 2001).

11.2 The Developer shall be responsible for applying for, obtaining and maintaining, at its own cost, all Required Consents. Provided that subject to and in accordance with the provisions of this Agreement, the Grantor shall, at the Developer's request:

(a) use reasonable efforts to assist the Developer in its dealings with any Competent Authority to the extent permitted by the provisions of any Statutory Requirements in connection with executing and implementing the Project in accordance with the provisions set forth in this Agreement; and

(b) use reasonable efforts to assist the Developer to the extent permitted by the provisions of any Statutory Requirements to obtain the Required Consents necessary for the construction, operation and maintenance of the Toll Road, PROVIDED THAT the Grantor shall bear no liability whatsoever if the Developer does not succeed in obtaining any such Required Consents nor shall the above be construed as permitting the Developer to avoid complying with and performing the requirements of any Statutory Requirements.

11.3 If the Developer fails to pay any fee or other amount due pursuant to a Statutory Requirement or Required Consent when it is due, the Grantor may (at its sole discretion) pay such fee and the amount so paid shall be immediately due and payable by the Developer to the Grantor.

11.4 The Developer shall comply with any decree, declaration, order, judgment, direction, stipulation or requirement given, made or issued by any Competent Authority against or in relation to the Developer or the Grantor as a result of a breach by the Developer of any Statutory Requirement or Required Consent.

11.5 The Developer shall provide the Grantor with all information reasonably requested by it in relation to the Required Consents (including, if so requested, copies of applications together with supporting documentation and copies of Required Consents) and shall consult with the Grantor in connection therewith.

11.6 The Grantor hereby assigns to the Developer, on the terms and conditions specified in this Agreement, the Grantor's rights under the toll order made or to be made under the Toll Roads Act with respect to the Highway 2000 (as referred to in the toll order) for the period of 35 years from November 21st, 2001, such assignment to take effect as of the date that the said toll order came or comes into effect.

12. TIME FOR COMPLETION

12.1 The Developer shall execute or procure the execution of the Construction Works:

- (a) in accordance with the Design and Construction Specification, the Reviewed Quality Documentation and the Reviewed Design Documentation; and
- (b) so that they shall be completed in accordance with the Design and Construction Specification and the Reviewed Design Documentation and comply with the Core Requirements (and, in the event of any conflict, the Core Requirements shall take precedence),

all within the Time for Early Project Completion (in respect of the Early Project Construction Works) and the Time for Phase 1A Completion (in respect of the Phase 1A Construction Works) and the Time for Phase 1B Completion (in respect of the Phase 1B Construction Works).

The Preliminary Tolerated Section shall be completed by the date which is 8 months before the Time for Final Phase 1A Completion (as defined below), subject to any extensions of time permitted under Clause 12.2 of this Agreement (the **"Time for Preliminary Phase 1A Completion"**).

The Phase 1A Construction Works shall be completed within the date falling 31 months after February 28, 2004, subject to any extensions of time permitted under Clause 12.2 of this Agreement (the **"Time for Final Phase 1A Completion"**).

In this Clause 12:

- i. references to "Phase 1A Final Completion Certificate" shall be construed as references to the Completion Certificate in respect of the Preliminary Tolerated Section, or to the Completion Certificate for the rest of the Phase 1A Construction Works, as the case may require;
- ii. reference to "Time for Phase 1A Completion" shall refer to the Time for Preliminary Phase 1A Completion, or to the Time for Final Phase 1A Completion, as the case may require;
- iii. Liquidated damages shall be payable in respect of failure to achieve the Time for Preliminary Phase 1A Completion or the Time for Final Phase 1A Completion as the Grantor thinks relevant but the Grantor hereby acknowledges and agrees not to require the Developer to pay liquidated damages in respect of both the Preliminary Tolerated Section and the Phase 1A Construction Works; and
- iv. the "Latest Time for Phase 1A Completion" shall be the date falling twelve months after the Time for Final Phase 1A Completion.

12.2 If by reason of:

- (a) a Grantor Variation;
- (b) a Change of Law Variation or a Qualifying Change of Law Variation;
- (c) a Force Majeure Event including, for the avoidance of doubt, any Qualifying Force Majeure Event; or

- (d) a breach by the Grantor of any of its obligations under this Agreement, including, without limitation, a breach of Clause 8.5 or Clause 15.10, a delay leading to a suspension under Clause 5.7 hereof, or a breach by the Government under the Implementation Agreement,

(each a "**Delay Event**"), Early Financial Close, Financial Close 1A, or Financial Close 1B has been delayed or the Developer has been delayed in the completion of the Early Project Construction Works, the Phase 1A Construction Works or the Phase 1B Construction Works then, provided that the Developer has complied and continues to comply with all obligations under Clause 12.3, the Grantor's Representative shall, on receipt of such notice and particulars, grant to the Developer from time to time in writing either prospectively or retrospectively, such extension of the EFC Long Stop Date, the FC1A Long Stop Date or the FC1B Long Stop Date, as the case may be, (but in any event such extension shall not be greater than 4 months beyond the relevant date, in the case of (b) and (c) above) or extension of the Time for Early Project Completion, the Time for Phase 1A Completion and/or the Time for Phase 1B Completion (as the case may be) as shall be reasonable in relation to such Delay Event.

12.3 In order to obtain an extension as described above:

- a. the Developer must within 28 days after it became aware that the Delay Event has caused or is likely to cause delay (or, if earlier, within 28 days after the date on which it should have become so aware) give to the Grantor's Representative notice of its claim for an extension of time and as soon as reasonably practicable but in any event within 15 days after such notice (so far as practicable) supply the Grantor's Representative with full particulars of the extension to which it considers itself entitled; and
- b. the Developer must establish to the reasonable satisfaction of the Grantor that:
 - (i) the event in question had a material effect on the time for the achievement by the Developer of the Time for Early Project Completion, the Time for Phase 1A Completion and/or the Time for Phase 1B Completion (as the case may be);
 - (ii) the lost time could not reasonably be recovered by Time for Early Project Completion, the Time for Phase 1A Completion and/or the Time for Phase 1B Completion (as the case may be) by the Developer and its contractors acting in accordance with Good Engineering and Operating Practices; and
 - (iii) the Developer has procured that its contractors have, at all times, taken all reasonable steps within their respective powers and consistent with Good Engineering and Operating Practices to:
 - (A) prevent Delay Events affecting the performance of the Developer's obligations under this Agreement; and
 - (B) mitigate the effect of any Delay Event and recover any time lost as a result of any Delay Event.

12.4 The Developer shall not be entitled to any extension of the time in respect of a Delay Event, to the extent that such extension is based on an application made or information provided after the dates laid down in paragraph (a) of Clause 12.3. The Developer shall be deemed to have waived all rights and claims to which it might otherwise have become entitled on the basis of such application or information.

- 12.5 If the Developer fails to receive the Early Project Final Completion Certificate in accordance with Clause 16 (Construction Completion):
- (a) within three months of the Time for Early Project Completion, the Developer shall pay to the Grantor by way of liquidated damages the sum set out in paragraph 4 of Schedule 20 each day between the Time for Early Project Completion and the earlier of the Early Project Handover Date and the Latest Time for Early Project Completion; and
 - (b) by the Latest Time for Early Project Completion, the Grantor may terminate this Agreement in accordance with Clause 28 (Termination by Grantor).
- 12.6 If the Developer fails to receive the Phase 1A Final Completion Certificate in accordance with Clause 16 (Construction Completion):
- (a) within three months of the Time for Phase 1A Completion, the Developer shall pay to the Grantor by way of liquidated damages the sum set out in paragraph 4 of Schedule 20 each day between the Time for Phase 1A Completion and the earlier of the Phase 1 Handover Date and the Latest Time for Phase 1A Completion; and
 - (b) by the Latest Time for Phase 1A Completion, the Grantor may terminate this Agreement in accordance with Clause 28 (Termination by Grantor).
- 12.7 If the Developer fails to receive the Phase 1B Final Completion Certificate in accordance with Clause 16:
- (a) within three months of the Time for Phase 1B Completion, the Developer shall pay to the Grantor by way of liquidated damages the sum set out in paragraph 4 of Schedule 20 for each day between the Time for Phase 1B Completion and the earlier of the Phase 1B Handover Date and the Latest Time for Phase 1B Completion; and
 - (b) by the Latest Time for Phase 1B Completion, the Grantor may terminate this Agreement in accordance with Clause 28 (Termination by Grantor).

13. DESIGN INFORMATION, DRAWINGS AND MANUALS

- 13.1 The Developer shall submit, either as one set or as a number of partial sets in respect of a Phase or Section of the Toll Road, for the review of compliance by the Grantor's Representative in accordance with the content set out in Part 1 of Schedule 3 (Specification) draft or revised design information, drawings and manuals in relation thereto in a form and to a level of detail as will satisfy the Core Requirements and in particular the requirements of the Competent Authorities set out in Schedule 6 (Competent Authority Consents).

Such information, documents and manuals shall be submitted:

- (a) in the case of the draft Design for Approval, not less than 30 days prior to commencement of any detailed design activity on the Construction Timetable; or
- (b) in the case of the draft or revised Detailed Design, not less than 60 days prior to commencement of any construction activity on the Construction Timetable; or
- (c) in the case of an application for a Competent Authority Consent for information only, not later than 7 days after submission to and 7 days after approval by the relevant Competent Authority. No change to the requirements of the approved Competent

Authority Consent shall be made without the prior written approval of the relevant Competent Authority.

13.2 Within 30 days of the receipt of such draft or revised information, drawing or manual, the Grantor's Representative shall either:

- (a) return the same marked as "reviewed without comments" such marking not to be unreasonably withheld if minor modifications may be undertaken at a later date subject to satisfying the requirements of Schedule 6 (Competent Authority Consents); or
- (b) return the same marked as "reviewed with comments" in which case the draft information, drawings or manuals shall be modified by the Developer as often and to the extent necessary until the same is returned reflecting the comments appended thereto,

provided that (i) in the case of Old Harbour Bypass, the Grantor's Representative shall use his reasonable endeavours to accomplish (a) or (b) within 15 days, and (ii) this Clause 13.2 shall not apply to applications for Required Consents.

On each submission of the draft or revised information, drawings or manuals, the Grantor's Representative shall return the submitted draft or revised information, drawings or manuals marked as either "reviewed with comments" or "reviewed without comments" within 30 days of its receipt by the Grantor's Representative. If any such draft or revised information, drawing or manual is not so returned by the Grantor's Representative within 30 days of submission it shall be deemed to have been returned marked as "reviewed without comments".

13.3 For the purposes of Clauses 13.1 or 13.2, the Grantor's Representative may call for such further or other draft or revised Design Documentation as may be reasonably necessary. For the avoidance of doubt, the Grantor's representative may raise comments in relation to any submission or revision or substitution of the Design Documentation or any course of action detailed therein:

- (a) that is not to a standard equal to or better than the Concession Specification; or
- (b) that is not in accordance with Good Engineering and Operating Practice; or
- (c) on the ground that the proposed document or course of action would be inconsistent with the Toll Regulator's duties or the NWA's duties or the NRCA's duties; or
- (d) on the ground that the Developer has not provided all information required in respect of such submission; or
- (e) on the ground that the adoption of such document or proposed course of action would result in a conflict with any Statutory Requirement; or
- (f) under any express provision set out elsewhere in this Agreement.

Upon the return of any draft Detailed Design marked as "reviewed with comments", the Developer may, at its own risk and cost, proceed with the Construction Works but shall subsequently ensure that account is taken of any comments received from the Grantor's Representative, subject to notification by the Developer of any dispute under Clause 13.9. If the Developer disagrees with the Grantor's Representative's comments it shall notify the

Developer to that effect in writing within 7 days of receiving those comments and the Parties shall attempt in good faith for a period of 7 days to resolve that dispute.

- 13.4 The Toll Road shall be constructed and the Construction Works and O&M Works carried out and completed in accordance with the Reviewed Design Documentation.
- 13.5 Within the time or times stated in the Construction Timetable or in any event no later than the dates expressed in this Clause 13.5, the Developer shall supply for review by the Grantor's Representative five copies of:
- (a) drawings of each Phase or Section of the Toll Road as built (or as substantially built) no later than 3 months after the date of the relevant Handover; and
 - (b) draft or revised operating and maintenance manuals (including health and safety) and instructions for each Phase or Section of the Toll Road no later than two months prior to the relevant Handover Date,

in each case in the form and in such detail as may be reasonably required by the Grantor.

- 13.6 The Developer shall:
- (a) revise and amend the operating and maintenance manuals, instructions and drawings submitted under Clause 13.5 in accordance with any reasonable substantive comments made thereon by the Grantor's Representative within 30 days after receipt by the Grantor's Representative of such materials; and
 - (b) supply to the Grantor's Representative five copies of the operating and maintenance manuals, instructions and drawings, together with the computer disks and transparencies or microfiches of such manuals and drawings, as so revised and amended all at the latest within three months after the receipt of the comments of the Grantor's Representative.
- 13.7 The operating and maintenance manuals, instructions and drawings submitted under Clause 13.5 shall be periodically updated during the Concession Period and shall continue to be in such detail as will enable the Grantor to operate, maintain and extend all parts of the Toll Road to which they relate in the event of termination of this Agreement.
- 13.8 The submission of information, drawings or manuals, to the Grantor's Representative, its review by or on behalf of the Grantor and the making of any comments thereon (including any approvals) shall not relieve the Developer of any of its obligations under this Agreement.
- 13.9 Any dispute under Clauses 13.2, 13.3 (if not resolved by the Parties in accordance with the procedure set out in Clause 13.3), 13.6 or 13.7 shall be referred to an Expert for determination in accordance with Clause 47 (Expert Determination). If the Developer does not refer a dispute to an Expert within 30 days of receipt of a "review with comments", the comments of the Grantor's Representative shall be deemed to have been accepted by the Developer.

13A. QUALITY DOCUMENTATION REVIEW

- 13A.1 The Developer shall submit for the review of the Grantor's Representative, no later than the delivery dates prescribed under Clause 13B.3, comprehensive draft or revised Quality Documentation in a form in accordance with the requirements of Clause 13B and Schedule 5.

13A.2 Within 30 days of the receipt of such draft or revised Quality Documentation, the Grantor's Representative shall either:

- (a) return the same marked as "reviewed without comments"; or
- (b) return the same marked as "reviewed with comments" in which case the draft or revised Quality Documentation shall be modified by the Developer as often and to the extent necessary until the same is returned reflecting the comments appended thereto.

On each submission of the draft or revised Quality Documentation, the Grantor's Representative shall return the submitted draft or revised Quality Documentation marked as either "reviewed with comments" or "reviewed without comments" within 30 days of its receipt by the Grantor's Representative. If any draft or revised Quality Documentation is not so returned by the Grantor's Representative within 30 days of submission they shall be deemed to have been returned marked as "reviewed without comments".

13A.3 For the avoidance of doubt, the Grantor's Representative may raise comments in relation to any submission or revision or substitution of the Quality Documentation or any course of action detailed therein:

- (a) that is not to a standard equal to or better than the Concession Specification; or
- (b) that is not in accordance with Good Engineering and Operating Practice; or
- (c) on the ground that the proposed document or course of action would be inconsistent with the Toll Regulator's duties or the NWA's duties or the NRCA's duties; or
- (d) on the ground that the Developer has not provided all information required in respect of such submission; or
- (e) on the ground that the adoption of such document or proposed course of action would result in a conflict with any Statutory Requirement; or
- (f) under any express provision set out elsewhere in this Agreement.

13A.4 The Toll Road shall be designed, constructed, operated and maintained and the Construction Works and Operation Works shall be carried out and completed in accordance with the Reviewed Quality Documentation.

13A.5 The submission of Quality Documentation to the Grantor's Representative, its review by or on behalf of the Grantor and the making of any comments thereon (including any approvals) shall not relieve the Developer of any of its obligations under this Agreement.

13A.6 If the Developer disagrees with comments made by the Grantor's Representative under Clause 13A.2, it shall notify the Grantor to that effect in writing within 7 days of receiving those comments and the Parties shall attempt in good faith for a period of 7 days to resolve that dispute. Any dispute under Clause 13A.2 which has not been resolved by the Parties in accordance with this procedure shall be referred to an Expert for determination in accordance with Clause 47 (Expert Determination).

13B. QUALITY DOCUMENTATION CONTENT

13B.1 The Developer shall procure that all aspects of the Concession (with the exception of financing) are the subject of quality management systems which comply with the provisions of this Clause 13B.

13B.2 The quality management systems referred to in Clause 13B shall comply with:

- (a) the relevant part of the BS EN ISO 9001:2000 series; and
- (b) Good Engineering and Operating Practices,

and shall be reflected in appropriate Quality Documentation which complies with the requirements set out in Schedule 5 (Principles for Management Plans and Quality Documentation).

13B.3 Without limitation on the generality of Clause 13B.2, there shall be:

- (a) Quality Documentation for the Developer meeting the requirements set out in Schedule 5 (Principles for Management Plans and Quality Documentation) to be submitted for review under Clause 13A.2 no later than 30 days after the Concession Award Date;
- (b) design Quality Documentation for the Contractor describing its procedures and quality management system for undertaking the activities associated with the Design Documentation and activities in respect of design and certification under the Construction Contract and meeting the requirements set out in Schedule 5 (Principles for Management Plans and Quality Documentation) to be submitted for review under Clause 13A.2 no later than 30 days after the Concession Award Date;
- (c) construction Quality Documentation for the Contractor, including the health and safety management plan and environmental management plan, describing its procedures and quality management system for undertaking the activities covered by the Construction Contract and meeting the requirements set out in Schedule 5 (Principles for Management Plans and Quality Documentation) to be submitted for review under Clause 13A.2 no later than 30 days prior to commencement of the Construction Works;
- (d) operation and maintenance Quality Documentation for the Operator describing its procedures and quality management system for undertaking the activities covered by the O&M Contract and meeting the requirements set out in Schedule 5 (Principles for Management Plans and Quality Documentation) to be submitted for review under Clause 13A.2 no later than 60 days prior to the date for handover of the first Phase or Section of the Construction Works as detailed on the Construction Timetable;
- (e) Quality Documentation for any other party contracting with the Developer describing the procedures and quality management system for undertaking the activities covered by that party's contract with the Developer and meeting the requirements set out in Schedule 5 (Principles for Management Plans and Quality Documentation) no later than 60 days prior to commencing any activity upon the Toll Road;
- (f) Quality Documentation in respect of Competent Authority Consents which is to be submitted for information only, not later than 7 days after submission to and 7 days after approval by the relevant Competent Authority. No change to the requirements of the approved Competent Authority Consent shall be made without the prior written approval of the relevant Competent Authority.

- 13B.4 The Developer shall not commence or permit the commencement of any aspect of the Concession before those parts of the Quality Documentation which concern such aspect have been submitted to the Grantor's Representative under the review procedure of Clause 13A and there has been no objection thereto in accordance with the review procedure with the exception of the Design for Approval of the first Section of the Toll Road. The Developer may, at its own risk and cost, proceed with the relevant aspect of the Concession prior to receiving a no objection thereto, but shall subsequently ensure that account is taken of any comments received from the Grantor's Representative, subject to notification by the Developer of any dispute under Clause 13A.6.
- 13B.5 The Developer shall comply with the Developer's Quality Documentation and shall procure that:
- (a) the Contractor complies with the Quality Documentation appropriate to the activities undertaken, and the Contractor's design and construction quality management system;
 - (b) the Operator complies with the Quality Documentation appropriate to the activities undertaken, and the Operator's quality management system;
 - (c) any other party contracting with the Developer complies with the Quality Documentation appropriate to the activities undertaken and that party's quality management system.
- 13B.6 The Developer shall submit to the Grantor's Representative in accordance with the review procedure of Clause 13A, in compliance with the requirements of Clause 13B.2, any proposed changes or additions to or revisions of any of the Quality Documentation and no such changes or additions to or revisions shall be given effect unless there has been no objection thereto in accordance with the review procedure.
- 13B.7 If the Developer fails to propose any change required pursuant to Clause 13B.6, then the Grantor may propose such change and it shall be dealt with in accordance with the review procedure of Clause 13A as though it had been proposed by the Developer.
- 13B.8 If there is no objection under the review procedure of Clause 13A to a part of the Quality Documentation referred to in Clause 13B.4 or a change, addition or revision pursuant to Clause 13B.6 or Clause 13B.7, then the Reviewed Quality Documentation shall be amended to incorporate such part, change, addition or revision.
- 13B.9 If any Quality Documentation refers to, relies on or incorporates any quality manual, plan, procedure or like document then such quality manual, plan, procedure or other document or the relevant parts thereof shall (unless the Grantor's Representative otherwise agrees) be submitted to the Grantor's Representative at the time that the relevant Quality Documentation or part of or change, addition or revision is submitted in accordance with the review procedure Clause 13A. The Grantor's Representative may require the amendment of any such quality manual, plan or procedure or other document to the extent necessary to enable the relevant Quality Documentation to satisfy the requirements of Clause 13B.2.
- 13B.10 Notwithstanding any other provision of this Clause 13B, the Developer shall provide the Grantor's Representative with such information as the Grantor's Representative may reasonably require to demonstrate compliance with this Clause 13B and the provisions of Schedule 5.

- 13B.11 Where the Developer is required to carry out any calibration, sample, trial or test, such calibration, sample, trial or test shall be carried out by the Contractor or a materials testing contractor in accordance with the provisions of Clause 13B.12 to Clause 13B.14 inclusive.
- 13B.12 Save as referred to in Clause 13B.13, all on-site and off-site calibrations, samples, trials and tests shall be carried out by laboratories accredited by the Jamaican Bureau of Standards for such calibrations, samples, trials and tests.
- 13B.13 In respect of any calibration, sample, trial or test to be carried out at an on-site laboratory during an initial period of not exceeding 30 days from the first calibration, sample, trial or test to be carried out at the laboratory:
- (a) the Developer shall take two samples for calibration, sampling, trial or testing, one of which shall be calibrated, sampled, tried or tested at the on-site laboratory; and
 - (b) if the on-site laboratory does not obtain accreditation within such initial period, then the calibration, sample, trial or test referred to in Clause 13B.13(a) shall not constitute a valid calibration, sample, trial or test in accordance with this Agreement and the second set of samples shall be taken and calibrated, sampled, tried or tested at an off-site accredited laboratory.
- 13B.14 For the avoidance of doubt, the Developer shall be responsible, without limitation, at its own expense for any remedial work required as a result of any failure to pass any calibration, sample, trial or test required in accordance with this Agreement or as a result of any laboratory not being accredited as required by this Agreement.
- 13B.15 The Developer shall be responsible for quality management and for ensuring the establishment and maintenance of the Developer's management plans and quality management system and reporting on performance of the said plans and system. Without limitation to the foregoing, the Developer's responsibilities shall include:
- (a) ensuring effective operation of the Developer's quality management system;
 - (b) auditing the Developer's quality management systems and the other quality management systems referred to in Clause 13B.3 at regular intervals and reporting the findings of such audits to the Grantor's Representative;
 - (c) reviewing all quality management systems referred to in Clause 13B.2 and Clause 13B.3 at intervals agreed with the Grantor's Representative to ensure continued suitability and effectiveness;
 - (d) liaising with the Grantor's Representative on all matters relating to quality management; and
 - (e) ensuring that relevant quality records are retained for the retention periods required by Clause 15.3.
- 13B.16 Without limitation to Clause 15 (Monitoring of Performance), the Grantor's Representative may carry out audits of the quality management system referred to in Clause 13B.3 (including without limitation all Quality Documentation) at approximate intervals of 3 months and may carry out other periodic monitoring, spot checks and auditing of such quality management systems.

14. TIMETABLES

- 14.1 The Developer shall carry out all investigations, design, construction, commissioning, testing, operation, maintenance and related works, and enter into all Financing Agreements, in accordance with the Developer's Timetable as set out in Schedule 4 (Developer's Timetable).
- 14.2 The Grantor's Representative may notify the Developer if in his opinion the Developer is departing from the Developer's Timetable and/or the Construction Timetable but no such notice or review by the Grantor's Representative of the Developer's Timetable and/or the Construction Timetable or any comment thereon shall relieve the Developer of any of its obligations under this Agreement.
- 14.3 Subject to Clause 14.4, the Developer may propose amendments or revisions to the Developer's Timetable from time to time and shall promptly submit a copy of such amended or revised timetable to the Grantor's Representative for his approval, such approval not to be unreasonably withheld or delayed. The Developer shall submit to the Grantor's Representative proposed amendments or revisions to the Construction Timetable from time to time, for the Grantor's Representative's comments, but not for his approval.
- 14.4 For the avoidance of doubt no amendment or revision to the Developer's Timetable shall relieve the Developer of its obligations to complete each Phase of the Toll Road by the relevant Time for Completion.

15. MONITORING OF PERFORMANCE

- 15.1 The Developer shall provide the Grantor's Representative with accurate and complete information with respect to the Early Studies, the Early Project Construction Works, the Phase 1A Construction Works, the Phase 1B Construction Works and the O&M Works (as the case may be) and the events affecting the performance of the relevant Construction Works and the operation and maintenance of the Toll Road to the extent such information is required, in the reasonable opinion of the Grantor, to enable the Grantor to monitor the performance by the Developer of its obligations under this Agreement or to exercise the Grantor's rights thereunder.
- 15.2 The Developer shall immediately after it becomes apparent notify the Grantor's Representative of all incidents of whatsoever nature affecting or likely to affect materially the progress of the Construction Works or the performance of the O&M Works.
- 15.3 The Developer shall maintain its books and records in the manner described in the Concession Specification for a period of at least five years and shall permit the Grantor to have access to all such books and records and all other information in its possession as may be required in the reasonable opinion of the Grantor to enable the Grantor to monitor the performance by the Developer of its obligations under this Agreement, or to exercise the Grantor's rights thereunder, or to verify amounts due from one Party to the other under this Agreement, to audit the same and to take copies of all or part thereof.
- 15.4 In the event that a matter has been referred to an Expert for determination, the Developer shall also permit the Expert to have access to its books and records and all other information in its possession as the Expert may require in order to determine the matter in question, and to take copies of all or part thereof for such purpose, and the Developer agrees and acknowledges that the Grantor is entitled to disclose copies of the same in its possession to the Expert.

- 15.5 The provisions of clauses 15.2 and 15.3 are subject to the provisions of Clause 44 (Confidentiality).
- 15.6 During the Concession Period the Developer shall supply the Grantor's Representative with such information as is required to be provided by the Developer pursuant to the Concession Specification or as may be reasonably required by the Grantor's Representative having regard to the Grantor's statutory duties or the obligations to be performed by the Developer under this Agreement.
- 15.7 The Grantor or the Grantor's Representative may at all times enter upon the Sites and inspect the construction, operation and maintenance of the Toll Road to ensure the Developer's obligations under this Agreement are being performed.
- 15.8 The Grantor and the Grantor's Representative shall at all times have access to the Construction Works and the Sites and the Developer shall afford, and shall procure that the Contractor shall afford, every facility for and assurance in obtaining such access.
- 15.9 The Grantor and the Grantor's Representative shall at all times, during working hours, have access to the Early Project, Phase 1A and Phase 1B following the Early Project Handover Date, the Phase 1A Handover Date and the Phase 1B Handover Date as the case may be and shall be entitled, at the Grantor's cost, to conduct tests and shall be entitled to have access to test results carried out by or on behalf of the Developer.
- 15.10 The Grantor and the Grantor's Representative shall, without prejudice to Clause 15.6, in exercising their rights of access to the Sites, comply at all times with any relevant health and safety requirements at the Sites and shall not cause any unnecessary disruption to the Construction Works.

16. CONSTRUCTION COMPLETION

- 16.1 The Developer shall give the Grantor's Representative not less than 28 days' notice of the date when one or more Sections of the Toll Road (the "**Completed Part**") will be complete for the purposes of issuing a Completion Certificate.
- 16.2 After receipt of the notice referred to in Clause 16.1 by the Grantor's Representative and upon the Developer confirming to the Grantor's Representative that in respect of the Completed Part all of the conditions precedent to issuance of the Completion Certificate as set out in Schedule 10 (Conditions Precedent and Conditions Subsequent) have been satisfied in all material respects, the Grantor's Representative shall within 14 days of receipt of such confirmation commence an inspection of the Completed Part in accordance with Clause 16.3.
- 16.3 The Grantor's Representative shall inspect the Completed Part in conjunction with the Developer prior to issuance of any Completion Certificate.
- 16.4 The Grantor's Representative shall within 28 days of the commencement of the inspection referred to in Clauses 16.2 and 16.3 either:
- (a) in accordance with Clause 16.5, issue the Completion Certificate (whether or not subject to Snagging Matters); or
 - (b) in accordance with Clause 16.6, notify the Developer in writing of its decision not to issue the Completion Certificate and to state the reasons for such decision.

- 16.5 Provided that the Grantor's Representative is satisfied in respect of the Completed Part that the conditions precedent to issuance of a Completion Certificate as set out in Schedule 10 (Conditions Precedent and Conditions Subsequent) have been satisfied in all material respects and that none of the grounds for refusal set out in Clause 16.6 exist, then the Grantor's Representative shall issue the Completion Certificate in respect of the Completed Part. The Grantor's Representative shall issue a Completion Certificate notwithstanding that there are Snagging Matters. Where there are Snagging Matters, the Grantor's Representative shall, within 14 days of the date of issue of the Completion Certificate, issue a Snagging Notice which shall specify the Snagging Matters. Following the issue of a Snagging Notice, the Developer shall, in consultation with the Grantor's Representative, rectify all Snagging Matters within 28 days of the issue of the Snagging Notice. The Grantor shall be entitled to retain from any payment due to the Developer an amount equal to 150% of the cost of carrying out the Snagging Matters. A pro rata proportion of the amount so retained shall be paid to the Developer upon each Snagging Matter being rectified.
- 16.6 The Grantor's Representative, in accordance with Clause 16.4(b), shall refuse to issue a Completion Certificate in respect of the Completed Part, if:
- (a) there has, in respect of the completion of the Completed Part, been material non-compliance with the Concession Specification;
 - (b) the Completed Part does not comply with any Statutory Requirements or any Required Consent which needs to be satisfied prior to the opening of that Completed Part to traffic;
 - (c) the Grantor's Representative believes on reasonable grounds that any lane or any part of any lane of the Completed Part will be closed at any time in the next 12 months in order to complete the Completed Part to the standard required for the Completion Certificate; or
 - (d) satisfactory written evidence of compliance with Clause 42 (Insurance) has not been received.
- 16.7 In the event of service of a notice by the Grantor's Representative under Clause 16.4(b) and following completion by the Developer of such further works or other measures necessary or appropriate to remedy or remove the cause of the refusal to issue the Completion Certificate in respect of the Completed Part, the Developer may give notice to the Grantor's Representative that such further works have been completed or measures taken and the Grantor's Representative shall inspect such further works or measures within 10 days of such notice and the provisions of Clauses 16.2 to 16.6 (inclusive) and this Clause 16.7 shall apply mutatis mutandis.
- 16.8 The issue of a Completion Certificate shall be without prejudice to:
- (a) the obligation of the Developer to complete any Snagging Matters;
 - (b) the obligations of the Developer to operate and maintain the Toll Road in accordance with the terms of this Agreement; and/or
 - (c) any warranties (as to defects or otherwise) given by the Developer under this Agreement.

- 16.9 Upon issue by the Grantor's Representative of a Completion Certificate in respect of all Sections of a Phase, the Grantor's Representative shall issue a certificate (the "**Final Completion Certificate**") confirming completion of that Phase.
- 16.10 As from the date of issue of a Completion Certificate in respect of a Completed Part, the Developer shall be responsible for and shall operate and maintain that Completed Part in accordance with this Agreement.
- 16.11 The Preliminary Tolled Section will be deemed to constitute a Section for the purposes of this Clause 16.

17. OPERATION AND MAINTENANCE

- 17.1 The Developer shall be obliged at its own expense to operate and maintain the Toll Road in accordance with the Concession Specification.
- 17.2 The Developer warrants that the O&M Specification complies with the Core O&M Requirements.
- 17.3 Without prejudice to the obligations of the Developer under Clauses 17.1 and Clause 13A.4, and 17.2, the Developer shall ensure on a continuing basis that, at all times during the Concession Period its maintenance and operating procedures are sufficient to ensure that, save as expressly provided otherwise by this Agreement, the Core O&M Requirements are continuously met.
- 17.4 If at any time:
- (a) any report indicates or the Grantor's Representative is notified or otherwise becomes aware that the Developer has failed to perform any of its obligations under this Agreement in respect of O&M Works; or
 - (b) the Grantor's Representative serves a notice under Clause 21.1 and the Developer fails to remedy the failure within a reasonable period (the "**Remedial Period**") as defined by reference to the table set out in Part 2 of Schedule 11 (Penalty Points),

then the Grantor's Representative may (without prejudice to any other right or remedy available to the Grantor) by notice to the Developer award points (herein called "**Penalty Points**") calculated by reference to the table set out in Schedule 11.

- 17.5 The Parties acknowledge that Schedule 11 provides the detailed list of the matters which may attract Penalty Points. However, if more than one Notice of Default is issued under Clause 21.1 (Step-In Rights) with respect to failures by the Developer to comply with any requirement of this Agreement then the Grantor may propose and the Parties shall agree within 30 days the penalty points and Remedial Period which shall from that time apply with respect to that requirement. For the avoidance of doubt, the number of points set out in Schedule 11 in respect of a matter is the maximum number of Penalty Points which may be awarded in respect of a single breach of the relevant obligation.
- 17.6 The Developer may, within 28 days of receipt of any notice pursuant to Clause 17.4, object to the award of any such Penalty Points or, where Penalty Points or any Remedial Period proposed by the Grantor in accordance with Clause 17.5 has not been agreed between the parties, to the number of such Penalty Points and/or the duration of the Remedial Period. If the Grantor's Representative and the Developer are unable to reach agreement on any such

matter within 14 days of such objection by the Developer, the matter shall be subject to determination by an Expert upon the application of either Party pursuant to Clause 47 (Expert Determination) or otherwise in accordance with Clause 48 (Disputes). In respect of any dispute as to the number of Penalty Points to apply pursuant to Clause 17.5 or the duration of the Remedial Period, the issue for decision shall be how many Penalty Points should be awarded or the duration of the Remedial Period in comparison with the number of Penalty Points and duration of the Remedial Period set out in Schedule 11 for defaults of equivalent severity.

- 17.7 Without prejudice to any other right or remedy available to the Grantor, if at any time the Developer has committed any material breach of its obligations under this Agreement or has been awarded 100 Penalty Points in any 3 year period or 42 or more Penalty Points in any one year period, then the Grantor's Representative may give written notice (herein called a "**Warning Notice**") to the Developer setting out in general terms the matter or matters giving rise to such notice and containing a reminder to the Developer of the implications of such notice. Any such notice shall state on the face that it is a "**Warning Notice**" and shall be signed for or on behalf of the Grantor.
- 17.8 In the event of the Developer having received a Warning Notice under Clause 17.7, the Grantor's Representative may (without prejudice to any other right or remedy available to the Grantor) by notice to the Developer increase the level of its monitoring of the Developer until such time as the Developer shall have demonstrated to the reasonable satisfaction of the Grantor's Representative that it will perform and is capable of performing its obligations under this Agreement. The notice to the Developer shall specify the additional measures to be taken by the Grantor's Representative in monitoring the Developer in response to the matters which led to such Penalty Points being awarded or Warning Notice sent. The Developer shall compensate the Grantor for all costs incurred by it as a result of such increased level of monitoring (including without limitation, the relevant administration expenses of the Grantor, including an appropriate sum in respect of general staff costs and overheads and the cost of the installation and operation of on-line electronic recording systems to assist the Grantor in that monitoring).
- 17.9 In the event the Developer is awarded a total of 15 or fewer Penalty Points in any one year, the number of Penalty Points (if any) accrued in the previous year shall be reduced by 50% for the purpose of calculating Penalty Points in accordance with Clause 17.7.

18. TRAFFIC MANAGEMENT

- 18.1 From and after each Handover Date in respect of a Section until the expiry of the Concession Period, the Developer shall ensure that the Section is open to traffic and that the traffic flow along the Toll Road is convenient and safe at all times, in accordance with the Core Requirements.
- 18.2 The Developer shall ensure that during the Concession Period, the entrances to and exits from the Toll Road shall be only by and through the points of access and egress approved by the Grantor in advance and in writing.
- 18.3 The Developer or anyone on its behalf shall not prevent any vehicle from travelling on the Toll Road except as a result of breach of any applicable traffic regulations or the non-payment of any Toll which should be paid in accordance with this Agreement for travelling on the Toll Road.

- 18.4 The Developer shall be responsible for ensuring the proper traffic management (including installation of traffic signs) on the Toll Road and fulfilling the provisions of any applicable Statutory Requirement.
- 18.5 The Developer shall be obliged to remove or ensure the removal without delay of any stationary vehicles or other obstacle from the Toll Road.
- 18.6 The Grantor shall procure that the Jamaican police will provide traffic safety and security services on the Toll Road at no cost to the Developer, subject to the Developer providing such facilities as may be reasonably required by the Jamaican police for such purposes.
- 18.7 The Developer shall procure that the Operator cooperates with the Emergency Services in relation to their activities in respect of the Toll Road. The Grantor shall assist the Developer as far as possible in co-ordinating the arrangements with the Emergency Services. Subject to procedures to be jointly established by the Parties, cars or other vehicles belonging to the Jamaican Emergency Services shall be exempt from the obligation to pay Tolls when they are on duty.
- 18.8 The Developer shall be entitled, if the need is imperative, to stop traffic immediately and shall report any such initiative to the authorities responsible for policing traffic. The Developer shall take all measures of a technical nature to limit the inconvenience to users resulting from any interruption to traffic.

19. GRANTOR VARIATIONS

- 19.1 The Grantor shall, subject to and in accordance with this clause, have the power by notice to the Developer from time to time during the Concession Period to propose variations to the Core Requirements ("**Grantor Variations**").
- 19.2 As soon as practicable and in any event within 28 days after receipt of a notice under Clause 19.1, the Developer shall notify the Grantor's Representative (together with full supporting details):
- (a) whether, in the Developer's opinion, any adjustments to the provisions of this Agreement (including adjustments to the Developer's Concession Responsibilities but excluding any changes to the Compensation Amount) would be necessary as a result of the proposed Grantor Variation to enable the Developer to perform its obligations under this Agreement;
 - (b) the Estimated Operating Cost and the Estimated Capital Cost of the proposed Grantor Variation together with a written statement from the Independent Engineer confirming the reasonableness of such Estimated Operating Cost and Estimated Capital Cost;
 - (c) subject to paragraph (d) below, the steps which the Developer proposes to take to implement the proposed Grantor Variation and the proposed timetable for taking those steps and, if appropriate, an estimate of the likely extension of time required under Clause 12.2 (Time for Completion); and
 - (d) if the Developer objects to the proposed Grantor Variation on any one or more of the following grounds:

- (i) that implementation of the proposed Grantor Variation is impossible or not technically feasible, would be unsafe for the Developer's personnel or would be contrary to Good Engineering and Operating Practices;
- (ii) that implementation of the proposed Grantor Variation would infringe any Statutory Requirements or any Land Documents or any other title burdens, conditions or restrictions affecting the Toll Road; or
- (iii) that the Developer is unable to procure the necessary rights of access and/or use of such areas of land as it reasonably requires outside of the Sites to implement the proposed Grantor Variation,

provided that the Developer shall not be entitled to object where the ground of objection in question can be adequately and reasonably mitigated or overcome by the exercise of Good Engineering and Operating Practices.

- 19.3 As soon as practicable after the Grantor's Representative receives the Developer's notice under Clause 19.2, the Parties shall discuss and agree the matters referred to in Clause 19.2. During the course of these discussions the Grantor's Representative may propose modifications of the proposed Grantor Variation, in which event the Developer shall, as soon as practicable and in any event within 14 days after receipt of the proposed modifications, notify the Grantor's Representative of any modifications to its notice under Clause 19.2 (including, without limitation, as to whether the Developer's opinion on the matters in Clause 19.2(a) is correct and as to whether the Developer is reasonably entitled to object to the Grantor Variation on one of the grounds specified in Clause 19.2(d)). If the Parties cannot agree on the matters referred to in Clause 19.2 the dispute will be determined by an Expert in accordance with Clause 47 (Expert Determination).
- 19.4 As soon as practicable after the matters referred to in Clause 19.2 are agreed, or have been determined by the Expert pursuant to Clause 19.3, the Grantor's Representative shall either confirm the Grantor Variation (as modified under Clause 19.3, if applicable) or withdraw it. The Grantor shall indemnify the Developer for reasonable costs incurred in relation to any Grantor Variation which it has proposed and then withdrawn. If the Grantor does not confirm the Grantor Variation within thirty days after agreement or determination it shall be deemed to have been withdrawn. The Grantor's Representative may not confirm a Grantor Variation if it is agreed, or determined by the Expert, that the Developer was reasonably entitled to object to the Grantor Variation on one of the grounds specified in Clause 19.2(d).
- 19.5 The Developer shall, subject to the provisions of this clause, carry out with all diligence and complete within a reasonable period all work necessary to comply with an Grantor Variation and, as from completion of such work or (if earlier) expiry of such reasonable period, be bound by this Agreement as though that Variation were provided for in the Concession Specification.
- 19.6 A Grantor Variation that requires any capital expenditure shall give rise to an obligation on the Grantor to make an upfront lump sum payment or to provide to the benefit of the Developer a letter of credit equal to the Estimated Capital Cost, which terms and conditions are satisfactory for the Lenders. A Grantor Variation that does not require any capital expenditure but will result in an increase of the Developer's operating costs shall be compensated either (at the Grantor's option) through the Grantor making a lump sum payment equal to the Estimated Operating Cost or through the Grantor making annual payments to the Developer equal to the Estimated Operating Cost for any calendar year. This increase in the Developer's operating costs shall be assessed on the basis of (i) the net

present value of the yearly operating costs of the Developer and (ii) the average interest under the Phase 1B Financing Agreements.

- 19.7 In any case where the Developer is required to carry out a Grantor Variation, the Developer shall keep contemporaneous records of the cost of and time expended on making the Grantor Variation. Such records shall be open to inspection by the Grantor's Representative at all reasonable times.
- 19.8 The implementation of any Variation proposed by the Grantor, other than a Grantor Variation, shall be subject to agreement between the Developer and the Grantor on the price and timing of that Variation.
- 19.9 In accordance with the Toll Roads Act, the Developer has offered to adjust the rates of toll to be charged for the use of the Portmore Causeway by the three different classes of vehicles and the Grantor has offered to compensate the Developer for the subsequent financial losses. The terms and conditions on which the rates of toll in respect of Portmore Causeway are adjusted and the corresponding financial compensation shall be paid to the Developer are set out in the Toll Subsidy Compensation Agreement dated 8 August 2006, which is recorded for convenience in Schedule 23.

19A. DEVELOPER VARIATION

- 19A.1 The Developer shall be entitled to make proposals to the Grantor's Representative for variations to the Design and Construction Specification and the O&M Specification by notice to the Grantor's Representative, but no variation so proposed shall be carried out by the Developer except as agreed in writing by the Grantor's Representative. Each proposal may include any number of variations. Expansion Schemes will be deemed to be a Developer Variation upon the occurrence of an Expansion Scheme Trigger Event in accordance with the provisions of Part 2 of Schedule 17 (Expansion Schemes).
- 19A.2 The Grantor shall not withhold or delay its consent to any variation which would not conflict with the Core Requirements and which would not result in the Developer's Concession Responsibilities being less stringent than the standards set out in Schedule 21 (Technical Standards). If the Grantor fails either to give its permission or to refuse its permission within 30 days of the proposal being received by it, then permission to proceed with the variation shall be deemed to have been given. In the event the Developer Variation arises as a result of an Expansion Scheme Trigger Event, the Developer shall commence the Design and Construction Works within 28 days after receipt of the Grantor's permission to proceed with the variation has been given or has been deemed to have been given.
- 19A.3 All Developer Variations, with the exception of Developer Variations made in accordance with Clause 8.1 hereof, are to be made at the sole cost and expense of the Developer.

20. CHANGE OF LAW

- 20.1 Where a Change of Law occurs or is due to occur, either Party may by written notice to the other advise that Party's opinion of the following matters:
- (a) the Variation(s), if any, that need to be made to the Toll Road to comply with the Change of Law;

- (b) whether any adjustments to the provisions of this Agreement (other than to the Compensation Amount) are necessary to enable the Developer or the Grantor to comply, in the performance of each Party's obligations under this Agreement, with the Change of Law;
- (c) in the case of a Change of Law which is a Qualifying Change of Law, the Estimated Operating Costs of, and/or reduction in toll revenues due to the Qualifying Change of Law and the Estimated Capital Cost of any Variation required to comply with the Qualifying Change of Law (but not including any cost which is or would be incurred prior to the date on which the Variation is agreed by the Parties or determined by the Expert under Clause 20.2),

and shall give full supporting details of its opinion.

- 20.2 As soon as practicable after receipt of any notice from either Party pursuant to Clause 20.1 the Parties shall discuss and agree the matters referred to in Clause 20.1 and any ways in which the effects of the Change of Law may be mitigated or avoided. For the purpose of this clause no account shall be taken of any increase in operating costs or capital costs of any required Variation which would not have been suffered or incurred had the Toll Road been designed, constructed, operated and maintained in accordance with Good Engineering and Operating Practices and the Concession Specification. If the Parties cannot agree on the matters referred to in this Clause 20.2, the dispute shall be determined by an Expert in accordance with Clause 47 (Expert Determination).
- 20.3 In the event of a Qualifying Change of Law, a Compensation Amount will be paid or adjusted so as to put the Developer in the same Financial Position as it would have been in had the Qualifying Change of Law not been made provided that the Grantor may (at its sole option) meet the whole or any part of the Estimated Capital Cost required for the Qualifying Change of Law Variation.
- 20.4 In any case where the Developer is required to proceed with a Qualifying Change of Law Variation the Developer shall keep contemporaneous records of the cost of, reduction in toll revenues due to, and time expended on, making the Qualifying Change of Law Variation. Such records shall be open to inspection by the Grantor's Representative at all reasonable times.
- 20.5 In the event that the Parties agree to a Change of Law Variation or a Qualifying Change of Law Variation, or the Expert determines that such a Variation is necessary, the Developer shall carry out any work required for that Change of Law Variation or Qualifying Change of Law Variation in accordance with its obligations under this Agreement, subject to agreement between the Developer and the Grantor, or determination by the Expert, on the price and timing of any such Qualifying Law Variation and shall commence that work as soon as is reasonably practicable.
- 20.6 For the avoidance of doubt, save insofar as it is otherwise agreed by the Parties or specified in this Agreement, any Change of Law Variation shall be carried out entirely at the Developer's cost and shall not give rise to any a payment of, or an adjustment to, the Compensation Amount.

21. STEP-IN RIGHTS

- 21.1 If the Grantor or the Grantor's Representative becomes aware that the Toll Road does not, or the Developer has failed or is failing to, comply in some respect with the requirements of this Agreement, including the Concession Specification, the Grantor may issue a notice to the Developer giving details of the failure to comply (a "**Notified Default**") and requiring the Developer to remedy the Notified Default within a reasonable period, such period to be agreed between the Parties within 30 days and in default of agreement as determined by the Expert, by reference to the nature and consequences of the default and the remedial action required.
- 21.2 If the Developer fails to remedy a Notified Default within the period fixed by the Grantor under Clause 21.1 then, without prejudice to the Grantor's other rights, the Grantor may arrange for the Notified Default to be remedied and shall be entitled to recover the costs of such work from the Developer.
- 21.3 Notwithstanding any other provision of this Agreement, the Grantor may take such action as it considers necessary in order to prevent, mitigate or eliminate an immediate and serious risk to health, security, safety or the environment where such functions are not being properly discharged through the Developer under this Agreement (including, without prejudice to the generality of this provision, the suspension of the Developer's rights under this Agreement). The Grantor may for this purpose enter upon any of the Sites and, for such period as is necessary for the purposes referred to above, take over all or part of the operation and maintenance of the Toll Road. The Grantor shall act reasonably and in proportion to the relevant breach at all times in exercising and performing its step-in rights under this Clause 21.3.
- 21.4 The Developer shall co-operate fully with whatever action the Grantor deems it appropriate to take for the purposes of Clause 21.3 and shall provide all reasonable assistance to the Grantor for that purpose and for the avoidance of doubt the Developer shall not be obliged to perform and discharge obligations under this Agreement for so long as those obligations are being performed and discharged by the Grantor pursuant to Clause 21.3.
- 21.5 For each day on which the Grantor takes over the operation of or continues to operate any part of the Toll Road (whether or not that take over has arisen for reasons which **do not** arise from any breach by the Developer of its obligations under this Agreement), the Developer shall, as from the Handover Date for that part of the Toll Road, be entitled to receive the Toll Revenues and, to the extent that any Compensation Amount is due under this Agreement at the time of that take over or continuation of operation by the Grantor, that Compensation Amount.
- 21.6 For each day on which the Grantor takes over or continues to operate any part of the Toll Road for reasons which **do** arise from a breach by the Developer, the Developer shall pay the Grantor all the Grantor's reasonable costs of such operation. The Developer may request such documentary evidence as it shall require to determine whether the costs of the Grantor have been reasonably incurred.
- 21.7 Any dispute about the amounts due to the Developer under Clauses 21.5 and 21.6 shall be subject to determination by an Expert upon the application of either Party pursuant to Clause 47 (Expert Determination), if only the amount of compensation is in dispute, or otherwise in accordance with Clause 48 (Disputes).

22. TOLL REVENUES

- 22.1 All expenses relating to the collection of Tolls on the Toll Road shall be borne by the Developer. Subject to Clause 24 (Developer Payments), the Developer will have sole rights to revenue arising out of the collection of Tolls and from the operation of Secondary Developments initiated by the Developer, during the Concession Period.
- 22.2 Any new toll equipment shall only be erected to the extent its construction complies with the Core Requirements.
- 22.3 Subject to the Developer applying pursuant to clause 5.1 of Schedule 15 for a variation of the Toll Levels equal to or below the Capped Toll Level for the ensuing period in accordance with the Tolling Policy, in the event that any authorisation required in order to allow for the lawful charging of such variation Tolls is not provided in accordance with applicable law on or before the day that is ten (10) days before the 1st Saturday of July of each calendar year (or, where applicable, on the day that is ten (10) days before the 1st Saturday of the month next following any month end when the increase in the Jamaican CPI in the period since the most recent toll increase has been greater than 5%) at the levels that the Developer requests, the Developer can require the Grantor to pay an amount as calculated in paragraph 7 of Schedule 15 (Tolling Policy) during the period in which the actual Toll Levels are below those requested by the Developer. Each such variation of the Toll Levels shall commence on a Saturday.
- 22.4 The amount payable under Clause 22.3 will continue throughout the period in which the Toll Levels below those requested by the Developer, insofar as the requested Toll Levels are equal to or below the Capped Toll Level for that period.
- 22.5 Any dispute as to the level of any amount of Toll Compensation payable shall be determined by the Expert pursuant to Clause 47 (Expert Determination).
- 22.6 The Developer shall be entitled at any time to collect Tolls at or below the Capped Toll Levels for the relevant period. The Developer is entitled to a variation of the Toll Levels on the first Saturday of July of each year, subject to Clause 5.1 of Schedule 15. The Developer may, not later than two months before 1st July of each year, apply to the Toll Regulator, in accordance with the Tolling Policy, for the approval to a variation in the Toll Levels.
- 22.7 Once the authorization required to allow for the lawful charging of such variations toll is obtained, the Developer shall (by publication of press ads in two nationwide newspapers and such radio announcements as the Developer considers appropriate) inform the public of such variation. Such ads are to be published so as to ensure that the public is provided with at least 7 (seven) days before such a variation is implemented. The Developer may commence collecting Tolls at the varied levels from the date that is ten (10) days after the authorisation is obtained, provided however that if that date is after the first Saturday of July of that year then Toll Compensation shall be paid by the Grantor to the Developer in accordance with Clause 7 of Schedule 15 in respect of the period between the first Saturday of July of that year and the date that is ten (10) days after the authorisation is obtained.

23. SECONDARY DEVELOPMENTS

- 23.1 Subject to Clause 7.11, each Party agrees that the other Party (itself or its nominee) shall have the right to undertake install, develop, construct, possess, and/or sub-license or sublet Secondary Developments at the Sites at no cost to the first Party provided that:

- (a) the development concerned does not materially and adversely affect the Construction Works, the O&M Works and the use of the Toll Road; and
 - (b) the second Party gives its prior written consent (not to be unreasonably withheld or delayed) in each particular case.
- 23.2 The use by the Developer of the Secondary Developments shall not survive the termination of this Agreement.
- 23.3 The Developer agrees that the Grantor (and/or its nominees) shall in particular have a priority right to place electricity and telecommunications cables and fibre optics within the Sites at no charge to either Party.
- 23.4 The Grantor agrees that the Developer (and/or its nominees) shall in particular have a priority right to develop gas stations and service areas within the Sites at no charge to either Party.
- 23.5 The Developer shall, at its own cost, maintain, or if necessary, provide suitable alternative accommodation for the vendors at Melrose Hill.
- 24. DEVELOPER PAYMENTS**
- 24.1 In this Clause 24:
 - (a) "**Calculation Period**" means the periods set out in Clause 24.2;
 - (b) "**Upside Amount**" means the amount payable by the Developer to the Grantor, in respect of a particular Calculation Period in accordance with the Upside Formula;
 - (c) "**Upside Formula**" means the formula set out in Schedule 18.
- 24.2 The following provisions shall apply to the duration of Calculation Periods:
 - (a) the first Calculation Period shall commence on the first Handover Date and end on the last date of the calendar year in which the first Handover Date falls;
 - (b) the second Calculation Period and each successive Calculation Period until and including the penultimate Calculation Period shall commence on the first date of the next calendar year and end on the last date of that calendar year; and
 - (c) the last Calculation Period shall begin on the first date of the calendar year in which the Concession Period ends and end on the last date of the Concession Period.
- 24.3 The Parties agree that the Developer has entered into this Agreement on the basis of certain assumptions regarding the expected gross revenues to be earned by the Developer by, inter alia, the charging of Tolls. The Developer agrees that, in the event that the Developer's gross revenues are above those set out in the Base Case, it will pay the Upside Amount to the Grantor in relation to the relevant Calculation Period.
- 24.4 The Upside Formula shall determine the Upside Amount for each Calculation Period.
- 24.5 In respect of each Calculation Period and no later than 60 days after the end of the relevant Calculation Period, the Developer shall:

- (a) calculate the Upside Amount in accordance with the Upside Formula, and shall advise the Grantor of such amount (together with such supporting documentation and other information as is reasonably required to demonstrate the accuracy of the calculation); and
 - (b) pay to the Grantor the Upside Amount (if any) notified under paragraph (a).
- 24.6 If the Grantor disagrees with the Developer's calculation it shall notify the Developer to that effect.
- 24.7 If the Parties are unable to agree within 30 days of the Grantor's notification of its disagreement in accordance with Clause 24.6, any or all of the calculation of the Upside Amount for a particular Calculation Period, the dispute shall be referred to the Expert for determination.
- 24.8 No later than 7 days following the date on which (a) the Grantor and the Developer agree the Upside Amount for a particular Calculation Period or (b) if the Grantor and the Developer are unable to agree, the Expert determines the Upside Amount for a particular Calculation Period, the Developer shall pay to the Grantor the balance of the Upside Amount (if any) for such Calculation Period, with interest at the Reference Rate from the date the amount would have become due under Clause 24.5 to the date of payment.
- 24.9 The Developer shall retain for a minimum period of 10 years after the date on which the relevant data were created all source data and information used or relied upon by the Developer for the purpose of calculating the Toll Revenues, the Developer's other revenues and the Developer's operation and maintenance costs.
- 24.10 The source data and other information referred to in Clause 24.9 shall be made available for inspection by the Grantor (and its agents and advisers) during normal business hours and on prior notice to the Developer. The Grantor (and its agents and advisers) shall be entitled to take copies of such source data and other information as it or they see fit.
- 24.11 If any breach by the Developer of its undertakings under this Agreement has a material effect on the traffic on the Toll Road or part thereof, the data which was used for the purpose of payment under Clause 24.4 shall be determined such that the results of the payment will be as if the breach had not occurred.
- 24.12 For the avoidance of doubt, in no circumstances will the Grantor be liable to pay the Developer any sums under this Clause 24 in the event that the Developer's net revenues are less than the assumed levels.

24A. CERTIFICATES AND PAYMENT

24A.1 Payments made under Phase 1A

(a) Phase 1A Preliminary Payment and First Payment

- As far as Phase 1A is concerned, the Grantor shall pay to the Developer, as a Disbursement under, and subject to the conditions set out in, the GPD Loan Agreement, the Grantor's Proportion of the Preliminary Payment within five (5) Business Days after 21st November 2001.

- The Grantor shall pay to the Developer, as a Disbursement under, and subject to the conditions set out in, the GPD Loan Agreement, the EFC First Payment within five (5) Business Days after the Early Financial Close.

(b) Phase 1A Monthly Payments

The Grantor shall pay to the Developer the Grantor's Proportion of the Monthly Payments as set out in Schedule 19 and in accordance with the following principles:

- (1) At the end of each month after the First Payment, the Developer shall submit to the Grantor a Monthly Statement setting out:
 - i. the Time Related Cost Centres of an amount specified in the Payment Schedule for the month with respect to which the relevant Statement relates;
 - ii. the Variable Cost Centres of an amount specified in the relevant Statement (the Payment Schedule giving an indication only of the amount likely to be payable with respect to the month to which the relevant Statement relates);
 - iii. the progress of completion of each Fixed Cost Centre and each Fixed Cost Centre Task since the last Monthly Statement paid by the Grantor, (whether this is equal to, less than, or greater than the percentages set out for indicative purposes in the Payment Schedule);
 - iv. the amount of the Grantor's Proportion of the Monthly Payment payable by the Grantor with respect to that Monthly Statement; and
 - v. the payment instructions for the proposed Disbursement under the GPD Loan Agreement.

The application shall be accompanied by statements:

- from the Independent Engineer, endorsed by the Developer, that, in its opinion, the percentages of the relevant Fixed Cost Centres have been completed in accordance with the Concession Specification; and
- from the Developer that the amounts payable with respect to each Variable Cost Centre is a true and accurate reflection of the costs comprised in that Variable Cost Centre.

All Monthly Statements shall be sent together with evidence satisfactory to the Grantor in support of the opinions set out in the accompanying statements.

- (2) On receipt of each Monthly Statement, the Grantor's Representative shall either:
 - i. accept that Monthly Statement, by the issue of a Monthly Certificate, within fourteen (14) calendar days of that Monthly Statement, together with a list, if necessary, of all items of work to be rectified or completed by the next Monthly Statement. The Grantor shall then pay to the Developer as a Disbursement under the GPD Loan Agreement the Grantor's Proportion of the relevant Monthly Payment within five (5) Business Days of the issue of the Monthly Certificate; or
 - ii. reject all or part of the Monthly Statement solely on the basis that:
 - (A) the computations or amounts set out in the Monthly Statement are incorrect; or

- (B) that the Fixed Cost Centre Task has not been carried out; or that the Fixed Cost Centre Task has not been carried out in accordance with the Concession Specification.

In which case, the Grantor shall:

- issue to the Developer a Monthly Certificate related to the undisputed amount of the Monthly Statement within fourteen (14) calendar days of the relevant Monthly Statement. The Grantor shall pay as a Disbursement to the Developer under the GPD Loan Agreement the Grantor's Proportion of the Monthly Payment which corresponds to this undisputed amount (if any) within five (5) Business Days of the date of the issue of the Monthly Certificate, and
- notify the Developer of the basis for rejecting the disputed amount of the Monthly Statement (giving reasonable details) within seven (7) calendar days of receipt of the relevant Monthly Statement. The Parties shall then attempt in good faith to resolve that dispute for a further period of five Business Days. If an agreement is reached, the provisions of Clause 24.A.1 (b)(2)(i) shall apply. If an agreement is not reached, the Grantor shall, within five (5) Business Days, either pay the disputed amount of the Monthly Statement as a Disbursement under the GPD Loan Agreement, or refer to an expert for determination of the dispute in accordance with Clause 47 (Expert Determination). The Expert shall, on making his decision, issue the Monthly Certificate stating the amount which he has determined is due.

(c) Phase 1A Currency of payment by the Grantor

- a. With respect to each of the Grantor Early Project Commitment and the Grantor Phase 1B Commitment, fifty per cent (50%) of the amount of each Disbursement shall be paid in Jamaican Dollars and fifty per cent (50%) of the amount of each Disbursement shall be paid in US Dollars, save for the Disbursement related to the Preliminary Payment which shall be paid 100% in US Dollars.
- b. The amount of a Disbursement in Jamaican Dollars will be calculated as an amount equal to the US Dollar Amount (as defined in the GPD Loan Agreement) of the Disbursement converted to Jamaican Dollars at the Rate of Exchange (as defined in the GPD Loan Agreement), at the date of the payment.
- c. Fifty per cent. (50%) of the amount of each Disbursement under the GPD Loan Agreement shall be paid in Jamaican Dollars and fifty per cent (50%) of the amount of each Disbursement under the GPD Loan Agreement shall be paid in US Dollars, save for the Disbursement related to the Preliminary Payment which shall be paid 100% in US Dollars.

(d) Phase 1A Grantor's Proportion Maximum Amount

Notwithstanding any other provision of this Agreement:

- (a) the total amount of Disbursements payable under the GPD Loan Agreement pursuant to this Agreement shall not exceed, with respect to the Early Studies and the Early Project, the Grantor Early Project Commitment, (as defined in the GPD Loan Agreement); and

- (b) the maximum Disbursement under GPD Loan Agreement for the Early Studies shall be USD 2,200,000.

24A.2 Phase 1B Payments

24A.2.1 On or about the Financial Close 1B, the GPD Loan Agreement shall be terminated.

24A.2.2 The Grantor shall pay to the Developer the Subsequent Contribution under and subject to the terms and conditions set out in the Loan Conversion Agreement.

24A.2.3 The Developer shall pay the Monthly Payments as set out in Schedule H of the Construction Contract in accordance with the following principles:

- (a) At the end of each month after the first payment made at Financial Close 1B, the Developer shall submit to the Grantor a Monthly Statement setting out:
- (i) the Time Related Cost Centres of an amount specified in the Payment Schedule for the month with respect to which the relevant Monthly Statement relates;
 - (ii) the Variable Cost Centres of an amount specified in the relevant Monthly Statement (the Payment Schedule giving an indication only of the amount likely to be payable with respect to the month to which the relevant Monthly Statement relates); and
 - (iii) the progress of completion of each Fixed Cost Centre and each Fixed Cost Centre Task since the last Monthly Statement;

The application shall be accompanied by statements:

- (i) from the Independent Engineer, endorsed by the Developer, that, in its opinion, the percentages of the relevant Fixed Cost Centres have been completed in accordance with the Concession Specification; and
- (ii) from the Developer that the amounts payable with respect to each Variable Cost Centre is a true and accurate reflection of the costs comprised in that Variable Cost Centre.

All Monthly Statements shall be sent together with evidence satisfactory to the Grantor in support of the opinions set out in the accompanying statements.

- (b) On receipt of each Monthly Statement, the Grantor's Representative shall either:
- (i) accept that Monthly Statement, by the issue of a Monthly Certificate, within fourteen (14) calendar days of that Monthly Statement, together with a list, if necessary, of all items of work to be rectified or completed by the next Monthly Statement; or
 - (ii) reject all or part of the Monthly Statement solely on the basis that:
 - (A) the computations or amounts set out in the Monthly Statement are incorrect; or
 - (B) that the Fixed Cost Centre Task has not been carried out; or that the Fixed Cost Centre Task has not been carried out in accordance with the Concession Specification.

In which case, the Grantor shall:

- (1) issue to the Developer a Monthly Certificate related to the undisputed amount of the Monthly Statement within fourteen (14) calendar days of the relevant Monthly Statement, and
- (2) notify the Developer of the basis for rejecting the disputed amount of the Monthly Statement (giving reasonable details) within seven (7) calendar days of receipt of the relevant Monthly Statement. The Parties shall then attempt in good faith to resolve that dispute for a further period of five (5) Business Days. If an agreement is reached, the provisions of Clause 24.A.2.3 (b)(i) shall apply. If an agreement is not reached, the Grantor shall refer to an expert for determination of the dispute in accordance with Clause 47 (Expert Determination). The Expert shall, on making his decision, issue the Monthly Certificate stating the amount which he has determined is due.

25. COMPENSATION AMOUNT

- 25.1 The Grantor shall pay the Developer the amount of any Compensation Amount which may from time to time be due in accordance with the provisions of this Agreement within 30 days after receipt of an invoice accompanied by a properly completed certificate.
- 25.2 The payments to be made by the Grantor whether by way of Compensation Amount or otherwise shall be as expressly stated in this Agreement and shall not be increased or reduced save in accordance with:
- (a) Clause 19.6 (Grantor Variations);
 - (b) Clause 20.3 (Change of Law);
 - (c) Clause 25.6 (Grantor Breach, Qualifying Force Majeure Event, Prolonged Force Majeure Event and delay in the entry into force of the Toll Roads Bill as an Act of the Parliament of Jamaica);
 - (d) Clause 25.8 (Competing Roads);
 - (e) Clause 25.9 (GPD Loan Agreement); or
 - (f) a Variation agreed in accordance with Clause 19.8 (Grantor Variations).
- 25.3 Where the amount of any payment is disputed, the undisputed amount shall be paid. Either Party shall refer to an Expert any dispute about the calculation of any Compensation Amount for determination in accordance with Clause 47 (Expert Determination). Where a disputed amount is determined by the Expert to be due, it shall be paid within 7 days after the date of determination, with interest at the Reference Rate from the date the amount would have become due under Clause 25.4 above to the date of payment.
- 25.4 If any supply made under or contemplated by this Agreement is or becomes chargeable to GCT then the person receiving that supply (the "**Recipient**") shall in addition pay the amount of that GCT to the person making the supply (the "**Supplier**") against receipt by the Recipient from the Supplier of a proper GCT invoice in respect of the supply.
- 25.5 The Parties acknowledge the tax exemptions to be made available to the Developer pursuant to the Implementation Agreement.

25.6 The Developer shall be entitled to a payment of, or an adjustment to, the Compensation Amount if:

- i. a breach by the Grantor of its obligations under this Agreement, including, without limitation, a delay in payment under the GPD Loan Agreement leading to a suspension under Clause 5.7 and a delay in the entry into force of the Toll Roads Bill as an Act of the Parliament of Jamaica until after the EFC Long Stop Date; or
- ii. the occurrence of a Qualifying Force Majeure Event;
- iii. a Prolonged Force Majeure Event;
- iv. a Grantor Variation; or
- v. a Qualifying Change of Law,

increases the costs of the Developer as set out in the Schedule of Task, including costs of construction or operation and maintenance of the Toll Road (whether or not, with respect to paragraph (ii) above, that increase occurs during the period that the relevant Qualifying Force Majeure Event or Prolonged Force Majeure Event is subsisting), or results in the Developer losing revenue, provided that the Developer has, in accordance with Good Engineering and Operating Practices, mitigated any such increase in costs (and/or loss of revenue), and the payment of, or an adjustment to, the Compensation Amount shall (subject to Clause 12.2 (Time for Completion) and the provisions of Clause 26.6 be the sole remedy available to the Developer for that breach or event. The adjustment will be calculated so as to put the Developer in the same Financial Position (in accordance with Clause 40.3) as it would have been in had the Grantor's breach or Qualifying Force Majeure Event or Prolonged Force Majeure Event not occurred.

25.7 Any claim for a payment of, or an adjustment to, the Compensation Amount mentioned in Clause 25.6 must be made by notice from the Developer to the Grantor's Representative within 28 days after the date on which the Developer became aware of the increased costs and/or (if applicable), the loss of revenue, or (if earlier) of the date on which it should have become so aware. The notice must set out the Developer's estimate of the increase in its costs as set out in the Schedule of Task, including costs of construction or operation and maintenance costs and/or (if applicable), the loss of revenue, due to the breach by the Grantor and must be supported by full details of the claim. As soon as practicable after the Grantor receives the Developer's notice the Parties shall discuss and agree the estimated increase in the Developer's costs as set out in the Schedule of Task, including costs of construction or operation and maintenance costs and/or (if applicable), the loss of revenue, due to the breach, Qualifying Force Majeure Event, Prolonged Force Majeure Event, Grantor Variation, Qualifying Change of Law. If the Parties cannot agree on the costs and/or the amount of lost revenue due to the breach, Qualifying Force Majeure Event, Prolonged Force Majeure Event, Grantor Variation or Qualifying Change of Law, then the dispute shall be determined by an Expert in accordance with Clause 47 (Expert Determination). Notwithstanding the foregoing, the Grantor shall not be liable for the additional costs in construction or operation and maintenance and/or the loss of revenue resulting from a Prolonged Force Majeure Event to the extent those costs arise or revenue is lost within the first nine months of the occurrence of the relevant Force Majeure Event.

25.8 The Developer shall be entitled to a payment of, or an adjustment to, the Compensation Amount to reflect any reduction in traffic levels that arise solely from the carrying out of works by or on behalf of the Government of Jamaica which:

- (a) provides a new rail public transport passenger link between Spanish Town and Kingston; or
- (b) enhances the speed or capacity of competing roads within the transport corridor served by the Toll Road,

except those schemes or projects included in the list below:

- (i) Northern Jamaican Development Project improving the Northern coastal road from Negril to Fair Prospect
- (ii) Upgrading of the Three Miles roundabout in Kingston;
- (iii) Improvement to the Jose Marti and Old Harbour roundabouts on Spanish-Town by pass;
- (iv) Widening of Washington Boulevard, in Kingston, between Molynes Road and Duhaney Park Avenue;
- (v) expansion and upgrading of Port Bustamante in Kingston; and
- (vi) expansion and upgrading of Norman Manley International Airport in Kingston and Sangster International Airport in Montego Bay.
- (vii) the refurbishment of the existing single track passenger rail link between Kingston, Spanish Town and Williamsfield, and Spanish Town and Ewarton, (to the level operating before the closure of the rail link for the carriage of passengers).

For the purposes of determining the amount of Compensation Amount payable under this Clause, the reduction in actual traffic levels on the Toll Road (if any) will be determined by an independent traffic advisor mutually agreed between the Grantor and the Developer. If no agreement can be reached on the appointment of the independent traffic adviser, either Party may request the President of the International Chamber of Commerce to appoint the independent traffic adviser.

25.9 Provided that the Developer has given the Grantor 5 Business Days' notice of a delay in a payment to be made by the Grantor to the Developer under the GPD Loan Agreement, the Developer shall be entitled to a payment of, or an adjustment to, the Compensation Amount to reflect any costs to the Developer which arise after the notice period has elapsed and which are directly caused by the delay.

25.10 To the extent that the Developer receives or has a right to receive any sum from any person (including without limitation any State entity or insurance company) with respect to any event for which the Developer has received or has a claim for a Compensation Amount hereunder, then the Developer shall hold that sum and that right and its proceeds on trust for the Grantor absolutely and shall assign the same free of any security to the Grantor and give the Grantor reasonable assistance in recovering the same.

26. FORCE MAJEURE

26.1 No Party shall be in breach of its obligations under this Agreement (other than payment obligations) or incur any liability to the other Party for any losses or damages of any nature whatsoever incurred or suffered by that other (otherwise than under any express indemnity in this Agreement) if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure Event except to the

extent that the relevant breach would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure Event had not occurred (in which case this Clause 26 shall not apply to that extent).

- 26.2 As soon as reasonably practicable following the date of commencement of a Force Majeure Event, and within a reasonable time following the date of termination of a Force Majeure Event, any Party invoking it shall submit to the other Party reasonable proof of the nature of the Force Majeure Event and of its effect upon the performance of the Party's obligations under this Agreement.
- 26.3 The Developer shall, and shall procure that its sub-contractors shall, at all times take all reasonable steps within their respective powers and consistent with Good Engineering and Operating Practices (but without incurring unreasonable additional costs) to:
- (a) prevent Force Majeure Events affecting the performance of the Developer's obligations under this Agreement;
 - (b) mitigate the effect of any Force Majeure Event; and
 - (c) comply with its obligations under this Agreement and (without limiting any of its other obligations under this Clause 26.3) comply with the Concession Specification in respect of the Toll Road to the extent not prevented by the relevant Force Majeure Event.

The Parties shall consult together in relation to the above matters following the occurrence of a Force Majeure Event.

- 26.4 This clause is without prejudice to the requirement for the Developer to comply with Clause 12 (Time for Completion) in order to obtain extensions of time for any Force Majeure Event.
- 26.5 Should Clause 26.1 apply as a result of a single Force Majeure Event for a continuous period of more than 9 months (a "**Prolonged Force Majeure Event**") then subject to Clause 26.6 the provisions of Clause 25.6 (Compensation Amount) shall apply, provided that the Developer shall assign to the Grantor its rights of compensation in respect of any Force Majeure Event arising from an expropriation, sequestration or requisition by the Government of Jamaica.
- 26.6 Either Party may, following a Prolonged Force Majeure Event affecting the other Party's obligations under this Agreement, at its option and instead of paying any additional costs established pursuant to Clause 25.6 (Compensation Amount) by notice to the other Party terminate the Parties' rights and obligations under this Agreement to the extent they relate to the affected Phase.
- 26.7 Save as provided in Clauses 25.6 (Compensation Amount) and 31 (Termination Payments) the Grantor shall not be liable for any costs resulting from a Force Majeure Event or a Qualifying Force Majeure Event.

27. TERMINATION BY DEVELOPER

- 27.1 If:
- (a) the Grantor fails to pay an amount of money exceeding US\$100,000 due under this Agreement, and that amount remains outstanding for more than 90 days;

- (b) the Government expropriates, sequestrates or requisitions (by a single or a series of events) the whole or substantially the whole of the Toll Road, the Contract Plant, the Construction Works, or the Contractor's Equipment);
- (c) the Grantor is in breach, and that breach has not been remedied for more than 90 days, of any of its obligations under this Agreement, the GPD Loan Agreement, the Lease Agreement, the Grantor Working Capital Reserve Agreement, the NROCC Funding Agreement, the NROCC Direct Agreement and the Loan Conversion Agreement:
 - (i) in a manner or to an extent that is material in the context of the Grantor's obligations, and/or the Developer's rights, under this Agreement or the Developer's obligations under any Financing Agreement (including, but not limited to, when such breach causes or contributes to an event of default under clause 9 ("*Events of Default and Remedies*") of the common terms agreement entered into by and between Developer and the Lenders on or around the date of this Agreement, being one of the Phase 1B Financing Agreements (the "**Common Terms Agreement**")); or
 - (ii) where the breach is:
 - (A) deliberate or wilful; or
 - (B) indicates an intention, desire or preference not to comply with the relevant obligations; or
 - (C) is repeated or persistent to such an extent as is, in the Developer's reasonable opinion, material;
- (d) the Lenders take any or all of the actions and remedies under clause 9.2 ("*Remedies*") of the Common Terms Agreement as a result of NROCC causing or contributing to an event of default under and in accordance with the provisions of clauses 9.1.6 ("*Misrepresentation*"), 9.1.8 ("*Involuntary Proceedings*"), 9.1.9 ("*Voluntary Proceedings*"), 9.1.10 ("*Inability to Pay Debts*"), 9.1.11 ("*Events Analogous to Bankruptcy, Insolvency, Etc.*"), 9.1.13 (c) ("*Judgments*") and/or 9.1.14 ("*Legal Proceedings*") of the Common Terms Agreement;
- (e) the Government of Jamaica is in breach, for more than 90 days, of its obligations under the Implementation Agreement, the Government Guarantee or any other document with respect to the Project to which it is a party or that it issued;
 - (i) in a manner or to an extent that is material in the context of the Grantor's obligations, and/or the Developer's rights, under this Agreement or the Developer's obligations under any Financing Agreement (including, but not limited to, when such breach causes or contributes to an event of default under clause 9 ("*Events of Default and Remedies*") of the Common Terms Agreement); or
 - (ii) where the breach is:
 - (A) deliberate or wilful; or
 - (B) indicates an intention, desire or preference not to comply with the relevant obligations,
 - (C) is repeated or persistent to such an extent as is, in the Developer's reasonable opinion, material;
- (f) the Grantor's ability to act as Grantor under the Jamaican legislation is terminated by, or becomes ineffective due to, an act of the Government of Jamaica, and this termination or ineffectiveness lasts for more than 90 days; or

- (g) the Grantor's ability to act as Grantor under the Jamaican legislation is terminated or becomes ineffective due to a final decision of the Privy Council of the United Kingdom or any final appellate court of Jamaica, which is brought about by a third party constitutional proceeding.

the Developer may give the Grantor a notice in writing (a "**Developer Termination Notice**") specifying (i) (in the case of paragraph (a)) the non-payment of the amount and requiring payment of that amount or (ii) (in the case of paragraph (b)) specifying the act concerned and requiring release of the same, within 60 days or such further period as may be allowed by the Developer or (iii) (in the case of paragraph (c)) specifying the breach that shall be remedied within 60 days or (iv) (in the case of paragraph (d) or (e)) specifying the breach that will lead to termination.

- 27.2 Upon expiry of the Developer Termination Notice, the Developer may, unless the ground or grounds for termination specified in the notice has or have been remedied, without prejudice to any other right under this Agreement, by notice to the Grantor forthwith terminate this Agreement.
- 27.3 This Clause shall not apply in the case of Clause 27.1 to amounts which are disputed by the Grantor to be due and which have been referred to the Expert for determination in accordance with the terms of this Agreement and in respect of which the Expert has not made a determination.
- 27.4 If a Qualifying Change of Law makes it illegal or impossible (but not merely more expensive) for the Developer to perform substantially all its material obligations under this Agreement in respect of any Phase, then (subject to the following provisions of this Clause 27.4) the Developer may give 90 days' notice to the Grantor to terminate this Agreement and unless the illegality or impossibility has been removed prior to the expiry of that notice, the Parties' rights and obligations under this Agreement shall terminate on such expiry. However, the Developer shall not give any such notice in respect of any action or change that results from any breach by the Developer (or any of its employees, agents or sub-contractors) of:
 - (a) any obligation of any such person under this Agreement or the Land Documents; or
 - (b) any Statutory Requirement or Required Consent.

28. TERMINATION BY GRANTOR

- 28.1 If:
 - (a) the Developer shall in whole or in part assign this Agreement, remove or replace the Contractor or sub-let the whole or a part of the Construction Works otherwise than in accordance with Clause 34 (Assignment and Security) or remove or replace the Contractor or the Operator otherwise than in accordance with Clauses 35.2 and 35.3 (Sub-Contractors); or
 - (b) the Grantor is entitled to terminate the Early Project under Clause 12.5(b) (Time for Completion) of this Agreement or Phase 1A of this Agreement under Clause 12.6(b) (Time for Completion) or Phase 1B of this Agreement under Clause 12.7(b) (Time for Completion); or
 - (c) there is a breach of this Agreement under Clause 33 (Transfers and Amendments); or
 - (d) a Prohibited Act is committed:

- i. by the Developer or by an employee not acting independently of the Developer; or
 - ii. by an employee of the Developer acting independently of the Developer; or
 - iii. by a sub-contractor or by an employee of that sub-contractor not acting independently of that sub-contractor; or
 - iv. by an employee of a sub-contractor acting independently of that sub-contractor; or
 - v. by any other person not specified in paragraphs (i) to (iv) above; or
- (e) the Developer is in breach of any of its obligations under this Agreement:
- i. in a manner or to an extent that is material in the context of the Developer's obligations, and/or the Grantor's rights, under this Agreement or any other agreement with respect to the Project to which it is a party or which it issued and/or the Grantor's statutory and other duties and functions; or
 - ii. where the breach is:
 - (A) deliberate or wilful; or
 - (B) indicates an intention, desire or preference not to comply with the relevant obligations; or
 - (C) is repeated or persistent to such an extent as is, in the Grantor's reasonable opinion, material;
- (f) the Bouygues Travaux Publics fails to subscribe for equity and/or advance moneys in accordance with the Shareholders Equity Undertaking and that amount remains outstanding for more than 90 days;
- (g) the Developer, the Contractor, the Operator or the Sponsor breaches or seeks to vary (without the Grantor's consent) any material term of a Project Agreement;
- (h) the Developer fails to pay within 90 days of demand any amount exceeding US\$100,000 required to be paid by it in accordance with this Agreement, or
- (i) the Developer receives three or more Warning Notices,

then the Grantor may give in relation to the provisions set out in paragraphs (a), (c), (d), (f), (h) or (i) above not less than 60 days' notice in writing and in relation to the provisions set out in paragraphs (b) (e) or (g) above, not less than 120 days' notice in writing (a "**Grantor Termination Notice**") to the Developer to terminate the Parties' rights and obligations under this Agreement.

28.2 In the Grantor Termination Notice the Grantor shall specify the ground or grounds of termination and details of the breach or breaches concerned. If the ground or grounds are any of those mentioned under Clause 28.1(d) the Grantor Termination Notice shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Grantor believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate.

28.3 Upon the expiry of a Grantor Termination Notice the Grantor may, without prejudice to any other remedy under this Agreement, by notice to the Developer, immediately terminate this Agreement and the relevant Land Documents and enter the relevant Sites and expel the Developer from them, but without releasing the Developer from any of its obligations or liabilities which have accrued under this Agreement and without affecting the rights and powers conferred by this Agreement on the Grantor or the Grantor's Representative, unless:

- (a) the ground or grounds for termination specified in the notice has or have been remedied; or
- (b) in respect of the grounds mentioned under Clauses 28.1(d)(ii) and (iv) the Developer has terminated the employee's employment and (if necessary) procures the performance of the relevant obligations by another person; or
- (c) in respect of the ground mentioned under Clause 28.1(d)(iii), the Developer has terminated the relevant agreement which created the sub-contractor's obligations and procures the performance of those obligations by another person; or
- (d) in respect of the ground mentioned under Clause 28.1(d)(v), the Developer has procured the termination of the person's employment and of their employer's (where not employed by the Developer or a sub-contractor of the Developer) and (if necessary) the performance of the relevant obligations by another person; or
- (e) in respect of the ground mentioned under Clause 28.1(e), remedial action has commenced and is being pursued with all diligence and is completed to the reasonable satisfaction of the Grantor within a reasonable period.

28.4 For the purposes of this Clause 28, the "relevant Land Documents", the "relevant Sites" and the "relevant Construction Works" shall mean:

- (a) Not Used
- (b) Not Used
- (c) in the case of a termination of this Agreement, the Land Documents, the Sites and the Construction Works.

29. BANKRUPTCY AND INSOLVENCY

If an Insolvency Event occurs in relation to the Developer:

- (a) the Grantor shall be entitled to terminate this Agreement forthwith (and without payment of any amount by way of compensation except under Clause 31 (Termination Payments)) by notice to the Developer or to the administrator, receiver, manager or liquidator or to any person in whom this Agreement may become vested, in any of which events the provisions of Clause 28 (Termination by Grantor) shall apply; or
- (b) where the Insolvency Event comprises the appointment of a receiver by a secured creditor of the Developer in respect of financing provided under the Phase 1A Financing Agreements and/or Phase 1B Financing Agreements and such appointment is not withdrawn on or before ninety (90) days after the date of such appointment, the receiver (acting pursuant to the terms of the relevant Phase 1A Financing Agreement and Phase 1B Financing Agreement on behalf of the Developer) shall be entitled to terminate this Agreement by giving a thirty (30) days notice in writing to the Developer and the Grantor (and in such event, without prejudice to the proviso to this paragraph (b), the Grantor shall not be liable to pay any amount by way of compensation in respect of such termination except under Clause 31 (Termination Payments), and on such termination, the provisions of Clause 28 (Termination by the Grantor) shall apply as if the Grantor has terminated this Agreement under paragraph (a) of this Clause 29, provided however that the right of the receiver to terminate this Agreement under this paragraph (b), or the exercise of that right by the receiver, shall not affect or diminish the Developer's rights

pursuant to Clause 26.6 insofar as the Insolvency Event has been caused by Prolonged Force Majeure or pursuant to Clause 27 insofar as the Insolvency Event has been caused by a breach of the Grantor giving rise to a right of termination of this Agreement by the Developer, as the case may be, and provided further that the right of the receiver to terminate this Agreement under this paragraph (b) shall not affect or diminish the Grantor's right to terminate under paragraph (a) of this Clause 29.

30. VOLUNTARY TERMINATION

- 30.1 The Grantor shall be entitled to terminate this Agreement by giving not less than 12 months and no more than 18 months' written notice to the Developer. Any such notice shall be irrevocable by the Grantor.
- 30.2 If the payment specified in Clause 31.1 (Termination Payments) in the case of termination under this Clause 30 has not been paid in full, in accordance with the provisions of this Agreement, then the termination by the Grantor pursuant to Clause 30.1 shall not take effect until such payment has been paid in full. If, by a date three months after the date such payment is due, such payment has not been paid in full the Developer may, by notice to the Grantor, cancel such termination, in which case the Concession Period shall continue and any right of the Grantor under Clause 30.1 shall terminate and the Grantor shall pay the Developer's costs arising from actions taken as a result of the notice given in Clause 30.1.

31. TERMINATION PAYMENTS

31.1 Grantor Responsibility Termination

- (a) If a Grantor Responsibility Termination occurs in respect of this Agreement prior to Early Financial Close, the Grantor shall pay the Developer by way of compensation a capital sum calculated in accordance with Part 1.1 of Schedule 12.
- (b) If a Grantor Responsibility Termination occurs in respect of this Agreement on or after Early Financial Close but prior to Financial Close 1A, the Grantor shall pay the Developer by way of compensation a capital sum calculated in accordance with Part 1.2 of Schedule 12.
- (c) If a Grantor Responsibility Termination occurs in respect of this Agreement on or after Financial Close 1A but prior to Financial Close 1B, the Grantor shall pay the Developer by way of compensation a capital sum calculated in accordance with Part 1.3 of Schedule 12.
- (d) If a Grantor Responsibility Termination occurs in respect this Agreement on or after Financial Close 1B and the whole of the Agreement is terminated the Grantor shall pay the Developer by way of compensation a capital sum calculated as the aggregate of:
- i. the capital sum calculated in accordance with Part 1.3 of Schedule 12; and
 - ii. the capital sum calculated in accordance with Part 1.4 of Schedule 12.

31.2 Developer Responsibility Termination

- (a) If a Developer Responsibility Termination occurs in respect of this Agreement prior to Early Financial Close, the Grantor shall pay the Developer by way of compensation a capital sum calculated in accordance with Part 2.1 of Schedule 12.

- (b) If a Developer Responsibility Termination occurs in respect of this Agreement on or after Early Financial Close but prior to Financial Close 1A, the Grantor shall pay the Developer by way of compensation a capital sum calculated in accordance with Part 2.2 of Schedule 12.
- (c) If a Developer Responsibility Termination occurs in respect of this Agreement on or after Financial Close 1A but prior to Financial Close 1B, the Grantor shall pay the Developer by way of compensation a capital sum calculated in accordance with Part 2.3 of Schedule 12.
- (d) If a Developer Responsibility Termination occurs in respect this Agreement on or after Financial Close 1B and the whole of the Agreement is terminated, the Grantor shall pay the Developer by way of compensation a capital sum calculated as the aggregate of:
 - i. the capital sum calculated in accordance with Part 2.3 of Schedule 12; and
 - ii. the capital sum calculated in accordance with Part 2.4 of Schedule 12.

31.3 No Responsibility Termination

- (a) If a No Responsibility Termination occurs in respect of this Agreement prior to Early Financial Close, the Grantor shall pay the Developer by way of compensation a capital sum calculated in accordance with Part 3.1 of Schedule 12.
- (b) If a No Responsibility Termination occurs in respect of this Agreement on or after Early Financial Close but prior to Financial Close 1A, the Grantor shall pay the Developer by way of compensation a capital sum calculated in accordance with Part 3.2 of Schedule 12.
- (c) If a No Responsibility Termination occurs in respect of this Agreement on or after Financial Close 1A but prior to Financial Close 1B, the Grantor shall pay the Developer by way of compensation a capital sum calculated in accordance with Part 3.3 of Schedule 12.
- (d) If a No Responsibility Termination occurs in respect this Agreement on or after Financial Close 1B and the whole of this Agreement is terminated, the Grantor shall pay the Developer by way of compensation a capital sum calculated as the aggregate of:
 - i. the capital sum calculated in accordance with Part 3.3 of Schedule 12; and
 - ii. the capital sum calculated in accordance with Part 3.4 of Schedule 12.

31.4 To the extent that the Developer has the right to receive any insurance or bond proceeds in or sums due and payable from third parties in respect of the Phase being terminated, but in either case such proceeds or sums (as applicable) have not been irrevocably received by the Developer by or before the Termination Date then in such case the Developer shall hold such right and such proceeds and sums on trust for the Grantor absolutely and shall assign any such rights and claims free of any security in relation to such insurance or bond proceeds and sums due and payable from third parties to the Grantor and give the Grantor reasonable assistance in prosecuting such rights and claims.

31.5 The sum paid under this Clause in respect of any termination is in full and final settlement of all the Developer's claims and rights against the Grantor for breaches and/or termination of this Agreement whether under contract, tort, restitution or otherwise but it is without prejudice to:

- (a) any antecedent liability of the Developer to the Grantor which may be set off pursuant to Clause 45.12 of this Agreement;
- (b) any antecedent liability of the Grantor to the Developer that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the sum due on termination; or
- (c) any breach by either party of their obligations under this Agreement which continue after the Termination Date.

31.6 Any sum due under this Clause 31 shall be paid:

- (a) in the case of sums due from the Grantor to the Developer, less any amounts referred to in Clause 31.5(a), by the Grantor to the Developer in a single instalment on the day falling 30 days after the date that is the later of:
 - (i) the date that the Grantor receives an invoice from the Developer for such sums; and
 - (ii) the date that the Grantor receives a signed certificate from the Lenders with respect to the amount of the Developer Senior Debt, and with respect to all other sums, certified audited statements demonstrating the amount of such claims; and
- (b) in the case of sums due from the Developer to the Grantor, by the Developer to the Grantor within 30 days after the date that the Developer receives an invoice from the Grantor for such sums.

31.7 In addition to such sums the Grantor will pay to the Developer, or the Developer shall pay to the Grantor (as the case may be), interest on the sums due under this Clause 31 (or any part that remains outstanding) at the Reference Rate from (but excluding) the Termination Date to (and including) the date on which such sum falls due or if earlier the date of payment of such sums (or part thereof).

31.8 The Developer will give to the Grantor the invoice and supporting information referred to in Clause 31.6 as soon as practicable and in any event within 30 days of the Termination Date.

31.9 The costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this Clause 31 shall only be such costs and/or expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

31.10 The Developer and the Grantor shall use all reasonable endeavours to mitigate all costs and expenses and other sums claimed as part of or as deductions from any termination sums due pursuant to this Clause 31.

31.11 The amount of any compensation paid pursuant to this Clause 31 including the identification and calculation of each element comprised in or to be deducted from it, the ascertainment of any amount or matter requiring to be estimated or anticipated and (where so required by the provisions of this Clause 31) the reasonableness of any amount or matter, shall be as agreed between the Parties or, if they are unable to agree within a period which is reasonable in the light of the amounts and matters requiring to be so identified, ascertained or calculated, as referred to and determined in accordance with Clause 48 (Disputes) and so that an interim or partial amount of compensation may be declared payable pending final determination where, because of difficulty in resolving particular elements comprised in it,

undue delay would otherwise be caused in payment or commencement of payment of compensation.

31.12 If the payment of any amount is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with Clause 48 (Disputes).

31.13 The Grantor shall be entitled but shall not be obliged to rely on the certificate of the Lender's Agent as conclusive as to the amount of the Developer Senior Debt.

31.14 In this Clause 31:

- (a) **"Grantor Responsibility Termination"** means a termination of this Agreement:
- i. by the Developer in accordance with Clause 2.2(b) (Conditions Subsequent regarding Early Financial Close), or Clause 2.3(b) (Conditions Subsequent Regarding Financial Close 1A) or Clause 2.4(b) (Conditions Subsequent Regarding Financial Close 1B);
 - ii. by the Developer in accordance with Clause 27.2 (Termination by Developer);
 - iii. by the Developer in accordance with Clause 27.4 (Termination by Developer);
 - iv. by the Grantor in accordance with Clause 30 (Voluntary Termination); or
 - v. by the Grantor or the Developer for Prolonged Force Majeure in accordance with Clause 26.6 (Force Majeure) provided that the relevant Event of Force Majeure is solely due to expropriation, sequestration or requisition by the Government of Jamaica (by a single or a series of events) of any part of the Toll Road, the Contract Plant, the Construction Works, or the Contractor's Equipment);
- (b) **"Developer Responsibility Termination"** means a termination of this Agreement by the Grantor (or by a receiver appointed by a secured creditor of the Developer in respect of financing provided under the Phase 1A Financing Agreements and/or Phase 1B Financing Agreements, in the case of subclause (iii) below):
- i. by the Grantor in accordance with Clause 2.2(a) (Conditions Subsequent regarding Early Financial Close), Clause 2.3(a) (Conditions Subsequent Regarding Financial Close 1A); Clause 2.4(a) (Conditions Subsequent Regarding Financial Close 1B); or
 - ii. in accordance with Clause 28.3 (Termination by Grantor) (other than for a reason specified in Clause 28.1(d)); or
 - iii. in accordance with Clause 29 (Bankruptcy and Insolvency); and
- (c) **"No Responsibility Termination"** means a termination of this Agreement :
- i. by the Grantor or by the Developer in accordance with Clause 2.2(c) (Conditions Subsequent regarding Early Financial Close), Clause 2.3(c) (Conditions Subsequent Regarding Financial Close 1A) or Clause 2.4(c) (Conditions Subsequent Regarding Financial Close 1B);
 - ii. by the Grantor in accordance with Clause 28.3 (Termination by Grantor) for a reason specified in Clause 28.1(d) (Prohibited Acts); or
 - iii. by the Grantor or by the Developer in accordance with Clause 26.6 (Force Majeure).

32. OTHER CONSEQUENCES OF TERMINATION**32.1** On termination of this Agreement for any reason:

- a. the relevant Land Documents shall terminate in accordance with their terms and both the Grantor and the Developer will execute any deeds reasonably required to record the termination of the relevant Land Documents;
- b. all interests in the Toll Road shall vest in the Grantor or any person nominated by it;
- c. up-to-date versions of all maintenance manuals, project specific health and safety manuals and drawings referred to in Clause 13.5 (Design Information Drawings and Manuals) shall be delivered to the Grantor;
- d. all other books and records reasonably required to enable the Grantor or a successor concessionaire to own, operate and maintain the Toll Road shall be delivered to the Grantor;
- e. the Grantor shall be entitled (and the Developer shall ensure that this right is obtained) to purchase all spare parts, tools and moveable property used in the Toll Road (to the extent owned or leased (to the extent possible, the Developer having used all reasonable endeavours to enable such leased property to be transferred) by the Developer) free from all liens, charges and encumbrances at fair market value as agreed by the Parties or in default of agreement within thirty (30) days of termination as determined by the Expert;
- f. the Developer shall transfer the rights to all development studies and other studies and investigations made for the purpose of the Construction Works to the Grantor; and
- g. the Developer shall transfer all its receivables to the Grantor,
- h. provided that in the event of termination by the Developer pursuant to Clause 27.2 or 27.4 (Termination by Developer) or Clause 30.1 (Voluntary Termination), if the Developer incurs costs or expenses arising from the obligations set out in this Clause 32.1, the Grantor shall reimburse the Developer for such costs reasonably and properly incurred. The Grantor may request such documentary evidence as it shall require to determine whether the costs of the Developer have been reasonably and properly incurred.

32.2 If so required by the Grantor, as soon as practicable after termination in accordance with Clause 27 (Termination by Developer), Clause 28 (Termination by Grantor) or Clause 29 (Bankruptcy and Insolvency) the Developer shall assign or procure the assignment to the Grantor or to any contractor nominated by it the benefit of any or all of the contracts and sub-contracts relating to the O&M Works and the Construction Works which have been let by the Developer or the Contractor together (including but without limitation the Project Agreements) with all relevant Required Consents (to the extent capable of transfer or assignment). The Grantor may itself complete the Toll Road or the Phase being terminated (as the case may be) in accordance with this Agreement or may employ any other contractor so to do.

32.3 For the purposes of this Clause 32, the "relevant Land Documents" and the "relevant Phase" shall mean in the case of a termination of Phase 1A, the Phase 1A Land Documents and Phase 1A;

- 32.4 In the event of a Developer Responsibility Termination before Early Finance Close, the cash balances held by the Developer would be transferred to the Grantor.

33. TRANSFERS, AMENDMENTS AND DISTRIBUTIONS

- 33.1 Shares in the capital of the Developer may be freely transferred and new Shares in the capital of the Developer may be issued provided that (a) the Sponsor and Autoroutes du Sud de la France, together with any affiliate or parent company, remains the holder of a minimum of 51% (fifty-one percent) of the shares in the capital of the Developer, (b) the transfer is made in accordance with Clause 33.2, (c) the Grantor has consented to the transfer (including pursuant to any consent granted in an agreement between among the Grantor and the Lenders under the Phase 1B Financing Agreements) or (d) the transfer is made after the earlier of the date falling two years after the Phase 1B Handover Date and the date falling four years after the Phase 1A Handover Date. The Developer shall procure that the Shareholders Equity Undertaking contains provisions giving effect to the provisions of Clauses 33.1 and 33.2.
- 33.2 Shares may be transferred upon the insolvency of any shareholder firstly to other shareholders in the Developer on a pre-emptive basis and thereafter, but only with the prior written consent of the Grantor, to any third party.
- 33.3 The Developer shall not be entitled to pay any dividends or make other similar distributions to the Shareholders until the Phase 1A Handover Date. The Developer shall not pay any dividend or other similar distribution (or make any payment or other distribution which would result in such payment being made by a third party) to the Sponsor or to any of their Affiliates which would cause the IRR of the Sponsor to exceed eleven percent (11 %) (in real terms and after tax) unless the Phase 1C Handover Date has occurred.

The amount which is equal to any distribution to the Sponsor in excess of such limit shall be paid by the Developer annually to the Grantor.

For the avoidance of any doubt, the foregoing limit does not apply to dividend or similar distribution made (or to be made) to a Lender Shareholder.

- 33.4 If the Grantor consents under Clause 35.2 (Sub-Contractors) to a replacement Contractor or under Clause 35.3 (Sub-Contractors) to a replacement Operator, Clause 33.1 shall not apply to a transfer, contemporaneously with the taking effect of the appointment of the replacement Contractor or Operator (as the case may be), to such replacement Contractor or Operator (or to one of its Affiliates) of the entire interest in the equity share capital of the Developer held by the Contractor or Operator which is being replaced together with any such interest held by any Affiliate of such Contractor or Operator, provided that the acceptability to the Grantor of the replacement Contractor or Operator or its Affiliates as shareholders in the Developer is a ground on which the Grantor may withhold its consent to the replacement (or impose conditions thereon) under Clause 35.2 or Clause 35.3, as applicable.
- 33.5 Nothing in this clause shall restrict the ability of Lenders to take security over any interest in the share capital of the Developer or to enforce that security.
- 33.6 The Developer shall not, without the Grantor's prior written consent (not to be unreasonably withheld or delayed):

- a. terminate or make any amendments to any Project Agreement which could affect its ability to perform its obligations under this Agreement to any material extent;
- b. amend any Financing Agreement or enter into any new agreement for the financing or re-financing, in any form, of the Toll Road which (in any such case):
 - i. would increase the aggregate amount of principal, fees or other charges capable of being borrowed or payable by the Developer;
 - ii. would reschedule the dates on which payments are due under any such agreement; or
 - iii. would (on the assumption that it were performed in accordance with its terms) result in an increase in the amount of Developer Senior Debt outstanding at any time.

33.7 For the avoidance of doubt, the refinancing of the Developer Senior Phase 1A Initial Debt shall not be construed as a discharge of the Developer Senior Phase 1A Debt and shall not release in any way the Grantor from its obligations under the Grantor Documents.

34. ASSIGNMENT AND SECURITY

34.1 Without prejudice to any assignment or other transfer of the rights or obligations of either Party under this Agreement required or effected by or under statute or by operation of law, and save as permitted by this clause or with the prior written consent of the other Party, neither Party may assign this Agreement or the rights arising under this Agreement nor create any security over this Agreement or such rights or over any property or rights forming part of the Toll Road.

34.2 For the purpose of financing the construction or operation of the Toll Road, the Developer may by way of security assign its rights under this Agreement to the Lenders (or the Lenders' Agent) and create any other forms of security over it or over any property or rights forming part of the Toll Road to the Lenders (or the Lenders' Agent) provided that all such rights and forms of security (but for the avoidance of doubt not including security over the Project Agreements) shall cease in relation to the Toll Road upon payment in full of the sums payable to the Developer pursuant to Clause 31 (Termination Payments) and Schedule 12 (Termination Sums).

34.3 The Grantor shall upon request of the Developer enter into a direct agreement with the Developer and the Lenders in a form acceptable to the Grantor.

34.4 The Grantor may transfer or assign its rights and obligations under this Agreement to a different company wholly owned by the State and/or a governmental department and the Developer shall co-operate with the Grantor in completing the formalities of any transfer or assignment including by executing any additional documents as may be required by the Grantor PROVIDED THAT at the same time the Grantor procures that the Government Guarantee is amended to guarantee the obligations of such assignee or transferee on the same terms as the Grantor's obligations are guaranteed. All costs of such an assignment shall be borne by the Grantor and/or the assignee or transferee.

35. SUB-CONTRACTORS

35.1 Subject to Clauses 35.2 and 35.3 the Developer may subcontract any of its obligations under this Agreement but without relieving the Developer of its obligations under the terms of this Agreement.

- 35.2 The Developer agrees that it shall not remove or replace the Contractor without the consent of the Grantor which shall not be withheld unless, in the Grantor's opinion, the proposed replacement contractor does not have the relevant experience or will not be a competent or responsible contractor or will not have adequate financial resources to discharge the obligations of the Developer under this Agreement for the construction of the Toll Road. The Developer shall as a precondition to any such removal or replacement procure that an agreement in terms substantially the same as the terms of the relevant Construction Warranty is entered into in respect of the new contractor with a person acceptable to the Grantor.
- 35.3 The Developer agrees that it shall not remove or replace the Operator without the consent of the Grantor which shall not be withheld unless, in the Grantor's opinion, the proposed replacement operator does not have the relevant experience or will not be a competent or responsible operator or will not have adequate financial resources to discharge the obligations of the Developer under this Agreement for the operation and maintenance of the Toll Road. The Developer shall as a precondition to any such removal or replacement procure that an agreement in terms substantially the same as the terms of the O&M Warranty is entered into in respect of the new operator with a person acceptable to the Grantor.
- 35.4 The Developer shall inform the Grantor as soon as practicable of the engagement, employment or termination of any persons as a Material Sub-contractor and the reasons for termination, (subject to confidentiality restraints). The Developer shall also provide the Grantor's Representative with regularly updated details of the Contractor's and the Operator's Material Sub-contractors in accordance with the requirements of Schedule 5 (Principles for Management Plans and Quality Documentation).
- 35.5 No additional sub-contractor shall carry out any activities until:
- (a) the Grantor has been notified in writing of the person concerned and the terms of engagement or employment; and
 - (b) the Developer has provided the Grantor a waiver of liability confirming agreement to the terms and conditions of Clause 9 (Own Enquiries) in a form satisfactory to the Grantor acting reasonably.
- 35.6 The Developer shall procure that the Sponsor and Autoroute du Sud de la France shall remain the majority shareholder in the Operator until the earlier of the date falling two years after the Phase 1B Handover Date and the date falling four years after the Phase 1A Handover Date.
- 35.7 Notwithstanding Clauses 35.2 and 35.3 above, the Grantor acknowledges and agrees to the replacement of the Contractor and/or the Operator (as relevant) by the Lenders (or by the Developer upon instruction of the Lenders) under and subject to the terms and conditions of the NROCC Direct Agreement provided always that any replacement Contractor or Operator shall satisfy the Substitute Conditions.

36. GRANTOR'S REPRESENTATIVE

- 36.1 The Grantor shall appoint a duly authorised and competent representative, who is fluent in English, to act as the Grantor's agent in connection with this Agreement.

- 36.2 The Grantor's Representative has authority to act on behalf of the Grantor under this Agreement only where, and to the extent that, this Agreement so provides expressly or the Grantor notifies the Developer in writing. In the absence of such express provision, the Grantor's Representative shall have no authority to give instructions to the Developer, derogate from or amend this Agreement, relieve the Developer of any duty or obligation under this Agreement or otherwise to act on behalf of the Grantor under this Agreement.
- 36.3 The Grantor may from time to time in writing delegate to the Grantor's Representative any of the powers and authorities vested in the Grantor pursuant to this Agreement and shall furnish the Developer with a copy of all such written delegations of powers and authorities.
- 36.4 Any notice or consent given by the Grantor's Representative to the Developer under this Agreement or within the terms of such delegation, but not otherwise, shall bind the Developer and the Grantor (for whom the Grantor's Representative shall be deemed to act as agent) as though it had been given by the Grantor.
- 36.5 In the discharge of his functions under this Agreement the Grantor's Representative shall not owe any duty to the Developer and shall incur no liability to it.
- 36.6 The Grantor may remove and replace the Grantor's Representative at any time without the consent of the Developer but shall give the Developer immediate notice of any removal or replacement and provided always that no such removal or replacement of any person as the Grantor's Representative shall invalidate or otherwise affect any actions or decisions of such person in his capacity as the Grantor's Representative prior to such removal or replacement. In the event that the Grantor removes the Grantor's Representative, then, until it appoints a replacement, any notification to be made by the Developer to the Grantor's Representative shall be made to the Grantor.

37. DEVELOPER'S REPRESENTATIVE

- 37.1 The Developer shall appoint a duly authorised and competent representative, who is fluent in English, to superintend the carrying out of the Toll Road and to act as the Developer's agent in connection with this Agreement.
- 37.2 The Developer's Representative shall, together with such of the Developer's staff as may be appropriate, attend all meetings with the Grantor's Representative at times and at frequencies reasonably required by the Grantor's Representative.
- 37.3 The Developer's Representative shall be deemed to have full power and authority to act on behalf of the Developer.
- 37.4 Subject to the approval of the Grantor the Developer may, and if so required by the Grantor due to serious misconduct, shall, remove or replace the Developer's Representative at any time provided always that no such removal or replacement of any person as the Developer's Representative shall invalidate or otherwise affect any actions or decisions of such person in his capacity as the Developer's Representative prior to such removal or replacement.
- 37.5 The Grantor shall be entitled to request the Developer to remove, or procure the removal, from the Sites of any person whose behaviour or activities are likely, in the opinion of the Grantor, to bring the Grantor or the Project into disrepute.

38. HANDBACK

- 38.1 On the Expiry Date, each element of the Toll Road shall be in a condition which is:
- (a) consistent with the due performance by the Developer of its obligations under this Agreement including the construction, operation and maintenance of the Toll Road in compliance with the Concession Specification; and
 - (b) consistent with the Toll Road having been designed and constructed in accordance with the applicable design life requirements set out in the Core Requirements,
- (together referred to as the "**Handback Requirements**").
- 38.2 Not less than three years prior to the Expiry Date, the Developer and the Grantor's Representative shall conduct a joint inspection of the Toll Road.
- 38.3 Within 30 days after the completion of the inspection, if it is found that any element of the Toll Road is not in a condition consistent with the Handback Requirements, the Developer shall forthwith provide to the Grantor's Representative:
- (a) the Developer's proposal as to the works (if any) (the "**Handback Works**") required to be carried out in order to procure that the Toll Road will, on the Expiry Date, satisfy the Handback Requirements;
 - (b) the Developer's proposal as to the programme (the "**Handback Programme**") for the carrying out of the Handback Works over the remainder of the Concession Period, such programme shall describe the total works to be carried out and the method of carrying out such works during the overall period in which the Handback Works shall be executed; and
 - (c) the Developer's estimate of the cost of carrying out the Handback Works (the "**Handback Amount**").
- 38.4 The Grantor's Representative may, within 30 days after receipt of the details set out in Clause 38.3 from the Developer, raise comments on the Developer's proposals and estimate referred to in Clause 38.3.
- 38.5 On agreement, or determination in accordance with Clause 47 (Expert Determination), of the Handback Works, the Handback Programme and/or the Handback Amount (as the case may be), the Developer shall procure that the Handback Works are carried out in accordance with the Handback Programme. The Developer shall carry out the Handback Works at its own cost notwithstanding that the actual cost of the Handback Works may be higher than the Handback Amount.
- 38.6 The Developer shall within seven days of the agreement or determination referred to in Clause 38.5, procure the provision of a bond (the "**Handback Bond**") in favour of the Grantor for an amount equal to the Handback Amount from a bank acceptable to the Grantor. Any failure of the Developer to procure the provision of the Handback Bond shall entitle the Grantor to terminate this Agreement on 30 days' written notice. No payment shall be due to the Developer from the Grantor upon such a termination.

- 38.7 The Developer shall carry out the Handback Works to the satisfaction of the Grantor's Representative in accordance with Good Engineering and Operating Practices and in accordance with the Handback Programme so as to meet the Handback Requirements.
- 38.8 Not later than one year before the Expiry Date, the Developer and the Grantor's Representative shall conduct a joint inspection of the Toll Road. Such inspection shall confirm whether or not the condition of the Toll Road is such that it can reasonably be expected to be in accordance with the Handback Requirements on the Expiry Date. The Grantor shall notify the Developer of any Handback Works which are still outstanding and the Developer shall promptly complete such Handback Works at its own cost.
- 38.9 On, or within 30 days after the Expiry Date, the Grantor's Representative shall either:
- (a) issue to the Developer a certificate confirming the compliance of the Toll Road with the Handback Requirements (the "**Handback Certificate**"); or
 - (b) notify the Developer of its decision not to issue the Handback Certificate stating the reasons for such decision.
- 38.10 Any notice given by the Grantor's Representative in accordance with Clause 38.9 shall set out each respect in which the Handback Works have not been completed or the Toll Road does not comply with the Handback Requirements and shall state the Grantor's estimate of the cost of procuring that the Toll Road complies in all respects with the Handback Requirements.
- 38.11 The Developer may, within 14 days after receipt of the notice given in accordance with Clause 38.10 by notice to the Grantor's Representative, object to any matter set out in the Grantor's Representative's notice. The notice from the Developer shall give details of the grounds of such objection and shall set out the Developer's proposals in respect of such matters.
- 38.12 If no agreement is reached between the Developer and the Grantor's Representative as to any matter referred to in the Developer's notice given in accordance with Clause 38.11 within 30 days of receipt of that notice by the Grantor's Representative, then either the Developer or the Grantor's Representative may refer the matter for determination by the Expert in accordance with Clause 47 (Expert Determination) as to:
- (a) whether the Toll Road complies in all respects with the Handback Requirements; and
 - (b) the estimated cost of procuring that the Toll Road complies in all respects with the Handback Requirements, where the Toll Road does not comply in all respects with the Handback Requirements.
- 38.13 If it is agreed or determined in accordance with Clause 47 (Expert Determination) that the Toll Road did not, at the Expiry Date, comply in all respects with the Handback Requirements, the Developer shall pay to the Grantor an amount equal to the estimated cost of completing such Handback Works or procuring that the Toll Road comply in all respects with the Handback Requirements. Such payment shall be made not later than fourteen (14) days after the estimated cost has been agreed or determined and, upon such payment being received by the Grantor, the Grantor's Representative shall issue the Handback Certificate and return the Handback Bond to the Developer. In the event that the Developer fails to make such payment the Grantor shall be entitled to recover such payment by way of a demand under the Handback Bond and by action against the Developer.

39. FINANCIAL STATEMENTS AND REPORTING

- 39.1 The Developer shall make arrangements with respect to the installation and operation of an accounting and cost control system and for the appointment of auditors from a firm of reputable independent accountants.
- 39.2 All books of account of the Developer shall be kept in accordance with applicable Jamaican laws and regulations.
- 39.3 The Developer shall, as soon as available but in any event within 90 days after the end of each financial year, furnish to the Grantor:
- (a) two copies of its complete financial statements for such financial year (which are in agreement with its books of accounts and prepared in accordance with international accounting standards consistently applied), together with an audit report thereon; and
 - (b) a copy of any management letter or other communication sent by the independent auditors to the Developer or to its management in relation to the Developer's financial, accounting and other systems, management and accounts.
- 39.4 The Developer shall, as soon as available but in any event within sixty 60 days of the end of each six month period of each financial year furnish to the Grantor:
- (a) two copies of the Developer's complete financial statements for such six month period, all in accordance with international accounting standards consistently applied, and, if requested, certified by an officer of the Developer;
 - (b) a report on any factors materially and adversely affecting or which might materially and adversely affect the Developer's business and operations or its Financial Position; and
 - (c) a report on the implementation and progress of the Project, containing such information as the Grantor may reasonably require and disclosing any factors of which the Developer is aware which materially and adversely affect, or which would be likely materially and adversely to affect, the carrying out of the Project.
- 39.5 The Developer shall promptly notify the Grantor of any material change in its management and organization structure and arrangements for the supervision of the Construction Works or the O&M Works.

40. FINANCIAL MODEL

- 40.1 Immediately after execution of this Agreement, the Developer shall deliver two copies of the Financial Model to the Custodian (both on disk and in hard copy) to be held in custody in accordance with the provisions of the Custody Agreement.
- 40.2 Either Party and/or their professional advisers shall have the right to inspect and audit the Financial Model at all reasonable times.
- 40.3 If a Compensation Amount Event occurs, and for so long as the Compensation Amount Event continues, the Base Case shall be recalculated by the running of the Financial Model (using

assumptions amended to take into account the change in circumstances giving rise to that event) to determine the amount of Compensation Amount which is necessary to put the Developer in the same Financial Position that it would have been in had that event not occurred.

- 40.4 Unless otherwise agreed between the Parties, any amendments to the Financial Model shall reflect, be consistent with and be made only in accordance with the provisions of this Agreement, and shall in all cases be subject to the prior written approval of the Grantor (such approval not to be unreasonably withheld or delayed). In the event that the Parties fail to agree any proposed amendments to the Financial Model the matter shall be referred for resolution in accordance with Clause 48 (Disputes).
- 40.5 Following the approval of any amendment of the Financial Model by the Grantor, the Developer shall promptly deliver a copy of the revised Financial Model to the Grantor, and two copies to the Custodian, in the same form as the original form (or such other form as may be agreed by the Parties from time to time).
- 40.6 The Parties shall instruct the Custodian to keep a copy of all versions of the Financial Model on disk and in hard copy (or such other form as may be agreed by the Parties from time to time).

41. INDEMNITY

- 41.1 The Developer shall, subject to Clause 41.2, be responsible for, and shall release and indemnify the Grantor, the State, any ministry, and their respective employees, agents and contractors on demand from and against, all liability for death or personal injury, loss of or damage to property (including property belonging to the Grantor or the State or for which they are responsible), actions, penalties, liabilities, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) which may arise out of, or in consequence of, the design, construction, operation or maintenance of the Toll Road or the performance or non-performance by the Developer of its obligations under this Agreement or the presence on the Grantor's property of the Developer, its employees, agents or contractors.
- 41.2 The Developer shall not be responsible or be obliged to indemnify any person pursuant to Clause 41.1 for any injury, loss, damage, cost and expense caused by the negligence of the Grantor, the State, any ministry, or their respective employees, agents or contractors or by the breach by the Grantor of its obligations under this Agreement and provided further that the Developer's liability to indemnify the Grantor and the State as provided in Clause 41.1 shall be reduced proportionately to the extent that the negligence of the Grantor, the State, any ministry, or their respective employees, agents or contractors or the Grantor's breach is determined to have contributed to the said injury, loss, damage, costs and expenses.
- 41.3 The Developer's liability to the Grantor arising under any indemnity in this Agreement shall be without prejudice to any other right or remedy available to the Grantor.
- 41.4 An indemnity given by either Party under any provision of this Agreement shall be without limitation to any indemnity by that Party under any other provision of this Agreement.
- 41.5 Without prejudice to Clause 9.2 (Own Enquiries), the Grantor shall be responsible for, and shall release and indemnify the Developer, its employees, agents and contractors on demand from and against all liability for death or personal injury and loss of or damage to property,

claims, costs, demands and expenses (including legal expenses on an indemnity basis) to the extent resulting from any negligent act or omission of the Grantor, its employees, agents or representatives or from any breach by the Grantor of its obligations under this Agreement, except to the extent that any such liability arises from the exercise by the Grantor of its step-in-rights under Clause 21 (Step-in Rights) as a result of a breach by the Developer of its obligations under this Agreement, in which case the Grantor shall only be responsible for loss of or damage to property to the extent resulting from any wilful act or omission of the Grantor, its employees, agents or contractors.

41.6 If one Party (the "**Beneficiary**") becomes aware of any matter which might give rise to a claim for an indemnity under this Agreement from the other Party (the "**Undertaker**"), the following provisions shall apply:

- (a) the Beneficiary shall immediately give written notice to the Undertaker of the matter in respect of which the indemnity is being claimed (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult with the Undertaker with respect to the matter (and if the matter has become the subject of any proceedings the Beneficiary shall give the notice within sufficient time to enable the Undertaker time to contest the proceedings before any first instance judgement in respect of such proceedings is given);
- (b) the Beneficiary shall take such action and institute such proceedings, and give such information and assistance, as the Undertaker or its insurers may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against any person (other than the Undertaker) the rights of the Beneficiary or its insurers in relation to the matter;
- (c) in connection with any proceedings related to the matter (other than against the Undertaker) the Beneficiary shall use professional advisers nominated by the Undertaker or its insurers and approved by the Beneficiary (such approval not to be unreasonably withheld or delayed) and if the Undertaker or its insurers so requests and the Beneficiary consents (such consent not to be unreasonably withheld or delayed), allow the Undertaker or its insurers the exclusive conduct of the proceedings in each case;
- (d) the Undertaker shall fully indemnify the Beneficiary for all costs incurred as a result of any request or nomination by the Undertaker or its insurers pursuant to paragraphs (b) or (c);
- (e) the Beneficiary shall not admit liability in respect of or settle the matter without the prior written consent of the Undertaker (such consent not to be unreasonably withheld or delayed); and
- (f) if the Undertaker has conduct of any litigation and negotiations in connection with a claim, the Undertaker shall promptly take all proper action to deal with the claim so as not, by any act or omission in connection with the claim, to cause the Beneficiary's business interests to be materially prejudiced.

41.7 The indemnities contained in this clause shall, for the avoidance of doubt, extend to include all costs and expenses suffered or reasonably incurred by the Beneficiary in connection with enforcing its rights under this clause.

41.8 Without prejudice to Clauses 2.2 (Conditions Precedent and Effective Date), 12.5, 12.6 or 12.7 (Time for Completion), neither Party shall have any liability to the other for loss of

revenue or profit or other indirect or consequential loss arising from or in connection with the performance or non-performance of its obligations under this Agreement, whether or not as a result of negligence or default, and whether such liability would arise in contract, tort or otherwise except to the extent that such losses comprise part of the liquidated sums payable under Clause 31 (Termination Payments).

- 41.9 The provisions and obligations set out in this clause shall survive and remain in force upon and following the termination of this Agreement.

42. INSURANCE

- 42.1 The Developer shall, throughout the Construction Phase, take out and maintain the insurances described in Part 1 paragraphs 1, 2, 4, 5, 6 and 7 of Schedule 14 and any other insurances as may be required by law. The Developer shall cause the Contractor to take out the insurances described in Part 1, paragraphs 5 and 7 of Schedule 14 of its own interest. In addition, the Developer shall cause the Contractor to maintain a professional indemnity insurance in relation to any design activities.

- 42.2 The Developer shall, from the Early Project Handover Date or the Phase 1A Handover Date, whichever is earlier, take out and maintain described in Part 2 paragraphs 1, 2, 4, and 5 of Schedule 14 and any other insurances as may be required by law. The Developer shall cause the Operator to take out the insurances described in Part 1 paragraphs 4 and 5 of Schedule 14 for its own interest.

- 42.3 No Party shall take or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which such Party is a co-insured or additional insured person.

- 42.4 The insurances taken and maintained by the Developer pursuant to Clauses 42.1 and 42.2 shall:

- (a) name the Developer as co-insured with any other party maintaining the insurance;
- (b) contain a clause waiving the insurers' subrogation rights against the Grantor, its employees and agents;
- (c) provide for 30 days' prior written notice of their cancellation, non-renewal or amendment to be given to the Grantor; and
- (d) provide for payment of any proceeds to be made by insurers in accordance with Clauses 42.12 to 42.15.

Except in respect of the insurances listed in Part 1 paragraphs 2, 5 and 7 and in Part 2 paragraphs 2, 4 and 5 of Schedule 14, the Developer shall ensure that the Grantor is named, and shall procure that any other party maintaining the insurances names the Grantor, on each policy as a co-insured for its separate interest.

- 42.5 The Developer shall furnish copies of all insurance policies relating to the above to the Grantor on request and the Grantor shall be entitled to inspect during ordinary business hours such original policies of insurance taken out and maintained pursuant to Clauses 42.1 and 42.2 which are or should be in the custody of the Developer, together with evidence that

the premiums payable thereunder have been paid and that the insurances are in full force and effect.

- 42.6 Renewal certificates in relation to such insurances shall be obtained as and when necessary and copies thereof (certified in a manner acceptable to the Grantor) shall be forwarded to the Grantor as soon as possible but in any event at least 10 days before the renewal date.
- 42.7 If the Developer fails to maintain or procure the maintenance of such insurances, the Grantor may pay any premiums required to keep such insurance in force or itself procure such insurance and may in either case recover the reasonably and necessarily incurred amounts thereof on written demand from the Developer or deduct the amounts from the Compensation Amount.
- 42.8 The Developer shall give the Grantor notification within 30 days after any claim of an amount in excess of US\$30,000 with respect to any of the insurance policies referred to in this clause accompanied by full details of the incident giving rise to such claim.
- 42.9 Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Developer of its liabilities and obligations under this Agreement.
- 42.10 The premiums in respect of insurance referred to in this clause shall be the responsibility of the Developer.
- 42.11 The insurances referred to in this clause shall be effected with insurers approved by the Grantor such approval not to be unreasonably withheld or delayed.
- 42.12 All insurance proceeds received under any policy referred to in Part 1, paragraph 1, and Part 2, paragraph 1 of Schedule 14 (the "**Physical Damage Policies**") shall be applied, subject to and in accordance with this Agreement to repair, reinstate and replace each part or parts of the Toll Road in respect of which the proceeds were received.
- 42.13 All insurance proceeds paid under the policies referred to in Part 1, paragraph 1 (in case of Force Majeure) or Part 2, paragraph 1 of Schedule 14 in respect of a single event (or a series of related events) in an amount in excess of US\$20,000,000 (Indexed) shall be paid to the Grantor (and the Grantor shall be named on those policies as sole loss payee). The Grantor shall be obliged to invest at its discretion all insurance proceeds paid to it under this clause and the Developer shall be entitled to be paid the interest accruing in and credited to the account in which such proceeds are invested as and when the principal sum in respect of which the interest has accrued is payable to the Developer pursuant to this clause.
- 42.14 Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "**Relevant Incident**") in an amount in excess of US\$20,000,000 (Indexed):
- (a) the Developer shall deliver as soon as practicable and in any event within 28 days after the making of the claim a plan prepared by the Developer for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, reinstate or replace (the "**Reinstatement Plan**") the property which is the subject of the relevant claim or claims in accordance with Clause 42.15 below. The proposed Reinstatement Plan shall be agreed within 28 days by the Grantor, who must make any comments within 14 days in order to allow the Developer to propose any amendments to its proposal. The Reinstatement Plan shall set out:

- (i) if not the Contractor, the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Grantor; and
 - (ii) the proposed terms and timetable upon which the Reinstatement Works shall be effected (including the date that the affected part of the Toll Road will become fully operational), the final terms of which shall be subject to the prior written approval of the Grantor;
- (b) provided that the Grantor is satisfied that the Reinstatement Plan will enable the Developer to comply with Clause 42.15 below within a reasonable timescale:
- (i) the Reinstatement Plan will be adopted;
 - (ii) the Developer shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the approved Reinstatement Plan on the terms approved by the Grantor; and
 - (iii) the proceeds received by the Grantor under any Physical Damage Policy in respect of the Relevant Incident (the "**Relevant Proceeds**") (together with any interest accrued thereon) will be paid by the Grantor to the Developer as required by the Developer to enable it to make payments in accordance with the terms of the contractual arrangements, referred to in (ii) of this paragraph (b), and to meet any other costs and expenses of the Developer for the sole purposes of financing the Reinstatement Works;
- (c) if the Grantor is not satisfied, on reasonable ground(s), that the Reinstatement Plan will enable the Developer to comply with Clause 42.15 below within a reasonable timescale, the Developer shall amend the Reinstatement Plan so that the Grantor is so satisfied and, until the Grantor is so satisfied, no amount of the Relevant Proceeds shall be payable to the Developer and the Reinstatement Plan will not be adopted.

42.15 Where insurance proceeds shall be used, in accordance with this Agreement to repair, reinstate or replace any part of the Toll Road, the Developer shall carry out the work with due care and diligence and in accordance with the Developer's Concession Responsibilities so that on completion of the work, that part of the Toll Road meets the Core Requirements. The provisions of this clause shall not prejudice the Developer's obligations under the other provisions of this Agreement.

42.16 Nothing in this clause shall oblige the Developer to take out insurance which is not available or is available only at a cost or on terms other than in accordance with good commercial practice and on normal commercial rates taking into account the nature of the Toll Road (provided that the reason for the non-availability of the cost or terms is not connected with the claims record or acts or omissions of the Developer, Contractor or Operator or any of their respective contractors or sub-contractors).

42.17 Until such time that all indebtedness under the Phase 1A Financing Agreements and the Phase 1B Financing Agreements have been repaid, the Lenders' Agent shall be named as the first-ranking loss payee on the insurance policies referred in Part 2 paragraph 1 of Schedule 14 to this Agreement, notwithstanding the reference to the Grantor being the "sole loss payee" in Clause 42.13 of this Agreement, provided however that all insurances proceeds received shall be applied in the manner provided in Clause 42.12 of this Agreement. Any insurance proceeds shall be paid first to the Lenders' Agent to the extent that the Developer has any indebtedness to the Lenders except to the extent such proceeds are applied to reinstate any assets which have been damaged or otherwise impaired by the event in respect of which such proceeds were paid. Any payment to the Lenders' Agent made under the

insurance shall reduce pro tanto any amount due from the Grantor to the Developer upon any termination of this Agreement.

43. INTELLECTUAL PROPERTY RIGHTS

- 43.1 All Intellectual Property Rights which may subsist in those parts of the Concession Specification or in the Design Documentation or other design material of whatever nature prepared by the Developer specifically for the Toll Road, shall (as between the Grantor and the Developer) vest in the Developer and the Developer hereby grants to the Grantor (or, in the event that any such right is vested in a third party, agrees to procure the grant to the Grantor, at no cost to the Grantor, of) a perpetual royalty free non-exclusive licence to use (or to license others to use) the same to the extent required to enable the Grantor to exercise its rights and perform its obligations under this Agreement and to enable it to relet the Concession or to own, construct, operate, maintain and, if applicable, sell the Toll Road with the benefit of such licence after the termination (in whole or in part) of this Agreement.
- 43.2 Except as provided in Clause 44 (Confidentiality) or pursuant to an assignment under Clause 34 (Assignment and Security), drawings or information supplied by the Developer shall not without the Developer's consent be used, copied or communicated to a third party by the Grantor's Representative or the Grantor otherwise than as strictly necessary for the purposes of, or otherwise permitted by, this Agreement.
- 43.3 Drawings and information supplied by the Grantor and the Grantor's Representative to the Developer for the purposes of this Agreement shall remain the property of the Grantor. They shall not without the consent of the Grantor be used, copied or communicated to a third party by the Developer otherwise than as strictly necessary for the purposes of, or otherwise permitted by, this Agreement.
- 43.4 Each Party agrees to do whatever may be necessary to give effect to or confirm the terms of the licences provided for by this clause.
- 43.5 The Developer shall indemnify the Grantor on demand against all actions, claims, demands, liabilities, costs, charges and expenses (including legal expenses on an indemnity basis) arising from, or incurred by reason of, any infringement or alleged infringement of letters patent, registered design, copyright, trade mark or trade name protected in Jamaica or any other country by the use or possession of any Contract Plant supplied by the Developer, but such indemnity shall not cover any use by the Grantor of the Toll Road otherwise than for the purpose indicated by, or reasonably inferred from, the Concession Specification or any infringement which is due to the use of any Contract Plant in association or combination with any other Contract Plant not supplied by the Developer.
- 43.6 In the event of any claim being made or action brought against the Grantor arising out of the matters referred to in this clause, the Developer shall be promptly notified thereof and may at his own expense conduct all negotiations for the settlement of the same, and any litigation that may arise therefrom. The Grantor shall not, unless and until the Developer has failed to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by the Developer of such negotiations or litigation shall be conditional upon the Developer having first given to the Grantor such reasonable security as shall from time to time be required by the Grantor to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses and costs for which the Grantor may become liable. The Grantor shall, at the request of the Developer, afford all available assistance for the purpose of contesting any such claim or action, and

shall be repaid all reasonable expenses incurred in so doing.

- 43.7 If the Grantor is prevented from using the Toll Road in consequence of any infringement of letters patent, registered design, copyright, trade mark or trade name and the Developer is unable within 30 days after notice thereof from the other Party to procure the removal at its own expense of the cause of prevention then the Parties shall meet and use their best endeavours to agree an alternative method (including if necessary amendments to this Agreement) for avoiding the infringement, failing which (subject to the Grantor's rights under Clause 19 (Grantor Variations) to make a Grantor Variation which would avoid the infringement), the Grantor may treat such prevention as a material breach of its obligations by the Developer and exercise the powers and remedies available to it under Clause 28 (Termination by Grantor).
- 43.8 The provisions and obligations set out in this clause shall survive and remain in force upon and following the termination of this Agreement.

44. CONFIDENTIALITY

- 44.1 Subject to clause 44.2, the Parties to this Agreement shall keep confidential all matters relating to this Agreement and shall not make any disclosure, and shall use their best endeavours to prevent their employees, agents and servants from making any disclosure, to any person of any information, data, documents, secrets, dealings, transactions or affairs of or relating to this Agreement.
- 44.2 The confidentiality obligation of the Parties shall not apply to the following:
- (a) any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;
 - (b) any disclosure which may reasonably be required for the performance of that Party's obligations under this Agreement or to enable the Expert to make a determination where a matter has been referred to him;
 - (c) disclosure of information which is required by the Toll Regulator, any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority whether or not having the force of law (but, if not having the force of law compliance with which is in accordance with the general practice of persons subject thereto);
 - (d) disclosure of any information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing Party;
 - (e) the provision of information to shareholders, suppliers or subcontractors of the Developer for purposes connected with the Concession;
 - (f) provision of information to the Lenders or the Lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Developer to enable it to carry out its obligations under this Agreement, to that person but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
 - (g) disclosure of information to enable the Developer to comply with its obligations under Clause 42 (Insurance);

- (h) disclosure by the Grantor of information relating to the design, construction, operation and maintenance of the Toll Road and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to (i) any proposed new concessionaire, its advisers and lenders should the Grantor decide to re-let a concession or (ii) any proposed purchaser of the Toll Road;
- (i) disclosure of information by the Grantor to any other department, office or agency of the State or to the Parliament of the State or a select committee of Parliament of the State;
- (j) any disclosure by the Grantor of any part of this Agreement or any document related to this Agreement to which it is a party and which in each case contains no commercially sensitive information;
- (k) any disclosure for the purpose of the examination and certification of the Grantor's accounts; or
- (l) the provision of information to professional advisers or insurance advisers of either Party but only to the extent strictly necessary to assist the Developer in performing its obligations under this Agreement.

44.3 Where disclosure is permitted under Clause 44.2, other than paragraphs (c), (j) or (k) the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this Agreement.

44.4 The provisions and obligations set out in this clause shall survive and remain in force upon and following the termination of this Agreement.

45. MISCELLANEOUS

45.1 Save as required by law or regulation the Parties to this Agreement shall not make any announcements in connection with this Agreement without the prior written consent of the other Party such consent not to be unreasonably withheld.

45.2 None of the terms, provisions or conditions of this Agreement shall be considered waived by any Party unless a waiver is given in writing by that Party.

45.3 No waiver referred to in Clause 45.2 above shall be a waiver of any past or future default or breach nor shall it create any amendment or addition to or deletion from any of the terms, provisions or conditions of this Agreement unless (and then only to the extent) expressly stipulated in the waiver.

45.4 In entering into this Agreement no Party may rely on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and the documents referred to in it) made by or on behalf of any other Party before the signature of this Agreement and each of the Parties waives all rights and remedies which, but for this clause, might otherwise be available to him in respect of any such representation, warranty, collateral contract or other assurance; provided that nothing in this clause shall limit or exclude any liability for fraud.

45.5 This Agreement and the relevant documents referred to in it contain the whole agreement between the Parties relating to the subject matter of this Agreement and supersede all previous agreements between the Parties relating to that subject matter.

- 45.6 The various agreements, exhibits and schedules which together make up this Agreement shall be taken as mutually explanatory of one another and, in the event that the Developer or the Grantor discovers any ambiguities or discrepancies between any of such documents, the same shall be explained and adjusted by mutual agreement between the Grantor and the Developer.
- 45.7 Each Party agrees, upon the request of the other, to execute any documents and take any further steps as may be reasonably necessary in order to implement and give full effect to this Agreement.
- 45.8 (a) The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining part or provisions of this Agreement.
 (b) If any of those provisions is void but would be valid if some part of the provision were deleted the provision in question shall apply with such modification as may be necessary to make it valid.
- 45.9 The Parties will pay interest on any principal sums payable under this Agreement not paid on the date provided for payment under this Agreement, over the period from that date until the date of actual payment at a rate per annum equal to the Reference Rate.
- 45.10 Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Grantor and the Developer.
- 45.11 Save as expressly provided otherwise in this Agreement, the Developer shall not be, or be deemed to be, an agent of the Grantor and the Developer shall not hold itself out as having authority or power to bind the Grantor in any way.
- 45.12 Notwithstanding this provision, the Grantor may not set-off amounts due by the Developer to it against the sums described in Schedule 12, Part 1.2 paragraph (a), Part 1.3 paragraph (a), Part 1.4 paragraph (a), Part 2.2, Part 2.3, Part 3.2 paragraph (a) and Part 3.3 paragraph (a).

46. NOTICES PROVISIONS

- 46.1 All notices or other communications under this Agreement to any Party shall be deemed to be duly given or made when given in writing and:
- (a) when delivered, in the case of personal delivery or post; or
- (b) when received by a responsible employee of the recipient (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine), in the case of facsimile,

in each case to such Party addressed to it at the address given in Clause 46.2 or at such address as such Party may after the 21st November 2001 specify in writing for such purpose to the other Party to this Agreement by notice in writing.

- 46.2 The initial addresses of the Parties are as follows:

- (a) Grantor: National Road Operating and Constructing Company Limited

For the attention of: Chairman: Chris Bovell
 Managing Director: Ivan Anderson

Fax Number: +1 876 926 9281

with a copy to: the Grantor

Grantor's Representative: Mr. David Rogers

Fax Number: +1 876 929 0382; and

(b) Developer: TRANSJAMAICAN HIGHWAY LTD

For the attention of: Mr Franck PEYRON

Fax Number: +1 876 969 3730

46.3 A written notice includes a notice by facsimile provided that a copy by way of confirmation is also delivered by personal delivery or post.

46.4 A notice or other communication received on a non-working day or after business hours in the place of receipt shall be deemed to be served on the next following working day in such place.

47. DISPUTE RESOLUTION AND EXPERT DETERMINATION

47.1 The Parties shall, prior to initiating a reference under this clause or referring a dispute to arbitration under Clause 48 (Disputes), attempt in good faith for a period of 45 days to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the Parties who have authority to settle the same.

47.2 Any dispute arising out of or in connection with this Agreement during, or after the termination of, the Concession Period shall be determined by an Expert in accordance with this clause if:

- (a) this Agreement expressly so provides; or
- (b) either Party decides to submit the said dispute to an Expert, the other Party being bound by this decision.

47.3 Either Party may initiate the reference of a dispute described in Clause 47.2 above to an Expert by proposing by notice to the other Party the appointment of an Expert.

47.4 The Expert shall be a qualified engineer of neither French nor Jamaican nationality, with at least 10 years of international experience of construction, operation and maintenance of toll roads in both developing and developed countries, except for

- (a) disputes about the amounts payable under Clauses 31 (Termination Payments) and calculation of Compensation Amounts where the Expert shall be an investment

banker or accountant of neither French nor Jamaican nationality, with at least 10 years of experience in financial modelling for project and concession finance transactions; and

- (b) disputes as to whether or not a Change of Law has occurred, where the Expert shall be a Queen's Counsel with at least 10 years experience in construction matters in England,

and shall be appointed by agreement between the Parties, or, if they have not agreed within 14 days after receipt of the notice under Clause 47.3, (for an engineer) by the President of the Institute of Civil Engineers of the United Kingdom, (for an accountant) by the President of the Institute of Chartered Accountants of the United Kingdom, or (for a Queen's Counsel) by the President of the Law Society of the United Kingdom, on the application of either Party. If the Expert has been appointed but is unable to complete the reference another Expert shall be appointed by the Parties, or if they have not agreed on the appointment within 14 days, by the appropriate appointing authority on the application of either Party.

- 47.5 The Expert shall act as an expert and not as an arbiter. The Parties shall each have the right to make representations to the Expert. There will be no formal hearing. The Expert shall regulate procedure as he sees fit. The Expert shall have the power to open up, review, and revise any certificate, opinion, requisition or notice including any decision of the Grantor's Representative and to determine all matters in dispute. The decision of the Expert shall be (subject to Clause 48.1 below) final and binding on the Parties and can include orders that one or both of the Parties shall pay his costs, stating the proportion, and that one Party shall pay the other Party's costs. The Expert may take such advice and assistance from professional advisers or other third parties as he reasonably considers appropriate to enable him to reach a determination of the dispute.
- 47.6 Where any provision of this Agreement does not specify the use of expert determination any dispute in relation to that provision, or if for any reason it is not possible to refer a dispute in relation to the rights and obligations of the Parties to expert determination for resolution that dispute, shall be resolved in accordance with Clause 48 (Disputes).
- 47.7 Any amount which becomes payable as a result of the Expert's decision shall become due and payable within seven days of publication of the decision.
- 47.8 Any dispute relating to the enforcement of the Expert's decision shall be referred to the courts of Jamaica who will have exclusive jurisdiction to hear such disputes.

48. ARBITRATION

- 48.1 All disputes arising out of or in connection with this Agreement (including any question regarding its existence, validity or termination) during, or after the termination of, the Concession Period which have not been resolved pursuant to Clause 47.1 or which have been so resolved but are disputes either about a sum equal to or in excess of US\$1.5 million; or which involve only a question of law; or in relation to which the decision of an Expert under Clause 47 has been manifestly erroneous, may be referred to and finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The arbitration shall be conducted in English in London. Pending resolution of the dispute under those rules, the Parties shall treat any resolution of a dispute pursuant to Clause 47.1 as if it had been finally settled and fulfil their obligations under this Agreement and the Project Agreements accordingly. If a dispute

which has been resolved pursuant to Clause 47.1 has not been referred to arbitration on the grounds set out in this Clause 48.1 within 60 days of that resolution, then the Parties cease to have the right to refer that dispute to arbitration.

- 48.2 The arbitrators while determining any dispute shall, without prejudice to the generality of their powers, have power to open up, review and revise any certificate, opinion or notice and any decision of the Grantor's Representative; issue proposed findings at the request of either Party; award compensation, assess and award damages and award expenses to or against any Parties in the arbitration; award interim or part decrees; and award interest at such rate as they think fit on any sum awarded by them (whether interim or final) for any period, whether before or after the date of their award. The award of the arbitrators shall be binding on the Parties.
- 48.3 Performance of this Agreement shall continue during any expert determination, negotiation or arbitration unless the Parties agree to a suspension or if such continuation is impossible on account of the nature of the dispute.
- 48.4 With respect to any proceedings for enforcement of an award pursuant to Clause 48 against assets (other than Excepted Assets) of either Party brought in the courts of England:
- (a) the Government appoints the High Commissioner of Jamaica in England at 1 Prince Consort Road, London SW7 2BZ, to receive for and on its behalf service of process in such jurisdiction in any such enforcement proceedings.
 - (b) the Developer shall appoint an agent (to be notified in writing to the Government by not later than Early Financial Close) to receive for and on its behalf service of process in the United Kingdom in any such enforcement proceedings.
 - (c) each Party agrees to maintain in England duly appointed process agents, notified to the other Party, for the purpose of Clause 48.
 - (d) each Party agrees that failure by any such process agent to give notice of any process to it shall not impair the validity of such service or of any judgment based thereon.

49. JOINDER

- 49.1 The provisions of Clause 47 and 48 (as appropriate) shall apply, subject to the provisions of this Clause 49.
- 49.2 If:
- (a) a dispute has arisen between any of the parties to any of the Grantor Documents under, out of, or in connection with any other agreement between any of the parties to any of the Grantor Documents ("**Related Contract**") or under this Agreement ("**Related Dispute**"); and
 - (b) one of the parties has initiated the reference of the Related Dispute to an expert or arbitrator(s) in the accordance with the provisions of the Related Contract or one of the Parties has initiated a dispute under this Agreement; and
 - (c) a dispute or claim arises under this Agreement or under any of the Grantor Documents ("**Dispute**"); and
 - (d) in the opinion of either Party ("**that Party**"), the Dispute is similar to the Related Dispute;

that Party may seek to have the Dispute consolidated and determined together with the Related Dispute ("joined") by giving to the expert or arbitrator(s) appointed in the Related Dispute and to the other Party the particulars set out clause 49.3 below. Such particulars shall be given as soon as practicable and, in any case, no later than 14 days from the date on which that Party becomes aware of the Dispute.

49.3 The particulars referred to in clause 49.2 are:-

- (a) a copy of this Agreement;
- (b) a statement from that Party summarising:-
 - (i) the basis and grounds for seeking to have the Dispute and the Related Dispute joined;
 - (ii) the cases of the parties to the Dispute (if known);
 - (iii) any relief sought by the parties to the Dispute (if known).

49.4 The other Party may object to the Dispute and the Related Dispute being joined by giving to that Party and the expert or arbitrator(s) appointed in the Related Dispute no later than 7 days after receipt of the particulars referred to in clause 49.3 above a statement setting out the basis and grounds for objecting to the Dispute and the Related Dispute being joined.

49.5 Provided the expert or arbitrator(s) appointed in the Related Dispute is satisfied that, in doing so, there will be no material delay in or material adverse affect on the determination of the Related Dispute, he may no sooner than 28 days after receipt of the particulars referred to in clause 49.3 above and no later than 35 days thereafter (at his discretion) direct that the Dispute and Related Dispute be joined and he shall have the authority and the power referred to in clause 49.7 below.

49.6 Unless the parties agree otherwise, the Dispute and the Related Dispute shall only be joined if the expert or the arbitrator(s) appointed in the Related Dispute receives the particulars set out in clause 49.3 above within the time limit stipulated in clause 49.2.

49.7 The parties agree (subject to clause 49.6) that the expert or arbitrator(s) in the Related Dispute shall have the authority and the power to:-

- (a) consolidate and determine together the Dispute and Related Dispute which shall thereafter proceed as if both had been referred at the same time to arbitration or expert determination (as appropriate) in accordance with the Related Procedure; and
- (b) direct that all procedural and/or evidential matters arising in both the Dispute and Related Dispute are to be joined in whatever manner the expert or the arbitrator(s) in the Related Dispute considers shall lead to the fair and expeditious resolution of the Dispute and Related Dispute,

and the Parties shall thereafter abide by and implement any such consolidation, direction and determination.

49.7 If the Dispute and the Related Dispute are joined, the expert or the arbitrator(s) in the Related Dispute shall reach a decision on the Dispute and Related Dispute at the same time.

- 49.8 Without fettering or restricting the power and authority of the expert or the arbitrator(s) in the Related Dispute, it is the intention of the Parties that, in the event that the Dispute and the Related Dispute are joined, the expert or the arbitrator(s) in the Related Dispute shall, insofar as relevant, practicable and appropriate, come to the same conclusion as to the facts and to apply the same reasoning and analysis in reaching a decision on both the Dispute and the Related Dispute.
- 49.9 Unless the arbitrator(s) or expert appointed in the Related Dispute directs (in accordance with the provisions of this Clause 49 or otherwise by agreement of the Parties) that the Dispute and the Related Dispute shall be joined, the provisions of Clauses 47 or 48 (as appropriate) shall apply (unaffected by this Clause 49) to the determination of the Dispute.
- 49.10 Notwithstanding any joinder under this Clause 49, the parties in dispute shall continue to fulfil their obligations under the Grantor Documents.

50. COSTS AND EXPENSES

The Developer shall bear its own costs and expenses (including advisers' fees and expenses) in connection with the preparation, negotiation and completion of this Agreement.

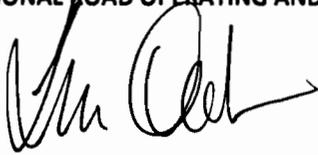
51. GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of Jamaica.

IN WITNESS of which this Agreement has been signed by the Parties on the date which appears first on page 1 of this Agreement.

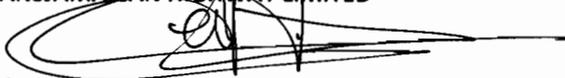
SIGNED by Mr. *Ivan Anderson*
on behalf of

NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED



in the presence of: *Christopher Bovell*
CS Bovell

SIGNED by *Francis Eyles*
TRANSJAMAICAN HIGHWAY LIMITED



in the presence of: *M-UKIT*

Mr. MARK GORDING

SCHEDULE ONE**PARTICULARS OF THE DEVELOPER**

Name:	TRANSJAMAICAN HIGHWAY LIMITED
Registered Number:	64928
Place of Incorporation:	KINGSTON
Registered Office:	2, Goodwood Terrace, Kingston 10, Jamaica
Managing Director:	Mr. Franck PEYRON
Shareholders	Bouygues Travaux Publics Autoroutes du Sud de la France Proparco IFC

SCHEDULE TWO

CORE REQUIREMENTS

PART 1 - CORE DESIGN AND CONSTRUCTION REQUIREMENTS

1.1 PRINCIPLES OF THE DESIGN AND CONSTRUCTION CORE REQUIREMENTS

In the design, planning and execution of the Construction Works and all other works and functions associated with the improvement or construction of the Toll Road and Existing Road Sections, the Developer shall take all such action and do all such things (including, without limitation, organising itself, adopting measures and standards, executing procedures, including inspection procedures and safety patrols, and engaging and managing contractors, agents and employees) as will:

- enable the Grantor, to provide an acceptably safe highway in respect of its condition (structural safety), use (road safety) and risks affecting road users and third parties;
- enable the Grantor to fulfil its statutory, administrative and common law obligations;
- enable police, Competent Authorities, and others with statutory duties or functions in relation to the Toll Road or adjoining roads to perform their duties and functions;
- enable the Grantor to provide a level of service to the public generally during construction or improvement works not inferior to as provided for tolled trunk road and motorway networks equal to or better than the standards specified in Schedule 21 (Technical Standards);
- minimise the risk of damage, disturbance to or destruction of third party property;
- minimise the occurrence and adverse effects of accidents;
- ensure that members of the public are treated with all due courtesy and consideration;
- provide a safe, clear and informative system of road signs;
- ensure road users are given adequate information and forewarning of any events on or any matters affecting the Toll Road as will enable them to minimise any adverse consequence on them of those events or matters;
- ensure standards of reliability, durability, accessibility, operability, maintainability, quality control and assurance, and fitness for purpose are achieved throughout the Concession Period as appropriate to a highway of the character of the Toll Road;
- comply with Grantor Variations, subject to the provisions of Clause 19.2(d);
- comply with the Statutory Requirements and Required Consents;

- achieve the standard required by NRCA in the mitigation of any adverse environmental risk affecting the amenity enjoyed by the owners and occupiers of land adjacent to the Toll Road and to adjoining roads and facilities; and
- achieve a high standard in the appearance and aesthetic quality of the Toll Road and achieve integration of the Toll Road with the character of the surrounding landscape through both sensitive design and sensitive management of all visible elements including those on the Existing Road Sections;

1.2 SCOPE OF CORE DESIGN AND CONSTRUCTION REQUIREMENTS

A modern multi-lane limited access, divided and grade-separated highway shall be designed and constructed in accordance with the Core Design and Construction Requirements, the Outline Design and the Design and Construction Specification. The scope of the Core Design and Construction Requirements includes the provision of a full and complete design, securing of all approvals, supply of all materials and performance of all work necessary to construct the Toll Road.

1.3 PROJECT LIMITS

The Toll Road, the connecting links and related works shall be located generally within the nominal "Right of Way" as defined on the engineering drawings accompanying the Outline Design.

The Toll Road shall be considered to comprise the following works:

- Kingston to Williamsfield (approximately 72 km incorporating approx. 13 km of the 2-lane Old Harbour Bypass, portions of the proposed Porus Bypass within the pre-defined Right of Way, 5 km of the existing Melrose Bypass (2 and 3 lane provision) and including connections to Dyke Road and the Mandela Highway in Kingston and to Highway A2 at Williamsfield); and
- Portmore Causeway/Dyke Road Upgrading (approximately 11.5 km of 6 and 2 lane arterial roadway from 100 m east and 100 m north of the Marcus Garvey Drive/Causeway Road intersection, including upgrading and reconstruction of the intersection to the Dyke Road/Portmore Access Road interchange and including a new 6 lane crossing of Hunt's Bay and demolition of the existing bridge) and including a new 2 lane road link through Portmore and along the existing Dyke Road. The link road and Dyke Road, the junction between Portmore Causeway and Marcus Garvey Drive and the Portmore Mall Roundabout shall be handed back to the Grantor following issue of a Completion Certificate, under the Handback Requirements determined in accordance with Clause 38 (Handback).

1.4 DESIGN

1.4.1 Responsibility

The Developer shall be responsible for the design of all elements of the Toll Road including the undertaking of supplementary geotechnical investigations, topographic surveys, field investigations and analyses required to complete the design in a professional and competent manner and to obtain the necessary approvals and permits.

The Developer will be responsible for determining the technical standards, specifications and requirements for the review of, and no objection by, the Grantor's Representative, and shall provide independent certification of compliance with such requirements pursuant to the Reviewed Quality Documentation.

1.4.2 Management of Design

All detailed design functions for the Toll Road shall be managed under the responsible direction of an appropriately qualified and experienced person appointed by the Developer to be the primary point of contact with the Grantor's Representative on design-related issues.

Design shall be managed in accordance with the Quality Documentation and in particular the methodology for planning and management of the design as prescribed in Schedule 5 (Principles for Quality Documentation).

1.4.3 Design Deliverables

The Developer may submit Design and Environmental Documentation for a part or the whole of a Phase or Section of the Toll Road under the review procedures of Clause 13 (Design Information, Drawings and Manuals).

For each part or the whole of a Phase or Section of the Toll Road, the design activities shall be in two stages:

(i) Design for Approval:

The Design for Approval shall be based upon the Outline Design and include, *inter alia*, vertical and horizontal alignment indicating the position of the road, proposed cross sections, toll plaza location and layout, definition of the Site, necessary utilities diversion, Environmental Documentation including details of any mitigation measures to be undertaken to counter the environmental impact of the project, etc.

The Design for Approval shall include such designs and supporting documentation in a form and level of detail as required by and acceptable to NRCA and NWA and shall be submitted to:

- the Grantor's Representative, for review in accordance with Clause 13
- the Natural Resources Conservation Authority (NRCA), for review and approval
- the National Works Agency (NWA), for review and approval

The Design for Approval shall be in sufficient detail to enable the Grantor to complete the land acquisition and identify utilities diversions, and to enable the Developer to implement the Detailed Design and the Construction Works.

The relevant parts of the Quality Documentation shall be submitted to the Grantor's Representative prior to commencement of the design in accordance with Clause 13A (Quality Documentation Review).

(ii) Detailed Design

The Detailed Design shall include the preparation of all appropriate documentation to enable the Construction Works to be undertaken in accordance with the Concession Specification and shall be carried out and completed in accordance with the Reviewed Design for Approval and the Competent Authority Consents.

1.4.4 Contents of the Design for Approval

The Developer shall submit and revise a draft copy of the Design for Approval for a part of or the whole of a Phase or Section of the Toll Road in accordance with Clause 13 (Design Information, Drawings and Manuals) until the Design Documentation has been returned by the Grantor's Representative as "reviewed without comments".

The Reviewed Design Documentation comprising the Design for Approval Report, Drawings, Safety Review Report and Environmental Impact Assessment Report shall be updated to reflect the following information:

- Issues raised by National Works Agency
- Issues raised by the National Environmental and Planning Agency
- Issues raised by Grantor's Representative
- Permit Requirements
- Issues raised by Parish Councils and other stakeholders

The content of the Design for Approval of each part or whole of a Phase or Section of the Toll Road shall include, but will not be limited to, the following design documentation, information, and drawings in electronic and hard copy format:

(i) Design for Approval Report:

- Executive summary
- Description of the works
- Core Design and Construction Requirements
- Design and Construction Specification
- Existing and future conditions (Natural and social environment)
- Traffic analysis
- Interchanges
- Grade separations
- Secondary road works
- Conceptual design for bridges
- Ancillary works (truck inspection stations, rest areas,...)
- Tolling facilities and operational systems
- Drainage and storm water management
- Environmental works and mitigation
- Clearance requirements for Utility relocation and coordination
- Demolition and removals
- Land and road reserve requirements ("the Site")
- Temporary limited access requirements
- Temporary and permanent illumination
- Landscaping
- Pavement marking and signage

- Preliminary materials report and pavement design details
- Traffic arrangement during construction

(ii) Design for Approval Drawings:

- Layout drawings, indicating horizontal alignment details, intersections and accesses, at a scale not less than 1:2500
- Longitudinal sections indicating proposed vertical alignment
- Typical road cross-sections, drainage and pavement details
- Junctions and interchanges layout
- Toll Plaza location and layout
- Bridges general arrangement drawings

(iii) Explicit Safety Review Report

A safety review of all aspects of the design shall be undertaken by a qualified and experienced engineer. A Safety Review report shall be submitted indicating that the Design for Approval has been checked and that the highway and related works have been designed in accordance with good safety practices. The University of New Brunswick (Canada) Transportation Group Road Safety Audit (RSA) Guidelines, or approved equivalent, shall be followed.

In addition, the Developer shall adopt the Explicit Safety Assessment Methodology (ESAM) as detailed in the Ontario Ministry of Transportation Document "1998 Update on Roadside Safety Practice" or an approved equivalent methodology. Where the Design for Approval varies from the Outline Design, the onus will be on the Developer to demonstrate that the proposed changes will not lower the level of safety or will improve it. The Developer shall at all times ensure that the design satisfies the Statutory Requirements for safety.

(iv) Environmental Impact Assessment Report

- Executive summary
- Description of the proposed project
- Description of the environment including:
 - Natural Environment
 - Physical Environment (Superficial Soils and Subsurface Conditions)
 - Watershed, Drainage and Groundwater
 - Forestry, Vegetation and Wildlife
 - Social Environment
 - Land Use
 - Property affected and relocation of buildings and people
 - Graves, Historical, Archaeological and Heritage Resources
- Policy, legal and administrative framework
- Significant environmental impacts
- Analysis of alternatives
- Mitigation measures
- Recommendations for monitoring plan
- List of references
- Photographs, maps and plans as appropriate

For the avoidance of doubt, the documentation comprising the Design for Approval may be insufficient to meet the requirements of the Competent Authorities. The Developer shall satisfy itself as to the suitability and content of all documentation submitted for Competent Authority Consents and comply with all such requirements.

1.4.5 Contents of the Detailed Design

The Developer shall submit a draft copy of the Detailed Design for a part of or the whole of a Phase or Section of the Toll Road in accordance with Clause 13 (Design Information, Drawings and Manuals) and shall resubmit for review any revision to the Reviewed Detailed Design.

In addition, the Design Documentation for a Section of the Toll Road shall be consolidated into a Detailed Design Report specifying the procedures and methodology for undertaking and completing all of the design and construction activities in compliance with the Concession Specification.

The content of the Detailed Design for any part of a Phase or Section of the Toll Road shall include, but will not be limited to the following design documentation, information, and drawings in electronic and hard copy format:

(i) Detailed Design

- Horizontal Alignment Alternatives, if any
- All working drawings, schedules and designs required for completion of the Construction Works in accordance with the Concession Specification including any temporary works and utility relocation
- Drainage and Stormwater Temporary Works
- The Design and Construction Specification, Standards, method statements and other provisions required for the Construction Works including temporary works and coordination of utility relocation
- A detailed geotechnical report on the foundations for all structures
- Community Disruption and Liaison Procedures

(ii) Highway Safety Review Report

The Highway Safety Review Report (HSRR) submitted with the Design for Approval shall be updated and resubmitted with the Detailed Design for review by the Grantor's Representative and will address the following additional items:

- Bridge piers and abutments, incl. scour and erosion protection for piers and abutments located in or adjacent to river beds
- Headwalls of culverts with opening greater than 1.5m
- Ditch inlets in median or in roadside ditches
- Median and roadside barriers (incl. bridge parapets)
- Crash attenuators and energy attenuators
- Signing and pavement marking drawings
- Traffic lights
- Earthworks (under seal pursuant to Clause 1.4.26 of this Part 1 of Schedule 2)

(iii) Quality Documentation and Management Plans

Prior to construction, other documents shall be submitted to the Grantor's Representative in accordance with Clause 13A (Quality Documentation Review):

- Contractor's Construction Quality Documentation as set out in Schedule 5;
- Environmental Management Plan as approved by NRCA;
- Health and Safety Management Plan

(iv) Structural Review Report (under seal)

A design review of all bridges and major structures shall be undertaken by a qualified and experienced professional engineer, registered in a jurisdiction acceptable to the Grantor. A Structural Review report shall be submitted under professional seal indicating that the structural calculations have been checked and that the structures have been designed in accordance with the Concession Specification. The Developer shall ensure that the structural review satisfies the requirements for Competent Authority Consent.

(iv) Detailed Design Report

Upon completion of the design for all parts of a Section of the Toll Road, the Reviewed Design Documentation shall be summarised under a Detailed Design Report comprising a list of documents submitted to the Grantor's Representative for the Section and an executive summary outlining the Detailed Design, Design for Approval Report, Drawings, Structural Review Report, Safety Review Report and Environmental Impact Assessment Report. The completed report shall be submitted to the Grantor's Representative for review.

The following minimum design speeds shall be used in the development of the Design for Approval from the referenced highway standards set out in Schedule 21 (Technical Standards).

Condition	Generally Flat to Rolling Terrain	Rolling and Hilly Terrain	Arterial link	Outer Ramps	Outer Ramps	Loop Ramps
Location	Kingston to Porus (km 57.9)	Porus (km 57.9) to Williamsfield	Portmore Causeway	110 km/h Mainline Design Speed	90 km/h Mainline Design Speed	All
Minimum Design Speed	110 km/h	90 km/h	70 km/h	70 km/h	60 km/h	50 km/h

Paved shoulder widths may be reduced on long structures in accordance with the provisions of the Structural Design Criteria and Standards Report. The right shoulder and median width shall be designed and constructed in accordance with the referenced standards set out in Schedule 21 (Technical Standards).

Future widening of The Toll Road shall be triggered by an increase in traffic in accordance with Schedule 17 "Expansion Schemes". Adequate provision shall be made for traffic safety during any interim 2, 4 or 6 lane operating conditions including the provision of median

guardrails, crash attenuators or other measures to reduce the possibility of serious accidents. The Developer shall indicate how provisions for future lanes at bridges and grade separation structures shall be accommodated and indicate what advance works, if any, are proposed in anticipation of future widening.

Supplementary transition lanes and speed change lanes shall be added where required by Good Engineering and Operating Practice.

1.4.7 Interchanges

Grade-separated interchanges shall be designed to safely and efficiently accommodate the anticipated traffic in each direction and constructed at the following locations:

Kingston – Williamsfield section:

- km 0.3: Mandela Interchange at the junction with Mandela Highway
- km 1.2: Portmore Interchange at the junction with Portmore Access Road/Dyke Road
- km 7.4: Spanish Town Interchange
- km 26.3 Old Harbour Interchange
- km 41.0 Mineral Heights Interchange

Portmore Causeway:

- km 193.0: Fort Augusta Interchange

The Fort Augusta interchange shall as a minimum provide access to and egress from the Toll Road along westbound ramps. The at grade intersection between Portmore Causeway and Marcus Garvey Drive shall be rehabilitated and upgraded.

1.4.8 Public Road Crossings

All existing public roads crossing the Toll Road shall be designed and constructed as grade separated.

1.4.9 Railway Crossings

Grade separations shall be designed and constructed where the Toll Road crosses the railway.

1.4.10 Pedestrian Crossings and Field Connectors

Supplementary pedestrian and farm animal structures shall be designed and constructed as grade separated crossings.

1.4.11 River Bridges

River bridges are defined as structures across rivers and drainage features with spans in excess of 5.0 m.

1.4.12 Secondary Roads

A number of secondary roads that cross or infringe on the Toll Road corridor will require modification, re-alignment and/or reconstruction. The minimum geometric design standards for secondary roads shall be as established according to Jamaican standards for the particular class of road. Where pre-existing conditions are substandard, the secondary roadway shall be reconstructed to minimum Jamaican standards for the class and type of road.

Secondary roads shall be reinstated within the project limits to no less than pre-existing conditions. The project limits for secondary roads passing over or under the Toll Road shall be the toe of the ramps on intersection or the toe of the highway embankment).

Where secondary roads are not required to cross the Toll Road, they shall be terminated in a cul-de-sac to the requirements of the referenced geometric standards set out in Schedule 21 (Technical Standards) or re-aligned and extended to connect to the nearest roadway of comparable standard.

1.4.13 Drainage

Major structures (> 5.0 m in span) along the Toll Road shall be designed to convey a 1:100 year storm with a 1.0 m freeboard.

Minor structures shall be designed to convey a 1:10 year storm without surcharging and to convey a 1:100 year storm with a 0.6 m freeboard between the edge of shoulder elevation and the water level.

Storm sewers shall be designed to convey a 1:2 year storm without surcharging and to convey a 1:100 year storm through the major system with a maximum of 300 mm of flooding.

Connecting links designed to arterial roadway standards (Portmore Causeway) shall be designed to convey a 1:50 year storm with a 0.6 m freeboard; minor structures shall be designed to convey a 1:10 year storm without surcharging, and to convey a 1:50 year storm with a 0.6 m freeboard between the edge of shoulder elevation and the water level.

Minimum culvert sizes shall be 900 mm in diameter. All culverts and drainage works shall be designed for the applied loads and an assumed minimum 75 year service life. Appropriate erosion control measures shall be incorporated in the design.

1.4.14 Pavement Design

Pavement design for The Toll Road, including the arterial connecting links and interchange ramps, shall be undertaken by the Developer based upon the anticipated traffic and operating conditions and the operating and maintenance requirements. The proposed pavement design, including maintenance and rehabilitation schedule, shall be submitted to the Grantor's Representative for review.

1.4.15 Structures

Bridges and structures shall be designed in accordance with the UK Design Manual for Roads and Bridges supplemented by appropriate seismic design criteria.

In case of overpasses and underpasses, the requested lateral clearances shall only be reduced, when the protection measures of the piers and abutments warrant an equivalent level of roadside safety, for the particular class of road.

Alternative design codes may be proposed for review by the Grantor under Clause 13, providing that the requirements in relation to a service life of 75 years are equal to or better than those referenced under Schedule 21 (Technical Standards).

1.4.16 Traffic Signals

Traffic signal design shall conform to the latest version of the Manual of Uniform Traffic Control Devices for Canada or approved equivalent. Consideration shall be taken of modifications to “right hand driving” conditions.

An Emergency Call System (SOS) or approved equivalent shall be provided along the complete length of the Toll Road.

Automated loop detectors (or equivalent systems) shall be installed on all interchanges, the data being transmitted by optic fibre or radio system to the Operation Centre.

1.4.17 Tolling Facilities

The Developer shall demonstrate a fully integrated tolling strategy through preliminary details of the technologies to be used and a “whole life” approach to the design and construction of the Toll Road.

1.4.18 Commercial Concession Plazas

A commercial and concession plaza shall be provided at the existing Melrose Hill plaza location (km 69). The plaza shall incorporate, in addition to Developer requirements, a minimum of 20 finished concession stalls (each with gross floor area of no less than 10 m²). The plaza shall contain washroom facilities (minimum of 2 urinals and 4 water closets for males and 10 water closet units for females plus a minimum of 4 sinks for males and 6 for females). All necessary services shall be provided including power, water supply, wastewater disposal, solid waste disposal and communications facilities.

1.4.19 Illumination

Full illumination shall be provided at the following locations:

- urban area to km 2.3 (Portmore interchange);
- Portmore Causeway;
- all interchanges;
- main toll plazas;
- toll ramps
- Melrose Hill Plaza/rest area

Either high mast or conventional equipment may be used to achieve the following minimum photometric performance in accordance with a specification which is equal to or better than:

Illuminance Level (minimum average maintained):

Highway & interchanges	6 lux
Toll plazas:	25 lux
Luminance Level (minimum average maintained):	0.6 cd/m ²
Uniformity Ratio:	
Longitudinal (Maximum/Minimum)	1.4:1 (0.7)
Overall (Average/Minimum)	3:1 (0.33)
Maximum/Minimum	6:1 (0.14)
LuminanceVeiling Average	< 0.3

Calculations shall be based on the area bounded by the travelled roadway including shoulders, extended by an additional 5 m. The limits of partial illumination shall extend for 50m beyond main line tapers and speed change lanes at interchanges and for 50 m beyond the intersection of ramps with secondary roads.

The Developer shall design the lighting to take account of the proximity of adjacent rail and shipping corridors and shall liaise with the relevant authorities to ensure that safety is not compromised.

1.4.20 Signing and Pavement Markings

The Developer shall be responsible for the design, installation and maintenance of all permanent signs, pavement markings and indicators required for the safe and efficient operation of the highway including, kilometre markers in both directions, directional signs, distance indicators, advisory signs and pathfinders. Signs and pavement markings shall have an initial minimum retroreflectance of 250 millicandelas/m²/lux and a minimum 5 year Service Life rating.

Due consideration shall be taken in the design of traffic sign, traffic signal and lighting columns for hurricane conditions. (BS K factor of 5)

1.4.21 Fencing and Barriers

The entire Site shall be fenced with minimum 1.5m high chain-link fence and a steel bar welded across poles and to the fence to prevent theft. Pipe grating shall be installed across all ramps to discourage goats, cows and other domesticated animals from entering the Sites. Each ramp shall be equipped with a security gate that may be used to restrict access to the highway.

Permanent median barriers shall be the concrete "New Jersey" type, or approved equivalent. Temporary barriers may be either moveable concrete barriers or steel guard rail type on wooden posts.

Roadside barriers are required for embankment heights greater than 2.6 metres and shall be permanent concrete or steel guard rail type on steel posts. Post and wire guide systems shall not be acceptable.

Barriers shall be continuous with minimum gaps between successive barriers of 100 m. Emergency or maintenance access through the median barrier may be provided at intervals no less than 3 km. A removable steel guard rail type barrier shall be provided at all such openings.

Barrier flares or crash attenuators shall be incorporated at the termination of barriers in the direction of on-coming traffic. Energy attenuators shall be placed to protect "roadway hazards" (bridge piers, utility poles, lighting posts and other like features) where the hazards are not adequately shielded by a longitudinal barrier.

1.4.22 Landscaping

The Developer shall provide a reasonable level of landscape treatment including topsoiling, seeding, fertilising and mulching of all disturbed areas. Additional treatment shall be undertaken at interchanges and rest areas including contour grading and ornamental tree planting (averaging 100 trees/Ha).

1.4.23 Emergency Escape Lanes

Emergency escape lanes shall be designed and constructed where required in accordance with applicable design and safety standards.

1.4.24 Vehicle Detection System

Automated loop detectors (or equivalent apparatus) and a central monitoring system (or equivalent) shall be installed to count and monitor traffic in both directions on each lane between each interchange.

1.4.25 Incorporation of Existing Works

The Developer shall incorporate the following National Works Agency projects into the Toll Road:

Phase 1:

- Old Harbour Bypass (under construction)
- Porus Bypass (utilise road Right-of-Way)
- Melrose Bypass, including the rest area (geometric improvements and upgrades required)

The Developer shall undertake such remedial works as are required to upgrade and integrate the works to be incorporated into the Toll Road.

1.4.26 Slopes of Cuts and Fills

The Developer shall design the slopes of cuts and fills in order to provide long term stability against failure. Slopes must be protected against erosion and be subjected to a maintenance program to ensure their integrity. Slope stability of rock cuts must take into account the properties of the rock and also the properties of the rock mass. Design of all slopes shall be undertaken and submitted under the seal of a qualified professional engineer indicating that the slopes were designed to ensure the security and safety of the road and the road users.

1.4.27 Sinkholes

Treatment of sinkholes shall be in accordance with requirements specified in the Drainage and Hydrology Report, Geotechnical Report and Strategic Environmental Assessment as referenced under Schedule 21 (Technical Standards).

1.5 CONSTRUCTION REQUIREMENTS

1.5.1 Responsibility

The Developer shall be responsible for the construction of all elements of the Toll Road and related works including required environmental mitigation measures, co-ordination of utility relocations, demolitions and removals, and temporary works.

1.5.2 Management of Construction

All construction functions for the Toll Road shall be managed under the responsible direction of an appropriately qualified and experienced person appointed by the Developer to be the primary point of contact with the Grantor's Representative on construction related issues.

The Developer shall procure that a logic linked Construction Timetable is prepared using an industry standard computer programme as a CPM (critical path method) GANTT chart to show all the major design and construction activities with the latest and earliest start and finish times. A copy of the computer software shall be made available to the Grantor complete with the baseline Construction Timetable as revised from time to time in accordance with Clause 14 of this Agreement.

Construction shall be managed in accordance with the methodology for planning and management for construction described under the Quality Documentation as prescribed in Schedule 5 (Principles for Quality Documentation)..

1.5.3 Traffic Management

In general, the Developer shall maintain access along existing roads running parallel to and crossing the Sites. Permission may be granted for road closings of short duration to facilitate specific construction operation. In particular, it is noted that access to pre-construction service levels across the Portmore Causeway and across the Rio Cobre along the Dyke Road/Portmore access from Mandela Highway must be maintained throughout the construction period.

1.5.4 Certification of Work in Accordance with Reviewed Design Documentation

The Developer shall procure certification by a qualified professional engineer that the Construction Works have been completed in accordance with the Reviewed Design Documentation for each Section. Any proposed deviations from the Reviewed Design Documentation shall be resubmitted to the Grantor's Representative for review.

1.5.5 Reporting Requirements

Weekly Progress records shall be published on the Project Web Site corresponding to each Section of the Toll Road for which a Design Report has been reviewed. The reports shall contain, at minimum, a narrative description of the work completed in the period, a summary of the materials test results for the period and a summary of issues that require attention.

A digital photographic log shall be maintained beginning with clearly-identified pre-construction record photographs, progress photographs documenting significant stages of construction, and completion photographs.

Monthly reports shall be published on the Project Web Site corresponding to each Section of the Toll Road for which a Design and Construction Report has been reviewed. Monthly reports shall include an updated GANTT schedule, a summary of resources committed during the period and additional information not included in the Weekly Reports.

1.5.6 Access to Construction

The Developer shall facilitate safe access to the works by the Grantor and his designates for the purposes of monitoring progress and conducting independent quality, safety and environmental reviews.

1.5.8 Record Drawings and Documents

The Developer shall prepare record drawings and documents that fully describe the completed Construction Works. Unrestricted digital and hard copies of the drawings and documents shall be submitted to the Grantor's Representative for review. The as built record drawings shall be submitted not later than 3 months after completion of each Section. Draft operations and maintenance manuals (including health and safety) and instructions shall be submitted on the date of Handover of a Section.

1.5.9 Utility Relocation and Permits

The Developer shall be responsible for coordinating with all utility owners and arranging for utility relocations where required. Any works undertaken for utility providers, or in the vicinity of utilities, shall be undertaken in accordance with the procedures and requirements of the relevant utility. Compliance with such procedures and requirements shall be the sole responsibility of the Developer.

The Developer shall be responsible for obtaining permits to undertake works outside the boundary of the Sites and in the vicinity of utilities and roads which cross the Sites.

PART 2 - CORE OPERATION AND MAINTENANCE REQUIREMENTS

2.1 PRINCIPLES OF THE CORE O&M REQUIREMENTS

In the design, planning and execution of all works and functions associated with the operation, repair and maintenance of the Toll Road and its facilities, the Developer shall take all such action and do all such things (including, without limitation, organising itself, adopting measures and standards, executing procedures, including inspection procedures and safety patrols, and engaging and managing contractors, agents and employees) as will:

- enable the Grantor to provide an acceptably safe highway in respect of its condition (structural safety), use (road safety) and risks affecting road users and third parties;
- enable the Grantor to fulfil its statutory, administrative and common law obligations
- enable police, Competent Authorities, and others with statutory duties or functions in relation to the Toll Road or adjoining roads to perform those duties and functions;
- comply with the appropriate Core Design and Construction Requirements when undertaking new construction or maintenance works during operation of the Toll Road;
- ensure the Toll Road is operated and maintained to no lesser standard than is appropriate for a highway of the character of the Toll Road and for use by the traffic which is reasonably to be expected to use the Toll Road;
- minimise the occurrence and adverse effects of accidents and ensure that all accidents and emergencies are responded to as quickly as possible
- ensure members of the public and others are given adequate opportunity to bring to the attention of the Developer any matters affecting the safety, use and enjoyment of the Toll Road and its facilities

ensure traffic data and data relating to the operation and maintenance of the Toll Road facilities and the events on the Toll Road are collected and disseminated such that the Grantor, the State and other persons or bodies with statutory duties or functions in relation to the Toll Road or adjoining roads are better able to perform those duties and functions;

2.2 PROJECT SPECIFIC REQUIREMENTS

The designed and constructed Toll Road shall be operated and maintained as a safe and efficient highway for the benefit of the travelling public in accordance with the Core O&M Requirements. The scope of the Core O&M Requirements includes the provision of all materials, labour and equipment required in the performance of all work necessary to operate and maintain the Toll Road, including the following:

- Collection of tolls
- Daily maintenance patrols
- Safety management
- Traffic management
- Incident management

- Removal of litter, debris and obstructions
- Maintenance of travelled surfaces
- Maintenance of shoulders
- Maintenance of ditches, watercourses and drainage systems
- Maintenance of landscape features and vegetation
- Maintenance of barriers, crash attenuators and fencing
- Maintenance of road markings and traffic signs
- Maintenance of earth and rock slopes
- Maintenance of rest areas and ancillary works
- Maintenance of bridges and structures (including retaining walls)
- Maintenance of illumination and power supply facilities
- Maintenance of traffic monitoring and control devices
- Maintenance of tolling facilities
- Other works required to operate and maintain a safe and efficient tolled motorway

The Developer shall be responsible for operating, upgrading as necessary and maintaining all works within the limits of the Sites including all temporary and permanent interchange ramps, arterial roadway works, intersection improvements, drainage works and structures associated with the Toll Road.

The Developer shall not be responsible for the surface and shoulders of secondary roadways as well as their drainage features and other highway equipment, with the exception of lighting columns extending 50m beyond main line tapers and speed change lanes at interchanges and extending 50 m beyond the intersection of ramps with secondary roads,.

2.3 OPERATION AND MAINTENANCE MANAGEMENT

All operation and management functions for the Toll Road shall be managed by a person appointed by the Developer to be the primary point of contact with the Grantor's Representative on operation and maintenance related issues.

Operation and maintenance shall be managed in accordance with the Quality Documentation and in particular the methodology for planning and management of the operation and maintenance of the Toll Road as prescribed in Schedule 5 (Principles for Quality Documentation).

2.4 BASIC MAINTENANCE CRITERIA

Maintenance shall be categorised as routine, corrective and rehabilitation activities.

Routine maintenance shall include daily visual inspections, emergency repairs, removal of physical and visual obstructions, cleaning, vegetation removal, pavement re-marking, illumination maintenance, sign maintenance and related work. Rest areas and public facilities shall be inspected, cleaned and consumables replenished on a daily basis at minimum.

Corrective (or periodic) maintenance shall include resealing of surfaced roads, local shallow milling where good maintenance practice so requires and local resurfacing of full width of the lane, painting of structures and other road elements.

Rehabilitation maintenance shall include road structure repairs through extensive patching, crack sealing and levelling layers of asphalt followed by resealing or thin asphalt overlays to the full width of a lane, addition of a correction layer and/or reconstruction of one in-situ layer, replacement of parapets, refurbishment or replacement of bearings, replacement of expansion joints, repair of concrete spalling, reinstatement of embankments and/or the provision of erosion/scour protection, repair of bridge surfacing. Rehabilitation maintenance shall also include the implementation of extensive improvements in pavement structure undertaken in response to increased traffic demand or loading for the purpose of extending the life expectancy of the Toll Road.

SCHEDULE THREE**SPECIFICATION****PART 1 – DESIGN AND CONSTRUCTION SPECIFICATION****1.1 PURPOSE**

The purpose of this Part 1 of Schedule 3 shall be to define the Design and Construction Specification for the Toll Road that the Developer shall, together with the Outline Design, develop and optimise to an equal or better standard.

The Design for Approval shall be developed from the Outline Design in respect of each Phase or Section of the Construction Works so as to allow Detailed Design of that Phase or Section in accordance with the Concession Specification.

The Detailed Design shall be developed from the Design for Approval in respect of each part of a Phase or Section of the Construction Works so as to allow construction of that part in accordance with the Concession Specification.

The Design and Construction Specification, together with the Core Requirements (Schedule 2), the Technical Standards (Schedule 21) and the Outline Design (Schedule 22), describe the standards and requirements for the design, construction, operation and maintenance of the Toll Road.

1.2 GENERAL DESCRIPTION

The Highway 2000 Project was conceived to provide a modern multi-lane limited access, divided and grade-separated tolled including the provision of:

- a new 4-lane highway between Kingston and the western and northern parts of Jamaica. The Toll Road is limited under Phase 1 to the Sections from Kingston to Williamsfield. The scheme forecasts further developments under Phase 2 from Williamsfield to Montego Bay in the West and from Bushy Park to Ocho Rios in the North.
- a new 4-lane highway under Phase 1 between Kingston and Portmore, along the route of the existing Portmore Causeway, as well as a 2-lane urban highway through Portmore along the existing Dyke Road, which shall be upgraded and remain untolled.

The Toll Road, the connecting links and related works shall be located generally within the nominal Right-of-Way that is identified on the outline design drawings and as prescribed in the Core Requirements.

1.3 PHASING OF THE PROJECT

The General Layout of Schedule 22 (Outline Design) indicates the phasing of the design and construction works for Phase 1B. The tolling strategy for operation of the various Sections and Phases of the Toll Road are set out in Schedule 15.

1.3.1 Phase 1A: Kingston to Sandy Bay

- the 2 lane single carriageway Old Harbour Bypass (km 21.0 to 33.7) between Bushy Park and Sandy Bay shall be constructed as a divided 2x2 lane carriageway with the addition of a further 2 lanes, median and reconstruction of the northern ramps of the Old Harbour interchange. A main toll plaza shall be constructed to the East of the eastern ramps complete with a highway maintenance centre. The tolling operation of the bypass shall be implemented as an open system.
- the Kingston to Bushy Park Section (km 0.0 to 21.0) shall be constructed as a divided 2x2 lane carriageway with interchanges at km 0.3 (Mandela Highway), 1.2 (Portmore Access Road) and 7.4 (Spanish Town). Toll plazas shall be located on the eastbound ramps of the Spanish Town Interchange with the whole of the tolling operation on the Kingston to Sandy Bay Section implemented as an open system.

1.3.2 Phases 1B & 1C: Sandy Bay to Williamsfield

- the Sandy Bay to Williamsfield Section (km 33.7 to 71.4) shall be constructed as a divided 2x2 lane carriageway;
- the existing Melrose Bypass shall be incorporated in widened divided 2+3 lane carriageway between km 66.4 and 70.2, realigned as a divided 2x2 lane carriageway between km 70.2 and 70.9 and widened to a divided 2x2 lane carriageway between km 70.9 and 71.4;
- the Mineral Heights interchange shall be constructed at km 41. Phase 1B shall terminate at a temporary connection with Highway A2 east of the Rio Minho Bridge.
- the Developer shall construct a main toll plaza at Williamsfield, a toll plaza east of the Mineral Height interchange (2x3 lanes plus 2 reversible lanes). Kingston to Williamsfield shall remain as an open system;

1.3.3 Portmore Causeway

The congestion problems within the Portmore area shall be addressed through a two phase construction of the new causeway as set out on Drawing Nos 04-24 and 04-25 of the Outline Design contained in Schedule 22 of the Concession Agreement dated the 21st day of November, 2001.

- The 1st Phase of the causeway shall be constructed as a divided 2x2 lane carriageway between km 188.1 and 190.8 and includes the Hunt's Bay bridge with demolition of the existing bridge. (first deck operated as 4-lanes undivided). The segment between km 190.8 and 193.8 (Portmore entrance) shall be constructed as a divided 2x3 lane. The Fort Augusta interchange shall be restricted to construction of the eastbound ramps only. A main toll plaza shall be located to the west of the bridge, including an operation centre. The causeway shall be operated as an open system.
- The 2nd Phase of the Causeway shall include implementation of widening from a divided 2 x 2 lane to a divided 2 x 3 lane highway, the second deck of the Hunt's Bay bridge as well as construction of the Dyke road improvement and new link through Portmore.

1.4 GEOMETRIC DESIGN

1.4.1 Main road

The following geometric criteria shall apply:

Condition	Flat to Rolling Terrain	Rolling Terrain	Hilly Terrain	Arterial Link	Outer Ramps	Outer Ramps	Loop Ramps
Location	Kingston to Porus	Porus to W'field	Porus to W'field	Portmore Causeway Link	110 km/h Mainline Design	90 km/h Mainline Design	All
Minimum Design Speed	110 km/h	90 km/h	90 km/h	70 km/h	70 km/h	60 km/h	50 km/h
Number of Lanes	2+2	2+2 2+3 ^a	2+2 2+3 ^a	2+3 2 ^e	1	1	1
STOPPING SIGHT DISTANCE m							
Desirable Minimum	220	170	170	110	110	85	65
One Step below Desirable Minimum	170	110	110	85	85	65	45
HORIZONTAL CURVATURE							
Minimum R [m] without elimination of Adverse Camber and Transitions	2500	1650	1650	1200	1200	800	530
Minimum R [m] with Superelevation of 2.5%	1650	1200	1200	800	800	530	300
Minimum R [m] with Superelevation of 3.5%	1200	800	800	530	530	300	190
Desirable Minimum R [m] with Superelevation of 5%	800	530	530	300	300	190	120
One Step below Desirable Minimum R [m] with Superelevation of 8%	530	300	300	190	190	120	80
Two steps below Desirable Minimum R [m] with Superelevation of 8%	300	190	190	120	120	80	60
VERTICAL CURVATURE							
Desirable Minimum Crest K Value	85	55	55	22	22	15	7
One Step below Desirable Minimum Crest Value	55	22	22	15	15	7	5
Absolute Minimum Sag K Value	55	40	40	25	25	20	11
Maximum Gradient	<3%	<5%	<7% ^b	5%	6%	6%	6%
Lane Width [m]	3.65 m	3.65 m	3.65 m	3.5 m	4.80 m	4.80 m	4.80 m

Left Shoulder Width [m]	3.0 m 2.5 m ^c	3.0 m 2.5 m ^c 2.0 m ^d	3.0 m 2.5 m ^c 2.0 m ^d	2.5 m	2.5 m	2.5 m	2.5 m
Right Shoulder Width [m]	1.5 m	1.5 m	1.5 m	1.5 m	1.0 m	1.0 m	1.0 m
Minimum Median Width [m]	3.6 m	3.6 m	3.6 m	3.6 m	N/A	N/A	N/A
Nominal ROW Width [m]	100 m	100 m	100 m	100 m	N/A	N/A	N/A

^a widening of existing Melrose by-pass (km 66.4-70.2): 3 climbing lanes, 2 lanes downhill

^b exceptions within existing Melrose Bypass of 8.1% over 120 m and 8.5% over 160 m

^c from km 21.0 at the beginning of Old Harbour Bypass

^d Melrose Bypass adjacent the 3 climbing lanes

^e road link to Dyke Road

1.4.2 Interchanges

Interchanges shall be provided in accordance with Clause 1.4.7 of Part 1 of Schedule 2 (Core Requirements).

1.4.3 Roadway/Railway grade separations, field connectors, river bridges

The grade separated structures between the Toll Road and the existing roads, railway, pedestrian and farm crossings, field connectors, gullies and rivers (defined as structures across rivers and drainage features with spans in excess of 5.0 m) shall be designed and constructed at the outline locations as indicated in Schedule 22:

- number, km and name of the crossing
- type of crossing: overpass, underpass, river bridge,...
- proposed type of structure: precast beams, frame,...
- proposed type of foundations: piles,...
- skew angle
- straight crossed width, and skewed length
- width

The river bridge and gully dimensions, in terms of opening and bridge soffit level, shall comply with the Table 5.2. of the Drainage and Hydrology Report from Dessau Soprin (Illustrative Design) as referenced under Schedule 21 (Technical Standards).

The general arrangement of structures shall be as illustrated in schedule 22 Outline Design.

An at grade intersection shall be designed for Dyke Road, between km 193.8 and 200.0. The Dyke Road link including the intersection, the junction between Portmore Causeway and Marcus Garvey Drive and Portmore Mall Roundabout shall be treated as urban highways, and shall be handed back to the Grantor upon completion in accordance with the Handback Requirements of Clause 38 (Handback) .

1.4.4. Pavement

The pavement structure shall be based on a design life of 15 years. The principle for the design shall be to provide an evolutive pavement structure. The pavement shall be designed as an “over-dimensioned” foundation (base and sub-base) which shall provide support for the predicted cumulative long term traffic flows. The initial asphalt concrete surfacing shall be provided to an appropriate reduced thickness in compliance with the design standards required for the predicted cumulative traffic flow during the initial years of operation. In addition to routine maintenance, strengthening phases shall be programmed for the provision of further asphalt overlays in accordance with the requirements of the design standards for the recorded and forecasted traffic flows on the Toll Road.

1.4.5. Hydrology and drainage

The drainage system shall be designed to accommodate Jamaican climatic conditions, comprising heavy rainfall and rapid runoff, through a system of drainage with two components:

- The minor drainage system, which shall collect runoff resulting from the more frequent storm events and shall be designed to convey the runoff to the outlet at the receiving major drainage system. The minor drainage system shall consist of curbs, gutters, storm sewers, small cross-culverts and roadside ditches.
- The major drainage system follows the route that the runoff takes when capacity of the minor drainage system is exceeded (large water crossings, rivers, etc).

The drainage system shall include large roadside ditches and water crossings in sufficient numbers to match the design storm requirements. Where necessary, additional longitudinal pipe systems will handle the storm flows.

In general, all ditches shall be lined where required (longitudinal gradient greater than 3% and where in-situ material is likely to scour) with concrete, rip rap, grouted stone, precast concrete elements or asphalt.

The 3.6 m wide median shall be surfaced and sloped away from the barrier. Where the Toll Road is superelevated and the paved surface slopes toward the median, a system of flat gutters (concrete swale) and gullies shall be installed along the New Jersey barrier with longitudinal pipes discharging transversely at intervals to the outside of the carriageway.

Along existing roads (Old Harbour Bypass and Melrose Bypass) where the existing carriageway is crowned, the lane which is sloped towards the new carriageway shall be drained. Openings at the base of the New Jersey barrier shall be constructed to allow the water to be collected by the drainage system located alongside the new carriageway.

The Drainage and Hydrology Report as referenced in Schedule 22 (Technical Standards), assumes that the surface drainage systems for the Toll Road shall not include facilities for storm water quantity or quality control. However, potential drainage impact on existing infrastructure and waterways shall be properly addressed and mitigation measures implemented to minimise the impact.

1.4.6 Tolling strategy, facilities and infrastructure

The overall tolling strategy shall be implemented in accordance with Schedule 15.

1.4.7 Rest area and service facilities

The provision of facilities at the Melrose Hill Plaza are detailed under Clause 1.4.18 of Part 1 of Schedule 2 (Core Requirements).

1.4.8 Illumination and power supply

The Toll Road shall be illuminated in accordance with Schedule 2 clause 1.4.19 of the Core Requirements.

The lights shall be turned on and off by detectors.

The Developer will arrange for connection to the national grid power supply at its own cost and expense.

1.4.9 Pavement markings and signs

The design of the signing and pavement marking shall comply with the Core Requirements. No allowance shall be made by the Developer for variable message signs.

1.4.10 Barriers, Crash Attenuators and Fencing

The provision of barriers, crash attenuators and fencing are detailed under Clause 1.4.21 of Part 1 of Schedule 2 (Core Requirements).

1.4.11 Other Road Furniture and Ancillary Facilities

The provision of other road furniture and ancillary facilities are detailed under Clause 1.4.16 of Part 1 of Schedule 2 (Core Requirements).

1.5 Vineyards Expansion construction works

The Vineyards Expansion construction works shall consist in:

- One additional manual lane on the north bound,
- Relocation of the two tag lanes
- Two tag lane upgraded to both manual and tag,
- A second reversible lane, and
- Utilities transferred over the lanes and not underneath.

PART 2 - OPERATION AND MAINTENANCE SPECIFICATION**SCHEDULE THREE****TECHNICAL SPECIFICATIONS****PART 2 - OPERATION AND MAINTENANCE SPECIFICATIONS****2.1 PURPOSE**

The purpose of this Part 2 of Schedule 3 shall be to define the O&M Specification for the Toll Road that the Developer shall develop and optimise to an equal or better standard.

The O&M Specification, together with the Core Requirements (Schedule 2), the Technical Standards (Schedule 21) and the Outline Design (Schedule 22), describe the standards and requirements for the operation and maintenance of the Toll Road.

2.2 RESPONSIBILITY AND PROJECT LIMITS

The Developer shall be responsible for operating, upgrading as necessary and maintaining all works within the limits of the Sites including all temporary and permanent interchange ramps, arterial roadway works, intersection improvements, drainage works and structures.

Operation and maintenance limits shall be:

- between Kingston, commencing at the junction with the Mandela Highway and Williamsfield;
- the Portmore Causeway commencing 30 m north of the intersection with Marcus Garvey Drive to a location 30 m north of the Portmore Mall Roundabout.

The Developer shall operate and maintain the Toll Road in accordance with the Concession Specification and ensure that Good Engineering and Operating Practices shall be employed throughout the life of the Concession.

The Developer shall provide and update a timetable of its programmed activities in respect of operation and maintenance activities.

2.3 ASPHALT PAVEMENTS**2.3.1 Road roughness (riding quality)**

The International Roughness Index [IRI] shall be used as a primary indicator of functional pavement condition. A Class 1 or 2 measuring apparatus (as defined in World Bank Technical Paper number 46) is to be used to record measurements by lane in sub-segments of 100 m or less..

Testing interval: measurements taken and recorded as cm/km roughness for every 100 m
Segment length: 1km

Maximum number of segments in any Section with IRI worse than limiting value

1		> 300 cm/km	corrective maintenance to segment
5		> 300 cm/km	corrective maintenance to Section
1	2 cycles corrective	> 300 cm/km	rehabilitation maintenance to segment
1		> 350 cm/km	rehabilitation maintenance to segment
5		> 350 cm/km	rehabilitation maintenance to Section

When one of these criteria is not reached, the Developer shall undertake the appropriate maintenance within 6 months of inspection.

2.3.2 Skid resistance

Segment length : 1 km

Skid resistance shall be monitored and recorded through a minimum of 3 tests per segment (consisting of 10 sub-segments not exceeding 100m) that shall be conducted using the British Pendulum Test. Corrective action is to be taken within 6 months of inspection when the average Skid Resistance falls below 40 in any lane-km. Local conditions of flushing or polishing are to be corrected within 3 months of observation.

2.3.3 Rut depth (Distortions, Rippling and Ponding)

A distortion or ripple shall be recorded as the maximum vertical distance (mm) in the wheel path measured between the road surface and the bottom of three meter straight edge placed transversely or longitudinally across a wheel path.

The measured distortion or ripple shall be no greater than the following:

Distortion	40 mm
Ripple	25 mm (noticeable ridges and valleys)

When one of these criteria is not reached, the Developer shall undertake the appropriate maintenance within 6 months of inspection.

In the event that water ponds in local depressions to a depth greater than 10 mm on the mainline or 20 mm on the shoulders, corrective rehabilitation shall be undertaken within 3 months of inspection.

2.3.4 Pavement cracking

When 150 m of cracks per lane-km are observed, all cracks greater than 10 mm in width shall be routed and sealed within 6 months of inspection. The standard for shoulders shall be 300 m of cracks per 3.0 m wide lane or equivalent.

2.3.5 Frequency of pavement inspections

Complete pavement inspections shall be undertaken prior to opening a new Section for full or partial traffic, within 12 months of handover and at intervals not exceeding 2 years. A Pavement Condition Report shall be prepared and submitted within 3 months of each inspection containing a complete summary of results by kilometre and lane. The inspection shall include a complete road roughness evaluation, skid resistance evaluation, rut depth evaluation and cracking evaluation. The report shall include a summary and safety review of incidents by location during the period. Attention shall be focused on sections having a

higher than average number of incidents and on sections that required emergency maintenance during the period. Recommendations shall be made regarding potential safety improvements, corrective maintenance requirements and rehabilitation requirements.

2.3.6 Structural condition evaluation

A residual strength evaluation shall be conducted using Dynatest’s Falling Weight Deflectometer [FWD], or an approved equivalent device, prior to undertaking a rehabilitation maintenance. At least 10 tests per segment (consisting of 10 sub-segments not exceeding 100m) are to be conducted.

The FWD data, in conjunction with the current and predicted traffic, is to be used to calculate the residual life of the pavement using Dynatest’s ELMOD software, or an approved equivalent method. This calculation will help to validate the forecast maintenance strategy during the concession period. A corrective or rehabilitation maintenance strategy is to be developed that will provide a minimum projected residual life expectancy of 8 years following maintenance.

At the end the Concession Period, before the Developer transfers the Toll Road to the Grantor, this method will be used in order to determine the appropriate maintenance to be undertaken to provide the minimum projected residual life specified in Clause 2.9 of this Part 2 of Schedule 3.

2.4 BRIDGE AND STRUCTURAL MAINTENANCE

A comprehensive inspection of bridges, river crossings and major structures shall be undertaken by a qualified professional engineer at intervals not exceeding 5 years. Bi-annual inspections shall be undertaken of deck joints, bearings, drainage and safety barriers. Inspections shall be carried out by a qualified professional engineer. The frequency and detail of the inspections shall satisfy the more stringent of the requirements in this Clause 2.4 and those of the National Works Agency.

Comprehensive Bridge Inspection Reports, under the seal of a qualified professional engineer registered in a jurisdiction acceptable to the Grantor, shall include an inventory and condition rating of channels and banks, foundations, bearings, superstructure, deck, surface, expansion joints, railings and barriers, drains and attached utilities.

Inspections and rating of structural components, including retaining walls, shall be completed in accordance with Ontario Ministry of Transportation (Canada) Document :“ONT-86-10 Maintenance of the Highway Infrastructure: Structure Inspection and Evaluation System” (or other equivalent international standard, such as the French “Instruction Technique pour la Surveillance et l’Entretien des Ouvrages d’Art” de la DRCR), which uses rating indices for material condition (MCI) and element conditions (ECI). Each element shall be rated on a scale varying from 1 to 6, with level 1 corresponding to the most critical condition.

Recommendations shall be made for maintenance and rehabilitation works. Prioritisation of rehabilitation and repair works shall be related to condition ratings as follows:

MCI or ECI	Intervention delay
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6	No work required
5	Works required within a 6 to 10 year period
4	Works required within a 3 to 5 year period
3	Works required within a 1 to 2 year period
2	Works required within one year
1	Priority works – Immediate intervention required

Reports shall be submitted to the Grantor's Representative within 3 months of the completion of inspection.

2.5 EMERGENCY REPAIRS

Appropriate signs shall be placed to warn travellers of local surface problems that constitute a safety hazard until such time as they are repaired.

In the case of serious hazards, including potholes (greater than 200 mm in width or 75 mm in depth), wash-outs, damaged barriers and damaged attenuators, emergency repairs shall be made or safety measures employed within 48 hours of the first reasonable repair opportunity to protect road users from harm. The repairs or measures taken shall be followed-up with an inspection and report by a qualified inspector within 1 month of the repair or temporary measure employed.

Damaged barriers and crash attenuators shall be permanently repaired within 3 weeks.

2.6 OTHER MAINTENANCE

Drainage works, including bridge openings, shall be inspected bi-annually and cleaned of debris before the expected rainy season. Embankment and cutting slopes shall be systematically inspected on a bi-annual basis for signs of erosion and various failures. A Drainage Report shall be submitted to the Grantor's Representative within 3 months of the completion of drainage inspections. The report shall contain recommendations for remedial activities where warranted. Remedial activities shall be carried out within 3 months of submitting the Report.

Pavement markings, road studs, traffic signals, traffic signs and road lighting shall be inspected annually. Pavement markings, road studs, traffic signals, traffic signs and road lighting shall be re-marked, repaired or repainted to like-new condition when the measured retro-reflectance falls below 120 millicandelas/m²/lux (average value of 10 equally spaced measurement points per 5 m² of pavement marking or signs).

A Highway Equipment Condition Report shall be submitted to the Grantor's Representative within 3 months of the completion of inspection. The report shall contain recommendations for remedial activities where warranted. Remedial activities shall be carried out within 3 months of submitting the Report.

Rock cuts higher than 15m shall be inspected by a qualified professional engineer or a geologist at an interval not exceeding 2 years. General stability conditions shall be investigated and a report submitted to the Grantor's Representative within 3 months of

inspection. Any local instabilities (loose rocks) shall be corrected within 6 months of inspection. A Slope and Rock Cut Stability Report shall be submitted to the Grantor's Representative within 3 months of the completion of inspections and investigations. The report shall contain recommendations for remedial activities where warranted. Remedial activities shall be carried out within 3 months of submitting the Report.

Vegetation shall be cut-back at least twice per annum, to maintain safe sight distances, hydraulic capacity of ditches and watercourses and safe highway operating conditions.

All fences, including boundary fences, shall be repaired as soon as possible after damage is observed and no later than 48 hours after the observation. Road kill shall be removed as soon as possible after observation and no later than 24 hours after occurrence.

2.7 BASIC TOLLING OPERATION CRITERIA

The Developer shall meet the following Levels of Performance and Quality.

2.7.1 Toll Collection

(a) The Developer shall ensure that toll booths are manned in a manner such that during each month the levels of service at the toll barriers shall be achieved for the durations stated below save as provided in Clause 2.7.1(e) herein.

(b) The Service Time for users going through a toll plaza (as defined below), is the sum of the waiting time of vehicles in a queue and the transaction time for payment of the toll. The level of service to be provided by the Developer pursuant to Clause 2.7.1(c) shall be determined by reference to the following three categories:

- Level A Service Time between 0 and 90 seconds (queue of 5 vehicles or less for manual lanes in operation);
- Level B Service Time between 90 and 180 seconds (queue of 6 to 10 vehicles for manual lanes);
- Level C Service Time above 180 seconds.

For the purpose of this Clause 2.7.1, the Service Time shall be the average service time calculated for each direction for all toll lanes in operation at a particular toll plaza during a period of 15 minutes.

The Service Time is deemed to begin when the arriving vehicle stops behind the preceding one, and to end when the cashier has given back the change.

(c) If the average daily traffic is less than 40,000 vehicles and/or the peak hour traffic is less than 2,000 vehicles in the peak direction at the Portmore Causeway toll plaza, a sufficient number of toll booths shall be manned to achieve Level A save as provided in Clause 2.7.1(e).

For any particular toll plaza and for each direction at such toll plaza:

- Level C shall not be reached for more than 4 hours in the aggregate for any calendar month;

- Level B and/or C shall not be reached for more than 19 hours in the aggregate for any calendar month.
- (d) If all toll lanes are open and if the traffic exceeds the toll plaza capacity, the Developer shall use all reasonable endeavours to minimise the Service Time. The Developer shall investigate the cause of the reduction in toll booth capacity and shall submit a report to the Grantor within 1 month of such investigation. The report shall identify the measures to be taken to satisfy the requirements of Clause 2.7.1(c). Any recommended measures in respect of the O&M Works of the Toll Road shall be implemented within 3 months of submission of the report.
- (e) The Developer shall comply with the level of service set out in Clause 2.7.1(c) save in exceptional circumstances such as exceptional climatic conditions, major accidents, or other causes of delay of a similar nature outside the control of the Developer and save at bank holiday weekends.
- (f) The Developer shall, from time to time, agree with the Grantor, or such other entity as may be required from time to time by the Grantor, a proper schedule for statistical observations and records at the toll barriers.

2.7.2 Accidents

The Developer shall commence the implementation of safety procedures (road signing, information for users, information for the police) as soon as practicable but in no event later than 30 minutes from notification of an accident provided that the traffic has not been completely interrupted by such accident.

The Developer shall procure the services of local garages for repairs or towing of users' light vehicles and heavy vehicles at the users' expense and shall, enter into agreements with them so that the repair shop responsible for repair or towing of users' cars should reach the site of the accident or breakdown within 30 minutes of notice by the Developer or the police under normal traffic conditions and the repair shop responsible for repair or towing of users' heavy vehicles should reach the site of the accident or breakdown within the time specified in the Operation and Maintenance Manuals.

2.7.3 Motorway Patrol

The Developer shall provide regular patrol services to monitor and inspect the tolling facilities in accordance with detailed procedures for auditing as set out in the operation and maintenance manuals. The Developer shall ensure that a register is maintained to record all visits to inspection and checking control points in the following manner:

- Patrol officer to visit each inspection and checking control point, the patrol officer shall inform the operator of the traffic control room;
- Road routine maintenance staff to visit each inspection and checking control point, workers shall inform the operator of the traffic control room;
- Operator staff to visit each inspection and checking control point, all Operator staff members shall inform the operator of the traffic control room.

2.8 OTHER REPORTING REQUIREMENTS

Monthly operating reports summarising the following key information for the period are to be submitted to the Grantor in both electronic and hard copy format.:

- Hourly and Daily traffic volumes and per categories
- Daily toll revenues total and per categories
- Daily incident reports
- Maintenance activities from monthly maintenance plan
- Quality Assurance (QA)/Quality Control (QC) Management
- Any other related information

The maintenance activities recorded in the monthly operating reports shall include details of the date, lengths, time of day and duration of all lane closures, accurately referenced to the Toll Road kilometre marker posts.

The Developer shall provide the Grantor with a licensed copy, and annual updates during the Concession Period, of an industry-standard infrastructure management system [IMS], or an alternative to be agreed by the Grantor, to assist in the monitoring of pavement, bridge and maintenance management activities. The IMS shall include the following sub-systems:

- Infrastructure Operation and Maintenance Management System;
- Pavement Management System;
- Pavement and Associated Feature Maintenance Management System;
- Bridge Management System;
- Quality Assurance (QA)/Quality Control (QC) Management and Reporting System.

2.9 HAND-BACK STANDARDS

The Toll Road shall be handed-back to the Grantor at the end of the Concession Period in a good and operable condition.

All durable components (bridge girders, abutments, piers, culverts, illumination poles, barriers, etc.) of the highway system must have a minimum remaining useful life expectancy of no less than 20 years.

The handback standard for pavements shall meet the minimum criteria as set out in Clause 2.3 of this Part 2 of Schedule 3. The minimum projected residual life expectancy shall be 8 years.

The handback standard for pavements shall be as follows:

Handback Standard	
	Condition
Pavement	
Asphaltic Pavement	
– Distress	All segments must exceed minimum required standard
– Road roughness	60% of Maintenance Units must have an IRI <300, No Segment may have an IRI >350

Handback Standard	
	Condition
- Skid	All segment's average value >40
- Rutting	All segment's Rut <20 mm
- Strength	All segments average > 8 years

All pavement markings must have been re-marked with 5-year quality marker within 2 years of hand-back. All signs and pavement markings must have a measured average retro-reflectance greater than 180 millicandelas/m²/lux with no more than 1% falling below 120 millicandelas/m²/lux (average measurement as detailed under Clause 2.6 of this Part 2 of Schedule 3). All signs must be in place and in good repair.

All fencing, bridge railings, safety barriers and crash attenuators shall be in good repair.

All structural damage and deterioration shall be repaired such that no part of the structure or any of its components shall have a Condition Rating Index lower than 5 for structural parts and 4 for non structural parts.

- Bridge expansion joint seals and bearings shall be no older than 5 years. Elements used for replacement shall have a life expectancy at handback of not less than 15 years;
- All steel structures (except for weathering steel) shall be re-painted within 5 years of hand-back with a painting system having a rated life expectancy at handback of at least 10 years;
- Bridge decks shall have been resurfaced within 5 years of hand-back with a wearing surface having a life expectancy at handback of at least 10 years.

All electrical systems and illumination devices shall be functional (per specification) and in good repair.

Vegetation must be cut-back and landscaping maintained until hand-back.

All drainage works shall have been cleaned and maintained within 6 months of hand-back.

The toll collection system shall be handed-back in a good state of repair. No electronic toll collection or computer equipment shall be older than 5 years. Maintenance facilities and equipment shall be handed back in a good state of repair.

**SCHEDULE 3A –
PRELIMINARY TOLLED SECTION**

Preliminary Tolled Section

For clarification, the chainages in the Original Outline Design of the Concession Agreement for Phase 1A starting from Chainage 188+050 to Chainage 199+500, have been replaced in the new Phase 1A Outline Design (as shown in Schedule 3 above) with chainages from 0+000 to Chainage 11+450. The "**Preliminary Tolled Section**" is a part of Phase 1A Construction Works and constitutes that part of Phase 1A from Km 0+000 to Km 5+900 on the east bound carriageway and 5+800 on the west bound carriageway at Dawkin's Drive. From approximately Km 0+400 to Km 2+400, at the Time for Preliminary Phase 1A Completion the traffic will be accommodated on the final east bound carriageway and temporary carriageway constructed north of the permanent alignment. The temporary construction will require occupation of land from Km 0+400 to Km 2+440 to a width of 25m North of the edge of the permanent construction.

Due to the temporary nature of the construction on the Preliminary Tolled Section, at Time for Preliminary Phase 1A Completion various elements of the works for the segment between km 0+400 to km 2+400 will not be in compliance with the Core Requirements, as follows:

1. Permanent Drainage works on the East bound Carriageway will only be completed at Time for Final Phase Completion. Adequate temporary drainage will be provided at the Time for Preliminary Phase 1A Completion.
2. The temporary carriageway will be of a temporary nature providing the same level of service and safety as the permanent carriageway.
3. A temporary steel median barrier will be provided with specifications meeting the design speed of 70 km/h.
4. Permanent Lighting and Signage might not be installed in the final permanent locations at Time for Preliminary Phase 1A Completion, but will be installed in temporary locations to fulfil the Core Requirements. Temporary Lighting and Signage will be provided as necessary while transferring to the permanent locations before Time for Final Phase 1A Completion.
5. Emergency Telephones will be only operational on one side on the completed permanent carriageway at Time for Preliminary Phase 1A Completion.
6. Landscaping and Grassing will only be completed at Time for Final Phase 1A Completion.
7. As Built Drawings will be supplied at Time for Final Phase 1A Completion + 3 months.

The following items will be only delivered at Time for Final Phase 1A Completion:

1. Traffic monitoring systems.
2. Communications between Portmore Causeway Plaza and Vineyards and Spanish Town.

SCHEDULE FOUR

DEVELOPER'S TIMETABLE

[To be attached separately.]

SCHEDULE FIVE**PRINCIPLES FOR QUALITY DOCUMENTATION****PART 1****1.1 DEVELOPER'S RESPONSIBILITIES**

The Developer shall submit to the Grantor's Representative environmental and health and safety management plans as part of the Quality Documentation in accordance with the provisions of Clause 13A (Quality Documentation Review). The Quality Documentation, in combination with the management plans, identify the procedures and methodology for managing the Concession and ensuring all parties involved in the design, construction and operation of the Toll Road exercise the required standard of quality control and assurance.

The Quality Documentation shall perform the dual purpose of providing information related to the management of and methodology for the design, construction, operation and maintenance of the Toll Road and its related activities in parallel with the quality management systems of the Developer, Contractor, Operator and other contracting parties.

The Developer's responsibilities include the provision of Quality Documentation that will enable the Grantor to monitor and measure the Developer's performance in the management, design, construction and operation & maintenance of the Toll Road and the level of service being provided to road users over a period of time, including without limitation, its performance in respect of:

- quality;
- environment;
- health & safety;
- road safety;
- Level of Service on Toll Road highway;
- Level of Service at toll plazas;
- traffic data collection and verification;
- downtime of tolling equipment;
- response times for maintenance and attendance at, and clearance of, accidents and incidents;
- litter;
- dealing with complaints and claims from road users and other interested parties;
- road surface condition (including skid resistance, ride quality and residual life);
- condition and availability of equipment (including communication equipment, data recording equipment and road signs);
- encouraging drivers to travel within speed limits (advisory signs);
- dealing with overloaded vehicles;
- management of the landscape and ecology;
- other environmental aspects, including air quality and noise;
- the provision and maintenance of facilities for any class of road user the needs of whom require specific consideration (including without limitation pedestrians, cyclists etc who require to cross the Toll Road);
- impact of the operations on neighbouring road and rail routes with an emphasis on the development of an integrated transport system; and
- consultations and discussions with other interested parties

1.2 REVIEW OF THE DEVELOPER'S QUALITY DOCUMENTATION

The parties shall meet regularly, on at least a quarterly basis, to discuss the Developer's, Contractor's and Operator's proposals for Quality Documentation and verify compliance with the criteria set out in the check list contained in Part 2 of Schedule 5.

1.3 QUALITY MANAGEMENT SYSTEM

The Developer shall provide Quality Documentation as detailed in Part 2 of this Schedule 5 developed in accordance with BS EN 9001:2000 to a level of detail that would enable the quality management system be Certified.

1.4 OPERATION AND MAINTENANCE QUALITY DOCUMENTATION

Operation and maintenance procedures shall be definitive and descriptive. The Developer shall provide a level of detail in equal or greater detail than the Ontario (Canada) Ministry of Transportation Maintenance Special Provisions, or approved equivalent.

1.5 ENVIRONMENTAL MANAGEMENT PLAN

The Developer shall provide an environmental management plan in accordance with the ISO 14000 series of standards to a level of detail that can be Certified.

1.6 HEALTH AND SAFETY MANAGEMENT PLAN

The Developer shall provide a health and safety management plan to address workplace and public health and safety during all stages of project development, design, construction, operation and maintenance. In particular, the Developer shall comply with the requirements for the application of Explicit Safety Assessment Methods during any design process and the completion of an Safety Review prior to submitting Design and Construction Reports for each Section or any capital works or rehabilitation during the operation and maintenance phase.

PART 2

2.1 PRINCIPLES OF QUALITY DOCUMENTATION

The Developer shall submit to the Grantor's Representative Quality Documentation in accordance with the provisions of Clause 13A (Quality Documentation Review). The requirements and principles that apply to the Quality Documentation are as set out in this Part 2 of Schedule 5.

All Quality Documentation submitted by the Developer shall indicate points where no further work or activity shall proceed without documented authorisation of the designated person identified in the related work instruction, method statement, inspection and test plan, design review plan, design verification plan, operation and maintenance manual or other control document ("**Hold Points**").

The Grantor's Representative shall be given the opportunity to indicate where Hold Points are required to enable witnessing by the Grantor's Representative, especially for those items subject to covering up.

The table below indicates content of the Quality Documentation required from each of the parties undertaking works or services for or on behalf of the Developer. The term "Other Parties" includes all subcontractors, subconsultants and suppliers of any tier whether or not employed directly by the Developer. Other Parties shall comply with the requirements of the Quality Documentation applicable to the Contractor or the Operator as the case may be.

2.2 LEVEL OF DETAIL FOR QUALITY DOCUMENTATION

No	Description	Developer	Contractor Design	Contractor Construction	Operator
2.1	The Quality Documentation shall include the following details as a summary introduction:				
	a. Executive Summary	✓	✓	✓	✓
	b. Purpose	✓	✓	✓	✓
	c. Confidentiality Statement	✓	✓	✓	✓
	d. Scope of Work	✓	✓	✓	✓
	e. Deliverables, <i>inter alia</i>				
	• <i>Environmental Approval Documents</i>		✓	✓	✓
	• <i>Permit Requirements</i>		✓	✓	✓
	• <i>Design Reports for Construction Works, ancillary works or Expansion Works</i>	✓	✓	✓	✓
	• <i>Construction Drawings</i>		✓	✓	✓
	• <i>Construction Specifications</i>		✓	✓	✓
	• <i>Other Deliverables</i>		✓	✓	✓
2.2.1	The Quality Documentation shall describe the Quality Management System which as a minimum satisfies the requirements of BS EN ISO 9001:2000 and which includes, <i>inter alia</i> ;				

No	Description	Developer	Contractor Design	Contractor Construction	Operator
	a. a quality manual describing how the Quality Management System meets the requirements of BS EN ISO 9001:2000 series both on and off site;		✓	✓	✓
	b. a quality plan or plans which follow ISO 10005;		✓	✓	✓
	c. other quality documentation, if any, describing the objectives of the party and how the party's obligations will be performed in respect of the Toll Road;		✓	✓	✓
	d. the details and scope of any current third party certification of operating a Quality Management System which complies with BS EN ISO 9001:2000 for the locations where work will be undertaken;	✓	✓	✓	✓
	e. details of the Quality Documentation submitted by subcontractors and suppliers (" Other Parties "), if any, and any other information to demonstrate how the party will meet the requirements imposed by its contract or otherwise in respect of the Concession;		✓	✓	✓
	f. where applicable, a description of any joint venture Quality Management System to be operated (including details of any third party certification);			✓	✓
	g. auditing and management review of the party's own and its contractors' and subcontractors' activities and Quality Management Systems (including timing and scope);	✓	✓	✓	✓
2.3	The Quality Documentation shall provide details of:				
	a. organisational structure covering the activities to be performed in respect of this Agreement and the lines of communication with other parties both on and off site;	✓	✓	✓	✓
	b. list of contractors/consultants and reference to the location of a list of main subcontracts of the contractors/consultants with reference to related Quality Documentation;	✓			
	c. relevant party's main contractual arrangements and those of its contractors, subcontractors and subconsultants;	✓	✓	✓	✓
	d. responsibilities of contractors and subcontractors in relation to this Concession Agreement;	✓			
	e. name of the Developer's Representative (in Clause 37);	✓			
	f. name, job specification and responsibilities of Developer's Quality Director;	✓			
	g. name, title, job specification and responsibilities of the person with defined authority for establishing, maintaining and reporting on the party's quality management system during the different phases or sub-phases of the Concession;	✓	✓	✓	✓
	h. name, title, and responsibilities of supporting quality management staff reporting to the person with defined authority;	✓	✓	✓	✓

No	Description	Developer	Contractor Design	Contractor Construction	Operator
	i. names, titles, job specification and responsibilities of key staff and specific experience required for those positions (a copy of the CV for each individual shall be separately submitted to the Grantor's Representative for information upon that individual's appointment) to include the staff responsible for, <i>inter alia</i> ;				
	<ul style="list-style-type: none"> • <i>Environmental Management</i> 			✓	✓
	<ul style="list-style-type: none"> • <i>Safety Management</i> 			✓	✓
	<ul style="list-style-type: none"> • <i>Traffic Management</i> 			✓	✓
	<ul style="list-style-type: none"> • <i>Survey and Construction Layout</i> 			✓	✓
	<ul style="list-style-type: none"> • <i>Public Liaison and Communications</i> 			✓	✓
	<ul style="list-style-type: none"> • <i>Utility Coordination</i> 			✓	✓
	<ul style="list-style-type: none"> • <i>Other Construction Procedures</i> 			✓	✓
	<ul style="list-style-type: none"> • <i>Highway Marketing and Communications</i> 				✓
	<ul style="list-style-type: none"> • <i>Emergency Response and Incident Management</i> 				✓
	<ul style="list-style-type: none"> • <i>Toll Collection Management</i> 				✓
	<ul style="list-style-type: none"> • <i>Policing and Enforcement</i> 				✓
	<ul style="list-style-type: none"> • <i>Daily Patrols and Monitoring</i> 				✓
	<ul style="list-style-type: none"> • <i>Maintenance Management</i> 				✓
	<ul style="list-style-type: none"> • <i>General Maintenance</i> 				✓
	<ul style="list-style-type: none"> • <i>Pavement Maintenance</i> 				✓
	<ul style="list-style-type: none"> • <i>Bridge Maintenance</i> 				✓
	<ul style="list-style-type: none"> • <i>Materials Inventory Management</i> 				✓
	<ul style="list-style-type: none"> • <i>Fleet and Equipment Management</i> 				✓
	<ul style="list-style-type: none"> • <i>Facilities Management</i> 				✓
	<ul style="list-style-type: none"> • <i>Ancillary Works and Heavy Repairs</i> 	✓			
	j. names and contact details of key personnel for contractors and subcontractors and any third party with which the relevant party will have dealings in the course of its activities in relation to the Concession (including any on site checking team, if any);		✓	✓	✓
	k. a list of written project specific quality and management procedures and the methodology which will be followed to ensure the effective management and implementation of the activities to be undertaken for all relevant technical aspects of the Concession (excluding commercial, legal and financial aspects), indicating any amendments required to its standard practices, (including where any procedure is not pertinent at the time when a quality plan is submitted, a short synopsis of each such procedure);	✓	✓	✓	✓
	l. written quality procedures describing how examination of the Construction Works or other services will be performed including, <i>inter alia</i> :				
	<ul style="list-style-type: none"> • <i>Geotechnical Site Investigations</i> 		✓	✓	✓

No	Description	Developer	Contractor Design	Contractor Construction	Operator
	<ul style="list-style-type: none"> • <i>Surveys and Mapping</i> 		✓	✓	✓
	<ul style="list-style-type: none"> • <i>Environmental Investigation and Compliance</i> 		✓	✓	✓
	<ul style="list-style-type: none"> • <i>Safety Audit</i> 		✓	✓	✓
	<ul style="list-style-type: none"> • <i>Structural Audit</i> 		✓	✓	✓
	<ul style="list-style-type: none"> • <i>Aesthetics in Design</i> 		✓	✓	✓
	<ul style="list-style-type: none"> • <i>Materials Compliance Testing</i> 		✓	✓	✓
	m. a list of certificates, reports and other deliverables to be provided, to the Developer and/or Grantor's Representative, and target dates for delivery of the same;		✓	✓	✓
	n. a sequence of activities for submission of any written procedure or method statement which allows for its submission to the Grantor's Representative in accordance with the review procedures prior to commencement of the relevant activity;		✓	✓	✓
	o. a list of quality records required and retention periods;	✓	✓	✓	✓
	p. a list of particular key reference documents, databases, standards, performance and design input criteria (<i>i.e. list of technical appraisal forms</i>);		✓		
	q. a list of the work instructions or other like detailed documentation describing the activities to be carried out in respect of the Concession which will be followed or applied including any relevant inspection and test plans of the party, its contractors and subcontractors;		✓	✓	✓
	r. a list of inspection and test plans or like items identifying the proforma and/or databases to be used for recording the inspection and test results;			✓	✓
	s. servicing requirements for equipment including statistical techniques, if any, and their control;			✓	✓
	t. handling, storage, package, preservation and delivery of materials, documents, drawings and data to be used in respect of the Concession including, <i>inter alia</i> ;				
	<ul style="list-style-type: none"> • <i>Filing and Data Management Procedures (including Distribution Lists)</i> 	✓	✓	✓	✓
	<ul style="list-style-type: none"> • <i>Project Web Site Protocol</i> 		✓	✓	✓
	<ul style="list-style-type: none"> • <i>Network and Intranet Protocols</i> 		✓	✓	✓
	<ul style="list-style-type: none"> • <i>Design Files and Models</i> 		✓		✓
	<ul style="list-style-type: none"> • <i>CAD Standards (hardware, software, layering, reference files and object libraries)</i> 		✓		✓
	<ul style="list-style-type: none"> • <i>Other Administration Requirements</i> 	✓	✓	✓	✓
	u. method statements for each major activity whether directly undertaken or subcontracted to include, <i>inter alia</i> ;				
	<ul style="list-style-type: none"> • <i>General Approach</i> 		✓	✓	✓
	<ul style="list-style-type: none"> • <i>Work Breakdown Structure and Schedule</i> 		✓	✓	✓
	<ul style="list-style-type: none"> • <i>Resource Allocation by Task</i> 		✓	✓	✓
	<ul style="list-style-type: none"> • <i>Location of Work</i> 		✓	✓	✓

No	Description	Developer	Contractor Design	Contractor Construction	Operator
v.	a logic linked timetable, supported by descriptions of the scope of work for each activity, including the estimation of work completed	✓	✓	✓	✓
w.	Developer derived quality performance indicators and the measures adopted by the Developer for monitoring and reporting those indicators;	✓	✓	✓	✓
x.	method for managing and controlling changes and modifications to the Quality Documentation;	✓	✓	✓	✓
y.	any other measures necessary to meet the party's quality objectives and those imposed by the Developer on its contractors.		✓	✓	✓
z.	any other measures to demonstrate how the party will meet its obligations under the this Agreement or otherwise in respect of the Toll Road.		✓	✓	✓
2.4	The Quality Documentation shall detail the arrangements for:				
a.	interfacing Quality Documentation;	✓			
b.	controlling the interface between landscaping, ecological and archaeological aspects and other aspects of the design, construction, operation and maintenance of the Toll Road;	✓			
c.	interfacing with the landscaping, ecological and archaeological aspects of the Toll Road;		✓	✓	✓
d.	interfacing between the Contractor, the Operator, subcontractors and independent certifiers including any design engineer, the structural design auditor, the safety auditor, any quality checker, any testing contractor and similar parties and their respective Quality Management Systems during Construction or O&M Works;		✓	✓	✓
e.	procurement of services, materials and products and control of contractors, consultants, subcontractors and subconsultants including requirements for the preparation and submission of Quality Documentation and records;		✓	✓	✓
f.	quality control for monitoring any work and testing undertaken by subcontractors and suppliers both on and off site, including a resource table and Hold Points;		✓	✓	✓
g.	quality control for monitoring any services undertaken in the design office and on site including resource table, Hold Points, design review and certification, verification plans, etc;		✓	✓	✓
h.	carrying out examinations of Construction and O&M Works, reviewing of examinations, issuing certificates, observation of testing and reporting results and certification of compliance of all items of Construction or O&M Works by authorised key personnel;	✓	✓	✓	✓

No	Description	Developer	Contractor Design	Contractor Construction	Operator
	i. reporting to the Grantor's Representative the occurrence of any matter listed in Schedule 11 (Penalty Points) including recording and dealing with reports from its contractors and subcontractors concerning any other matter which constitutes or may constitute a breach by the Developer of its obligations under this Agreement in accordance with Clause 15;	✓			
	j. identification of, dealing with, recording and reporting to the Developer the occurrence of any of the matters listed in Schedule 11 (Penalty Points) and any other matter which constitutes or may constitute a breach by the Developer of its obligations under this Agreement including non conforming work or products and on site problems together with corrective and preventative action reporting in accordance with Clause 15;		✓	✓	✓
	k. direct reporting to the Developer by parties not immediately contracted to the Developer of any matter referred to in item j above;		✓		
	l. communications procedures	✓	✓	✓	✓
	m. consultation with and taking due account of the views of Competent Authorities, (in particular the National Works Agency and the Natural Environmental and Planning Authority) and interested parties;		✓	✓	✓
	n. liaison with, document control and reporting between the Developer, the Contractor, the Grantor's Representative, Competent Authorities (in particular the National Works Agency and the Natural Environmental and Planning Authority) and other interested parties, including arrangements to allow the Grantor's Representative to witness activities and designate specific or random Hold Points;	✓	✓	✓	✓
	o. liaison with the public, press, media and similar parties in accordance with the press media policy of the Grantor;	✓			
	p. dealing with comments and/or complaints received from road users and others;	✓		✓	✓
	q. dealing with the provision of information that may be required by the Government of Jamaica in relation to statements or responses to questions or issues raised by or on behalf of the Jamaican Parliament, or any member thereof in respect of the Toll Road, and that is within the possession of the Developer or any company which is at the relevant time an associated company of the Developer or any of their respective directors, officers, employees, servants or agents;	✓			

PART 3**DEVELOPER'S QUALITY DOCUMENTATION**

The Quality Documentation included in this Part 3, identifies those items which have been included at the Concession Award Date solely for the purpose of establishing the minimum requirements of the Quality Documentation, which shall be resubmitted as a complete package of Quality Documentation under the Review Procedure in accordance with Clause 13A.

The relevant items of the Developer's management plans and quality documentation shall include all technical aspects for the management and administration of the respective activities, excluding any commercial, financial and legal aspects as follows:

- (a) design management plan;
- (b) construction management plan;
- (d) operation and maintenance plan;
- (e) quality management plan;
- (f) health and safety and environmental management plan; and
- (g) environmental management plan.

SCHEDULE SIX

COMPETENT AUTHORITY CONSENTS

1. Environmental permit to be issued by the Natural Resources Conservation Authority (NRCA) under the procedure agreed with the Executive Director of the NRCA.
2. Consent from the Chief Executive Officer of the National Works Agency (NWA) under the procedure set out in the Main Roads Act.

SCHEDULE SEVEN

UTILITIES CLEARANCE PROGRAMME

1. PROVISION OF DUAL CARRIAGEWAY TO OLD HARBOUR BYPASS – km 21.0-33.7

The early start for construction of a dual 2 lane Old Harbour Bypass will require the early availability of the relevant land free from utilities:

- Land for Contractor's site installation at Old Harbour Interchange – km 26.3, at EFC;
- Land for widening bridges at km 21.22, 21.87, 23.70, 24.32, 25.05, 25.86, 27.50, 29.65, 30.13, 30.32, 31.10, 33.50, no later than 2 months after EFC;
- All land for earthworks from km 21.0 to 33.7, no later than 6 months after EFC.

2. KINGSTON – BUSHY PARK – km 0.0-21.0

- No later than 7 months after EFC;

3. PORTMORE CAUSEWAY – 1st Phase – km 190.4-193.8

- 1st phase of Hunt's Bay bridge from km 190.4 to 191.2, no later than 2 months after FC1A;
- Other areas of the Site from km 191.2 to 193.8, no later than 6 months after FC1A;

4. DYKE ROAD – km 193.8-200.0

- Bridges at km 194.6 and 200.0, no later than 8 months after FC1A;
- Other areas of the Site, no later than 9 months after FC1A;

5. PORTMORE CAUSEWAY – 2nd Phase – km 187.9-191.2

- 2nd phase of Hunt's Bay bridge from km 190.4 to 191.2 no later than 18 months after FC1A
- Other areas of the Site from km 187.9 to 190.4, no later than 33 months after FC1A

6. SANDY BAY – MAY PEN – km 33.0-43.5

- No later than 4 months after FC1B.

NB - For the purposes of this Schedule 7:

EFC means Early Financial Close;
 FC1A means Financial Close 1A; and
 FC1B means Financial Close 1B.

SCHEDULE EIGHT

LAND DELIVERY SCHEDULE

1. DUALISATION OF OLD HARBOUR BYPASS – km 21.0 to 33.7

Note: the early start of the construction works on the dualisation of the Old Harbour Bypass requires an early availability of the relevant lands. In order to facilitate the process for the Grantor, the availability will be requested on the following 3 steps:

- Land for site installation at Old Harbour Interchange – km 26.3: EFC
- Land for widening bridges at km 21.22, 21.87, 23.70, 24.32, 25.05, 25.86, 27.50, 29.65, 30.13, 30.32, 31.10, 33.50: EFC + 2 months
- Totality of land for earthworks – km 21.0 to 33.7: EFC + 6 months

2. KINGSTON – BUSHY PARK – km 0.0-21.0

- EFC + 4 months

3. PORTMORE CAUSEWAY – 1st Phase – km 190.4 to 193.8

- Land for 1st Hunt's Bay bridge – km 190.4 to 191.2: FC1A
- Totality of land – km 191.2 to 193.8: FC1A + 4 months

4. DYKE ROAD – km 193.8 to 200.0

- FC1A + 7 months

5. PORTMORE CAUSEWAY – 2nd Phase – km 187.9 to 191.2

- Land for 2nd Hunt's Bay bridge – km 190.4 to 191.2: FC1A + 18 months
- Totality of land – km 187.9 to 190.4: FC1A + 30 months

6. SANDY BAY – MAY PEN – km 33.0 to 43.5

- Land for Phase 1B, from Sandy Bay to May Pen, including toll barrier at May Pen at FC1B

7. MAY PEN – WILLIAMSFIELD – km 43.5 to 71.4

- Land for Phase 1C, from May Pen to Williamsfield, at FC1C

NB - For the purposes of this Schedule 8:

EFC means Early Financial Close;
 FC1A means Financial Close 1A;
 FC1B means Financial Close Phase 1B, and
 FC1C means Financial Close Phase 1C.

SCHEDULE NINE

LAND DOCUMENTS

PART 1 - GENERAL

A master lease which sets out the terms on which the land specified in the schedules to that lease is to be leased by the Grantor to the Developer.

PART 1A - EARLY PROJECT LAND DOCUMENTS

The schedules to the master lease described in Part 1 above which provide for the leasing of the Early Project Sites by the Grantor to the Developer.

PART 1B - PHASE 1A LAND DOCUMENTS

The schedules to the master lease described in Part 1 above which provide for the leasing of the Phase 1A Sites by the Grantor to the Developer.

PART 1C - PHASE 1B LAND DOCUMENTS

The schedules to the master lease described in Part 1 above which provide for the leasing of the Phase 1B Sites by the Grantor to the Developer.

N.B. *It is envisaged that the Commissioner of Lands will purchase the freehold of the Sites and grant a lease over them to the Grantor who will then grant a sub-lease to the Developer. The proposed form of Lease will be circulated to the Developer in due course.*

SCHEDULE TEN**CONDITIONS PRECEDENT AND CONDITIONS SUBSEQUENT
PART 1****Effective Date Conditions Precedent**

The delivery of validly executed copies (except where indicated) of the following agreements to each of the Parties in a form acceptable to the Parties:

1. GPD Loan Agreement
2. Government Guarantee
3. Implementation Agreement
4. Shareholders Equity Undertaking
6. Letter of Exemption from the Ministry of Finance and Planning
8. Financial Model

PART 2**EFC Developer Conditions Subsequent**

The delivery of validly executed copies of the following agreements to the Grantor in a form acceptable to the Grantor and the delivery of a notice to the Grantor that they have become unconditional in all respects (save for any condition relating to the un-conditionality of this Agreement):

1. Insurance Certificates
2. Construction Contract (including the Construction Timetable and the Schedule of Tasks)
3. O&M Agreement term sheet
4. Performance Bond for Construction Contract
5. Shareholders EFC Letter of Credit

The fulfilment of any condition precedent to the Bridging Financing Agreements within the Developer's control.

PART 3**EFC Joint Conditions Subsequent**

The delivery of validly executed copies of the following agreements to each of the Parties in a form acceptable to the Parties and the delivery of a notice to each Party that they have become unconditional in all respects (save for any condition relating to the un-conditionality of this Agreement)

1. Construction Warranty
2. Early Project Intercreditor Agreement
3. Step-In Security Agreement
4. Bridging Financing Agreements
5. Subordinated Debt Agreement
6. Form of Head Lease
7. Form of Lease

8. Custody Agreement

PART 4**EFC Grantor Conditions Subsequent**

The delivery of validly executed copies of the following agreements to the Developer in a form acceptable to the Developer and the delivery of a notice to the Developer that they have become unconditional in all respects (save for any condition relating to the un-conditionality of this Agreement):

1. The entry into force of the Toll Roads Bill as an Act of the Parliament of Jamaica and the entry into force and/or validity of any consents necessary to enable Developer to raise tolls
2. Agreement for Handover of Existing Road Sections
3. Competent Authority Consents
4. NROCC Licence
5. Tax Exemption Orders
6. Grantor Working Capital Reserve Agreement
7. Grantor EFC Letter of Credit

The fulfilment of any condition precedent to the Bridging Financing Agreements within the Grantor's control.

PART 5**FC1A Developer Conditions Subsequent**

The delivery of validly executed copies of the following agreements to the Grantor in a form acceptable to the Grantor and the delivery of a notice to the Grantor that they have become unconditional in all respects (save for any condition relating to the un-conditionality of this Agreement):

1. O&M Agreement
2. O&M Warranty
3. Performance Bond for O&M Agreement
4. Shareholders FC1A Letter of Credit

The fulfilment of any condition precedent to the Phase 1A Financing Agreements within the Developer's control.

PART 6**FC1A Grantor Conditions Subsequent**

The delivery of validly executed copies of the following agreements to the Developer in a form acceptable to the Developer and the delivery of a notice to the Developer that they have become unconditional in all respects (save for any condition relating to the unconditionality of this Agreement):

1. Grantor Working Capital Reserve Agreement
2. A confirmation from National Commercial Bank Jamaica Limited that the Grantor has caused additional funds in the amounts of US \$ 6,500,000.00 to be deposited to the escrow account held at National Commercial Bank Jamaica Limited pursuant to the Escrow Agreement dated 12th March 2002 made between the Developer, the Grantor and the National Commercial Bank Jamaica Limited, in addition to the funds already deposited to the said escrow account, or the issuance of a Deed of Guarantee and Indemnity by Development Bank of Jamaica Limited to the Developer in accordance with clause 6 of the FC1A Closing Agreement dated 13th February, 2004 made between the Grantor and the Developer.

The fulfilment of any conditions precedent to the FC1A Financing Agreements within the Grantor's control.

PART 7**FC1A Joint Conditions Subsequent**

The delivery of validly executed copies of the following agreements to each of the Parties in a form acceptable to both Parties and the delivery of a notice to each Party that they have become unconditional in all respects (save for any condition relating to the unconditionality of this Agreement):

1. Phase 1A Financing Agreements

PART 8**FC1B Developer Conditions Subsequent**

The fulfilment of any condition precedent to the Phase 1B Financing Agreements within the Developer's control.

PART 9**FC1B Grantor Conditions Subsequent**

The fulfilment of any conditions precedent to the Phase 1B Financing Agreements within the Grantor's control.

Execution of a direct agreement with the Lenders in a form acceptable to the Lenders

Execution of the Grantor's Documents related to Phase 1B

PART 10

FC1B Joint Conditions Subsequent

1. The delivery of validly executed copies of the Phase 1B Financing Agreements

PART 11**Conditions Precedent to Completion**

- The provision of an Opening Strategy Report.
- A formal inspection under the direction of the Project Management Unit. (Highway to be substantially complete and fit for purpose with no safety defects).
- Acceptance of the works and Opening Strategy Report by the Project Management Unit.
- The Opening Strategy Report is be generally in the following format:

Introduction

Background Information
Scope of Work and Location
Proposed Opening Date and Time

Work to be Completed Prior to Opening

Construction Works
Final Inspection
Notification of Stakeholders
Public Officials
Police
Emergency Response
Utilities
Public
Others

Activities on Day of Opening

Pre-opening Inspection
Pre-opening Notifications
Formal Activities
Opening Sequence
Monitoring

Post-Opening Activities

Completion of Construction Works
Initiation of Operations and Maintenance Plan

**SCHEDULE ELEVEN
PENALTY POINTS**

Ref	DESCRIPTION	Penalty Points	Remedial Period
	O&M REQUIREMENTS		
1	Provisions of General Application		
1.1	Land Issues		
1.1.1	Failure by the Developer to execute variations to Leases in the event the Concession Period is extended in accordance with Clause 7.9.	5	1 week
1.1.2	Failure to include provisions enabling rights to use, occupy, share or exploit land or other property of the Developer to be terminated and duration of rights for a term no longer than the remaining term of the Concession Agreement in accordance with Clause 7.11.	10	NIL
1.2	Utilities Provision		
1.2.1	Failure to procure access for contractors, agents or employees of the Grantor or of the relevant utility company in accordance with Clause 8.4.	3	1 day
1.3	Archaeological Finds		
1.3.1	Failure to inform the Grantor's Representative of the discovery of any Archaeological Find as required by Clause 10.2.	5	NIL
1.3.2	Failure to comply with the directions of the Grantor's Representative in relation to removal or disposal in accordance with Clause 10.2.	5	1 day
1.3.3	Failure to prevent the removal or damage of any Archaeological Find as required by Clause 10.3.	5	NIL
1.3.4	Failure to procure access for the Grantor or any Competent Authority to carry out investigations as required by Clause 10.2 and Clause 10.4.	3	1 day
1.4	Operating and Financial Reporting		
1.4.1	Failure to submit monthly operating reports summarising key information for the period, including traffic volumes, toll revenues, incident reports, maintenance activities and related information as required by Clause 2.8 of Part 2 of Schedule 3.	2	1 week

Ref	DESCRIPTION	Penalty Points	Remedial Period
1.4.2	Failure to provide the Grantor with a licensed copy, and annual updates during the Concession Period, of an industry-standard infrastructure management system [IMS] system to assist in the monitoring of pavement, bridge and maintenance management activities in electronic and manual format as required by Clause 2.8 of Part 2 of Schedule 3.	2	1 week
1.4.3	Failure to furnish the annual financial statements and information in accordance with Clause 39.3.	5	1 week
1.4.4	Failure to furnish the bi-annual financial statements, reports and information in accordance with Clause 39.4.	3	1 week
1.5	Quality Management		
1.5.1	Commencing or permitting the commencement of any aspect of the operation and maintenance of the Toll Road prior to submitting the Quality Documentation in breach of Clause 13B.4.	5	NIL
1.5.2	Failure to submit any proposed change, addition or revision to any aspect of the operation and maintenance of the Toll Road in accordance with Clause 13B.6.	2	1 week
1.5.3	Failure by the Developer or any contractor or sub-contractor to comply with any applicable Quality Documentation under Clause 13B.3(d) in compliance with Clause 13B.1.	1	1 week
1.5.4	Failure to use an accredited laboratory in accordance with Clause 13B.12.	2	1 week
1.5.5	Failure to report on the performance of the quality management system in accordance with Clause 13B.15 and Clause 2.8 of Part 2 of Schedule 3.	5	1 week
1.6	Insurance		
1.6.1	Failure to submit details of any insurance or changed insurance that comply with the requirements of Clause 42.4.	3	1 week
1.6.2	Failure to furnish any insurance policy (or a copy thereof certified in a manner acceptable to the Grantor's Representative) in accordance with Clause 42.5.	1	1 day
1.6.3	Failure to provide evidence of payment of premiums and effectiveness of insurances in accordance with Clause 42.5.	1	1 week
1.6.4	Failure to obtain and forward to the Grantor's Representative renewal certificates in accordance with Clause 42.6.	1	1 week

Ref	DESCRIPTION	Penalty Points	Remedial Period
1.6.5	Failure to notify the Grantor of claims and incidents in accordance with Clause 42.8.	3	NIL
1.6.6	Failure to notify the Grantor of any claims and incidents involving third parties, whether or not such claims are insurable under Clause 42.8.	5	NIL
1.6.7	Failure to apply the proceeds received under any policy in accordance with Clause 42.12 to 42.15.	5	NIL
1.7	Emergencies		
1.7.1	Failure to ensure that staff, plant, equipment and materials are present at the scene of any Emergency following initial notification of the Emergency to co-ordinate arrangements with the Emergency services as required by Clause 18.7, and in accordance with Clause 2.7.2 of Part 2 of Schedule 3.	2	1 hour
1.8	Measurement of Traffic		
1.8.1	Failure to maintain hourly and daily records in digital format for each recording location as required by Clause 2.8 of Part 2 of Schedule 3.	3	3 days
1.8.2	Failure to submit the programmed monthly records for each recording location to the Grantor as required by Clause 2.8 of Part 2 of Schedule 3.	2	1 week
1.9	Operation of Toll Barriers		
1.9.1	Failure to provide an acceptable Level of Service through toll booths defined under Clause 2.7.1(b) of Part 2 of Schedule 3 as measured by detection loops and recorded electronically.	3	1 week
1.10	Expansion Schemes		
1.10.1	Failure to make a proposal for a Developer Variation in accordance with Clause 19A.1 upon the occurrence of an Expansion Scheme Trigger Event as set out in Clause 2 of Schedule 17.	10	1 month
2	Maintenance Works		
2.1	Programming		
2.1.1	Failure to plan a programme of surveys for traffic data collection or to review or revise any such programme in order to comply with the requirements of Clause 2.1, Clause 2.2 and Clause 2.7.1 of Part 2 of Schedule 3 and in respect of Expansion Scheme Triggers under Schedule 17.	2	1 week

Ref	DESCRIPTION	Penalty Points	Remedial Period
2.1.2	Failure to submit a copy of a programme of operation and maintenance activities in accordance with Clause 2.2 of Part 2 of Schedule 3.	2	1 week
2.1.3	Failure to collect, record, and analyse survey data on a systematic and regular basis in order to comply with the requirements of Clause 2.1, Clause 2.2 and Clause 2.7.1 of Part 2 of Schedule 3 and to establish Expansion Scheme Trigger Events under Schedule 17.	2	1 month
2.2 Recording of Survey Data			
2.2.1	Failure to submit a copy of any survey reports or results to, or to provide a list of survey records and make available for inspection by the Grantor's Representative in order to comply with the requirements of Clause 2.1, Clause 2.2 and Clause 2.7.1 of Part 2 of Schedule 3 and to establish Expansion Scheme Trigger Events under Schedule 17.	2	1 week
2.3 Safety and Traffic Management Measures			
2.3.1	Failure to provide, erect, maintain, reposition, cover, uncover or remove temporary traffic signs and traffic management equipment in order to ensure traffic flow is convenient and safe at all times in compliance with the requirements of Clause 18.1 and 18.4.	1	1 day
2.3.2	Failure of the Developer to employ a nominated person responsible for traffic safety and control to be on duty at all times in order to fulfil the Developer's obligations under Clause 18.	3	4 hours
2.3.3	Failure to remove or ensure removal of stationary vehicles or obstacles from the carriageway and shoulders of the Toll Road in accordance with Clause 18.5.	5	1 day
2.3.4	Failure to remove or ensure removal of stationary vehicles or obstacles from other areas of the Sites in accordance with Clause 18.5.	5	1 week
2.4 Closure of Sections or Lanes and Alternative Routes			
2.4.1	Failure to ensure that all routine closures are clearly signed at least four weeks before implementation in order to limit the inconvenience to road users under the requirements of Clause 18.8.	2	NIL

Ref	DESCRIPTION	Penalty Points	Remedial Period
2.4.2	Failure to procure that traffic signs are erected outside the area of the Toll Road to inform Road Users of closure and alternative routes in order to ensure proper traffic management under Clause 18.4 and to limit the inconvenience to road users under the requirements of Clause 18.8.	2	1 day
2.5	Information		
2.5.1	Failure to treat the public with due courtesy and consideration when dealing with any written query or complaint, which is brought to the notice of the Grantor by the complainant or his agent, in compliance with Clause 2.1 of Part 1 of Schedule 2.	1	1 week
2.5.2	Failure to record and maintain an up to date register of written queries and complaints thereby ensuring that members of the public are given adequate opportunity to bring to the attention of the Developer any matters affecting the safety, use and enjoyment of the Toll Road and its facilities in compliance with Clause 2.1 of Part 2 of Schedule 2.	1	1 day
2.5.3	Failure to give adequate notice to bus operators who may be affected by proposed roadworks on the Toll Road in order to limit the inconvenience to road users under the requirements of Clause 18.8.	1	1 day
3	Routine Maintenance		
3.1	Inspection		
3.1.1	Failure to submit and update a programme of inspection and routine maintenance for the Operation and Maintenance of the Toll Road under Clause 2.2 of Part 2 of Schedule 3 including, <i>inter alia</i> , visual inspections, emergency repairs, removal of physical and visual obstructions, cleaning, vegetation removal, pavement re-marking, illumination maintenance, sign maintenance and related work in order to satisfy the requirements of Clause 2.4 of Part 2 of Schedule 2.	2	1 week
3.1.2	Failure to carry out a complete pavement condition inspection within 12 months of handover as required by Clause 2.3.5 of Part 2 of Schedule 3.	2	1 week
3.1.3	Failure to carry out the programmed regular and complete pavement condition inspection at 2 yearly intervals following initial inspection under paragraph 3.1.2 as required by Clause 2.3.5 of Part 2 of Schedule 3.	2	1 week

Ref	DESCRIPTION	Penalty Points	Remedial Period
3.1.4	Failure to submit a Pavement Condition Report within 3 months of each inspection under paragraph 3.1.2 and 3.1.3 containing a complete summary of results by kilometre and lane. The report shall include a summary and safety review of incidents by location during the period as required by Clause 2.3.5 of Part 2 of Schedule 3.	2	1 week
3.2 Emergency Repairs			
3.2.1	Failure to place appropriate signs to warn travellers of local surface problems that constitute a safety hazard until such time as they are repaired as required by Clause 2.5 of Part 2 of Schedule 3.	3	24 hours
3.2.2	Failure to make emergency repairs or employ safety measure after first reasonable repair opportunity in the case of serious hazards, including potholes (greater than 200 mm in width or 75 mm in depth), wash-outs, damaged barriers and damaged crash attenuators as required by Clause 2.5 of Part 2 of Schedule 3.	10	24 hours
3.2.3	Failure to inspect and submit a report by a qualified inspector following emergency repairs as required by Clause 2.5 of Part 2 of Schedule 3.	2	1 week
3.2.4	Failure to make any permanent repairs to any safety fence within 3 weeks of emergency repair or implementation of safety measures as detailed in paragraph 3.2.2 and in accordance with Clause 2.5 of Part 2 of Schedule 3.	5	1 week
3.2.5	Failure to make any other permanent repairs within 1 month of emergency repair or implementation of safety measures as detailed in paragraph 3.2.2 and in respect of Good Engineering and Operating Practice and the Core Requirement providing for safety of road users.	3	2 weeks
3.3 SURFACE DETERIORATION			
3.3.1	Failure to undertake corrective maintenance to a segment of the Toll Road when the IRI of any 1 km segment in a Section exceeds 300 cm/km within 6 months as required by Clause 2.3.1 of Part 2 of Schedule 3.	5	1 month
3.3.2	Failure to undertake corrective maintenance for the entire Section when the IRI of any 5 segments in a Section exceed 300 cm/km within 6 months as required by Clause 2.3.1 of Part 2 of Schedule 3.	5	2 months
3.3.3	Failure to limit the number of corrective maintenance cycles to no more than 2 prior to undertaking rehabilitation maintenance as required by Clause 2.3.1 of Part 2 of Schedule 3.	10	NIL

Ref	DESCRIPTION	Penalty Points	Remedial Period
3.3.4	Failure to undertake rehabilitation maintenance for any 1 km segment when the average IRI is greater than 350 cm/km within 6 months as required by Clause 2.3.1 of Part 2 of Schedule 3.	3	1 month
3.3.5	Failure to rehabilitate the entire Section when the IRI of any 5 segments in a Section exceed 350 cm/km within 6 months as required by Clause 2.3.1 of Part 2 of Schedule 3.	10	3 months
3.3.6	Failure to take corrective action when Skid Resistance falls below 40 in any lane-km within 6 months as required by Clause 2.3.2 of Part 2 of Schedule 3.	5	1 month
3.3.7	Failure to take corrective action when local conditions of flushing or polishing are observed within 3 months as required by Clause 2.3.2 of Part 2 of Schedule 3.	2	1 month
3.4	PAVEMENT CRACKING AND DEFORMATION		
3.4.1	Failure to correct distortions (greater than 40 mm in 3 m), rippling (noticeable ridges and valleys over 25 mm in height) and wheel track rutting (greater than 20 mm in depth) within 6 months as required by Clause 2.3.3 of Part 2 of Schedule 3.	3	1 month
3.4.2	Failure to correct depression ponding of greater than 10 mm on the mainline and 20 mm on the shoulders within 6 months as required by Clause 2.3.3 of Part 2 of Schedule 3.	3	1 month
3.4.3	Failure to route and seal pavement cracking when 150 m of cracks per lane-km are observed (all cracks greater than 10 mm in width) within 6 months as required by Clause 2.3.4 of Part 2 of Schedule 3.	3	1 month
3.4.4	Failure to route and seal shoulder cracking when 300 m of cracks per 3.0 m wide lane or equivalent are observed (all cracks greater than 10 mm in width) within 6 months as required by Clause 2.3.4 of Part 2 of Schedule 3.	3	1 month
3.5	Embankments and Cuttings		
3.5.1	Failure to carry out the programmed and updated activities under the Developer's Timetable, for the bi-annual systematic inspection of embankment and cutting slopes for signs of erosion and various failures as required by Clause 2.6 of Part 2 of Schedule 3.	2	1 week
3.5.2	Failure to arrange and carry out the programmed inspection and investigation of rock cuts higher than 15m at intervals not exceeding 2 years by a qualified professional engineer or a geologist as required by Clause 2.6 of Part 2 of Schedule 3.	2	1 week

Ref	DESCRIPTION	Penalty Points	Remedial Period
3.5.3	Failure to submit a Slope and Rock Cut Stability Report on general stability conditions within 3 months of inspection as required by Clause 2.6 of Part 2 of Schedule 3.	3	1 week
3.5.4	Failure to correct any local instabilities (loose rocks) within 6 months of inspection as required by Clause 2.6 of Part 2 of Schedule 3.	10	1 month
3.5.5	Failure to undertake recommended remedial activities, where warranted, within 3 months of submission of Slope and Rock Cut Stability Report as required by Clause 2.6 of Part 2 of Schedule 3.	10	1 month
3.6 Highway Drainage			
3.6.1	Failure to carry out the programmed systematic twice-yearly inspection of drainage works, including bridge openings as required by Clause 2.4 and 2.6 of Part 2 of Schedule 3.	2	1 week
3.6.2	Failure to carry out the programmed twice-yearly cleaning of debris from highway drainage before the expected rainy seasons as required by Clause 2.6 of Part 2 of Schedule 3.	5	1 week
3.6.3	Failure to submit the twice-yearly Drainage Report within 3 months of inspection of drainage works, including bridge openings as required by Clause 2.6 of Part 2 of Schedule 3.	2	1 week
3.6.4	Failure to undertake recommended remedial activities within 3 months of submission of the twice-yearly Drainage Report as required by Clause 2.6 of Part 2 of Schedule 3.	10	1 month
3.6.5	Failure to take all reasonable steps to prevent water draining from the Toll Road causing nuisance or damage to any land not forming part of the Site or damage to any third party in respect of Good Engineering and Operating Practice and the Core Requirement to minimise the risk of damage, disturbance to or destruction of third party property under Clause 2.1 of Part 2 of Schedule 2.	3	1 week
3.7 Environmental Mitigation Measures			
3.7.1	Failure to undertake mitigation measures to limit the impact of contamination on the environment arising from incidents of spillage comprising, <i>inter alia</i> , hazardous materials and petrochemicals in respect of Good Engineering and Operating Practice and the Core Requirement to minimise the risk of damage, disturbance to or destruction of third party property under Clause 2.1 of Part 2 of Schedule 2.	3	24 hours
3.8 Traffic Signals, Traffic Signs, Pavement Markings and Road Lighting			

Ref	DESCRIPTION	Penalty Points	Remedial Period
3.8.1	Failure to carry out the programmed and updated activities under the Developer's Timetable, for the routine inspection and maintenance of any traffic signal, traffic sign, road stud, pavement marking or road lighting installation as required by Clause 2.6 of Part 2 of Schedule 3.	2	1 week
3.8.2	Failure to rectify any observed defect in traffic signals, traffic signs, road studs, road markings and road lighting installations as required by Clause 2.6 of Part 2 of Schedule 3.	3	1 month
3.8.3	Failure to submit a Highway Equipment Condition Report within 3 months of inspection as required by Clause 2.6 of Part 2 of Schedule 3.	2	1 week
3.8.4	Failure to undertake recommended remedial activities within 3 months of submission of the Highway Equipment Condition Report as required by Clause 2.6 of Part 2 of Schedule 3.	2	1 month
3.8.5	Failure to re-mark, repair or repaint pavement markings and signs to like-new condition when the measured retroreflectance falls below 120 millicandelas/m ² /lux as required by Clause 2.6 of Part 2 of Schedule 3.	2	1 month
3.9 Measuring Equipment			
3.9.1	Failure to carry out the programmed and updated activities under the Developer's Timetable, for the routine maintenance of any Measuring or data collection Equipment in order to comply with the requirements of Clause 2.1, Clause 2.2 and Clause 2.7.1 of Part 2 of Schedule 3 and to establish Expansion Scheme Trigger Events under Schedule 17.	2	1 month
3.9.2	Failure to protect or make safe any of the Developer's electrical installations in respect of Good Engineering and Operating Practice and the Core Requirement providing for the safety and risks affecting road users and other third parties under Clause 2.1 of Part 2 of Schedule 3.	3	48 hours
3.10 Boundary Fences and Barriers			
3.10.1	Failure to carry out the programmed and updated activities under the Developer's Timetable, for the routine maintenance of any boundary fence or barrier as required by Clause 2.6 of Part 2 of Schedule 3.	2	1 week
3.10.2	Failure to repair boundary fences and barriers as soon as possible and no later than 48 hours after damage is observed as required by Clauses 2.3.4 and 2.6 of Part 2 of Schedule 3.	2	24 hours

Ref	DESCRIPTION	Penalty Points	Remedial Period
3.11	Kerbs, Edgings and Pre-Formed Channels		
3.11.1	Failure to carry out the programmed and updated activities under the Developer's Timetable, for the routine maintenance on any kerb, edging or pre-formed channel under related work as required by Clause 2.4 of Part 2 of Schedule 2.	2	1 week
3.12	Planted and Landscaped Areas		
3.12.1	Failure to carry out the programmed and updated activities under the Developer's Timetable, for the bi-annual cutting-back of vegetation, to maintain safe sight distances, hydraulic capacity of ditches and watercourses and safe highway operating conditions as required by Clause 2.6 of Part 2 of Schedule 3.	2	1 month
3.12.2	Failure to carry out the programmed and updated activities under the Developer's Timetable, for the bi-annual inspection of planted vegetation and trees under related work as required by Clause 2. 4 of Part 2 of Schedule 2.	2	1 week
3.12.3	Failure to carry out the programmed and updated activities under the Developer's Timetable, for the annual routine maintenance of planted vegetation and trees under related work as required by Clause 2.4 of Part 2 of Schedule 2.	2	1 month
3.13	Sweeping and Cleaning		
3.13.1	Failure to carry out the programmed and updated activities under the Developer's Timetable, for the routine maintenance of removing litter, debris and obstructions from all areas of the Site.	2	1 month
3.13.2	Failure to clear and remove major obstructions of debris and road kill from the Toll Road and to sweep and clean as soon as possible after observation and no later than 24 hours as required by Clause 2.6 of Part 2 of Schedule 3.	3	24 hours
3.13.3	Failure to inspect and clean rest areas and public facilities and replenish consumables on a daily basis under related work as required by Clause 2.4 of Part 2 of Schedule 2.	2	1 day
4	Maintenance of Highway Structures		
4.1	Records of Highway Structures		
4.1.1	Failure to prepare an individual maintenance manual or group maintenance manual in accordance with Clause 13.5.	3	1 week

Ref	DESCRIPTION	Penalty Points	Remedial Period
4.1.2	Failure to prepare or maintain a register of structures and a structure file, including identification, location, all reports, inventories and condition ratings, in order to comply with the requirements of Clause 2.4 of Part 2 of Schedule 3.	2	1 week
4.2	Inspections		
4.2.1	Failure to carry out the programmed Bi-annual inspection of deck joints, bearings, drainage and safety barriers by a qualified professional engineer as required by Clause 2.4 of Part 2 of Schedule 3.	2	1 week
4.2.2	Failure to submit a Structural Inspection Report within 3 months of submission of Bi-annual and 5 yearly inspections as required by Clause 2.4 of Part 2 of Schedule 3.	2	1 week
4.2.3	Failure to carry out the programmed comprehensive inspection of bridges, river crossings and major structures every 5 years by a qualified professional engineer as required by Clause 2.4 of Part 2 of Schedule 3.	2	1 week
4.2.4	Failure to submit a Comprehensive Bridge Inspection Report, under the seal of a qualified professional engineer registered in a jurisdiction acceptable to the Grantor, within 3 months of 5 yearly inspections as required by Clause 2.4 of Part 2 of Schedule 3.	2	1 week

SCHEDULE TWELVE**TERMINATION SUMS****PART 1****GRANTOR RESPONSIBILITY TERMINATION****PART 1.1****BEFORE EARLY FINANCIAL CLOSE**

A capital sum equal to the Shareholder Contribution Amount applicable to the Early Project which has been contributed at that date less any cash standing to the credit of the accounts of the Developer or any other unexpended portion of that sum;

PART 1.2 EARLY PROJECT

A capital sum equal to the aggregate of:

- (a) the Developer Senior Early Project Debt;
- (b) the Shareholder Contribution Amount contributed to the Project; and
- (c) an equity compensation amount calculated to yield the Shareholders an IRR of 16% (taking into account a nominal, after tax, cumulative target IRR).

PART 1.3 - PHASE 1A

A capital sum equal to the aggregate of:

- (a) Developer Senior Phase 1A Debt;
- (b) the Shareholder Contribution Amount contributed to the Project; and
- (c) an equity compensation amount calculated to yield the Shareholders an IRR of 16% (taking into account a nominal, after tax, cumulative target IRR).

PART 1.4 – PHASE 1B

A capital sum equal to the aggregate of:

- (a) Developer Senior Phase 1B Debt;
- (b) the Shareholder Contribution Amount contributed to the Project; and
- (c) an equity compensation amount calculated to yield the Shareholders an IRR of 20% (taking into account a nominal, after tax, cumulative target IRR).

Notwithstanding the provisions of this Part 1 of Schedule 12, if FC1B is not reached by the FC1B Long Stop Date, the equity compensation amount paid to the Developer under Part 1.2 paragraph (c), Part 1.3 paragraph (c) and/or Part 1.4 paragraph (c) will be calculated so that the proportion of the equity compensation amount that the Sponsor receive corresponding to an IRR (on the relevant Phase of the Project) of 11% (calculated on a real, after-tax basis).

PART 2

DEVELOPER RESPONSIBILITY TERMINATION

PART 2.1

BEFORE EARLY FINANCIAL CLOSE

Nil

PART 2.2

EARLY PROJECT

A capital sum equal to the Developer Senior Early Project Debt

PART 2.3 - PHASE 1A

A capital sum equal to the Developer Senior Phase 1A Debt

PART 2.4 - PHASE 1B

A capital sum equal to the Developer Senior Phase 1B Debt

PART 3

NO RESPONSIBILITY TERMINATION

PART 3.1

BEFORE EARLY FINANCIAL CLOSE

A capital sum equal to fifty percent of the Shareholder Contribution Amount applicable to the Early Project which has been contributed at that date less any cash standing to the credit of the accounts of the Developer or any other unexpended portion of that sum.

PART 3.2

EARLY PROJECT

A capital sum equal to the aggregate of:

- (a) Developer Senior Early Project Debt; and
- (b) 50% of the Shareholder Contribution Amount applicable to the Early Project.

PART 3.3 - PHASE 1A

A capital sum equal to the aggregate of:

- (a) Developer Senior Phase 1A Debt; and

- (b) 50% of the Shareholder Contribution Amount applicable to Phase 1A.

PART 3.4- PHASE 1B

A capital sum equal to the aggregate of:

- (a) Developer Senior Phase 1B Debt; and
- (b) 50% of the Shareholder Contribution Amount contributed to the Project.

SCHEDULE THIRTEEN**HEDGING POLICY**

The hedging instruments shall be determined in accordance with the policy described herein with the prior written approval of the Grantor, such approval not to be unreasonably withheld.

General Principles

1. Any interest rate hedging shall be by means of either (i) the purchase by the Developer of interest rate caps or swaps, or (ii) financing instruments bearing a fixed rate of interest.
2. The counterparty to any swap shall, at the date of execution of that hedging instrument be a bank or financial institution selected by the Developer which has a long term credit rating of at least "A-" from S&P or "A3" from Moody's (or an equivalent rating from another credit rating agency) and which has agreed to be bound by the terms of the Concession Agreement as a Hedging Counterparty in accordance with the terms thereof.
3. The terms of any swap shall be based on ISDA documentation subject to such adjustments and amendments as the Grantor may require.
4. Save as agreed between the Developer and the Grantor, the hedging policy in respect of the Phase 1A Financing Agreements and the Phase 1B Financing Agreements shall be as set out above.

Developer Senior Early Project Debt

1. It is intended that the Developer may hedge, in accordance with the above Hedging Policy, the interest rate exposure of the Bridge Loan to the London interbank offered rate for USD at market conditions at the time of the hedge.

FC1B Hedging Policy

A certain portion of the financing contracted by the Developer under the Phase 1B Financing Agreements bears a fixed rate so as to hedge the interest rate risk in connection with the refinancing of the Phase 1A Debt and the financing of Phase 1B. In case of early termination of the Phase 1B Financing Agreement, breakage or unwinding costs in connection with the hedging of the interest rate risk will be owed to the Senior Lenders as part of the sums due under the Phase 1B Financing Agreements as if the Senior Lenders were a Hedging Counterparty of the Borrower for all intents and purposes of the relevant sections of the Concession Agreement including in particular and without limitation the definition of Developer Senior Phase 1A Debt and Developer Senior Phase 1B Debt.

It is the Developer's intention to hedge the interest rate risk during construction by entering into a cap agreement with a bank which has a long term credit rating of at least A- from S&P or A3 from Moody's.

SCHEDULE FOURTEEN

INSURANCE

PART 1 - CONSTRUCTION PHASE INSURANCE

1. Contractors' all-risks insurance;
2. Advance Loss of Profit insurance;
3. Professional Indemnity insurance;
4. Third party liability insurance;
5. Employer's liability insurance;
6. Construction plant and equipment insurance; and
7. Motor vehicles insurance.

PART 2 - O&M PHASE INSURANCE

1. Property damage insurance;
2. Business Interruption insurance;
3. Third party liability insurance;
4. Employer's liability insurance; and
5. Motor vehicles insurance.

SCHEDULE FIFTEEN**TOLLING POLICY****1. PRINCIPLES**

- 1.1.** Except as otherwise stated in this Schedule 15 or in the Law and as outlined in paragraph 2 (Exempt Vehicles) of this Schedule, all users of the Toll Road, or sections of the Toll Road shall be charged tolls from the Handover Date of any relevant Section.
- 1.2.** The Toll Levels for any period will be set by the Developer, in accordance with the Capped Toll Level for that period. The Capped Toll Level for any period will be calculated from the Initial Toll Level and the escalation formula set out in paragraph 5.2 of this Schedule 15.
- 1.3.** If the Toll Levels set by the Developer are at or below the Capped Toll Level for that period and the Developer applies to the Toll Regulator in accordance with Clause 5 of Schedule 15 and in accordance with any relevant statutory requirements imposed on the Developer, for the approval of such Toll Levels, the Toll Regulator may approve them and upon such approval such Toll Levels shall be implemented in accordance with applicable law on the first Saturday of July following the Developer's said application. However, the Toll Regulator does have the powers to insist that the Developer charges other Toll Levels and, in this circumstance, or in the circumstances referred to in clause 22.3 of the Amended and Restated Agreement, the Developer shall be compensated by the Grantor for lost revenue, as calculated by the formula set out in paragraph 7 of this Schedule 15.
- 1.4.** The Developer may not discriminate between different users except:
- Different Toll Levels may be set for different categories of vehicle (as set out in paragraph 3 of this Schedule 15);
 - Discounts may be given to certain classes of user, based either on the origin/destination of the trip, or on the residence of the trip maker;
 - Discounts may be given in relation to the frequency of the trip;
 - Discounts may be given in relation to time based multi access tickets.
- 1.5.** Any such discount schemes must be notified to the Toll Regulator.
- 1.6.** Tolls may be levied either manually at toll barriers or through electronic data collection. However, in the event of electronic data collection being installed, it must always be possible for those without valid electronic transponders to pay tolls and legally access the Toll Road.

2. EXEMPT VEHICLES

Emergency Vehicles on duty, and vehicles driven by employees of the Developer and of the Operator may use the Toll Road exempt of any toll charges.

3. VEHICLE CLASSIFICATION

- 3.1.** The Developer shall implement a vehicle classification system as outlined below.
- 3.2.** Any proposal to modify the descriptions of each category, or vary the number of categories shall be submitted to the Toll Regulator, for approval within 30 (thirty) days of receipt of such request. The Toll Regulator shall not unreasonably withhold such

approval.

3.3. The table below sets out:

1. the description of each of the traffic categories
2. the ratio of the toll for each category with the Initial Toll Level of Class 1 vehicles

Vehicle Category	Vehicle Description	Toll Ratio
Class 1	Less than 1.70 m high	1:1
Class 2	Less than 5.5 m long and more than 1.70 m high	2:1
Class 3	More than 5.5 m long and more than 1.70 m high	3:1

3A. TOLLING SYSTEM

The Developer will be free to implement an Open System or a Closed System or a mix of the two systems.

A Closed System is one in which a vehicle's movement both onto and off the motorway is recorded- and the toll is levied as the vehicle leaves the toll road, calculated on the basis of the movement actually made.

An Open System is one in which passage onto and off the toll road is not recorded — and a fixed toll is levied whenever a vehicle passes through a toll barrier, irrespective of the use made by the vehicle of the toll road.

4. INITIAL TOLL LEVEL

4.1. The ceiling for the levels of toll allowed to be charged under this contract will be established in the light of the Initial Toll Level (ITL). ITL, will be set, in Jamaican Dollar 1/01/2001, at the following level for Class 1 vehicles (exclusive of any tax):

- for the Kingston — Mandeville Section (km 0 to km 71):
 - for *closed* sections, the ITL will be calculated as distance travelled (in Km) x Jam\$ 3.16,
 - for *open* sections, the ITL will be calculated as the greatest distance that the vehicle might travel on the toll road using this open section of the toll road (in Km) x Jam\$ 3.16 (for the avoidance of doubt, if, in Phase 1A, the toll road is operated as an open system,
 - between Kingston and Sandy Bay (km 0 to km 33), then the ITL at the toll barrier will be calculated as Jam\$ 3.16 x 33), even though some traffic might have only used the toll road for a shorter distance, using intermediate interchanges.
- For the barrier on the Portmore Causeway, ITL will be Jam\$ 45.10.

The Developer is free to propose to the Grantor tariffs lower than those deriving from the ITL and the application of toll increase formula.

5. CAPPED TOLL LEVEL

- 5.1. The Developer may apply to the Toll Regulator no later than two months prior to 1st July of each calendar year for variation of the Toll Levels for the 12 month period commencing on that the first Saturday of July of that calendar year and ending the day before the first Saturday of July of the next calendar year; provided however that if the increase in the Jamaican CPI for the preceding period (which shall be calculated by annualising the increase in the Jamaican CPI over the most recent 6 months) exceeds twenty five percent (25 %) per annum, , the Developer may, apply for a variation of Toll Levels at any month end when the increase in the Jamaican CPI in the period since the most recent toll increase has been greater than 5%.
- 5.2. The tolls charged will always be set at a level equal to or less than the Capped Toll Level for that period.

The Capped Toll Level, in period t representing the period commencing on first Saturday of July of the calendar year during which the application referred to in Clause 5.1 of Schedule 15 is made and ending the day before the first Saturday of July of the next calendar year, until the Developer's debt (other than debt due to its shareholders) which is denominated in a currency other than Jamaican Dollars is fully repaid, will be calculated as follows:

$$CTL_t = ITL * \text{Allowed Escalation}$$

where Allowed Escalation is calculated as:

$$AE = P_{a,t} * ((CPI_{a,t} / CPI_{a,0}) * (RoE_{a,t} / RoE_{a,0})) + P_{b,t} * ((CPI_{b,t} / CPI_{b,0}) * (RoE_{b,t} / RoE_{b,0})) + P_{c,t} * ((...)) + P_{d,t} * ((...)) +$$

where $P_{a,t}$ = proportion of debt in currency a at time t

$CPI_{a,t}$ = consumer price index in country with currency a at time t
 $CPI_{a,0}$ = consumer price index in country a at 1/01/2001

$RoE_{a,t}$ = exchange rate Jam\$ in terms of currency a at time t
 $RoE_{a,0}$ = exchange rate Jam\$ in terms of currency a at 1/01/2001

P_b = proportion of debt in currency b

CPI_b = consumer price index in country with currency b
 RoE_b = exchange rate Jam\$ in terms of currency b

etc

In determining the Allowed Escalation, the projected consumer price index and the exchange rate mentioned above as at 1st January in the period t shall be calculated and taken into account.

The projected consumer price index and exchange rate as at January 1st in the period t shall be calculated as follows:

$$CPI_{a,jan} = CPI_{a,ref} * (1+R_{cpi})^{(ncpi/365)} \quad RoE_{a,jan} = CPI_{a,ref} * (1+R_{roe})^{(nroe/365)}$$

Where

- $CPI_{a,jan}$ = projected consumer price index as at January 1st in the period t
- $CPI_{a,ref}$ = latest known consumer price index

- R_{cpi} = rate of increase of the consumer index price over the year ending on the date of the said latest known consumer price index
- N_{cpi} = number of days between the date of the said latest known consumer price index and January 1st in the period t
- RoE_{a,jan} = projected exchange rate as at January 1st in the period t
- RoE_{a,ref} = latest known exchange rate
- R_{roe} = rate of increase of the exchange rate over the year ending on the date of the said latest known exchange rate
- N_{roe} = number of days between the date of the said latest known exchange rate and January 1st in the period t.

In addition, during the period until foreign debt is repaid, tolls may be increased by a further 1% each year.

For the period after the Developer's debt (other than debt due to its shareholders) which is denominated in a currency other than Jamaican Dollars is repaid, the Capped Toll Level will be escalated in line with increase in Jamaican CPI over the preceding year.

- 5.3.** The exchange rates included in the formula set forth will be those published by the Bank of Jamaica. The CPI for each country will be the one published by the relevant government statistical office.

6. ROUNDINGS

- 6.1.** All the tariffs published and implemented shall be rounded at the nearest Jamaican Dollar 1 if the tariff is less than Jamaican Dollar 100 or at the nearest Jamaican Dollar 5 if the tariff is equal to or higher than Jamaican Dollar 100.
- 6.2.** Nevertheless, for calculation purposes, neither the ITL nor the CTL will be rounded.

7. COMPENSATION

- 7.1.** Provided that the Toll Level applied for by the Developer in accordance with Clause 5.1 of Schedule 15 is at or below the Capped Toll Level, in the event that any authorisation required in order to allow for the lawful charging of an increased Toll Level is not provided in accordance with applicable law on or before the day that is 10 (ten) days before the first Saturday of July following such application as outlined in clause 22.3, the Grantor shall be required to pay compensation (the "Toll Compensation") to the Developer as follows:
- a.** Toll Compensation shall be calculated for successive periods of not less than two weeks each (each referred to herein as a "Toll Compensation Period") comprising the Toll Weeks elapsed since July 1st or (as regard subsequent periods) comprising the Toll Weeks elapsed since the end of the period covered by the Developer' s previous Compensation Invoice referred to in paragraph 7.2(a) below.
 - b.** For this purpose, a Toll Week comprises seven (7) consecutive days commencing immediately following 0:00:00 (Jamaica Time) on Saturday (that is, the commencement of each Saturday morning) of that calendar week, and ending at 23:59:59 (Jamaica time) on the following Friday (that is, the end of the following Friday).
 - c.** The Toll Compensation with respect to each Toll Compensation Period shall be the amount which results when (i) the total of the Tolls actually paid in respect of all the

vehicles constituting the traffic carried on the Toll Road or any part thereof during such Toll Compensation Period, is subtracted from (ii) the total of the Tolls which all such vehicles would have been charged if the increase of the Toll Levels applied for by the Developer had been implemented in accordance with applicable law on the July 1st following the Developer's said application.

7.2. The Toll Compensation shall be paid by the Grantor as follows:

- a. After each Toll Compensation Period, the Developer shall prepare an invoice (a "Compensation Invoice") setting forth the amount payable by the Grantor to the Developer with respect to that Toll Compensation Period.
- b. Summaries of the underlying data and the calculations by which the Toll Compensation has been calculated shall be attached to each Compensation Invoice.
- c. The Developer shall send each Compensation Invoice to the Grantor, and shall send a copy thereof to the Ministry with the Finance portfolio.
- d. Each Compensation Invoice shall be due and payable by the Grantor no later than the tenth (10th) Business Day after the day on which the Compensation Invoice is delivered to the Grantor (such tenth Business Day being referred to herein as its "Due Date").
- e. In the event that a Compensation Invoice is not paid in full on or before its Due Date, the amount of that Compensation Invoice (or, if it is paid in part, the unpaid portion thereof) shall be converted into US Dollars by applying the mid-point between the published weighted average buying and selling rates of exchange prevailing on the date of the Compensation Invoice and shall thereupon and thereafter be due and payable to the Developer in US Dollars in the amount resulting from such conversion.
- f. Interest shall be payable by the Grantor to the Developer on the amount of US Dollars which results from conversion pursuant to paragraph 7.2 (e) above, such interest being charged at the rate specified in clause 5.1 (b) of the GPD Loan Agreement and accruing as from the day next following the Due Date until such amount of US Dollars and the interest accrued thereon are paid in full to the Developer, and such interest shall be compounded at monthly intervals until paid.
- g. The Developer may apply payments received from the Grantor under this clause 7.2 firstly in reduction of any interest which has accrued under paragraph 7.2 (f) above and thereafter in reduction of any other sums payable to the Developer under this Clause 7.2.
- h. The Developer shall have the right to set off all or part of any amount which is due and payable to the Developer under this clause 7.2, and any interest accrued and unpaid thereon, against and in reduction of any sums (whether by way of interest, principal or otherwise) from time to time falling due from the Developer to the Grantor under the GPD Loan Agreement.

7.3. Under these conditions, the Developer will be required to complete all obligations under the Core Requirements for maintenance and operation, and under Schedule 17 (Expansion Schemes) of the Amended and Restated Agreement.

SCHEDULE SIXTEEN

COMPETENT AUTHORITY CONSENTS - PROCEDURE AND REQUIREMENTS

INDICATIVE REQUIREMENTS FOR GRANT OF CONSENT BY THE NATURAL RESOURCES CONSERVATION AUTHORITY

1. Application to Natural Resources Conservation Authority in compliance with Natural Resources Conservation (Permits and Licences) Regulations, 1996.
2. Provision of Environmental Impact Assessment (EIA) (dependent on review of project information form). The NRCA are prepared to accept one environmental impact assessment for each phase of the Toll Road.
3. Commitment of Developer to adhere to mitigation measures as recommended in the Strategic Environmental Assessment (SEA) (separate and apart from any mitigation measures to be identified during conduct of EIA).
4. With specific reference to Phase I - Minimum of four (4) public presentations to be conducted to appraise the public of the proposed highway configuration and the findings, mitigation measures etc. from the impact assessment. Consideration should be given to holding presentations for the benefit of the following communities:-
 - Portmore (St. Catherine)
 - Spanish Town/Old Harbour (St. Catherine)
 - May Pen, (Clarendon) and
 - Porus/Williamsfield/Mandeville (Manchester)

N.B. It should be pointed out that any deviations from the preferred alignment as identified in the SEA Report by the Developer may necessitate a new scoping exercise to determine the Terms of Reference for undertaking the EIA.

INDICATIVE REQUIREMENTS FOR GRANT OF NWA CONSENT

The required approval procedures for NWA consent are as follows:

1. Submission of Outline Drawings to the NWA

Outline drawings should include:

- (a) Preliminary survey drawings;
- (b) Route selection;
- (c) Bridges/interchange location;
- (d) Preliminary sketch proposals are to be submitted for approval before final design; and
- (e) Access and exit points to the facility.

Approval will be granted based on conformance to the Agency's standards for gradients, radius of curvature, design speeds etc., for arterial highways. Approval will be granted within thirty (30) days of receipt of the preliminary drawings, provided that the submission is in accordance with the NWA's requirements.

2. Submission of EIA Studies to the Natural Resources Conservation Authority (NRCA)

The Environmental Impact Assessment ("EIA") should be comprehensive and include the potential damage to the physical and social environment and the mitigation measures which will be taken to alleviate the potential adverse impacts. These should include (but are not limited to) the impact on:

- (a) Opening new quarries;
- (b) Watershed and forestry areas;
- (c) Relocation of building and people;
- (d) Historical sites; and
- (e) Graves, etc.,

in accordance with the requirements of the NRCA.

3. Submission of Detailed Drawings for Approval

These should be accompanied by the specifications for designs, specifications for construction, the requirements for safety control, operations and maintenance. In addition, designs and detailed calculations should be submitted for:

- (a) Hydrological and hydraulic investigation;
- (b) Geometric design;
- (c) Drainage design;
- (d) Geotechnical design;
- (e) Pavement design;
- (f) Bridge and culvert designs
- (g) Retaining walls design;
- (h) Intersection/interchange designs;
- (i) Street lighting designs;
- (j) Traffic control devices; and
- (k) Temporary works diversion.

Plans should be submitted for the relocation of utilities along with plans for landscaping and environmental protection.

Approval will be granted within forty five (45) days of receipt of the detailed drawings, provided that the submission is in accordance with NWA's standards.

SCHEDULE SEVENTEEN**EXPANSION SCHEMES****1. PRINCIPLES**

1.1. The proposed expansion schemes comprise:

- a) for the KINGSTON – MANDEVILLE section of Phase 1:
 - widening the existing 2x2 motorway with the addition of two further running lanes to a 2x3 motorway.
 - providing new all-direction interchanges
- b) for PORTMORE CAUSEWAY:
 - widening the existing 2x2 causeway to a 2x3 causeway.

1.2. The Developer will be obliged to start the construction of expansion works, within one year of the triggering events described below being reached;

2. EXPANSION SCHEME TRIGGER EVENTS

2.1 For any section of the KINGSTON – MANDEVILLE motorway, the trigger event for the widening of that section will occur when traffic on that section in one direction reaches 3600 passenger car units ("pcu") per hour for 30 hours or more in a calendar year.

2.2. For the KINGSTON – MANDEVILLE section, the creation of a new interchange shall be triggered when the traffic entering or exiting at an existing interchange reaches an average of 1200 pcu per lane per hour for more than 30 hours in a calendar year. For the avoidance of doubt, a full interchange allows traffic in four (4) directions.

2.3. The Developer shall present, in the annual operating report, the calculation of this threshold by running the data recorded at toll barriers.

2.4. For the PORTMORE CAUSEWAY, expansion of the causeway will be triggered when traffic in any one direction reaches 4000 pcu per hour for 30 hours in any calendar year, as recorded at the toll barrier.

SCHEDULE EIGHTEEN**UPSIDE FORMULA**

To the extent that certain IRR thresholds are met as described in paragraphs 1 to 4 below, actual annual traffic revenues over and above those forecasted in the Base Case Model to be agreed between the Grantor and the Developer and which model will form the basis for establishing the profile of the Upside Amount to be paid by the Developer to the Grantor shall be shared with the Grantor in the following manner (such excess revenues being defined, in 12/31/2010 value, as "Excess Revenues"):

1. first band: 100% to the Developer

Provided that the Excess Revenues contribute to an IRR of up to 16% (the Sponsor and Autoroutes du Sud de la France real after tax IRR).

2. second band: 50/50 between the Developer and Grantor

Provided that the Excess Revenues contribute to an IRR within the range of 16% (the Sponsor and Autoroutes du Sud de la France real after tax cumulative IRR) and 22%.

3. third band: 30% to the Developer and 70% to the Grantor

Provided that the Excess Revenues contribute to an real after tax IRR within the range of 22% and 25%.

4. fourth band: 100% to the Grantor

Provided that the Excess Revenues contribute to an real after tax IRR over and above 25%.

For the avoidance of doubts no Upside Amount in excess of the split here above defined shall be paid by the Developer to the Grantor until the amounts to be distributed to the Shareholders have allowed the Sponsor and Autoroute du Sud de la France's IRR thresholds to be effectively met.

SCHEDULE NINETEEN

PHASE 1A PAYMENT DETERMINATION SCHEDULE

PHASE 1A CERTIFICATES AND PAYMENT

1.1 Certificates and Payment Cost Centres definition

The Early Project Cost shall consist of 12 Cost Centres and, of which (a) five (5) of them shall be fixed (the “**Fixed Cost Centres**”) (b) four (4) shall be time-related (the “**Time Related Cost Centres**”), and (c) the remaining three (3) shall be variable (the “**Variable Cost Centres**”).

The application of the Cost Centres set out below will be the same for the implementation of the other phases .

1.1.1 The Fixed Cost Centres shall be:

Cost Centre n°1: Earthworks
 Cost Centre n°2: Bridges & structures
 Cost Centre n°3: Pavement
 Cost Centre n°4: Highway equipments
 Cost Centre n°5: Tolling equipments & commissioning

1.1.2 The Time Related Cost Centres shall be:

Cost Centre n°6 : Contractor
 Cost Centre n°7 : Operator
 Cost Centre n°8 : Developer
 Cost Centre n°9 : Toll revenue
 Cost Centre n°10 : Provision for inflation

1.2 Application for Payment for the Early Project

Payments to the Developer shall be determined as follows:

1.2.1 Payments to the Developer at Execution of the Concession Agreement and at Early Financial Close

- (i) Five (5) Business Days after the execution of the Concession Agreement a preliminary payment (the “**Preliminary Payment**”) consisting of :
 - 13.32% of the Cost Centre n°6
 - 18.58% of the Cost Centre n°8
 - the relevant variable Cost-Centre(s)
- (ii) Five (5) Business Days after the Early Financial Close, a first payment (the “**EFC First Payment**”) consisting of:
 - 20% of the Cost Centres n°1 to n°5,

- 17.34% of the Cost Centre n°6,
- 11.61% of the Cost Centre n°8,
- the relevant variable Cost-Centre(s)

1.2.2 Monthly Amounts

From the Early Financial Close, payments will be as follows:

- (i) Payment due for each of the Fixed Cost Centres shall be calculated as follows:

$$P = CCLS \times 0.8 \times (X_1 \times Y_1 + X_2 \times Y_2 + \dots + X_n \times Y_n)$$

Where:

- P: Payment due for each Fixed Cost Centre
 CCLS: Fixed Cost Centre lump sum price in USD_{1/01/2001} value
 X₁ to X_n: Relevant Cost Centre task percentage for a Phase or Section of the Toll Road as set out in the Schedule of Tasks.
 Y₁ to Y_n: The certified progress of the relevant Fixed Cost Centre Task in the month to which the relevant Monthly Certificate relates, expressed as a percentage.

- (ii) Payment for each of the Time Related Cost Centres will be determined by reference to the Payment Schedule.

1.2.3 Split between sources of funding

The respective payments due to the Developer shall be determined as follows:

- (i) The Preliminary Payment shall be paid in the proportion of 50% by the Shareholders under the Shareholders Equity Undertaking and 50% by the Grantor as a Disbursement under the GPD Loan Agreement;

- (ii) From and including the date of the EFC First Payment until the later of the FC1A Long Stop Date and the date at which Bridging Loan has been fully drawn down, Monthly Payments shall be paid by each of the Grantor (as Disbursements under the GPD Loan Agreement), the Shareholders (under the Shareholders Equity Undertaking) and the Bridging Bank (under the Bridging Loan) pro rata, in the following proportions:

(A)	Developer's equity	7.69%
(B)	Grantor Procured Debt	45.67%
(C)	Bridging Loan	46.64%

- (iii) On or after the FC1A Long Stop Date or the date at which the Bridging Loan has been fully drawn down, and until the completion of the Early Project Construction Works, the payments due to the Developer shall be paid by each of the Grantor (as Disbursements under the GPD Loan Agreement) and the Shareholders (under the Shareholders Equity Undertaking) pro rata, in the following proportions:

(A)	Developer's equity	17.24%
(B)	Grantor Procured Debt	82.76%

1.2.4 Flexibility between the sources of funding after the preliminary payment and until the Long Stop Date

- (a) In the event that the progress of the Early Project Construction Works is such that at the date which is three months before the FC1A Long Stop Date, the full amount of the Bridging Loan has not been drawn down, the proportion of payments between Developer's equity, Grantor Procured Debt and Bridging Loan (as defined in 1.2.3(ii)) shall be modified so that the full amount of the Bridging Loan will be drawn down on or before the FC1A Long Stop Date.

- (b) In the event that the Variable Cost Centres vary and are higher than the amounts indicated in the Payment Schedule and/or Cost Centre No 9 (Toll Revenues) is lower than forecasted in the Payment Schedule, the Developer shall be entitled to draw the necessary amount from the Grantor Working Capital Reserve in order to fund the construction cash-flow shortfall.

PHASE 1B PAYMENT DETERMINATION SCHEDULE**PHASE 1B CERTIFICATES AND PAYMENT TO THE D&C CONTRACTOR****2.1 Certificates and Payment Cost Centres definition**

The Phase 1B Cost shall consist of 6 Cost Centres and, of which (a) five (5) of them shall be fixed (the “**Fixed Cost Centres**”) (b) one (1) shall be time-related (the “**Time Related Cost Centres**”).

2.1.1 The Fixed Cost Centres shall be:

Cost Centre n°1: Earthworks and drainage
Cost Centre n°2: Structures & Bridges
Cost Centre n°3: Pavement
Cost Centre n°4: Highway equipments
Cost Centre n°5: Tolling equipments

2.1.2 The Time Related Cost Centres shall be:

Cost Centre n°6: Design, Setup and Mobilization

2.2 Application for Payment for the Project

Payments to the Developer shall be determined as follows:

2.2.1 First Payment to the D&C Contractor

Under the D&C Contract, a first payment will be paid by the Developer to the Contractor, equal to USD fifteen million seven hundred eighty one thousand eight hundred (15,781,800 USD) and corresponding to:

- (i) Five (5) Business Days after the Financial Close, a first payment (the “**EFC First Payment**”) consisting of:
 - 15% of the Cost Centres n°1 to n°6.

2.2.2 Monthly Amounts

Expected subsequent payments to the D&C Contractor will be as in the following table:

**EXPECTED PAYMENT SCHEDULE PHASE 1B (Sandy Bay to May Pen)
IN USD Value 01/01/2011**

Break down of Payment		M1	M2	M3	M4	M5	M6	M7	M8	M9	M10
		advance payment									
		15%									
Cost Centre 1- Earthworks & Drainage	33 257 819	4 988 673	257 872	257 872	343 829	429 787	1 431 043	1 596 911	2 334 249	3 493 688	3 923 474
Cost Centre 2- Structures & Bridges	11 353 660	1 703 049	-	-	-	196 744	491 859	429 951	938 563	1 900 837	1 769 351
Cost Centre 3- Pavement	27 666 458	4 149 969	-	-	-	-	-	-	-	-	-
Cost Centre 4- Highway Equipment	9 196 911	1 379 537	-	-	-	-	-	-	-	-	-
Cost Centre 5- Tolling Equipment	12 863 549	1 929 532	-	-	-	-	-	-	422 648	1 056 621	3 068 881
Cost Centre 6- Design, Setup and Mobilization	10 873 603	1 631 040	2 841 624	2 841 624	902 698	434 719	386 417	386 417	386 417	386 417	338 115
Total	105 212 000	15 781 800	3 099 496	3 099 496	1 246 528	1 061 249	2 309 319	2 413 279	4 081 877	6 837 563	9 099 821
Cumulated Total		15 781 800	18 881 296	21 980 792	23 227 320	24 288 569	26 597 888	29 011 167	33 093 043	39 930 606	49 030 427

Break down of Payment		M11	M12	M13	M14	M15	M16	M17	M18	M19
Cost Centre 1- Earthworks & Drainage	33 257 819	3 923 474	2 818 122	2 560 250	2 400 428	1 712 770	785 378	-	-	-
Cost Centre 2- Structures & Bridges	11 353 660	1 845 164	1 405 710	506 091	133 368	32 973	-	-	-	-
Cost Centre 3- Pavement	27 666 458	-	999 451	3 797 913	3 797 913	3 797 913	3 797 913	3 797 913	2 469 231	1 058 242
Cost Centre 4- Highway Equipment	9 196 911	49 118	49 118	386 492	1 931 984	1 802 731	2 056 548	1 088 548	289 872	162 964
Cost Centre 5- Tolling Equipment	12 863 549	633 972	633 972	422 648	2 012 260	670 753	670 753	670 753	670 753	-
Cost Centre 6- Design, Setup and Mobilization	10 873 603	241 511	96 604	-	-	-	-	-	-	-
Total	105 212 000	6 693 239	6 002 977	7 673 394	10 275 952	8 017 140	7 310 592	5 557 215	3 429 857	1 221 206
Cumulated Total		55 723 667	61 726 644	69 400 038	79 675 990	87 693 130	95 003 722	100 560 937	103 990 794	105 212 000

SCHEDULE TWENTY**INDEX, RATES AND LIQUIDATED DAMAGES**

The amount and formula for certain values set out in this Agreement are as follows:

1. Clause 1.1 - "Indexed" Indexed in accordance with increases in the Jamaican CPI, as documented by the Statistical Institute of Jamaica
2. Clause 1.1 - "Reference Rate" the rate of interest per annum equal to the weighted average of the interest rate charged from time to time on the outstanding amounts under the Financing Agreements as per the Phase 1B Financing Agreements
3. Clauses 12.5, 12.6 and 12.7 - daily delay liquidated damages for final completion of Early Project, Phase 1A and Phase 1B US\$20,000 per day up to a maximum of 5% of contract price

SCHEDULE TWENTY ONE

TECHNICAL STANDARDS

PART 1 – TECHNICAL STANDARDS

- 1.1 The Developer shall be responsible for determining the technical standards and requirements of the draft Design Documentation submitted to the Grantor's Representative for review in accordance with Clause 13 (Design Information, Drawings and Manuals) and for then certifying compliance of the Construction Works with the Reviewed Design Documentation.
- 1.2 The design and construction of the Toll Road shall be to the more stringent of Jamaican or North American technical standards and specifications. Other European standards of international recognition may be considered in lieu of North American standards provided that they are materially equivalent or superior.

Where neither a Jamaican, European or North American standard or specification exist or do not address a particular issue, the Developer may propose an alternative standard of international recognition.

- 1.3 The following list of documents provides an indication of the minimum standards and requirements to be used in the design and construction of the Toll Road:
- Design Manuals, Procedures and Guidelines published by the Transportation Association of Canada [TAC] including:
 - Geometric Design Guide for Canadian Roads
 - Urban Supplement to the Geometric Design Guide
 - Guide for the Design of Roadway Lighting
 - Manual of Uniform Traffic Control Devices
 - Highway Capacity Manual, Special Report 209, Third Edition, Transportation Research Board, National Research Council, Washington, D.C., 1998
 - Ontario Provincial Standard Specifications Volumes 1-4
 - Design Manuals, Procedures and Guidelines published by the Ontario Ministry of Transportation including:
 - Bridge Clearance and Load Restriction Manual
 - Concrete Culvert Design and Detailing Manual
 - Contract Design Estimating and Documentation Manual
 - Drainage Manual
 - Electrical Engineering Manuals (Volumes 1-4)
 - Form-work and False-work Manual
 - Highway Engineering Standard Drawings: Structural
 - Signing Policy Manual
 - Ontario Traffic Signal Control Specifications
 - Pavement Design and Rehabilitation Manual
 - Post Tensioned Decks
 - Integral Abutments
 - Pre-stressed Concrete Manual
 - Roadside Safety Manual
 - Sign Support Manual
 - Structural Manual
 - Structure Inspection Manual

- Structural Steel Coating Manual
- Structural Rehabilitation Manual
- Traffic Control Manual for Roadway Work Operations
- Pavement design: French Ministry of Transportation – Highway and Traffic Department - LCPC – SETRA – Pavement structures of new carriageways (Structures Types de Chaussées Neuves, 1993)
- Design Manuals, Procedures and Guidelines published by the American Association of State Highway and Transportation Officials [AASHTO] including:
 - Guide for the Design of Pavement Structures for Rigid and Flexible Pavements
- British Standards Institute BS 5400, Part 2 (highway loads)
- Canadian Standards Association CAN/CSA-S6-88 “Design of Highway Bridges”
- Other Publications and Standards published by the Canadian Standards Association and British Standards Institute
- The University of New Brunswick (Canada) Transportation Group Road Safety Audit (RSA) Guidelines
- Explicit Safety Assessment Methodology (ESAM) as detailed in the Ontario Ministry of Transportation Document "1998 Update on Roadside Safety Practice"
- Guidelines in ACI publication MP-1 for aesthetic treatment in structural designs

Reports from the Illustrative Design by Dessau Soprin, Jentech Consultants Ltd and Environmental Solutions Ltd

- Drainage and Hydrology Report – Volume I and II – Dated June 2000
- Hunt’s Bay – Portmore Causeway Report – Dated June 2000
- Geotechnical Study Report – Dated June 2000
- Structural Design Criteria and Standards Report – Dated June 2000
- Strategic Environmental Assessment Report – Volume I to IV – Dated June 2000

North American and European technical standards and specifications are to be modified, where appropriate, to reflect the Jamaican standard of driving on the left side of the road.

PART 2 – OPERATION AND MAINTENANCE

- 2.1 The Developer shall be responsible for determining the technical standards and requirements for operating and maintaining the Toll Road which shall be no less stringent than those detailed in the Reviewed Design Documentation and the reviewed operating and maintenance manuals and instructions submitted to the Grantor's Representative for review in accordance with Clause 13 (Design Information, Drawings and Manuals).
- 2.2 The Developer shall also be responsible for certifying compliance of the O&M Works with the Reviewed Design Documentation and the reviewed operating and maintenance manuals and instructions.
- 2.3 The Developer shall adopt such standards and requirements that represent Good Engineering and Operating Practices throughout the life of the Concession.

SCHEDULE TWENTY TWO

OUTLINE DESIGN AND DRAWINGS

[Outline Design and Drawings CD Attached.]

SCHEDULE TWENTY THREE
TOLL SUBSIDY COMPENSATION AGREEMENT

**TOLL SUBSIDY
COMPENSATION AGREEMENT**

THIS AGREEMENT is made as of the ^{8th} ~~July~~ ^{AUGUST} day of ~~July~~, 2006

BETWEEN

- (1) **NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED** (the "Grantor"); and
- (2) **TRANSJAMAICAN HIGHWAY LIMITED** (the "Developer")

WHEREAS:

A. At the request of the Minister of Transports and Works (the "Minister") in accordance with the Toll Roads Act the Developer has offered to adjust the rates of toll to be charged for the use of the Portmore Causeway by the three different classes of vehicles, so that toll is charged at the rates specified in Appendix 1 attached hereto (the "Adjusted Toll Rates"), the Adjusted Toll Rates comprising reductions of the rates of toll that would otherwise be payable by such users if the rates of toll were determined and charged in accordance with and pursuant to the Concession Agreement;

B. The Grantor has offered to compensate the Developer for the financial losses resulting from the charging of the Adjusted Toll Rates, as provided in this Agreement (the "Portmore Toll Compensation"),

C. The Parties have this day entered into this Agreement with respect to the foregoing matters and other matters relating thereto,

Now in consideration of the mutual promises hereinafter set forth and for other good and valuable consideration moving from each Party hereto (the receipt and sufficiency of which are acknowledged by each Party hereto) **IT HEREBY AGREED AS FOLLOWS:**

1. The Adjusted Toll Rates

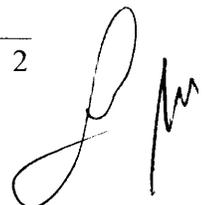
1.1 The Developer agrees that toll will be charged at the Adjusted Toll Rates respectively applicable to the three (3) different classes of vehicle which make passages along the Portmore Causeway section of the Project.

1.2 As indicated in Appendix 1 attached hereto:

- 1.2.1 vehicles which pay the toll in cash at the toll booth, will be charged the Adjusted Toll Rates at fixed amounts, the specific rate of toll depending on which of the three classes the relevant vehicle is comprised in; and
 - 1.2.2 vehicles which contain tags to facilitate electronic payment of the toll, will be charged the Adjusted Toll Rates on a scale which reduces at specific increments by reference to the number of passages made by (or attributed to) each such vehicle during the particular Toll Week, the specific rates of toll depending on which of the three classes the relevant vehicle is comprised in.
- 1.3 For this purpose:
- 1.3.1 each “Toll Week” comprises seven (7) consecutive days commencing immediately following 0:00:00 (Jamaica time) on Saturday (that is, the commencement of each Saturday morning) of that calendar week, and ending at 23:59:59 (Jamaica time) on the following Friday (that is, at the end of the following Friday); and
 - 1.3.2 references to a vehicle paying or being charged toll, shall be construed as references to the person who is liable to pay the toll with respect to the passage of that vehicle.
- 1.4 For the avoidance of any doubt, it is declared that the provisions of this clause 1 and clause 2 below apply only to passages by vehicles along the Portmore Causeway section of the Project.

2. The Portmore Toll Compensation

- 2.1 The Grantor agrees to pay Portmore Toll Compensation to the Developer, as provided in this Agreement.
- 2.2 Portmore Toll Compensation shall be calculated in accordance with this clause 2 with respect to each period (referred to herein as a “Toll Compensation Period”) comprising the Toll Weeks which have elapsed since the end of the period covered by the Developer’s previous Compensation Invoice referred to in sub-clause 3.1 below or (as regards the first Toll Compensation Period) which have elapsed since the Portmore Causeway Opening Date.
- 2.3 The Portmore Toll Compensation with respect to each Toll Compensation Period, shall be the aggregate of the compensation payable with respect to all vehicles which together comprise the “traffic carried” on the Portmore Causeway section of the Project during such Toll Compensation Period.



2.4 For the purposes of this clause 2 and clause 3 below, the compensation payable with respect to each vehicle during a given Toll Compensation Period, shall be the total of all the compensation payable with respect to that vehicle on account of that vehicle's passages during each of the Toll Weeks comprising that Toll Compensation Period.

2.5 For the purposes of this clause 2 and clause 3 below, the compensation payable with respect to a vehicle on account of that vehicle's passages during a Toll Week shall be determined by subtracting - (i) the total of the actual toll paid by that vehicle during that Toll Week, from (ii) the amount of toll which that vehicle would have been charged during that Toll Week had the Developer's Proposed Toll Rates applied.

2.6 For the purposes of this clause 2 and clause 3 below, as regards vehicles which do not contain tags to facilitate electronic payment of the toll, the Developer's Proposed Toll Rates are \$Jam 70 (for Class 1 vehicles), \$Jam 100 (for Class 2 vehicles), and \$Jam 200 (for Class 3 vehicles).

2.7 For the purposes of this clause 2 and clause 3 below, as regards vehicles which contain tags to facilitate electronic payment of the toll, the Developer's Proposed Toll Rates for each Toll Week are set forth in Appendix 2 attached hereto, with respect to each of the three classes of vehicles.

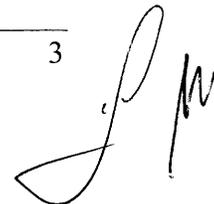
2.8 While the Developer continues to be paid Portmore Toll Compensation in accordance with this clause 2 and clause 3 below, the provisions set forth in paragraph 7 of Schedule 15 to the Concession Agreement shall not apply to the compensation payable in respect of the Adjusted Toll Rates charged for passages along the Portmore Causeway section of the Project.

2.9 In this Agreement, a "tag" refers to an electronic identification device which facilitates the toll payable with respect to passages in the vehicle containing such device being charged against a corresponding prepaid account held with Jamaican Infrastructure Operator Limited, and includes any device facilitating the lawful payment of toll by electronic means.

3. Payment of the Portmore Toll Compensation

3.1 After each Toll Compensation Period, the Developer shall prepare an Invoice (a "Compensation Invoice") setting forth the amount payable by the Grantor to the Developer on account of the Portmore Toll Compensation with respect to that Toll Compensation Period.

3.2 The amount of each Compensation Invoice shall be the amount set forth in Appendix 3 attached hereto with respect to that Toll Compensation Period (the "Provisional Amount"), plus (if positive) or minus (if negative) an amount equal to the Prior Toll Compensation Period Adjustment Amount.

A handwritten signature in black ink, appearing to be 'J. P. M.', is located in the bottom right corner of the page.

3.3 For the purposes of sub-clause 3.2 above, the Prior Toll Compensation Period Adjustment Amount means the – (i) the Portmore Toll Compensation with respect to the previous Toll Compensation Period, minus (ii) the Provisional Amount that was paid with respect to the previous Toll Compensation Period. It is understood that the Compensation Invoice in respect of the first Toll Compensation Period shall be for the Provisional Amount for the first Toll Compensation Period, and there will be no Prior Toll Compensation Period Adjustment Amount for the purposes of the first Toll Compensation Period.

3.4 Summaries of the underlying data and the calculations by which the Portmore Toll Compensation has been calculated with the previous Toll Compensation Period, if any, shall be attached to each Compensation Invoice.

3.5 The Developer shall send each Compensation Invoice to the Grantor, and shall send a copy thereof to the Ministry of Finance and Planning.

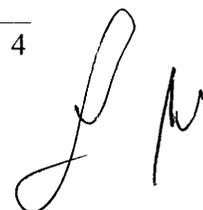
3.6 Each Compensation Invoice shall be due and payable by the Grantor no later than the tenth (10th) Business Day after the day on which the Compensation Invoice is delivered to the Grantor (such tenth Business Day being referred to herein as its “Due Date”).

3.7 In the event that a Compensation Invoice is not paid in full on or before its Due Date, the amount of that Compensation Invoice (or, if it is paid in part, the unpaid portion thereof) shall be converted into US Dollars by applying the mid-point between the published weighted average buying and selling rates of exchange prevailing on the date of the Compensation Invoice and shall thereupon and thereafter be due and payable to the Developer in US Dollars in the amount resulting from such conversion.

3.8 Interest shall be payable by the Grantor to the Developer on the amount of US Dollars which results from conversion pursuant to sub-clause 3.7 above, such interest being charged at the rate specified in clause 5.1(b) of the GPD Loan Agreement and accruing as from the day next following the Due Date until such amount of US Dollars and the interest accrued thereon are paid in full to the Developer, and such interest shall be compounded at monthly intervals until paid.

3.9 The Developer may apply payments received from the Grantor under this clause 3 firstly in reduction of any interest which has accrued under sub-clause 3.8 above and thereafter in reduction of any other sums payable to the Developer under this clause 3.

3.10 Payments made to the Developer by the GOJ on behalf of the Grantor shall reduce commensurately the liability of the Grantor with respect to the interest and/or the Compensation Invoice with respect to which such payment is made by the GOJ.

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a smaller, less distinct mark.

3.11 The Developer shall have the right to set off all or part of any amount which is due and payable to the Developer under this clause 3, and any interest accrued and unpaid thereon, against and in reduction of any sums (whether by way on interest, principal or otherwise) from time to time falling due from the Developer to the Grantor under the GPD Loan Agreement.

4. Future toll increases

4.1 Nothing herein shall prevent the Developer from submitting to the Toll Regulator from time to time in accordance with the Concession Agreement, a level of Tolls for the Portmore Causeway section that is calculated at a level up to the Capped Toll Level derived from the ITL (as defined in Schedule 15 of the Concession Agreement).

4.2 In the event that the Developer becomes entitled as from a particular date (a "Revised Toll Date") to charge another level of Toll for the Portmore Causeway section pursuant to a submission referred to in sub-clause 4.1 above and the Minister wishes the toll to be charged at a lower level than that which the Developer has become entitled to charge, then either:

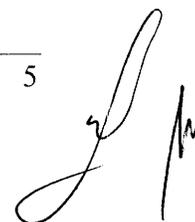
4.2.1 the Parties may negotiate and agree in writing appropriate amendments to clause 2.6 hereof and revised Appendices to replace the existing Appendices 1, 2 and 3 attached hereto as from the Revised Toll Date, in which event this Agreement as amended (and with such agreed revised Appendices replacing the existing Appendices 1, 2 and 3 attached hereto) shall apply to determine the amount of and govern the payment of Portmore Toll Compensation by the Grantor to the Developer as from the Revised Toll Date; or

4.2.2 if the Parties do not agree in writing appropriate amendments to clause 2.6 hereof and revised Appendices to replace the existing Appendices 1 and 2 attached hereto within fourteen days after the Revised Toll Date but the Developer charges toll on the Portmore Causeway Section at rates which are lower than that which the Developer has become entitled to charge pursuant to the said submission, the Grantor shall as the Revised Toll Date pay Portmore Toll Compensation calculated in accordance with the provisions set forth in paragraph 7 of Schedule 15 to the Concession Agreement will apply (notwithstanding sub-clause 2.8 of this Agreement).

5. Costs and expenses

5.1 Each Party shall bear its own the legal costs and expenses in connection with the preparation, negotiation and completion of this Agreement.

6. Definitions



6.1 Terms defined in the Concession Agreement (in this Agreement referred to as the "Concession Agreement") dated 21st November, 2001 made between the Grantor and the Developer (as amended by the Closing Agreement dated 22nd February, 2002 and by the FC1A Closing Agreement dated the 13th February, 2004, both made between the Grantor and the Developer) shall have the same meaning in this Agreement.

6.2 Terms defined in the FC1A Closing Agreement dated the 13th February, 2004, made between the Grantor and the Developer, shall have the same meaning in this Agreement.

7 Governing Law

7.1 This Agreement shall be governed by the laws of Jamaica.

8. Dispute Resolution

8.1 The provisions of clauses 47 and 48 of the Concession Agreement shall apply to disputes arising under this Agreement.

9. Supplemental to the Concession Agreement

9.1 This Agreement is supplemental to the Concession Agreement.

9.2 The Concession Agreement remains in full force and effect, as supplemented by this Agreement.

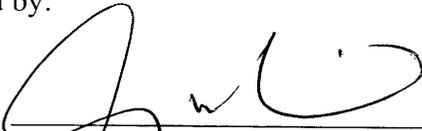
10. Condition Precedent

10.1 It is a condition precedent to this Agreement coming into effect that the Unadjusted Delay Compensation Payment in the sum of US\$9,000,000 shall have been paid to the Developer by the Grantor in accordance with the Portmore Causeway Delay Compensation Agreement of even date herewith.

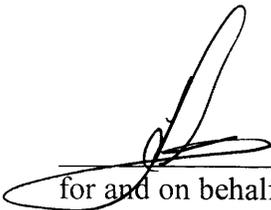


IN WITNESS whereof the Parties have entered into this Agreement as of the date first above written.

Signed by:



for and on behalf of the Grantor
Name: Dr/Wayne Reid
Title: Managing Director



for and on behalf of the Developer
Name: Trevor Jackson
Title: Managing Director

Appendix 1: Adjusted Toll Rates

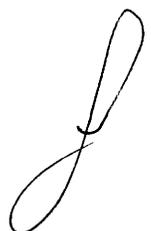
Vehicles which pay the toll in cash at the toll booth.

	Class 1	Class 2	Class 3
Toll per passage (Ja\$)	60	100	200

Vehicles which utilize tags

The table below set forth the toll to be paid for each passage during one Toll Week.

	Toll per passage (Ja\$)	Class 1	Class 2	Class 3
Number of the passage in the Toll Week	1st	60.00	100.00	200.00
	2nd	60.00	100.00	200.00
	3rd	60.00	100.00	200.00
	4th	60.00	100.00	200.00
	5th	60.00	100.00	200.00
	6th	60.00	100.00	200.00
	7th	60.00	100.00	200.00
	8th	60.00	100.00	200.00
	9th	20.00	100.00	200.00
	10th	0.00	0.00	0.00
	11th	40.00	80.00	160.00
	12th	40.00	80.00	160.00
	13th	40.00	80.00	160.00
	14th	40.00	80.00	160.00
	15th	40.00	80.00	160.00
	16th	40.00	80.00	160.00
	17th	40.00	80.00	160.00
	18th	40.00	80.00	160.00
	19th	40.00	80.00	160.00
	20th	40.00	80.00	160.00
	21st	40.00	80.00	160.00
	22nd and after	40.00	80.00	160.00



Appendix 2: Developer's Proposed Toll Rate

Vehicles which pay the toll in cash at the toll booth.

	Class 1	Class 2	Class 3
Toll per passage (Ja\$)	70	100	200

Vehicles which utilise tags (Class 1 and SUV's in Class 2 only)

The table below set forth the toll to be paid for each passage during one Calender Month.

	Toll per passage (Ja\$)	Class 1	Class 2	Class 3
1st	70.00	100.00	200.00	
2nd	70.00	100.00	200.00	
3rd	70.00	100.00	200.00	
4th	70.00	100.00	200.00	
5th	70.00	100.00	200.00	
6th	70.00	100.00	200.00	
7th	70.00	100.00	200.00	
8th	70.00	100.00	200.00	
9th	70.00	100.00	200.00	
10th	70.00	100.00	200.00	
11th	70.00	100.00	200.00	
12th	70.00	100.00	200.00	
13th	70.00	100.00	200.00	
14th	70.00	100.00	200.00	
15th	70.00	100.00	200.00	
16th	70.00	100.00	200.00	
17th	70.00	100.00	200.00	
18th	70.00	100.00	200.00	
19th	70.00	100.00	200.00	
20th	70.00	100.00	200.00	
21st	70.00	100.00	200.00	
22nd	70.00	100.00	200.00	
23rd	70.00	100.00	200.00	
24th	63.00	90.00	200.00	
25th	63.00	90.00	200.00	
26th	63.00	90.00	200.00	
27th	63.00	90.00	200.00	
28th	63.00	90.00	200.00	
29th	63.00	90.00	200.00	
30th	63.00	90.00	200.00	
31st	63.00	90.00	200.00	
32nd	63.00	90.00	200.00	
33rd	56.00	80.00	200.00	
34th	56.00	80.00	200.00	
35th	56.00	80.00	200.00	
36th	56.00	80.00	200.00	
37th	56.00	80.00	200.00	
38th	56.00	80.00	200.00	
39th	56.00	80.00	200.00	
40th	56.00	80.00	200.00	
41st	49.00	70.00	200.00	
42nd	49.00	70.00	200.00	
43rd	49.00	70.00	200.00	
44th	49.00	70.00	200.00	
45th	49.00	70.00	200.00	
46th	49.00	70.00	200.00	
47th	49.00	70.00	200.00	
48th	49.00	70.00	200.00	
49th	49.00	70.00	200.00	
50th	49.00	70.00	200.00	
51st	42.00	60.00	200.00	
52nd	42.00	60.00	200.00	
53rd	42.00	60.00	200.00	
54th	42.00	60.00	200.00	
55th	42.00	60.00	200.00	
56th	42.00	60.00	200.00	
57th	42.00	60.00	200.00	
58th	42.00	60.00	200.00	
59th	42.00	60.00	200.00	
60th	42.00	60.00	200.00	
61st	35.00	50.00	200.00	
62nd	35.00	50.00	200.00	
63rd	35.00	50.00	200.00	
64th	35.00	50.00	200.00	
65th	35.00	50.00	200.00	
66th	35.00	50.00	200.00	
67th	35.00	50.00	200.00	
68th	35.00	50.00	200.00	
69th	35.00	50.00	200.00	
70th	35.00	50.00	200.00	
71st	28.00	40.00	200.00	
72nd	28.00	40.00	200.00	

Number of the passage in a Calender Month



Appendix 3: Indicative Portmore Toll Compensation payment schedule

Month	Indicative Portmore Toll Compensation (JMD)
July 2006	4,300,000
August 2006	8,800,000
September 2006	10,100,000
October 2006	10,300,000
November 2006	10,200,000
December 2006	11,800,000
January 2007	11,100,000
February 2007	10,400,000
March 2007	11,500,000
April 2007	11,000,000
May 2007	11,100,000
June 2007	11,000,000
July 2007	11,500,000

