



Sierra Leone Roads Authority



Republic of Sierra Leone



China Railway Seventh Group (SL) Co. Ltd.

CONCESSION CONTRACT

FOR

THE FINANCE, DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF THE
WELLINGTON - MASIKA ROAD

BETWEEN

THE GOVERNMENT OF SIERRA LEONE
(Represented by the Ministry of Works, Housing and Infrastructure)

AND

CHINA RAILWAY SEVENTH GROUP (CRSG)

DATE: DECEMBER 2015

CONCESSION AGREEMENT

This Concession Agreement is made on the Dec. 22nd, 2011 between the **GOVERNMENT OF SIERRA LEONE** represented by the **MINISTRY OF WORKS, HOUSING AND INFRASTRUCTURE** and having its principal place of business at New England Ville, Freetown (hereinafter called the Concessionaire) and **CHINA RAILWAY SEVENTH GROUP (SL) CO. LTD** a corporation incorporated under the laws of the Republic of Sierra Leone and having its principal place of business at No. 7 Lumley Beach Highway, Phase II 5&6, West African Sunshine, Aberdeen, Freetown, Sierra Leone (hereinafter called the Concessionee).

WHEREAS:

1. The Government of Sierra Leone received a proposal from the Concessionaire for the rehabilitation and widening of the two-lane Wellington-Masiaka Road to four-lane, construction of a new bridge at Orugu with two lanes and the structural strengthening of the existing bridge under Build, Operate and Transfer (BOT) arrangement;
2. The Ministry of Works, Housing and Infrastructure (MoWH&I) provides oversight to the Sierra Leone Roads Authority (SLRA), a statutory body established by an act of Parliament in 1992, and is responsible for the development, construction, maintenance and control of all roads and related structures;
3. The negotiations for the award of contract were held with the participation of stakeholders from the Sierra Leone Roads Authority, the Ministry of Finance and Economic Development (MoFED), Office of the Chief of Staff, The Public Private Partnership Unit, Ministry of Works, Housing and Infrastructure (MoWH&I), Road Maintenance Fund Administration (RMFA) and other relevant MDAs.

NOW THEREFORE in consideration of the mutual covenants, conditions, representations and Warranties set forth herein the Parties hereto agree as follows-

1. DEFINITIONS AND INTERPRETATION

- 1.1 The headings in this Concession Agreement are for convenience only and shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof.
- 1.2 Words importing the singular only, also include the plural and vice versa where the Context requires.
- 1.3 Any reference to any agreement shall be construed as including a reference to any agreement Amending or substituting that agreement.
- 1.4 If any definition in this Clause 1 contains a substantive provision conferring rights or Imposing obligations on any Party, effect shall be given to such provision as if It were a substantive provision in the body of this Concession Agreement.

1.5 In this Concession Agreement (including the recitals) the following words and expressions shall have the meanings hereby assigned to them when said terms are used with a capitalised first letter:

"Additional Construction Works" means all Construction Works other than those included within the Initial Construction Works;

"Associated Agreements" means the contracts related to the design, construction, financing, Operation and Maintenance of the Wellington-Masiaka Road or otherwise to be entered into by the Concessionee in connection with the Project in the form approved by the Concessionaire;

"Associated Facilities" means all those facilities which do not form part of the Highway which are to be built by the Concessionee so as to satisfy the Concessionaire's Requirements and which are not to be operated or maintained by the Concessionee;

"Base Toll Tariff" means the tariff at the beginning of the toll

"Business Day" means any day other than Sunday or a day which has been declared/gazetted as a public holiday by the State;

"Concession Agreement" means this Concession Agreement between the Concessionaire and the Concessionee;

"Concession Period" means the period specified in Clause 2.3 and any extensions thereof;

"Concession Rights" means all the rights conferred and obligations imposed on the Concessionee pursuant to this Concession Agreement for the purposes of the Project, including, without limitation, the right to design, construct, commission, operate, maintain, repair, charge and collect tolls on the Wellington-Masiaka Road and raise revenues from Developments;

"Concessionee" means China Railway Seventh Group (SL) Co. Ltd, a company established under the laws of the Republic of Sierra Leone and its legal successors and assigns;

"Construction Commencement" means the commencement of any Construction Works as certified by the Independent Engineer;

"Construction Completion" in respect of any Construction Works means the completion of such Construction Works as certified by the issue of the Taking Over Certificate by the Independent Engineer;

"Construction Contracts" means any contracts entered into by the Concessionee in relation to Construction Works;

"Construction Documents" has the meaning ascribed to it in each Construction Contract;

"Construction Works" means the design, construction, upgrade, rehabilitation and periodic maintenance works required to be undertaken by the Concessionee so as

to meet its obligations under this Concession Agreement including, without limitation, the Initial Construction Works, the Additional Construction Works and the construction of Associated Facilities, but excluding Operation and Maintenance;

"Contractor" means the party or parties designated as Contractor pursuant to any Construction Contract;

"Contract Price" means:-

- (a) in the case of the Construction Works, the contract price as specified in the Construction Works Contract; and
- (b) in the case of any Additional Construction Works, the contract price as specified in the relevant Construction Contract for such works;

"Correction Period" means the period specified for the rectification of any non-conformance with the acceptance criteria specified in;

"Day" or "day" means a calendar day;

"Delivery Date(s)" means in relation to each Highway Section the date(s) upon which the Concessionaire delivers that Highway Section and the Rights of Way relating thereto to the Concessionee;

"Design and Construction Contract" means the terms specified in the contract;

"Detailed Design" means the detailed design for the Construction Works prepared or procured by the Concessionee and reviewed and approved in accordance with the procedure set out in the Engineering Requirements;

"Detailed Design Procedure" means the procedure for approval of the Detailed Design as specified in the Engineering Requirements;

"Development Period" means the period between the date of this Concession Contract and the Effective Date;

"Effective Date" means the day after the date when the conditions specified in Clause 24.2 have been met or waived;

"Engineering Requirements" means the requirements (including without limitation, the standards) specified in this Concession Agreement;

"Final Maintenance Agreement" means the Agreement described in Clause 11.7;

"Financial Closing" means the signing of (i) the Loan Agreements and the satisfaction or waiver of the conditions precedent therein in respect of the initial drawdown to be made thereunder;

"Financial Model" means the Financial Base Case for the Project as prepared for, updated and approved by the Lenders from time to time;

"Force Majeure" shall have the meaning set forth in Clause 18.1;

"Full Concession Period" means, at any date, the Concession Period (or the remaining balance thereof) assuming that it endures for 25 years from the Effective Date plus the aggregate of any extension periods previously awarded under the terms of this Concession Agreement;

"Gross Toll Revenues" means the gross toll revenues (net of taxes and collection expenses) received by the Concessionee during the relevant period;

"Highway" means Wellington-Masiaka Road, together with all works, structures, facilities, plant and equipment (including all relevant software) which are integral to, or necessary for, the operation of the Highway, including, without limitation, toll facilities, road furniture and other structures and infrastructure for highway service areas to be built pursuant to this Concession Contract (but excluding, for the avoidance of doubt, Associated Facilities or Developments);

"Highway Sections" means the sections of the Highway described above;

"Concessionaire" means the Ministry of Works, Housing and infrastructure.

"Concessionaire's Requirements" means the description of the scope, standards, design and performance criteria required by the Concessionaire in terms of this Concession Agreement;

"Independent Engineer" means the consulting engineer(s) appointed by the Concessionaire and whose duties are set forth in the Independent Engineer's Agreement, this Concession Contract, the Construction contracts and the Operation and Maintenance Contracts;

"Independent Engineer's Agreement" means the contract(s) to be entered into by the Concessionaire, and the Independent Engineer for the purpose of this Concession Agreement;

"Construction Period" means the total period of Four(4) years, in which the Highway to be constructed by the Concessionee, commencing on the Effective Date as the same may be extended pursuant to the terms of this Concession Agreement;

"Construction Programme" means the programme for the Initial Construction Works;

"Construction Works" means those design and construction works that are specified to be carried out in the Initial Construction Period;

"Construction Works Contract" means the contract to be entered into on or before the date of this Concession Agreement between the Concessionee and the Initial Contractor for the design and construction of the Initial Construction Works;

"Operation" means the operation of the Highway as described in the Engineering Requirements;

"Operation and Maintenance" means all Operation, Routine and Periodic Maintenance activities that are necessary for the proper operation and maintenance of the Highway in accordance with the requirements of this Concession Agreement, and

"Operate and Maintain" shall have a corresponding meaning;

"Operation and Maintenance Contracts" means the agreements entered into by the Concessionaire and the O&M Contractors, for the Operation and Maintenance of the Highway;

"Operation and Maintenance Manuals" shall have the meaning ascribed to them

in the Engineering Requirements;

"O&M Contractors" means the counterparties to the Concessionee in the Operation and Maintenance Contracts;

"Party" means the Concessionaire or the Concessionee, as the case may be;

"Parties" means, collectively, the Concessionaire and the Concessionee;

"Performance Certificate" means the Performance Certificate to be issued by the Independent Engineer under Clause 9.2;

"Periodic Maintenance" means that maintenance work which is pre-planned over periods exceeding 6 months and for which a programme and design has to be submitted for approval.

"Preliminary Design" means the preliminary design carried out by the Concessionee;

"Project" means the design, construction, commissioning, financing, rehabilitation, upgrading, operation and maintenance of the Highway, the design, construction rehabilitation and financing of the Associated Facilities and the undertaking of any Developments, all as envisaged or required by this Concession Contract;

"Project Documentation" means (i) the records, plans, specifications, engineering documents, soil data and analysis, systems, procedures, software, property acquisition documents, insurance policies, diaries, utility relocation plans, record maps, other reports and samples relating to the Project and in the possession of the Concessionaire and (ii) the licences, permits, contracts, warranties and contract rights of the Concessionaire relating to the Project;

"Refinancing" means any waiver, variation, amendment, supplement, novation or replacement of the Loan Agreements after the date of this Concession Contract which, whether independently or in combination with any connected arrangement has the effect of changing:

- (a) the margin or the effective rate of interest in respect of the Lenders' Liabilities;
- (b) the date for any payment or repayment of principal or interest in respect of the Lender Liabilities;
- (c) the Lender Liabilities outstanding at any time or the amount;
- (d) the balance required to be standing to the credit of the restricted accounts pursuant to the Loan Agreements;
- (e) the dividend cover ratios referred to in the Loan Agreements; and/or
- (f) the IRR;

"Rehabilitation" means the extensive repairs and/or reworking of structural layers, the laying of overlays in asphalt or other materials (Max. 50mm thickness) on surfaced roads, extensive repairs and/or extensions on drainage structures and other appurtenant works;

"Relevant Authority" means any ministry, department, provincial or local agency, authority or body of the State and any other public authority, body, entity or Person having jurisdiction under the laws of the State over any matter which may affect the Concessionaire or the Project;

"Rights of Way" means rights of passage over or under, and of access and egress to and from, the Site and any part or parts thereof, or where applicable land additional to the Site, without undue interference by any third party, for the purpose of the Construction Works and Operation and Maintenance of the Highway;

"Road Reserve" means the entire area reserved for the Highway and any Associated Facilities to be constructed by the Concessionaire, as proclaimed in accordance with the Act or any other relevant legislation;

"Routine Maintenance" has the meaning ascribed to it in the Engineering Requirements;

"Site" means the land and Rights of Way specified in together with such other land and rights of way as the Concessionaire is obliged to make available to the Concessionee under this Concession Agreement;

"Local Currency" means the lawful currency of the Republic of Sierra Leone from time to time;

"State" means the Government of Sierra Leone, acting directly or through its lawfully designated representatives;

"Taking Over Certificate" means Taking Over Certificate to be issued by the Independent Engineer pursuant to Clause 9.2;

"Tax" means any present or future income, Concession, excise, stamp or other tax, fee, duty or other levy, impost or charge imposed by the State (but not banking funds transfer taxes or duties of any kind);

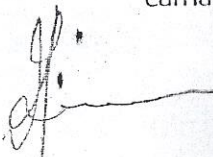
"Time for Completion" means in relation to the Construction Works the date(s) specified for the completion of the relevant Construction Works in the Construction Contract and in relation to the Additional Construction Works, the date(s) specified for completion of the relevant Construction Works in Clause 13.1 or 13.2 (as appropriate) as such dates may be extended in accordance with this Concession Agreement in the case of either the Initial Construction Works or the Additional Construction Works;

"Tolling Date" means with respect to Highway Sections identified in Clause 10, the date or dates from which the Concessionee is entitled to charge and collect tolls at the relevant toll plazas in respect of such Highway Sections pursuant to Clause 10;

"Toll Tariff" has the meaning ascribed to it in clause 10

"Unknown Utilities" means existing Utilities, the location of which could not reasonably have been foreseen and which are either charted with unknown positions or uncharted;

"Upgrade Works" means capacity improvements to the Highway such as the addition of lanes (including climbing lanes) and/or shoulders to single and/or dual carriageways, major alignment relocation, upgrade of single carriageway roads to



dual carriageway or multiple lane facilities, improvements to the capacity of bridges, toll plazas and other structures;

"Utilities" means all facilities serving the population such as water, power, electricity, lighting, gas and telecommunications;

- 1.7 When any number of Days is prescribed in this Concession Agreement, the same shall be calculated by excluding the first day and including the last day unless the last day is not a Business Day. Where the last day is not a Business Day, the time shall be calculated by excluding the first day, excluding such non Business Day and including the next Business Day.

2. CONCESSION RIGHTS AND OBLIGATIONS

2.1 Concessionee Obligations

- 2.1.1 The Concessionee will undertake the Project at its own cost and risk in accordance with the provisions of this Concession Agreement. Neither the Concessionaire nor any Relevant Authority shall provide any guarantee or support to the Concessionee except as otherwise specifically provided herein or as provided in law. This Concession Agreement shall not be deemed to grant the Concessionee any right or impose any obligations on the Concessionaire or any Relevant Authority except as specifically stated in this Concession Agreement,
- 2.1.2 No instructions or approvals given by the Concessionaire in accordance with the law and the provisions of this Concession Contract will affect the Concessionee's responsibility to undertake the Project. Notwithstanding that this Concession Agreement permits or requires the Concessionee to engage third parties to perform part of the Project, such engagements shall not release the Concessionee from any of its obligations and responsibilities to the Concessionaire hereunder, and the Concessionee shall be fully responsible to the Concessionaire for the acts and omissions of such third parties in relation to the Project.

2.2 Exclusive Grant of Concession Rights

Subject to the terms of this Concession Agreement, the Concession Rights are granted exclusively to the Concessionee from the date of this Concession Agreement until the termination or expiry of this Concession Agreement in accordance with the terms of this Concession Agreement.

2.3 Term of Concession Period

The Concession Period shall be for a period of Twenty-five (25) years from the Effective Date, subject to extension and/or termination in accordance with this Concession Contract. This period shall be in addition to the period fixed for initial construction works which shall not exceed 15 (fifteen) months after the Effective date or as may be extended. The period shall start counting from the first day the Concessionee begins to collect revenue from the toll.

2.4 Concession Agreement Legally Binding

Without prejudice to the Resolutive Conditions to be satisfied prior to the Effective Date, each Party hereto hereby represents and warrants that this Concession Contract is legally valid and binding upon itself.

2.5 Payments

- 2.5.1 Save as expressly provided in this Concession Agreement and subject to Clause 2.5.2 the Government of the Republic of Sierra Leone (GOSL) shall, during the repayment of the loan and interest by the Concessionee to their Lenders, receive from the Concessionee 5% (Five Percent) of the gross incoming toll revenue annually and the remaining 95% (Ninety-Five percent) shall be used for the purpose of loan and interest repayment. After the completion of loan and interest repayment, the Concessionee shall pay to the Concessionaire on a yearly basis 10% of the gross incoming toll revenue and Concessionee shall be entitled to the remaining 90% (Ninety percent).
- 2.5.2 The Concessionee shall not make the payments required in Clause 2.5.1 above to the Government of Sierra Leone during the Periods/years referred to in the Construction Works Contract for the complete overlay of the Highway. The Concessionee shall use, during those periods, the toll revenue collected for the complete overlay of the Highway. Any revenues left over, after the said complete overlay of the Highway, shall be shared in the manner agreed above.
- 2.5.3 Equipment, Plant, Civil Material (Bitumen, Cement, Reinforcing steel and Fuel), Supplies and Services imported or bought locally by the concessionaire used for this Project, Operation and maintenance shall be exempt from all local and import taxes, GST, Duties, levies (except the fuel levy) and other charges; The Concessionee shall be exempted from corporation tax for 10(ten) years as stated in the Finance Act (2013); The Concessionee shall pay the withholding taxes, PAYE for Local staff and GST for Goods purchased locally;
- 2.5.4 For the avoidance of any doubt, neither the Concessionaire nor any Relevant Authority shall be liable for any payments except as expressly specified in this Concession Agreement or in any applicable law.

3. CONCESSIONEE COVENANTS

3.1 Registration

- 3.1.1 The Concessionee is incorporated in the Republic of Sierra Leone and shall remain validly registered for the entire Concession Period.
- 3.1.2 The Concessionee shall not amend, restate, supplement or otherwise modify its Certificate of Incorporation, Memorandum of Association or Articles of Association unless otherwise approved by the Concessionaire in writing.

3.2 Compliance with Laws, Regulations and Standards

The Concessionee shall comply with all laws, regulations and standards having the force of law of the State during the Development Period and the Concession Period.

3.3 Consents and Approvals

The Concessionee shall:

- 3.3.1 comply with the Environmental Approval; and
- 3.3.2 obtain and comply with all other necessary permits and approvals in accordance with any applicable laws and regulations for the implementation of the Project.

3.4 Compliance with Requirements

- 3.4.1 The Concessionee shall comply and shall ensure compliance by its sub-contractors with this Concession Agreement.
- 3.4.2 The Concessionee warrants that it shall comply with, and the Project shall be carried out in conformity with, the Concessionaire's Requirements (including without limitation to the standards specified therein) and using equipment and materials which are of suitable quality for the purpose and uses intended and free of defects and deficiencies. All such work shall be completed to the satisfaction of the Independent Engineer.

3.5 The Concessionee to Make Documents Available to the Concessionaire

As hereinafter provided in this Clause 3.5, the Concessionee shall, upon the written request of the Concessionaire and at no cost to the Concessionaire, make available at all times documents which are or were acquired or brought into existence by the Concessionee or supplied to the Concessionee by other parties to the Associated Agreements for the purposes of the Project. The Concessionee shall not be obliged to disclose any document in respect of which the Concessionee can claim legal privilege against the Concessionaire.

Documents in respect of which the Concessionee can claim legal privilege against third parties shall be held in confidence by the Concessionaire in terms of Clause 3.6.5 as if the Concessionaire was bound by that Clause provided always that this restriction shall not prevent any disclosure by the Concessionaire which is required by law or to the State.

3.6 Copyright and Confidentiality

- 3.6.1 The Concessionee shall procure to the extent legally possible any software, programmes and documentation used by an O&M Contractor in connection with the Project and which are required for the continuing performance of the functions performed by the relevant O&M Contractor (other than software or software licences which are freely commercially available and are not transferable in terms of the standard licences by which the right to use the software was acquired) shall be provided to the Concessionee by the relevant O&M Contractor upon termination or expiry of the relevant Operation and Maintenance Contract and that the Concessionee shall be granted a perpetual non-exclusive, royalty-free licence to use the same for the Operation and Maintenance of the Highway which licence shall be transferable to a Substituted Entity or to a third party or the Concessionaire for continuing the Operation and Maintenance of the Highway. The Concessionee shall, on termination of this Concession Agreement or expiry of the Concession Period, whichever is the earlier, grant to the Concessionaire a transferable perpetual non-exclusive royalty free licence to use such software for the Operation and Maintenance of the Highway. ()
- 3.6.2 Copyright in the Concessionaire's Requirements and other documents issued by the Concessionaire of which the Concessionee can claim legal privilege against the Concessionaire) shall be the exclusive property of the Concessionaire. The Concessionee may at its cost (and shall allow other parties to Associated Agreements at their cost to) copy, use and communicate any such document for the purposes of the respective Associated Agreements. The Concessionee shall not (and shall ensure that other parties to Associated

Agreements shall not), without the Concessionaire's consent, use, copy or communicate to a third party such documents, except as strictly necessary for the purposes of the Associated Agreements or as permitted by Clause 3.6.5.

3.6.3

The Concessionee agrees, upon request by the Concessionaire, to make available to the Concessionaire, or to any Relevant Agency designated by the Concessionaire in writing, at no cost to the Concessionaire or such Relevant Authority, for their use in relation to the Construction Works, financing and Operation and Maintenance of the Highway such copies of all drawings, data, books, reports, documents, software, source codes and manuals and other information as are required. To the extent that such source codes are not owned by the Concessionee, the Concessionee will ensure that such source codes either be licensed to the Concessionaire or, if not capable of being licensed, be deposited with a recognised escrow agent and available to be accessed by the Concessionaire on the terms of the applicable escrow agreement as approved by the Concessionaire. This requirement excludes software or software licences which are freely commercially available and are not transferable in terms of the standard licences by which the right to use the software was acquired ("Proprietary Materials") which the Concessionee and/or any Contractor or O&M.

Contractor has been using and which are necessary for continuing operation of the Construction Works, financing and Operation and Maintenance of the Highway as the Concessionaire may reasonably require in the performance of its functions under this Concession Contract or in the performance of its or the Relevant Authority's statutory duties. The Concessionee further agrees, upon expiry of the Concession Period or termination of this Concession Agreement, to grant

or procure the grant to the Concessionaire or, if this Concession Agreement is terminated and a Substituted Entity is appointed in terms of Clause 20, to such Substituted Entity of a transferable perpetual non-exclusive royalty free licence to use the Proprietary Materials (to the extent owned by the Concessionee, Contractor or O&M Contractor). The Concessionee shall procure that the Concessionaire or, if applicable, any Substituted Entity (at the cost of the Concessionaire or the Substituted Entity, as the case may be, in respect of any reasonable licence fees payable to any licensor) is legally entitled to use such Proprietary Materials as are used but not owned by the Concessionee, Contractor or any O&M Contractor and which are necessary for continuing Construction Works and the continued Operation and Maintenance of the Highway.

The Concessionee shall indemnify the Concessionaire against and hold the Concessionaire harmless from any liability or cost which is suffered or incurred by the Concessionaire as a result of the infringement of any third party's rights arising from the proper use by the Concessionaire of the Proprietary Materials in relation to the Project and/or the Highway.

3.6.4

The Concessionee shall not (and shall ensure that other parties to the Associated Agreements shall not), without the prior written approval of the Concessionaire (which approval shall not be unreasonably withheld or delayed), take or authorize the taking of photographs of the Highway for use in any publicity or advertising or publish alone or in conjunction with any other Person, any articles, photographs or other illustrations relating to the Project or any part thereof nor shall it impart to any publication, journal or newspaper or any radio or television programme any information regarding the Highway other than information that is or becomes in the public domain (other than through the default of the Concessionee or other parties, to the Associated Agreements) and such information or documentation that is required by law to be delivered to any Relevant Authority,

stock exchange, the Concessionaire or any other Person

- 3.6.5 The Concessionee shall not (and shall ensure that other parties to the Associated Agreements shall not) during its engagement hereunder (save in the course of its duties or as contemplated under this Concession Agreement) or at any time after the expiry or termination of this Concession Agreement for any reason disclose to any person (other than to its professional advisers, actual or prospective Lenders and their professional advisers, and actual or prospective subscribers for or purchasers of Equity and their professional advisers or a proposed Substituted Entity, in each case subject to obtaining similar confidentiality undertakings in favour of the Concessionaire to those contained in this Concession Agreement) or otherwise make use of any confidential information including, without limitation, information relating to methods and techniques of construction for the Highway or the Project, financial information relating to the Highway, the Project, the Concessionaire or the Concessionee and the contents of any documents, including any legal agreements, prepared by or on behalf of the Concessionee or to which the Concessionee is a party which it has or may in the course of its engagement hereunder become possessed of relating to the Concessionee, the Highway or the Project or otherwise, without the prior written approval of the Concessionaire save for such information or documentation that is or becomes in the public domain (other than through the default of the Concessionee or other parties to the

Associated Agreements) and such information or documentation that is required by law to be delivered to any Person. Nothing in this Clause shall preclude the Concessionee from using such information and documents in enforcing its rights against the Concessionaire or any other person.

- 3.6.6 Unless otherwise agreed in writing by the Concessionaire, the Concessionee and other parties to the Associated Agreements shall have no interest in nor receive remuneration in connection with the Highway except as provided for in this Concession Agreement or the Associated Agreements. Subject to the proper enforcement of rights under the Associated Agreements, the Concessionee shall not (and shall take all reasonable steps to ensure that other parties, excluding the Lenders acting in their capacity as Lenders, to the Associated Agreements shall not) engage in any activity which might conflict with the interests of the Concessionaire under this Concession Contract or the Associated Agreements, unless such activity is carried out pursuant to the enforcement of its rights hereunder or there under.

3.7 Transfer of Highway and Developments

At the end of the Concession Period or at such earlier time as may be provided herein, the Concessionee shall hand over the Highway and Associated Facilities to the Concessionaire free of charges, liens, claims or encumbrances of any kind whatsoever, free of any liabilities and in good condition in accordance with the standards set out in the Concessionaire's Requirements, and shall not, other than as provided for in this Concession Contract, be entitled to payment of any monies in connection therewith. The rights held by the Concessionee relating to the Developments shall be transferred to the Concessionaire free of charges, liens, claims or encumbrances of any kind whatsoever, and free of any liabilities on termination of the Concession Period. The Concessionee shall ensure that from the date which is 12 (twelve) months prior to the expiry of the Concession Period and for the remainder of such period, the Highway shall be in the condition that will meet the standards required at the end of the Concession Period as set out in the Engineering Requirements. The Independent Engineer shall certify whether the

Concessionee has discharged its obligations under this Clause 3.7.

3.8 Contracts, Employment, Letting, Training

3.8.1 The Concessionee shall:-

- (a) enter into such contracts as are necessary to ensure the timely and proper completion of the Preliminary Design, Detailed Design, Construction Works, financing, Operation and Maintenance of the Highway, and such future design and construction as may be necessary to meet the Concessionee obligations under this Concessionee Contract;
- (b) not enter into any contract or arrangement referred to in sub-paragraph (a) above unless the form of such contract or arrangement has been approved by the Concessionaire, provided that the Concessionee is not required to obtain such approval in relation to any such contract or arrangement which is of an immaterial nature. For the purposes of this clause a contract or arrangement is immaterial if the contract or arrangement is not material in financial terms or not material to the performance of the Concessionee obligations hereunder; and
- (c) not enter into any other material contract or arrangement unless the form of such contract or arrangement has been approved by the Concessionaire.

3.8.2 The Concessionee shall ensure that the Contractors perform the Construction Works in accordance with the terms of the relevant Construction Contracts. The terms of the Initial Construction Works Contract shall serve as the basis of any subsequent Construction Contract to be entered into by the Concessionee.

3.8.3 The Concessionee shall ensure that the O&M Contractors perform their functions relating to Operation and Maintenance of the Highway in accordance with the relevant Operation and Maintenance Contracts. The terms of the Initial Operations and Maintenance Contract shall serve as the basis of any subsequent Operations and Maintenance Contract to be entered into by the Concessionee.

3.8.4 The Concessionee shall employ, in full compliance with the Local Content Policy of Sierra Leone and other statutory and labour rules and regulations, citizens of the Republic of Sierra Leone. The Concessionee shall ensure skills transfer to the Sierra Leonean citizens, so employed, to operate and maintain all equipment necessary for the proper functioning of the Highway.

3.9 Approvals

3.9.1 The Concessionee warrants and shall ensure that any official decision, determination, instruction, inspection, examination, testing, consent, approval, expression of satisfaction, acceptance, agreement, exercise of discretion (whether sole or otherwise) or similar act by the Concessionaire or the Independent Engineer in respect of this Concession Agreement, the Construction Contracts, the Operation and Maintenance Contracts or other Associated Agreements shall be so applied for or requested promptly.

3.9.2 Unless expressly provided otherwise in this Agreement, the Concessionaire

shall not unreasonably withhold or delay the giving of any consent, approval or expression of satisfaction referred to in Clause 3.9.1 and shall exercise its rights referred to in that Clause reasonably and fairly. If no reply or approval is received within 7 (seven) days of notification, then it will be assumed that the request has been approved by the Concessionaire.

4. CONCESSIONAIRE'S CONTRIBUTION

Except as otherwise expressly provided in this Concession Agreement, the contribution of the Concessionaire shall be limited to the granting of the Concession Rights upon the terms and conditions set out herein and the Concessionee shall not be entitled to receive, by virtue of this Concession Contract, any financial assistance or payment, including, without limitation, any grants, guarantees, incentives or subsidies from the State, the Concessionaire or any Relevant Authority. The Concessionaire's contribution is subject to the fulfilment or waiver of all the requirements set out in Clause 24.

5. CONCESSIONAIRE'S UNDERTAKINGS

5.1 Concessionaire Assistance

Except as otherwise provided in this Concession Agreement, the Concessionaire shall:

5.1.1 give reasonable assistance to the Concessionee in its dealings with the Relevant Authorities in connection with implementing the Project in accordance with the terms and conditions set forth herein;

5.1.2 to ensure that the Concessionee obtains those permits and approvals necessary for the Construction Works and Operation and Maintenance of the Highway.

5.2 Traffic Reduction

The Concessionee shall solely bear the risk for any reduction in traffic using the Highway, except as provided for in Clauses 17, 18 or 19.

5.3 Liability/Disclaimer

Except as expressly stated in this Agreement, the Parties shall bear liability to the other Party arising out of any review of and/or comments on any document submitted to either Party under this Concession Agreement.

5.4 Concessionaire's Competence

5.4.1 The Concessionaire hereby represents and warrants that the Concessionaire has been duly empowered and authorised to implement the Project and to enter into and perform its obligations under this Concession Agreement.

5.4.2 All decisions, determinations, instructions, inspections, examinations, tests, consents, approvals, certifications, expressions of satisfaction, acceptances, agreements, exercises of discretion (whether sole or otherwise), nominations or similar acts of the Concessionaire shall be given, made and done in writing, and if given, made and done by the Director General (or such other person or persons as he or she may notify to the Concessionee for such purpose from at a regular time) may be relied upon by the Concessionee and the Lenders.

- 5.4.3 The Concessionaire shall establish a Project Implementation Unit (PIU) and also appoint a Project Manager who shall ensure effective supervision, quality control and cost effectiveness during the implementation of this Concession Agreement.

5.5 Entering onto Land by the Concessionee

- 5.5.1 The Concessionee and its staff and their authorised agents and contractors, shall be duly authorised in writing by the Concessionaire to enter upon such land as may be necessary for any construction, investigation, survey or other act necessary for the purposes of the Project.
- 5.5.2 Where the Concessionee enters land pursuant to Clause 5.5.1, the Concessionee shall promptly notify the owner of the relevant land prior to such entry and inform such person of the reason for the Concessionee presence. The Concessionaire shall pay for such land and cause the Concessionee to reasonably recover the land before handing over to the owner.

6. INDEPENDENT ENGINEER OR ADVISOR

6.1 Appointment of the Independent Engineer or Advisor

The Concessionaire shall ensure that an Independent Engineer or Advisor is appointed at all times under Quality and Cost Based Selection (QCBS) method during the Concession Period. In that respect, the Concessionaire and the Concessionee agree to enter into the Independent Engineer's Agreement on or prior to the Effective Date. It is acknowledged that the identity of the Independent Engineer may be changed from time to time by agreement between the Parties. The Independent Engineer will report directly to the Concessionaire and the Concessionee, and the costs of the Independent Engineer will be paid by the Concessionaire and the Concessionee, in the manner set forth in the Independent Engineer's Agreement.

6.2 Performance of the Duties of the Independent Engineer or Advisor

- 6.2.1 The Independent Engineer or Advisor shall be required to perform the duties set forth herein, in the Independent Engineer's or Advisor's Agreement, in the Construction Contracts and in the Operation and Maintenance Contracts. The Parties shall require the Independent Engineer or Advisor to act impartially and within the terms of the relevant contract when exercising its discretion and discharging its professional duty.
- 6.2.2 The Concessionaire and the Concessionee shall be entitled to consult with the Independent Engineer or Advisor on any matter relating to the Project and may request that the Independent Engineer or Advisor deliver and issue an opinion, instruction, certificate, valuation or other determination, as applicable with respect to all technical matters relating to the Project. As provided in Clause 6.2.6, the Parties shall comply with such decisions of the Independent Engineer.
- 6.2.3 The scope of services of the Independent Engineer shall include but not be limited to review, inspection, testing and certification in accordance with the Independent Engineer's Agreement of each Contractor's work to ensure proper performance and completion of the Preliminary Design, Detailed Design and the Construction Works in accordance with the terms of this Concession Agreement and the relevant Construction Contracts. The scope of services of the Independent Engineer shall

also include but not be limited to review, inspection and testing in accordance with the Independent Engineer's Agreement of the Concessionee work to ensure the Operation and Maintenance is carried out in accordance with the terms of this Concession Agreement and the relevant Operation and Maintenance Contract.

- 6.2.4 Wherever under this Concession Agreement a determination is required to be made by the Independent Engineer with respect to any request of the Concessionee for extension of time, the Independent Engineer shall make such determination save that, in the event of any request of the Concessionee for extension of the Concession Period, the Concessionaire shall make such determination taking into account any recommendation by the Independent Engineer.
- 6.2.5 Whenever under this Concession Agreement a determination is required to be made with respect to any request of the Concessionee for compensation for monetary relief and/or increased costs, the Independent Engineer shall, subject to Clause 21.4, make such determination.
- 6.2.6 Nothing in this Clause shall alter the rights and obligations of the Parties under this Concession Agreement nor prevent the Parties from challenging any opinion, instruction, determination, certification or evaluation of the Independent Engineer in accordance with Clause 21.2, provided that the Parties shall comply with such decisions by the Independent Engineer until and unless otherwise determined pursuant to Clause 21.
- 6.2.7 If any determination which is required to be made by the Independent Engineer in terms of this Concession Contract involves the evaluation or assessment of any matter outside the Independent Engineer's field of expertise as Independent Engineer, the Independent Engineer shall insofar as practicable rely on independent expert advice in making such evaluation or assessment.
- 6.2.8 If the Concessionaire or the Concessionee questions any determination or instruction of an assistant of the Independent Engineer, the Concessionaire or the Concessionee may within 7 (seven) Business Days of receipt of such determination or instruction, refer the matter to the Independent Engineer, who shall confirm, reverse or vary such determination or instruction.
- 6.2.9 The Concessionee shall ensure that the Independent Engineer is provided with copies of all information received from any Contractor or O&M Contractor in relation to the Project, insofar as such information relates to the functions of the Independent Engineer.

7. ACQUISITION AND DELIVERY OF SITE

7.1 Site Acquisition

Subject to the Concessionee complying with the provisions of Clause 24.2, the Concessionaire will have possession of each part of the Site identified, including Rights-of-Way relating to such part of the Site at the date for delivery of that part of the Site to the Concessionee within 7 days after receipt of Concessionee request.

7.2 Clearance of Site

- 7.2.1 The Concessionee shall be responsible, (subject to Clause 7.2), for:

- (a) the clearance of the Site,
- (b) with the prior approval of the Concessionaire, any diversions to and re-routing of roads not forming part of the Highway; and
- (c) with the prior approval of the Concessionaire, the clearance, relocation and diversion of all Utilities at the Site which are required to implement the Project,

from the date on which possession of the Site or that portion of the Site is delivered to the Concessionee.

- 7.2.2 The Concessionee shall make the necessary applications to the Relevant Authorities for any and all approvals or authorisations required for the clearance of the Site and for the relocation and diversion of Utilities and where the Concessionee is unable within a reasonable period to obtain any such approval or authorisation the Concessionaire shall use its reasonable efforts to assist in the obtaining of such approval or authorisation.

7.3 Assistance

Each Party shall use reasonable endeavours in assisting the other Party in complying with its obligations under this Clause 7.

7.4 Archaeological Matters and National Monuments

- 7.4.1 All fossils, coins, articles of value or antiquity, and structures and other remains or things of geological or archaeological interest or burial sites discovered on the Site shall (as between the Parties) be the property of the Government of Sierra Leone. The Concessionee shall take reasonable precautions to prevent its staff, labour or other Persons from removing or damaging any such article or thing. The Concessionee shall, immediately upon discovery of such article or thing, advise the Concessionaire and the Independent Engineer, who shall issue instructions for dealing with it.

- 7.4.3 Subject to complying with its obligations under Clause 7.5.1, the Concessionee shall be required to minimise and mitigate, and to ensure that its sub-contractors minimise and mitigate, to the maximum extent reasonably possible the consequences of any such discovery as is referred to in this Clause.

7.5 Physical Conditions

- 7.5.1 Subject as otherwise expressly provided in this Concession Contract, the Concessionee shall bear all risks and costs with regard to:

- (a) any weather conditions, including, without limitation, floods;
- (b) any pollution, contamination or other damage to the Site or the Highway or any defect in the Highway (in any such case whenever caused and whether or not known to the Concessionaire or any Relevant Authority);
- (c) the clearance of physical conditions or obstructions on the Site (both above ground and subsurface and whether artificial or not) whether foreseen or unforeseen which are encountered during Construction Works or otherwise.

- 7.5.2 The Concessionee shall be responsible during the Concession Period and thereafter

against any costs, loss or expense incurred by the Concessionaire arising out of or in connection with:

- (a) the conservation of the Environment of the Site and the area impacted by the Project during the Concession Period;
- (b) rectifying any pollution, contamination or damage on the Site which occurs prior to the end of the Concession Period; or
- (c) any cost, loss or expense resulting from claims by third parties for damage to the Environment which has occurred, or has resulted from any act or omission, prior to the end of the Concession Period..

7.6 Protester Action

Where at any time following delivery of vacant possession and use of the Site to the Concessionee pursuant to Clause 7.2, the Highway or any part thereof so delivered, is subjected to protester action (for the purpose of this Clause 7.6 "protestor action" means action of any nature by a person or persons protesting against the implementation of all or any part of the Project including without limitation the undertaking of any Construction Works or the imposition of or increase in tolls on the Highway but excludes any industrial action by employees of the Concessionee or of any of its sub-contractors) which has not resulted or arisen from any default or negligence on the part of the Concessionee or any of its sub-contractors:

7.6.1 the Concessionaire shall take all reasonable steps to minimize and mitigate the effect of such protester action on the performance of the Concessionee obligations under this Concession Agreement;

7.6.2 where such protester action continues for a period in excess of 7 (seven) days, the Concessionee shall be entitled to delay the Construction Commencement of any Initial Construction Works affected and/or to such extension of the Time for Completion of any Construction Works affected by such protester action as the Independent Engineer determines is appropriate; and

7.6.3 subject as provided in Clause 7.6.1, the Concessionee shall be excused from penalties under Clause 11 in respect of the performance of its Operation and Maintenance obligations to the extent that such performance is prevented by such protester action.

The Concessionee shall not be entitled to any monetary compensation from the Concessionaire nor (except as specified in Clauses 7.6.1 to 7.6.3) to any other relief as a result of or in consequence of any such protester action.

7.7 Damage to or Destruction of the Highway

7.7.1 Subject to the provisions of this Concession Agreement including, without limitation, Clause 18, upon delivery of vacant possession and use of the Site or any portion thereof to the Concessionee pursuant to Clause 7.2, the Highway or such portion thereof shall be at the sole risk of and be under the care, custody and control of the Concessionee and should the Highway or any portion thereof be damaged or destroyed

at any time during the Concession Period, the Concessionee shall, within a reasonable period of time, at the maintenance cost and expense of the Concessionee, repair, rebuild or replace the same so that after such repairing, rebuilding or replacing, the Highway shall be substantially the same as prior to such damage or destruction.

- 7.7.2 The Concessionaire shall bear the cost of rectifying any damage to the Highway arising from the actions of its officers, employees, servants, agents or other sub-contractors except to the extent that the cost of rectifying such damage is or should have been recoverable under the insurance policies to be maintained by the Concessionee pursuant to Clause 15.

8. CONSTRUCTION WORKS

8.1 Design and Construction

- 8.1.1 The Concessionee shall, prior to the Effective Date, undertake or procure the Preliminary Design in accordance with the Preliminary Design approval procedure specified in, and otherwise in accordance with, the Engineering Requirements and shall thereafter undertake or procure the Detailed Design in accordance with the Preliminary Design and the Detailed Design Procedure.

- 8.1.2 The Concessionee shall undertake or procure all Construction Works in accordance with the Engineering Requirements, the Detailed Design and to meet the requirements of this Concession Agreement, in so far as they relate to the Construction Works, and, subject thereto, in accordance with Good Industry Practice. The Concessionaire bears sole responsibility for the procurement of all construction materials; the adequacy of the design in terms of road quality and safety, the Concessionaire's Requirements and compliance with this Concession Agreement and any applicable law or legally binding requirement in the [host country].

- 8.1.3 If the Concessionaire requires:

- (a) any suspension of any Construction Works;
- (b) any variation to the Construction Works or any new construction works;
- (c) any change to the Preliminary Design after it has been approved by the Concessionaire;
- (d) any change to the Detailed Design,

the Concessionee shall, respectively, suspend the relevant Construction Works or procure the relevant construction works in accordance with such variation or with the Preliminary Design or the Detailed Design as modified by such changes.

The Concessionee shall be entitled to an extension of time from the Concessionaire for all reasonable increased costs and/or loss of revenue and/or delay in receipt of revenue and/or relief from penalties under Clause 11.9.3 if any such suspension (except for a suspension required as a result of illegal actions or omissions or breach of this Concession Agreement by the Concessionee) or change (except for such change required as a result of and in order to correct an error in the Concessionee performance of its design obligations):

- (i) delays the Effective Date, Construction Commencement, any Construction

Completion or any Opening Date(s) or any Tolling Date; or

- (ii) causes an increase in costs of Construction Works or Operation and Maintenance or loss of or delay in receipt of revenues.

If the Concessionaire withdraws its requirement for any such change prior to its implementation, the Concessionee shall be entitled to recover from the Concessionaire its reasonable costs incurred in preparing or procuring detailed costings and design prior to such withdrawal.

8.1.4 The Concessionee shall give notice of any claim under Clause 8.1.3 to the Independent Engineer with a copy to the Concessionaire. Following receipt of such notice, the Independent Engineer shall make a determination, subject to Clauses 6.2 and 21.4, with respect to:

- (a) any extension of the Effective Date, any date for Construction Commencement, any Time for Completion, any Opening Date or any Tolling Date to which the Concessionee is entitled; and/or
- (b) any monetary compensation to which the Concessionee is entitled; and/or
- (c) any relief from penalties under Clause 11.9.3 to which the Concessionee is entitled.

The Concessionee shall be required to minimise, mitigate or avoid, and to ensure that its subcontractors and any other relevant third parties minimise, mitigate or avoid, to the maximum extent reasonably possible, any such delay and/or increased costs and/or reduction in revenues as are referred to in this Clause 8.1. If no reply or approval is received within 28 (twenty-eight) days of notification, then it will be assumed that the request has been approved by the Concessionaire.

8.1.5 The location, design and construction of any points of access to and/or egress from the Highway both during construction and afterwards shall be in accordance with the Concessionaire's Requirements or otherwise be subject to the prior written consent of the Concessionaire.

8.2 Commencement

Subject and without prejudice to the Concessionaire's obligations under the concession contract, the Concessionee shall be entitled to commence construction of the Initial Construction Works at any time after the Effective Date provided that Construction Commencement of the Initial Construction Works shall be effected not later than 40 Business Days after the Effective Date.

8.3 Completion

Construction Completion of the Initial Construction Works on any Highway Section shall be effected not later than the dates specified in respect of that Highway Section except as such dates may be otherwise extended pursuant to this Concession Agreement.

8.4 Environmental Regulations

8.4.1 The Concessionee shall comply with the Environmental Requirements of the Sierra Leone Environment Protection Agency (EPA) and any other applicable international statute or regulation relating to the environment.

8.4.2 The Concessionaire shall use all reasonable endeavours in assisting the Concessionee to obtain any environmental permits required by the Concessionee to perform the Project and its obligations under this Concession Agreement provided, however, that the Concessionaire shall bear no liability for any failure of the Concessionee to obtain such permits.

8.4.3 In performing the Project and its functions under this Concession Contract, the Concessionee shall take all necessary steps to ensure that appropriate pollution control and other environmental protection measures are taken by itself and its agents, servants, employees and sub-contractors in accordance with any applicable laws or regulations.

8.5 Access to the Site and Facilities

The Concessionaire or any of its designated representatives may from time to time, enter any part of the Site but, in respect of those parts of the Site on which Construction Works are being carried out, only at reasonable times and on reasonable prior notice to the Concessionee and the relevant Contractor provided that the Concessionaire or its designated representative must comply with the reasonable safety requirements of the Concessionee or Contractor which generally apply. The Concessionee shall provide the Independent Engineer with adequate office space and facilities at the Site and shall provide copies of all information and reports which are furnished to the Concessionaire also to the Independent Engineer. The Concessionee and the Concessionaire shall co-operate fully with the Independent Engineer in the performance of its duties.

8.6 Information Relating to the Construction Works

8.6.1 The Concessionee shall, as soon as is reasonably possible, furnish to the Concessionaire or any of its designated representatives all such reports and other information relating to Construction Works as the Concessionaire may reasonably request

8.6.2 The Concessionee shall provide to the Concessionaire copies of the monthly and quarterly construction progress reports and all reports relating to quality assurance and design and construction verification.

8.6.3 Upon Construction Completion and at any time thereafter upon request, the Concessionee shall supply the Concessionaire with copies of all as-built drawings and other technical and design information, completion records and all other Construction Documents relating to the finished Construction Works.

8.7 Disruption to Existing Traffic

The Concessionee shall ensure that the Construction Works do not cause any disruption to existing traffic nor to activities on adjoining land except to the extent that such disruption cannot reasonably be avoided as a result of such Construction Works being carried out. Where disruption cannot reasonably be avoided, the Concessionee shall ensure that appropriate traffic management measures are implemented to minimise the effect of any such disruption on road users or adjoining land holders.

9. COMMISSIONING

9.1 Concessionee to Operate and Maintain

The Concessionee shall with effect from delivery to it of vacant possession of each part of the Site:

- 9.1.1 commence or procure the commencement of Operation and Maintenance of such part of the Site; and
- 9.1.2 ensure that the relevant Highway Sections located or partially located within such parts of the Site satisfy the Concessionaire's Requirements.
- 9.1.3 The Concessionee may only charge and collect tolls in accordance with Clause 10. The collection of such tolls shall commence after widening of the existing road to four lane from km 0+000 to km 10+000, and after attaining 30% of site clearing works on the entire road, which is 20.1km from the start point where the four lanes and two lanes join together.

9.2 Inspection of Construction Works

- 9.2.1 Upon the Contractor giving notice to the Concessionee of the anticipated completion of any Construction Works to be carried out in respect of any Highway Section and its Associated Facilities, the Concessionee shall forthwith notify the Concessionaire and the Independent Engineer thereof in writing provided that such notice shall be given to the Concessionaire not more than 15 Business Days and not less than 5 Business Days prior to the anticipated date of Construction Completion of the relevant Construction Works (the "Completion Notice").
- 9.2.2 The Independent Engineer and the Concessionaire's, in conjunction with the Concessionee, shall, as soon as reasonably practicable after the anticipated Construction Completion date specified in the Completion Notice but in any event within 5 (five) Business Days of such anticipated Construction Completion date, inspect such Construction Works to verify whether the Construction Works have been completed in accordance with the Concessionaire's Requirements except for minor omissions or minor defects which do not adversely affect the continuous and expeditious passage of vehicles over the relevant Highway Section, the safety of road users or the ability of the Concessionee to perform its obligations under this Concession Agreement in respect of such Highway Section (the "Snagging Items").
- 9.2.3 If, in the reasonable opinion of the Independent Engineer, the relevant Construction Works have been completed to the level specified in Clause 9.2.2, the Independent engineer shall, within 5 Business Days of such inspection, issue a Taking Over Certificate in respect of such Construction Works. Such certificate shall state the date on which the Construction Works were so completed and the Snagging Items that the Concessionee must complete and/or rectify before all of its obligations in respect of such Construction Works are satisfied.
- 9.2.4 If the Independent Engineer is not of the opinion that the Construction Works have been completed to the level specified in Clause 9.2.2, the Independent Engineer shall within 5 Business Days of such inspection notify the Concessionaire's and

the Concessionee of that fact and shall specify in such notice all the work which is required to be carried out by the Concessionaire before he will issue a Taking Over Certificate.

The Independent Engineer shall issue a Taking Over Certificate in accordance with Clause 9.2.3 within 5 Business Days of completion (to his satisfaction) of the works specified in such notice.

- 9.2.5 The Independent Engineer shall, within 5 Business Days of being notified by the Concessionee that the Snagging Items have been completed and/or rectified (as appropriate), inspect the Construction Works and, if the Independent Engineer is reasonably satisfied that the Concessionee has completed and/or rectified (as appropriate) the Snagging Items, shall issue within 5 Business Days of such inspection a Performance Certificate. Such certificate shall state the date on which the Snagging Items are completed and/or rectified.

9.3 Approval to Open Highway Sections

Following the issue of a Taking Over Certificate under Clause 9.2 in respect of a Highway Section, the Concessionaire shall grant the approval to the Concessionee to operate each such Highway Section within 4(Four) days and shall announce that such Highway Section is open to traffic at the same time. The date of such approval and announcement shall be the "Opening Date" of such Highway Section. Such approval shall be granted without delay when the Taking over Certificate with respect to the relevant portion of the Highway and relevant Associated Facilities has been issued and the relevant portion of the Section is connected to other parts of the International and National Trunk Road network and reliably operable.

10. TOLLS

10.1 Right to Charge and Collect Tolls

The Concessionee shall have the exclusive right and obligation during the Concession Period to charge, collect and keep for its account tolls from vehicles utilizing the Highway in accordance with the terms and conditions hereof as part of the Concession Rights.

10.2 Concessionee Responsible for Tolling System

The Concessionee shall have absolute responsibility for the installation, operation and maintenance of the tolling system. The Concessionaire will not incur or assume any liability in connection with any defect or deficiency of the tolling system.

10.3 Initial Tolls

Subject as provided in Clause 10.10, the Concessionee shall apply the Toll Tariffs Specified in the Table below:

TOLL TARIFF FOR BOT

Category	Sedan	Taxi	Minibus/ jeep	Medium bus up to 18 passengers	Coach	Light-Truck/ Pickup	Medium truck	Heavy truck	Tractor & Trailer Unit
US Dollar/time s	0.5	0.7	1.2	2.3	4.6	4.6	11.5	92	115
SL Leone	2000	3000	5000	10000	20000	20000	50000	400000	500000

Note: The values in the table represent the United States Dollar value at a selling rate announced by the Bank of Sierra Leone 28 (Twenty-eight) days prior to the commencement of tolling.

10.4 Revisions to the Highway Tolls

The Toll Tariff shall be adjusted subject to a review on the base traffic data by both parties whenever the exchange rate varies by 10%. The Concessionaire shall ensure that the Toll Tariffs are published at such time so as to enable the adjusted tolls to be charged with effect from the requisite date under this Concession Agreement. At any rate, Not later than 2 days after mutual agreement.

10.5 Toll Collection Expenses

All toll collection expenses shall be borne by the Concessionee.

10.6 Currency of Tolls

Tolls shall be collected in Local Currency.

10.7 Certain Vehicles Exempt from Tolls

The Concessionee shall exempt from the obligation to pay tolls any such vehicles or other vehicles exempted by law as the Concessionaire's may advise the Concessionee in writing from time to time, provided that any change to vehicles exempted by law as it or they exist at the date of signature of this Concession Agreement shall, if such change has material adverse revenue consequences for the Concessionee, be deemed to be Material Adverse Government Action for the purposes of Clause 17.

10.8 Refusal to Pay

The Concessionee or the relevant O&M Contractor shall refuse passage to vehicles which are not exempted from tolls under clause 10.7. The Concessionee or its representative, respectively, shall undertake, at its Operational cost, expense and responsibility all necessary civil or criminal legal measures required in order to enforce the payment of the requisite tolls; and exercise at its sole cost, expense and responsibility its other authorities in connection with any refusal by any Person to pay tolls.

10.9 Tolling System

The tolling system for the Highway shall be in accordance with the Standard Specification for Operations and Maintenance: General, Standard Specification for Operations and Maintenance: Electrical and Mechanical Equipment, Standard Specification for Operations and Maintenance: Toll System and Emergency Communications System and Standard Specification for Operations and Maintenance: Electronic Toll Collection referred to in the Engineering Requirements.

10.10 Toll Concession and Discounts

The Concessionee shall be entitled to grant Concession and discounts to users of the Highway at its discretion.

11. OPERATION AND MAINTENANCE

11.1 Ownership of the Highway

The Parties hereby agree and acknowledge that the Highway and Associated public Facilities remain the property of the Government of Sierra Leone but that possessory and similar rights and privileges are granted to the Concessionee during the period herein granted.

11.2 Operation and Maintenance by the Concessionee

11.2.1 The Concessionee shall be obliged during the Concession Period to undertake Operation and Maintenance of the Highway or any Section thereof and of all related Construction Works and Developments undertaken by the Concessionee, provided that the Concessionee shall have no obligation to operate or maintain the Associated Facilities after the Taking Over Certificate pertaining to the Highway or such Section thereof has been issued.

11.2.2 The Concessionee shall furnish the Concessionaire's with monthly and quarterly report in respect of its operations and maintenance activities or as otherwise reasonably notified by the Concessionaire's. Such report shall be in an agreed format.

11.3 Standards of Operation and Maintenance

Operation and Maintenance shall be carried out in accordance with the laws, regulations and standards having the force of law of the Republic of Sierra Leone, in conformity with the Engineering Requirements and Good Industry Practice and using equipment and materials which are of suitable quality for the purposes and uses intended and free of defects and deficiencies and in accordance with the Engineering Requirements and the Operation and Maintenance Manuals. Operation and Maintenance Manuals shall be prepared by the Concessionee, by not later than 14 (fourteen) days after the Effective Date, based on the foregoing and Shall be amended as such laws, regulations and standards change from time to time. Any manual for Operation and Maintenance procedures and activities relating thereto and any changes to it which may be made by the Concessionee from time to time thereafter, shall be subject to the other provisions of this Concession Agreement and the prior written approval of the Concessionaire.

11.4 Inspection by the Concessionaire

- 11.4.1 The Concessionaire and/or the Independent Engineer may at any time during the Concession Period inspect the Highway and Associated Facilities to ensure that the Concessionee's obligations in respect of Operation and Maintenance are being discharged in accordance with the terms of this Concession Contract.
- 11.4.2 If the Concessionee has failed to Operate and Maintain the Highway in accordance with the terms hereof, the Concessionaire's may, in addition to the provisions provided in Clause 11.6, give notice thereof and, if any such failure is not remedied within 14 (fourteen) Business Days or any longer period reasonably determined by the Independent Engineer, the Concessionaire's shall be entitled to remedy such failure, either itself or through a third party, (and shall have access to the Site for such purpose) at the expense of the Concessionee which shall promptly make payment to the Concessionaire's for its costs, expenses and other damages suffered or incurred in connection with such remedial acts. The Concessionaire shall be entitled to draw on the Operation and Maintenance Agreement delivered pursuant to this Concession Agreement to the extent of the costs, expenses and any other damages referred to in this Clause 11.4.2 if the Concessionee fails to perform its obligations under this Clause 11.4.

11.5 Third Party Contract

- 11.5.1 The Concessionee may use a third party or third parties to carry out all or part of its Operation and Maintenance obligations under this Concession Contract. The terms of any such sub-contract shall, in all material respects, reflect the provisions of the Operation and Maintenance Contract and be subject to the prior written approval of the Concessionaire's, provided that the engagement of a third party shall not release the Concessionee from any of its obligations hereunder. Should the Concessionee not engage an O&M Contractor for all or part of such obligations, the obligations and duties of the O&M Contractor set forth in the Operation and Maintenance Contract shall apply to the Concessionee. All powers, rights and duties of the Independent Engineer with respect to the O&M Contractor shall apply, *Mutatis mutandis*, to the Concessionee.
- 11.5.2 Without prejudice to any other provisions hereof, in the event of any breach by any O&M Contractor of its material obligations under its Operation and Maintenance Contract which is not remedied within the applicable remedy period, the Concessionee shall, if the O&M Contractor then fails to remedy such breach within such further reasonable period as may be specified by the Concessionaire (such period to be in no circumstances longer than 7 (seven) days) and, if the Concessionaire so requests, penalise the relevant Operation and Maintenance Contractor.

11.6 Operation and Maintenance Agreement

- 11.6.1 Prior to the Effective Date, the Concessionee shall deliver to the Concessionaire an Operation and Maintenance Agreement in an amount acceptable to the Concessionaire. This Agreement shall be reinstated in full and its amount adjusted annually in accordance with Clause 1.5 on each anniversary of the Effective Date. The Operation and Maintenance Agreement shall remain in force for the duration of this Concession Agreement.

- 11.6.2 If the Concessionee fails on demand to pay any amount due to the Concessionaire arising from any failure referred to in Clause 11.4.2, arising by way of any penalties payable by the Concessionee pursuant to Clause 11.9 or arising from the termination of this Concession Agreement under Clause 19.1 or as a result of a default by the Concessionee in relation to the Operation and Maintenance of the Highway or arising from the Concessionaire incurring any expense pursuant to the exercise of its rights under Clause 11.9.4, the Concessionaire shall be entitled to call on and shall apply the proceeds of such Agreement to the rectification of such failure, payment of such penalties or to compensate the Concessionaire where this Concession Agreement is so terminated under Clause 19.1. In such event the Concessionaire shall be entitled to call on the full amount of the Agreement and apply the proceeds in its sole discretion.

11.7 Modifications during Concession Period

- 11.7.1 Modifications to the Highway shall be subject to the prior written consent and procedures of the Concessionaire.
- 11.7.2 Any such modifications to the Highway accomplished during the Concession Period shall be subject to the provisions set forth in this Clause 11.
- 11.7.3 The Concessionee shall not construct any additional exit or entry points on the Highway without the consent of the Concessionaire. Where at any time during the Concession Period the Concessionaire requires additional exit or entry points to be constructed on the Highway or modifies any Concessionaire Requirements, such modification shall be deemed to be a variation of the Construction Works by the Concessionaire for the purpose of Clause 8.1.3. (without any avoidance or influence of the toll and at the additional cost or compensated by the Concessionaire)

11.8 Traffic and Penalties

- 11.8.1 During the Concession Period, the Concessionee shall ensure that, subject to the other provisions of this Concession Contract the Highway is open to traffic at all times and that the traffic flow along the Highway is convenient and safe at all times.
- 11.8.2 If the Concessionee fails to perform any of the obligations specified in sub-clauses (i) to (iv) below, the Concessionaire, or its representative, shall notify the Concessionee of such failure and, if the Concessionee shall fail to rectify such failure to the satisfaction of the Independent Engineer within the reasonable period specified for such rectification in such notice, the Concessionee shall pay to the Concessionaire for such default the penalties specified in relation to that failure as follows:
- (i) if the Concessionee fails to adhere to the traffic management processing standards as set forth by the Concessionaire and as more particularly specified in the Operation and Maintenance Manuals, it shall pay a penalty per day during which such breach persists representing 1.5% (One and a half per cent) of the Daily Gross Toll Revenue for the Highway Section in respect of which such failure occurred;
 - (ii) if the Concessionee fails to report electronic problems timeously or to cause the electromechanical equipment to be properly maintained, the Concessionee shall pay a penalty per day during which such breach

persists representing 1% (one per cent) of the Daily Gross Toll Revenue for the Highway Section in respect of which such failure occurred;

(iii) for any failure to keep the roadside and toll facility in good order and state of cleanliness, the Concessionee shall pay a penalty per day during which such breach persists representing an amount equal to 2% (two per cent) of the Daily Gross Toll Revenue for the Highway Section in respect of which such failure occurred;

(iv) If the Concessionee fails to produce the required reports specified in the Operation and Maintenance Contract, the Concessionee shall pay a penalty per day during which such breach persists representing 1% (one per cent) of the Daily Gross Toll Revenue for the Highway Section in respect of which such failure occurred;

11.8.3 The term "Daily Gross Toll Revenue" in this Clause 11.8 is the average daily Gross Toll Revenue relating to the Highway Section in respect of which such failure occurred for the three months prior to the month in which the failure occurs. The Independent Engineer shall determine the Daily Gross Toll Revenue using such information as the Independent Engineer finds appropriate and such determination of the Independent Engineer, acting as an expert, shall be final and binding on the Parties, except in the case of manifest error. The penalties provided for in this Clause 11.8 shall, unless otherwise stated, be calculated for each day or portion thereof during which such failure continues, commencing from the first day of such failure.

11.8.4 If the Concessionee has not remedied a default specified in this Clause 11.9 within the period allowed in this Clause, the Concessionaire shall be entitled to remedy any such failure (and shall have access to the Site for such purpose) and the Concessionee shall reimburse the Concessionaire on demand for all work and expenses which it incurs as a result of or in connection with such remedial action.

11.8.5 The maximum aggregate amount of the penalties payable by the Concessionaire under this Clause 11.8 in respect of any month during the Concession Period shall not exceed the sum of 3% (3per cent) of the Gross Toll Revenue from the Highway for such month.

11.8.6 The Concessionaire accepts and acknowledges that, save as provided in Clause 11.8.4, it shall not be entitled to seek damages for any failure of the Concessionee for which there is a specified penalty under this Clause 11.8. The provisions of this Clause 11.8 are, however, without prejudice to the Concessionaire's rights to claim damages for any other breach or default of this Concession Agreement or to exercise any other rights available to it at law or under this Concession Agreement (including without limitation under Clause 19.1) arising as a result of any failure of the Concessionee as referred to in this Clause 11.8. this

11.9 Regulations, Traffic Management, Rescue Operation

11.9.1 The Concessionee shall be responsible for ensuring proper traffic management on the Highway (including without limitation in accordance with the Engineering Requirements) and that the requirements of applicable State law and regulations are satisfied with respect thereto.

11.9.2 The Concessionee shall not be responsible for the enforcement of traffic laws nor for the provision of emergency medical (except as specified in the Engineering

Requirements) or fire services as regards vehicles or persons using the Highway.

- 11.9.3 The Concessionee shall be obliged to remove, subject to applicable laws, any broken down vehicles from the Highway with the service fee.
- 11.9.4 The Concessionee shall ensure that an effective liaison system is established and maintained between the Concessionee, the relevant O & M Contractors and the relevant police and emergency services regarding the operation of the road and shall provide details thereof to the Concessionaire.
- 11.9.5 The Concessionee shall take all reasonable steps in the performance of its obligations hereunder to prevent the occurrence of any environmental or safety hazards.

11.10 Overloading

- 11.10.1 The Concessionaire and the Concessionee shall jointly determine and implement a strategy to combat the overloading of vehicles on the Highway.
- 11.10.2 The Concessionee shall provide weighing stations for use on the Highway.

12. DEVELOPMENTS

- 12.1 The Concessionee shall be entitled to undertake Developments or to nominate other Persons to undertake Developments upon such terms and conditions as it may agree with such other persons, subject to the prior approval of the Concessionaire. Where the Concessionaire approves of a Development, it shall grant such right or interest in land comprised within the Road Reserve for the Highway to the Person undertaking such Development as such Person may reasonably require.
- 12.2 Should the Concessionee fail to initiate any specific Developments or undertake any specific Development to the reasonable satisfaction of the Concessionaire, the Concessionaire shall, after giving the Concessionee the right to first refusal, be entitled to grant the right to undertake such Developments to third parties. The Concessionaire shall not grant such rights in respect of any proposed Development if it shall materially interfere with the operation or use of the Highway or materially conflict with the Development rights granted to the Concessionee.

13. ADDITIONAL CONSTRUCTION WORKS

13.1 Timing of other Additional Construction Works

Where the performance criteria require Additional Construction Works (other than Upgrade Works) to be carried out on a Highway Section, the Concessionaire shall, subject to the remaining provisions of this Clause 13, ensure that all requisite Additional Construction Works are completed within a reasonable time after the relevant performance criteria so require.

13.2 Additional Construction Works Programme

The Concessionee shall ensure that any such Additional Construction Works Programme is consistent with and shall enable the Concessionee to comply with

its obligations regarding the completion of the relevant Construction Works under this Concession Agreement. Any Additional Construction Works Programme revised following such consultation shall replace the Additional Construction Works Programme in force immediately prior to such agreement.

13.4 Conditions applying to Additional Construction Works

Subject to the exceptions set forth in this Clause 13.4 or except where otherwise expressly specified in this Concession Contract, the provisions governing the performance of the Initial Construction Works shall apply mutatis mutandis to the performance of the Additional Construction Works: those parts of the Site which are necessary for the construction, and subsequent Operation and Maintenance of, the additional Construction Works, and which have not been previously delivered to the Concessionee, will be delivered to the Concessionee in accordance with the delivery schedule to be agreed by the Concessionaire and the Concessionee and which will form part of the Additional Construction Works Programme provided always that other than in respect of land to be provided by the Concessionaire.

14. LIABILITY WITH RESPECT TO USERS AND THIRD PARTIES

14.1 Concessionee Indemnification

14.1.1 Subject as provided in Clause 14.1.3, the Concessionee shall indemnify the Concessionaire against, and hold the Concessionaire harmless from and shall otherwise be responsible to third parties for, any third party claim, liability, loss or cost of any kind whatsoever incurred by the Concessionaire which arises on or after the date of signature of this Concession Agreement (including any claim against the Concessionaire by a Relevant Authority) as a result of any act or omission of the Concessionee and/or any Responsible Persons (including, without limitation, any default or failure by the Concessionee to comply with any of its obligations under this Concession Agreement).

14.1.2 Without limiting the generality of the foregoing, the Concessionee shall, subject as provided in Clause 14.1.3, indemnify the Concessionaire against all losses and claims in respect of:-

- (a) death or injury to any person; or
- (b) loss of or damage to any property,

which may arise out of or in consequence of any act or omission of the Concessionee and/or any Responsible Persons and against all claims, proceedings, liabilities, costs, charges and expenses whatsoever incurred or suffered by the Concessionaire in respect thereof or in relation thereto.

14.1.3 It is acknowledged and agreed by the Concessionaire that the provisions of this Clause 14.1 do not apply:

- (a) to costs, expenses and liabilities incurred by the Concessionaire in discharging its obligations under this Concession Agreement (including without limitation under Clause 7.3) except to the extent that any such cost, expense or liability arises as a result of any negligence or default on the part of the Concessionee or any Responsible Person;

- (b) in respect of the right of the Concessionaire to enter into this Concession Agreement and to perform its obligations hereunder;
- (c) in respect of the acts or omissions of any Responsible Person otherwise than in relation to the Project;
- (d) in respect of discharging its obligations to pay the Concessionee Default sum under Clause 19.1.4 or the Concessionaire Default Compensation Sum under Clause 19; or
- (e) to the extent that any such cost, expense, loss or liability arises as a result of any negligence, default, breach or breach of statutory duty on the part of the Concessionaire or any Relevant Agency or any of their respective sub-contractors, agents, servants, officers or employees.

14.1.4 For the purposes of this Clause 14.1 "Responsible Persons" means any sub-contractor, agent, servant, officer or employee of the Concessionee.

14.2 Defence against Indemnified Claims and Actions

If any legal action is brought or claim is made against the Concessionaire and the Concessionaire is entitled to be indemnified pursuant to Clause 14.1, the Concessionee shall be entitled at the expense of the Operational cost to defend, have conduct of, or settle any such action or claim and the Concessionaire shall notify the Concessionee promptly of any such claims or any such threatened claims and take such action as the Concessionee reasonably directs. The Concessionaire shall be entitled to engage its own Legal counsel and the Concessionee shall co-ordinate its defence with the Concessionaire. If the Concessionee fails to defend, deal with or negotiate any such action or Claim diligently, the Concessionaire may, after first giving the Concessionee reasonable notice to so act, settle such action or claim without the consent of the Concessionee and without relieving the Concessionaire of The obligation to indemnify the Concessionaire as provided in Clause 14.1.

15. INSURANCE

15.1 Construction

During the period of any Construction Works, the Concessionee shall ensure that the Contractor maintains insurance for the part of the Highway and Associated Facilities and its other insurable properties affected by those Construction Works in the minimum sums, including, without limitation, construction all risks insurance, third party liability insurance, employer's liability insurance and, where appropriate, consequential loss/completion delay insurance.

15.2 Operation

During the period starting at the delivery of the Site or any portion thereof and ending on the date of the termination or expiry of this Concession Agreement, the Concessionee shall, to the reasonable satisfaction of the Concessionaire and to the extent Clause 15.1 does not apply thereto, maintain or procure maintenance of insurance on the Highway and its other insurable properties in the minimum sums and including, without limitation, assets all risk insurance, including, third party liability insurance and employer's liability insurance.

15.3 Covenants Relating to Insurance

- 15.3.1 The Concessionee shall provide the insurance policies set forth in Clauses 15.1 and 15.2 for the benefit of the Concessionee and, all relevant Contractors, O&M Contractors and consultants engaged in the Construction Works and Operation and Maintenance.
- 15.3.2 The Concessionaire, its officials, officers and employees, together with the Lenders, shall be named as additional insureds under the policies referred to in Clauses 15.1 and 15.2. The Concessionee shall provide the Concessionaire with certified copies of the certificates of all such insurance and shall periodically review the extent and adequacy of the coverage provided by such insurance in the context of this Clause 15 and then prevailing conditions in the [host country].
- 15.3.3 The proceeds of any claims under the construction all risks insurance policies referred to in Clause 15.1 and under the assets all risks insurance policies referred to in Clause 15.2 hereof shall be deposited into an account of the Concessionaire and shall be applied to the repair or restoration of the Highway.

16. FINANCIAL ACCOUNTS AND REPORTS: MANAGEMENT

16.1 Appointment of Auditors

The Concessionee shall arrange at the expense of operation cost for an accounting and cost control system consistent with Generally Accepted Accounting Principles and for the appointment as its auditors of a firm of internationally recognized independent accountants approved in writing by the Concessionaire. The Concessionee shall keep all such books and records for 15 years and at all times within the [host country]. Such accounts and the reports of such accountants shall be provided to the Concessionaire. The Concessionaire may meet with the Concessionee auditors regarding the Concessionee accounts and operations from time to time. The Concessionaire may also conduct or require that officers of the appropriate State departments or a firm of independent accountants conduct reasonable additional audits of the Concessionee, such audits to be carried out at the expense of the Concessionaire save where any such audit reveals material irregularities in which case the cost of such audit shall be borne by the Concessionee.

16.2. Right of Inspection

The Concessionee shall furnish to the Concessionaire any information the Concessionaire may reasonably request and shall permit representatives of the Concessionaire to visit the Construction Works, the Highway and any of the other offices where the business of the Concessionee is conducted and to have access to its books of accounts and records, designs, drawings and all other data assembled in connection with the Project and shall cause each O&M Contractor to make such information, books of accounts and records, drawings and other data relating to the Operation and Maintenance of the Highway available to the Concessionaire.

16.3 Periodic Reports

- 16.3.1 The Concessionee shall furnish to the Concessionaire as soon as practicable but in any event not later than 90 days after the end of each fiscal

year:

- (a) [three] copies of the Concessionee complete financial statements for such fiscal year (which are consistent with the books of accounts and prepared in accordance with Generally Accepted Accounting Principles and consistently applied), together with an audit report thereon, all in accordance with the requirements of the laws and regulations pertaining to accounting;
- (b) a copy of any management letter or other communication sent by the auditors to the Concessionee or to its management in relation to the Concessionee financial, accounting and other systems, management and accounts;
- (c) an annual report by the auditors certifying that, based on its said financial accounting and other systems, management and accounts, the Concessionee was in compliance with its financial obligations under the Loan Agreements as at the end of the relevant fiscal year or, as the case may be, detailing any non-compliance therewith;
- (d) a reconciliation of the current year's profit and loss account and the budget for the year, and an analysis thereof; and

16.3.2 The Concessionee shall furnish to the Concessionaire as soon as practicable, but in any event no later than [75 (seventy-five)] days after the end of each quarterly period of each fiscal year (except for the last quarterly period of each fiscal year):

- (a) three copies of the Concessionee complete financial statements for such quarterly period (which are consistent with its books of account and prepared in accordance with Generally Accepted Accounting Principles and consistently applied), including in each such report a balance sheet, an income statement and a statement of cash flows as at the end of and for such period, and for the period from the beginning of such year to the close of such quarterly period, certified by an officer of the Concessionee, all in accordance with the requirements of the laws and regulations pertaining to accounting;
- (b) a report on any factors materially and adversely affecting or which might materially and adversely affect the Concessionee business and operation or its financial condition;
- (c) a statement describing in reasonable detail any Related Party Transaction to which the Concessionee is a party during the respective period;
- (d) a report on the implementation and progress of the Project, containing such information as the Concessionaire may reasonably require and disclosing any factors of which the Concessionee is aware which materially and adversely affect, or which would be otherwise likely materially and adversely to affect, the carrying out of the Project; and
- (e) a statement identifying the capital costs, construction costs and Operation and Maintenance costs during the respective period.

16.3.3 The Concessionee shall furnish to the Concessionaire as soon as practicable, but in any event no later than 30 (thirty) days prior to the end of each

fiscal year, the projected profit and loss account and the budget for the following year, together with an analysis thereof.

16.3.4 The Concessionee shall furnish to the Concessionaire as soon as practicable, but in any event no later than the end of each quarterly period of each fiscal year, the projected cash flow for the following quarterly period, together with an analysis thereof.

16.3.5 The Concessionee shall immediately report to the Concessionaire details of the following events:

- (a) any default under any Loan Agreement, the circumstances thereof and possible results as viewed by the Concessionee; and
- (b) any matter which might influence the validity of this Concession Agreement or any matter that constitutes a material breach, including without limitation, any possible termination event, the circumstances thereof, and possible results as viewed by the Concessionee.

16.3.6 The Concessionee shall provide a monthly written report to the Concessionaire with respect to the matters required in the Engineering Requirements to be reported relating to toll collection operations.

16.4 Delivery of Records

For a period of not more than [120] ([one hundred and twenty]) days following the termination of this Concession Agreement for whatever reason, the Concessionee shall retain in safe storage all such records as are referred to in Clause 8.7 and all records relating to Operation and Maintenance, which were in existence at the date of termination. Upon expiry of such [120] ([one hundred and twenty]) day period or such earlier date as may be requested by the Concessionaire, the Concessionee shall deliver all such records (or where such records are required by legislation to remain with the Concessionaire or, copies thereof) to the Concessionaire or to its order, in such manner and at such location as the Concessionaire shall specify. The costs of retaining such records in safe storage and delivering the same shall be borne by the Operation and Maintenance contractor.

16.5 Management of Concessionee

The Concessionee shall at all times ensure that it has sufficient suitable appropriately qualified personnel to undertake the responsibilities vested in the Concessionee hereunder and that such personnel shall be located in the [host country]. Without limiting the generality of the foregoing, the Concessionee shall ensure that the Key Personnel positions are always filled as soon as reasonably possible.

16.6 Reporting of Changes

16.6.1 The Concessionee shall report to the Concessionaire 2 (two) days prior to its entering into effect:

- (a) any change in its corporate documents or in its fiscal year;
- (b) any contract or other arrangement to be entered into by the Concessionee not in the ordinary course of business; and
- (c) any change in the insurance policies.

16.6.2 The Concessionee shall report to the Concessionaire 14 (fourteen) days prior to its entering into effect any change in the constitution of its Board of Directors or its Key Personnel, any material change in the Concessionee organisational structure, or any other material change which might affect the fulfilment of the Concessionee obligations under this Concession Agreement which, in any such case, is effected voluntarily by the Concessionee.

16.6.3 The Concessionee shall report to the Concessionaire as soon as possible after the occurrence of the relevant event:

- (a) any change of the nature referred to in Clause 16.6.2 other than as a result of a voluntary act of the Concessionee; and
- (b) any claim brought or threatened under this Concession Contract or any Associated Agreement which is reasonably likely to have a material effect on the Concessionee or on its ability to perform its obligations hereunder or any event of default under the Loan Agreements.

17. MATERIAL ADVERSE GOVERNMENTAL ACTION

17.1 Consequences of Material Adverse Governmental Action

Should any Material Adverse Governmental Action occur, the Concessionee shall be entitled to such extension of time and/or monetary relief from the Concessionaire as shall place the Concessionee in the same economic position that the Concessionee would have been in but for such action. The Concessionee shall give written notice to the Concessionaire containing reasonable particulars of such actions and its likely economic consequences to the Concessionee.

The Concessionaire shall have [60] ([sixty]) days from the date of receipt of such notice to effect a remedy for the situation which restores the general economic position of the Concessionee to that which it would have been in if such Material Adverse Governmental Action had not occurred. If the Concessionaire does not effect such a remedy within such period, the Concessionaire and the Concessionee shall consult within 10 (ten) Business Days after the expiration of such period with a view to reaching a mutually satisfactory resolution of the situation. In the event that a mutually satisfactory resolution has not been reached within such 10 (ten) Business Day consultation period, the matter may be referred by the Concessionee to the Independent Engineer, who subject to Clause 6.2, shall determine having regard to the circumstances any appropriate extension of time and/or monetary relief required. The Concessionee shall be required to minimise or mitigate the effect of any Material Adverse Governmental Action. For the avoidance of doubt, the provisions of this Clause 17.1 shall not apply if this Concession Agreement has been terminated pursuant to Clause 19.2.1 (c).

17.2 Definition of Material Adverse Governmental Action

A "Material Adverse Governmental Action" shall occur if:

17.2.1 the State, the Concessionaire or any other Relevant Agency either (i) takes

any action of any nature whatsoever, including without limitation the introduction, application, or change of any law, decree, order, regulation, or bylaw having the force of law after the date of this Concession Agreement or (ii) fails to carry out its obligations as prescribed by law, and

(a) such action or failure directly affects:

- (i) the Concessionee (or any of its Contractors or O&M Contractors) in performing their function under the relevant sub-contracts; or
- (ii) the Concessionee (or any of the aforesaid) and any other toll road Concessionee (or any of the aforesaid).

and only incidentally affects other Persons; or

(b) such action or failure renders the performance by the Concessionee or the Concessionaire of any or all of the obligations under this Concession Contract illegal, void or unenforceable; or

17.2.2 the State or any Relevant Agency takes or omits to take any action of any nature whatsoever, which, if such action had been taken or omitted by the Concessionaire, would have constituted a material breach of this Concession Agreement, and in the case of either Clause 17.2.1 or Clause 17.2.2, such action, failure or omission, as the case may be, materially adversely affects or is likely to materially adversely affect the economic position of the Concessionee.

17.3 Acts or Omissions of Concessionee

A Material Adverse Governmental Action shall not be deemed to have occurred under circumstances where action, failure or omission of the State or any Relevant Authority is in direct response to any act or omission on the part of the Concessionee which is illegal (other than an act or omission rendered illegal by virtue of such action by the State or any Relevant Authority) or in violation of agreements to which the Concessionee is a party and is for the purpose of properly enforcing compliance therewith or remedying the consequences of such act or omission.

17.4 Changes in Taxes

An increase in taxes of general application which does not discriminate against the Concessionee, or the Concessionee and any other Persons holding concessions from the public sector, shall not be deemed to be a Material Adverse Governmental Action.

17.5 Acts Deemed Not to be Material Adverse Governmental Action

A Material Adverse Governmental Action shall not be deemed to have occurred if such action, failure or omission by the Concessionaire, State or any Relevant Agency is required:

17.5.1 as a result of an event of Force Majeure and is reasonably proportionate thereto;

17.5.2 for the proper discharge and performance by the Concessionaire, the State or such Relevant Agency of its statutory duties; or

17.5.3 on the grounds of national security or public safety and such action, failure or omission is reasonable in relation thereto;

but only if such action, failure or omission is not taken under legislation which:-

- (a) comes into force after the date hereof; and
- (b) is legislation which itself constitutes a Material Adverse Governmental Action,

and provided further that any such action, failure or omission may, where it does not constitute Material Adverse Governmental Action, constitute Force Majeure for the purposes of Clause 18.

17.6 No Breach of Concession Contract

If the performance by the Concessionaire of any obligation under this Concession Contract is prevented or adversely affected by reason of any Material Adverse Governmental Action, the Concessionaire shall not be considered to be in breach of such obligation to the extent the Concessionaire is so prevented or adversely affected.

18. FORCE MAJEURE

18.1 Force Majeure Defined

"Force Majeure" shall mean any event beyond the reasonable control of the Party claiming the occurrence of Force Majeure:

- (a) the occurrence of which could not have been reasonably foreseen at the date of execution of this Concession Contract; and
- (b) includes, but is not limited to, war whether declared or not, revolution, riot, strikes or other protestor action (except strikes or protestor action by or affecting employees of (i) the Concessionaire, (ii) the Contractor or any other Person undertaking any part of the Construction Works and (iii) any O&M Contractor or any other Person undertaking any part of the Operation and Maintenance of the Highway, which strike(s) or protestor action are not part of or directly related to any more widespread or general strike or other

industrial action and excluding any protestor action as defined in Clause 7.8), insurrection, civil commotion, invasion, armed conflict, hostile act of foreign enemy, act of terrorism, sabotage, radiation or chemical contamination, ionising radiation, Act of God, plague or other serious epidemic; and

- (c) which:
 - (i) causes material physical damage or destruction to all or any portion of the Highway, including, without limitation, its toll collecting facilities or functions; or
 - (ii) materially delays the scheduled Time for Completion of all or any portion of the Highway; or

- (iii) materially interrupts the full and regular operation of all or any portion of the Highway, including, without limitation, its toll collecting facilities or functions,

provided that any event covered by Clauses 7.6 and 7.7 (other than, in the case of Clause 7.7, floods of a scale that occur not more frequently than once in every [100] years) or which constitutes a Material Adverse Governmental Action shall not be events of Force Majeure.

18.2 Notice of Force Majeure

Each Party shall promptly notify the other and the Independent Engineer of the occurrence of a perceived event of Force Majeure and when such event has ceased. The Independent Engineer will determine whether the perceived event of Force Majeure is an event of Force Majeure.

18.3 Continuation of Performance

18.3.1 Each Party shall take all reasonable steps to prevent, limit and minimise the effect of events of Force Majeure on the performance of its obligations under this Concession Contract.

18.3.2 Decisions concerning Force Majeure and the application of this Clause 18 shall be directed toward the completion of construction of the Highway and the continued Operation and Maintenance of the Highway for the full duration of the Concession Period. In this regard the Concessionee shall, to the maximum extent possible, continue to construct or operate (as the case may be) the Highway during the occurrence of any event of Force Majeure, and shall also notify the Independent Engineer of any proposals, including any reasonable alternative means for performance, but shall not effect such proposals without the consent of the Independent Engineer.

18.3.3 In the event of any delay to Construction Works caused by an event of Force Majeure the period of time for completion of such Works under this Concession Contract shall be extended by the Independent Engineer by a time period necessary to take account of the effects of such Force Majeure.

18.3.4 Subject to Clauses 18.2, 18.3.1 and 18.4, any Party affected by the occurrence of the Force Majeure shall be excused from performance of its obligations under this Concession Agreement to the extent that it is unable to perform those obligations as a result of such Force Majeure and neither Party shall be entitled to:

- (a) terminate this Concession Contract on account of such occurrence other than in accordance with the terms and conditions of Clause 18.5; and/or
- (b) claim damages, penalties or other compensation from the other party or call on any bond or agreement provided pursuant to this Concession Agreement as a result of such failure to perform.

18.4 Insured Events of Force Majeure

To the extent that the consequences of an event of Force Majeure fall within the terms of the insurance cover required by Clauses 15.1 and 15.2, then the Concessionee shall forthwith make the appropriate claims thereunder and shall

apply the proceeds as required by Clause 15.3.4.

18.5 Consequences of Force Majeure

18.5.1 If the Parties agree or it is determined under Clause 18.2 that an event of Force Majeure has occurred, the Concessionaire and the Concessionee shall promptly consult to agree a mutually satisfactory resolution to the changed circumstances resulting from the event of Force Majeure.

18.5.2 If an event of Force Majeure (or its consequences) shall continue for a continuous period of 182 or more days (but only, in the case of Clause 18.1 (c), if the relevant event of Force Majeure interrupts, damages, destroys or delays (as the case may be) a material portion of the Highway for such period) and the Parties have not reached a mutually satisfactory resolution to the changed circumstances and the effect of the Force Majeure is continuing, this Concession Agreement may, upon 28 days prior notice:

(a) be terminated by the Concessionaire; or

(b) where:

(i) the event of Force Majeure is an Uninsurable Event;

(ii) any amount is outstanding under the Lending Agreements; and

(iii) the losses and/or damages suffered by the Concessionee as a result of such event exceed the aggregate of (1) the amount of any insurance cover which the Concessionee has in respect of such event of Force Majeure, and (2) the other cash balances of the Concessionaire which are available to apply in remedying the consequences of such event of Force Majeure, be terminated by the Concessionee.

18.6 No Relief from Compliance

The foregoing provisions of Clause 18 shall not excuse or release the Party claiming Force Majeure from obligations due or performable, or compliance required, under this Concession Agreement prior to the above-mentioned failures or delays in performance due to the occurrence of Force Majeure, or payment obligations to any party or obligations not affected by the event of Force Majeure. A Party excused from performance by the occurrence of Force Majeure shall continue its performance under this Concession Contract when the effects of the event of Force Majeure are removed.

19. TERMINATION

19.1 Termination by Concessionaire

19.1.1 Subject to Clauses 19.1.2 and 19.1.3, the Concessionaire shall have the right to terminate this Concession Contract upon the occurrence of any of the following events:

(a) the granting of any judgment (which is not subject to appeal or, if it is, such

appeal is not diligently pursued), or the passing of any resolution, for the dissolution and/or judicial management and/or liquidation of the Concessionee (except for the purposes of amalgamation or reconstruction on terms approved in advance by the Concessionaire in writing);

- (b) the Concessionee commences voluntary liquidation proceedings;
- (c) the Concessionee commits a material breach of this Concession Agreement including, but not limited to, a material breach of its obligations to perform the Operation and Maintenance of the Highway, as provided for herein;
- (d) the Concessionee fails to complete Construction Works by unreasonable Long Stop Date;

19.1.2 The Concessionaire shall, prior to any termination of this Concession Contract under this Clause 19.1, send a written notice to the Concessionee and the Lenders notifying them of the event giving rise to its right to terminate and stipulating that the notice is given in terms of this sub-clause and requesting the Concessionee to remedy the event giving rise to such right of termination within the Remedy Period; provided, however, that no Remedy Period shall be required for the events described in Clauses 19.1.1(a), 19.1.1(b), 19.1.1(c),

19.1.3 If, following notice by the Concessionaire pursuant to Clause 19.1.2, the relevant events are not remedied by the Concessionee by the expiry of the Remedy Period or the relevant event does not require a Remedy Period, and neither the Concessionaire nor the Lenders have appointed a Substituted Entity pursuant to Clause 20.4 or Clause 20.5 after the expiration of the time allowed therefor, the Concessionaire shall terminate this Concession Contract forthwith by notice in writing to the Concessionee and the Lenders,

19.1.4 Upon any termination pursuant to this Clause 19.1, the following provisions shall apply:

- (a) if termination is effected before the Effective Date, the Concessionaire shall be entitled to demand the amount in the Maintenance Agreement in full and the Concessionee shall be reimbursed by the Concessionaire for all its costs and expenses incurred since the signature of this Concession Contract and the Concessionaire shall be entitled to pursue any other remedies, including the recovery of any other damages suffered by the Concessionaire as a result of the default of the Concessionee that gave rise to such termination, which may be available to the Concessionaire at law;
- (b) if termination is effected after the Effective Date, the Concessionaire shall be entitled to claim reimbursement from the Concessionee for all loss or damage recoverable by law which is suffered by the Concessionaire as a result of such termination and where termination has resulted from the performance or non-performance of Operation and Maintenance, to call on the Operation and Maintenance Agreement, in order to recover any such loss or damages.

19.1.5 Should the Concessionaire or the Lenders appoint a Substituted Entity pursuant to Clauses 20.4.1 or 20.5.1, respectively, then:

- (a) as between the Parties, this Concession Agreement (other than Clauses 19,

20, 21 and 22) shall cease to have effect subject to all rights and obligations of the Parties existing prior to such appointment of a Substituted Entity;

- (b) as between the Parties, the Concession Rights shall terminate, subject to this Clause 19.1.5;
- (c) such rights as the Concessionee may have over the Site, the Highway, the Associated Facilities and the Developments, and all other immovable property thereon shall terminate;
- (d) the Concessionee shall forthwith relinquish any right in any immovable property on the Site or constituting part of the Highway, the Associated Facilities and the Developments in favour of the Concessionaire and shall convey such immovable property free of all liens, charges, claims or encumbrances of any kind, such immovable property to be ceded by the Concessionaire to the Substituted Entity;
- (e) subject to Clauses 3.8 and 3.9, the Concessionee shall deliver all Project Documentation to the Concessionaire, such Project Documentation to be delivered by the Concessionaire to the Substituted Entity; and
- (f) all movable property of the Concessionee including, without limitation, all toll equipment, shall be transferred to the Concessionaire together with all requisite licences which shall be royalty-free to enable the Concessionaire to continue to use the tolling equipment, such movable property and licences to be transferred by the Concessionaire to the Substituted Entity.

For the avoidance of doubt, references in paragraphs (a) to (f) above to "Parties" and "Concessionee" shall not include the Substituted Entity to be appointed pursuant to Clauses 20.4.1 or 20.5.1 or if the Concessionee has previously been replaced by a Substituted Entity, the term "Concessionee" shall not include the new Substituted Entity which is to replace such Substituted Entity previously appointed.

19.1.6 Should the Concessionaire to Clauses 20.4.1 and 20.5.1 respectively, then if the Concessionaire serves notice on the Lenders and the Concessionee under Clause 20.4.2, the Concessionaire shall have the right to enter and take immediate day to day operational control of the Highway and all contracts and arrangements related to Construction Works and Operation and Maintenance activities provided that the reasonable costs and expenses of the Concessionaire shall be deducted from any toll revenues received during the period for which the Concessionaire has such operational control (which revenues shall otherwise be for the account of the Concessionee and paid at the direction of the Lenders). In the event of the cession and delegation of this Concessionee Contract to a Substituted Entity pursuant to Clause 20.7 the Concessionaire shall relinquish such operational control to such Substituted Entity within a time to be agreed with such Substituted Entity.

19.2 Termination by Concessionee

19.2.1 The Concessionee shall have the right to terminate this Concession Agreement if:

- (a) the Concessionaire commits a material breach in respect of the performance of any of its material obligations hereunder or is in material breach of the warranty given by it under Clause 23.2.2;

(b) any part(s) of the Site and/or the Highway are compulsorily acquired or expropriated from the Concessionee by the State, which results in a material impairment of the Concession Rights;

(c) any Material Adverse Governmental Action:-

(i) renders the exercise by the Concessionee of any of its material rights hereunder, or the performance by the Concessionaire of any of its material obligations hereunder, illegal, void or unenforceable; or

(ii) is of the nature referred to in Clause 17.2.2 and is not or cannot be remedied within the 60 day period referred to in Clause 17.1 and cannot be adequately compensated in terms of Clause 17.1 ; or

(d) the assets or rights or a major portion thereof of the Concessionee are nationalized or expropriated.

19.2.2 The Concessionee shall, before exercising its rights to terminate this Concession Agreement pursuant to Clause 19.2, give written notice to the Concessionaire requiring the Concessionaire to remedy the event referred to in Clause 19.2.1. If said event is not remedied before the expiry of the Remedy Period, the Concessionee may, upon expiry of the Remedy Period, terminate this Concession Contract.

19.2.3 If this Concession Contract is terminated pursuant to this Clause 19.2 after the Effective Date, the Concessionaire shall pay to the Concessionee an amount (the "Concessionaire Default Compensation Sum") equal to the aggregate of:-

(a) all amounts properly due and payable under any contracts (including without limitation employment contracts) entered into by the Concessionaire in connection with the Project, for the purpose of discharging its obligations under this Concession Contract, prior to the date of such termination (including amounts arising as a result of such termination), provided always that such contracts have been entered into on bona fide arm's length terms (it being acknowledged for the purposes of this sub-clause only that all Associated Agreements, the form of which have been approved by the Concessionaire, have been entered into on bona fide arm's length terms), together with interest on the net amount specified in paragraphs (a) above from the date of termination to the due date for payment as specified in Clause 19.2.4.

19.2.4 The amount payable by the Concessionaire under Clause 19.2.3 shall accrue interest at the rate specified in Clause 19.4.4 from the date of termination to the due date for payment as specified in Clause 19.4.2 and be paid on the due date for payment under Clause 19.4.2.

19.3 Effect of Termination

19.3.1 On the expiry or termination of this Concession Contract and/or the Concessionee Period for whatever reason and without prejudice to any rights of the Parties hereto (subject as herein provided):

(a) this Concession Contract (other than the Clauses referred to in Clause

22.14) shall cease to have effect, but without prejudice to all rights and obligations of the Parties which:

- (i) have accrued prior to or upon, but remain undischarged as at, the date of termination; or
- (ii) arise as a consequence of such termination,

except to the extent that such rights and obligations are included in any compensation payable and actually paid as a result of such termination whether under this Concession Agreement.

- (b) the Concession Rights shall terminate, subject to this Clause 19.3.1;
- (c) such rights as the Concessionee may have over the Site, the Highway, the Associated Facilities and the Developments, and all other immovable property thereon shall terminate;
- (d) the Concessionee shall forthwith relinquish any interest in any immovable property on the Site or constituting part of the Highway, Associated Facilities and Developments in favour of the Concessionaire and shall convey such immovable property free of all liens, charges, claims or encumbrances of any kind to the Concessionaire; and
- (e) all movable property of the Concessionee which is required for or integral to the continuing operation of the Highway (including without limitation all toll equipment) shall be transferred to the Concessionaire free of all liens, charges, claims or encumbrances of any kind together with all requisite licences (other than licences of software which are freely commercially available) which shall be royalty free to enable the Concessionaire to continue to use the tolling equipment.

19.3.2 Upon termination of this Concession Agreement, the Concessionaire shall have the right to:

- (a) enter and take immediate operational control of the Highway and all related Construction Works; and
- (b) select and substitute a new Concessionee for the Concessionee.

19.3.3 Upon termination of this Concession Agreement, the Concessionaire shall be entitled, and the Operation and Maintenance Contracts shall so provide, to require the O&M Contractors (subject to the Concessionaire assuming the obligations of the Concessionee under such contract with effect from the date of such termination) to continue to operate and maintain the Highway for a period of six months from the date of such termination on the terms and conditions specified in the Operation and Maintenance Contracts or such longer time - as shall be agreed with each O&M Contractor. The Operation and Maintenance Contracts shall provide that in the absence of such agreement the Concessionaire shall be entitled to purchase all the property of the O&M Contractor at fair market value.

19.4 Payment Procedure

19.4.1 Except as otherwise provided for expressly in this Concession Agreement, whenever

under this Concession Agreement an amount is required to be paid by any Party, such Party shall make the same available to the other Party within 7 (seven) Business Days of demand to such account with such bank in the [host country] as the other Party may have specified for this purpose.

19.4.2 Where the Concessionaire is required to pay an amount to the Concessionee by operation of Clause 19.2.3, the Concessionaire shall make such payment on the earlier of:

- (a) the date which is 7 (seven) Business Days after the relevant amount to be paid by the Concessionaire has either been agreed by the Parties or determined pursuant to Clause 21.2 and the Concessionaire has obtained the requisite funding to make such payment; and
- (b) the first anniversary of the date of termination of this Concession Agreement.

19.4.3 Without prejudice to any other right or remedy, each Party shall be entitled to receive interest on an amount due under this Concession Agreement, calculated from the due date for payment of such amount as referred to in Clause 19.4.1 or 19.4.2 (as the case may be or such other date as may be expressly provided for in this Concession Contract) to the date of payment of such amount, at the rate referred to in Clause 19.4.4. Interest which has accrued on an amount due under this Concession Agreement shall be paid on the same date as payment of such amount.

19.4.4 For the purposes of Clause 19.4.3 interest shall accrue at a rate of 2 percent above the publicly quoted basic rate of interest (expressed as a per centum per annum, compounded monthly in arrears and calculated on a 365 day year) from time to time published by one of the Reference Banks nominated by the Concessionee to the Concessionaire in writing for such purpose (or, failing such nomination, one of the Reference Banks nominated by the Concessionaire to the Concessionee in writing) as being its prime overdraft rate, as certified by any manager of such bank. Such interest shall be computed on a daily basis from the due date of payment until the relevant amount together with accrued interest is fully paid by the defaulting Party.

19.4.5 All payments to be made pursuant to this Clause 19 shall be made in United States Dollar or its equivalent in the local currency of Leones.

19.5 Release of Security Interest

All security interests granted to the Lenders as envisaged by Clause 20.3 in respect of the Highway or any part thereof shall be released forthwith upon the termination of this Concession Agreement for whatever reason.

19.6 Other Rights and Remedies

No Party shall have any rights or remedies against any other Party arising on termination, save for the rights and remedies specified in this Concession Agreement.

19.7 Calculations

19.7.1 If any calculation is required to be made for the purposes of determining an amount payable by one Party to the other pursuant to Clauses 19.1 or 19.2, the same shall be made by an internationally recognised firm of accountants (the "Independent Expert") appointed by the Parties and the Lenders or, in the absence of agreement,

by the President of the Sierra Leone Institute of Chartered Accountants.

19.7.2 Each calculation to be made by the Independent Expert shall use the latest Financial Model prepared prior to the date of termination of this Concession Contract. The Concessionee will not alter the methodology employed in such Financial Model from that employed in the Financial Base Case without the prior consent of the Concessionaire, such consent not to be unreasonably withheld or delayed. In preparing any calculation for the purpose of this Clause 19.7.1, the Independent Expert shall:

- (a) use the input parameters contained in such Financial Model, unless either Party objects to any such parameter as not properly reflecting the most likely outcome for the matter which is the subject of the input parameter concerned, in which case the Independent Expert, acting reasonably and after having taken appropriate specialist and technical advice and considered the representations of the Parties, if any, shall be entitled to amend the input parameter concerned to reflect the most likely outcome; and

19.7.3 In making any determination pursuant to this Clause 19.7, the Independent Expert shall act as an expert and not an arbitrator.

19.8 Gross Up

Where the Concessionee is required to pay Tax on any amount paid to it by the Concessionaire under Clause 19.2.3 (a) and/or the Concessionaire is obliged to make any deduction by way of withholding from such amount, the Concessionaire shall make such additional payment to the Concessionee as is required to ensure that the net amount received and retained by the Concessionee after such Tax and/or withholding is equal to the amount which the Concessionaire is obliged to pay to the Concessionee under clause 19.2.3 (a) prior to the application of any such Tax or withholding.

20. ASSIGNMENT AND SUBSTITUTED ENTITY

20.1 Assignment by the Concessionee

The Concessionee shall not, without the prior written consent of the Concessionaire, cede, assign or transfer or otherwise dispose of:

- 20.1.1 this Concession Agreement or any Associated Agreement;
- 20.1.2 any of its rights or obligations thereunder or;
- 20.1.3 any of its assets except in the ordinary course of business, save in each case, in order to give effect to any agreement creating a security interest therein in accordance with Clause 20.3.

20.2 Dissolution by Concessionaire

The Concessionaire may not, at any time, cede, delegate, assign, sub-contract or otherwise dispose of, in whole or in part, its rights and obligations under this Concession Agreement except to an assignee which has:

- (a) the legal capacity, power and authority to become a party to and perform the obligations of the Concessionaire under this Concession Contract; and
- (b) to the reasonable satisfaction of the Lenders and the Concessionee, the technical competence, financial standing and resources to enable it to perform its obligations, including payment of all sums due to the Concessionaire.

20.3 Creation of Security

The Concessionee shall, upon the prior written consent of the Concessionaire and, to the extent permitted by the Loan Agreements, cede, assign or create security over its rights and interests:

- 20.3.1 under or pursuant to this Concession Agreement; or
 - 20.3.2 in, over or to any claims and/or contingent and/or future claims by the Concessionee under this Concession Agreement; and/or
 - 20.3.3 under or pursuant to any Associated Agreement; and/or
 - 20.3.4 in, over or to any cash, receivables or other assets as may be required in accordance with the terms of the Loan Agreements.
- The holder of any security created under this Clause 20.3 shall not be prevented or impeded by the Concessionaire from enforcing such security in accordance with its terms, but the exercise of any such security shall be subject to the provisions of the laws of the host country.

20.4 Substituted Entity Nominated by the Concessionaire

- 20.4.1 In the event of the Concessionaire being entitled to terminate this Concession Agreement pursuant to Clause 19.1.1 and having given notice to the Concessionee and Lenders pursuant to Clause 19.1.2, In agreement with the lender, the Concessionaire shall have the right to nominate a Substituted Entity pursuant to Clause 20.4.2 if the Concessionee does not remedy the event as provided in Clause 19.1.2 or, if no Remedy Period is required pursuant to Clause 19.1.2, on the happening of the event entitling termination and the giving of notice under Clause 19.1.2.

- 20.4.2 If the Concessionaire wishes to nominate a Substituted Entity pursuant to Clause 20.4.1, the Concessionaire shall so notify the Lenders and the Concessionee within 14 (fourteen) Business Days of the expiry of the Remedy Period or of the event of termination if no Remedy Period is required and:

- (a) such proposed Substituted Entity shall be required, within 91 (ninety one) days of that notice, to provide evidence satisfactory to the Lenders that:
 - (i) it is legally and validly constituted and has the capability to enter into such agreements as may be reasonably required to give effect to the substitution;
 - (ii) it has the financial and technical capability sufficient to perform and assume the obligations of the Concessionee under this Concession

Contract and the Loan Agreements;

- (iii) it has the financial capability to pay any damages or other sums outstanding which the Concessionaire is entitled to receive from the Concessionee before or at the time of such substitution;

- (b) the Lenders shall, within 28 (twenty eight) days of receipt of such evidence, inform the Concessionaire of their acceptance or not of the substitution, which acceptance shall not be withheld if the conditions set forth in Clause 20.4.2(a) have been satisfied.

20.4.3 If the Concessionaire does not wish or is not able to nominate a Substituted Entity pursuant to Clauses 20.4.1 and 20.4.2, it shall so notify the Lenders and the Concessionee within 14 (fourteen) Business Days of the expiry of the Remedy Period or of the event of termination if no Remedy Period is required. If the Concessionaire fails to give notice under Clauses 20.4.2 or 20.4.3 within the time periods specified under such Clauses, it shall be deemed to have given notice under this Clause 20.4.3.

20.5 Substituted Entity Appointed by Lenders

20.5.1 Either following:

- (a) the declaration of the occurrence of an event of default and an acceleration of the amount outstanding under the Loan Agreements; or
- (b) the Concessionaire giving notice or deemed notice under Clause 20.4.3, or the Concessionaire giving notice under Clause 20.4.2 and no substitution is effected within a further 147 (one hundred and forty seven) Days thereafter; the Lenders shall have the right to give notice to the Concessionaire of their intent to nominate a Substituted Entity.

20.5.2 If Clause 20.5.1(a) applies, the Concessionaire shall within 14 (fourteen) Business Days of receipt of the notice referred to in Clause 20.5.1 advise the Lenders whether the Concessionaire wishes to nominate a Substituted Entity itself and, if so, the provisions of Clause 20.4.2 shall be applicable. If the Concessionaire advises that it does not wish to nominate a Substituted Entity or fails to advise the Lenders within such period or, if Clause 20.5.1 (b) applies, then the Lenders may proceed pursuant to Clause 20.5.3.

20.5.3 If the Lenders elect to nominate a Substituted Entity following notice by the Concessionaire under Clause 20.4.3 that it does not wish to nominate a Substituted Entity or it does not nominate a Substituted Entity pursuant to the second sentence of Clause 20.5.2, they shall so notify the Concessionaire within 14 (fourteen) Business Days of such notice or failure to notify or if the Lenders elect to nominate a Substituted Entity following the expiry of the said period for substitution referred to in Clause 20.5.1 (b), they shall notify the Concessionaire within 14 (fourteen) Business Days of such expiry and:

- (a) such Substituted Entity may be required, upon the written request of the Concessionaire, to provide the Concessionaire within 28 (twenty-eight) days of such request with all relevant information concerning itself, including without limitation, all such information as was required from the original Concessionaire prior to the execution of this Concession

Contract, such information to be satisfactory to the Concessionaire;

- (b) such Substituted Entity shall be required within 91 (ninety-one) days of the notice by the Lenders pursuant to Clause 20.5.3 to provide evidence satisfactory to the Concessionaire that;
- (i) it is legally and validly constituted and has the capability to enter into such agreements as may be reasonably required to give effect to the substitution;
 - (ii) it has the financial and technical capability sufficient to perform and assume the obligations of the Concessionee under this Concession Contract and the Loan Agreements;
 - (iii) it has the financial capability to pay any damages or other sums outstanding which the Concessionaire is entitled to receive from the Concessionee before or at the time of such substitution; and
- (c) the Concessionaire shall, within 28 (twenty-eight) days of receipt of such evidence inform the Lenders of their acceptance or not of the substitution, which acceptance shall not be withheld if the conditions set forth in Clause 20.5.3 have been satisfied.

20.5.4 Should the Lenders, pursuant to Clause 20.5.3, notify the Concessionaire that they wish to nominate a Substituted Entity and no agreement is entered into with a Substituted Entity within a further 28 (twenty eight) Business Days of the notice of acceptance in terms of Clause 20.5.3(c), then the Concessionaire shall be entitled to terminate forthwith this Concession Agreement pursuant to Clause 19.1.

20.6 Cession and Delegation to a Substituted Entity

Immediately following the acceptance by the Lenders pursuant to Clause 20.4.2(b), or by the Concessionaire pursuant to Clause 20.5.3(c), of the nomination of the Substituted Entity, this Concession Agreement shall be ceded and delegated to such Substituted Entity and, where the Substituted Entity has been nominated and appointed by either the Concessionaire or the lender, the Concessionaire and, or the lender shall ensure that the Substituted Entity takes over all the liabilities of the Concessionee under the Loan Agreements as at the date of substitution.

21. GOVERNING LAW AND RESOLUTION OF DISPUTES

21.1 Governing Law

This Concession Agreement shall be governed by the laws of the [Republic of Sierra Leone].

21.2 Resolution of Disputes

- 21.2.1** If a dispute of any kind whatsoever arises between the Concessionaire and the Concessionee in connection with or arising out of this Concession Agreement, including, but not limited to, any dispute as to any opinion, instruction, determination,

certification or valuation of the Independent Engineer, then an attempt shall be made by the Parties to settle such dispute amicably and either party may send the other party a written invitation to conciliation under UNCITRAL (as hereinafter defined) Conciliation Rules. If the Parties are unable to agree on a conciliator either Party may apply to the Sierra Leone Institution of Engineers to assist the Parties in appointing a conciliator.

- 21.2.2 If the dispute is not resolved by means of the conciliation procedure within thirty days after entering into such process, or at such earlier time as the Parties may agree, the chief executive officer of the Concessionaire and the chief executive officer of the Concessionee shall in that respect meet and endeavour to resolve issues between them. The joint and unanimous written decision of such

chief executive officers of the Parties shall be final and binding upon the Parties but if they do not meet or are unable to agree within 60 (sixty) days of the reference to them then the matter may be referred to arbitration pursuant to Clause 21.2.3.

- 21.2.3 Any such dispute which cannot be settled pursuant to Clauses 21.2.1 and 21.2.2 of this Concession Agreement within 90 (ninety) days after receipt by one Party of the other Party's request to do so may be submitted by either Party to arbitration under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules in force on the date of this Concession Agreement for a decision which shall be final and binding. Such arbitration shall be conducted in [Sierra Leone]. In the event of a conflict between the UNCITRAL Arbitration Rules and the terms of this Concession Agreement, the terms of this Concession Agreement shall govern.

- 21.2.4 The appointing authority shall be the Secretary General of the ICC International Court of Arbitration. The arbitration shall be conducted in the English language before a panel of three arbitrators. The Concessionaire and the Concessionee shall each select one arbitrator within 30 (thirty) days after commencement of the arbitration and, within such 30 (thirty) day period, each Party shall notify the appointing authority and request that the appointing authority appoint such arbitrator. The arbitrators as hereinabove selected shall select in consultation with the Parties the third arbitrator who shall act as president of the arbitral panel within 30 (thirty) days from the date of appointment of the second of the two arbitrators. If no decision as to the third arbitrator is made within such period, then upon written request of either Party, the president of the arbitral panel shall be selected by the appointing authority. The arbitral panel shall have the power to join such other party or parties to the arbitration, to consolidate the arbitration with any arbitration between such other party or parties and either or both of the Parties or between such other parties, or to hold concurrent hearings of the arbitration between the Parties and any other such arbitration.

- 21.2.5 Any Party shall be entitled to apply for any arbitration award pursuant to this Concession Agreement to be made an order of court.

- 21.2.6 Notwithstanding any contrary provision in this Concession Contract, either Party shall have the right to approach the High Court [Sierra Leone] otherwise having jurisdiction for urgent or interim relief.

21.3 Obligations During Arbitration

Pending any attempt at amicable settlement or any award of an arbitral panel, the Concessionee shall, and shall cause the Contractors and O&M Contractors to,

continue to perform their respective obligations hereunder unless otherwise instructed in writing by the Concessionaire. Pending any such settlement or award, the Concessionaire shall continue to perform its obligations under this Concession Agreement.

21.4 Claim

Where the Concessionee intends to claim any extension of time and/or additional payment or other compensation pursuant to or relating to this Concession Agreement and from whatsoever cause arising (other than compensation following termination), it shall give notice of its intention to the Concessionaire, with a copy to the Independent Engineer, within 30 (thirty) Business Days after the event giving rise to the claim has first arisen or should reasonably have come to the knowledge of the Concessionee whichever is the later. Such claim shall be accompanied by such documentation and contemporaneous records as are appropriate to substantiate the same within 30 (thirty) Business Days after the date of the notice of intention to claim, save that if the Concessionee cannot submit all relevant details within that period, the Concessionee shall submit interim details at intervals of not more than 30 (thirty) days from the date of the notice of intention of the Concessionee to apply for an extension of time and/or additional payment or other relief and shall submit full and final supporting details of its application by such date as may be determined by the Independent Engineer as appropriate and reasonable having regard to the nature and consequences of the event giving rise to such claim. If the Concessionee fails to comply with the requirements of this Clause, it shall not be entitled to any extension of time, additional payment, compensation or other relief in respect of the relevant cause.

22. MISCELLANEOUS PROVISIONS

22.1 Pre-existing Defects

The Concessionaire hereby cedes, assigns and transfers to the Concessionee all rights and claims which the Concessionaire may be entitled to pursue in relation to unfulfilled obligations and latent defects in connection with any construction or maintenance on the Highway which was carried out prior to the Effective Date whether or not they manifest themselves after the Effective Date. The Concessionaire shall give the Concessionee reasonable assistance with regard to information in relation thereto. If the rights or claims cannot be ceded, assigned and transferred, the Concessionaire shall pursue those rights or claims at the request, direction, risk and expense of the Concessionee, for the benefit and account of the Concessionee.

22.2 Primacy of this Concession Agreement

22.2.1 This Concession Contract shall govern all aspects of, and all contractual relationships relating to, the Project as between the Parties. In the event of conflict between this Concession Contract and any Associated Agreement on a matter affecting the Parties, including all questions of interpretation, this Concession Contract shall prevail.

22.2.2 The Annexes attached hereto shall be deemed a part of this Concession Agreement and shall have binding effect. If the content of any of the Annexes is in conflict with the content of this Concession Contract, the content of this Concession Contract shall prevail.

22.3 Confidentiality

Each Party shall, subject to applicable law, keep in confidence all information, data or other records provided that nothing in this Clause 22.3 shall limit the Concessionaire's right to use such documents and information in circumstances where this Concession Agreement has been terminated in accordance with Clause 19 or a Substituted Entity's right to use such documents and information or the Lenders' rights to information required under any Loan Agreements. In each case such rights will only be used in connection with the operation and maintenance of the Highway.

22.4 Variations in Writing

All additions, amendments and variations to this Concession Contract shall be binding only if in writing and signed by duly authorised representatives of each of the Parties.

22.5 Entire Agreement

This Concession Agreement, including the Annexes attached thereto, represents the entire agreement between the Parties in relation to the subject matter thereof and supersedes, the proposal for the Project submitted by the Concessionee, and any or all previous agreements or arrangements, whether oral or written, between the Parties in respect of the Project, the Highway, and the Concession Rights or the other contents of this Concession Contract. No representations, warranties or other terms and conditions of whatever nature not contained or recorded herein have been made or agreed to.

22.6 No Waiver

No waiver by either Party of any default or variation by the other in the performance of any of the provisions of this Concession Agreement shall operate or be construed as a waiver of any other or further default or variation whether of a like or different character, or shall be effective, unless in writing duly executed by an authorised representative of such Party.

22.7 Time and Indulgence

Any time or other indulgence allowed by one Party to the other in which to perform its duties and obligations hereunder or to remedy any breach hereof shall not be, and shall not be construed as, a waiver by the Party giving such time or indulgence of any of its rights hereunder, except to the extent of such time or indulgence.

22.8 No Third Party Beneficiaries

Save as provided in Clause 26, this Concession Agreement is made exclusively for the benefit of the Concessionaire and the Concessionee and no third party shall have any rights hereunder or be deemed to be a beneficiary hereof except as may be expressly provided herein.

22.9 Language

This Concession Agreement shall be drawn up and construed in the English language.

22.10.1 Any notice or correspondence to be given under this Concession Contract shall be in writing in English unless otherwise agreed and shall be delivered personally or sent by registered or certified mail, return receipt requested, or sent by fax followed by the original delivered by hand or sent by registered or certified mail, return receipt requested, save that any notice required pursuant to Clause 17, 18 or 19 shall be delivered by hand to the physical address of the Party to whom such notice is being given and such Party shall sign a receipt for such notice.

22.10.2 The addresses for Notices and the domicilia citandi et executandi are as follows:

Concessionaire:

The Government of Sierra Leone, Represented by Minister of Works, Housing and infrastructure

New England Ville, Freetown, Sierra Leone

Concessionee: China Railway Seventh Group (S.L) Co., Ltd

No. 7 Lumley Beach Highway, Phase II-5&6, West African Sunshine

Aberdeen, Freetown Sierra Leon

Independent Engineer: As notified to the Parties from time to time by the Independent Engineer

Lenders:.....

.....

.....

Either Party, the Lenders or the Independent Engineer may change its nominated address and domicilium citandi et executandi to another physical address in [host country] by prior notice to the other Party, the Lenders and the Independent Engineer.

22.11 Severability

If anyone or more of the covenants, agreements, provisions or terms of this Concession Agreement shall be held wholly or partly invalid, illegal or unenforceable for any reason whatsoever, then those covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Concession Agreement and shall in no way affect the validity, legality

or enforceability of this Concession Contract. The Parties shall meet as soon as possible and negotiate in good faith upon a replacement provision that is legally valid and that achieves as nearly as possible the objective of this Concession Contract and produces an equivalent economic effect.

22.12 Representatives

22.12.1 The Concessionee shall be represented by the Country Director of CRSG, or such other representative as shall from time to time be notified to the Concessionaire.




22.12.2 The representatives of the Concessionaire shall be the **Hon. Minister, Ministry of Works, Housing and Infrastructure** or such other representative as shall from time to time be notified to the Concessionee.

22.13 Financial Base Case and Associated Agreements *

The Parties shall, on the date of Financial Closing:

- (a) replace Financial Base Case with project forecasts prepared by the Concessionee and in the form approved by the Lenders and the Concessionaire for the purposes of Financial Closing, which forecasts are substantially in the form of the financial model contained in and are prepared using the methodology and assumptions contained therein and amended to incorporate the final terms of the Loan Agreements as at the date of Financial Closing;
- (b) update Associated Agreements to incorporate the complete list of Loan Agreements approved by the Concessionaire and entered into as at Financial Closing.

22.14 Provisions Surviving Termination

Notwithstanding the termination of this Concession Agreement for any reason, including the expiry of the Concession Period, the Parties shall continue to be bound by the following provisions which shall remain in full force and effect:

22.14.1 Clause 1, Clauses 3.8 to 3.13 (inclusive), Clause 11.6, Clause 11.7, Clauses 19.1.4 to 19.1.7 (inclusive), Clause 19.2.3 to 19.7 (inclusive), Clause 21, Clause 22, Clause 24.3 and Clause 26.

22.14.2 Clause 14, but only to the extent that:

- (a) the act or omission that gave rise to the claim, liability, loss or cost occurred prior to the expiry or termination of this Concession Agreement; and
- (b) such act or omission has not been taken into account in the calculation of the compensation payable on such termination pursuant to the provisions of Clause 19 or the Deed of Suretyship.

22.15 REVIEW

This Concession Agreement shall be subject to review every 3 (three) years from the Effective Date.

23. REPRESENTATIONS AND WARRANTIES

23.1 Representations and Warranties by the Concessionee

The Concessionee hereby represents and warrants to the Concessionaire as follows:

23.1.1 The Concessionee is a company duly organised under the laws of the [host country] with all requisite corporate power to carry out its obligations under this Concession Contract and to execute and deliver this Concession Agreement, and acknowledges that, except as the Concessionaire may otherwise agree in

writing, its sole purpose is to implement the project. A true and complete copy of the documents constituting the Concessionee Certificate of Incorporation, Memorandum of Association and Articles of Association certified by the duly authorised representative of the Concessionee, as in effect on the date hereto, is attached as Annex.....

- 23.1.2 This Concession Agreement has been duly authorised by all necessary corporate action, is legally valid and binding upon itself and does not require approval in any form in order to give full effect thereto; provided, however, that this Concession Contract is subject to the fulfilment of all the conditions set forth in Clause 24.
- 23.1.3 The Concessionee is not prevented or restrained legally, commercially or otherwise from entering into and undertaking the provisions of this Concession Agreement in accordance with its terms.
- 23.1.4 The Concessionee has fully familiarized itself with all aspects of the Project and has all the knowledge, experience, ability (particularly financial ability) to carry out the Project in accordance with the terms of this Concession Agreement and all relevant laws and regulations.
- 23.1.5 The Concession has reviewed and checked as an expert the Site and its surroundings, and the physical condition of the Site and its surroundings and is fully familiar with the terms of all relevant laws and regulations including without limitation all laws and regulations relating to the Highways and toll roads and its rights and obligations thereunder and hereunder, and pursuant to such review the Concessionee finds the Site suitable for the fulfilment of its obligations and undertakings under this Concession Contract, including without limitation, the completion of the design and construction of the Highway, the Associated Facilities and the Project. The Concessionee further acknowledges its willingness to enter into this Concession Agreement with full awareness of, among other things, the rights and obligations derived from the physical and legal status of the Site and the Highway, the provisions of this Concession Agreement and its ability to fulfil all of its obligations under this Concession Agreement adequately and in a timely manner.
- 23.1.6 The Concessionee has conducted a full inquiry and has satisfied itself, and accordingly accepts responsibility for the fact that the execution of the Project or any part thereof shall not involve any infringement of any patent or trade secret or know how or copyright belonging to any third party.
- 23.1.7 The Concessionee has evaluated all factors that may reasonably be deemed to affect the carrying out of its obligations under this Concession Agreement, including geological conditions, technical risks, traffic risks, and any other risk involved herein, and such other conditions that may reasonably be deemed to affect the progress or completion of the Project in accordance with the terms of this Concession Agreement.
- 23.1.8 All representations, warranties, information and data of the Concessionee contained in any Written statement (including financial statements), certificate, exhibit or schedule in connection with this Concession Agreement, shall be true and correct in all material respects as of the date hereof.
- 23.2 Representations and Warranties of the Concessionaire**
The Concessionaire hereby represents and warrants to the Concessionee as follows:
- 23.2.1 In executing this Concession Contract for the purposes of accepting the benefits hereof and the granting of the Concession Rights, Minister of Works, Housing and Infrastructure is acting for and on behalf of the Concessionaire and in accordance with law.

23.2.2 The Concessionaire is duly established under the law of the State and this Concession Agreement is legally valid and binding upon the Concessionaire and enforceable in accordance with its terms.

24. EFFECTIVENESS

24.1 Effectiveness Prior to Effective Date

During the period between the signature of this Concession Contract and the Effective Date the provisions of this Concession Agreement shall be in full force and effect, save where otherwise mentioned by the said provisions or required by the context.

Resolutive Conditions

The following shall be satisfied after signature hereof:

- (a) signature by the Concessionaire and the Concessionee of the Initial Construction Works Contract.
- (b) signature by the Concessionee and the relevant O&M Contractors of the Initial Operation and Maintenance Contract in the form approved by the Concessionaire;
- (c) execution by the parties thereto (other than the Concessionaire) of the other Associated Agreements, in each case in a form satisfactory to the Concessionaire;
- (d) submission to the Concessionaire of details of the management and Organization structure of the Concessionee, satisfactory to the Concessionaire;
- (e) issuance of a legal opinion by a practising attorney addressed to the Concessionaire in a form satisfactory to the Concessionaire, affirming compliance by the Concessionee
- (f) delivery by the Concessionee of an Operation and Maintenance Agreement in the Form approved by the Concessionaire;
- (g) achievement of Financial Closing (other than any condition precedent relating to the unconditionality of this Concession Contract or any other condition precedent of a continuing nature, the satisfaction of which can only be determined on the date of first drawdown under the Loan Agreements);
- (h) if the O&M Contractor is a joint venture (or consortium), the delivery by such entity(ies) of two notarially certified copies of the joint venture (or consortium) agreement to the Concessionaire and the Independent Engineer;
- (i) delivery by the Concessionee to the Concessionaire of a broker's note confirming that the insurance policies required in terms of Clause 15 have been effected;
- (j) completion by the Concessionee of the Preliminary Design in respect of the Initial Construction Works as approved by the Concessionaire;
- (k) declaration of the Highway as a toll road in terms of an Act of Parliament.

24.3

Failure to Meet Resolutive Conditions

24.3.1

Unless the parties otherwise agree in writing, if the conditions specified in Clause 24.2.1 (a) to (j) are not fulfilled within 90 (ninety) days of the date hereof, this Concession Contract shall terminate and the obligations of each Party shall be determined pursuant to Clauses 19.1.4(a), Clause 19.3.1 (a), (b) and (e) and this Clause 24.3.1 (as appropriate). Where this Concession Contract has terminated as aforesaid, the Concessionaire shall be entitled to claim under the Resolutive

Conditions Bond if the Concessionee has failed to satisfy any of the conditions set forth in Clauses 24.2.1 (a), 24.2.1 (b), 24.2.1 (c), 24.2.1 (d), 24.2.1 (f), 24.2.1 (i), 24.2.1 (j) or 24.2.1 (j) or has failed to use its best endeavours to satisfy any of the conditions set forth in Clauses 24.2.1 (e) and 24.2.1 (g) and 24.2.1 (h), provided also that the Concessionaire shall be entitled to call up the Resolutive Conditions Bond if Financial Closing is not achieved by reason of failure of the Shareholders to sign the Equity Subscription Agreements. If the Concessionaire has failed to comply with its obligations under Clause 24.2.2, the Concessionee shall be entitled to terminate this Concession Contract in which event the Concessionaire shall reimburse the Concessionee for all its reasonable costs and expenses incurred in relation to the Project since the date of this Concession Agreement.

24.3.2

If the conditions specified in Clause 24.2.1 (a) to (j) are not fulfilled within 90 days of the date hereof, the Concessionee may, prior to the expiry of the 90 (ninety) day period referred to above, give notice of its intention to extend the validity of the Resolutive Conditions Bond for an additional period of 90 (ninety) days, in which event:

- (a) if the Concessionaire acknowledges that it is not entitled, or does not intend, to call on the Resolutive Conditions Bond and the Concessionee extends the validity of the Resolutive Conditions Bond, prior to its expiry, as aforesaid, then this Concession Contract shall only be terminated if the conditions set forth in Clause 24.2.1 (a) to (j) are not met within 180 (one hundred and eighty) days of the date hereof; or
- (b) if the Concessionee does not extend the validity of the Resolutive Conditions Bond prior to its expiry or the Concessionaire acknowledges that it is entitled and intends to call on the Resolutive Conditions Bond, then this Concession Agreement shall be terminated on the expiry of the said period of 90 (ninety) days.

24.3.3

If the Concessionee believes that the conditions specified in Clause 24.2.1 (a) to (k) will not be fulfilled within 90 (ninety) days of the date hereof, and that the Concessionaire will be entitled to call on the Resolutive Conditions Bond pursuant to Clause 24.3.1, then the Concessionee may not later than the expiry of the 90 (ninety) day period referred to above, deliver a new resolute conditions bond to replace the Resolutive Conditions Bond, such new bond to be on the same terms and subject to the same conditions as the Resolutive Conditions Bond, except that such new bond shall be in an amount of million (..... million Local Currency) in prices and shall have a validity period that expires 91 (ninety-one) days after the expiry date of the Resolutive Conditions Bond that it replaces.

Where the Concessionee delivers a new resolute conditions bond that meets the

requirements of this Clause 24.3.3:

- (a) unless the Parties agree otherwise in writing, this Concession Agreement shall be terminated if the conditions specified in Clause 24.2.1 (a) to (k) are not fulfilled within 180 (one hundred and eighty) days of the date of signature of this Concession Agreement;
- (b) the Concessionaire shall otherwise be entitled to call on such new bond in the same circumstances as it would have been able to call the Resolutive Conditions Bond; and
- (c) the rights and obligations of each Party shall be determined pursuant to Clause 19.

25.

STIPULATIONS FOR THE BENEFIT OF THE LENDERS

The Parties agree that the provisions of this Concession Agreement that refer to the Lenders comprise stipulations for the benefit of the Lenders and that the Lenders may at any time accept such stipulations in their favour provided that they accept the obligations imposed upon them in terms of this Concession Contract. The Concessionaire and the Lenders respectively shall have no obligations to each other under this Concession Agreement in respect of the content thereof save for such obligations that are expressly provided for herein. The Parties further agree that they shall not amend the provision of this Concession Agreement that are for the benefit of the Lenders without prior approval of the Lenders.

Execution on behalf of the Concessionaire

DONE AND SIGNED at The Sierra Leone Roads Authority this 22nd day of Dec 2015

Signature of Minister
ION, ABDUL B. BARRIE

ACTING MINISTER

MINISTRY OF WORKS, HOUSING AND INFRASTRUCTURE

Duly authorised hereto

Witness:

Signature of Witness 1
Abdulai Aziz Kamara

Name

Signature of Witness 2
M/S. Saeedur Rahman

Designation

Signature of Witness 3
Ibrahim S. Kromah

Name

Signature of Witness 4
Deputy Secretary

Designation

Execution on behalf of the Concessionee:

DONE AND SIGNED at this 22nd day of Dec 2015

Signature of MR. ZONG QINGWEI
MR. ZONG QINGWEI

COUNTRY DIRECTOR

CHINA RAILWAY SEVENTH GROUP (SL) CO., LTD

Duly authorised hereto

Witness:

Signature of Witness 5
Name

Name

Signature of Witness 6
Marketing Manager

Designation

Signature of Witness 7
Name

Name

Signature of Witness 8
Chief Engineer

Designation