

GAMBIA REVENUE AUTHORITY



GAMBIA REVENUE AUTHORITY

PAYMENT RECEIPT

RECEIPT No **9473116** TIN **2300366745** 20240628_9473116

NAME **TRANSGAMBIA BRIDGE COMPANY LIMITED** TAX OFFICE **02**

PAYEE NAME **SELF**

SLIP No. **07241800** TAX YEAR **2024** TAX MONTH **6** QUARTER **0**

PAYMENT DATE **28-Jun-2024** CASHIER **GRAlyymanneh**

Amount Paid

500.00

Five Hundred Only

AGREEMENT

Details of this Payment

Payment Mode Details

<u>Payment Mode</u>	<u>Bank Name</u>	<u>Cheque No</u>	<u>Currency Code</u>	<u>Amount Paid</u>
Cash			GMD	500.00
				<u>500.00</u>

Payment Tax Type Details

<u>TaxName</u>	<u>Paid Amount</u>	<u>Payment Date</u>
STAMP DUTY	500.00	28-Jun-2024
	<u>500.00</u>	

NOTE:



Dated 21 JUNE 2024

Concession Agreement

relating to the upgrade, finance, operation and maintenance of the
Senegambia Bridge, The Gambia

between

The Government of The Gambia
the Contracting Authority

and

Transgambia Bridge Company Ltd
the Concessionaire

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This Concession Agreement is made on _____ 2024

Between:

- (1) **The Government of The Gambia** (the "GoTG"), represented by the **Ministry of Finance and Economic Affairs**, a sovereign republic established in terms of the Constitution of The Gambia adopted in 1996 and entered into force in January 1997 (hereinafter referred to as the "Contracting Authority"); and
- (2) **Transgambia Bridge Company Ltd**, a company incorporated in The Gambia with registered number 2023/C21335 and whose registered office is at 136 Kairaba Avenue, Fajara Booster Station, Kanifing Municipality, The Gambia (hereinafter referred to as the "Concessionaire"),

collectively referred to as the "**Parties**" (or, individually, a "**Party**").

Whereas:

- (A) Africa50's Asset Recycling Programme ("ARP") seeks to raise revenue for governments by commercialising existing assets.
- (B) Pursuant to the ARP, Africa50 and the GoTG identified the Bridge, which is currently operated by the GoTG as a public toll road, as a suitable project for the ARP.
- (C) The award by the GoTG to the Concessionaire of the Project is permitted under Applicable Law.
- (D) Accordingly, the GoTG and Africa50 have entered into:
 - (i) a memorandum of understanding dated 1 December 2022 under which Africa50 proposed that in return for the right of the Concessionaire to operate and maintain the Bridge and the Feeder Roads, including the levying and collection of toll revenues and weighing fees, Africa50 will pre-fund the projected toll revenues that the GoTG would have collected over the Concession Term, which will be split into three (3) payments, on the basis that the GoTG will apply all revenue payments made to it under such arrangement for the development of new infrastructure in The Gambia;
 - (ii) a joint development agreement dated 4 July 2023 setting out the activities to be undertaken by them to develop the Project, first for the purposes of Africa50 making a final offer to the GoTG based on the feasibility studies to be conducted, and then for the Parties to agree the Project Agreements and Financing Agreements culminating in Financial Close;
 - (iii) a heads of terms dated 4 July 2023 setting out the material commercial and legal terms for this Agreement, such terms being substantially reflected in this Agreement; and
 - (iv) a Shareholders Agreement to regulate their relationship in relation to the Concessionaire, which has been established under the laws of The Gambia as a special purpose vehicle with the sole object of carrying out the Project.
- (E) The GoTG and the Concessionaire wish to implement the Project in accordance with the terms and conditions set out in this Agreement.

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

When used in this Agreement, the following terms shall have the meanings set out below:

"**Access Roads**" means the access roads leading into the Project Site and depicted in Part 1 of Schedule 2 (*Access Roads*) for which the Contracting Authority is responsible and which excludes the Feeder Roads.

"Access Roads Reserve Escrow Agent" means a reputable bank designated by the Concessionaire for the purpose of managing the Reserve Account for Access Roads, as notified to the Contracting Authority within thirty (30) Days from Signature Date.

"Access Roads Reserve Escrow Agreement" means the escrow agreement to be entered into between the Contracting Authority, the Concessionaire and the Access Roads Reserve Escrow Agent, substantially in the form set out in Schedule 20 (*Access Roads Reserve Escrow Agreement*) or such other form as may be agreed by the Contracting Authority and the Concessionaire from time to time.

"Accrued Interest" means interest accrued pursuant to the Financing Agreements on the Principal Amount as at the Termination Date, calculated based on the Principal Amount, but excluding any default interests unless such default interests have accrued as the result of a Compensation Event.

"Actual IRR" means an internal rate of return on Africa50's investment in the Concessionaire calculated commencing on the date of this Agreement and compounded annually to the extent not paid on a current basis, taking into account the timing and amounts of: (i) all Equity; and (ii) all Distributions, provided that, in computing the Actual IRR:

- (a) the Equity invested by Africa50 before the date of this Agreement shall be deemed to have been made on the date of this Agreement and all subsequent Equity investments shall be deemed to have been made as at the date such investments were completed;
- (b) any Distributions received by Africa50 shall be deemed to have been received on the actual date received;
- (c) all Distributions shall be based on the amount of the Distribution after the application of any Tax payable with respect thereto (including pursuant to any withholding or deduction requirements);
- (d) the rate of return shall be calculated as a per annum rate and all amounts shall be calculated and compounded on an annual basis;
- (e) the rate of return and all Equity and Distributions shall be calculated on the basis of USD, and any amounts invested, distributed or paid in another currency shall be converted into USD, with the currency in which such investment, distribution or payment is paid or received converted into USD at the spot rate on the relevant date of payment or receipt as quoted by Bloomberg on such date; and

for all relevant purposes of this Agreement, internal rate of return shall be calculated using the Microsoft Excel XIRR function (or replacement function in Microsoft Excel from time to time).

"Actual IRR15" has the meaning ascribed thereto in Clause 28.1.3 (*First Performance Review*).

"Actual IRR20" has the meaning ascribed thereto in Clause 28.2.3 (*Second Performance Review*).

"Adjusted Termination Amount" means the amount to be paid by the Contracting Authority to the Concessionaire upon the termination of the Agreement as calculated in accordance with Schedule 12 (*Adjusted Termination Amount*).

"Adjusted Termination Amount Floor" means:

- (a) the Creditor Claims; plus
- (b) in the case of termination of this Agreement for any reason other than under Clause 29.1 (*Termination for Concessionaire Termination Event*), an additional amount which would result in the Actual IRR achieved by Africa50 (as shareholder of the Concessionaire) being equal to or greater than the Target IRR.

"Affiliate" means in relation to a person any other person or entity directly or indirectly Controlled by, or Controlling of, or under common Control with, that person.

"Africa50" means the shareholder of the Concessionaire that is: (i) the international organization, Africa50, Africa50 – Project Finance or Africa50 – Project Development; and/or (ii) any of their respective Affiliates; from time to time.

"Agreement" means this Agreement together with all its Schedules and any amendments thereto made in accordance with the terms of this Agreement.

"Annual Incident Management Report" has the meaning ascribed thereto in Clause 18.3 (*Annual Incident Management Report*).

"Annual Traffic Volume Report" has the meaning ascribed thereto in Clause 18.2 (*Annual Traffic Volume Report*).

"Applicable Law" means the Constitution of the Republic of the Gambia, all the statutes including regulations and rules made thereunder, subordinated legislation, the common law, judgments, directives, injunctions, and orders of any court of record, as may be in force and effect in The Gambia during the subsistence of this Agreement and whether emanating within The Gambia or from any supra-national authority or community or union of which The Gambia may be a member or part or other appropriate authority which is binding on a Party.

"Applicable Permits" means all permits, authorizations, consents, approvals and decisions required to be obtained by the Concessionaire or by any of its Contractors, Shareholders or Financing Parties under Applicable Law in order to perform any of their obligations or to exercise any of their rights under this Agreement, any of the Project Agreements or any of the Financing Agreements (as the case may be) as listed in Schedule 4 (*Applicable Permits*).

"Approved Auditor" means any of the following firms appointed by the Concessionaire in accordance with Clause 31.2 (*Calculation of the Adjusted Termination Amount*):

- (a) PwC;
- (b) Deloitte;
- (c) KPMG;
- (d) EY; or
- (e) any other internationally qualified audit firm of equivalent standing to the firms referred to in paragraphs (a) to (d),

including the local consultants and advisors in The Gambia of the firms referred to in paragraphs (a) to (e).

"Approved Auditor Termination Report" has the meaning ascribed thereto in Clause 31.2.3 (*Calculation of the Adjusted Termination Amount*).

"ARP Compensation" means the compensation payable to the Contracting Authority by the Concessionaire for the granting of the Concession Rights pursuant to Clause 19 (*ARP Compensation*).

"Assessed Maintenance Amount" has the meaning ascribed thereto in Clause 17.3.5 (*Final Maintenance Survey*).

"Assessed Maintenance Requirements" has the meaning ascribed thereto in Clause 17.3.5 (*Final Maintenance Survey*).

"Availability Certificate" means the certificate issued by the Independent Engineer in accordance with Clause 14.2 (*Availability Certificate*).

"Back Office" means the facility and systems established by the Concessionaire for the purposes of debiting Toll Credits from User Accounts when Users with e-tags pass through a Toll Plaza.

"Banjul-Barra Bridge" means a bridge of approximately 7.1 kilometres in length between the greater Banjul area and the North Bank Region.

"Base Case Financial Model" means the Financial Model applicable as at the Effective Date attached hereto as Part 2 of Schedule 3 (*Base Case Financial Model*).

"Base Case Traffic Model" means the traffic model setting out the projections of traffic volumes on the Bridge for the Tolling Operations Period attached hereto as Part 1 of Schedule 3 (*Base Case Traffic Model*).

"Base Toll" means the Toll in respect of each Vehicle Classification and as set out in Schedule 8 (*Tolling and Weighing Fees*).

"Baseline Infrastructure Report" means the report prepared by the Concessionaire in accordance with Clause 14.5 (*Baseline Infrastructure Report*).

"Bridge" means the Senegambia Bridge, a toll bridge of approximately 1 kilometer in length located along the Trans-Gambia Corridor connecting the northern and southern parts of The Gambia and Senegal.

"Business Day" means a day which is not a Saturday or Sunday or recognised public holiday in The Gambia and is a day on which commercial banks are open for business in The Gambia.

"Capital Expenditure" means any costs and expenses incurred which, in accordance with the international accounting standards (IFRS), are treated as capital costs and shall include the capital element of any cost or expense incurred in connection with the Tolling Works, Tolling Works, the Tolling Equipment or otherwise in accordance with this Agreement.

"Change in Law" means:

- (a) the introduction, enactment or coming into force of any Applicable Law;
- (b) the amendment, modification, repeal or re-enactment of any Applicable Law (excluding any repeal of the Tolling Notification or amendment to the Tolling Notification that is in conflict with the provisions of this Agreement including its Schedules);
- (c) a change in the interpretation or application of any Applicable Law by a court of record as compared with such interpretation or application prior to the Signature Date; and/or
- (d) in respect of any Applicable Permit:
 - (i) the imposition of a material condition or requirement in connection with the issuance, renewal or modification of any Applicable Permit where such condition or requirement did not exist or was not applied as at the Effective Date;
 - (ii) the grant of any Applicable Permit on terms and conditions that are unreasonably onerous or restrictive, will involve the incurrence of unreasonable costs on the part of the Concessionaire, or will result in a Material Adverse Effect; and
 - (iii) after the date of grant of an Applicable Permit, a revocation or withdrawal of such Applicable Permit, a change in the material terms and conditions attaching to such Applicable Permit or the attachment of new terms and conditions to such Applicable Permit which result in a Material Adverse Effect;
- (e) any change in the rates of any Taxes or other levies or the introduction of any new Taxes;

in each case occurring after the Signature Date.

"Commercial Operations Date" means the first Business Day after the Availability Certificate is issued by the Independent Engineer in accordance with Clause 14.2 (*Availability Certificate*).

"Compensation Event" has the meaning ascribed thereto in Clause 24.1 (*Definition of a Compensation Event*).

"Compensation Relief Period" has the meaning ascribed thereto in Clause 24.2.2(b) (*Consequence of a Compensation Event*).

"Competing Bridge" means any new bridge traversing the Gambia River within a fifty (50) kilometre radius of any part of the Bridge erected after the Signature Date (but excluding the Banjul-Barra Bridge).

"Competing Route" means any new sea-faring (including ferry), road excluding Competing Bridges, or rail transport infrastructure, including any mass transport scheme, developed by or on behalf of any Government Authority (including by means of a public, private partnership or otherwise) or otherwise permitted, subsidized or authorised by any Government Authority which adversely affects, or is likely to adversely affect, traffic volumes on the Bridge and/or the operating revenues of the Concessionaire, provided that, the performance of routine maintenance of Access Roads, or the upgrading of the surfaces of Access Roads where there is no increase to the capacity of such Access Roads shall not qualify as the development of a **"Competing Route"** for the purposes of this Agreement.

"Completion Certificate" means the certificate issued by the Concessionaire in accordance with Clause 14 (*Completion of the Tolling Works*) when the Tolling Works are completed.

"Concession Term" means the period commencing on the Effective Date and terminating on the earlier of the Expiry Date and the Termination Date.

"Concessionaire Conditions Precedent" means each of the conditions to be fulfilled by the Concessionaire pursuant to Clause 2.2 (*Conditions Precedent*) as a condition to the Effective Date, as set out in Schedule 16 (*Conditions Precedent*).

"Concessionaire" has the meaning ascribed thereto in the recitals of this Agreement.

"Concessionaire Termination Event" means the occurrence of any the following:

- (a) an Insolvency Event occurs other than by reason of the exercise by the Financing Parties of any of their rights pursuant to the Direct Agreement or any of the Financing Agreements;
- (b) the Concessionaire repudiates this Agreement or otherwise manifests an irrevocable intention not to be bound by this Agreement;
- (c) the Project has not reached Financial Close by the Long Stop Date;
- (d) non-payment by the Concessionaire of any amount owing to the Contracting Authority and which persists for a period of more than ninety (90) Days from the due date;
- (e) assignment by the Concessionaire of the Concession Rights without the prior written consent of the Contracting Authority, without prejudice to permitted assignments under Clause 38.2 (*Exceptions*); or
- (f) failure to remedy a material breach of this Agreement within sixty (60) Days of notification to do so by the Contracting Authority.

"Concessionaire Termination for Convenience" means the termination of the Agreement for convenience by the Concessionaire in accordance with Clause 29.4 (*Concessionaire Termination for Convenience*).

"Concessionaire Variation Proposal" has the meaning ascribed thereto in Clause 21.2.1 (*Concessionaire Variations*).

"Concession Rights" means the rights granted to the Concessionaire as set out in Clause 4.2 (*Concession Rights*).

"Conditions Precedent" means:

- (a) the Joint Conditions Precedent;
- (b) the Concessionaire Conditions Precedent; and
- (c) the Contracting Authority Conditions Precedent.

"Contracting Authority" has the meaning ascribed thereto in the recitals of this Agreement.

"Contracting Authority Conditions Precedent" means each of the conditions to be fulfilled by the Contracting Authority pursuant to Clause 2.2 (*Conditions Precedent*), as a condition to the Effective Date, as set out in Schedule 16 (*Conditions Precedent*).

"Contracting Authority Termination Event" means:

- (a) if any GoTG authority expropriates or compulsorily acquires:
 - (i) any part of the Concession Rights;
 - (ii) any assets of the Concessionaire; or
 - (iii) any of Africa50's share capital in the Concessionaire, other than where expressly permitted under this Agreement; or
- (b) repudiation of this Agreement or otherwise manifest an irrevocable intention not to be bound by this Agreement; or
- (c) assignment of Contracting Authority rights without prior written consent; or
- (d) non-payment by the Contracting Authority of any amount owing to the Concessionaire and which persists for ninety (90) Days; or
- (e) any time after the Signature Date, the GoTG commences a procurement process for the design and / or construction of a Competing Bridge or is in breach of its obligations under Clause 7.4 (*Obligations relating to Competing Route*); or
- (f) withdrawal of the Concessionaire's free access to the Project Site; or
- (g) Material Adverse Government Action causing a default under the Financing Agreements and/or any material adverse effect on the Concessionaire and/or its Shareholders.

"Contractor" means any person, company or organization with whom or with which the Concessionaire has entered into an agreement (including the EPC Contractor and the O&M Contractor) in respect of the performance of any of the obligations of the Concessionaire under this Agreement and the subcontractors of any such person, company or organisation of any tier.

"Contract Year" means each successive period of 12 (twelve) months commencing on and including 1st January and ending on and including 31st December, save that:

- (a) the first Contract Year shall be the period commencing on the Effective Date and ending on and including 31st December next following; and
- (b) the last Contract Year shall be the period commencing on and including 1st January falling in the year in which this Agreement expires or is terminated in whole (for whatever reason) and ending on and including the Expiry Date or the Termination Date (as the case may be).

"Control" means, in respect of a body corporate, the entitlement to exercise a majority of the voting and other governance rights: (i) whether by the holding of shares or other equity interests, possession of voting rights or by virtue of any other power conferred by the constitution, partnership deed, trust deed or other documents regulating another person, or by

any other means whatsoever in respect of that body corporate; or (ii) the ownership of a majority of the issued shares and equity securities in that body corporate, and "Controlled" and "Controlling" shall be construed accordingly.

"Cost" or "Costs" means any loss, damage, interest, fee, cost or expense, including, in relation to the Concessionaire, all costs and expenses incurred by the Concessionaire in connection with the exercise of the Concession Rights or the performance by the Concessionaire of its obligations under this Agreement, including all capital expenditure, operation and maintenance expenses, administrative costs, insurance premiums, premises costs and any Taxes or duties (including Taxes and duties on dividends or the repayment of capital contributions).

"Creditor Claims" means an amount equal to the sum of:

- (a) the Principal Amount;
- (b) Accrued Interest; and
- (c) Pre-payment Costs.

"Day" means a calendar day.

"Direct Agreement" means any agreement to be entered into by the Parties with the Financing Parties or their appointed agent on the basis of the principles set out in Schedule 15 (*Main Principles for the Direct Agreement*).

"Dispute Notice" has the meaning ascribed thereto in Clause 34.2.2(a) (*Internal Referral*).

"Dispute" means any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it.

"Distribution" means any interest, repayments of principal, distribution, dividend, buy back, redemption or distribution of assets or the proceeds thereof by the Concessionaire to Africa50 or its Affiliates on account of Africa50's Equity, gross of any Taxes or withholdings.

"Due Date for Payment" means the Termination Amount Payment Due Date in respect of the Adjusted Termination Amount or in the case of any other payment, the date falling thirty (30) Days after the date of an invoice or such other date as may be expressly contemplated herein.

"Early Tolling Works" means any part of the Tolling Works carried out by the Concessionaire (or its Contractors), at its own discretion, prior to and or after the Signature Date and until the Effective Date.

"Effective Date Longstop Date" means the date that is one hundred and fifty (150) Days after the Signature Date or such later date as may be agreed by the Parties in writing.

"Effective Date" means the date on which all Conditions Precedent are fulfilled or waived in writing by both of the Parties hereto.

"Electronic tag" or "e-tag" means the User identifier comprising either a smartcard or a short-range communication tag which constitutes an on-board unit affixed to a Vehicle for the purpose of processing a Transaction.

"Emergency Services" means any police, medical, fire and/or towing services required in response to any Emergency which services are notified to the Concessionaire by any Users, or a third party.

"Emergency Vehicles" means any Vehicle used by police, medical, fire and/or towing services required in response to any Emergency which services are notified to the Concessionaire by any Users, or a third party.

“Emergency” means a condition or situation that is likely to endanger the security of individuals in or about the Project Site including Users or which poses an immediate threat of material damage to any of the Tolling Infrastructure or the Tolling Equipment.

“EPC Contract” means any of the contracts to be entered into by the Concessionaire with the EPC Contractor for the design and construction of the Tolling Works.

“EPC Contractor” means any contractor(s) appointed for the design and construction of the Tolling Works by the Concessionaire from time to time.

“EPC Specifications” means the specification prepared by the Concessionaire for the design and construction of the Tolling Works and Tolling System set out in Schedule 6 (*EPC Specifications*).

“Equator Principles” means the Equator Principles July 2020, a benchmark for determining, assessing and managing environmental and social risk in projects issued by the Equator Principles Association.

“Equity IRR” means having regard to the Base Case Financial Model the real post-tax internal rate of return on Equity as stated in and calculated by the Financial Model.

“Equity” means, as on the relevant date, the subscription price paid or satisfied by Africa50 or its Affiliates with respect to shares of the Concessionaire issued to and held by it and any loan and any other debt or equity capital provided by or on behalf Africa50 and its Affiliates to the Concessionaire up to the relevant date.

“ESG Plan” means an environmental, social and governance action plan to be prepared in accordance with Applicable Law defining actions, responsibilities, budgets, deliverables, compliance indicators and a timeframe for any measures required to be taken in respect of the applicable environmental, social and governance requirements, including the Equator Principles, in respect of the Project.

“Estimate” has the meaning ascribed thereto in Clause 21.1.2 (*Contracting Authority Variations*).

“Exempted Vehicles” means Vehicles which are exempted from the payment of Tolls under the Tolling Notification including:

- (a) President and Vice-President motorcades;
- (b) military vehicles and the Gambia Police Force vehicles;
- (c) Emergency Vehicles, ambulances and other similar medical vehicles;
- (d) Local Governor’s official vehicle; and
- (e) maintenance vehicles and/or project vehicles in the ordinary course of their duties which have been notified by the Contracting Authority in writing to the Concessionaire (along with registration numbers) in advance of commencement of the relevant maintenance and/or project.

“Existing Contamination” means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour) existing in the Project Site on the Effective Date.

“Existing Tolling Infrastructure” means the Bridge and any tolling infrastructure situated on the Project Site as at the Signature Date.

“Expiry Date” means the twenty-fifth (25th) anniversary of the Effective Date, as renewed or extended as the case may be, including in accordance with Clause 3 (*Duration*).

“Extension Notice” has the meaning ascribed thereto in Clause 3.2 (*Duration*).

"Fast Track Disputes" has the meaning ascribed thereto in Clause 34.1.1 (*Referrable Disputes*).

"Feeder Roads" means the roads feeding into the Toll Plazas situated on either side of the Bridge approximately 4.5 km (four point five kilometres) in length to be constructed and/or maintained by the Concessionaire as part of the Tolling Works, as depicted in Schedule 1 (*Project Site*) to this Agreement.

"Final Maintenance Survey" has the meaning ascribed thereto in Clause 17.3 (*Final Maintenance Survey*).

"Financial Close" means the date on which the Concessionaire notifies the Contracting Authority that the Financing Agreements have been executed and the conditions precedent to the first drawdown have been fulfilled or waived.

"Financial Model" means the computer model prepared by the Concessionaire used (among other things) to prepare forecasts of operating revenue, balance sheets, debt service costs, as the same may be updated from time to time in accordance with Clause 21.1.3 (*Contracting Authority Variations*). A copy of the Base Case Financial Model, applicable as at the date of this Agreement is provided in Part 2 of Schedule 3 Schedule 3Part 2 (*Base Case Financial Model*).

"Financing Agreements" means any and all loan agreements, notes, bonds indentures, security agreements, direct agreements, registration or disclosure statements, subordination agreements, mortgages, deeds of trust, credit agreements, note or bond purchase agreements, hedging agreements, participation agreements and other documents entered into by the Concessionaire relating to, among other things, the financing of the Concessionaire's obligations under this Agreement and any refinancing thereof, provided by a Financing Party.

"Financing Party" means any person providing debt, bond or capital market financing or refinancing under the Financing Agreements to the Concessionaire and such person's permitted successors and assigns, including any agent or trustee for such person but not including a Shareholder or any other person with respect to indebtedness constituting Equity.

"First Tranche" has the meaning ascribed thereto in Clause 19 (*ARP Compensation*) below.

"First Performance Review" has the meaning ascribed thereto in Clause 28.1.1 (*First Performance Review*).

"Fiscal Benefits" has the meaning ascribed thereto in Clause 7.6 (*Fiscal Benefits*).

"Force Majeure Event" has the meaning ascribed thereto in Clause 25.1 (*Definition of a Force Majeure Event*).

"Force Majeure Period" has the meaning ascribed thereto in Clause 26.3(b) (*Consequences of a Force Majeure Event*).

"Front Office" means the point of sales designated by the Concessionaire for:

- (a) the opening of User Accounts; and
- (b) the issuance of e-tags (to be affixed to a vehicle); and
- (c) the purchase of Toll Credits.

"Gambian Dalasi" "Dalasi", "D" or "GMD" means the lawful currency of the Republic of The Gambia.

"Gambian Prime Rate" means the six (6)-month interest rate in respect of deposits of Gambian Dalasi offered by the Central Bank of The Gambia at 11:00 am on the date on which it is to be determined.

"Good Industry Practice" means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted

internationally from a reasonably skilled and experienced toll road concession company engaged in the same type of undertaking as envisaged under this Agreement, and means also good engineering practices in design engineering and construction which would be expected to result in the performance of the Concessionaire's obligations in the operation and maintenance of the Tolling System in accordance with this Agreement.

"GoTG Shareholder" means the GoTG or any entity or agency forming part of the GoTG acting in its capacity as a Shareholder in the Concessionaire.

"Government Authority" means the Government of the Republic of The Gambia or any ministry thereof, and any department or agency of the central Government of the Republic of The Gambia (including the Gambia Police Force) as well as regulatory agencies and district assemblies having jurisdiction over the Concessionaire, the Project or the Project Site or any part thereof or the performance of all or any of the obligations of the Concessionaire or any of its rights under the provisions of this Agreement.

"Government Authority Enforcement Obligations" has the meaning ascribed thereto in Clause 7.7 (*Government Authority Enforcement Obligations*).

"Heavy Vehicles" means the following classification of Vehicles:

- (a) bus;
- (b) truck; and
- (c) truck with trailer; and
- (d) any vehicle which may be qualified as heavy vehicle from time to time.

"Indemnified Party" has the meaning ascribed thereto in Clause 27 (*Liability and Indemnity*).

"Indemnifying Party" has the meaning ascribed thereto in Clause 27 (*Liability and Indemnity*).

"Independent Engineer" means the person jointly appointed by the Parties in accordance with Clause 9.1.

"Independent Engineer Agreement" means an agreement to be concluded between the Parties and the Independent Engineer substantially in the form attached as Schedule 5 (*Independent Engineer Agreement*) to this Agreement.

"Independent Expert" means an independent person with appropriate qualifications and experience:

- (a) agreed upon between the Parties; or
- (b) nominated by the International Centre for Expertise of the International Chamber of Commerce, in accordance with the provisions for appointment of experts under the Rules for Expertise of the International Chamber of Commerce, following a reference from either Party in the absence of an agreement as contemplated in paragraph (a) above within fourteen (14) Days of the initiation of the reference to expert determination or, as applicable, the Parties being notified that an identified expert is unable or unwilling to undertake or complete the reference to expert determination.

"Indicative Works Programme" means the indicative timetable for the delivery of the Tolling Works and which will specify the Scheduled Commercial Operations Date, attached as Schedule 9 (*Indicative Works Programme*) to this Agreement.

"Insolvency Event" means, in respect of the Concessionaire, any corporate action, legal proceedings or other similar procedure or step taken in relation to:

- (a) the winding up, dissolution or administration of the Concessionaire; or
- (b) the appointment of a liquidator in respect of the assets of the Concessionaire,

and, in any such case, such procedure or proceedings are not discharged within 150 (one hundred and fifty) Days or such shorter period provided for contesting such procedure or proceedings as specified under Applicable Laws.

"Intellectual Property Rights" means all intellectual property or other proprietary rights of every kind, including without limitation all patents, registered designs, unregistered design rights, works subject to the laws of copyright, trade secrets, processes, trademarks and service marks whether registered or not, and know-how and any associated or similar rights (including, in all cases, applications and right to apply therefor and documentation thereof).

"Interim Tolling Escrow Accounts" has the meaning ascribed thereto in Clause 16.1.3(b) (*Entitlement to collect Tolls and Weighing Fees*).

"Interim Tolling Escrow Agent" means a reputable bank designated by the Concessionaire for the purpose of managing the Interim Tolling Escrow Accounts, as notified to the Contracting Authority within thirty (30) Days from Signature Date.

"Interim Tolling Escrow Agreement" means the escrow agreement to be entered into between the Contracting Authority, the Concessionaire and the Interim Tolling Escrow Agent, substantially in the form set out in Schedule 19 (*Interim Tolling Escrow Agreement*) or such other form as may be agreed by the Contracting Authority and the Concessionaire from time to time.

"Interim Tolling Period" means the period starting at the Effective Date and ending on the Tolling Acceptance Date.

"Joint Conditions Precedent" means each of the conditions to be fulfilled jointly by both Parties pursuant to Clause 2.2 (*Conditions Precedent*) as a condition to the Effective Date, as set out in Schedule 16 (*Conditions Precedent*).

"Land Agreements" means the sub-lease agreements to be entered into between:

- (a) the Gambia Ports Authority and the Concessionaire prior to the Effective Date substantially in the form set out in Part 1 (*Bereto Land Agreement*) of Part 1 (*Land Agreements*) in respect of the land situated at Bereto Upper Baddibu District (North Bank Region) or in such other form as may be acceptable to the Concessionaire (in its sole discretion); and
- (b) the Gambia Ports Authority and the Concessionaire prior to the Effective Date substantially in the form set out in Part 2 (*Jenoi Land Agreement*) of Part 1 (*Land Agreements*) in respect of land situated at Jenoi in the Jarra Central District (West Coast Region) or in such other form as may be acceptable to the Concessionaire (in its sole discretion);

"LCIA" means the London Court of International Arbitration.

"Long Stop Date" means the date falling 24 (twenty-four) months from the Commercial Operations Date, as extended as the case may be in accordance with this Agreement.

"Maintenance Programme" has the meaning ascribed thereto in Clause 17.1.2 (*Routine Maintenance and Major Maintenance*).

"Maintenance Surveyor" has the meaning ascribed thereto in Clause 17.3.2 (*Final Maintenance Survey*).

"Major Maintenance" means any refurbishment and/or lifecycle replacement works to the Feeder Roads, the Tolling Equipment and the Tolling Infrastructure to be performed by the Concessionaire in accordance with the major maintenance schedule attached as Schedule 10 (*Major Maintenance Schedule*) and excludes Routine Maintenance.

"Material Adverse Effect" means any event or circumstance which adversely affects the Concessionaire's performance or exercise of its rights under this Agreement, its expected

investment returns under the Financial Model, or the legality, validity or enforceability of this Agreement, the Related Agreements, or any Financing Agreements.

"Material Adverse Government Action" means any act or omission of any Government Authority having a Material Adverse Effect on the Concessionaire, its Shareholders and/or the Project or the transactions and activities contemplated in under this Agreement or any Project Agreements.

"Minimum Reserve Amount" has the meaning ascribed thereto in Clause 17.4.3(a) (*Maintenance of Access Roads*).

"Necessary Action" has the meaning ascribed thereto in Clause 22.3 (*Contracting Authority Step-In*).

"O&M Contract" means any of the contract(s) to be entered into by the Contractor with the O&M Contractor(s) for the operation and maintenance of any part of the Project.

"O&M Contractor" means any contractor(s) appointed for the operation and maintenance of any part of the Project by the Concessionaire from time to time.

"O&M Scope" means the operations and maintenance scope for the Project with which Concessionaire must comply as described in Schedule 7 (*O&M Scope*).

"Operation" means the operation of the Tolling System by the Concessionaire in accordance with the O&M Scope as more fully set out in Clause 15 (*Operation of the Tolling Infrastructure, Tolling Equipment and the Feeder Roads*).

"Outstanding Debt" means all amounts required to be paid or repaid by the Concessionaire pursuant to: (a) the Financing Agreements in effect on Financial Close; and (b) any additional Financing Agreements relating to working capital facilities up to the amount specified in the Financial Model if such working capital facilities are entered into following the date of Financial Close pursuant to the Financing Agreements in effect on the date of Financial Close, together with all amounts required to be paid or repaid by the Concessionaire under any facilities for the financing of costs as provided hereunder, as may be varied or amended following the occurrence of an event of default under such Financing Agreements to reflect any rescheduling of the Outstanding Debt agreed between the Financing Parties and the Concessionaire.

"Pre-handover Period" has the meaning ascribed thereto in Clause 17.3.5 (*Final Maintenance Survey*).

"Pre-payment Costs" means an amount as at the Termination Date equal to the sum of any: (a) interest period breakage costs; (b) interest rate hedging breakage costs; (c) early redemption amounts in respect of the bonds, including any make-whole premium (if applicable); and (d) other breakage costs, in each case, payable by the Concessionaire to the Financing Parties as a result of a pre-payment under the Financing Agreements, provided that any positive payments received by or on behalf of the Financing Parties as a result of a breakage of interest rate hedging agreements, or otherwise, shall be applied in reduction of the amount of the relevant value.

"Principal Amount" means the amount required to repay the principal amount of the Outstanding Debt outstanding as at the Termination Date to the extent such principal amount was actually applied for the purposes of financing the Project.

"Prohibited Vehicles" means a Vehicle:

- (a) which is overloaded in that it exceeds the maximum laden weight of in respect of that Vehicle or trailer attached to that Vehicle or any axle of the Vehicle or trailer attached to that Vehicle in violation of the limits set for such maximum laden weight in accordance with Applicable Laws;
- (b) in respect of which the User of the Vehicle has failed to pay to the Concessionaire any Toll for which the User is liable in accordance with Applicable Law; or

- (c) in respect of which the User of the Vehicle commits, or has attempted to commit, any act constituting an offence.

"Project" means:

- (a) the financing, upgrade and construction of the Tolling Works;
- (b) the establishment of the Tolling System; and
- (c) the Operation and maintenance of the Tolling System, the Feeder Roads, the Tolling Infrastructure and the Tolling Equipment; and
- (d) the performance of all other obligations of the Parties and the exercise of their rights in accordance with and subject to the terms of this Agreement.

"Project Agreements" means:

- (a) the EPC Contract;
- (b) the O&M Contract; and
- (c) such other agreements as the Parties may agree to designate as **"Project Agreements"** from time to time.

"Project Information" has the meaning given to such a term in Clause 37.1.1 (*Project Information*).

"Project Site" means the land owned by the GoTG upon which the Project will be carried out, which includes:

- (a) the land over which the Bridge, (including the river Gambia) and the Feeder Roads traverse;
- (b) the land over which dedicated truck lanes and bypasses from the Feeder Roads traverse;
- (c) the land on which the Weighing Station is located or designated to be located;
- (d) the land on which overload control facilities are erected;
- (e) the land on which the Toll Plazas are located; and
- (f) the land on which the administrative and training offices required for the Operations are located,

which is to be more fully described and graphically depicted in Schedule 1 (*Project Site*) to this Agreement.

"Project Site Conditions" means the conditions of the Project Site including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions.

"Registered User" means a User in whose name a User Account has been opened.

"Related Agreement" means the Direct Agreement, the Land Agreements and the Independent Engineer Agreement, the Interim Tolling Escrow Agreement and the Access Roads Reserve Escrow Agreement and such other agreements relating to or arising out of the subject matter of this Agreement as the Contracting Authority and the Concessionaire may agree in writing to designate as such.

"Relief Event" has the meaning ascribed thereto in Clause 23.1 (*Definition of a Relief Event*).

"Relief Period" has the meaning ascribed thereto in Clause 23.2.2(b) (*Consequences of a Relief Event*).

"Required Standards" means, in respect of the Access Roads, the specific standards set out in Part 2 of Schedule 2 (*Access Roads*).

"Reserve Account for Access Roads" has the meaning ascribed thereto in Clause 17.4.3 (*Maintenance of Access Roads*).

"Reserve Withdrawal Notification" has the meaning ascribed thereto in Clause 17.4.3(b) (*Maintenance of Access Roads*).

"Revised List of Vehicle Classifications" has the meaning ascribed thereto in Clause 16.6.2 (*Vehicle Classification and Exempted Vehicles*).

"Road Furniture" means all objects for the safety and control of traffic to be placed on the Bridge and the Feeder Roads, for assisting Users by providing the necessary warnings, rules, distance and directional information in order to travel along the Bridge and the Feeder Roads safely, including non-essential road elements such as advertising signs, tourist information signs and waste receptacles, and road elements essential to the welfare of drivers such as signs, safety barriers, road lights and other utility poles, boundary fences, and raised road markers required to reflect Vehicle headlights.

"Routine Maintenance" means regular maintenance work which is short term or cyclic in nature and necessary to keep the Feeder Roads, the Tolling Infrastructure and the Tolling Equipment in good and safe working order, including preventative maintenance, minor repairs to all elements of the Feeder Roads, the Tolling Infrastructure and/or Tolling Equipment, including cleansing, verge and horticultural maintenance.

"Rules" means the rules of procedure for arbitration as provided by the LCIA and such other rules of procedure for arbitration as agreed between the Parties.

"Sanctions" means economic, financial or trade sanctions or restrictive measures enacted, imposed, administered or enforced from time to time by (i) the US government or any US agency (including the Office of Foreign Assets Control of the United States Department of the Treasury, the US State Department, the US Department of Commerce or the US Department of the Treasury), (ii) the United Nations Security Council, or (iii) the European Union (or any of its member states), or (iv) the Kingdom of Morocco, including, in each case, any other governmental institution of any of the foregoing.

"Second Performance Review" has the meaning ascribed thereto in Clause 28.2.1 (*Second Performance Review*).

"Service Costs" means in respect of any period:

- (a) all expenditure of the Concessionaire in connection with the operation, management or maintenance of the Project including:
 - (i) costs, expenses and fees in relation to management and administration of the Concessionaire;
 - (ii) costs and expenses of the Concessionaire to maintain its incorporation, office and staff (including wages, salary and superannuation), other administrative, management and overhead expenses;
 - (iii) amounts under the Related Agreements or Project Agreements (other than Capital Expenditure under the EPC Contracts);
 - (iv) insurance premiums and other costs (including deductibles);
 - (v) maintenance and repair costs;
 - (vi) any scheduled payments under operating leases;
 - (vii) utility, fuel and electricity costs;
 - (viii) Taxes;

(ix) costs and expenses of legal, technical, financial and other third-party advisers; and

(b) all interest, fees, commissions, hedging premia and any other costs or expenses payable under the Financing Agreements.

"Scheduled Commercial Operations Date" means the date stipulated in the Indicative Works Programme as being the Commercial Operations Date.

"Scheduled Completion Date" means the date in the Indicative Works Programme scheduled for the completion of the Tolling Works.

"Schedules" means the schedules to this Agreement and **"Schedule"** means any of them.

"Second Tranche" has the meaning ascribed thereto in Clause 19 (*ARP Compensation*).

"Shareholders Agreement" means the shareholders agreement entered into on 2 October 2023 between the GoTG Shareholder, the Africa50 and the Concessionaire.

"Shareholders" means the shareholders in the Concessionaire being, at the date hereof the Africa50 and the GoTG Shareholder.

"Signature Date" means the date of signature of this Agreement.

"Snagging Items" means minor omissions and minor defects which prevent the Tolling Works from being complete in accordance with the EPC Specifications, provided that:

(a) such omissions and defects will not prevent the Tolling System from being used for the intended purpose;

(b) the existence and making good of such omissions and defects will not adversely affect the Concessionaire having regard to the intended purpose of the Tolling System; and

(c) which do not cause any legal impediment to the use of the Tolling System;

"Snagging List" has the meaning ascribed thereto in Clause 14.3 (*Snagging Items*).

"Snagging Programme" has the meaning ascribed thereto in Clause 14.3.2 (*Snagging Items*).

"SOFR" means the secured overnight financing rate administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

"Step-in Period" has the meaning ascribed thereto in Clause 22.2 (*Contracting Authority Step-in*).

"Target IRR" means seventeen per cent (17%).

"Tax Authority" means any government, state or municipality or any local, state, federal or other authority, body or official anywhere in the world competent to impose, collect or assess Tax.

"Tax" means any form of taxation, any duty, impost, withholding, deduction or levy in the nature of tax and any statutory or governmental (whether national or local) charges, impositions, contributions, rates or levies, any social security contributions or other amount payable to any Tax Authority in the nature of tax, together with all related penalties, charges, surcharges, costs and interest, in each case whenever and wherever imposed and whether imposed by way of a withholding or deduction for or on account of tax or otherwise.

"Termination Accounts" has the meaning ascribed thereto in Clause 31.2.1 (*Calculation of the Adjusted Termination Amount*).

"Termination Amount Payment Date" has the meaning ascribed thereto in Clause 31.3(a) (*Interest on the Adjusted Termination Amount*).

"Termination Amount Payment Due Date" has the meaning ascribed thereto in Clause 31.2.5(a) (*Calculation of the Adjusted Termination Amount*).

"Termination Costs" means:

- (a) all Taxes and any other costs imposed on the Concessionaire by a Government Authority as a result of termination of this Agreement, payment by the Contracting Authority of any sums under Schedule 12 (*Adjusted Termination Amount*);
- (b) amounts payable by the Concessionaire (including any penalties, fees, costs, damages or expenses of any kind) in relation to:
 - (i) the EPC Contractors' termination costs under the EPC Contracts, as duly documented by the Concessionaire;
 - (ii) the EPC Contractors upon termination of the EPC Contracts for work properly completed by the EPC Contractors and not yet paid for by the Concessionaire, if any;
 - (iii) the O&M Contractors upon termination of the O&M Contracts; and
 - (iv) the termination of contracts, which the Concessionaire has entered into, acting reasonably, in relation to the Project; and
- (c) any experts' and professional advisers' fees and expenses which are incurred by the Concessionaire in connection with the enforcement of any rights under, or the termination, of this Agreement.

"Termination Date" means the date on which this Agreement terminates.

"Termination Event" means either a Concessionaire Termination Event or a Contracting Authority Termination Event.

"Termination Notice" has the meaning ascribed thereto in Clause 29.1.1 (*Termination for a Concessionaire Termination Event*).

"Third Tranche" has the meaning ascribed thereto in Clause 19 (*ARP Compensation*) below.

"Toll Credits" means any pre-payment of Tolls purchased by Registered Users to pass through a Toll Plaza and over the Bridge.

"Toll Plazas" means the toll plazas located on either side of the Bridge at Soma and Farafenni respectively.

"Toll" means the tolls as set out in the Concessionaire's Base Case Financial Model, as adjusted in accordance with Schedule 8 (*Tolling and Weighing Fees*) to this Agreement.

"Tolling Acceptance Date" has the meaning ascribed thereto in Clause 16.2.2 (*Tolling System and Tolling Acceptance Date*).

"Tolling Equipment" means collectively:

- (a) the equipment required for the operation of the Tolling Infrastructure;
- (b) the e-tags issued to Registered Users; and
- (c) the cabling and all the information technology systems, software and communications between the Toll Plaza and the Back Office.

"Tolling Infrastructure" means the Existing Tolling Infrastructure and any upgrades or enhancements to the Existing Tolling Infrastructure and including:

- (a) the Back Office;
- (b) the Front Offices including systems for opening of User Accounts and purchase of Toll Credits;
- (c) the Toll Plazas;
- (d) the administrative and training offices required for the Operations; and
- (e) the Weighing Stations.

"Tolling Notification" means the instrument to be issued by the GoTG authorising the Concessionaire to:

- (a) operate the Bridge and the Feeder Roads as a toll road;
- (b) levy and collect Tolls from Users; and
- (c) set Toll tariffs and Weighing Fees.

"Tolling System" means the electronic tolling system installed and operated by the Concessionaire in accordance with which Users of Vehicles passing through a Toll Plaza will be levied an applicable Toll from the Tolling Acceptance Date, which will be payable:

- (a) in cash in Gambian Dalasi and/or West African CFA Franc; or
- (b) by way of an accredited debit or credit card; or
- (c) by a debit of a Toll to a User Account, where such User has opened a User Account at a Front Office, such that when such User passes through a Toll Plaza, the e-tag transponder will be recognised and communicate with the Back Office which will in turn process a Transaction.

"Tolling Operations Period" means the period commencing on the Tolling Acceptance Date and terminating on the earlier of the Termination Date and the Expiry Date.

"Tolling Works" means the works required for the upgrades or enhancements to the Existing Tolling Infrastructure and the works required for the establishment of a Tolling System, which will consist of:

- (a) the provision of the Tolling Equipment;
- (b) the civil works required for establishing:
 - (i) the Tolling Infrastructure (other than the Existing Tolling Infrastructure);
 - (ii) the Feeder Roads;
 - (iii) a dedicated truck lane and bypass from the Feeder Roads including Weighing Station facilities;
 - (iv) the overload control facilities erected for Heavy Vehicles; and
- (c) trenching and laying the cabling for information exchange between the Toll Plazas and the Back Office,

as more fully set out in the EPC Specifications.

"Tolling Works Period" means the period commencing on the Effective Date and ending on the issuance of the Availability Certificate.

“Traffic Infringements” means the violation of any Applicable Laws relating to Users present at the Bridge and on the Feeder Roads, including but not limited to over-loading of Heavy Vehicles and a failure by Users passing through the Toll Plazas to pay for Tolls.

“Traffic Management Plan” means the traffic management plan set out in Schedule 17 (*Traffic Management Plan*).

“Transaction” means the debiting or deduction of a Toll Credit from of a User Account after a User passes through a Toll Plaza.

“Unplanned Maintenance” has the meaning ascribed thereto in Clause 17.2.1 (*Unplanned Maintenance*).

“User Accounts” means the accounts held in the name of either: (a) a User who is a natural person and licensed to operate a Vehicle; or (b) a juristic person whose Registered Users are licensed to operate Vehicles.

“User Agreement” has the meaning ascribed thereto in Clause 16.5.1 (*Registered Users*).

“User” means a person using a Vehicle on the Bridge, the Weighing Stations or the Feeder Roads, and from whom Tolls and/or Weighing Fees will be collected.

“Utilities” means any utilities, apparatus, equipment pole, tower, pylon, overhead or underground pipeline, cable or conduit, any other supporting or sustaining structure, and any trench, together with accessories, susceptible of use for the supply or distribution of electrical, telecommunication, cable delivery, signalling service or any other similar service, or for the conveyance of any liquid, liquefied or non-liquefied substance.

“Validity Period” has the meaning ascribed thereto in Clause 21.1.3 (*Contracting Authority Variations*).

“Variation Proposal” has the meaning ascribed thereto in Clause 21.1.3 (*Contracting Authority Variations*).

“Variation Request” has the meaning ascribed thereto in Clause 21.1.1 (*Contracting Authority Variations*).

“Variation” means a variation to the Tolling Works, Operations and maintenance obligations, EPC Specifications or O&M Scope proposed by the Contracting Authority in accordance with Clause 21.1 (*Contracting Authority Variations*) or the Concessionaire in accordance with Clause 21.2 (*Concessionaire Variations*).

“Vehicle Classification” means the vehicle classes set out in Part 1 of Schedule 3.

“Vehicle” means any vehicle traveling on the Bridge, the Feeder Roads or any other part of the Project Site, comprising any Vehicle Classification.

“Weighing Fees” means the weighing fees paid by Users for using the Weighing Stations.

“Weighing Stations” means the overload control facilities erected for Heavy Vehicles.

“West African CFA Franc” or **“XOF”** means the lawful currency in the West African Economic and Monetary Union (UEMOA).

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words in the singular shall include the plural and words in the plural shall include the singular;
- (b) a reference to any Party shall include that Party's personal representatives, successors and permitted assigns;

- (c) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and any subordinate legislation for the time being in force made under it;
- (d) a reference to writing or written includes email but no other form of electronic communication;
- (e) any obligation on a Party not to do something includes an obligation to take reasonable steps not to allow that thing to be done;
- (f) a reference to “transfer” includes any sale, assignment, grant of any rights over or other disposal (whether of a legal or a beneficiary interest and whether direct or indirect);
- (g) a reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time;
- (h) where any obligation in this Agreement is expressed to be undertaken or assumed by any Party, that obligation is to be construed as requiring the Party concerned to exercise all rights and powers of control over the affairs of any other person which it is able to exercise;
- (i) reference to Gambian law shall include the laws, statutes, decrees, regulations, rules or by laws as well as the common law and judicial decisions which have the force of law in The Gambia;
- (j) any reference to a point in time shall mean the time of day applicable in Banjul in The Gambia;
- (k) the headings in this Agreement are for convenience of reference only, and shall not be used in, and shall not affect the construction or interpretation of, this Agreement;
- (l) the Schedules to this Agreement form an integral part of this Agreement and shall be of full force and effect as if they were expressly set out in the body of this Agreement;
- (m) any consent, approval, authorization, notice, communication, information or report required to be given under any provision of this Agreement shall be in writing duly signed by the person required to give it, or his duty authorized representative;
- (n) the words “including” and “in particular” or similar words or expressions shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of the preceding words;
- (o) where any Party is required to give its consent or approval to any matter under this Agreement, such consent shall not be unreasonably withheld or refused, except where the relevant provision of this Agreement expressly states that the consent or approval may be withheld at the discretion of the Party from whom such consent or approval is sought. Equally, where any Party or the Independent Engineer is entitled to issue a requirement to another Party, the Party entitled to make the requirement shall act reasonably in relation thereto; and
- (p) a reference to a “company” shall include any company, corporation or other body corporate, wherever and however incorporated or established and a reference to a “person” includes any natural person, company, firm, corporate or unincorporated body (whether or not having a separate legal personality), partnership, limited liability partnership, association, organisation, trust, authority, government or political subdivision or agency thereof (in each case whether or not having separate legal personality) but references to an individual refer to a natural person only.

1.3 Joint Drafting

The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or if a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

1.4 Priority of Agreements, Clauses and Schedules

1.4.1 Without prejudice to Clause 44 (*Conflict with other Project Agreements*), this Agreement, and all other agreements and documents forming part of, or referred to in, this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and the other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents including Schedules forming part hereof or referred to herein and as amended from time to time and including any addenda thereto,

so that this Agreement shall prevail over all such other agreements and documents.

1.4.2 Subject to Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement and unless otherwise expressly provided elsewhere in this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail; and
- (c) between any two Schedules, the Schedule relevant to the issue under consideration shall prevail.

2. COMMENCEMENT AND CONDITIONS PRECEDENT

2.1 Effective Date

2.1.1 Except as set out in Clause 2.1.2 or as otherwise expressly set out elsewhere in this Agreement, all rights and obligations of the Parties referred to in this Agreement shall take effect on the Effective Date.

2.1.2 The rights and obligations set out in Clauses 1 (*Definitions and Interpretations*), 2 (*Commencement and Conditions Precedent*), 4.4 (*Exclusivity*), 5 (*Subcontracting*), 7.4 (*Obligations relating to Competing Route*), 9 (*Independent Engineer*), 12.1 (*Early Tolling Works*), 15.1 (*Continuous Operations*), 16 (*Tolls and Tolling*), 29 (*Termination of Agreement*), 30 (*Consequences of Termination*), 31 (*Compensation on Termination*), 33 (*Governing Law and Jurisdiction*), 34 (*Dispute Resolution*), 36 (*Notices*), 37 (*Confidentiality*), 38 (*Assignment*), 39 (*Amendments*), 43 (*Waiver*), 47 (*Severability*), 48 (*Counterparts*), Schedule 12 (*Adjusted Termination Amount*), Schedule 16 (*Conditions Precedent*) shall take effect from the Signature Date.

2.2 Conditions Precedent

2.2.1 The occurrence of Effective Date shall be subject to and conditional upon:

- (a) both Parties satisfying the Joint Conditions Precedent, other than any Joint Conditions Precedent which have been waived pursuant to Clause 2.6 (*Waiver of Conditions Precedent*);

- (b) the Concessionaire satisfying the Concessionaire Conditions Precedent, other than any Concessionaire Conditions Precedent which have been waived pursuant to Clause 2.6 (*Waiver of Conditions Precedent*); and
- (c) the Contracting Authority satisfying the Contracting Authority Conditions Precedent, other than any Contracting Authority Conditions Precedent which have been waived pursuant to Clause 2.6 (*Waiver of Conditions Precedent*),

in each case, prior to the Effective Date Longstop Date.

2.2.2 The Concessionaire shall satisfy the Concessionaire Conditions Precedent and the Contracting Authority shall satisfy the Contracting Authority Conditions Precedent and the Parties shall jointly satisfy the Joint Conditions Precedent as soon as reasonably practicable and, in any event, on or prior to the Effective Date Longstop Date.

2.2.3 Where a Party considers that a Condition Precedent has been satisfied, it shall promptly notify the other Party. If that Party disputes that the Condition Precedent has been satisfied, it shall provide notice to that effect within seven (7) Days, failing which the Condition Precedent shall be deemed satisfied.

2.3 Non-satisfaction of the Joint Conditions Precedent

2.3.1 If, and to the extent that, the Joint Conditions Precedent have not been fully and unconditionally satisfied and/or waived pursuant to Clause 2.6 (*Waiver of Conditions Precedent*) prior to the Effective Date Longstop Date, either Party may choose to terminate this Agreement by issuing a termination notice on the other Party, provided that such Party has made its best effort to satisfy the Joint Conditions Precedent.

2.3.2 Where a termination notice is issued by a Party pursuant to Clause 2.3.1, this Agreement shall (unless otherwise agreed by the Parties) terminate five (5) Business Days after the date of the termination notice, following which:

- (a) the Parties shall be relieved from all of their obligations and liabilities arising out of this Agreement, except to the extent expressly set out in this Clause 2.3.2;
- (b) the rights and obligations of the Concessionaire and the Contracting Authority under Clause 37 (*Confidentiality*) shall continue for a period of two (2) years after the date of the termination notice; and
- (c) the Contracting Authority shall pay the Concessionaire any Costs incurred by the Concessionaire or its Contractors in relation to the Early Tolling Works before the termination of this Agreement within thirty (30) Days from receipt by the Contracting Authority of an invoice from the Concessionaire together with invoices or other reasonable evidence in respect of the Costs incurred.

2.4 Non-satisfaction of Concessionaire Conditions Precedent

2.4.1 If, and to the extent that, the Concessionaire Conditions Precedent have not been fully and unconditionally satisfied by the Concessionaire and/or waived pursuant to Clause 2.6 (*Waiver of Conditions Precedent*) prior to the Effective Date Longstop Date, the Contracting Authority may choose to terminate this Agreement by issuing a termination notice on the Concessionaire, provided that all of the Contracting Authority Conditions Precedent have been satisfied in full and/or waived pursuant to Clause 2.6 (*Waiver of Conditions Precedent*).

2.4.2 Where a termination notice is issued by the Contracting Authority pursuant to Clause 2.4.1, this Agreement shall (unless otherwise agreed by the Parties) terminate five (5) Business Days after the date of the termination notice, following which:

- (a) the Parties shall be relieved from all of their obligations and liabilities arising out of this Agreement, except to the extent expressly set out in this Clause 2.4.2;

- (b) the rights and obligations of the Concessionaire and the Contracting Authority under Clause 37 (*Confidentiality*) shall continue for a period of two (2) years after the date of the termination notice; and
- (c) the Contracting Authority shall pay the Concessionaire any Costs incurred by the Concessionaire or its Contractors in relation to the Early Tolling Works before the termination of this Agreement within thirty (30) Days from receipt by the Contracting Authority of an invoice from the Concessionaire together with invoices or other reasonable evidence in respect of the Costs incurred.

2.5 Non-satisfaction of Contracting Authority Conditions Precedent

2.5.1 If, and to the extent that, the Contracting Authority Conditions Precedent have not been fully and unconditionally satisfied by the Contracting Authority and/or waived pursuant to Clause 2.6 (*Waiver of Conditions Precedent*) prior to the Effective Date Longstop Date, the Concessionaire may choose to terminate this Agreement by issuing a termination notice on the Contracting Authority, provided that all of the Concessionaire Conditions Precedent have been satisfied in full and/or waived pursuant to Clause 2.6 (*Waiver of Conditions Precedent*).

2.5.2 Where a termination notice is issued by the Concessionaire pursuant to Clause 2.5.1, this Agreement shall (unless otherwise agreed by the Parties) terminate five (5) Business Days after the date of the termination notice, following which:

- (a) the Parties shall be relieved from all of their obligations and liabilities arising out of this Agreement, except to the extent expressly set out in this Clause 2.5.2;
- (b) the rights and obligations of the Concessionaire and the Contracting Authority under Clause 37 (*Confidentiality*) shall continue for a period of two (2) years after the date of the termination notice; and
- (c) the Contracting Authority shall pay the Concessionaire any Costs incurred by the Concessionaire or its Contractors in relation to the Early Tolling Works before the termination of this Agreement within thirty (30) Days from receipt by the Contracting Authority of an invoice from the Concessionaire together with invoices or other reasonable evidence in respect of the Costs incurred.

2.6 Waiver of Conditions Precedent

2.6.1 If at any time prior to the Effective Date Longstop Date the Contracting Authority or the Concessionaire believe that it is desirable for one or more of the Conditions Precedent to be waived (including where waived and treated as a condition subsequent to be satisfied after the Effective Date), it shall notify the other Party in writing as soon as is practicable and in any event no later than twenty (20) Business Days before the Effective Date Longstop Date.

2.6.2 Any notification given pursuant to Clause 2.6.1 shall include full details of the relevant facts and circumstances, including but not limited to:

- (a) why the notifying Party believes that the relevant Condition(s) Precedent cannot be satisfied prior to the Effective Date Longstop Date;
- (b) when the notifying Party believes that the relevant Condition(s) Precedent will be satisfied;
- (c) whether the notifying Party believes that the relevant Condition(s) Precedent should be waived unconditionally or waived and treated as a condition subsequent to be satisfied after the Effective Date; and
- (d) what potential impact the notifying Party believes such waiver is likely to have on the Parties and the Project.

2.6.3 As soon as practicable following a notification given pursuant to Clause 2.6.1, the Parties shall consult with each other in good faith and use reasonable endeavours to agree whether the relevant Condition(s) Precedent should be waived unconditionally or waived and treated as a

condition subsequent to be satisfied after the Effective Date and if so, on what terms, provided that, for the avoidance of doubt, in either case, the agreement of both Parties shall be required. If no agreement has been reached by the Effective Date Longstop Date, Clauses 2.3 to 2.5 shall apply, as applicable.

3. DURATION

3.1 Without prejudice to Clause 2.1.2 (*Effective Date*), this Agreement shall take effect on the Effective Date and shall terminate on the earlier of:

- (a) the Expiry Date.
- (b) the Termination Date; and

3.2 The Expiry Date may be extended and re-extended from time to time by mutual agreement of the Parties upon such terms and for such duration as may be agreed between them, provided that where either Party so wishes to extend the Expiry Date, it shall submit a written request to the other Party no later than thirty-six (36) months before the Expiry Date ("**Extension Notice**") and the other Party shall respond in writing to the Extension Notice no later than eighteen (18) months before the Expiry Date indicating its acceptance or rejection of the proposed extension.

3.3 Upon receipt of an Extension Notice, the Parties shall use their reasonable endeavours to negotiate and agree the terms and duration of the proposed extension.

3.4 Any extension of the Expiry Date shall be subject to:

- (a) the Parties concluding an addendum in writing to this Agreement in order to affect the extension and incorporate the terms of such extension into this Agreement; and
- (b) to the extent documented in the addendum referred to in Clause 3.4(a), the Contracting Authority obtaining any required approval for such proposed extension under the Applicable Law,

whereupon the Expiry Date shall be deemed to have been extended for such period as agreed by the Parties.

4. CONCESSION

4.1 Grant of Concession

4.1.1 Without prejudice to Clauses 12.1.3 (*Early Tolling Works*) and 16.2.3(a) (*Tolling System and Tolling Acceptance Date*), the Contracting Authority hereby grants to the Concessionaire, for the Concession Term, all of the Concession Rights, subject to the terms of this Agreement.

4.1.2 The Contracting Authority hereby acknowledges that it has obtained all required consents, authorisations, approvals and exemptions required to be issued by any Government Authority in accordance with Applicable Laws and has taken all other actions required under Applicable Laws for:

- (a) the appointment of the Concessionaire to carry out the Project; and
- (b) the granting all of the Concession Rights to the Concessionaire for the Concession Term;

each as contemplated in this Agreement.

4.2 Concession Rights

The Concession Rights granted to the Concessionaire under Clause 4.1.1 (*Grant of Concession*) include the general right and license to carry out all aspects of the Project, including the exclusive right to:

- (a) investigate, study, design, engineer, procure, finance, construct and any other activities required to perform the Tolling Works;
- (b) operate, maintain, rehabilitate, remove and replace from time to time in accordance with this Agreement the Tolling Equipment and the Tolling Infrastructure;
- (c) perform Routine Maintenance and Major Maintenance;
- (d) to manage and operate the Bridge and the Feeder Roads for the purposes of the Tolling System;
- (e) enter onto, occupy and use the land comprising the Project Site for the purposes of performing its obligations and exercising its rights under this Agreement (including exercising the Concession Rights);
- (f) utilise and access existing Utilities including electricity, water reticulation, sewerage and drainage systems serving the Project Site;
- (g) perform the Project for commercial gain, including to levy and collect Tolls from Users in accordance with this Agreement;
- (h) increase Toll and Weighing Fees every three (3) Contract Years commencing on the Effective Date based on the greater of these two values: (i) a flat rate of ten percent (10%); or (ii) the average consumer price index for The Gambia for the preceding three (3) Contract Years;
- (i) exercise and enjoy such other rights as are expressly provided in this Agreement as being included within the Concession Rights;
- (j) exercise and enjoy any other rights reasonably necessary to perform its obligations and exercise its rights under this Agreement; and
- (k) receive, utilise and benefit from the Fiscal Benefits.

4.3 Acceptance of Concession

The Concessionaire hereby accepts the grant of the Concession Rights made by the Contracting Authority pursuant to Clause 4.1.1 (*Grant of Concession*) and agrees to perform and discharge its obligations under this Agreement in accordance with the terms and conditions of this Agreement.

4.4 Exclusivity

From the Signature Date and during the Concession Term, the Contracting Authority shall not enter into, nor shall it permit any other Government Authority to:

- (a) enter into, any agreement with third parties in respect of the Project or any of the obligations or rights of the Concessionaire set out in this Agreement (whether effective or not); or
- (b) do or omit to do any action which adversely affects, or may adversely affect, the exclusive rights of the Concessionaire under this Agreement or under the Related Agreements (including the Concession Rights).

5. SUBCONTRACTING

5.1 The Concessionaire may freely subcontract the performance of any of its obligations under this Agreement to or through its Contractors, provided that any such subcontracting shall not relieve the Concessionaire from the performance of such obligations and the Concessionaire shall be fully responsible to the Contracting Authority under the terms of this Agreement for the acts and defaults of its Contractors.

5.2 The Concessionaire will be entitled to appoint new and/or replacement Contractors and enter into any subcontracts in respect of any of its obligations under this Agreement at the

Concessionaire's sole discretion, being specified that the Concessionaire shall inform the Contracting Authority in writing of such appointment and/or replacement of Contractors within thirty (30) Days from the date of appointment and/or replacement of a Contractor.

5.3 The Parties hereby acknowledge the Concessionaire intends to enter into the following subcontracts:

- (a) the EPC Contracts; and
- (b) the O&M Contracts.

6. REPRESENTATIONS AND WARRANTIES

6.1 Warranty of Each Party

Each Party hereby represents and warrants to the other Party that this Agreement is legally valid and binding upon it in accordance with its terms.

6.2 Warranties of the Contracting Authority

The Contracting Authority represents and warrants to the Concessionaire that as at the Effective Date:

- (a) it shall ensure legal enforcement of all Applicable Laws relevant to the Project;
- (b) all consents, authorisations, approvals and exemptions issued by any Government Authority in accordance with Applicable Laws relevant to the Project will have been validly and lawfully obtained;
- (c) it has full power and authority to enter into and execute this Agreement and the Related Agreements and is duly authorised to perform its obligations hereunder and thereunder;
- (d) the execution of, and performance by, the Contracting Authority of its obligations under this Agreement and the Related Agreements will not cause the Contracting Authority to contravene or otherwise be in breach of any Applicable Laws;
- (e) the entry by the Contracting Authority into this Agreement and the Related Agreements, and the performance by it of its obligations under those agreements, is not ultra vires its constitutional and statutory powers;
- (f) the Concession Rights and this Agreement have been granted to the Concessionaire through the due and valid process under the Applicable Law and have been duly authorised and the Contracting Authority has full constitutional and legal powers to make such award to the Concessionaire;
- (g) it is the sole legal, beneficial and unencumbered owner of the Project Site and holds all valid and enforceable titles in relation to the Project Site and can freely grant to the Concessionaire all rights over the Project Site for the purposes of the Project, including the performance of the Tolling Works and the Operation and the rights set out in Clause 4.2(e) (*Concession Rights*);
- (h) the condition of the Existing Tolling Infrastructure and the Access Roads is such that it will not have a Material Adverse Effect on the Concessionaire or the exercise by the Concessionaire of its rights or performance of its obligations under this Agreement; and
- (i) it has complied with (i) all applicable environmental, social and governance requirements under Applicable Law that are applicable to the Existing Tolling Infrastructure, the Feeder Roads and the Project Site; and (ii) any ESG Plan developed in respect of the construction, operation and/or maintenance of the Existing Tolling Infrastructure and/or Project Site prior to the Signature Date.

6.3 Warranties of the Concessionaire

The Concessionaire represents and warrants to the Contracting Authority that as at the Effective Date:

- (a) it is duly constituted and validly existing under Applicable Laws;
- (b) it has the power and has taken all necessary corporate and other action to execute and perform its obligations under this Agreement;
- (c) it will adhere and maintain to an ESG Plan prepared by it in accordance with Applicable Law;
- (d) it has the financial standing and backing to perform its obligations under this Agreement when they fall due for performance;
- (e) there have been no undue payments to influence execution of this Agreement; and
- (f) it has not done and has no knowledge of anything which would result in any Material Adverse Effect or impair its performance under this Agreement.

7. SPECIFIC UNDERTAKINGS

7.1 Contracting Authority support undertakings

7.1.1 The Contracting Authority shall ensure that all Government Authorities comply with the rights granted to the Concessionaire under this Agreement and behave in a manner consistent with the Contracting Authority's commitments to the Project and under this Agreement in their dealings in respect of the Project and with the Concessionaire, Financing Parties and Contractors from time to time.

7.1.2 The Contracting Authority shall not take and shall ensure that no Government Authority takes (whether directly or indirectly) any discriminatory action which materially and adversely affects the Project, the performance of the Concessionaire's (or any Financing Parties' or Contractors') duties or obligations or the enjoyment of the Concessionaire's (or any Financing Parties' or Contractors') rights or powers under this Agreement or Related Agreements.

7.2 Exchange controls

7.2.1 The Contracting Authority guarantees to the Concessionaire in accordance with Applicable Law and throughout the Concession Term:

- (a) the unrestricted transfer and conversion of all funds and financial settlements connected with the Project; and
- (b) the unrestricted transfer of profits, dividends, liquidation and insurance proceeds from the Project.

7.2.2 The Contracting Authority will assist the Concessionaire to transfer, through any authorized domestic or international investment dealer or bank, in free convertible currency the remittance of any:

- (a) payments in respect of loans where a foreign loan has been obtained for the Project by the Concessionaire;
- (b) dividends to Shareholders outside of The Gambia or other payments attributable to the investment into the Concessionaire;
- (c) fees or charges in respect of any Financing Agreement or other agreements entered into by the Concessionaire;
- (d) proceeds (net of all Taxes and other obligations) of sale or liquidation or substitution of the Concessionaire; and

- (e) interest payable to Shareholders and attributable to the investment into the Concessionaire.

7.2.3 The Contracting Authority, to the extent legally permissible, will assist the Concessionaire (upon request) to convert revenues derived from the exercise of the Concession Rights from Gambian Dalasi to other currencies, after the Concessionaire has used reasonable endeavours to do so using the foreign exchange market and commercial banks.

7.2.4 Upon application by the Concessionaire in accordance with Applicable Law, the Contracting Authority shall ensure that the relevant Government Authorities, subject to Applicable Law:

- (a) promptly give the Concessionaire and its Contractors all necessary consents for the opening, maintaining, operation and retention of local currency and foreign currency bank accounts inside The Gambia with any bank nominated by the Concessionaire or its Contractors; and
- (b) promptly give the Concessionaire and its Contractors all necessary consents for the opening and maintaining of bank accounts outside The Gambia with any bank nominated by the Concessionaire or its Contractors,

in each case for any purposes connected with the Project, including allowing the Concessionaire to: (i) comply with its obligations under this Agreement, Financing Agreements and any Related Agreement; and (ii) make distributions (whether through dividends or repayments of shareholder loans) and any other payments to Shareholders.

7.3 Material Adverse Government Action

7.3.1 The Contracting Authority shall ensure that no Government Authority takes or causes to be taken any Material Adverse Government Action and the Contracting Authority shall in any case mitigate the effect of any Material Adverse Government Action.

7.3.2 If, and to the extent that, a Material Adverse Government Action occurs:

- (a) the Concessionaire shall promptly notify the Contracting Authority, indicating the type and nature of the Material Adverse Government Action that has occurred, giving reasonable details;
- (b) the Contracting Authority shall cease, or procure the cessation of, the Material Adverse Government Action and rectify any relevant adverse effect on the Concessionaire and/or the Project within ninety (90) Days after the date the Contracting Authority receives the notice from the Concessionaire pursuant to Clause 7.3.2(a); and
- (c) Clause 24 (*Compensation Event*) shall apply.

7.4 Obligations relating to Competing Route

The Contracting Authority shall ensure that from the Signature Date until the end of the Concession Term, neither the Contracting Authority nor any Government Authority shall (and the Contracting Authority shall procure that no Government Authority shall), at any time, construct, or cause and/or permit in any way the construction of, any Competing Route, except where the volume of Vehicles on the Bridge (as set out in the Annual Traffic Volume Report) has exceeded the annual volume forecast set out in the Base Case Traffic Model by fifty per cent. (50%) or more for two consecutive Contract Years.

7.5 Performance Securities

The Concessionaire shall not be required to procure or furnish the Contracting Authority with any performance security related to the performance of its obligations or duties in accordance with this Agreement, including in respect of the Concessionaire's obligations in respect of the Tolling Works or any Operation and maintenance obligations forming part of the Project.

7.6 Fiscal Benefits

The Contracting Authority hereby grants to the Concessionaire (and shall procure that each relevant Government Authority grants to the Concessionaire) the tax exemptions, incentives and other fiscal benefits listed in Schedule 14 (*Fiscal Benefits*) (the "Fiscal Benefits") on and from the Effective Date and for the entire Concession Term.

7.7 Government Authority Enforcement Obligations

The Contracting Authority shall perform and comply with and shall ensure that each relevant Government Authority performs and complies with, on and from the Effective Date and for the entire Concession Term, with the obligations set out in Schedule 13 (*Government Authority Enforcement Obligations*) (the "Government Authority Enforcement Obligations").

7.8 Work Permit

The Contracting Authority or relevant Government Authority, as applicable, shall facilitate the issuance of work permits for the key personnel of the Concessionaire that are not Gambian nationals, as notified by the Concessionaire to the Contracting Authority from time to time, work permits (or renew the work permits as applicable) for a period in accordance with the laws of The Gambia from the Commercial Operations Date.

7.9 Related Agreements

7.9.1 The Parties shall enter into an Independent Engineer Agreement with the Independent Engineer in accordance with Clause 9.1.

7.9.2 The Contracting Authority agrees to:

- (a) execute, or cause the relevant Government Authority to execute the Land Agreements, by no later than the Effective Date;
- (b) execute the Interim Tolling Escrow Agreement and the Access Roads Reserve Escrow Agreement, by no later than the Effective Date; and
- (c) in respect to each Direct Agreement:
 - (i) execute the Direct Agreement, upon request from the Concessionaire, by no later than Financial Close; and
 - (ii) simultaneously with Clause 7.9.2(c)(i), provide to the Concessionaire a certified copy of the legal opinion issued by the Attorney General of The Gambia confirming the due execution, validity and enforceability of the Direct Agreement.

7.9.3 The Concessionaire agrees to:

- (a) execute the Land Agreements, the Interim Tolling Escrow Agreement, and the Access Roads Reserve Escrow Agreement, by no later than the Effective Date; and
- (b) execute any Direct Agreement, if required, by no later than Financial Close.

8. THE PROJECT SITE

8.1 Use and Possession of the Project Site

8.1.1 Without prejudice to Clause 12.1.3 (*Early Tolling Works*) and 16.2.3(a) (*Tolling System and Tolling Acceptance Date*), on and from the Effective Date and for the entire Concession Term:

- (a) the Contracting Authority hereby grants to the Concessionaire and its Contractors and subcontractors the exclusive right to occupy and use the Project Site for the purposes of performing its obligations under this Agreement;

- (b) the Contracting Authority is responsible for providing the Concessionaire with the Project Site and the Existing Tolling Infrastructure free of any third-party occupiers, businesses, and any rights or claims affecting occupation, possession or use; and
- (c) the Contracting Authority guarantees that there are no restrictions, encumbrances, third party rights and/or other restrictive conditions of title applicable to the Project Site and/or the Existing Tolling Infrastructure which might have the effect of impeding, delaying, restricting or in any manner preventing the proper performance by the Concessionaire (including through its Contractors) of its obligations under this Agreement or which may interfere with the Concessionaire's possession of the Project Site for the duration of this Agreement or with any rights granted to the Concessionaire under this Agreement.

8.1.2 Upon the earlier of the Termination Date and Expiry Date, the Concessionaire and its Contractors' right to occupy and use the Project Site shall automatically lapse, save that the Concessionaire and Contractors shall be given access to the Project Site for purposes of giving effect to the provisions of Clause 30 (*Consequences of Termination*).

8.2 Ownership and Title in the Project Site

The Parties hereby acknowledge and agree that ownership and title in the Project Site and the Existing Tolling Infrastructure shall remain with the Contracting Authority for the entire Concession Term, without prejudice to the rights granted to the Concessionaire in accordance with Clause 8.1 (*Use and Possession of the Project Site*).

8.3 Warranty of Title by the Authority and Project Site Conditions

The Contracting Authority warrants and undertakes to the Concessionaire for the entire Concession Term that:

- (a) the Project Site and the Existing Tolling Infrastructure is vested in the Contracting Authority through the due process of Applicable Law and the Contracting Authority has full powers to hold, dispose of and to deal with the Project Site and to grant the Concession Rights set out in this Agreement;
- (b) the Concessionaire and its Contractors shall remain in peaceful possession and enjoyment of its rights over the Project Site;
- (c) there is no disposal or grant of rights to any person other than the Concessionaire in respect of the Project Site;
- (d) the Concessionaire and its Contractors shall remain in peaceful possession and enjoyment of the Project Site for the duration of this Agreement, free from any interference or obstruction from any Government Authority, person, family, tribe or tribal authority claiming any right, title or interest in or over the Project Site;
- (e) the Contracting Authority does not, and shall ensure that no other Government Authority does, at any time during the subsistence of this Agreement, take any action, dispose of any interest in or grant to any person (other than the Concessionaire) any right over or in respect of the Project Site or any part thereof; and
- (f) the Contracting Authority shall provide any assistance to the Concessionaire, or its Contractors, required to prevent encroachment and shall ensure that any encroachments on the Project Site by third parties, including communities, are promptly removed and relocated so as to restore the Concessionaire's rights in respect of the Project Site.

The Contracting Authority shall indemnify and hold the Concessionaire harmless in case of any Existing Contamination and/or Project Site Conditions affecting the performance of the Tolling Works and/or the Operations.

8.4 Other Use of the Project Site

The Parties agree that the Concession Rights include the right for the Concessionaire to freely use and have access to the Project Site (and to authorise a third party, including a Contractor to use and have access to the Project Site) and manage the Project Site for billboarding or the erection of advertising signage.

9. INDEPENDENT ENGINEER

9.1 Appointment

- (a) Within one hundred and eighty (180) Days following the Effective Date (or such longer period the Concessionaire may agree), the Parties must jointly appoint the Independent Engineer in accordance with the Clause 9.1(b) and 9.1(c).
- (b) Within ninety (90) Days following the Effective Date (or such longer period the Concessionaire may agree), the Contracting Authority must nominate two (2) possible candidates for the role of Independent Engineer from amongst:
 - (i) Setec PSI;
 - (ii) Bureau Veritas;
 - (iii) Rendel Limited;
 - (iv) Steers Group; or
 - (v) any other internationally qualified engineering firm of equivalent standing to the firms referred to in this Clause (b) which is mutually agreed to in writing between the Contracting Authority and the Concessionaire,

and notify the Concessionaire of its nomination. Within twenty (20) Days following such notification, the Concessionaire must select one (1) of the candidates to assume the role of Independent Engineer following which the Parties shall enter into the Independent Engineer Agreement substantially in the form attached as Schedule 5 (*Independent Engineer Agreement*).

- (c) Failure by the Contracting Authority to notify the Concessionaire of the Independent Engineer candidates within the time period set out in Clause 9.1(b) will entitle the Concessionaire to select its own Independent Engineer from the list above and Parties shall enter in to the Independent Engineer Agreement substantially in the form attached as Schedule 5 (*Independent Engineer Agreement*).
- (d) The Concessionaire shall take lead engagement with the selected or shortlisted Independent Engineer on behalf of the Parties.

9.2 Replacement of the Independent Engineer and change to terms of appointment

9.2.1 Neither the Contracting Authority, nor the Concessionaire, shall without the other Party's prior written approval (not to be unreasonably withheld or delayed):

- (a) terminate, repudiate, cancel or discharge the appointment of the Independent Engineer;
- (b) waive, settle, compromise or otherwise prejudice any rights or claims which the other Party may from time to time have against the Independent Engineer; or
- (c) vary the terms of the appointment of the Independent Engineer or the services performed or to be performed by the Independent Engineer.

9.2.2 In the event the Parties agree to replace the Independent Engineer, or if the replacement of the Independent Engineer is required, the new Independent Engineer shall be selected and

appointed by the Concessionaire and the Contracting Authority as soon as possible thereafter in accordance with the following procedure:

- (a) in respect of the identification of suitable candidates for the role of Independent Engineer, the Concessionaire shall be entitled to propose by notice to the Contracting Authority three (3) candidates for such appointment;
- (b) the Parties shall use reasonable endeavours to agree the identity of the Independent Engineer amongst the candidates proposed by the Concessionaire and enter into and procure that the Independent Engineer enters into a contract substantially similar to the Independent Engineer Agreement as soon as reasonably possible;
- (c) the Contracting Authority shall approve or refuse a candidate proposed by the Concessionaire within ten (10) Days from receipt of the notice by the Concessionaire in accordance with Clause 9.2.2(a), provided that if the Contracting Authority does not respond within this 10-Day period, the Concessionaire shall have the right to designate any of the proposed candidates as the replacement Independent Engineer and such candidate shall be deemed to have been approved by the Contracting Authority;
- (d) the Contracting Authority can only refuse a candidate in accordance with Clause 9.2.2(c) if the Independent Engineer is not independent from the Concessionaire and there is a conflict of interest, provided that in the event the Parties disagree on the characterisation of a conflict of interest, the matter may be referred by either Party for resolution as a Fast Track Dispute in accordance with Clause 34.1 (*Fast-Track Dispute Resolution*); and
- (e) if several candidates proposed by the Concessionaire are approved by the Contracting Authority in accordance with this Clause 9.2.2, the Concessionaire shall have the right to designate the awarded candidate that will replace the Independent Engineer.

9.2.3 The Parties agree to co-operate with each other generally in relation to all matters within the scope or in connection with the Independent Engineer. All instructions and representations made by either Party to the Independent Engineer shall be simultaneously copied to the other Party and both Parties shall be entitled to be notified of and to attend all inspections undertaken by and meetings involving the Independent Engineer.

9.3 Undue Influence

The Parties agree that none of them shall at any time seek to exert undue influence over the Independent Engineer.

9.4 Breaches of the Independent Engineer Agreement

A breach by the Concessionaire or the Contracting Authority of the Independent Engineer Agreement shall constitute a breach of this Agreement and any Party that is in breach of the Independent Engineer Agreement shall not be entitled to request or require that the Independent Engineer performs any services under the Independent Engineer Agreement until the breach has been remedied to the satisfaction of the Independent Engineer and the other Party not in breach (acting reasonably).

9.5 Challenging Independent Engineer's Determinations

If a Party is dissatisfied with any determination of the Independent Engineer and such determination is not (or has not become), in accordance with the terms of this Agreement, final and binding on the Parties, then the following shall apply:

- (a) the dissatisfied Party shall give notice to the other Party to this effect within thirty (30) Days of receipt of notification of the Independent Engineer's determination; and
- (b) if the Parties cannot reach an amicable resolution of the issue within thirty (30) Days following the date of any notice issued under Clause 9.5(a), the matter may be resolved in accordance with Clause 34.2 (*Internal Referral and Arbitration*).

9.6 Payments to Independent Engineer

9.6.1 The Concessionaire shall be responsible for paying the fees of the Independent Engineer under the Independent Engineer Agreement, provided that the Contracting Authority shall reimburse to the Concessionaire within thirty (30) Days of receipt of the Concessionaire's invoice, fifty percent (50%) of the amount paid by the Concessionaire to the Independent Engineer under the Independent Engineer Agreement. Such amount may be deducted from the Third Tranche of the ARP Compensation or claimed directly from the Contracting Authority at the sole discretion of the Concessionaire.

9.6.2 The Concessionaire shall provide the Contracting Authority with copies of any invoices submitted by the Independent Engineer and shall give the Contracting Authority not less than fourteen (14) Days to raise any comments and questions in writing in respect of such invoices (including, if applicable, detailed reasons for any objections in respect of such fees). If the Contracting Authority does not raise any comments within this fourteen (14) Day period, the Contracting Authority will be deemed to have accepted the invoice.

9.7 Binding Effect of Independent Engineer's Determinations

Where this Agreement provides that the determination of an issue by the Independent Engineer is final and binding on the Parties, the Contracting Authority shall procure that each Government Authority shall be bound by such decision to the same extent as the Concessionaire and the Contracting Authority are bound thereby even though such Government Authority is not a party to the Independent Engineer Agreement.

10. APPLICABLE PERMITS

10.1 Unless otherwise provided in this Agreement, the Concessionaire is responsible for making the applications to obtain the Applicable Permits set out in Schedule 4 (*Applicable Permits*) in accordance with Applicable Laws.

10.2 The Contracting Authority shall procure that the relevant Government Authority duly and promptly grants and/or renews the Applicable Permits, provided that the Concessionaire or its Contractor has duly and promptly submitted the application for the Applicable Permit.

10.3 The Contracting Authority shall generally duly and promptly assist the Concessionaire and its Contractors to obtain, maintain and/or renew the Applicable Permits and shall further assist the Concessionaire and its Contractors to renew any Applicable Permit required during the Concession Term.

11. EPC SPECIFICATIONS

11.1 The Parties agree to design and construct the Tolling Works and Tolling System in accordance with the EPC Specifications.

11.2 The Contracting Authority confirms that the designs, requirements and standards for the Tolling Works and Tolling System as described or referred to in the EPC Specifications are approved for all purposes of this Agreement and may be utilised by the Concessionaire for any part of the Tolling Works without submitting the same for further review by the Contracting Authority.

12. TOLLING WORKS

12.1 Early Tolling Works

12.1.1 The Parties acknowledge and agree that Early Tolling Works were started and carried out by the Concessionaire or its Contractors prior to the Signature Date.

12.1.2 The Concessionaire is entitled to continue to pursue and carry out, at its own discretion, the Early Tolling Works on and from the Signature Date.

12.1.3 The Contracting Authority hereby grants to the Concessionaire:

- (a) all of the Concession Rights required to perform the Early Tolling Works; and
- (b) the right to occupy and use the Project Site for the purposes of performing Early Tolling Works.

12.2 Conduct of the Tolling Works

12.2.1 Without prejudice to Clause 12.1 (*Early Tolling Works*), the Concessionaire shall perform the Tolling Works throughout the Tolling Works Period.

12.2.2 The Concessionaire shall undertake the Tolling Works in accordance with the EPC Specifications, this Agreement and Good Industry Practice.

12.2.3 The Concessionaire shall, for the duration of the Tolling Works Period and the Tolling Operations Period, have due regard for the safety of all persons to the extent required by any Applicable Law, and shall keep the Project Site, the Tolling Infrastructure and the Tolling Equipment in an orderly state in accordance with Good Industry Practice to avoid danger to such persons.

12.2.4 The Concessionaire shall ensure that all Contractors and other persons engaged in the conduct of the Tolling Works are:

- (a) duly qualified and trained so that workmanship is executed in accordance with Good Industry Practice; and
- (b) correctly and properly project managed so as to adhere to the Indicative Works Programme.

12.2.5 Unless expressly notified, the Contracting Authority's conduct will not be deemed as confirmation of compliance of the Tolling Works with the EPC Specifications.

12.3 Change to the Indicative Works Programme

12.3.1 Subject to Clause 12.3.2, any changes to the Indicative Works Programme shall be carried out in accordance with the procedure set out in Clause 21 (*Variations*).

12.3.2 The Concessionaire shall be entitled to reschedule or reorder the execution of the Tolling Works (or any part of them) as it deems necessary throughout the Tolling Works Period and shall provide the Contracting Authority with a revised Indicative Works Programme reflecting any such rescheduling or reordering.

12.3.3 The Concessionaire may also propose at any time any change to the Indicative Works Programme (a "**Works Programme Change**"), including an extension of the Scheduled Commercial Operations Date. In such case, the provisions of Clause 21 (*Variations*) shall apply to any Works Programme Change.

12.4 Progress Reports

The Concessionaire shall provide to the Contracting Authority and the Independent Engineer periodic reports detailing the progress of the Tolling Works and highlighting any major issues that have arisen during the period covered by the report.

12.5 Inspection of the Tolling Works

12.5.1 The Concessionaire shall procure that the Contracting Authority or any duly authorised representative or adviser of the Contracting Authority shall have, at all reasonable times and upon giving reasonable notice, the right (but not so as to delay or impede the progress of the Tolling Works) to enter the Project Site in order to inspect the state and progress of the Tolling Works (and to ascertain whether they are being properly executed).

12.5.2 In exercising its rights under Clause 12.5.1, the Contracting Authority shall (and shall procure that its duly authorised representatives or advisers shall) at all times comply with all relevant

site rules notified to it by the Concessionaire or its Contractors in relation to the Project Site and minimise any disruption and/or interference to the carrying out of the Tolling Works.

12.6 Traffic Management

Where any part of the construction of the Tolling Infrastructure or the Feeder Roads is to be elevated over or constructed under any existing roads or other structures or connected to any existing roads or other structures, the Contracting Authority shall, within ten (10) Days from the request of the Concessionaire, grant the Concessionaire's request for the closure of such roads where necessary or take such other actions as will ensure the unimpeded and uninterrupted carrying out of the Tolling Works provided that:

- (a) the Contracting Authority shall be entitled to request that the Concessionaire delay the performance of the Tolling Works for a period which shall not exceed thirty (30) Days following the request of the Concessionaire, which request the Concessionaire shall consider in good faith;
- (b) the Concessionaire shall have provided the Contracting Authority not less than twenty-eight (28) Days prior written notice of such closure;
- (c) the duration of the closure shall be no longer than that reasonably required by the Concessionaire for the performance of the Concessionaire's relevant obligations under this Agreement;
- (d) the Concessionaire shall endeavour to minimise the duration of the required closure;
- (e) the Concessionaire will provide traffic management and a detailed schedule during the Tolling Works and must ensure that the Tolling Works do not disrupt traffic to the extent it can be reasonably avoided; and
- (f) the Concessionaire may provide for lane closures and signposting when carrying out the Tolling Works.

12.7 Delays

12.7.1 Subject to the terms of this Agreement, the Concessionaire shall ensure that the Tolling Works are carried out in a manner that minimises any delay in the conduct thereof and in such manner as to enable the Concessionaire to achieve the Scheduled Completion Date.

12.7.2 If the Concessionaire becomes aware of any likely material delay to the progress of the Tolling Works (as against the Indicative Works Programme) or the Scheduled Completion Date, it must provide a notice thereof to the Contracting Authority together with a revised Indicative Works Programme.

12.8 Liability and Latent Defects

12.8.1 Subject to Clause 12.8.2 below and unless otherwise specified in this Agreement, the Concessionaire shall be liable for:

- (a) the conduct of the Tolling Works and the lapse of related warranties, guarantees or defects liability in respect of the Tolling Works; and
- (b) any latent defect in the Tolling Infrastructure and the Tolling Equipment.

12.8.2 The Contracting Authority shall be liable for:

- (a) any repair and maintenance of the Existing Tolling Infrastructure during the Tolling Works Period; and
- (b) all latent defects in the Project Site and the Existing Tolling Infrastructure for the Concession Term, provided that the Concessionaire must notify the Contracting Authority of latent defects in the Project Site or the Existing Tolling Infrastructure, and at its own cost take measures to ensure the safety of Users in accordance with the O&M Scope.

- 12.8.3 Where agreed or determined by dispute resolution that the Contracting Authority is responsible for the latent defects, it may appoint a third party to remedy the latent defect; and if not appointed within ten (10) Days of agreement or determination, the Concessionaire may instead remedy the defect and shall be reimbursed by the Contracting Authority (either through set off or direct claim, at the election of the Concessionaire).

13. UTILITIES AFFECTING THE PROJECT SITE

13.1 Concessionaire's Responsibilities in respect of Utilities

Subject to Clause 13.2 (*Contracting Authority's Responsibilities in respect of Utilities*), the Concessionaire shall in relation to the Utilities required or affected as a result of the carrying out of the Tolling Works and/or providing the Operation:

- (a) be responsible for determining the location of such Utilities at the Project Site;
- (b) make all necessary investigations and surveys as to such Utilities at the Project Site; and
- (c) make provision for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any Utilities which may cross the Project Site and which may be impacted by the Tolling Works or Operation.

13.2 Contracting Authority's Responsibilities in respect of Utilities

13.2.1 The Contracting Authority shall or procure that the relevant Government Authority, as applicable, shall:

- (a) procure the provision of all Utilities to the Project Site (including fiber optic connections and power supply required for the Project) no later than 6 months from the Signature Date and for the whole remaining Concession Term;
- (b) procure that all necessary infrastructure required to provide any Utilities to the Project Site is in place no later than 6 months from the Signature Date and for the whole remaining Concession Term and that such infrastructure remains in place thereafter;
- (c) at the Concessionaire's request, provide reasonable assistance to the Concessionaire or its Contractors in enabling it to make or procure connection and access into other services and Utilities outside the Project Site during the Concession Term; and
- (d) co-operate with and support the Concessionaire in all its dealings with utility companies, agencies and other relevant third parties during the Concession Term.

13.2.2 If, at any time, any utility company or other person applies to the Contracting Authority for permission to perform any works or undertake any services on any part of the Project Site, the Contracting Authority shall refer the relevant utility company or person to the Concessionaire and the Concessionaire:

- (a) may impose such conditions on the performance of any such works or services as it may require in order to ensure that such works do not cause a Material Adverse Effect; and
- (b) shall be entitled to require that as a condition to entering the Project Site, the utility company enters into an agreement with the Concessionaire pursuant to which the relevant works will be carried out,

and, accordingly, to the extent relating to the Tolling Infrastructure, the Feeder Roads or the Project Site, the Contracting Authority shall not express any satisfaction or specify any period of time to a third party without obtaining the approval of the Concessionaire in respect thereof.

13.2.3 The Contracting Authority agrees that it shall not give permission to a utility company or to any other person to enter onto the Project Site or Tolling Infrastructure other than in accordance with the provisions of this Clause 13.2 or in the case of an Emergency.

13.3 Utilities

- 13.3.1 The Concessionaire shall notify the Contracting Authority within twenty-eight (28) Days of the discovery of any Utilities which were not expressly disclosed in writing prior to the Effective Date, providing details of the nature of the Utilities and approximate locations of such Utilities within the Project Site.
- 13.3.2 The Concessionaire shall be responsible for the removal, protection or relocation of any such Utilities to the extent required in order for the Tolling Works or other Operations of the Concessionaire to be performed in accordance with this Agreement.

14. COMPLETION OF THE TOLLING WORKS

14.1 Completion Certificate

- 14.1.1 When the Concessionaire is satisfied that the Tolling Works are complete and comply with the EPC Specifications, the Concessionaire shall issue the Completion Certificate to the Independent Engineer and the Contracting Authority.
- 14.1.2 Not later than fourteen (14) Days after receipt of the Completion Certificate, the Independent Engineer shall inspect the Tolling Works in the presence of the Concessionaire and the Contracting Authority, who shall make themselves available at the date proposed by the Independent Engineer in accordance with the Independent Engineer Agreement.
- 14.1.3 The Independent Engineer shall notify the Concessionaire and the Contracting Authority within fourteen (14) Days after the inspection that:
- (a) the Independent Engineer concludes, by providing justified grounds and supporting documentation, that any part of the Tolling Works is not complete in that it does not materially comply with the EPC Specifications. In such event and subject to Clause 14.1.4, the Concessionaire shall carry out such further work as detailed and instructed in the Independent Engineer's notice and repeat the steps set out in Clause 14.1.1 and 14.1.2 until the Independent Engineer confirms completion of the Tolling Works (which may be subject to Snagging Items) in accordance with Clause 14.1.3(b) or 14.1.3(c);
 - (b) the Independent Engineer concludes, by providing justified grounds and supporting documentation, that completion of the Tolling Works is subject to Snagging Items. In such event and subject to Clause 14.1.4, the provisions of Clause 14.3 (*Snagging Items*) shall apply; or
 - (c) the Independent Engineer concludes that Tolling Works are complete.
- 14.1.4 If the Concessionaire disagrees with any notification of the Independent Engineer pursuant to Clause 14.1.3(a) or 14.1.3(b), it shall notify the Contracting Authority and the Independent Engineer within fourteen (14) Days following the Independent Engineer's notification and the Independent Engineer, the Concessionaire and the Contracting Authority shall seek to resolve any such disagreements, but if no resolution is agreed within twenty-eight (28) days of the Concessionaire's notice, then the Concessionaire may refer the matter to be determined in accordance Clause 34.2 (*Internal Referral and Arbitration*).
- ### **14.2 Availability Certificate**
- 14.2.1 Within five (5) Days from the notification of the Independent Engineer pursuant to Clause 14.1.3(b) (*Completion Certificate*) or 14.1.3(c) (*Completion Certificate*) (as applicable), the Independent Engineer shall issue the Availability Certificate setting out the date on which the Tolling Works were so completed by the Concessionaire.
- 14.2.2 Without prejudice to any rights or remedies that the Parties may have against the Independent Engineer, the Availability Certificate shall be final, binding and enforceable upon the Parties unless and until it is agreed or determined that it was issued on the basis of fraud, collusion, bias or manifest error.

14.3 Snagging Items

- 14.3.1 In the event that the Independent Engineer concludes that completion of Tolling Works is subject to Snagging Items in accordance with Clause 14.1.3(b) (*Completion Certificate*), the Independent Engineer shall, at the same time as it issues its notification under Clause 14.1.3(b) (*Completion Certificate*) issue to the Concessionaire and the Contracting Authority a list of the Snagging Items (the "Snagging List").
- 14.3.2 Within thirty (30) Business Days of receipt from the Independent Engineer of the Snagging List the Concessionaire shall provide to the Contracting Authority and the Independent Engineer a reasonable programme for making good each Snagging Item set out in the Snagging List. The Independent Engineer can provide reasonable comments to such programme. The programme shall be known as the "Snagging Programme".
- 14.3.3 The Concessionaire shall procure that each Snagging Item is rectified in accordance with the Snagging Programme and to the satisfaction of the Independent Engineer.

14.4 Independent Engineer Failure to Inspect / Notify

Any failure by the Independent Engineer to complete any inspection and/or give any notification within the time periods provided for in this Clause 14 or to issue the Availability Certificate within the specified period shall, unless such failure is as a direct result of a breach by the Concessionaire of this Agreement, constitute a deemed acceptance that the Tolling Works are completed in accordance with the EPC Specifications and the Availability Certificate shall be deemed to have been issued on the date that the specified period expires and shall be final binding and enforceable upon the Parties.

14.5 Baseline Infrastructure Report

- 14.5.1 Following the issuance of the Availability Certificate, the Concessionaire shall prepare a draft baseline infrastructure report based on an inspecting of the Feeder Roads, the Tolling Infrastructure and the Tolling Equipment setting out photographs and comments on their respective states (the "Baseline Infrastructure Report") and shall provide the draft Baseline Infrastructure Report to the Contracting Authority.
- 14.5.2 If the Contracting Authority has any comments in relation to the draft Baseline Infrastructure Report, it shall notify the Concessionaire of such comments as soon as possible following receipt of the Baseline Infrastructure Report and, in any event, within thirty (30) Days of receipt.
- 14.5.3 If the Contracting Authority confirms to the Concessionaire its agreement to the draft Baseline Infrastructure Report or fails to notify the Concessionaire of any comments on the draft Baseline Infrastructure Report within the thirty (30)-Day period provided in Clause 14.5.2, then the draft Baseline Infrastructure Report shall immediately become the Baseline Infrastructure Report for the purposes of this Agreement.
- 14.5.4 If the Contracting Authority notifies the Concessionaire of any comments on the draft Baseline Infrastructure Report within the thirty (30)-Day period provided in Clause 14.5.2, then the Concessionaire shall seek to address such comments by amending the draft Baseline Infrastructure Report and resubmitting it to the Contracting Authority (in which case, Clauses 14.5.2, 14.5.3 and 14.5.4 shall thereafter apply).
- 14.5.5 If the Concessionaire does not agree with any of the comments raised by the Contracting Authority in respect of the draft Baseline Infrastructure Report, then the Concessionaire shall notify the Contracting Authority and, thereafter, the Contracting Authority and the Concessionaire shall, in good faith, seek to resolve the disagreement as soon as possible thereafter and the matter may be referred by either Party for resolution as a Fast Track Dispute in accordance with Clause 34.1 (*Fast Track Dispute Resolution*).

15. OPERATION OF THE TOLLING INFRASTRUCTURE, TOLLING EQUIPMENT AND THE FEEDER ROADS

15.1 Continuous Operation

15.1.1 On and from the Signature Date, the Concessionaire shall have the right to, and until the Tolling Acceptance Date the Contracting Authority or any Government Authority appointed by the Contracting Authority shall on behalf of the Concessionaire:

- (a) operate and maintain the Existing Tolling Infrastructure continuously and without interruption in accordance with the O&M Scope and other requirements of this Agreement; and
- (b) levy and collect Tolls from Users in accordance with Clause 16.1.3 (*Entitlement to collect Tolls and Weighing Fees*).

15.1.2 On and from the Tolling Acceptance Date, the Concessionaire will undertake to levy and collect Tolls from Users in accordance with Clause 16 (*Tolls and Tolling*).

15.1.3 As from the Commercial Operations Date, the Concessionaire will undertake to:

- (a) perform the Operations and management of the Tolling System, Tolling Equipment and Tolling Infrastructure, including traffic management, roadside assistance, and safe Operations of the Bridge and the Feeder Roads; and
- (b) provide Routine Maintenance and Major Maintenance in accordance with Clause 17.1 (*Routine Maintenance and Major Maintenance*).

15.1.4 The performance of the Operations and maintenance of the Project by the Concessionaire must comply with Applicable Law and Good Industry Practice.

15.1.5 The Bridge and Feeder Roads cannot be used for any purpose but as a public road and bridge in accordance with Applicable Law.

15.1.6 The Concessionaire must ensure an effective communication system between the O&M Contractor and Emergency Services.

15.2 Permitted Closures

15.2.1 Subject to the provisions of this Clause 15.2:

- (a) the Bridge and Feeder Roads shall be open twenty-four (24) hours a day; and
- (b) once the Tolling System has been made available for public use, the Concessionaire must, subject to Clauses 15.2.2 and 15.2.3, continue to keep it available for the levying and collection of Tolls.

15.2.2 The Concessionaire may close at any time any part of the Bridge and the Feeder Roads (or any portion thereof):

- (a) as may be necessary for the performance of its obligations under this Agreement including to carry out the Routine Maintenance or Major Maintenance, provided that any disruption to traffic flow must be minimised and subject to a fifteen (15) Day prior notice to the Contracting Authority;
- (b) for controlling access onto the Bridge and the Feeder Roads; or
- (c) in case of Emergencies, including in accordance with Clause 15.6 (*Roadside assistance and Emergencies*).

15.2.3 The Contracting Authority can reasonably require the Concessionaire to make closures, subject to fifteen (15) Days prior notice to the Concessionaire:

- (a) for the purposes of the Contracting Authority or another Government Authority complying with Applicable Laws; or

- (b) where there is a material risk to public health and safety.

15.3 Authority of Concessionaire

As part of the Concession Rights, the Contracting Authority hereby authorises the Concessionaire to:

- (a) control the entry onto the Bridge and the Feeder Roads by Prohibited Vehicles;
- (b) place Road Furniture on the Bridge and the Feeder Roads for instruction and information purposes and for the restriction and regulation of Users;
- (c) establish security services under its control to patrol the Bridge and the Feeder Roads and promote the safe use of the Bridge and the Feeder Roads by Users;
- (d) together with the assistance of the relevant Government Authority and the Contracting Authority as part of the Government Authorities Enforcement Obligations:
 - (i) prevent or remedy the consequences of any unauthorised access onto the Bridge and the Feeder Roads;
 - (ii) detect any Traffic Infringements regarding weight limits of Vehicles and prevent them from accessing the Bridge and the Feeder Roads until any excess weight has been offloaded and removed into storage at the Weighing Stations;
 - (iii) upon the request of a Government Authority, disclose and make available to such Government Authority any Project Information relating to the infringement or violation of Applicable Law by Users and third parties present at the Project Site that the Concessionaire has in its control, subject to any restrictions under this Agreement relating to confidentiality or unless such disclosure is otherwise prohibited under Applicable Law;
 - (iv) immediately notify the relevant Government Authority of any suspected or actual violation of Applicable Laws as they pertain, among other things, to matters of immigration control or the payment of customs duties and Taxes; and
 - (v) prevent any third party (including a User) from causing damage to Road Furniture,

in each case, in accordance with Good Industry Practice and Applicable Laws and provided that the Concessionaire shall not carry out any public enforcement functions which are the responsibility of the Contracting Authority or any other Government Authority.

15.3.2 The Concessionaire shall use all reasonable endeavours prevent damage to the Tolling Infrastructure, the Tolling Equipment and the Weighing Stations being caused by a User, provided that, the Concessionaire shall not be required to carry out public enforcement functions of a Government Authority.

15.4 Regulation of Users

15.4.1 The Contracting Authority shall ensure that Users of the Bridge and the Feeder Roads shall be subject to the same traffic regulations as are in general effect in The Gambia from time to time and the speed limit on the Feeder Roads and the Bridge shall be consistent with the speed limit provided by Applicable Law.

15.4.2 The Parties agree that the setting, amendment and enforcement of such regulations and speed limits shall be the responsibility of the Contracting Authority and appropriate law enforcement agencies and not of the Concessionaire.

15.5 Traffic Management Plan

15.5.1 As a Condition Precedent to the Effective Date the Concessionaire shall prepare a draft Traffic Management Plan, in accordance with Clause 15.5.2.

15.5.2 The Concessionaire shall provide a draft Traffic Management Plan to the Contracting Authority and:

(a) if the Contracting Authority has any comments in relation to the draft Traffic Management Plan:

(i) the Contracting Authority shall notify the Concessionaire of such comments as soon as possible following receipt of the Traffic Management Plan and, in any event, within fourteen (14) Days of receipt;

(ii) then the Concessionaire shall seek to address such comments by amending the draft Traffic Management Plan and resubmitting it to the Contracting Authority (which shall again have fourteen (14) Days to provide comments); and

(iii) if the Concessionaire does not agree with any of the comments raised by the Contracting Authority in respect of the draft Traffic Management Plan, then the Concessionaire shall notify the Contracting Authority and, thereafter, the Contracting Authority and the Concessionaire shall, in good faith, seek to resolve the disagreement as soon as possible thereafter and the matter may be referred by either Party for resolution as a Fast Track Dispute in accordance with Clause 34.1 (*Fast Track Dispute Resolution*); or

(b) if the Contracting Authority confirms to the Concessionaire its agreement to the draft Traffic Management Plan or fails to notify the Concessionaire of any comments on the Traffic Management Plan within the fourteen (14) Day period, then the draft Traffic Management Plan shall immediately become the Traffic Management Plan for the purposes of this Agreement.

15.5.3 The Concessionaire shall be responsible for ensuring proper traffic management on the Bridge and the Feeder Roads in accordance with the Traffic Management Plans and Applicable Law during the Tolling Works Period and the Tolling Operations Period, including directing or diverting traffic or lane closures during Routine Maintenance or Major Maintenance and disaster management, including incidents requiring Emergency Services and roadside assistance.

15.5.4 The Concessionaire may amend each Traffic Management Plan so as to ensure that at all times it is consistent with Applicable Law, subject to providing reasonable prior notice to the Contracting Authority.

15.6 Roadside assistance and Emergencies

15.6.1 The Concessionaire shall ensure that its personnel are adequately trained and able to provide roadside assistance on the Bridge and the Feeder Roads.

15.6.2 The Concessionaire shall contact Emergency Services where an incident occurs requiring Emergency Services and roadside assistance as provided for in the O&M Scope.

15.6.3 Where pursuant to a call for Emergency Services such Emergency Services are not timeously provided such that the cause for the Emergency Services prevents the Concessionaire from complying with the O&M Scope, then the Concessionaire shall be entitled to take reasonable remedial action to alleviate the cause for Emergency Services and may recover from the relevant User any Costs arising from such remedial action.

15.6.4 If, in the opinion of the Concessionaire there exists an Emergency which warrants the decommissioning or closure of any part of the Feeder Roads and / or the Bridge, the Concessionaire shall be entitled to decommission and/or close the whole or the relevant part of the Feeder Roads or the Bridge for as long as such Emergency and/or the consequences thereof warrant.

15.6.5 The Concessionaire shall within forty-eight (48) hours notify the Contracting Authority of any such closure and shall re-open the Feeder Road or the Bridge (or the affected part thereof) as quickly as practicable, after the Emergency and its consequences have ceased.

15.7 Monitoring of Operations

15.7.1 The Concessionaire shall permit the duly authorised representatives of the Contracting Authority who have been notified to the Concessionaire from time to time to have reasonable access to the Project Site for the purpose of inspecting the Tolling Infrastructure or the Tolling System and monitoring the performance by the Concessionaire of its obligations to operate and maintain the Tolling System, subject to a reasonable prior notice sent to the Concessionaire.

15.7.2 In exercising any of its rights to monitor the performance by the Concessionaire of its obligations to operate and maintain the Tolling System and the Tolling Infrastructure, the Contracting Authority agrees that it shall not interfere with or obstruct the Concessionaire in the performance of any of its obligations or the exercise of any of its rights under this Agreement.

15.8 Intellectual Property Rights of the Contracting Authority

15.8.1 The Contracting Authority shall, on prior written application by the Concessionaire and to the extent necessary for this Agreement, grant an irrevocable and royalty-payment-free right to use and licence to the Concessionaire (and its Contractors and subcontractors) to use the Contracting Authority's Intellectual Property Rights for the Concession Term.

15.8.2 The Contracting Authority shall allow the Concessionaire to apply its own name, logos or other branding to any of the Road Furniture, Tolling Infrastructure and/or Tolling Equipment in any manner, or otherwise to stipulate the placement and size of such names, logos or other branding, provide that any such branding of the Concessionaire shall be at cost to the Concessionaire.

15.8.3 The Concessionaire may use for the purpose of the Project all plans, designs, certificates, specifications, the reports, written data and information in printed or electronic form that are acquired or were acquired or created by or on behalf of the Contracting Authority. In case the Concessionaire wishes to use said data and/or documents for any other purpose, it shall inform the Contracting Authority who shall respond in writing within sixty (60) Days as to whether it consents or not. In the event that there is no reply by the Contracting Authority within this sixty (60)-Day deadline, the Concessionaire's request shall be deemed as accepted.

16. TOLLS AND TOLLING

16.1 Entitlement to collect Tolls and Weighing Fees

16.1.1 The Concessionaire shall have the exclusive right to levy and collect Tolls and Weighing Fees for its own benefit from the Effective Date and until the end of the Concession Term, including the exclusive right to levy and collect Tolls at the Tolling Infrastructure.

16.1.2 The Parties acknowledge the pre-existence of a weighing station operated by a third-party operator near the Project Site. The Contracting Authority shall procure that such third-party operator operates the weighing station in accordance with Good Industry Practice.

16.1.3 During the Interim Tolling Period, the Contracting Authority shall, or shall procure that any other Government Authority appointed by the Contracting Authority shall, levy and collect Tolls and Weighing Fees on behalf of the Concessionaire. Within ten (10) Days following the end of each calendar month of the Interim Tolling Period:

(a) the Contracting Authority shall provide the Concessionaire a report detailing the Tolls and Weighing Fees collected during the preceding month as well as the associated traffic volumes;

(b) all the Tolls and Weighing Fees collected by the Contracting Authority or any Government Authority appointed by the Contracting Authority during the relevant calendar month shall be paid, without any deduction, to dedicated escrow accounts

opened by the Contracting Authority with the Interim Tolling Escrow Agent for the sole purpose of receiving all the Tolls and Weighing Fees collected during the Interim Tolling Period and disbursing such amounts to the Concessionaire (the "Interim Tolling Escrow Accounts"); and

- (c) all amounts in the Interim Tolling Escrow Accounts shall be paid to the Concessionaire within fifteen (15) Days from the Tolling Acceptance Date in accordance with the Interim Tolling Escrow Agreement.

Any shortfall between the Tolls and Weighing Fees collected during the Interim Tolling Period and the amount which is paid to the Concessionaire, may be set-off against and deducted by the Concessionaire from any tranches of the ARP Compensation payable to the Contracting Authority.

- 16.1.4 On and from the Tolling Acceptance Date and throughout the Concession Term, the Concessionaire shall directly, or through a Contractor, levy and collect Tolls and Weighing Fees.

16.2 Tolling System and Tolling Acceptance Date

- 16.2.1 On and from the Signature Date, the Concessionaire shall be entitled to design, install, operate and maintain the Tolling System and, at its own discretion, update the Tolling System.

- 16.2.2 The Concessionaire shall notify the Contracting Authority when the Tolling System is operational, as determined at the sole discretion of the Concessionaire at any time after the Signature Date. This notification shall specify the date on which the Concessionaire will commence the levying and collection of Tolls and Weighing Fees, in accordance with Clause 16.1.4 (*Entitlement to collect Tolls and Weighing Fees*) (the "Tolling Acceptance Date").

- 16.2.3 Other than where provided for under this Agreement, the Parties acknowledge and agree that on and from the Tolling Acceptance Date:

- (a) the Contracting Authority shall grant to the Concessionaire:
 - (i) all of the Concession Rights required to charge, collect and handle Tolls and Weighing Fees; and
 - (ii) the exclusive right to occupy and use the Project Site;
- (b) the Concessionaire shall carry all risk of loss of Tolls and Weighing Fees due to a failure of the Tolling System to process Transactions;
- (c) the Concessionaire shall be solely responsible for all costs associated with the charging, collection and handling of Tolls and Weighing Fees; and
- (d) the Contracting Authority shall not incur or assume any liability for or in connection with any technical defect or deficiency of the Tolling System, except to the extent directly or indirectly caused or contributed to by the Contracting Authority.

16.3 Levying of Tolls and Weighing Fees

- 16.3.1 During the Interim Tolling Period, Tolls and Weighing Fees will be levied and collected from a User when its Vehicle passes through the Existing Tolling Infrastructure after having paid the applicable Toll in accordance with Clause 16.1.3 (*Entitlement to collect Tolls and Weighing Fees*).

- 16.3.2 From the Tolling Acceptance Date, Tolls and Weighing Fees will be levied and collected from a User when its Vehicle passes through the Toll Plaza and/or use the Weighing Stations through various payment methods including in cash or by way of credit or debit card, or through the deduction of Toll Credits from a User with a User Account.

- 16.3.3 Tolls and Weighing Fees shall be charged and collected in Gambian Dalasi or West African CFA Franc or otherwise in accordance with Schedule 8 (*Tolling and Weighing Fees*).

16.3.4 The Concessionaire may, notwithstanding the Tolls prescribed in the Tolling Notification, grant Toll or Weighing Fees concessions or discounts, as stipulated in a User Agreement, or from time to time in respect of a Vehicle Classification.

16.4 Base Tolls and adjustments to the Tolls

16.4.1 The Parties acknowledge and agree that as at the Effective Date, the GoTG has issued the Tolling Notification including the Tolls applicable to each Vehicle Classification.

16.4.2 Notwithstanding the provisions of the Tolling Notification fixing the Tolls, for purposes of this Agreement the Base Tolls shall be calculated in accordance with Schedule 8 (*Tolling and Weighing Fees*) and adjusted in accordance with Clause 4.2(h) (*Concession Rights*).

16.4.3 The Concessionaire shall adjust the Base Tolls to reflect any changes in Applicable Law regulating VAT, which shall become effective on the same date and time on which such change in Applicable Law regulating VAT applies to the Tolls.

16.5 Registered Users

16.5.1 Tolls and Weighing Fees may be charged by the Concessionaire in accordance with the manner prescribed in the agreement concluded between the Concessionaire and a Registered User when opening a User Account ("**User Agreement**"), whether by way of a deduction from pre-existing Toll Credits or by some other agreed form of payment.

16.5.2 In the event that the Concessionaire is unable to recover a Toll or Weighing Fees from a Registered User in the time and manner as prescribed in the relevant User Agreement or the User does not hold a User Account, the Concessionaire shall be permitted to recover any such Toll or Weighing Fees in accordance with the User Agreement, provided that the Concessionaire shall be solely responsible for and shall bear all cost and risk for the recovery of the Toll or Weighing Fees.

16.5.3 The Concessionaire shall ensure that:

- (a) Users are provided with readily accessible information for the opening of a User Account, the issuing of e-tags and the purchasing of Toll Credits at a Front Office or online, itemised Toll statements and Toll Credit balances on request, notification of low Toll Credits and outstanding Tolls, and instructions regarding e-tag installation; and
- (b) adequately trained staff are available to deliver such User services.

16.6 Vehicle Classification and Exempted Vehicles

16.6.1 The Parties acknowledge that as at the Effective Date the Vehicle Classifications are designated in the Tolling Notification and reflected in Schedule 8 (*Tolling and Weighing Fees*).

16.6.2 Subject to the provisions of the Tolling Law, the Concessionaire may at any time during the Concession Term notify and submit to the Contracting Authority a revised list of Vehicle Classifications ("**Revised List of Vehicle Classifications**") setting out the proposed new vehicle classifications.

16.6.3 Provided that such Revised List of Vehicle Classifications is not unduly financially onerous on Users, the Contracting Authority shall direct that the GoTG re-issue the Tolling Notification with the new Vehicle Classification contained in the Revised List of Vehicle Classifications.

16.6.4 Where after consideration, the Contracting Authority reasonably objects to the Revised List of Vehicle Classifications, either Party may refer the matter for determination in accordance with Clause 34.2 (*Internal Referral and Arbitration*).

16.6.5 The Concessionaire shall not be entitled to collect Tolls from Exempted Vehicles passing through a Toll Plaza, but shall maintain records of the numbers of Exempted Vehicles using the Feeder Road and the Bridge.

16.7 Prohibited Vehicles and Traffic Infringements

- 16.7.1 The Contracting Authority and any relevant Government Authority must cooperate with the Concessionaire regarding the non-payment of Tolls, save that any non-payment of Tolls can be recovered through the Tolling Notification or Applicable Law or where relevant, a User Account agreement, at the Concessionaire's cost and risk.
- 16.7.2 The Contracting Authority shall make available to the Concessionaire the national register of licensed Users for purposes of enforcing the provisions of the Tolling Notification in respect of Users that have committed Traffic Infringements.
- 16.7.3 The Concessionaire with the assistance of the Gambia police service as part of the Government Authorities Enforcement Obligations shall:
- (a) enforce any Traffic Infringements occurring on the Bridge and the Feeder Roads; and
 - (b) have recourse to such measures contained in the Tolling Notification as well as in any other Applicable Law,
- provided that the Concessionaire shall not carry out any public enforcement functions which are the responsibility of the Gambia Police Force, the Contracting Authority or any other Government Authority.
- 16.7.4 The Concessionaire shall have the right to:
- (a) refuse Prohibited Vehicles from entering onto the Bridge and/or the Feeder Roads; and
 - (b) together with the assistance of the Gambia Police Force and the Contracting Authority in accordance with the Government Authorities Enforcement Obligations remove from the Feeder Roads and/or the Bridge any Prohibited Vehicles.

17. MAINTENANCE

17.1 Routine Maintenance and Major Maintenance

- 17.1.1 On and from the Commercial Operations Date, the Concessionaire shall be responsible for carrying out Routine Maintenance and Major Maintenance in accordance with:
- (a) in the case of scheduled Routine Maintenance and Major Maintenance, the O&M Scope; and
 - (b) in the case of unplanned maintenance, as set out in Clause 17.2.1 (*Unplanned Maintenance*) below.
- 17.1.2 Not later than twenty (20) Business Days from the Commercial Operations Date and thereafter not later than twenty (20) Business Days before the start of each Contract Year from the Commercial Operations Date, the Concessionaire shall prepare, and provide to the Contracting Authority for review and comment a copy of, the annual maintenance programme for the relevant Contract Year for the Feeder Roads, the Tolling Infrastructure and the Tolling Equipment (the "**Maintenance Programme**").
- 17.1.3 The Maintenance Programme shall set out:
- (a) the nature, frequency and duration of Routine Maintenance and Major Maintenance (if any) for the Contract Year in question;
 - (b) intervals and procedures for carrying out inspection of all elements of the Feeder Roads, the Tolling Infrastructure and the Tolling Equipment; and
 - (c) safety and Traffic Management Plans during Routine Maintenance or Major Maintenance activities.
- 17.1.4 The Concessionaire can update or amend the Maintenance Programme at any time, subject to notifying the Contracting Authority of any material update or amendment.

17.2 **Unplanned Maintenance**

- 17.2.1 The Concessionaire must carry out any unplanned maintenance which is required in order to comply with the O&M Scope ("**Unplanned Maintenance**").
- 17.2.2 When carrying out such Unplanned Maintenance the Concessionaire shall be required to mitigate the impact thereof and if closures are required, to minimise disruption of traffic on the Bridge and the Feeder Roads.

17.3 **Final Maintenance Survey**

- 17.3.1 The Concessionaire shall ensure that a final maintenance survey of the Feeder Roads, the Tolling Infrastructure and the Tolling Equipment is carried out eighteen (18) months prior to the Expiry Date, which shall be conclusive proof of the state of the Feeder Roads, the Tolling Infrastructure and the Tolling Equipment as at the expiry of the Concession Term, considering their state as documented in the Baseline Infrastructure Report as adjusted for reasonable wear and tear ("**Final Maintenance Survey**").
- 17.3.2 The Final Maintenance Survey shall be carried out by a reputable and suitably qualified Independent Expert with appropriate knowledge of toll road projects, selected by the Contracting Authority from a panel of three (3) such experts nominated by the Concessionaire ("**Maintenance Surveyor**"). The Concessionaire shall give the Maintenance Surveyor such rights of access to the Feeder Roads, the Tolling Infrastructure and the Tolling Equipment, as well as any documentation and personnel of the Concessionaire and the O&M Contractor, as may reasonably be required by the Maintenance Surveyor to enable it to carry out the Final Maintenance Survey.
- 17.3.3 The Concessionaire shall pay the costs of the Final Maintenance Survey and the retention of the Maintenance Surveyor for the purpose of undertaking the same.
- 17.3.4 The Parties must cooperate with the Maintenance Surveyor to carry out the Final Maintenance Survey.
- 17.3.5 The purpose of the Final Maintenance Survey is to:
- (a) assess the maintenance requirements ("**Assessed Maintenance Requirements**") for the Feeder Roads, the Tolling Infrastructure and the Tolling Equipment for the last eighteen (18) months of the Concession Term (the "**Pre-handover Period**");
 - (b) provide a programme for carrying out the Assessed Maintenance Requirements for each month over the Pre-handover Period;
 - (c) determine if the anticipated lifespan of each item of the Feeder Roads, the Tolling Infrastructure and the Tolling Equipment is in accordance with the envisaged lifespan as set out in the O&M Contract after the Expiry Date;
 - (d) obtain the Maintenance Surveyor's estimate of the cost of carrying out the Assessed Maintenance Requirements, as well as to ensure that the average lifespan of the Feeder Roads, the Tolling Infrastructure and the Tolling Equipment is as set out in the O&M Contract (the "**Assessed Maintenance Amount**"); and
 - (e) establish a budget indicating that portion of the Assessed Maintenance Amount required for each such month of the Pre-handover Period.
- 17.3.6 The Final Maintenance Survey shall in the absence of manifest error be final and binding on the Parties in respect of determining the Assessed Maintenance Amount.
- 17.3.7 Following the Final Maintenance Survey, the Maintenance Surveyor shall provide each Party with a copy of the Final Maintenance Survey, including a copy of the programme for carrying out the Assessed Maintenance Requirements (if any) contemplated under Clause 17.3.5(b).
- 17.3.8 The final maintenance must be carried out by the Concessionaire and will be assessed by the Maintenance Surveyor for compliance with the Assessed Maintenance Requirements.

17.3.9 If the Concessionaire believes that it has completed the Assessed Maintenance Requirements for a relevant month in the Pre-handover Period, the Concessionaire shall notify the Contracting Authority accordingly. If upon the Termination Date or Expiry Date the Maintenance Surveyor is not satisfied that the Assessed Maintenance Requirements have been completed in accordance with the Final Maintenance Survey, the Contracting Authority shall be entitled to claim from the Concessionaire or set off from any amount owing to the Concessionaire on the Expiry Date or the Termination Date such portion of the Assessed Maintenance Amount as relates to such failure by the Concessionaire to carry out the Assessed Maintenance Requirements.

17.4 Maintenance of Access Roads

17.4.1 The Parties acknowledge the vital nature of the Access Roads to ensure that the Project can be successfully executed.

17.4.2 The Contracting Authority shall maintain or procure that the relevant Government Authority maintains the Access Roads to the Required Standards.

17.4.3 By no later than the Effective Date, the Contracting Authority shall establish a dedicated escrow account with the Access Roads Reserve Escrow Agent in accordance with the Access Roads Reserve Escrow Agreement specifically for the purpose of holding and disbursing funds for maintaining and upgrading the Access Roads from time to time ("**Reserve Account for Access Roads**"). Funding for the Reserve Account for Access Roads will be provided by the Contracting Authority under the following terms:

- (a) within twelve (12) calendar months following the Effective Date, the Contracting Authority shall deposit the Minimum Reserve Amount into the Reserve Account for Access Roads;
- (b) should the Concessionaire utilise any funds from the Reserve Account for Access Roads in accordance with Clause 17.4.7, the Concessionaire shall promptly notify the Access Roads Reserve Escrow Agent and Contracting Authority of such utilisation through a formal communication in accordance with the Access Roads Reserve Escrow Agreement ("**Reserve Withdrawal Notification**"); and
- (c) upon receiving the Reserve Withdrawal Notification, the Contracting Authority shall within thirty (30) Days from the date of receipt of the Reserve Withdrawal Notification, replenish the Reserve Account for Access Roads to maintain a balance of not less than the Minimum Reserve Amount.

The "**Minimum Reserve Amount**" shall be an amount of five (5) million GMD as on the Effective Date.

17.4.4 In the event that the Contracting Authority fails to deposit and maintain the Minimum Reserve Amount in the Reserve Account for Access Road as specified in Clause 17.4.3, the shortfall (being the difference between the actual balance of the Reserve Account for Access Roads and the Minimum Reserve Amount) may be deducted by the Concessionaire from any amounts payable by the Concessionaire to the Contracting Authority from time to time, including the ARP Compensation.

17.4.5 The Concessionaire shall be entitled to inspect the Access Roads from time to time.

17.4.6 The Concessionaire shall notify the Contracting Authority of a failure to adequately maintain the Access Roads if based on such any inspection and/or recorded traffic data it can be established that the Contracting Authority has not fulfilled its obligations in relation to the Access Roads or due to such failure, there is or there is reasonably likely to be a Material Adverse Effect on the ability of the Concessionaire to carry out the Project, fulfil any obligation under the Financing Agreements, or achieve its Equity IRR.

17.4.7 If a failure by the Contracting Authority to adequately maintain the Access Roads is not rectified within ninety (90) Business Days, the Concessionaire will be entitled to affect the repair and maintenance itself and shall fund such repair and maintenance from the monies in the Reserve Account for Access Roads.

17.4.8 In case of termination of the Access Roads Reserve Escrow Agreement or closure of the Reserve Account for Access Roads, for any reason, the Access Roads Reserve Escrow Agent shall transfer any funds remaining in the Reserve Account for Access Roads to the bank account designated by the Concessionaire in the Access Roads Reserve Escrow Agreement. Following this transfer, the Concessionaire shall, as applicable:

- (a) transfer these funds to a newly established Reserve Account for Access Roads, subject to any de-duction of any amounts used by the Concessionaire for maintaining and/or upgrading the Access Roads in accordance with Clause 17.4.7; or
- (b) upon termination of this Agreement, transfer these funds to a bank account designated by the Contracting Authority, subject to any deduction of any amounts used by the Concessionaire for maintaining and/or upgrading the Access Roads in accordance with this Clause 17.4.7.

18. CONCESSIONAIRE REPORTS

18.1 Financial Statements

No later than three (3) months after the end of its financial year, the Concessionaire must provide the Contracting Authority with a copy of its audited financial statements for the previous financial year.

18.2 Annual Traffic Volume Report

Within ninety (90) Days following the end of each Contract Year, the Concessionaire must provide the Contracting Authority with an annual traffic characteristics report relating to the Bridge and the Feeder Roads showing the traffic volumes for the previous Contract Year for each Vehicle Classification and the traffic forecasts for the following Contract Year in accordance with Part 1 of Schedule 3 (*Base Case Traffic Model*) (the "Annual Traffic Volume Report").

18.3 Annual Incident Management Report

Within ninety (90) Days following the end of each Contract Year, the Concessionaire must provide the Contracting Authority with an annual incident management report of Emergencies occurring at the Project Site (the "Annual Incident Management Report"), showing the following details:

- (a) classification of Emergency according to causation – road infrastructure related, fire, vehicle or vehicle-operator related, and other reasonably required details;
- (b) nature of resultant consequences - deaths, bodily injuries, road or property damage; and
- (c) number or volume of Emergencies.

18.4 Environmental Incident Report

The Concessionaire shall notify the Contracting Authority of any material discharge or spillage (accidental or otherwise) of any hazardous substances occurring on the Project Site by sending a report following the incident, including:

- (a) details of the incident;
- (b) the location and time of the incident;
- (c) the persons or agencies involved;
- (d) the damage which has occurred to the Bridge and/or the Feeder Roads; and
- (e) the measures (if any) which are proposed by the Concessionaire for the purpose of rectifying such damage.

19. ARP COMPENSATION

19.1 In consideration of the rights granted by the Contracting Authority to the Concessionaire under this Agreement, the Concessionaire shall pay to the Contracting Authority the ARP Compensation in accordance with the terms of this Agreement.

19.2 The ARP Compensation shall be an amount of USD \$ 100,000,000 (one hundred million United States Dollars), payable in three (3) tranches as follows:

- (a) the first tranche of the ARP Compensation (the "First Tranche") shall be payable within 30 Business Days of the Effective Date of this Agreement;
- (b) the second tranche of the ARP Compensation (the "Second Tranche") shall be payable within 30 Business Days of the effective drawdown made under the Financing Agreements following Financial Close; and
- (c) the third tranche of the ARP Compensation (the "Third Tranche") shall be payable on the fifth (5th) anniversary of payment of the Second Tranche.

19.3 The following principles apply to each ARP Compensation payment:

- (a) the First Tranche shall be equal to an amount of USD \$ 22,500,000 (twenty-two million five hundred thousand United States Dollars) comprising:
 - (i) USD \$ 15,500,000 (fifteen million five hundred thousand United States Dollars) payable to the GoTG; and
 - (ii) USD \$ 7,000,000 (seven million United States Dollars) payable to the Concessionaire or, if nominated by it, to its Contractors for purposes of conducting the Tolling Works on behalf of the Contracting Authority;
- (b) the Second Tranche shall be equal to an amount of USD \$ 50,000,000 (fifty million United States Dollars) payable to the GoTG; and
- (c) the Third Tranche shall be equal to an amount of USD \$ 27,500,000 (twenty-seven million five hundred thousand United States Dollars) payable to the GoTG.

19.4 Payment of any ARP Compensation shall be made:

- (a) in United States Dollars; and
- (b) by electronic funds transfer into the following bank account or any other bank account as may be directed by the Contracting Authority in writing from time to time so that it shall represent cleared funds in such bank account no later than the Due Date for Payment:

Name of Beneficiary	Ministry of Finance and Economic Affairs
Beneficiary address	Ministry of Finance and Economic Affairs Quadrangle, Banjul, The Gambia
Beneficiary account No.	1103003844
Beneficiary account name	Trans-Gambia Concession Project
Beneficiary bank name	Central Bank of The Gambia
Swift code of beneficiary bank	CBGAGMGM
Beneficiary bank address	1-2 Ecowas Avenue Banjul The Gambia

Correspondent bank name Federal Reserve Bank of New York
Swift code of correspondent FRNYUS33
Account number 021083970

- 19.5 It is expressly agreed between the Parties that any compensation or other amounts owing to the Concessionaire under this Agreement and outstanding at the date of payment of a tranche of the ARP Compensation may be deducted by the Concessionaire from the relevant tranche due to the Contracting Authority, subject to a fifteen (15) Days prior notice sent by the Concessionaire to the Contracting Authority.
- 19.6 The Contracting Authority shall exclusively allocate all proceeds received from the ARP Compensation towards the development and construction of new infrastructure projects in The Gambia. In the interest of maintaining transparency and accountability, the Contracting Authority shall provide the Concessionaire and the Financing Parties with regular annual reports, setting out in detail the type of infrastructure projects being undertaken with the ARP Compensation, the precise amount of ARP Compensation funds allocated to each project, and a projected timeline for the commencement and completion of such projects.

20. INSURANCE

20.1 Required Insurances

20.1.1 The Concessionaire shall take out and maintain or shall ensure that its Contractors take out and maintain the insurances identified in Schedule 11 (*Insurances*) in accordance with Applicable Laws.

20.1.2 If, at any time, any insurance identified in Schedule 11 (*Insurances*) ceases to be available:

- (a) at reasonable premiums; and/or
- (b) at reasonable commercial terms and conditions,

the Concessionaire is released from (i) its obligations to subscribe and maintain such insurance; and (ii) its obligation to insure the risk covered by such insurance. For the avoidance of doubt, the Concessionaire can only be required to maintain insurances where available at a reasonable premium or on reasonable terms and conditions.

20.1.3 For the purpose of Clause 20.1.2, it is agreed that the insurance is not available, including (but not limited to) in the following cases:

- (a) if the insurance is not available from accredited insurers (and/or reinsurers) operating in London and who have financial security index for insurers no lower than A- from Standard & Poor's, or the corresponding index from Fitch or Moody's, with conditions (including but not limited to the subject, the limits, the exemptions and the exceptions) that are essentially equivalent in accordance with insurance coverage available that the Concessionaire had until then and, to the extent that the insurance coverage is not yet secured, under conditions substantially equivalent to the terms of insurance coverage that the Concessionaire needs to secure pursuant to this Agreement; and/or
- (b) if this insurance is available from accredited insurers (and/or reinsurers) operating in London who have financial security index for insurers no lower than A- from Standard & Poor's, with the premium being at least double, than that projected in the Financial Model.

20.1.4 In the event of a dispute regarding availability of insurance at reasonable premiums and/or at reasonable commercial terms and conditions, either Party may appeal the dispute to an independent international insurance broker company with experience in insurance matters of large concession projects, to give its opinion to the issue on which the disagreement arose. The Party who wishes to appeal to the insurance broker company shall notify in writing its intention to the other Party, and the Parties shall jointly agree who that company would be, provided that if there is no agreement on this within thirty (30) Days, the insurance broker

company will be appointed by the President of Lloyd's of London. The insurance broker company will be consulted as an Independent Expert and not as an arbitrator. The content of the opinion of the insurance broker company will be applied by the Parties until the issue is referred to and determined in accordance with the procedure laid down in Clause 34.2.3 (*Arbitration*).

- 20.1.5 Upon insurance meeting the requirements of Schedule 11 (*Insurance*) becoming available after any period of unavailability as provided in Clause 20.1.2, the Concessionaire shall obtain such insurance and provide the Contracting Authority with full details thereof.

20.2 Application of Insurance Proceeds

Subject to the terms of the Financing Agreements, in the event of any loss or damage to the Feeder Roads, the Tolling Infrastructure and/or the Tolling Equipment, the Concessionaire shall apply or procure the application of the proceeds of any insurance claims under the applicable material damage insurances to the reinstatement of the Tolling Infrastructure and/or the Tolling Equipment, Tolling System and/or any other physical structures or assets of the Concessionaire on the Project Site as relevant.

20.3 Evidence of Insurance

Upon request by the Contracting Authority, the Concessionaire shall within a reasonable time provide the Contracting Authority with copies of policies and endorsements and such other information reasonably requested by the Contracting Authority in connection therewith, as evidence that the insurances referred to in Clause 20.1 (*Required Insurances*) have been taken out and are being properly maintained in accordance with this Agreement.

20.4 Unavailability of Insurance due to Actions of Parties

If any policy of insurance obtained or to be obtained by the Concessionaire pursuant to this Clause 20 becomes unavailable, is vitiated, withdrawn or otherwise does not provide the indemnity provided by its terms, due to any act or omission of the Contracting Authority or any other Government Authority then:

- (a) the Contracting Authority shall, on the occurrence of any risk that would have been covered by such insurance, pay to the Concessionaire any moneys which would have been recoverable under such insurance policies; and
- (b) the Concessionaire shall take reasonable steps to mitigate the loss that would have been covered by such insurance and the Contracting Authority shall pay to the Concessionaire an amount equal to any increased premium payable as a result of such act or omission of the Contracting Authority or other Government Authority.

21. VARIATIONS

The Contracting Authority has the right to propose a Variation in accordance with Clause 21.1 (*Contracting Authority Variations*) and the Concessionaire has the right to propose a Variation in accordance with Clause 21.2 (*Concessionaire Variations*).

21.1 Contracting Authority Variations

- 21.1.1 If the Contracting Authority requires a Variation to the EPC Specifications or the O&M Scope, it must serve a notice on the Concessionaire detailing the requested Variation ("**Variation Request**").
- 21.1.2 The Variation Request shall set out the Variation required in sufficient detail as to enable the Concessionaire to calculate and provide the estimated revised Project costs in accordance with Clause 21.1.3 below ("**Estimate**").
- 21.1.3 As soon as practicable and in any event within twenty (20) Business Days after having received the Variation Request, the Concessionaire shall deliver a written response to the Variation Request to the Contracting Authority (the "**Variation Proposal**"). The Variation Proposal shall

include the period within which it is open for acceptance (the "Validity Period") and in the opinion of the Concessionaire:

- (a) whether relief from compliance with the Concessionaire's obligations is required, including the obligations of the Concessionaire to meet the EPC Specifications or the O&M Scope during the implementation of the Variation;
- (b) any impact on the Tolling Works which will affect the Scheduled Completion Date;
- (c) any impact on the Operations and maintenance including (without limitation) changes to the location of the Tolling Infrastructure and /or Tolling Equipment;
- (d) any amendment required to this Agreement and/or any Project Agreement as a result of the Variation;
- (e) an Estimate of costs that will result directly from the Variation, including an updated Base Case Financial Model and the Base Case Traffic Model that accounts for any operational expenditure and Capital Expenditure that is required or no longer required as a result of the Variation, and any increase or decrease in the premiums payable in respect of the insurances and any other Project risk impacting on the Base Case Financial Model and/or the Base Case Traffic Model;
- (f) the reasonable measures to reduce cost increases that were taken by the Concessionaire in preparing the Estimate;
- (g) any envisaged loss of forecast Toll revenue that will result directly from the Variation; and
- (h) any Applicable Permits and other approval which are required.

21.1.4 As soon as practicable after the Contracting Authority receives the Variation Proposal, but by no later than the expiry of the Validity Period, the Parties shall meet and discuss the issues set out in the Variation Proposal. The Concessionaire shall:

- (a) provide evidence that it has used reasonable endeavours (including where practicable, and otherwise permitted under the terms of the EPC Contract or O&M Contract, the use of competitive quotes) to oblige its Contractors to minimise any increase in costs and maximise any reduction in costs;
- (b) demonstrate how any changes to the Base Case Financial Model and the Base Case Traffic Model have been prepared in a cost-effective manner; and
- (c) demonstrate that any expenditure that has been avoided, which was anticipated to be incurred in respect of the Feeder Roads, the Tolling Infrastructure and the Tolling Equipment that have been affected by the Variation Request, has been taken into account in the amount which in its opinion has resulted or is required under Clauses 21.1.3(e) and/or 21.1.3(g) above.

21.1.5 The issues in the Variation Proposal must be discussed and agreed by the Parties in good faith and within the Validity Period of the Variation Proposal and the Variation Proposal can be amended by the Contracting Authority through the discussions.

21.1.6 If the Variation Proposal cannot be agreed by the Parties within sixty (60) Days or the Variation Proposal is not confirmed in writing by the Contracting Authority within twenty-one (21) Days of being agreed by the Parties, then it will be deemed to have been withdrawn by the Contracting Authority.

21.1.7 The Parties agree that all Variation Proposals initiated by the Contracting Authority shall be fully funded by the GoTG, however the Parties may agree that the Concessionaire assist the GoTG to obtain funding on reasonably satisfactory terms. If the GoTG cannot provide adequate proof of its ability to fund the Variation Proposal initiated by the Contracting Authority and/or additional funding cannot be obtained, then the Concessionaire is not obliged to carry out the Variation.

21.1.8 Where the Variation Proposal is agreed by the Parties and not withdrawn by the Contracting Authority in accordance with Clause 21.1.6 above, then, to the extent required:

- (a) the Scheduled Completion Date and/or the Expiry Date may be extended in accordance with the Variation Proposal;
- (b) this Agreement or any other Project Agreement shall be amended in accordance with the Variation Proposal;
- (c) the Contracting Authority and the Concessionaire shall agree a payment schedule in respect of the payment of such sum reflecting the amount and timing of the Costs to be incurred by the Concessionaire in carrying out the Variation Proposal;
- (d) the Contracting Authority shall make payment to the Concessionaire within thirty (30) Days of receipt by the Contracting Authority of invoices presented in accordance with the agreed payment schedule (as the case may be, varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the Variation Proposal has been carried out; and
- (e) if payment is not made in accordance with Clause 21.1.8(d) above, the Contracting Authority shall pay interest to the Concessionaire on the amount unpaid from the date sixty (60) Days after receipt of the relevant invoice until paid, at the Gambian Prime Rate plus 4% (four percent) per annum calculated on a daily basis from the Due Date for Payment until the relevant amount together with accrued interest is paid in full for all payments stated to be in Gambian Dalasi.

21.1.9 The Contracting Authority shall bear the reasonable Costs of the Concessionaire preparing an Estimate for a Variation Proposal.

21.2 Concessionaire Variations

21.2.1 If the Concessionaire wishes to introduce a Variation, it must serve a notice on the Contracting Authority providing details of such Variation (a "Concessionaire Variation Proposal").

21.2.2 The Concessionaire Variation Proposal must:

- (a) set out the proposed Concessionaire Variation in sufficient detail to enable the Contracting Authority to evaluate it in full;
- (b) specify the Concessionaire's reasons for the Concessionaire Variation Proposal;
- (c) request the Contracting Authority to consult with the Concessionaire with a view to deciding whether to agree to the Concessionaire Variation Proposal and, if so, what consequential changes the Contracting Authority requires as a result;
- (d) specify all implications of the Concessionaire Variation Proposal on this Agreement and any of its terms;
- (e) attach a payment schedule in respect of the payment of sums to be paid by the Contracting Authority for the Concessionaire Variation Proposal (provided that the payment terms for the Contracting Authority to make payment to the Concessionaire shall be twenty (20) Business Days of receipt by the Contracting Authority of relevant invoice);
- (f) indicate, in particular, whether the Concessionaire Variation shall affect the Base Case Financial Model and/or the Base Case Traffic Model (and, if so, give a detailed cost estimate of such proposed changes and a revised Base Case Financial Model and Base Case Traffic Model); and
- (g) indicate if there are any dates by which a decision by the Contracting Authority is critical.

- 21.2.3 The Contracting Authority shall evaluate the Concessionaire's Variation Proposal taking into account all relevant issues, including whether:
- (a) the Variation will affect the quality or successful delivery of the Operations;
 - (b) the Variation will affect the Expiry Date;
 - (c) the Variation will impact on operations and maintenance;
 - (d) the Variation will adversely affect Users; and
 - (e) the Variation materially affects the risks or costs to which the Contracting Authority is exposed.
- 21.2.4 As soon as practicable after the Contracting Authority receives the Concessionaire's Variation Proposal, the Parties shall meet and discuss the matters referred to in it. During their discussions the Contracting Authority may propose modifications or accept or reject the Concessionaire's Variation Proposal.
- 21.2.5 If the Contracting Authority accepts the Concessionaire's Variation Proposal (without modification), the Concessionaire shall begin to implement the relevant changes arising from the Variation at a date stipulated in such Concessionaire Variation Proposal. Prior to the implementation of the Concessionaire Variation, the Parties shall amend this Agreement or any relevant Project Agreement, which are necessary to give effect to the Concessionaire Variation.
- 21.2.6 The Concessionaire shall bear the costs of preparing a Concessionaire Variation Proposal.

22. CONTRACTING AUTHORITY STEP-IN

- 22.1 If the Contracting Authority reasonably believes that it needs to take any temporary emergency action in connection with the Feeder Roads, the Tolling Infrastructure or the Tolling Equipment due to a serious and urgent risk to the health or safety of persons or property, to the environment, to national security and/or to discharge a statutory duty, which risk the Concessionaire is unable to mitigate or manage in accordance with this Agreement and Good Industry Practices, then the Contracting Authority shall, at its own cost and risk, be entitled to take action in accordance with the provisions of this Clause 22.
- 22.2 If pursuant to Clause 22.1 the Contracting Authority wishes to take action, it shall as soon as possible after reaching its determination to do so notify the Concessionaire in writing of:
- (a) the action it wishes to take;
 - (b) its reasons for taking such action;
 - (c) the date when it wishes to commence such action;
- the time period (the "**Step-in Period**") which it reasonably believes will be necessary for such action and which must be a fixed period of the shortest duration reasonable in the circumstances and to the extent practicable, the effect of such action on the Concessionaire in exercising its Concession Rights during the Step-in Period.
- 22.3 Following the service of such notice, and subject to the terms of the Direct Agreement, the Contracting Authority may take such action as notified under Clause 22.2 and any ancillary action as it reasonably believes is necessary (the "**Necessary Action**") and the Concessionaire shall give all reasonable assistance to the Contracting Authority in the conduct of such Necessary Action.
- 22.4 If the Necessary Action is taken other than as a result of a breach by the Concessionaire of any of its obligations under this Agreement, then:
- (a) the Concessionaire shall be relieved from all obligations affected by the Necessary Action during the Step-in Period; and

- (b) the Contracting Authority shall pay to the Concessionaire such compensation (which may, subject to the agreement of the Concessionaire be by way of an extension of the Expiry Date) as will place the Concessionaire in the same overall financial and economic position it would have been in had the Necessary Action not occurred.
- 22.5 Subject to the provisions of the Direct Agreement, if the Necessary Action is taken as a result of a breach by the Concessionaire of any of its obligations under this Agreement, then:
- (a) the Concessionaire shall be relieved from all obligations affected by the Necessary Action during the Step-in Period; and
 - (b) the Parties shall agree such compensation (which may, subject to the agreement of the Concessionaire be by way of an extension of the Expiry Date) as will ensure the Concessionaire does not breach any financial covenants under the Financing Agreements, *provided that*, the Contracting Authority may notify the Concessionaire to remedy the relevant breach during the Step-in Period.
- 22.6 In the event of disagreement as to the reasons or conditions for the application of any provision of this Clause or the quantum of compensation to be paid to the Concessionaire, the Concessionaire shall be entitled to submit at any time the Dispute for resolution as a Fast Track Dispute in accordance with Clause 34.1 (*Fast Track Dispute Resolution*).
- 22.7 Should the Independent Expert rule that the relevant conditions for Necessary Actions are or were not met, the intervention of the Contracting Authority will, without prejudice to the foregoing constitute a Compensation Event and the Contracting Authority shall be required to place the Concessionaire in the same financial position following the occurrence of the Necessary Actions (and taking into account its past and likely future effects) as it was in immediately prior to the occurrence of the event, calculated by reference to the Base Case Financial Model and taking all relevant circumstances into consideration.

23. RELIEF EVENT

23.1 Definition of a Relief Event

A "Relief Event" means:

- (a) the discovery by the Concessionaire or a Contractor of any:
 - (i) tangible moveable or immovable objects, property, structures, or groups of structures, having archaeological (prehistoric), paleontological, historical, cultural, artistic and religious values;
 - (ii) unique natural features or tangible objects that embody cultural values;
 - (iii) fossils and antiquities;
 - (iv) other objects having artistic, historic or monetary value; and/or
 - (v) human remains,
 which are or may be found on or at the Project Site at any time;
- (b) any accidental loss or damage to the Tolling Infrastructure and/or the Tolling Equipment; or
- (c) any failure or shortage of power, fuel or transport;

unless any of the listed events listed arises directly as a result of any gross negligence or wilful misconduct of the Concessionaire.

23.2 Consequences of a Relief Event

23.2.1 If, as a direct result of the occurrence of a Relief Event, the Concessionaire:

- (a) is unable to comply or is delayed in complying with any of its obligations under this Agreement; and/or
- (b) the rights of the Concessionaire under this Agreement are restricted, limited or otherwise affected; and/or
- (c) is unable to reach Financial Close by the Long Stop Date and/or to achieve the Tolling Works on or before the Scheduled Completion Date; and/or

then the Concessionaire shall be entitled to the reliefs and rights set out under Clause 23.2.3 and, as applicable, under Clause 23.2.7.

23.2.2 In case of a Relief Event, the Concessionaire shall:

- (a) as soon as practicable after it became aware of the Relief Event, notify the Contracting Authority of the occurrence of such Relief Event; and
- (b) after the later of receipt by the Contracting Authority of the notice referred to in Clause 23.2.2(a) above and the cessation of the Relief Event, provide the Contracting Authority with details of the claim, including details of the nature of the Relief Event, the date of occurrence and the likely duration of the impacts of the Relief Event ("Relief Period"); and
- (c) use reasonable endeavours to perform its obligations under this Agreement during the Relief Period.

23.2.3 In the event that the Concessionaire has complied with its obligations under Clause 23.2.2 above, the Concessionaire shall benefit from the following reliefs and rights:

- (a) the relevant time for performance (which may include the Scheduled Completion Date and Long Stop Date) shall be postponed for the whole duration of the period of the Relief Event;
- (b) the Concessionaire shall be relieved from all its obligations under this Agreement affected by the Relief Event;
- (c) the Contracting Authority shall not be entitled to bring a claim for breach of the Concessionaire's obligations as a result of a Relief Event or exercise its rights to terminate this Agreement; and
- (d) any other relief(s) as requested by the Concessionaire may be agreed between the Parties or otherwise be determined by an Independent Expert as a Fast Track Dispute following referral in accordance with Clause 34.1 (*Fast Track Dispute Resolution*).

23.2.4 If the Parties cannot agree on the existence of a Relief Event or any relief or right granted to the Concessionaire, either Party can refer the dispute to the Independent Expert as a Fast Track Dispute in accordance with Clause 34.1 (*Fast Track Dispute Resolution*).

23.2.5 The Independent Expert shall, within twenty (20) Days of receipt of a notification of dispute, determine whether or not the event constitutes a Relief Event.

23.2.6 If the Independent Expert determines that the notified event is a Relief Event, the Independent Expert shall, within thirty (30) Days from its decision under Clause 23.2.5 above, determine the extent of the reliefs and rights granted to the Concessionaire as a consequence of the occurrence of the Relief Event.

23.2.7 If:

- (a) one or more Relief Events persists for a period exceeding one hundred and eighty (180) Days in any twelve (12) month period; or

- (b) one of more Relief Events substantially effects the ability of the Concessionaire to comply with its obligations under the Financing Agreements,

then, in addition to any reliefs and rights referred to in Clause 23.2.3:

- (i) the Concessionaire shall be entitled to terminate this Agreement in accordance with Clause 29.3 (*Termination for Force Majeure Event and other events*); or
- (ii) upon written notice by the Concessionaire, the Contracting Authority shall use best endeavours to agree to the Concessionaire's requested modifications to this Agreement (including payments to be made to the Concessionaire) provided such modifications are fair and equitable having regard to the nature and effects of the Relief Event, the insurance proceeds obtained by the Concessionaire in respect of such Relief Event (if any) and the obligations of the Concessionaire under the Financing Agreements.

24. COMPENSATION EVENT

24.1 Definition of a Compensation Event

A "Compensation Event" means:

- (a) any breach by the Contracting Authority of any of its obligations under this Agreement or any representation or warranty of the Contracting Authority hereunder is inaccurate in any material respect;
- (b) any Material Adverse Government Action;
- (c) any Change in Law;
- (d) any failure to update or amend the Tolling Notification or issue a notice thereunder which has the effect of reducing the Toll tariff to below the value ascribed to such Toll as prescribed in this Agreement, being the Base Toll as adjusted in accordance with Schedule 8 (*Tolling and Weighing Fees*) of this Agreement;
- (e) any delay in obtaining, maintaining and/or renewing the Applicable Permits;
- (f) an act of war, invasion, civil war, armed conflict or act of foreign enemy, blockade, embargo, the imposition or extension of Sanctions or revolution;
- (g) a riot, insurrection, civil commotion, act or campaign of sabotage, terrorism or violence;
- (h) a strike, work-to-rule or go-slow which does not solely or primarily affect the Concessionaire;
- (i) any Existing Contamination affecting the performance of the Tolling Works and/or the Operations;
- (j) restriction for the Concessionaire or a Contractor to use or have access to the Project Site and Existing Tolling Infrastructure;
- (k) discovery of any Utilities which were not expressly disclosed in writing prior to the Effective Date; or
- (l) any Relief Event and/or any Force Majeure Event is proximate cause of or results in the actual number of Users falling below the minimum numbers assumed in the Base Case Traffic Model for three (3) consecutive quarters;

unless any of the listed events listed arises directly as a result of any gross negligence or wilful misconduct of the Concessionaire.

24.2 Consequences of a Compensation Event

24.2.1 If, as a direct result of the occurrence of a Compensation Event, the Concessionaire:

- (a) is unable to comply or is delayed in complying with any of its obligations under this Agreement; and/or
- (b) the rights of the Concessionaire under this Agreement are restricted, limited or otherwise affected; and/or
- (c) is unable to reach Financial Close by the Long Stop Date and/or to achieve the Tolling Works on or before the Scheduled Completion Date; and/or
- (d) incurs Costs or loss, including due to any inability to levy or collect Tolls;

then the Concessionaire shall be entitled to the reliefs, rights and compensations set out under Clause 24.2.3 and, as applicable, under Clause 24.2.8.

24.2.2 In case of a Compensation Event, the Concessionaire shall:

- (a) as soon as practicable after it became aware of the Compensation Event, notify the Contracting Authority of the occurrence of such Compensation Event; and
- (b) after the later of receipt by the Contracting Authority of the notice referred to in Clause 24.2.2(a) above and the cessation of the Compensation Event, provide the Contracting Authority with details of the claim, including details of the nature of the Compensation Event, the date of occurrence and the likely duration of the impacts of the Compensation Event ("**Compensation Relief Period**"); and
- (c) use reasonable endeavours to perform its obligations under this Agreement during the Compensation Relief Period.

24.2.3 In the event that the Concessionaire has complied with its obligations under Clause 24.2.2 above, the Concessionaire shall benefit from the following rights and reliefs:

- (a) the relevant time for performance (which may include the Scheduled Completion Date and Long Stop Date) shall be postponed for the whole duration of the period of the Compensation Relief Period;
- (b) the Concessionaire shall be relieved from all its obligations under this Agreement affected by the Compensation Event;
- (c) the Contracting Authority shall not be entitled to bring a claim for breach of the Concessionaire's obligations as a result of a Compensation Event or exercise its rights to terminate this Agreement;
- (d) the Concessionaire shall be paid a compensation amount and/or adjustment to the Expiry Date and/or where applicable, adjustment to the ARP Compensation in accordance with Clause 24.2.4; and
- (e) any other relief(s) as requested by the Concessionaire may be agreed between the Parties or otherwise be determined by an Independent Expert as a Fast Track Dispute following referral in accordance with Clause 34.1 (*Fast Track Dispute Resolution*).

24.2.4 It is expressly agreed by the Parties that the amount of compensation to which the Concessionaire is entitled to in respect of any Compensation Event shall be such amount as shall, so far as possible, place the Concessionaire in the same financial position as it was in immediately prior to the occurrence of the Compensation Event (and taking into account both the past and likely future effects of the Compensation Event), calculated by reference to the Financial Model, based on the traffic on the last 12 months prior to the occurrence of the Compensation Event and taking all relevant circumstances into consideration.

24.2.5 Without prejudice to Clause 24.2.8, if a Change in Law occurs which requires the Concessionaire to change the nature, quality or quantity of the Tolling Works or any of its

Operations, then the Concessionaire shall be given a reasonable time period (which shall be no less than one hundred and eighty (180) Days) to comply with the changed requirements arising from the Change in Law and be compensated and relieved in accordance with this Clause 24 before it can be considered or determined to be in breach of this Agreement.

24.2.6 If the Parties cannot agree on the existence of a Compensation Event or any relief, right or compensation referred to in Clause 24.2.3, either Party can refer the dispute to the Independent Expert as a Fast Track Dispute in accordance with Clause 34.1 (*Fast Track Dispute Resolution*).

- (a) the Independent Expert shall, within twenty (20) Days of receipt of a notification of dispute, determine whether or not the event constitutes a Compensation Event; and
- (b) if the Independent Expert determines that the notified event is a Compensation Event, the Independent Expert shall, within thirty (30) Days from its decision under Clause (a) above, determine the extent of any relief, right or compensation referred to in Clause 24.2.3 due to the Concessionaire from the Contracting Authority as a consequence of the occurrence of the Compensation Event.

24.2.7 Following the agreement of the Parties or the determination by the Independent Expert, the Contracting Authority shall, within sixty (60) Days of the Concessionaire's demand, pay the Concessionaire amounts agreed or determined to be due to the Concessionaire by the Independent Expert.

24.2.8 If:

- (a) one or more Compensation Events persists for a period exceeding one hundred and eighty (180) Days in any twelve (12) month period; or
- (b) one or more Compensation Events substantially effects the ability of the Concessionaire to comply with its obligations under the Financing Agreements,

then, in addition to any relief, right or compensation referred to in Clause 24.2.3, the Concessionaire shall be entitled to terminate this Agreement in accordance with Clause 29.3 (*Termination for Force Majeure Event and other events*).

25. FORCE MAJEURE EVENT

25.1 Definition of a Force Majeure Event

A "Force Majeure Event" means:

- (a) any nuclear, chemical or biological contamination;
- (b) the outbreak of any plague, epidemic or pandemic;
- (c) tsunamis or pressure waves caused by devices travelling at supersonic speeds;
- (d) an earthquake, lightning, fire, explosion, subsidence, heave, landslip, collapse, hurricane, storm, flood, drought, strong winds, extreme weather or environmental conditions, meteorite, loss or damage in the course of marine, rail, road or air transit, collision, volcanic eruption or ash cloud; or
- (e) any other circumstances outside of the reasonable control of the affected Party, to the extent not a Compensation Event or a Relief Event.

26. CONSEQUENCES OF A FORCE MAJEURE EVENT

26.1 To the extent that a Party is prevented from carrying out its obligations under this Agreement as a result of a Force Majeure Event:

- (a) the other Party shall not be entitled to bring a claim for a breach of such obligations under this Agreement or terminate this Agreement for such breach; and

- (b) the affected Party shall not incur any liability to the other Party for any losses or damages incurred by that other Party as a result of that Force Majeure Event.
- 26.2 For such time as the Concessionaire is unable to carry out the Tolling Works or perform any obligations under this Agreement as a result of the occurrence of a Force Majeure Event, the Concessionaire shall be entitled to a corresponding extension of time in respect of the Tolling Works and extension of the Expiry Date.
- 26.3 The Party claiming a Force Majeure Event shall:
- (a) promptly serve written notice on the other Party when it becomes aware of the Force Majeure Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Force Majeure Event;
 - (b) serve a subsequent written notice on the other Party within thirty (30) Business Days from the notice referred to in Clause 26.3(a) above, which shall contain relevant information of its failure to perform (or delay in performing) its obligations under this Agreement as is available, including the effect of the Force Majeure Event on the ability of the Party to perform its obligations, the date of occurrence of the Force Majeure Event and an estimate of the period of the impacts of the Force Majeure Event ("**Force Majeure Period**"); and
 - (c) serve written notice on the other Party as soon as the consequences of the Force Majeure Event have ceased and when performance of its affected obligations can be resumed.
- 26.4 The Party claiming a Force Majeure Event shall take all reasonable steps to mitigate the consequences of such event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Force Majeure Event as soon as practicable and use all reasonable endeavours to remedy its failure to perform obligations.
- 26.5 If:
- (a) the Force Majeure Event persists for a period exceeding, in aggregate, one hundred and eighty (180) Days in any twelve (12) month period; or
 - (b) one or more Force Majeure Events substantially effects the ability of the Concessionaire to comply with its obligations under the Financing Agreements;
- then the Parties shall, upon written notice by either Party, use best endeavours to agree modifications to this Agreement and payments to be made to any Party which shall be fair and equitable having regard to the nature and effects of the Force Majeure Event, the insurance proceeds obtained by the Concessionaire in respect of such Force Majeure Event (if any) and the obligations of the Concessionaire under the Financing Agreements.
- 26.6 If the Parties fail to agree on such modifications within ninety (90) Days of notification referred to in Clause 26.5, then either Party can terminate this Agreement in accordance with Clause 29.3 (*Termination for Force Majeure Event and other events*).

27. LIABILITY AND INDEMNITY

- 27.1 Subject to the other provisions of this Clause 27, each Party (the "**Indemnifying Party**") shall be responsible for, and hold harmless and indemnify the other Party (the "**Indemnified Party**") and their respective employees, contractors and agents from and against all damages, losses, liabilities, costs and expenses (including legal fees and expenses) arising out of or related to any third-party claims or actions against the Indemnified Party to the extent that such claims or actions result from the negligence by the Indemnifying Party or any breach or non-performance of the obligations of the Indemnifying Party under this Agreement, *provided that*, the Indemnifying Party's liability under this Clause 27.1 shall be reduced proportionately to the extent that the negligence or non-performance of the Indemnified Party or any of its respective employees, contractors or agents is determined to have contributed to the aforesaid loss, injury or damage.

27.2 The Concessionaire shall indemnify the Contracting Authority and its employees and agents from and against all claims, damages, losses, liabilities, fines, penalties, Costs (including legal fees and expenses) suffered or incurred by the Contracting Authority arising from or connected to:

- (a) breach of Applicable Law by the Concessionaire; and
- (b) any death or injury of third parties including Users at the Project Site resulting from the wilful misconduct or negligent acts or omissions of any of the Concessionaire's personnel or personnel of the Contractors;

unless, and to the extent that, in each case, the same is a direct result of the gross negligence or breach of this Agreement by the Contracting Authority.

27.3 The Contracting Authority shall indemnify the Concessionaire and its employees and agents from and against all claims, damages, losses, liabilities, fines, penalties, Costs (including legal fees and expenses) suffered or incurred by the Concessionaire arising from or connected to:

- (a) the Existing Tolling Infrastructure (including latent defects or design or conditions thereof);
- (b) breach of any Applicable Law by any Government Authority;
- (c) any death or injury of third parties including Users at the Project Site resulting from the wilful misconduct or negligent acts or omissions of any GoTG officials in their official capacity, whether from the Contracting Authority or another Government Authority, as applicable;
- (d) the Project Site, including latent defects prior to the Effective Date whether such claims, damages, losses, liabilities or expenses are suffered or incurred prior to or following the Effective Date; and
- (e) the acquisition by the Contracting Authority or by any other Government Authority of the Project Site, the Tolling Infrastructure, the Tolling Equipment and/or the Concession Rights granted to the Concessionaire in accordance with the terms of this Agreement, including any claims by third parties in relation to the Project Site, the Tolling Infrastructure, the Tolling Equipment and/or the Concession Rights prior to or following the Effective Date;

unless, and to the extent that, in each case, the same is a direct result of the gross negligence or breach of this Agreement by the Concessionaire.

27.4 Any Party claiming the right to be indemnified under this Clause 27 shall:

- (a) notify the other Party within ten (10) Days after becoming aware of the right to be indemnified, provided that failure to notify within this 10-Day period shall be taken into account when determining the extent of the indemnification if the failure to notify caused further Cost, loss or other liability;
- (b) provide in due course evidence of the existence and the extent of the Cost, loss and liabilities incurred; and
- (c) take all reasonable steps (but without being required to incur material additional costs) to mitigate such Cost, loss and liability.

27.5 Where any Party is required to indemnify any other Party under this Clause 27 in respect of any action or claim brought by any third party, the Indemnified Party will not unreasonably withhold its consent to the Indemnifying Party taking over conduct of any such claim or proceedings from the Indemnified Party provided that security reasonably acceptable to the Indemnified Party is provided in respect of any Costs or liabilities which may arise as a result of any such claim or proceedings.

- 27.6 The indemnities provided in this Clause shall survive the termination or expiry of this Agreement but only to the extent that the claims, fines, penalties, damages, losses, liabilities and expenses arose prior to the Termination Date or Expiry Date, as the case may be.
- 27.7 Without prejudice to any obligation to pay the Adjusted Termination Amount or compensation due in case of Compensation Events and other contrary provisions in this Agreement:
- (a) no Party shall be responsible to the other for any loss of profits, loss of use of the Tolling System, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Parties other than under this Clause 27;
 - (b) the indemnities provided under this Clause 27, and any right to claim for loss or damages shall be the only remedies available to the Parties unless expressly stated otherwise in this Agreement.

28. OVERPERFORMANCE REVIEW

28.1 First Performance Review

- 28.1.1 Within thirty (30) days of the fifteenth (15th) anniversary of Financial Close, the Concessionaire shall cause an Approved Auditor to conduct a performance review to assess the Actual IRR achieved by Africa50 (as shareholder of the Concessionaire) as on the fifteenth (15th) anniversary of Financial Close (the "First Performance Review").
- 28.1.2 The report of the Approved Auditor summarising the findings of the First Performance Review shall be provided to Contracting Authority promptly after the First Performance Review has been completed.
- 28.1.3 If the First Performance Review demonstrates that the Actual IRR achieved by Africa50 (as shareholder of the Concessionaire) as on the fifteenth (15th) anniversary of Financial Close ("Actual IRR15") is equal to or greater than the Target IRR, then the Parties shall engage in good faith discussions for a period of thirty (30) Days to revise the commercial terms of the Agreement, aiming to re-establish its economic equilibrium and:
- (a) if the Parties agree on a revision of the commercial terms of the Agreement within such period of thirty (30) Days, then the Parties shall enter into an amendment to the Agreement in accordance with Clause 39 (*Amendments*); or
 - (b) if the Parties fail to agree on a revision of the commercial terms of the Agreement within thirty (30) Days of the date of receipt of the report referred to in Clause 28.1.2, then the Contracting Authority shall have the right to terminate this Agreement within (but no later than) a sixty (60) Day period starting from the expiration of this thirty (30) Day negotiation period; and:
 - (i) if the Contracting Authority elects to terminate the Agreement within the sixty (60) Day period referred in Clause 28.1.3(b), then:
 - (1) the Termination Date shall be effective six (6) calendar months from the date of the receipt by the Concessionaire of the notice from the Contracting Authority informing the Concessionaire of its decision to terminate the Agreement;
 - (2) the Adjusted Termination Amount shall be calculated and paid by the Contracting Authority to the Concessionaire in accordance with Clause 31 (*Compensation on Termination*); and
 - (3) Clause 32 (*Handover on termination or expiry*) shall apply; or
 - (ii) if the Contracting Authority does not elect to terminate the Agreement within the sixty (60) Day period referred in Clause 28.1.3(b), then the Agreement shall continue in full force and effect on the same terms and conditions and Clause 28.2 (*Second Performance Review*) shall apply.

28.1.4 If the First Performance Review demonstrates that the Actual IRR achieved by Africa50 (as shareholder of the Concessionaire) is less than the Target IRR, then the Agreement shall continue in full force and effect on the same terms and conditions and Clause 28.2 (*Second Performance Review*) shall apply.

28.2 Second Performance Review

28.2.1 Within thirty (30) days of the twentieth (20th) anniversary of Financial Close, the Concessionaire shall cause an Approved Auditor to conduct a second performance review to assess the Actual IRR achieved by Africa50 (as shareholder of the Concessionaire) as on the twentieth (20th) anniversary of Financial Close (the "**Second Performance Review**").

28.2.2 The report of the Approved Auditor summarising the findings of the Second Performance Review shall be provided to Contracting Authority promptly after the Second Performance Review has been completed.

28.2.3 If the Second Performance Review demonstrates that the Actual IRR achieved by Africa50 (as shareholder of the Concessionaire) as on the twentieth (20th) anniversary of Financial Close ("**Actual IRR20**") is equal to or greater than the Target IRR, then the Parties shall engage in good faith discussions for a period of thirty (30) Days to revise the commercial terms of the Agreement, aiming to re-establish its economic equilibrium and:

(a) if the Parties agree on a revision of the commercial terms of the Agreement within such period of for a period of thirty (30) Days, then the Parties shall enter into an amendment to the Agreement in accordance with Clause 39 (*Amendments*); or

(b) if the Parties fail to agree on a revision of the commercial terms of the Agreement within thirty (30) Days of the date of receipt of the report referred to in Clause 28.2.2, then the Contracting Authority shall have the right to terminate this Agreement within (but no later than) a sixty (60) Day period starting from the expiration of this thirty (30) Day negotiation period; and:

(i) if the Contracting Authority elects to terminate the Agreement within the sixty (60) Day period referred in Clause 28.2.3(b), then:

(1) the Termination Date shall be effective six (6) calendar months from the date of the receipt by the Concessionaire of the notice from the Contracting Authority informing the Concessionaire of its decision to terminate the Agreement;

(2) the Adjusted Termination Amount shall be calculated and paid by the Contracting Authority to the Concessionaire in accordance with Clause 31 (*Compensation on Termination*); and

(3) Clause 32 (*Handover on termination or expiry*) shall apply; or

(ii) if the Contracting Authority does not elect to terminate the Agreement within the sixty (60) Day period referred in Clause 28.2.3(b), then the Agreement shall continue in full force and effect on the same terms and conditions until the end of the Concession Term.

28.2.4 If the Second Performance Review demonstrates that the Actual IRR achieved by Africa50 (as shareholder of the Concessionaire) is less than the Target IRR, then the Agreement shall continue in full force and effect on the same terms and conditions until the end of the Concession Term.

29. TERMINATION OF AGREEMENT

29.1 Termination for Concessionaire Termination Event

29.1.1 If any Concessionaire Termination Event occurs and such Concessionaire Termination Event is not caused by a Relief Event, a Compensation Event, a Force Majeure Event or a breach by the Contracting Authority of this Agreement, the Contracting Authority shall be entitled to deliver

to the Concessionaire a written notice of its intention to terminate this Agreement ("**Termination Notice**").

29.1.2 The Termination Notice shall specify the type of Concessionaire Termination Event which has occurred entitling the Contracting Authority to terminate this Agreement.

29.1.3 The Termination Notice shall specify either:

- (a) a reasonable time for the Concessionaire to remedy the Concessionaire Termination Event (which shall be no less than ninety (90) Days); or
- (b) if the Concessionaire Termination Event is not capable of being remedied, that the termination will be immediately effective on delivery of the Termination Notice by the Contracting Authority, subject however to the rights of the Financing Parties under the Direct Agreement.

29.2 Termination for Contracting Authority Termination Event

29.2.1 If any Contracting Authority Termination Event occurs and such Contracting Authority Termination Event is not caused by a Force Majeure Event or a breach by the Concessionaire of this Agreement, the Concessionaire shall be entitled to deliver to the Contracting Authority a Termination Notice.

29.2.2 The Termination Notice shall specify the type of Contracting Authority Termination Event which has occurred entitling the Concessionaire to terminate this Agreement.

29.2.3 The Termination Notice shall specify either:

- (a) a reasonable time for the Contracting Authority to remedy the Contracting Authority Termination Event (which shall be no less than ninety (90) Days); or
- (b) if the Contracting Authority Termination Event is not capable of being remedied, that the termination will be immediately effective on delivery of the Termination Notice by the Concessionaire.

29.3 Termination for Force Majeure Event and other events

29.3.1 In the circumstances referred to in Clause 26.6 (*Consequences of a Force Majeure Event*) arise, either Party may at any time afterwards terminate this Agreement by a Termination Notice to the other Party with such termination having immediate effect unless, at the discretion of the Party sending the Termination Notice, the Termination Notice includes a remedy period and specifies an alternate Termination Date at the end of the relevant remedy period, in which case, the termination shall occur on the specified Termination Date.

29.3.2 In the circumstances referred to in Clause 23.2.7 (*Consequences of a Relief Event*) or 24.2.8 (*Consequences of a Compensation Event*) arise, the Concessionaire may at any time afterwards terminate this Agreement by a Termination Notice to the Contracting Authority with such termination having immediate effect unless, at the discretion of the Concessionaire, the Termination Notice includes a remedy period and specifies an alternate Termination Date at the end of the relevant remedy period, in which case, the termination shall occur on the specified Termination Date.

29.4 Concessionaire Termination for Convenience

29.4.1 The Concessionaire may, at any time during the Concession Term, deliver to the Contracting Authority a Termination Notice.

29.4.2 The Termination Notice shall indicate:

- (a) the Concessionaire's decision to terminate the Agreement for convenience; and
- (b) a reasonable time before the termination becomes effective, with the Termination Date set no less than ninety (90) Days from the date of the notice informing the Contracting Authority of the Concessionaire Termination for Convenience.

30. CONSEQUENCES OF TERMINATION

30.1 Save as otherwise expressly provided in this Agreement:

- (a) termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the Termination Date; and
- (b) termination of this Agreement shall not affect the continuing rights and obligations of the Concessionaire and the Contracting Authority under Clauses 6 (*Representations and Warranties*), 15.8 (*Intellectual Property Rights of the Contracting Authority*), 27 (*Liability and Indemnity*), 30 (*Consequences of Termination*), 31 (*Compensation on Termination*) and Clauses 34.2 (*Internal Referral and Arbitration*) to 48 (*Counterparts*) and Schedule 12 (*Adjusted Termination Amount*) and under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

30.2 Within sixty (60) Days of the Termination Date, the Concessionaire and its Contractors will be required to vacate the Project Site in a safe manner taking such reasonable steps as may be within their control to avoid causing any danger to any Users or other person present at the Project Site, including the Bridge and the Feeder Roads.

30.3 Upon termination of this Agreement the Concessionaire shall comply with the requirements of Clause 32 (*Handover on termination or expiry*).

31. COMPENSATION ON TERMINATION

31.1 Adjusted Termination Amount

In the event of early termination of this Agreement for any reason, including pursuant to Clause 29.1 (*Termination for Concessionaire Termination Event*), Clause 29.2 (*Termination for Contracting Authority Termination Event*) or Clause 29.3 (*Termination for Force Majeure Event and other events*), the Contracting Authority shall pay the Adjusted Termination Amount to the Concessionaire as calculated in accordance with Clause 31.2 (*Calculation of the Adjusted Termination Amount*) and Schedule 12 (*Adjusted Termination Amount*).

31.2 Calculation of the Adjusted Termination Amount

31.2.1 The Concessionaire shall within ninety (90) Days after the Termination Date, prepare the termination accounts setting out the Adjusted Termination Amount payable by the Contracting Authority in accordance with Schedule 12 (*Adjusted Termination Amount*) (the "Termination Accounts").

31.2.2 Once the Termination Accounts have been prepared by the Concessionaire, the Concessionaire shall arrange for the Termination Accounts to be certified by an Approved Auditor as being true and correct and in accordance with the requirements of this Agreement.

31.2.3 The Approved Auditor shall be responsible for reviewing the Concessionaire's calculation of the Adjusted Termination Amount in accordance with Schedule 12 (*Adjusted Termination Amount*) and, within thirty (30) Days of receiving the Termination Accounts, shall issue a report to the Concessionaire and the Contracting Authority confirming either that the Adjusted Termination Amount set out in the Termination Accounts has been properly calculated or if, in the Approved Auditor's opinion, it has not been properly calculated, its own calculation of the Adjusted Termination Amount (the "Approved Auditor Termination Report").

31.2.4 The Approved Auditor shall act as an expert and not as an arbitrator. The reasonable costs and expenses of the Approved Auditor shall be borne equally between the Concessionaire and the Contracting Authority. The Approved Auditor shall be entitled to have access to the Concessionaire's premises and to its books, records and other documents for the purposes of carrying out their review, and each of the Parties shall promptly on request supply to the Approved Auditor all such documents and information as the Approved Auditor may require.

31.2.5 The Contracting Authority shall review the Adjusted Termination Amount and the Approved Auditor Termination Report within thirty (30) Days of receipt of the Approved Auditor Termination Report and shall before the end of this thirty (30) Day period, either:

- (a) notify the Concessionaire of its acceptance of the Adjusted Termination Amounts set out in the Termination Accounts and pay to the Concessionaire such Adjusted Termination Amount no later than thirty (30) Days after the notification of its acceptance of the Adjusted Termination Amounts and in any case no later than seventy (70) Days from the receipt by the Contracting Authority of the Approved Auditor Termination Report (the "Termination Amount Payment Due Date"); or
- (b) notify the Concessionaire its refusal, in all or in part, of the Adjusted Termination Amounts set out in the Termination Accounts, stating its duly justified reasons along with all required supporting documentation, provided that in such case:
 - (i) the Contracting Authority shall pay to the Concessionaire the non-contested part of the Adjusted Termination Amount by the Termination Amount Payment Due Date, being no later than thirty (30) Days after the notification of its refusal of the Adjusted Termination Amounts and in any case no later than seventy (70) Days from the receipt by the Contracting Authority of the Approved Auditor Termination Report; and
 - (ii) the Parties must seek to resolve any differences relating to the termination accounts within ten (10) Days of the Contracting Authority's notification of refusal. If the Parties cannot agree within this 10-Day period, the matter can be referred by either Party to an Independent Expert as a Fast Track Dispute in accordance with Clause 34.1 (*Fast Track Dispute Resolution*).

31.3 Interest on the Adjusted Termination Amount

The Parties hereby acknowledge and agree that:

- (a) the Contracting Authority will be required to pay interest to the Concessionaire at the interest rate applicable under the Financing Agreements on any amount due to the Concessionaire from Termination Amount Payment Due Date to the date of actual payment of the Concessionaire ("Termination Amount Payment Date"); and
- (b) the Contracting Authority shall be responsible for the payment of penalty interest (as calculated under the Financing Agreements) on the Adjusted Termination Amount, payable from the Termination Amount Payment Due Date until the Termination Amount Payment Date.

31.4 Payment of Adjusted Termination Amount

31.4.1 Any and all payment to be made by the Contracting Authority to the Concessionaire pursuant to this Clause 31 shall be made in US Dollars in immediately available funds to an offshore bank account nominated by the Concessionaire.

31.4.2 Any sums due to be paid by the Contracting Authority to the Concessionaire pursuant to this Clause 31 shall be grossed up so that the amount received by the Concessionaire net of any Taxes, withholdings or other deductions is equal to the amount which it would have received pursuant to this Clause 31.4 had there been no such Taxes, withholdings or other deductions.

31.4.3 Amounts due to the Concessionaire pursuant to this Clause 31 are calculated exclusive of VAT and other taxes. In addition to the amounts payable by the Contracting Authority to the Concessionaire pursuant to this Clause 31, the Contracting Authority shall also pay VAT and other taxes on such amounts due, if applicable.

31.5 Survival of Obligations

The rights and obligations under this Clause 31, Schedule 12 (*Adjusted Termination Amount*) and the other provisions of this Agreement which either expressly or by implication are to apply

following a termination of this Agreement shall survive the termination or expiry of this Agreement.

32. HANDOVER ON TERMINATION OR EXPIRY

32.1 Without limiting Clause 30.2 (*Consequences of Termination*), within ten (10) Business Days following the expiry or the termination of this Agreement, the Concessionaire shall, as applicable:

- (a) hand over the Project Site, the Tolling Infrastructure and the Tolling Equipment to the Contracting Authority free from all encumbrances in a reasonable condition, considering their state as documented in the Baseline Infrastructure Report, adjusted for reasonable wear and tear. If hand over has occurred due to the Expiry Date being reached, then these shall be in compliance with the Assessed Maintenance Requirements referred to in Clause 17.3 (*Final Maintenance Survey*);
- (b) provide to the Contracting Authority:
 - (i) all necessary software and intellectual property relating to the Tolling System and Tolling Works;
 - (ii) the database of Users, User Accounts, Toll Credits and other data generated by the Tolling System;
 - (iii) all as-built drawings of the Tolling Works and any Variations, operations and maintenance manuals, and historical operating data of the Tolling System; and
 - (iv) all keys, remote access apparatus, passwords, and computer access cards to the Front Office, Back Office, and any other relevant facilities on the Project Site, uninstalled e-tags, and a complete asset and data register of these items;
- (c) use all reasonable endeavours to procure that the benefit of all manufacturer's warranties and guarantees which continue to subsist at that time in respect of the Tolling Equipment are assigned, or otherwise transferred, to the Contracting Authority; and
- (d) ensure that any relevant contracts concluded by the Concessionaire that allow for the Contracting Authority to take over these contracts are turned over to the Contracting Authority.

32.2 Where this Agreement is terminated, any Toll credit accounts, claims in respect of insurance proceeds, and rights to collect any outstanding Tolls as at the Termination Date will be assigned by the Concessionaire to the Contracting Authority.

33. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and is to be construed in accordance with the laws of the Republic of The Gambia.

34. DISPUTE RESOLUTION

34.1 Fast Track Dispute Resolution

34.1.1 Referable Disputes

Either Party can refer the following Disputes for determination by an Independent Expert pursuant to this Clause 34.1 (the "Fast Track Disputes"):

- (a) any Dispute arising between the Parties in relation or connection to the appointment, payment, performance, acts, defaults, omissions, breaches, replacement and negligence of Contractors;

- (b) where the Parties disagree on the reason and/or need for any closures in respect of the Tolling Works or relating to operations and maintenance;
- (c) a failure by the Parties to agree the scope of the Independent Engineer;
- (d) any Dispute arising between the Parties relating to Variations unless expressly stated otherwise;
- (e) any Dispute as to the reasonableness, accuracy or relevance of any proposed revisions to the Base Case Traffic Model, and the Financial Model;
- (f) any Dispute for which this Agreement provides that the Dispute might be referred to an Independent Expert pursuant to this Clause 34.1; and
- (g) any Dispute for which the Parties mutually agree to refer to this Dispute to an Independent Expert pursuant to this Clause 34.1.

34.1.2 Procedure

- (a) Unless stipulated otherwise in this Agreement, the procedure set out in this Clause applies to any Fast Track Dispute.
- (b) Within five (5) Business Days after a dispute has been referred by either Party to an Independent Expert, the Independent Expert shall require the Parties to submit in writing their respective arguments. The Independent Expert shall, in his/her absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- (c) It shall be entirely within the power and competence of the Independent Expert to decide upon any matters related to the proper preparation of the dispute for hearing and in that regard the Independent Expert shall direct the Parties accordingly.
- (d) The Independent Expert shall set the date for the hearing (where a hearing has been determined necessary), choose the venue (which must be a venue in Banjul, The Gambia unless agreed otherwise by the Parties) for the hearing and determine all matters regarding any aspect of the hearing. Moreover, the Independent Expert can decide whether at the hearing the Parties are to give oral evidence or confine themselves to presenting their cases in writing or by some other appropriate procedure. In this regard, the Independent Expert must be guided by considerations of fairness, the cost-effective resolution of the dispute, and the need to resolve the dispute quickly.
- (e) The Independent Expert shall act impartially and may take initiative in ascertaining the facts and the law. The Independent Expert need not strictly observe the principles of law and may decide the matter submitted to him/her in accordance with what he/she considers equitable in the circumstances.
- (f) The Independent Expert must provide both Parties with his/her written decision on the dispute, within twenty (20) Business Days of the referral (or such other period as the Parties may agree after the referral). The Independent Expert shall give his/her reasons for the decision, if so requested by either Party.
- (g) The Independent Expert's costs of any referral shall be borne as the Independent Expert shall specify or, if not specified, shall be borne equally by the Parties. Each Party shall bear its own costs arising out of the referral, including its legal costs and the costs and expenses of any witnesses.
- (h) The Independent Expert is not liable for anything done or omitted in the discharge or purported discharge of his/her functions as Independent Expert unless the act or omission is grossly negligent or in bad faith. Any employee or agent of the Independent Expert is similarly protected from liability.
- (i) The proceedings shall be confidential and all information, data or documentation disclosed or delivered by either Party to the Independent Expert in consequence of or in connection with his/her appointment as Independent Expert shall be treated as

confidential. Neither the Parties nor the Independent Expert shall, save as permitted by Clause 37 (*Confidentiality*), disclose to any person any such information, data or documentation unless the Parties otherwise agree in writing, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Independent Expert's work.

- (j) Should any Party fail to co-operate with the Independent Expert with the result that in the view of the Independent Expert such default or omission prejudices the adjudication process, then the Independent Expert can either:
 - (i) give that Party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the adjudication; or
 - (ii) warn the Party in writing that its default or omission may make it liable to a punitive order of costs irrespective of whether it succeeds in the adjudication or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs.
- (k) The Independent Expert shall be deemed not to be an arbitrator but shall render his/her decision as an expert and the provisions of the Alternative Dispute Resolution Act, 2005 and any other Applicable Law relating to arbitration shall not apply to the Independent Expert or his/her determination or the procedure by which he/she reaches his/her determination.
- (l) The Independent Expert's decision shall be final and binding on the Parties.

34.2 Internal Referral and Arbitration

34.2.1 Referable Disputes

Any Dispute shall be resolved in accordance with the provisions of this Clause 34.2, except the Fast Track Disputes unless the Parties mutually agree to resolve the Fast Track Dispute in accordance with this Clause 34.2 rather than under Clause 34.1 (*Fast Track Dispute Resolution*).

34.2.2 Internal Referral

- (a) In the event of any Dispute referred to in Clause 34.2.1, the Parties shall first attempt in good faith to come to an agreement in relation to the disputed matter through internal referral in the following manner:
 - (i) any Party may notify the other of a Dispute and shall do so in writing by serving a dispute notice (a "**Dispute Notice**");
 - (ii) within thirty (30) Business Days of receipt of a Dispute Notice by a Party, the Parties shall endeavour to resolve such Dispute amicably; and
 - (iii) if the dispute has not been amicably resolved within thirty (30) Business Days of receipt of the Dispute Notice, either Party may refer the Dispute for a decision by the Permanent Secretary of the Contracting Authority and the Chief Executive Officer or equivalent officer of the Concessionaire.
- (b) In attempting to resolve the Dispute in accordance with the internal referral provisions of Clauses 34.2.2(a)(i) and 34.2.2(a)(ii) above, the Parties shall (and shall procure that their employees and representatives shall) use reasonable endeavours to resolve such Dispute without delay by negotiations or any other informal procedure which the relevant representatives may adopt. Those attempts shall be conducted in good faith in an effort to resolve the Dispute without necessity for formal proceedings;
- (c) If the Dispute referred to the representatives set out in 34.2.2(a)(iii) has not been resolved within ten (10) Business Days (or any longer period agreed between the

Parties), then the internal referral shall be deemed to have failed. The Parties are then entitled to refer the dispute for final resolution by way of arbitration in accordance with Clause 34.2.3.

34.2.3 Arbitration

- (a) In the event that internal referral has failed in accordance with the terms of Clause 34.2.2(c), the Parties are then entitled to refer the Dispute for final resolution by way of arbitration.
- (b) The arbitration agreement in this Clause 34.2.3 shall be governed by and construed in accordance with English law.
- (c) A Dispute so referred shall be finally settled by arbitration in accordance with the LCIA rules as in force at the date of this Agreement and as modified by this clause, which Rules shall be deemed incorporated into this clause, and subject to the following:
 - (i) the number of arbitrators shall be three unless otherwise agreed between the Parties, one of whom shall be nominated by the claimant(s), one by the respondent(s) and the third of whom, who shall act as presiding arbitrator, shall be nominated by the two party-nominated arbitrators, provided that if the third arbitrator has not been nominated within thirty (30) days of the nomination of the second party-nominated arbitrator, such third arbitrator shall be appointed by the LCIA Court;
 - (ii) the seat of arbitration shall be London, England;
 - (iii) the venue of arbitration shall be Banjul, The Gambia or such other venue as may be agreed between the Parties; and
 - (iv) the language of the arbitration shall be English.
- (d) The Parties shall have recourse to the courts of the relevant jurisdiction in the event that they seek interim relief.
- (e) No referral of any Dispute to any resolution process in terms of the Agreement shall relieve either Party from any liability for the due and punctual performance of its obligations under the Agreement.

34.3 Performance to Continue

No referral of any Dispute to any resolution process under the terms of this Agreement shall relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement, without prejudice however to rights of the Parties in case of a Force Majeure Event, Compensation Event or Relief Event.

35. WAIVER OF SOVEREIGN IMMUNITY

The Contracting Authority agrees not to claim and irrevocably waives, to the maximum extent permitted under Applicable Law, with respect to itself, its revenues and assets and property (irrespective of their use or intended use), any right of sovereign immunity that it may have in the courts of any jurisdiction, including from:

- (a) suit, including claims, counterclaims and set-off;
- (b) the jurisdiction of the courts in any jurisdiction and of any arbitral tribunal;
- (c) provisional measures, injunctive relief and any other legal measures aimed at securing the claim rendered or issued by the courts in any jurisdiction;
- (d) legal process including recognition and/or enforcement of a judgment or an arbitration award and the giving of any relief in the court of any jurisdiction whether before or after final judgment or arbitral award including, without limitation:

- (i) relief by way of interim or final injunction or order for specific performance or recovery of any property;
- (ii) attachment of its assets; and
- (iii) enforcement or execution (or in aid of execution) against any property, revenues or other assets whatsoever (irrespective of their use or intended use),

and the Contracting Authority accordingly submits to the jurisdiction of the courts of any other relevant jurisdiction in relation to the recognition of any determination by the Independent Expert, judgment or order of the courts of any other relevant jurisdiction in support of arbitration and in relation to the recognition of any decision of the Independent Expert, arbitral award and consents to the enforcement of any decision, order or judgment in connection with arbitration and any award in connection with any Dispute and the giving of any relief in the court of any relevant jurisdiction whether before or after final judgment or arbitral award including, without limitation, (1) relief by way of interim or final injunction or order for specific performance or recovery of any property; (2) attachment of its assets; and (3) enforcement or execution against any property, revenues or other assets whatsoever (irrespective of their use or intended use).

36. NOTICES

36.1 All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in accordance with this Agreement or relating to it shall be given in writing, written in English and sent by registered post, or delivered by hand, or transmitted by electronic mail to the recipient Party at its relevant address set out below:

(a) If to the Contracting Authority:

Address: Ministry of Finance and Economic Affairs
The Quadrangle
Banjul
The Gambia

Email: seedykaddy@yahoo.com

Attention: Hon. Seedy Keita

(b) If to the Concessionaire:

Address: 136 Kairaba Avenue
Fajara Booster Station
Kanifing Municipality
The Gambia

Email: k.hassane@transgambiabc.com

Attention: Kader Hassane

36.2 Each Party may, by written notice to the other Party, change any of the addresses at which or the designated person for whose attention those notices or other communications are to be given.

- 36.3 Any notice or other communication given by any Party to the other Party which:
- (a) is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the seventh (7th) Day after the date of posting; or
 - (b) is delivered by hand to the addressee during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
 - (c) is sent by email to the email addressee shall be rebuttably presumed to have been received by the addressee on the date the email was sent.
- 36.4 The previous provisions of this Clause 36 shall not invalidate any notice or other communication actually given and received otherwise than as described in those provisions.
- 36.5 The Parties choose their respective physical addresses in Clause 36 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in The Gambia, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within The Gambia in writing to be its new *domicilium citandi et executandi*.

37. CONFIDENTIALITY

37.1 Project Information

- 37.1.1 For purposes of this Clause 37 (*Confidentiality*), "**Project Information**" means all information or data disclosed under and/or pursuant to this Agreement, whether communicated orally or in writing by either Party to the other or by the representatives of one Party to the representatives of the other Party and shall include commercially sensitive information contained in any internal document of a Party regarding the nature of its business, operations, processes, intentions, product information, know-how, trade secrets, software, market opportunities, customer and business affairs.
- 37.1.2 Each Party shall treat as confidential and hold in confidence all Project Information while this Agreement remains in force and for a period of two (2) years after it terminates for any reason and no Party shall publish or otherwise disclose or use any Project Information other than for the performance of its obligations or the exercise of its rights under this Agreement, unless it is expressly provided that such information is not considered as confidential.
- 37.1.3 No Party shall seek to publicise any dispute or difference which may exist between them at any time.
- 37.1.4 This Clause 37 (*Confidentiality*) shall not apply to any documents or information:
- (a) already in the public domain other than as a result of a breach of this Agreement;
 - (b) which any person is required as a matter of Applicable Law to disclose;
 - (c) in the possession of the person receiving them before they were received from another person pursuant to this Agreement and which were not obtained under an obligation of confidentiality;
 - (d) obtained from any third party who was free to divulge the same and which were not obtained under an obligation of confidentiality; or
 - (e) except in respect of Project Information which is prohibited from release for national security reasons set out in Applicable Law, disclosed by the Concessionaire to:
 - (i) any of the Financing Parties or any person from whom the Concessionaire is seeking finance and their advisers:

- (ii) any entity appointed pursuant to the Direct Agreement to perform any of the Concessionaire's obligations under this Agreement or to whom this Agreement is novated in accordance with the Direct Agreement; or
- (iii) the affiliates, shareholders, employees, agents, advisers, consultants and Contractors of the Concessionaire or of an affiliate or shareholder of the Concessionaire.

37.1.5 Where the Concessionaire discloses information pursuant to Clause 37.1.4(e), the Party to whom such information is disclosed shall be bound by the same duty of confidentiality as the Concessionaire.

37.2 Survival of Obligations

The rights and obligations of the Parties under this Clause 37 shall survive the termination or expiry of this Agreement for a period of two (2) years from the date of termination or expiry.

38. ASSIGNMENT

38.1 No Transfer

Without prejudice to Clause 38.2 below, neither of the Parties will assign, charge, pledge or otherwise transfer any of its rights, interests and obligations under this Agreement to any person without the prior written consent of the other Party.

38.2 Exceptions

38.2.1 The provisions of Clause 38.1 do not apply to any assignment, charge, pledge or transfer contemplated under the Financing Agreement, including the grant of any security for any loan made to the Concessionaire under the Financing Agreements.

38.2.2 Nothing in this Agreement shall prohibit the Concessionaire from providing or procuring the provision of the Tolling Works, the Operation or any part of the Project from Contractors in accordance with Clause 5 (*Subcontracting*).

39. AMENDMENTS

No provision of this Agreement (including, without limitation, the provisions of this Clause 39) may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this Agreement, except (in any such case) by an agreement in writing signed by the duly authorised representatives of the Parties.

40. PREVIOUS AGREEMENTS

40.1 The Parties hereby acknowledge and agree that this Agreement and all documents or agreements entered into, or to be entered into, pursuant to this Agreement, constitute the whole agreement and understanding between the Parties in relation to their subject matter.

40.2 All previous agreements, understandings, undertakings, representations, warranties and arrangements of any nature whatsoever between the Parties with any bearing on the subject matter of this Agreement are superseded and extinguished (and all rights and liabilities arising by reason of them, whether accrued or not at the date hereof, are cancelled) to the extent that they have such a bearing.

41. FURTHER ASSURANCES

Each Party shall do, execute, perform and shall procure to be done, executed and performed all such further acts, deeds, documents and things as may be required from time to time for the purpose of giving the Concessionaire the full benefit of this Agreement and the Concession Rights.

42. INTEREST

Except as expressly stated otherwise (including in Clauses 21.1.8(e) (*Contracting Authority Variations*) and 31.3 (*Interest on the Adjusted Termination Amount*)) any Party who fails to make any payment on the Due Date for Payment under this Agreement shall be liable to pay interest thereon at the following rates:

- (a) at the Gambian Prime Rate plus four percent (4%) per annum calculated on a daily basis from the Due Date for Payment until the relevant amount together with accrued interest is paid in full for all payments stated to be in Gambian Dalasi; and
- (b) at the rate of SOFR plus 400 (four hundred) basis points per annum calculated on a daily basis from the Due Date for Payment until the relevant amount together with accrued interest is paid in full for all payments stated to be in US Dollars.

43. WAIVER

No Party shall be deemed to have waived any rights arising under this Agreement unless such waiver is recorded in writing. No failure by a Party to insist upon strict performance of this Agreement or to exercise its rights hereunder shall be construed as a waiver of any such right.

44. CONFLICT WITH OTHER PROJECT AGREEMENTS

44.1 In the event of any conflict between this Agreement and any Project Agreement (other than the Financing Agreements), the provisions of this Agreement will prevail.

44.2 In the event of any conflict between this Agreement and the Schedules to this Agreement, this Agreement shall take precedence, and in the event of any conflict between the Schedules to this Agreement, the Schedules in the following order shall rank in the following order of precedence:

- (a) EPC Specifications and O&M Scope; and
- (b) all other Schedules to this Agreement.

45. COSTS AND EXPENSES

Each Party shall bear its own costs and expenses (including advisers' fees and expenses) in connection with the preparation, negotiation, execution and completion of this Agreement and other Project Agreements.

46. NO PARTNERSHIP OR EMPLOYMENT

Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Contracting Authority and the Concessionaire.

47. SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in a manner which makes it effective and valid under Applicable Law, but if any provision of this Agreement is held to be illegal, invalid or unenforceable under Applicable Law, that illegality, invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force.

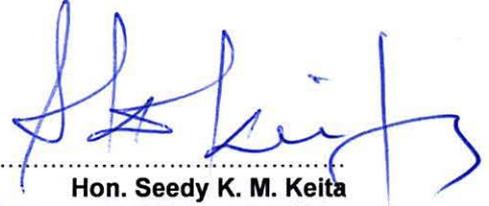
48. COUNTERPARTS

This Agreement may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts

taken together which, in either case, are executed by the Parties, shall constitute a full original of this Agreement for all purposes.

EXECUTED by the parties on the date which first appears in this Agreement.

Executed by
**THE GOVERNMENT OF
THE REPUBLIC OF THE
GAMBIA**
acting by



.....
Hon. Seedy K. M. Keita
Minister of Finance and Economic Affairs
Republic of The Gambia

Witnessed by:


.....

Signature
Name: **ABDOULIE JALLOW**
Address: **MINISTRY OF FINANCE AND
ECONOMIC AFFAIRS**
Occupation: **PERMANENT SECRETARY**

Executed by
**TRANSGAMBIA BRIDGE
COMPANY LTD**
acting by



.....
Kader Hassane
Chief Executive Officer
Transgambia Bridge Company Ltd

Witnessed by:

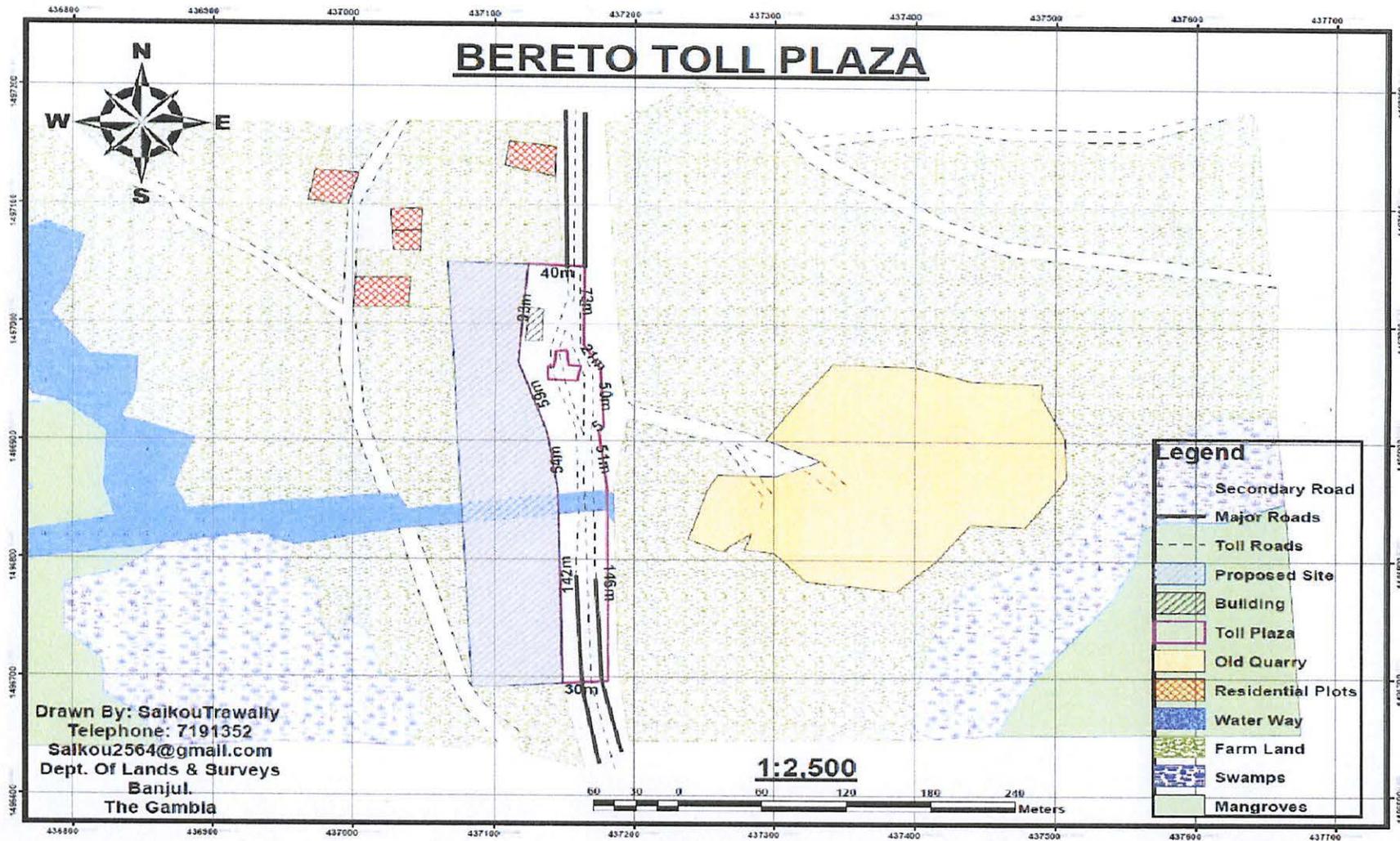

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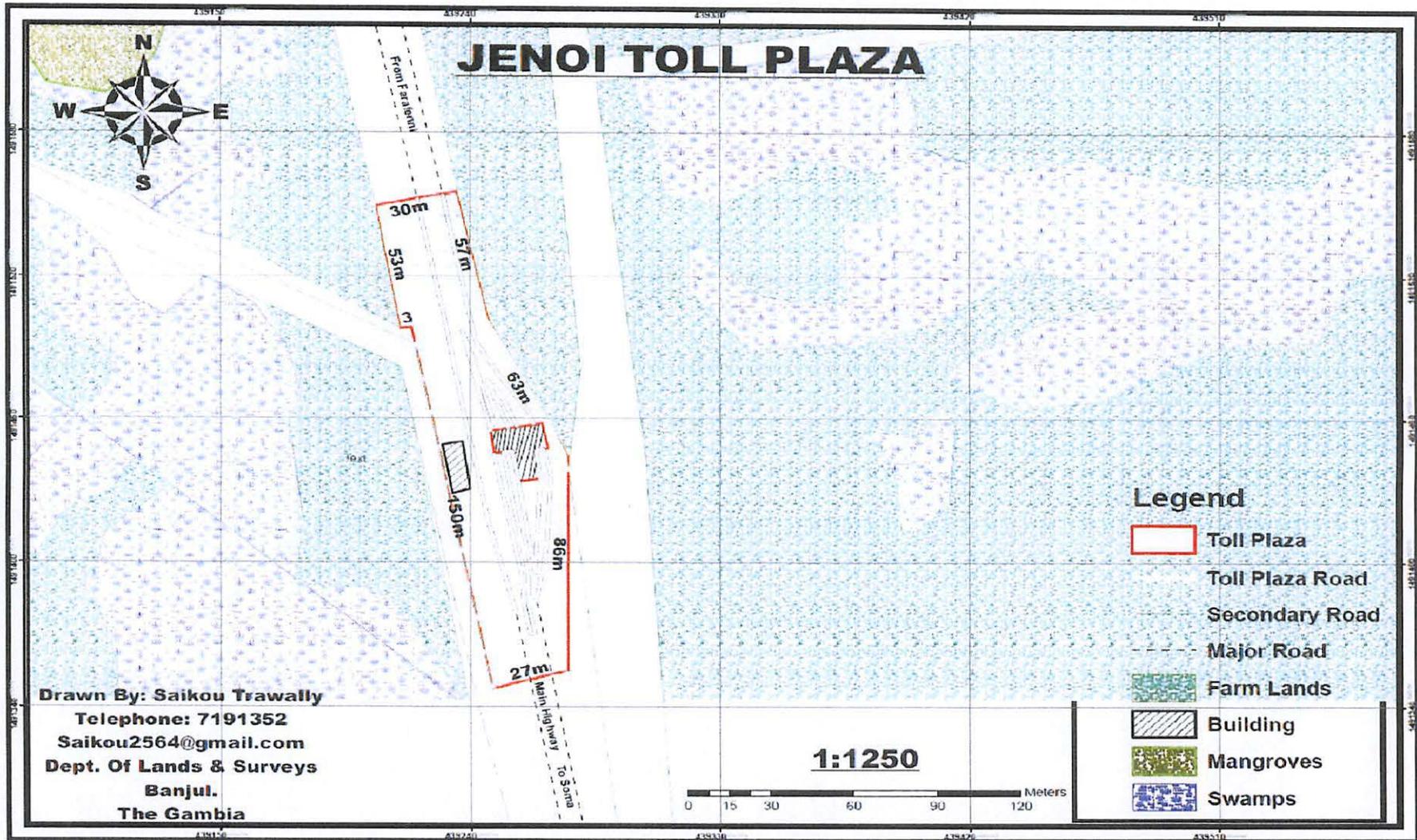
Signature
Name: **EVANS KOFI ADANYA**
Address: **AFRICASB, CASABLANCA, MOROCCO**
Occupation: **CHARTERED ACCOUNTANT**

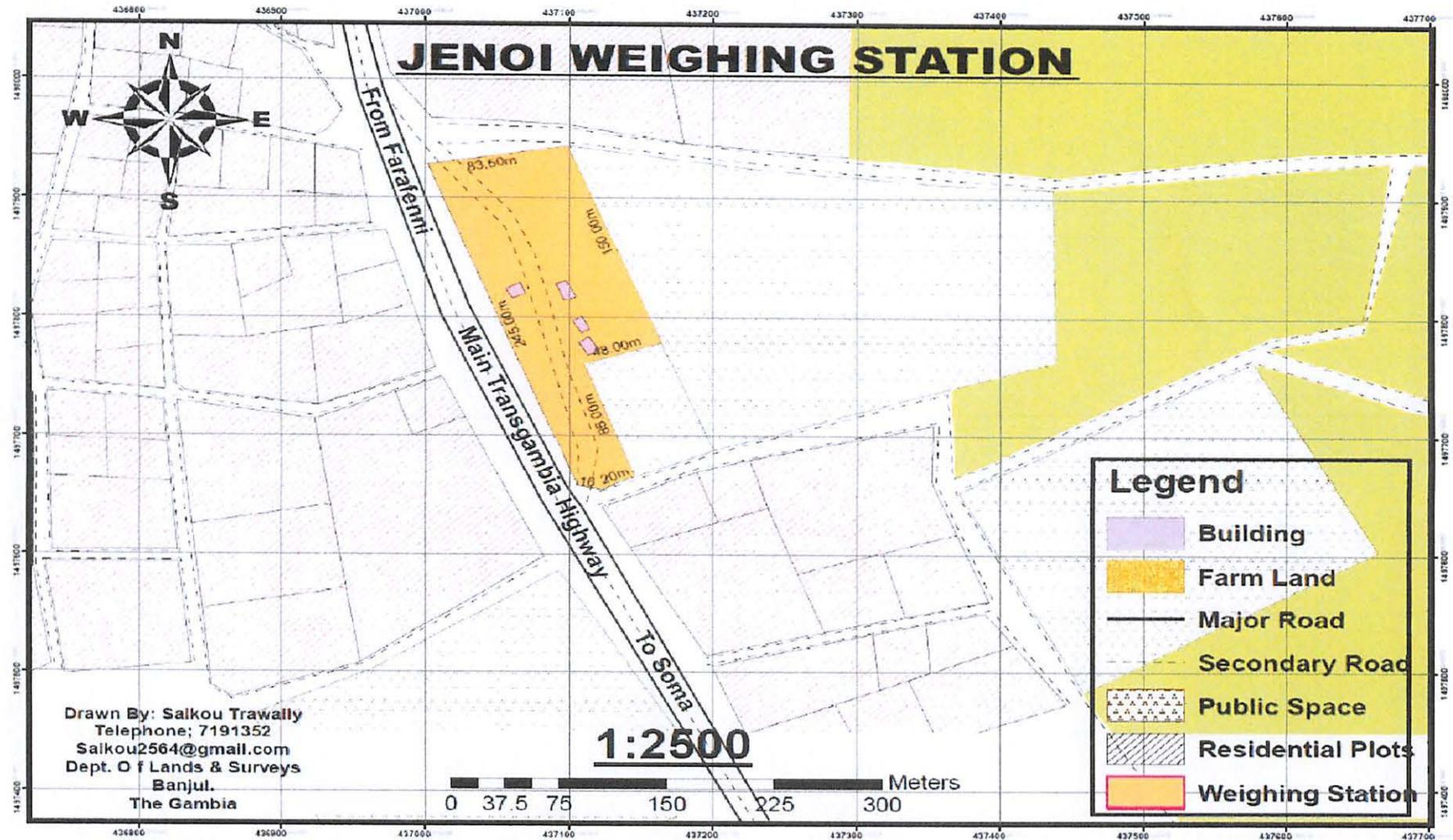


Schedule 1

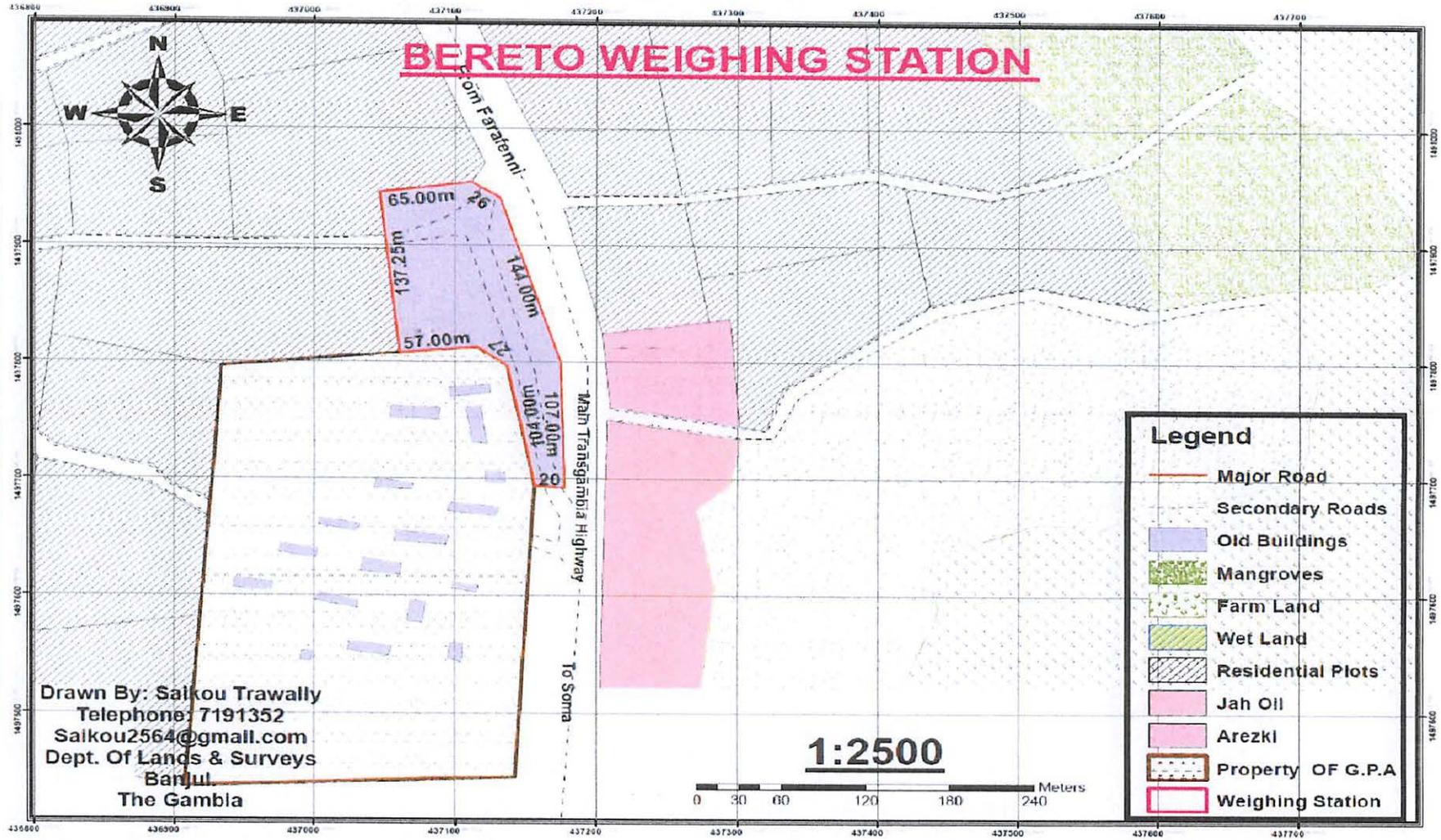
Project Site

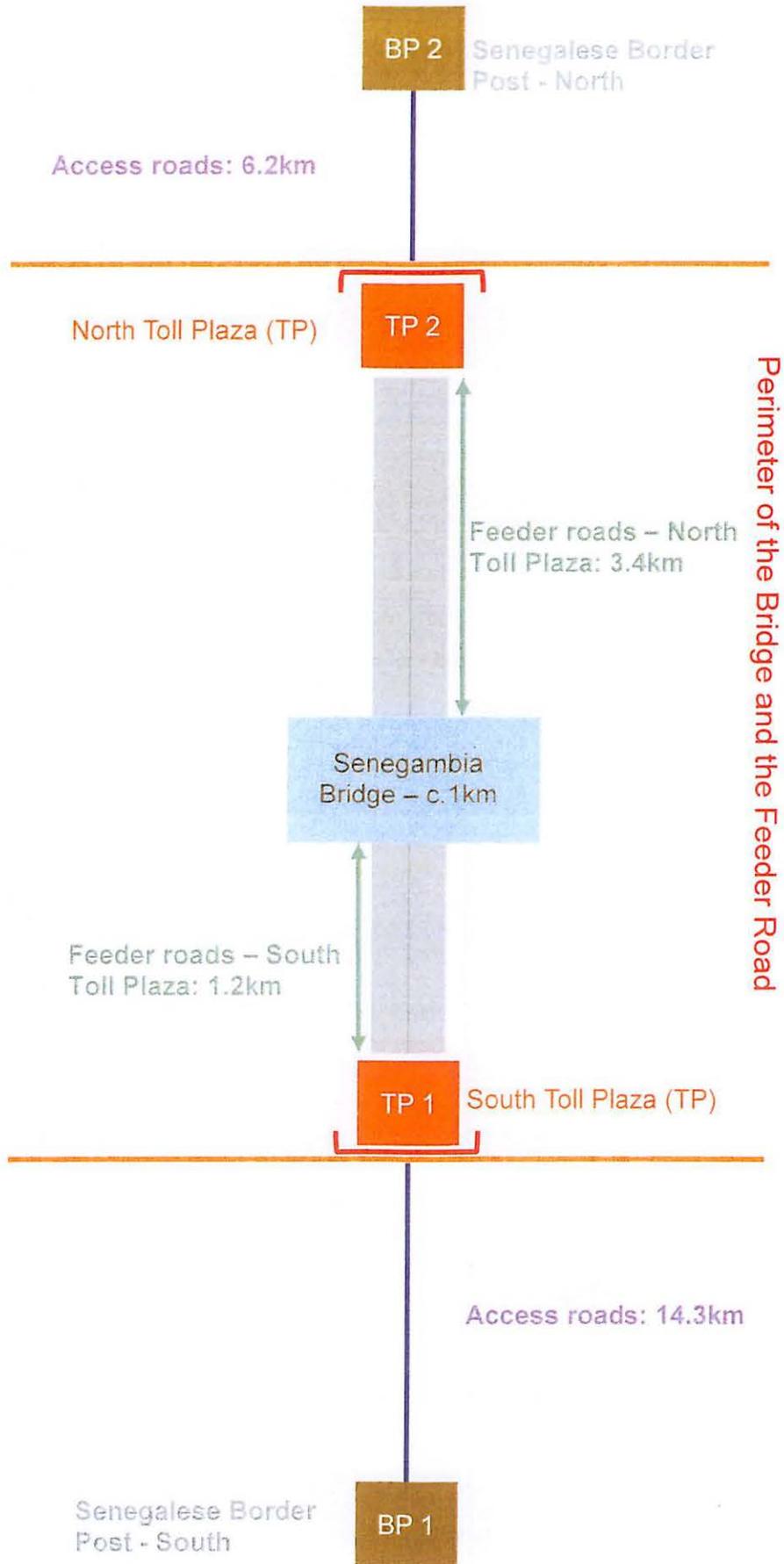






Bereto land plan to be adjusted to reflect the ceded GPA land





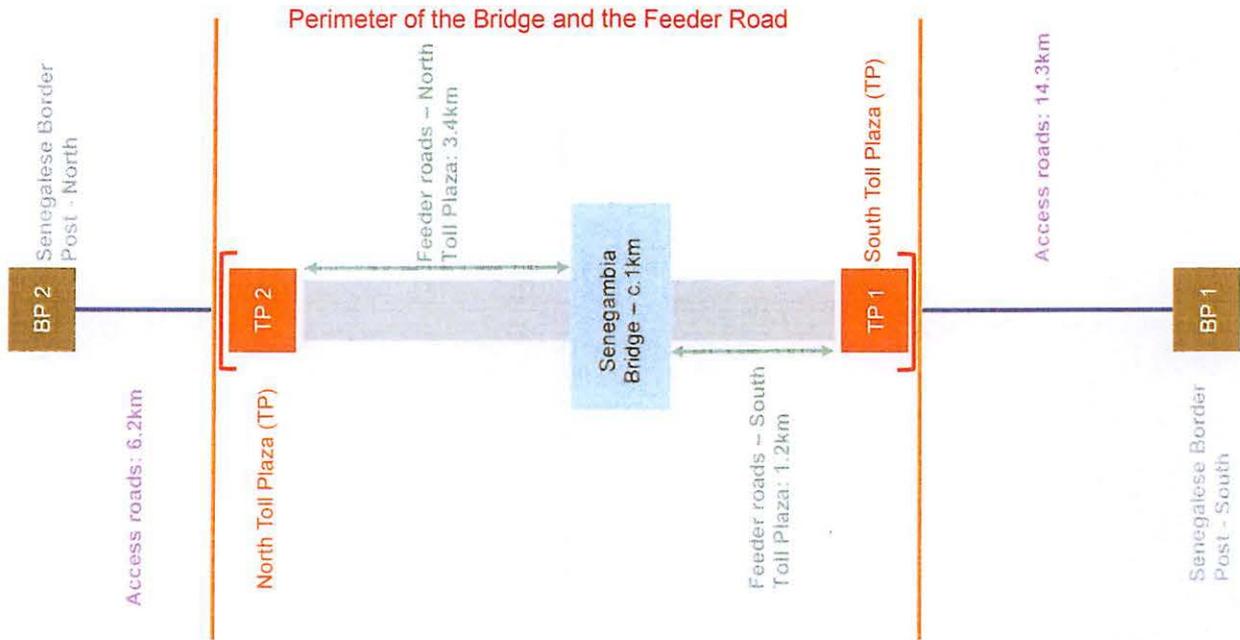
The scope of the Bridge and the Feeder Roads is approximately 5.6km

Schedule 2

Access Roads

Part 1 Description and Overview

The scope of the Bridge and the Feeder Roads is approximately 5.6km



Part 2 Required Standards

The maintenance of the Access Roads will be undertaken in accordance with the UK Design Manual for Roads and Bridges (DMRB).

Schedule 3

Models

Part 1
Base Case Traffic Model

	Total	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26
		2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048
Traffic Forecast																											
Traffic - Vehicles/year																											
Traffic Data based on vehicle re-alignment																											
Base case - Lenders																											
Class 1	3,980,532	112,873	116,146	119,394	122,609	125,877	129,190	132,548	135,959	139,256	142,591	145,775	148,991	152,033	155,088	158,160	161,240	164,322	167,402	170,476	173,548	176,610	179,659	182,708	185,809	188,963	193,309
Class 2	13,672,399	396,907	407,703	417,934	428,119	438,464	448,908	459,482	470,205	480,657	491,219	501,428	511,730	521,614	531,554	541,557	551,597	561,654	571,704	581,745	591,786	601,790	611,765	621,753	631,902	642,225	656,996
Class 3	3,983,624	112,182	116,132	119,473	122,790	126,194	129,644	133,168	136,772	140,135	143,556	146,691	149,869	152,720	155,595	158,497	161,419	164,355	167,302	170,258	173,226	176,197	179,173	182,165	185,197	188,291	192,622
Class 4	2,748,860	74,734	78,100	80,673	83,223	85,880	88,592	91,401	94,310	96,902	99,566	101,850	104,182	106,078	108,000	109,949	111,923	113,920	115,937	117,975	120,035	122,113	124,211	126,335	128,491	130,737	133,744
Class 5	4,097,028	99,983	107,639	112,290	117,135	122,257	127,454	132,868	138,512	143,352	148,355	152,406	156,559	159,630	162,752	165,925	169,149	172,423	175,746	179,118	182,542	186,015	189,539	193,118	196,752	200,449	205,059
Total		796,679	825,720	849,765	873,876	898,672	923,788	949,467	975,758	1,000,301	1,025,267	1,048,150	1,071,331	1,092,076	1,112,989	1,134,068	1,155,328	1,176,674	1,198,090	1,219,572	1,241,137	1,262,724	1,284,346	1,306,080	1,328,151	1,350,664	1,381,730

Traffic Studies Report																											
Base case - Lenders																											
Motor Cycle/ Taxi	6,634,220	188,121	193,577	198,990	204,348	209,794	215,317	220,914	226,598	232,093	237,651	242,958	248,318	253,389	258,481	263,600	268,733	273,669	279,003	284,127	289,247	294,350	299,431	304,513	309,681	314,938	322,181
Small Car	5,191,694	151,797	155,770	159,575	163,340	167,161	171,019	174,925	178,886	182,755	186,665	190,459	194,287	197,976	201,688	205,427	209,182	212,946	216,709	220,471	224,235	227,986	231,729	235,481	239,294	243,170	248,763
Jeep	5,827,016	169,862	174,502	178,764	183,040	187,385	191,762	196,191	200,680	205,065	209,494	213,786	218,116	222,283	226,473	230,690	234,922	239,160	243,394	247,624	251,852	256,064	260,263	264,467	268,736	273,080	279,361
Mini-bus/ Mini Van	3,983,624	112,182	116,132	119,473	122,790	126,194	129,644	133,168	136,772	140,135	143,556	146,691	149,869	152,720	155,595	158,497	161,419	164,355	167,302	170,258	173,226	176,197	179,173	182,165	185,197	188,291	192,622
Buses	883,567	26,807	27,358	27,924	28,475	29,029	29,586	30,148	30,713	31,282	31,855	32,432	33,013	33,598	34,187	34,780	35,377	35,975	36,573	37,170	37,768	38,363	38,957	39,553	40,158	40,773	41,711
Trucks	1,865,293	47,927	50,742	52,749	54,748	56,850	59,006	61,253	63,597	65,619	67,711	69,418	71,168	72,480	73,814	75,169	76,547	77,945	79,364	80,805	82,267	83,749	85,254	86,782	88,333	89,964	92,033
Trucks with trailers	4,097,028	99,983	107,639	112,290	117,135	122,257	127,454	132,868	138,512	143,352	148,355	152,406	156,559	159,630	162,752	165,925	169,149	172,423	175,746	179,118	182,542	186,015	189,539	193,118	196,752	200,449	205,059
Total		796,679	825,720	849,765	873,876	898,672	923,788	949,467	975,758	1,000,301	1,025,267	1,048,150	1,071,331	1,092,076	1,112,989	1,134,068	1,155,328	1,176,674	1,198,090	1,219,572	1,241,137	1,262,724	1,284,346	1,306,080	1,328,151	1,350,664	1,381,730

Vehicle Class	Description
Class 1	Motorcycle, Sidecar
Class 2	Vehicle with an overall height greater than 2 meters and less than 3 meters, with a gross vehicle weight less than or equal to than 3.5 tons
Class 3	Vehicle with an overall height less than or equal to 2 meters, with a gross vehicle weight less than or equal to 3.5 tons
Class 4	2-axle vehicle with either an overall height or equal to 3 meters a GVW exceeding 3.5 tons.
Class 5	<ul style="list-style-type: none"> - Vehicles with 3 or more axles a height of 3 meters or more or a GVW exceeding 3.5 tons - Rolling stock with a total height greater than or equal to 3 meters - Rolling combination with a towing vehicle with a GVW exceeding 3.5 tons

Part 2
Base Case Financial Model

Total		Year 2021	Year 2021	Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	Year 2028	Year 2029	Year 2030	Year 2031	Year 2032	Year 2033	Year 2034	Year 2035	Year 2036	Year 2037	Year 2038	Year 2039	Year 2040	Year 2041	Year 2042	Year 2043	Year 2044	Year 2045	Year 2046	Year 2047	Year 2048	Year 2049	Year 2050		
Unit	Total	Dec-21	Dec-21	Dec-22	Dec-23	Dec-24	Dec-25	Dec-26	Dec-27	Dec-28	Dec-29	Dec-30	Dec-31	Dec-32	Dec-33	Dec-34	Dec-35	Dec-36	Dec-37	Dec-38	Dec-39	Dec-40	Dec-41	Dec-42	Dec-43	Dec-44	Dec-45	Dec-46	Dec-47	Dec-48	Dec-49	Dec-50		
Traffic	Million	0.8	0.8	0.8	0.9	0.9	0.9	0.9	1.0	1.0	1.0	1.0	1.1	1.1	1.1	1.1	1.2	1.2	1.2	1.2	1.2	1.3	1.3	1.3	1.3	1.3	1.3	1.4	1.4					
Income Statement																																		
Total Operating Revenue	US\$m	486.7	-	5.4	9.7	10.2	11.5	11.9	12.4	14.0	14.4	15.0	16.7	17.1	17.6	19.6	20.0	20.5	22.8	23.2	23.8	26.5	26.9	27.7	30.7	31.3	32.1	35.8						
Class 1	US\$m	7.2	-	0.1	0.1	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.4	0.4	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.5	0.5		
Class 2	US\$m	106.5	-	1.3	2.2	2.4	2.6	2.6	2.7	3.1	3.1	3.2	3.6	3.7	3.8	4.2	4.3	4.4	4.9	4.9	5.1	5.6	5.7	5.9	6.3	6.3	6.6	6.8	7.0					
Class 3	US\$m	42.4	-	0.6	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1	1.1		
Class 4	US\$m	42.5	-	0.9	1.7	1.7	1.9	2.0	2.1	2.3	2.4	2.7	2.8	2.9	3.0	3.3	3.3	3.4	3.8	3.8	3.9	4.4	4.5	4.6	5.1	5.2	5.3	5.9						
Class 5	US\$m	248.1	-	2.8	4.8	4.9	5.5	5.8	6.1	6.9	7.1	7.5	8.3	8.6	8.8	9.8	10.0	10.2	11.1	11.6	12.0	13.3	13.4	13.9	15.5	15.8	16.2	18.1						
Weighting station fee	US\$m	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
OSM Cost																																		
Road maintenance - Fixed	US\$m	61.2	-	1.1	1.9	1.9	2.0	2.1	2.1	2.2	2.3	2.3	2.3	2.4	2.4	2.5	2.5	2.6	2.6	2.7	2.8	2.9	2.9	2.9	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	
Total NGA Expense	US\$m	10.4	-	0.2	0.3	0.3	0.3	0.3	0.3	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	
Inventory	US\$m	10.3	-	0.2	0.3	0.3	0.3	0.3	0.3	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
EBITDA	US\$m	413.9	-	3.0	7.2	7.6	8.8	9.3	9.6	11.1	11.4	12.0	13.7	14.0	14.4	16.3	16.9	17.0	19.2	19.6	20.1	22.7	23.0	23.8	26.8	27.1	27.9	31.8						
Tax paid	US\$m	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Working capital	US\$m	0.0	-	2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Transaction - commitment fee	US\$m	(0.9)	-	(0.9)	-	-	-	-	(0.3)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Operational Cashflow	US\$m	413.1	-	4.0	6.5	7.6	8.8	9.3	9.6	10.8	11.1	12.0	13.7	14.0	14.4	16.3	16.9	17.0	19.2	19.6	20.1	22.7	23.0	23.8	26.8	27.1	27.9	31.8						
Payment to the General government	US\$m	(81.0)	-	(15.5)	(20.0)	-	-	-	-	(27.5)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Support	US\$m	(12.0)	-	(4.0)	(5.4)	(2.1)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Maintenance capex (MRA)	US\$m	(8.2)	-	-	-	-	-	-	(1.2)	-	-	-	-	-	(1.0)	-	-	-	-	-	-	(2.0)	-	-	-	-	-	-	-	-	-	-	-	
Capital Expenditure	US\$m	298.9	-	(4.0)	(5.4)	(2.1)	-	-	(1.2)	-	-	-	-	-	(1.0)	-	-	-	-	-	-	(2.0)	-	-	-	-	-	-	-	-	-	-	-	
Free Cashflow	US\$m	114.1	-	(0.0)	1.1	5.5	8.8	9.3	8.4	10.6	11.1	12.0	13.7	14.0	14.4	16.3	16.9	17.0	19.2	19.6	20.1	22.7	23.0	23.8	26.8	27.1	27.9	31.8						
Capital Expenditure	US\$m	10.3	-	4.0	5.4	2.1	-	-	1.2	-	-	-	-	-	1.0	-	-	-	-	-	-	2.0	-	-	-	-	-	-	-	-	-	-	-	
Free Cashflow Available for Debt Serv	US\$m	103.8	-	(4.0)	1.1	5.5	8.8	9.3	8.4	10.6	11.1	12.0	13.7	14.0	14.4	16.3	16.9	17.0	19.2	19.6	20.1	22.7	23.0	23.8	26.8	27.1	27.9	31.8						
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.3)	-	-	-	(1.1)	(0.9)	-	-	-	-	(1.0)	(1.0)	-	-	-	-	-	-	-	-	-	-	-	-	-	
Debt Service	US\$m	(9.5)	-	-	(1.5)	(1.3)	-	-	(1.																									

Schedule 4

Applicable Permits

	Description	Granting authority	Indicative timing
1.	Approval granting the Concessionaire the authority to exercise control of the bridge in accordance with the National Roads Authority Act Cap 70:01.	National Roads Authority and the Minister of Works and Construction	21 days
2.	Development permit prior to any construction or building work pursuant to the Physical Planning and Development Control Act.	Department of Physical Planning and Clearance	14 days
3.	Trade licence to operate a tolling system.	Kerewan Area Council at North Bank Region	7 days
4.	Special investment certificate	Gambia Investment and Export Promotion Agency	30 days
5.	Approval to undertake structural developments.	National Environment Agency	30 days
6.	Consent to such an assignment for the properties to be assigned to the Concessionaire.	Minister of Lands and Local Government	60 days
7.	Entry, residence and work permits for non-Gambian nationals working for the Concessionaire.	Director of the Gambia Immigration Department	7 days
8.	Approval for expatriate quota (for non-Gambian specialists where the foreign national employees constitute 20% of the workforce).	Director of the Gambia Immigration Department	14 days

Schedule 5
Independent Engineer Agreement