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THIS CONCESSION AGREEMENT is made [DATE]

BETWEEN:

[] a company wholly owned by [GOVERNMENT] (the "**Grantor**");
and

[DEVELOPER] (a company duly registered in [COUNTRY], particulars of which are set out in Schedule 1 (the "**Developer**").

WHEREAS:

(A) The Grantor is a limited liability company duly incorporated under [RELEVANT LEGISLATION] having its registered office at [LOCATION].

(B) The Grantor wishes to make arrangements for the implementation of the 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 [DATE], [PREFERRED BIDDER] submitted to the Grantor a proposal for the Project dated [DATE].

(D) The Grantor appointed [PREFERRED BIDDER] as preferred bidder on [DATE] by entering into the preferred bidder appointment dated on that date.

(E) Pursuant to the preferred bidder's appointment, the Grantor has agreed to enter into this Agreement with the Developer for the carrying out of Phase 1 of the Project as more particularly described in this Agreement. Subject to Clause 6.3 hereof, other phases of the Project will be awarded to such persons as the Grantor in its absolute discretion may select.

(F) [The obligations of the Grantor under the Grantor Documents are guaranteed by the [GOVERNMENT] pursuant to the Government Guarantee.]

(I) The Parties have agreed (i) that the Contractor for the Project shall be [] [and (ii) that the Operator shall be a company having [] as shareholder].

NOW IT IS AGREED as follows:

1 INTERPRETATION

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

"**Actual Tolerated 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 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\$ 50,000,000 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 [LOCATION];

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

"**Change of Law**" means after the date of this Agreement 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 [COUNTRY] 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 [COUNTRY]'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 [LOCAL CURRENCY],
- but for the avoidance of doubt, does not include:
- (a) the entry into force after the date of this Agreement of any Statutory Requirement or Required Consent in existence but not in force at the date of this Agreement; 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 [COUNTRY] 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;

"**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 Event not occurred;

"**Compensation 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 Part 1 of 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 date of this Agreement;

"**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;

Comment [ID1]: This would be better appearing in as a substantive clause.

"**Construction Contract**" means the construction contract 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 [] 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 meters] in width centered 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;

Comment [ID2]: This appears to conflict with the intent of the wording commented on at ID1-in one case the Core Requirements over-rule the Design and Construction Specification in the case of conflict and now the parties are agreeing that the Specification is in compliance with the Core Requirements.

"**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 amounts outstanding at the date of termination of this Agreement including interest accrued as at that date, from the Developer to the Lenders or the Hedging Counterparty under the Phase 1A 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 Phase 1A or in hedging floating interest rates under the Phase 1A 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 1B 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 Lenders or the Hedging Counterparty under the Phase 1B 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 Phase 1B or in hedging floating interest rates under the Phase 1B loan agreement, less:

Comment [ID3]: What happens to receivables- are they assigned to Grantor?

(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'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;

"EA" means the [Environment Authority];

"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 [] 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 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);

Comment [ID4]: Where land is leased or sub-leased to the Developer need to check Highway and Motor Vehicle legislation that road or top layer of road does not need to be vested in Highway Authority

"**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

Comment [ID5]: Need to look at Land Acquisition Law to see if acquisition of additional land is feasible within the time-scale of the construction period.

(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;

Comment [ID6]: EFC seems to have two meanings-Effective Date Condition and Early Financial Close-could be considered as confusing.

"**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**" has the meaning set out in Clause 2.2 (Conditions Subsequent regarding Early Financial Close);

"**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;

Comment [ID7]: Need for clear understanding of power of Parish Councils and whether they can delay process or increase cost. On one project where overnight working was envisaged the successful attempt by a local authority to restrict hours of work cost tens of millions of dollars.

"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):

[]

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**" has the meaning set out in Clause 2.3 (Conditions Subsequent regarding Financial Close 1A);

"**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 for the Phase 1B Construction Works becomes unconditional;

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

"**FC1B First Payment**" shall have the meaning ascribed thereto in Schedule 19, 1.3.1;

"**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;

Comment [ID8]: This is a bit odd in that an event within the control of a sub-contractor of the Developer seems to fall within the definition of Force Majeure. Position is not same for Grantor which produces an asymmetrical result.

(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 [COUNTRY] 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 [COUNTRY] 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);

Comment [ID9]: Probably not tidal-tsunami is the usual technical expression as wave is due to seismic activity rather than the moon's gravitational pull.

(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];

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;

(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 sub-contractors, (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 [COUNTRY] 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 [];]

"**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 date of this Agreement given by the [GOVERNMENT] in favour of the Developer;

"**GPD Loan Agreement**" means the loan agreement of today's date 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;

"**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 Intercreditor Agreement and the Subordinated Debt 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 FC1B Letter of Credit**" means a letter of credit of a face amount equal to the Grantor Phase 1B Commitment 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;

Comment [ID10]: It would be normal to deal with these under an express clause rather than under a general FM clause. In this agreement there is not only the concept of Qualifying Force Majeure but clause 10 also deals with archeological finds and contamination. Might be more appropriate to deal with the issue in one place.

"**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 [AMOUNT AND CURRENCY] from Early Financial Close and up to [AMOUNT AND CURRENCY] from Financial Close 1A on terms which are subordinated by the Intercreditor Agreement to the rights of the Lenders under the Financing Agreements;

"**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 [RELEVANT LEGISLATION];

"**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] and the Developer under which the [GOVERNMENT] 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;

"**Indexed**" means increases on each anniversary of the date of this Agreement in line with the index specified in paragraph 1 of Schedule 20;

"**Indicative Payment Schedule**" means the milestones 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 [COUNTRY] 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, trade marks 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;

"**Intercreditor Agreement**" means the Deed of Subordination and the Deed of Postponement between the Lender, the Developer and the Grantor, pursuant to which the Grantor's rights against the Developer in relation to the Developer in relation to the Grantor Procured Debt are subordinated to the Lender's rights under the Bridging Loan Agreement;

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

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

Comment [ID11]: There may need to be an Intercreditor Agreement if the financing for various phases are not made available by the same Lenders.

Comment [ID12]: In some jurisdictions there is a preference for a Project IRR rather than a Shareholders IRR.

(d) Di 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 Ki and Di flows in nominal terms;

Where the IRR is described as "real", the calculation of the IRR shall take into account Ki and Di 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 Ki and Di flows before corporate tax or withholding tax of any kind on dividends, while an IRR described as "after tax" shall take into account Ki and Di 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) "Ki" 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;

"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);

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

"LOCAL CURRENCY" and "[]" means the lawful currency from time to time of [COUNTRY];

"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;

"Milestone" means a proportion or an identified part of the works, part of a Fixed Cost Center, as defined in the Construction Contract and/or the Construction Timetable;

"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.2;

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

"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 [] (together with any affiliate or parent company) as majority shareholder 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;

Comment [ID13]: Normally would be charged to Lenders-Developer will need access to bond if it has to terminate the contact with [EPC] Contractor or 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 (if Financial Close 1A is not achieved) the Early Project and (if Financial Close 1A is achieved) Phase 1A and, if the Phase 1B Commencement Notice has been given, Phase 1B;

"Phase 1" means Phase 1A and Phase 1B;

"Phase 1A" means that part of the Toll Road comprising the Early Project, the tolling and dualisation of Km1 to KmX 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 with the approval of the Grantor, not to be unreasonably withheld or delayed ;

(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;

"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 KMx to KMy as more particularly described in Schedule 3 (Specification);

"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 in accordance with the provisions of this Agreement;

"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 entered into (or to be entered into) for Phase 1B 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;

"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 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 [] and [];

"Phase 2B" means all the work concerning the detailed design, specification, construction, completion, operation and maintenance of a toll road extending between [] and [];

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

"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 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;

"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 [COUNTRY] (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 [LOCAL CURRENCY],

(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 [COUNTRY] 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

Comment [ID14]: This would normally be dealt with in a specific clause. Allowing Grantor either to assume responsibility for events if no longer insurable or to terminate the Concession Contract on receiving notice that events are no longer insurable.

(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];

Comment [ID15]: It would be normal to exclude expropriation etc by tax officials where there is a proper claim for unpaid tax. However there is increasing sensitivity that in some jurisdictions the validity of tax demands may be suspect.

"**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;

"**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 in the Agreed Form setting out, with respect to each Fixed Cost Centre, the tasks comprising that Fixed Cost Centre and the value of that task as a percentage of the [CCLS] for that Fixed Cost Centre;;

Comment [ID16]: CCLS is not a defined term

"**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 fiber optics;

Comment [ID17]: Site is a defined term and the various Sites are designated. Relationship between Site(s) and Project Sites not clear.

"Section" means each 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:

[LOCATIONS]

b) as part of Phase 1A:

[LOCATIONS]

as more particularly described in the Core Requirements;

"Shareholders" means the Sponsor 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;

Comment [ID18]: In some jurisdictions it is more tax efficient for equity to be injected by way of subordinate loan.

"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 date of this Agreement between the Shareholders 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;

"Shareholders FC1B Letter of Credit" means a letter of credit of a face amount equal to the Shareholders Phase 1B 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 [COMPANY];

"State" means [COUNTRY];

"**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;

"**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 [CURRENCY AND AMOUNT] incurred by the Grantor in connection with the Project;

"**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 date of this Agreement and whether imposed by a local, municipal, governmental, state, federal or other body or authority in [COUNTRY] 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 34 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;

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

"**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 [COUNTRY] which will set out the legal framework applicable to the construction, operation and maintenance of Toll Roads in [COUNTRY];]

"**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;

"**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;

"**WA**" means the [Works Agency].

- 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.

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

2.1 Conditions Precedent to Effective Date

With the exception of Clause 1 (Interpretation), this Clause 2 and Clauses 3 (Representations and Warranties), 9 (Own Enquiries), 41 (Indemnity), 44 (Confidentiality), 46 (Notices Provisions), 47 (Dispute Resolution and Expert Determination), 48 (Arbitration), 49 (Joinder), 50 (Costs and Expenses) and 51 (Governing Law) which shall be immediately enforceable on signature of this Agreement, the provisions of this Agreement are conditional upon the Effective Date Conditions Precedent being satisfied or waived by both Parties. If any Effective Date Condition Precedent is waived by both Parties that Effective Date Condition Precedent shall immediately become an EFC Joint Condition Subsequent, an EFC Developer Condition Subsequent, or an EFC Grantor Condition Subsequent as agreed by the Parties at the time of the waiver.

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 date falling three months after the Effective Date (or such later date as the Parties may agree) (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 later of the date falling 21 months after the Effective Date (or such later date as the Parties may agree) and the date falling 18 months after the EFC Long Stop Date (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.

Conditions Subsequent regarding Financial Close 1B

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

- d any of the FC1B Developer Conditions Subsequent have not been satisfied by the Developer or been waived by the Grantor;
- e any of the FC1B Grantor Conditions Subsequent have not been satisfied by the Grantor or been waived by the Developer;
- f any of the FC1B Joint Conditions Subsequent have not been satisfied or waived by both Parties

on or before 36 months after the FC1A Long Stop Date (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.

Comment [ID19]: Slightly convoluted approach. The agreement remains in existence and what happens is that Phase 1 B is removed from the project. It might be easier to so state.

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 [COUNTRY]):

- a it is a private company incorporated under the Companies Act of [COUNTRY] duly organised, validly existing and in good standing under the laws of [COUNTRY], 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 [COUNTRY];
- j The Sponsor is 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

Comment [ID20]: It is unusual for all the shares to be held by one company. In many jurisdictions this would put the Developer's borrowings onto the balance sheet of the Sponsor even if it were limited recourse. Also gives rise to reputational issues if the Sponsor allowed the Developer to go into insolvent liquidation.

issued and allotted share capital of the Developer on the date of this Agreement is held by the Sponsor.

- k The Sponsor 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 [COUNTRY]):

- a it is a private company incorporated under the Companies Act of [COUNTRY] duly organised, validly existing and in good standing under the laws of [COUNTRY], 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 fulfillment of the requirements of [COUNTRY] 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 (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 [COUNTRY];
 - h (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 [COUNTRY] 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.
- 5.2** 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.
- 5.3** 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.

- 5.4 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.
 - 5.5 The Developer shall ensure that the Construction Works are carried out in accordance with the Concession Specification.
 - 5.6 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.
 - 5.7 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.
 - 5.8 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.
 - 5.9 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 [COUNTRY].
 - 5.10 Should a payment of a loan under the GPD Loan Agreement or the Grantor Working Capital Reserve 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.
 - 5.11 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 date of this Agreement, and shall not engage in any business or activities other than the business and activities envisaged by this Agreement.
 - 5.12 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 2 RIGHT OF REFUSAL**
- 6.1 At any time prior to the date falling 36 months after the FC1A Long Stop Date (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.
 - 6.2 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

Comment [ID21]: Need to consider public sector commitments under treaties and conventions relating to trade as to the extent that a clause like this is permissible

phase of the Project to another person after competitive bidding or bilateral negotiation as it sees fit.

- 6.3 On or before the Phase 1B Long Stop Date, the Developer may issue a notice (the "Phase 2 Commencement Notice") informing the Grantor that it is willing to enter into a concession agreement with respect to Phase 2, or either of Phase 2A or Phase 2B. If the Phase 2 Commencement Notice has not been issued with respect to Phase 2, Phase 2A or Phase 2B by the Phase 1B Long Stop Date or if the corresponding concession agreement has not been entered into within 3 months of the Phase 1B Long Stop Date, the Grantor may award Phase 2, Phase 2A or Phase 2B (as the case may be) to such persons as the Grantor in its absolute discretion may select.

Comment [ID22]: The issue of interface between two projects being carried out by different parties needs to be considered. It becomes particularly complex where the roads are elevated. Also is it intended that there will be toll plazas at each interface otherwise revenue sharing issues arise. Further if there are telemetry or telecommunications how would these be linked where there are two or more concessionaires?

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.

Comment [ID23]: See comment to Clause 6.2 above.

- 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

Comment [ID24]: It would be necessary to review the legal procedures for this. In many jurisdictions only a highway authority can close or divert roads whether on a temporary or permanent basis.

Comment [ID25]: This needs to be considered. A franchisee of a service station will be concerned as to its investment if the franchise can be terminated and the franchisee would be facing the risk of seeking to recover its capital cost from an insolvent developer.

Comment [ID26]: The reasonableness of this provision depends upon the nature of the existing road and what improvements need to be carried out. Elevated structures will be a particular issue. Where it was envisaged that repairs would be carried out during the operations period out of retained profits the need to find money earlier on in the project may not be that simple.

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, coordination 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.

Comment [ID27]: Not much detail on how works are formulated or costings prepared. Might be better to link into Clause 19.1

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.

Comment [ID28]: This needs to be linked into the provisions for Force Majeure where Qualifying Force Majeure includes contamination and archeological finds. See also Clause 10

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 date of this Agreement).

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 is hereby authorised to assign or delegate to the Developer the Grantor's rights under the toll order to be made with respect to the Highway 2000 (as referred to in the toll order) for the period of 35 years from November 21, 2001, such assignment or delegation to be on the terms and conditions specified in this Agreement.

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).

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.

Comment [ID29]: This should tie in with sub-contractors.

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).

Comment [ID30]: There is a question as to whether the imposition of liquidated damages achieves best value for the public sector. The liquidated damages recoverable from the (EPC) Contractor can be applied against some of the debt service to Lenders. By imposing a higher level of cost i.e. damages payable to the Grantor this will increase EPC Cost. The commercial interests of the Developer are to achieve revenue earning as soon as possible. Any delay in revenue earning will have a knock on effect as to the timing when first dividends can be paid and thus on the net present value of shareholders' returns. There may be an issue in relation to the Early Project where the Grantor Debt is subordinated to the commercial debt and therefore there may be a real loss of cash flow to the Grantor but more detail would be required.

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 KMH to KMK 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 WA's duties or the EA'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 WA's duties or the EA'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 [COUNTRY] 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.

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 [COUNTRY] 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 [COUNTRY] 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 [COUNTRY] 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;

(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 Developers 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 Any Grantor Variation shall give rise to a payment of, or an adjustment to, the Compensation Amount so as to put the Developer in the same Financial Position as it would have been in had the Grantor Variation not been made provided that the Grantor may (at its sole option) meet the whole or any part of the Estimated Capital Cost or Estimated Operating Cost of any Grantor Variation.

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.

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 In the event that the Toll Regulator does not grant permission to the Developer to set the Tolls at the level that the Developer requests in accordance with the Tolling Policy, insofar as the requested Toll Levels are equal to or below the Capped Toll Level for that period, and the rate of increase of the toll from the previous period is in line with paragraph 7.1 of Schedule 15 (Tolling Policy), 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.

22.4 The amount payable under Clause 22.3 will continue throughout the period in which the Toll Regulator requires the Developer to hold 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, and the rate of increase of the toll from the previous period is in line with paragraph 7.1 of Schedule 15 (Tolling Policy).

22.5 Any dispute as to the level of any amount of Compensation Amount 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 may on the termination of each six month period following the first Handover Date, apply to the Toll Regulator, in accordance with the Tolling Policy, for the Toll Regulator's approval to an increase in the Toll Levels. From the date that the Toll Regulator approves the proposed increase the Developer shall be entitled to collect Tolls at the increased Toll Levels.

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 Preliminary Payment and First Payment

(a) 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 the execution of the Concession Agreement.

(b) 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.

(c) The Grantor shall pay to the Developer, as a Disbursement under, and subject to the conditions set out in, the GPD Loan Agreement, the FCIB First Payment within five (5) Business Days after the Financial Close 1B.

24A.2 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:

(a) 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:

(a) 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. 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:

(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. 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

(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 Business Days. If an agreement is reached, the provisions of Clause 24.A.2 (b)(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.

24A.3 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 [LOCAL CURRENCY] 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 USD Dollars.

(b) The amount of a Disbursement in [LOCAL CURRENCY] will be calculated as an amount equal to the US Dollar Amount (as defined in the GPD Loan Agreement) of the Disbursement converted to [LOCAL CURRENCY] at the Rate of Exchange (as defined in the GPD Loan Agreement), at the date of the payment.

24A.4 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 with respect to Phase 1B, the Grantor Phase 1B Commitment (as defined in the GPD Loan Agreement) shall not exceed USD 87,500,000; and

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

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 [COUNTRY]);

(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 [COUNTRY] 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 Milestone Schedule, 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 Milestone Schedule, 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 Milestone Schedule, 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] which:

[(a) provides a new rail public transport passenger link between [] and []; 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:

[LOCATIONS]

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].

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, sequesters 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 or the GPD Loan Agreement, Lease Agreement and Grantor Working Capital Reserve 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; 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 [GOVERNMENT] 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; or
 - (iii) 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;

(e) the Grantor's ability to act as Grantor under the [COUNTRY] legislation is terminated by, or becomes ineffective due to, an act of the [GOVERNMENT], and this termination or ineffectiveness lasts for more than 90 days; or

(f) the Grantor's ability to act as Grantor under the [COUNTRY] 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 [COUNTRY], 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 Shareholders fail 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 or, at the Grantor's discretion, the Phase affected by such default.

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 or a Phase of 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 or in respect of a Phase which has not been so terminated 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) in the case of a termination of Phase 1A, the Phase 1A Land Documents, the Phase 1A Sites and the Phase 1A Construction Works;

(b) in the case of a termination of Phase 1B, the Phase 1B Land Documents, the Phase 1B Sites and the Phase 1B Construction Works; and

(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, 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.

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.

Comment [ID31]: Not immediately apparent how termination under Clauses 2.2 or 2.3 work through nor what happens if partial termination under Clause 2.4

(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.

(e) If a Grantor Responsibility Termination occurs in respect of this Agreement on or after Financial Close 1B and Phase 1B only is terminated, the Grantor shall pay the Developer by way of compensation 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.

(e) If a Developer Responsibility Termination occurs in respect of this Agreement on or after Financial Close 1B and Phase 1B only is terminated, the Grantor shall pay the Developer by way of compensation 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.

(a) 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.

(b) 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.

(c) 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.

(d) If a No Responsibility Termination occurs in respect of this Agreement on or after Financial Close 1B and Phase 1B only is terminated, the Grantor shall pay the Developer by way of compensation 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 installment 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 (or, in relation to the payment of interest on the Bridging Loan, at the rate provided for in the Bridging Loan Agreement) 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 all or part 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] (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 all or part of this Agreement by the Grantor:

(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 all or part 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 or of any Phase 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;

Comment [ID32]: Need to check that land law does not permit the Developer to seek relief from early termination of a sub-lease.

(b) all interests in the Toll Road or, in the case of a partial termination, the relevant Phase 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 in respect of the relevant Phase;

(d) all other books and records reasonably required to enable the Grantor or a successor concessionaire to own, operate and maintain the relevant Phase or the Toll Road (as the case may be) 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 relevant Phase of 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.

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:

- (a) in the case of a termination of Phase 1A, the Phase 1A Land Documents and Phase 1A;
- (b) in the case of a termination of Phase 1B, the Phase 1B Land Documents and Phase 1B; and
- (c) in the case of a termination of the Agreement, the Land Documents and Phase 1A and Phase 1B.

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 provided that the Sponsor, together with any affiliate or parent company, remains the majority shareholder of the Developer. Otherwise, no shares in the capital of the Developer may be transferred, other than in accordance with Clause 33.2 or with the prior written consent of the Grantor, until the earlier of the date falling two years after the Phase 1B Handover Date or 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 a payment being made by a third party) to the Sponsor or to any of its Affiliates which would cause the IRR to exceed 8% (in real terms and after tax) unless it has issued the Phase 1B Commencement Notice and the Phase 1B Handover Date has occurred.

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.

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 in 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 termination of this Agreement.

34.3 The Grantor shall upon the request of the Developer enter into a direct agreement with the Lenders in a form approved by 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 shall remain the majority shareholder in the Operator.

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 [COUNTRY] 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 Event occurs, and for so long as the Compensation 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 judgment 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 or cause the Contractor to take out and maintain the insurances described in Part 1 of Schedule 14 and any other insurances as may be required by law.

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

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 referred to in Clauses 42.1 and 42.2 shall:

(a) name the Developer as co-insured with any other party maintaining the insurance;

Comment [ID33]: It might be prudent to seek a broker's letter which requires the Developer's insurance broker to notify Grantor if existing insurers not prepared to renew or only to renew with conditions or high premium.

(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.

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.

Comment [ID34]: Carve out for where insurance no longer available or no longer available at commercial rates. Whilst the carve out can be inferred from the Force Majeure Clauses nevertheless it may aid comprehension if it is referred to in the insurance clauses.

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, paragraphs 1, 6 and 7, and Part 2, paragraphs 1 and 5 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 any Physical Damage Policy 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).

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 [COUNTRY] 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 The Developer shall be entitled to retain or set off of any amount due from it to the Grantor under this Agreement against any amounts due by the Grantor under this Agreement or the GPD Loan Agreement to it and the Grantor may retain or set off amounts due from it to the Developer under this Agreement or the GPD Loan Agreement against amounts due to it by the Developer under this Agreement. 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), or Part 1.4 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 date of this Agreement 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:

with a copy to: the Guarantor

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) the Parties so agree.

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 country of origin of Sponsor nor [COUNTRY] 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 [COUNTRY] 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

Comment [ID35]: Need to check whether law of host country allows expert adjudication to bind a party.

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 [COUNTRY] 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 [], 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

Comment [ID36]: Joinder does not really work if the original parties appoint one arbitrator each and then there is an umpire or third arbitrator.

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 [].

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 []

on behalf of

[GRANTOR]

in the presence of:

[]

SIGNED by []

on behalf of

[DEVELOPER]

in the presence of: