

THIS IMPLEMENTATION AGREEMENT is made the 21st day of November, 2001

BETWEEN:

THE GOVERNMENT OF JAMAICA ACTING THROUGH THE MINISTER OF FINANCE AND PLANNING AND THROUGH THE MINISTER OF TRANSPORT AND WORKS (the "**Government**");

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

TRANSJAMAICAN HIGHWAY LIMITED, particulars of which are set out in Schedule 1 (the "**Developer**").

WHEREAS:

- (A) The Government has instructed and authorised its wholly owned company National Road Operating and Constructing Company Limited (the "Grantor") to make arrangements for the implementation of the Highway 2000 Project and the Grantor has invited companies to tender for a single contract to design, construct, operate, maintain and finance the Toll Road (the "**Project**").
- (B) In response to a Request for Proposals dated June, 2000, Bouygues Travaux Publics ("**Bouygues**") submitted to the Grantor a tender for the Project dated 15th February 2001 (the "**Tender**").
- (C) The Grantor appointed Bouygues as preferred bidder on 27th June, 2001 by entering into the preferred bidder appointment dated on that date.
- (D) Pursuant to the preferred bidder's appointment, the Grantor has agreed to enter into a Concession Agreement dated the same date as this Agreement with the Developer (the "**Concession Agreement**") for the carrying out of the works and the provision of the services described generally above and more particularly in the Concession Agreement.
- (F) It is a Condition Precedent to the Concession Agreement that the Government enters into this Implementation Agreement to cover and assume responsibility for those areas of the arrangements with the Developer which are properly the responsibility of the Government and not the Grantor.

NOW IT IS AGREED as follows:

1. INTERPRETATION

Terms defined in the Concession Agreement shall have the same meaning herein as therein.

2. CONDITIONS PRECEDENT AND EFFECTIVE DATE

2.1 This Agreement shall become effective on the Effective Date.

3. REPRESENTATIONS

The Government represents and warrants to the Developer that (subject, with respect to the matters covered by the Toll Roads Bill and contemplated in the Toll Road Principles, to the entry into force of that Bill as an Act of the Parliament of Jamaica):

- (a) the Grantor is a private company, wholly owned by the Government, which has been incorporated under the Companies Act of Jamaica and is duly organised, validly existing and in good standing under the laws of Jamaica, and has the necessary power and authority to enter into and perform its obligations under this Agreement;
- (b) this Agreement, and the Concession Agreement constitute respectively the legal, valid and binding obligation of the Government and the Grantor, enforceable against the Government and the Grantor respectively in accordance with their terms except as such enforceability may be limited by laws affecting the rights of creditors generally;
- (c) the execution, delivery and performance by the Government of this Agreement have been duly authorised by all requisite action, and will not contravene any provision of the Constitution of Jamaica, or any other applicable Statutory Requirement; and
- (d) all acts, conditions and things required to be done, fulfilled and performed in order:
 - (i) to enable the Government lawfully to enter into, exercise the Government's rights under, and perform and comply with the obligations expressed to be assumed by the Government in, this Agreement;
 - (ii) to ensure that the obligations expressed to be assumed by the Government in this Agreement are legal, valid, and binding (including but without limitation fulfilment of the requirements of Jamaican law concerning public procurement);
 - (iii) to enable the Grantor lawfully to enter into, exercise the Grantor's rights under, and perform and comply with the obligations expressed to be assumed by the Grantor in, the Concession Agreement; and
 - (iv) to ensure that the obligations expressed to be assumed by the Grantor in the Concession Agreement are legal, valid, and binding (including but without limitation fulfilment of the requirements of Jamaican law concerning public procurement),

have been done, fulfilled and performed.

4. TOLL REVENUES

- 4.1 The Government shall procure in accordance with the toll road principles set out in Schedule 1 hereof ("**Toll Road Principles**") that the Developer is granted the necessary rights to collect Tolls from users of the Toll Road as contemplated in the Concession Agreement. Tolls shall be charged and collected in Jamaican Dollars. All expenses relating to the collection of Tolls on the Toll Road shall be borne by the Developer. Subject to Clause 24 (Developer Payments) of the Concession Agreement, the Developer will have sole rights to revenue arising out of the collection of Tolls during the Concession Period.

- 4.2 Subject to Clause 22 (Toll Revenues) of the Concession Agreement, the Developer shall determine the level and structure of tolls to be charged on the Toll Road. The Developer shall not be entitled to collect Tolls in respect of any Segment until the Handover Date for that Segment.
- 4.3 The Developer shall not grant and shall not permit the granting of exemptions to the payment of Tolls other than those approved in advance by the Toll Regulator.
- 4.4 The Developer shall be free to determine the most appropriate methods for collecting Tolls, provided that it uses all reasonable endeavours to use the most efficient method for collecting Tolls, taking into account the installed facilities. The Developer may entrust a third party operator with the responsibility for collecting Tolls.
- 4.5 The Developer may with the approval of the Grantor and the Toll Regulator erect new toll equipment in order to implement its toll policy. Any new toll equipment shall only be erected to the extent its construction complies with the Core Requirements.
- 4.6 The Developer shall be entitled to collect Tolls at the Initial Toll Levels. The Developer, may on each anniversary of the first Handover Date, apply to the Toll Regulator, in accordance with the Tolling Policy, for the Toll Regulator's approval to an increase in the Toll Levels. From the date that the Toll Regulator approves the proposed increase the Developer shall be entitled to collect Tolls at the increased Toll Levels.
- 4.7 Without prejudice to any other rights of the Developer, including termination of the Concession Agreement, under the provisions of Clauses 27.1 and 31.1 of the Concession Agreement, if the Toll Roads Bill has not be enacted as an Act of the Parliament of Jamaica before the EFC Long Stop Date, the parties to this Agreement shall meet to discuss in good faith a way to restructure the contractual relationships so that the Developer obtains the necessary assurance as to the enforceability of the contractual basis of the Project, and so that the objectives of the parties to this Agreement are achieved.

5. GENERAL CONSUMPTION TAX

- 5.1 The Government shall, by no later than Early Financial Close, procure that the Developer is granted the following General Consumption Tax ("**GCT**") rates :
- (a) The rate of GCT on tolls charged to users is 0%, i-e zero rated for the duration of the Concession Period;
 - (b) GCT applicable on invoices of the Contractor to the Developer, and of the Operator to the Developer, as well as sub-contractors to the Contractor, Operator and the Developer will be exempted or remitted as the case may be provided that the said exemption or remission will be for a duration of 15 years from the Effective Date of the Concession Agreement;
 - (c) GCT applicable on other direct sub-contractors or suppliers of the Developer will be exempted or remitted as the case may be provided that the said exemption or remission will be for a duration of 15 years from the Effective Date of the Concession Agreement; and

- (d) GCT applicable on imports into Jamaica by the Developer will be exempted or remitted as the case may be provided that the said exemption or remission will be for a duration of 15 years from the Effective Date of the Concession Agreement.

5.2 The Government shall, by no later than Early Financial Close, procure that the Contractor and the Operator are granted the following GCT rates:

- (a) GCT applicable on invoices to the Developer (from both the Contractor and the Operator) will be exempted or remitted as the case may be provided that the said exemption or remission will be for a duration of 15 years from the Effective Date of the Concession Agreement
- (b) GCT applicable on invoices to the Contractor from its sub-contractors will be exempted or remitted as the case may be provided that the said exemption or remission will be for a duration of 15 years from the Effective Date of the Concession Agreement;
- (c) The GCT refundable will be paid to the Contractor within a maximum 8 week period; and
- (d) GCT applicable on imports into Jamaica by the Contractor and the Operator will be exempted or remitted as the case may be provided that the said exemption or remission will be for a duration of 15 years from the Effective Date of the Concession Agreement.

6. IMPORT DUTIES EXEMPTIONS

6.1 The Government shall, by no later than Early Financial Close, procure that the Developer is granted the necessary exemptions and waivers of any import duties of any kind on the material and equipment (but excluding motor cars) purchased directly by the Developer for the duration of the Concession Period for direct use on the Project, provided that the said exemption or remission will be for a duration of 15 years from the Effective Date of the Concession Agreement.

6.2 The Government shall, by no later than Early Financial Close, procure that the Contractor and the Operator are granted the necessary exemptions and waivers of any import duties of any kind on material and equipment (but excluding motor cars) imported for the Project for the duration of the Concession Period for direct use on the Project, provided that the said exemption or remission will be for a duration of 15 years from the Effective Date of the Concession Agreement.

6.3 The Developer will, to the maximum extent reasonably and economically possible, use, and procure that its sub-contractors use, labour, technical expertise, products and materials produced or originating in Jamaica.

7. TAX EXEMPTIONS AND REMISSIONS

7.1 The Government shall, by no later than Early Financial Close, procure that the Developer is granted, for the duration of the Concession Period, the following tax exemptions, waivers and remissions which are necessary to enable the Developer to fulfil its obligations under the Concession Agreement:

- (a) Corporate Tax

- (i) 0% rate for the first 12 years (tax and accounting losses can be carried forward until they have been fully absorbed); and
 - (ii) Realised exchange loss will be deductible for tax purposes .
- (b) Stamp duties and other duties
- (i) Stamp duties on equity and quasi-equity issues as well as on capital increase and transfer of shares; and
 - (ii) Stamp duties on insurance policies, assignment and other securities and other forms of transfer of contract.
- (c) Withholding taxes
- Withholding tax or other taxes incurred under the Jamaican Law on interest payments and other payments made for the loans contracted by the Developer with foreign or multilateral institutions under the Financing Agreements.
- (d) Other taxes
- (i) Contractor's levy and other taxes on construction contracts if any; and
 - (ii) Property taxes .

7.2 The Government shall, by no later than Early Financial Close, procure that the Contractor and the Operator are granted the following tax exemptions, waivers and remissions which are necessary to enable the Developer to fulfil its obligations under the Concession Agreement:

- (a) Corporate Tax
 - (i) Tax and accounting losses can be carried forward until they have been fully absorbed; and
 - (ii) Realised exchange loss will be deductible for tax purposes
- (b) Stamp duties and other duties
 - (i) Stamp duties on equity and quasi-equity issues as well as on capital increase and transfer of shares;
 - (ii) Stamp duties on insurance policies, financial instruments of any kind;
 - (iii) Stamp duties on assignment and other forms of transfer of contract;
- (c) Contractor's levy and other taxes on construction contracts, if any.

7.3 For corporate tax calculation purpose, the Developer's total costs of the Project shall be depreciated over the term of the Concession Period on a straight line basis from Handover Date of each Section.

8. EXPROPRIATIONS AND LAND ACQUISITIONS

- (a) The Government shall procure that the Developer will be given vacant possession of the Sites in accordance with Schedule 8 (Land Delivery Schedule) of the Concession Agreement, so as to enable the Developer to perform its obligations in relation to the Construction Works in due time.
- (b) If the parties to the Concession Agreement are unable to, or delayed in, performing their respective obligations with respect to Clauses 7, 8 and 11 of the Concession Agreement and the Schedules to the Concession Agreement referred to in those Clauses, the Government shall (promptly after a written request of either of the parties) exercise all reasonable endeavours to assist the parties with respect to those matters.

9. CONSTRUCTION SITE AND TOLL ROAD SECURITY

The Government shall procure that the Jamaican police will provide traffic safety and normal police security services on the Toll Road at no cost to the Developer, subject to the Developer providing such facilities as may be reasonably required by the Jamaican police for such purposes.

10. TRANSFER

- 10.1 The Government and the Developer agree that the right and obligation to operate and maintain each Existing Road Section will be transferred to the Developer on the relevant Existing Road Transfer Date.
- 10.2 The Government agrees to use all reasonable efforts to transfer any assignable and un-expired warranties from the contractors for the Existing Road Sections to the extent that these warranties relate to the Government's obligations under Clause 10.1 hereof.

11. CONSENTS

- 11.1 The Developer shall be responsible for applying for, and for all costs of obtaining, the Competent Authority Consents. Provided that the Developer notifies the Government at the time of making that application and complies with the procedures set out in Schedule 16 of the Concession Agreement and the Concession Specification complies with the requirements of Schedule 16 of the Concession Agreement, the Government shall procure that the Competent Authority Consents are delivered to the Developer within the time frames referred to in Schedule 16 of the Concession Agreement t.
- 11.2 Subject to Clause 11.3 below, the Developer shall be responsible for obtaining and maintaining, at its own cost, all Required Consents. Provided that subject to and in accordance with the provisions of this Agreement, the Government shall, at the Developer's request:
 - (a) use reasonable efforts to assist the Developer in its dealings with any Competent Authority to the extent permitted by the provisions of any Statutory Requirements in connection with executing and implementing the Project in accordance with the provisions set forth in this Agreement; and
 - (b) use reasonable efforts to assist the Developer to the extent permitted by the provisions of any Statutory Requirements to obtain those approvals and/or permits necessary for the construction, operation and maintenance of the Toll Road, provided that the Government

shall bear no liability whatsoever if the Developer does not succeed in obtaining any such approval and/or permit nor shall the above be construed as permitting the Developer to avoid complying with and performing the requirements of any Statutory Requirements.

- 11.3 Following issuance of a Completion Certificate in respect of a Completed Part and prior to the opening of the Completed Part for traffic, the Government shall promptly procure that the Completed Part is designated as a "Toll Road" by the Competent Authorities under Jamaican law. The Developer shall use reasonable efforts to assist the Government in this, in accordance with Clause 11.2 (Statutory Requirements and Required Consents) of the Concession Agreement.

12. RATE OF EXCHANGE

In the event that the Bank of Jamaica shall fail to publish a weighted average rate of exchange for the purchase of US Dollars in Jamaica with Jamaican Dollars, the Government shall convert to US Dollars any amount which the Grantor is required to pay to the Developer in US Dollars in accordance with the GPD Loan Agreement.

13. GOVERNING LAW AND SETTLEMENT OF DISPUTES

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

12.2 Arbitration

- (a) Any dispute arising out of, or in connection with, this Agreement- shall (regardless of the nature of the dispute) be referred to arbitration and finally be referred to and finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitration shall be conducted in English and in London.
- (b) No arbitrator appointed pursuant to this Clause 12.2 shall be a national of the jurisdiction of either Party to this Agreement or of the jurisdiction of any of the Sponsors nor shall any such arbitrator be an employee or agent or former employee or agent of any such person.
- (c) The arbitrator(s) while determining any dispute shall, without prejudice to the generality of their powers, have power to issue proposed findings at the request of either Party; award compensation, assess and award interest at such rate as they think fit on any sum awarded by them (whether interim or final) for any period, whether before or after the date of their award. The award of the arbitrator(s) shall be final and binding on the Parties.

12.3 Waiver of Sovereign Immunity

The Government unconditionally and irrevocably:

- (a) agrees that, should any proceedings be brought against it or its assets (other than aircraft, naval vessels and other defence-related items of the Government or assets protected (or which are capable of being protected) by the diplomatic and consular privileges under the State Immunity Act 1978 of the United Kingdom or the Foreign Sovereign Immunities Act of the United States of America or any analogous legislation, as applicable,

hereinafter the "**Excepted Assets**") in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets (other than Excepted Assets);

- (b) waives any right of immunity (to the fullest extent permitted by applicable law) which it or any of its assets (other than Excepted Assets) now has or may acquire in the future in any jurisdiction; and
- (c) consents generally in respect of the enforcement of any judgment against it (to the fullest extent permitted by applicable law) in any such proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings (including, without limitation, the making, enforcement or execution against or in respect of any property whatsoever (other than Excepted Assets) irrespective of its use or intended use).

12.4 **Enforcement**

With respect to any proceedings for enforcement of an award pursuant to Clause 12.2(a) against assets (other than Excepted Assets) of either Party brought in the courts of England:

- (a) the Government appoints the High Commissioner of Jamaica in England at 1 Prince Consort Road, London SW7 2BZ, to receive for and on its behalf service of process in such jurisdiction in any such enforcement proceedings.
- (b) the Developer shall appoint an agent (to be notified in writing to the Government by not later than Early Financial Close) to receive for and on its behalf service of process in the United Kingdom in any such enforcement proceedings.
- (c) each Party agrees to maintain in England duly appointed process agents, notified to the other Party, for the purpose of Clause 11.2.
- (d) each Party agrees that failure by any such process agent to give notice of any process to it shall not impair the validity of such service or of any judgment based thereon.

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

SIGNED by THE GOVERNMENT OF JAMAICA

Represented by

Dr. The Honourable Omar Davies, Minister of Finance and Planning

And

The Honourable Robert Pickersgill, Minister of Transport and Works

SIGNED by NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED
Represented by
Mr. Kingsley Thomas and Dr. Wayne Reid

SIGNED by Mr Pascal Radde
on behalf of
TRANSJAMAICAN HIGHWAY LIMITED

SCHEDULE ONE

TOLL ROAD PRINCIPLES

The following are the fundamental legal principles, which the parties expect will govern the operation of Toll Roads Jamaica.

Toll Roads will be governed by legislation to be enacted by the Jamaican Parliament. It is anticipated that the legislation would be based on the following principles and contain provisions to the effect as outlined below.

1. AUTHORITY FOR OPERATION OF TOLL ROADS

The Minister responsible for Transportation and Works (“the Minister”) will be conferred with a power to declare by order that any road, bridge, ferry etc. be declared a toll road for purposes of the legislation. It is expected that the legislation will also permit the Minister by order to designate certain roads as private tolling roads with controlled access (i.e. vesting in the designated person the right to deny access to the toll road without payment of toll charges) and allow him to name or designate the person or persons authorized to own and/or operate the toll roads.

2. DELEGATION

The legislation should contain a provision to the effect that where a person has been granted a Concession the Minister will have power to provide in the relevant order that the person to whom the Concession has been granted may delegate that grant to another person on such terms and conditions as the Minister will approve.

3. SCHEME FOR CHARGES

The duration and the maximum amount of tolls to be charged for a stated period are to be set by the Minister. Once the period and the maximum amount to be charged in that period is set by the Minister the Owner/Operator of the Toll Road would be entitled to raise or lower tolls by an agreed index to be set by the Minister under regulations made under the legislation. The Authority would be empowered to approve increases. The Authority would also be empowered to refuse increases in the tolling charges where the increases are not in keeping with the formula as provided for in the regulations or is discriminatory in the context of the Constitution.

4. PAYMENT OF TOLLING FEE AND RELATED CHARGES

A toll shall be paid to the Owner (“**Owner**” means the Developer)

- (a) if a toll device is not attached to the vehicle by the person in whose name the plate portion of the vehicle permit is issued
- (b) if a toll device is affixed to the vehicle, by the person to whom the toll device is registered.

Photographic or electronic evidence of the use of a tolling road is proof in the absence of evidence to the contrary of an obligation to pay a toll.

5. POWER OF THE OWNER/OPERATOR FOR COLLECTION OF TOLLING FEE AND RELATED CHARGES

The Owner shall have power subject to the approval of the Authority (“the Authority”) *infra* to:

- (a) establish, collect and enforce payment of tolls and related fees with respect to the operation of any vehicle or class of vehicles;
- (b) establish collect and enforce administration fees based on such criteria as the owner considers appropriate;
- (c) establish interest rates to be charged on unpaid tolls and fees and collect interest charged at those rates;
- (d) exempt any vehicle or class of vehicles from the application of (a) (b) and (c) (supra);
- (e) require security for the provision of toll devices;
- (f) determine the methods of payment of toll fees and interest;
- (g) prohibit any person from gaining access to pass over a toll road by vehicle or operate a vehicle on a toll road without paying the applicable toll imposed in accordance with the Act and the regulations.
- (h) Prohibit access to the toll road by pedestrians and animals.

There should be created an offence punishable by fine or imprisonment where a vehicle gains access to, passes over or is operated on a toll road in violation of the Act. The registered owner shall in the absence of evidence to the contrary be guilty of an offence.

6. METHOD OF COLLECTING TOLL CHARGES AND RELATED FEES.

The following should be the applicable provisions for the collection of toll charges fees and interest earned thereon:

- (a) All tolls, fees and interest collected by or on behalf of the Owner are the property of the Owner;
- (b) The Owner shall have the right to institute a system of immediate collection in cash or other mode of payment from a person desiring to enter a toll road. A person is responsible for the payment of a toll and/or fee where the Owner upon him, makes demand. Where a person refuses to pay the toll the Owner may refuse him access to the toll road.
- (c) A toll and any related fee or interest is a debt owing to the Owner and the Owner has a cause of action enforceable in any court of competent jurisdiction for the payment of debt

- (d) Where a person is notified of the debt above he has 30 days within which to pay failing which the Owner may send the person responsible for the payment a toll notice notifying him of failure to pay the toll.
- (e) The Notice should contain the following (i) set out the amount of the toll, of any administrative fee and the interest rate that is being charged, (ii) inform the person named in the notice that he or she may dispute the matter on grounds set out below, (iii) inform the person named in the notice that if he or she disputes the matter he or she must send a notice of dispute to the owner within the time period mentioned below, (iv) that he or she bears the onus of proving the grounds on which the matter is disputed, (v) the tolls, fees and interest set out in the notice shall be deemed to be paid in full if the Owner fails to send the person its decision within 30 days of receiving the persons notice of dispute, (vi) inform the person named in the notice that if the toll or fee referred to in the notice, or any interest on that toll or fee is not paid within 90 days of the day on which the person received the notice, the Collector of Taxes shall refuse to validate the person's road licence and the Collector may even refuse to validate even if there is failure to pay pursuant to the conditions stated below.
- (f) A person may dispute to pay a toll on the grounds that the toll was (i) paid in full, (ii) the amount of the toll is incorrect, (iii) the vehicle numbered plate or the toll device registered to the person was proven to the Owner or the Operator to be lost or stolen at the time the toll was incurred
- (g) A person who receives notice may dispute the alleged failure to pay if the person sends a notice of dispute, setting out the grounds on which the dispute is based to the Owner, being a ground referred to in (f).
- (h) The onus of proof is upon the person who sends the notice of the dispute.
- (i) Within 10 days the Owner shall render a decision and shall send the person a copy of the decision, with or without reasons.
- (j) Where the dispute is unsuccessful the Owner shall inform the person who gave notice of dispute of his right to appeal the decision to the Toll Regulator.
- (k) Interest on unpaid tolls shall be charges at such rate as is published by the Toll Regulator from time to time. Interest will continue to accrue and be payable on unpaid tolls even if a person disputes or appeals the obligation to pay a toll.
- (l) If a toll or related fees and interest are not paid within 45 days of the day it was imposed the Collector of Taxes shall refuse to licence a motor vehicle that has received notice of failure to pay. This may be acted upon notwithstanding that there has been a dispute or appeal.

Actions taken under the statute are in addition to any other methods or enforcement and collection available at law.

7. UTILITIES

It is expected that there will be a provision enabling the Owner to enter into arrangements with a public utility company or body for the erection and maintenance of any public utility, building, structure, wire, cable line, pole, track, pipe or other device under across, through or alongside a toll road, and to use the toll road for any other related purpose established in any regulations. Where the Owner and/or operator and the particular utility company or other body cannot so agree the legislation will empower the Minister to intervene in the public interest and authorize the establishment of such utility. Owner and/or operator to be compensated for any infringement or damage to its property as the case may be.

There should also be a provision to enable the Owner in accordance with any regulations made and in its discretion to issue usage permits, permitting the holder and persons acting under authority of the permit to erect or place a building, structure, wire, cable, line, pole, track, pipe or other device under across, through or alongside a toll road, and to use the toll road for any other related **purpose** established in any regulations.

8. MANAGEMENT OF TOLL ROADS

It is expected that the legislation will provide that exclusive possession of the toll road and all proprietary and possessory rights and powers attendant thereon be vested in the Owner subject to regulatory oversight of the Authority. In this regard it is anticipated that the bill will contain the following among key provisions:

- (a) Where the toll road intersects any main road that is not part of the toll road the continuation of the toll road to its full width across such road shall be deemed to be a toll road and to be under the jurisdiction and control of the Owner
- (b) Where a road is carried over or under a toll road by a bridge or other structure, the surface of the road shall be deemed to be under the jurisdiction and control of the authority that has jurisdiction and control over the remainder of the road.
- (c) Where the toll road intersects any part of a road the continuation of the road to its full width across the toll road shall be under the jurisdiction and control of such authority that has jurisdiction over it. The Minister shall however have power by order to declare such intersection to be part of the toll Where the toll road crosses a non toll road jurisdiction and that road is a public road jurisdiction will rest in the local authority unless the Minister otherwise orders. Where the road is a private road then jurisdiction will vest in the Owner provided the land has been properly acquired be it lease or expropriation.
- (d) Where a road is carried over or under a toll road by a bridge or other structure, the bridge or other structure is part of the toll road.
- (e) The responsibility for the maintenance, repair and rehabilitation of the road and toll road shall where the road is deemed to be a toll road be the responsibility of the Owner. Where the road is not deemed to be a toll road maintenance repair and rehabilitation shall be the responsibility of the relevant authority.
- (f) No person shall open, close or divert any road entering upon or intersecting a toll road without giving written notice to and obtaining prior approval of the Owner. This

provision is not to apply where the road is closed for a specified period of time not exceeding 72 hours and the Authority provides adequate detour.

- (g) The Owner may initiate and carry out proceedings under any Act respecting drainage for the purpose of procuring proper drainage for a toll road and the Owner has the authority to file notices and declarations as owner with local authorities or to receive notices where any other person is the initiating party. No storm or land drainage works shall be constructed on the toll road under any enactment without the consent of the Owner. Agreed.
- (h) The Owner may close part of toll road to traffic in order to do work on the toll road for such time as is necessary but in all cases the Owner shall keep the toll road open to traffic travelling in both directions at all times, except in case of a Force Majeure Event.
- (i) Where Owner plans to close part of toll road for more than 72 hours owner shall give to the Minister at least 30 days written notice and shall not commence the closure without the approval of the Minister, except in case of a Force Majeure Event.
- (j) Persons using any part of the toll road which is closed to traffic in accordance with the Act do so at the person's own risk and the Owner is not liable for any damage sustained by a person or property using any part of the toll road which is closed to traffic.
- (k) Any person who, without the consent of the Owner or other lawful authority (i) uses any part of a toll road which is closed to traffic (ii) defaces any barricade, light, detour sign or notice relating to a closure to traffic (iii) removes any barricade, light, detour sign or notice relating to a closure to traffic shall be guilty of a criminal offence and punishable on conviction to a fine and/or imprisonment.
- (l) Subject to the agreement of the land owner and pursuant to its powers to manage a toll road the Owner to have power to (i) enter upon and use any land (ii) alter in any manner any natural or artificial feature of the land (iii) construct and use roads on, to or from the land, or (iv) place upon or remove from the land any substance or structure. Where the Owner is unable to obtain consent of landowner within a reasonable time and on reasonable terms the Owner may refer the matter to the Minister.
- (m) Minister or Chief Technical Director to have same powers of intervention and powers over the private property as the Chief Technical Director under the Main Roads Act and where the Minister or Chief Technical Director is satisfied that the actions proposed by the Owner are necessary for the management of the toll road he himself may authorize the owner to do anything that the Chief Technical Director would be permitted to do under the Main Roads Act. For the purposes of this Agreement, private property is property not belonging to the Government of Jamaica.
- (n) Owner shall compensate the landowner for any damage resulting from such actions. The Minister or the Chief Technical Director will have powers of expropriation where the land is necessary for construction and/or expansion of the toll road. In such cases the Government will pay compensation. However if the Owner in carrying out his works, damages adjoining land he will be liable to compensate the Owner.

- (o) Owner to have power with the consent of the landowner or where no consent is given, with the authorization of the Minister to enter upon land adjacent to the toll road and cut down and remove any object or take any reasonable action in order to remove obstructions where in the opinion of the owner to do so is necessary for the safety and convenience of the travelling public. Owner to compensate the landowner for any damage resulting from the exercise of its powers.
- (p) Owner to control the use of toll roads in accordance with the policies of the Minister as established from time to time subject to any agreement entered into by the Owner and the Minister.
- (q) No person, municipality or local authority shall except with conditions set by the Owner (i) obstruct or deposit material on, along, under or across a toll road or take up or in any way interfere with a toll road (ii) construct or change the use of any private road, entranceway, gate or other structure or facility as a means of access to a toll road. Persons contravening this provision shall be guilty of a criminal offence.
- (r) Owner shall carry out the management of toll roads in compliance with the safety standards issued by the Authority for comparable controlled toll roads.
- (s) The Owner with the approval of the Authority may use safety standards other than the Authority's safety standards in carrying out its functions, activities and responsibilities with respect to toll roads if, in the opinion of the Authority the proposed standard provides equivalent.
- (t) The Authority may authorize such officials as it considers appropriate for the purpose of inspecting toll roads and carrying out an audit to ensure compliance with its safety standards.
- (u) The Authority in carrying out its duties may, without causing any disruption or unnecessary interference or disturbance to the Construction Works or the operation of the Toll Road (i) enter upon the toll road and the area around it with the prior permission of the Owner (such permission not to be unreasonably withheld), (ii) take up or use any machine, device article, thing, material or biological, chemical or physical agent or part thereof, (iii) in any inspection, examination, inquiry to test, be accompanied and assisted by or take with it any person or persons having special, expert or professional knowledge of any matter, (iv) take photographs, and take with it, and use any equipment or materials required for such purpose (v) conduct or take tests of any equipment, machine device, article thing, material or biological, chemical or physical agent and for such purposes take and carry away such samples as may be necessary, (vi) require in writing to the Owner to cause any tests described in clause (vii) to be conducted or taken, by a person possessing such special, expert or professional knowledge or qualifications as are specified by the official and to provide a report or assessment by that person.
- (v) The Authority officials may enter (i) enter the offices of the owner, at any reasonable time with the prior permission of the Owner, such permission not being unreasonably withhold (ii) upon giving a receipt, remove any record inspected or examined for the purpose of making copies or extracts and shall promptly return the original record within 3 working days to the person who produced or furnished it.

- (w) Owner shall have an obligation to facilitate entry, inspection, examination, by an official acting for the Authority at all reasonable times, subject to having been given reasonable notice, save in the case of emergency.
- (x) Where Owner fails to comply with official's inspection, entry, examination, inquiry or test the Authority may authorize whatever steps are necessary other than the use of force to ensure that the official is able to exercise his or her powers in a safe and prompt manner.
- (y) Where an official finds a contravention of any of the Authority's safety standard he shall notify Owner and the Owner shall comply.
- (z) Officials acting under this section to preserve confidentiality.
- (aa) Where Owner has failed to comply with safety standards and cannot reach agreement regarding interpretation or application of the Authority's safety standard, the cost of the work, plus a reasonable administrative fee is to be paid by the Owner.
- (bb) Where the Authority is of opinion that the management of all or part of the toll road should meet a higher safety standard than those prescribed by him the Authority may enter into an agreement with the Owner whereby the Owner agrees to undertake the additional work necessary to meet the higher standard at Authorities' costs.
- (cc) Where there is no agreement to a matter set out in (bb) above, the Authority may undertake all or part of the work required to meet its safety standards and to meet the higher standard and if it does so, the costs of undertaking the work shall be paid , (ii) to the extent that the work done is necessary to comply with the higher standard, the Authority shall pay the costs of undertaking the work. Costs that the Authority is to pay shall include any loss of revenue that is directly related to the work required to meet the higher standard. In doing so, the Authority shall warrants that there will be no traffic disruption. The Authority shall compensate the Owner in such circumstances.
- (dd) Specific offence providing for imprisonment or fine or both where a person is found guilty of depositing trash, glass, weeds, garbage or any other matter within the limits of the toll road. Additionally the creation of a specific offence punishable upon crime or imprisonment where any person uses any spurious or counterfeit ticket or device to avoid or reduce the payment of tolls or where a person maliciously and forcibly breaks, damages or destroys any property of the Owner of a toll road.

9. LIABILITIES OF OWNER

The legislation should contain provisions that impose certain responsibilities on the owner. Among the key provisions under this head are the following:

- (a) The Owner shall be responsible for maintaining the toll road and keeping it in repair and any national or local authority through which a toll road passes is relieved of any liability for maintaining and repairing the toll road to the extent that the same is designated a part of the toll road. This responsibility will extend only to the toll road and does not extend to any other municipal or national undertaking for which such entities are liable.

- (b) Owner will be liable to indemnify the Authority and any other national or local authority with respect to any liability to third parties for loss or damage arising as a result owner's default to keep toll road in proper state of repair.
- (c) Owner not liable for obstruction fences, walls guard rails etc. that was not designed or intended for use by vehicular traffic.
- (d) No action allowed for recovery of damages unless within 3 years but Court has discretion to extend time if there are exceptional circumstances giving rise to a reasonable excuse for failing to commence the action within that time and the Owner is not prejudiced thereby.
- (e) No action to be brought against the Owner for recovery of damages whether the want of repair was as a result of nonfeasance or misfeasance after the expiration of the time period laid down in the Public Authorities Protection Act.
- (f) Minister or any other agency of Government shall not have any duty to maintain or keep toll roads in repair.
- (g) No action to be maintained against the Minister or any agent of the Minister or agency of Government in respect of any loss or damage sustained by any person as a result of anything omitted to be done by any person concerning the management of toll roads.
- (h) The Government not be liable to any person in respect of any injury, damage or loss of any kind arising from the failure of the person entitled to demand collect or retain tolls.

10. EXPROPRIATION AND EXPANSION

The legislation should also contain powers vested in the Minister similar to those existing in the Main Roads Act dealing with the powers of expropriation. Such powers may be used to expand, extend or complete toll roads.. Among the key provisions are the following.

- (a) Minister may expropriate land, which he considers necessary for the purpose of expanding, extending or completing toll roads in accordance with the similar powers as is vested in the Chief Technical Director under the Main Roads Act.
- (b) Any expropriation shall be deemed to be in and for the public interest and benefit.
- (c) Owner to be exempt from permission of local and national planning authorities for constructing the toll road or related any works or buildings located within the area of toll road that are used or to be used for the construction, operation or management of the toll road but must have approval of the Authority (such approval not to be unreasonably delayed or withheld) who shall be obliged to consult with the local and national planning authorities..
- (d) Where the Owner carries out such construction or causes this to be carried out he shall nevertheless where he constructs or demolishes any building or there is any change in use of a building that would result in an increase in hazard as determined by the Authority do so in accordance with the approval of the Authority.

- (e) For purposes of any emergency the toll road may be included in any emergency plan and may be used in case of an emergency as if it were part of a main road and not a toll road. The Owner shall be fairly compensated..
- (f) The Authority may require the Owner to prepare and file with the Minister any emergency plans that the Minister considers necessary.
- (g) The Authority may direct the Owner to implement an emergency plan with any changes that the Minister considers necessary and the Owner shall comply with such direction. Where the Owner does not comply with a direction the Authority may carry out the direction. The Authority shall then be entitled to unusual or extraordinary costs associated with implementing an emergency plan..

11. COLLECTION OF PERSONAL INFORMATION

It is anticipated that the legislation will contain provisions, which will aid and enable the Owner to have access to certain information from state agencies namely the Central Motor Vehicle Registry at the offices of the Collector of Taxes. The following are among the key provisions expected to be in the legislation.

- (a) Provision for the Owner to collect information in any manner from state agencies for the purpose of aiding the collection of tolls, and using the information only for the purposes collected and disclosed. The Owner will be entitled to collect information in respect of vehicles who have avoided toll charges from the relevant state agencies.
- (b) The Authority to have the power to collect personal information from the Owner to (i) assist the Owner in the collection and enforcement of tolls fees and other charges owing in respect of toll roads, (ii) to assist the Owner in traffic planning and revenue management with respect to toll roads, (iii) to assist the Owner in communicating with users of toll roads and for the purpose of promoting the use of toll roads, (iv) to assist an entity with whom the Owner has an agreement relating to the collection and enforcement of tolls. This is subject to the Authority obtaining from the Owner in writing an agreement that will protect the confidentiality of personal information and prohibit the use of personal information not referred to above.
- (c) The Authority and any person who collects personal information to take all reasonable steps to protect the confidentiality of that personal information including protecting its confidentiality during its storage transportation and handling and destruction.
- (d) A person who knowingly uses or discloses for a purpose other than a purpose described in the Act is guilty of an offence upon conviction is liable to pay a fine.

12. REGULATIONS

The legislation will be complimented with a regulatory framework. It is anticipated that the Authority with the approval of the Minister makes these regulations. Among the main regulatory provisions are the following:

- (a) the formula containing indexation for the charging of tolls;

- (b) the imposition or a requirement that vehicles or classes of vehicles be equipped or operated with, carry or otherwise have and use a transponder or other toll device;
- (c) the registration and validation of transponders or other toll devices including the delegation to a person operating a system of toll collection on a toll road of the right to establish by agreement with another person the class of transponder or other toll device required as above,
- (d) the enforcement of provisions respecting the collection of tolls and fees, charges and interest in relation to tolls, including the refusal of access to a toll highway
- (e) the disclosure of information by the Collector of Taxes (Central Motor Vehicle Registrar) and the purposes for which it may be used or disclosed
- (f) the introduction or use by any person or in or by any court, tribunal or other body, of photographic, electronic or other evidence in relation to the use of a toll road with or without payment of a toll
- (g) any other matter or thing in relation to the use of toll roads or to tolls, fees, charges or interest in relation to tolls,
- (h) respecting any matter or thing in relation to advertisements, or signs generally upon or within 500 metres from the near edge of the travelled portion of a toll road inside any limits of any city or town including the erection, maintenance, posting, painting, exposing, destruction, defacing, removal or disposal or standards to be met by such advertisement or signs,
- (i) provide for the types of vehicles permitted to use toll roads or parts thereof and the classification of such vehicles.

13. THE AUTHORITY

It is also expected that the legislation will provide for the establishment of the Authority. This is the regulatory body that will have responsibility and regulatory oversight for Toll Roads as well as ensuring that the public interest in using the Toll Road is at all times protected. The following are the key provisions for the Authority. The Authority will be a body corporate with perpetual succession having its own seal and it may sue and sue in its own name. It shall be comprised of such persons as are appointed by the Minister. The functions of the Authority will be to:

- (a) take or assume control of a toll road where the Owner is unable or prohibited from operating a toll road subject to any agreements with third parties who by virtue or arrangements dealing with the financing of a toll road or otherwise would have prior right to assume control of the toll road subject however to the approval of the Authority.
- (b) approve supervise and execute the design construction and maintenance of rest and service areas and other facilities that may be deemed necessary along toll roads, approve the imposition of tolls, interests and other charges that may be imposed from time to time by toll owners on users and other persons who carry out activities on toll roads. This function is limited to refusing an adjustment to toll charges where the same is not consistent with the formula for increasing such tolls or where the tolling charges being

imposed are discriminatory within the context of the fundamental rights and freedoms stated the Jamaica Constitution It is also important under this head that the Authority performs its function in a transparent manner. In this regard it is therefore proposed that in making a decision in the exercise of its functions under the legislation the Authority shall observe reasonable standards of procedural fairness, act in a timely fashion and observe the rules of natural justice. The Authority in carrying out its functions will (i) consult in good faith with persons who are or are likely to be affected by the decision (ii) give to such persons an opportunity to make submissions to and to be heard by the Authority (iii) give reasons in writing for each decision (v) give notice of each decision in the prescribed manner

- (c) Any proposed increase in Toll Levels that is in accordance with the Tolling Policy shall be approved by the Authority.

14. DUTIES OF THE AUTHORITY

The Authority shall also cause the owners/operators of toll roads to maintain such (i) accounts, books and records as the Authority may require (ii) furnish to the Authority such information returns and accounts in respect of the payment and collection of Tolls as the Authority may require (iii) permit any duly authorized officer of the Authority to have access to or to examine or inspect, any accounts, books records documents machinery or equipment maintained or used for the payment or collection of tolls.

The above are the fundamental provisions, which it is anticipated may be contained in the legislation to be enacted in the Jamaican Parliament to govern the design construction, operation and maintenance of Toll Roads in Jamaica. The parties recognize that the Jamaican Parliament cannot be bound by these principles, which may be accepted modified or rejected by this body. The parties having regard to this fact have provided in the Concession Agreement appropriate mechanisms for protection should the anticipated provisions not be passed into law.

DATED 21st November, 2001

THE GOVERNMENT OF JAMAICA

and

NATIONAL ROAD OPERATING AND CONSTRUCTING COMPANY LIMITED

and

TRANSJAMAICAN HIGHWAY LIMITED

IMPLEMENTATION AGREEMENT
in respect of
the Highway 2000 Project
in Jamaica

ALLEN & OVERY

London
PG:219332.1

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