
**EXECUTIVE ORDER NO. 007 OF 2018: ROAD
INFRASTRUCTURE DEVELOPMENT AND
REFURBISHMENT INVESTMENT TAX
CREDIT SCHEME ORDER, 2019**

1. Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme

- (1) There is established a scheme to be known as “the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme” (hereinafter referred to as “the Scheme”).
- (2) The Scheme shall be a Public-Private Partnership intervention that shall –
 - (a) enable the Federal Government of Nigeria to leverage on private sector funding for the construction or refurbishment of Eligible Road infrastructure projects in Nigeria;
 - (b) focus on the development of Eligible Road infrastructure projects in an efficient and effective manner that creates value for money through private sector discipline; and
 - (c) guarantee Participants in the Scheme timely and full recovery of funds provided for the construction or refurbishment of Eligible Road infrastructure projects in the manner prescribed in this Executive Order.
- (3) The Scheme shall be in force for a period of ten (10) years from the date of commencement of this Executive Order.
- (4) There shall be established a Committee to be known as “Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme Management Committee (hereinafter referred to as “the Committee”), chaired by the Minister of Finance as Chairman and the Minister responsible for Works as Deputy Chairman, and charged with the responsibility of implementing and administering the Scheme. The Permanent Secretary of the Federal Ministry of Finance shall be the Secretary to the Committee.
- (5) The Regulations for the administration and operation of the Scheme shall be as provided for in the First Schedule to this Executive Order. The President, on the advice of the Minister of Finance, shall make such further Regulations, or amendments to the current Regulations, as may be deemed expedient.
- (6) The President shall have the powers to amend this Executive Order from time to time as may be deemed necessary.

2. Road Infrastructure Tax Credit

- (1) Participants in the Scheme shall be entitled to utilise the Project Cost incurred in the

construction or refurbishment of Eligible Roads as a credit against Companies Income Tax payable.

- (2) Participants shall be entitled to a single uplift equivalent to the prevailing Central Bank of Nigeria Monetary Policy Rate plus two (2) per cent of the Project Cost.
- (3) The uplift shall not constitute taxable income in the hands of a Participant or Beneficiary and shall be utilised as a credit against Companies Income Tax payable.
- (4) The Tax Credit granted under sub-paragraphs (1) and (2) of this paragraph, shall be referred to as “Road Infrastructure Tax Credit”.

3. Issuance of Road Infrastructure Tax Credit Certificate

- (1) The Federal Inland Revenue Service shall, upon approval by the Committee of a Participant’s application for Road Infrastructure Tax Credit, issue a Road Infrastructure Tax Credit Certificate (hereinafter referred to as “the Certificate”) to a Participant on an annual basis.
- (2) The Certificate shall only be issued upon presentation of the information specified in or required by this Executive Order.
- (3) The Certificate shall denote the Project Cost incurred by the Participant in the relevant fiscal year as certified by the Committee and as specified in the First Schedule to this Executive Order as it relates to on-going Eligible Road projects and the uplift on the relevant Project Cost. The Certificate shall also denote the Road Infrastructure Tax Credit due to the Participant, which shall be based on the Project Cost as certified and communicated by the Committee.
- (4) The Committee shall not approve the issuance of a Road Infrastructure Tax Credit to a –
 - (a) person not duly registered and certified by the Committee as a Participant or representative of a Participant in the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme;
 - (b) person not duly registered as a Participant and not designated as a Beneficiary of a Road Infrastructure Tax Credit by a Participant; and
 - (c) Participant or Beneficiary that is unable to provide evidence of certification of the Project Cost by the Committee.

4. Utilisation of the Road Infrastructure Tax Credit

(1) The Road Infrastructure Tax Credit shall become valid for use by a Participant or Beneficiary upon receipt of a Certificate from the Committee, as issued by the Federal Inland Revenue Service.

(2) A Participant shall be entitled to utilise the Road Infrastructure Tax Credit against the Companies Income Tax in and from the relevant fiscal year, in which the Project Cost is incurred, until it is fully utilised.

In giving effect to this paragraph, the amount of Road Infrastructure Tax Credit that may be utilised in any year of assessment shall be limited to fifty (50) per cent of the Companies Income Tax payable by the Participant or Beneficiary for that year of assessment.

Provided, however, that the Road Infrastructure Tax Credit issued with respect to an Eligible Road in an Economically Disadvantaged Area shall be available for utilisation, in any year of assessment, without the fifty (50) per cent limitation.

(3) Any un-utilised Road Infrastructure Tax Credit within the year of assessment shall be available to be carried forward by the Participant or Beneficiary to subsequent tax years, until fully utilised.

(4) Without prejudice to the provisions of Section 22 (Artificial Transactions) of the Companies Income Tax Act, Cap C.21, Laws of the Federation of Nigeria, 2004, a Participant or Beneficiary may elect to undertake a Disposal of the whole or part of its Road Infrastructure Tax Credit Certificate to a willing buyer on a Relevant Securities Exchange or pursuant to such other approved transaction.

(5) Every sale or transfer in conformity with sub-paragraph (4) of this paragraph shall be reported to the Committee which shall de-register the Participant making the disposal and register the new Beneficiary of the Certificate in a register maintained by the Committee.

(6) Upon transfer, the Beneficiary shall be entitled to utilise the Road Infrastructure Tax Credit in any year of assessment subject to sub-paragraph 2 of this paragraph.

(7) For the purpose of sub-paragraph (4) of this paragraph, a Participant or Beneficiary may register the whole or part of the Road Infrastructure Tax Credit Certificate as a tradable instrument on the Relevant Securities Exchange.

- (8) The Relevant Securities Exchange shall maintain a register of every Road Infrastructure Tax Credit Certificate registered and traded on the Exchange.
- (9) Any Participant wishing to trade its Road Infrastructure Tax Credit Certificate shall obtain the approval of the Committee and designate the registration status of its Certificate, in a register maintained by the Committee, as *'tradable on the Relevant Securities Exchange'*.
- (10) Where the whole or part of a Road Infrastructure Tax Credit Certificate had been designated as *'tradable on the Relevant Securities Exchange'* by a Participant and that Participant -
- (a) no longer wishes to trade on either the whole or part of the Certificate on the Relevant Securities Exchange; or
 - (b) wishes to utilise the whole or part of its Certificate;
- the Participant shall notify the Committee of the change in the registration status of the whole or part of the Certificate, so as to indicate that it is 'no longer tradable on the Relevant Securities Exchange' and provide evidence that it has also been de-registered from the Relevant Securities Exchange register.
- (11) For any Road Infrastructure Tax Credit Certificate purchased on the Relevant Securities Exchange, the holder shall -
- (a) de-register the whole or the part of the Certificate from the Relevant Securities Exchange register;
 - (b) register the whole or part of the Certificate in its name as the 'new' Beneficiary of the Certificate in a register maintained by the Committee; and
 - (c) de-register the 'old' Participant as the Beneficiary of the whole or part of the Certificate in a register maintained by the Committee.
- (12) A Road Infrastructure Tax Credit may qualify as an asset in a Participant or Beneficiary's financial records and shall be treated in line with the International Financial Reporting Standards. Any gains or losses arising on the disposal of a Road Infrastructure Tax Credit shall be subjected to tax in the manner prescribed by the applicable tax legislation.
- (13) A Participant shall cease to own and be unable to utilise any Road Infrastructure Tax Credit that has been disposed of pursuant to sub-paragraph 4 of this paragraph.

- (14) No Road Infrastructure Tax Credit shall be applied for the settlement of Companies Income Tax unless claimed by a Participant or Beneficiary in its tax returns for that year of assessment.
- (15) A Participant entitled to a Road Infrastructure Tax Credit on an Eligible Road shall not be entitled to claim any other tax credit, capital allowance, relief or incentive on the Project Cost incurred in respect of that Eligible Road under any law in force in Nigeria, in addition to the Road Infrastructure Tax Credit.

5. For the purpose of this Order –

“Beneficiary” means a company appointed by a Participant to utilise the whole or part of the Road Infrastructure Tax Credit initially issued to a Participant in the Scheme or any person that has purchased or otherwise acquired the rights to utilise the Road Infrastructure Tax Credit initially issued to a Participant in the Scheme;

“Committee” means the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme Management Committee established pursuant to this Order, chaired by the Minister of Finance as Chairman, the Minister responsible for Works as Deputy Chairman and comprising members indicated in the First Schedule to this Order.

“Disposal” means a sale, transfer, assignment or any transaction or agreement that expressly contemplates the sale, transfer or assignment of the whole or part of the Road Infrastructure Tax Credit Certificate from a Participant to another person or company for a consideration in money or money’s worth;

“Economically Disadvantaged Areas” mean any area or location in any geopolitical zone or State designated as ‘Economically Disadvantaged’ by the President, on the advice of the Minister of Finance. For the purpose of advising on the designation of an area as Economically Disadvantaged, the Minister of Finance shall give due consideration to such factors as:

- a) whether the average income level of the inhabitants of such areas falls below the minimum wage;
- b) the availability of infrastructure such as electricity, water, sewage, telecommunication, transportation facilities etc.;
- c) the volume and nature of economic activity being undertaken in such areas; and
- d) any other factors as may be considered relevant for the determination of an

Economically Disadvantaged Area by the Minister of Budget and National Planning.

“Eligible Road” means any road approved by the President as Eligible for the Scheme on the recommendation of the Minister of Finance and as duly notified to Participants and published pursuant to this Order. The recommendation of the Minister of Finance shall be based on the list of roads presented to the Minister by the Committee. The list of Eligible Roads may be updated as more Eligible Roads are considered, recommended and approved pursuant to this Order, from time to time, by the President on the advice of the Minister of Finance, provided that such updates shall be published in the official Gazettes of the Federal Republic of Nigeria. Each Eligible Road Project shall be concluded on terms and conditions customary for road infrastructure projects of this nature, as indicated in an appropriate Memorandum of Understanding and documented in Eligible Road Project Contract Documents;

“Participant” means -

- (a) any company or corporation (other than a corporation sole), established by or under the Companies and Allied Matters Act or any law in force in Nigeria duly designated as a Sponsor of an Eligible Road pursuant to this Order;
- (b) any company or corporation (other than a corporation sole), established by or under the Companies and Allied Matters Act or any law in force in Nigeria certified by the Committee to be eligible to participate in the Scheme;
- (c) a pool of companies operating through a special purpose vehicle registered with and designated by the Securities and Exchange Commission as an Infrastructure Fund set up solely for the purpose of managing the amounts received by the pool of companies for the construction or refurbishment of any Eligible Road, in the Scheme and represented by a Fund Manager duly registered with the Securities and Exchange Commission and certified by the Committee to be eligible to participate in the Scheme; and
- (d) Institutional Investors such as Pension Fund Administrators, Collective Investment Schemes, Insurance Companies, Investment Banks, etc., duly registered as a company, or companies, established by or under the Companies and Allied Matters Act or any law in force in Nigeria, by the Committee to be eligible to participate in the Scheme.

“Project Cost” means any expenditure wholly, reasonably, exclusively and necessarily

incurred by a Participant for the construction or refurbishment of an Eligible Road as quoted by the Participant in its Project Cost bid and as certified by the Committee. The Committee shall have discretion over costs that may be allowed as part of the Project Cost and, in exercising its discretion, the Committee shall give due consideration to the following costs -

- (a) the cost of road construction or refurbishment;
- (b) professional service fees paid to the Fund Manager, Project Manager, Contract Lawyers, Engineers or any other professional service provider that are wholly, reasonably, exclusively and necessarily incurred for the purpose of constructing or refurbishing an Eligible Road;
- (c) notwithstanding sub-paragraph (b) of this paragraph as it relates to road projects with a refurbishment or construction cost of ₦10 billion and above, the Committee shall exercise discretion over the aggregate professional service fees admissible as part of the Project Cost, provided that such costs shall not exceed 1.25% of the cost of road construction or refurbishment;
- (d) the cost of road maintenance for a period of five (5) years following completion of the construction or refurbishment of an Eligible Road; and
- (e) any amount in excess of the initial Project Cost necessarily and reasonably incurred in the construction or refurbishment of an Eligible Road, to the extent that the additional amount is certified by the relevant regulatory authority.

“Relevant Securities Exchange” means the FMDQ Over-The-Counter (**‘OTC’**) Securities Exchange, or any other relevant securities exchange, duly authorised and regulated by the Securities and Exchange Commission.

6. This Order may be cited as the Companies Income Tax (Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme) Order, 2018.

Dated this _____ day of _____, 2019.

Muhammadu Buhari
President, Federal Republic of Nigeria

FIRST SCHEDULE

[Paragraph 1(5)]

Regulations for the Administration and Operation of the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme

1. Establishment of the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme Management Committee

- (1) There shall be established a Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme Management Committee (in this Executive Order referred to as “**the Committee**”) which shall consist of representatives of the -
 - (a) Federal Ministry of Finance not below the rank of a Director;
 - (b) Federal Ministry of Power, Works and Housing not below the rank of a Director;
 - (c) Federal Ministry of Industry, Trade and Investment not below the rank of a Director;
 - (d) Federal Ministry of Justice not below the rank of a Director;
 - (e) Bureau of Public Procurement not below the rank of a Director;
 - (f) Federal Inland Revenue Service not below the rank of a Director;
 - (g) Nigerian Investment Promotion Commission not below the rank of Director;
 - (h) Securities and Exchange Commission not below the rank of Director or its equivalent;
 - (i) Infrastructure Concession Regulatory Commission not below the rank of Director or its equivalent;
 - (j) Budget Office of the Federation not below the rank of Director or its equivalent;
 - (k) National Bureau of Statistics not below the rank of Director or its equivalent;
 - (l) Nigeria Sovereign Investment Authority not below the rank of Director or its equivalent;
 - (m) The Presidency (the Office of the Chief of Staff to the President); and
 - (n) Any other person as may be deemed necessary by the Federal Ministry of Finance.
- (2) The Committee shall be chaired by the Minister of Finance as Chairman and the Minister responsible for Works as Deputy Chairman.
- (3) The Secretary of the Committee shall be the Permanent Secretary of the Federal Ministry of Finance. The Committee, which will serve as the Secretariat of the Scheme, shall be under the supervision and direction of the Minister of Finance and shall have

such powers and duties as are conferred upon it under this Schedule.

- (4) The Federal Ministry of Finance shall establish and maintain a fund for the operations and management of the Committee.

2. Functions of the Committee

- (1) The Committee shall administer and implement the Scheme established under this Executive Order and any subsequent Regulations or Guidelines that may be issued in respect of the Scheme.
- (2) The members of the Committee shall, for the purpose of administering and implementing the Scheme, apply the principles and procedures as laid down by their respective ministries and agencies in performing their functions.
- (3) The Committee shall -
 - (a) facilitate the publication of a list of Eligible Roads, as Gazetted by the Federal Ministry of Justice, within fourteen (14) days from the date on which the President approves inclusion of a road project as an Eligible Road pursuant to the Scheme;
 - (b) facilitate the publication, by the Ministry responsible for Works of the design and specification of Eligible Roads;
 - (c) facilitate the publication of a list of documentation to be submitted by an applicant to be registered as a Participant in the Scheme, along with the Project Cost and Completion Timeline bid,

Provided that all publications required to be made pursuant to this paragraph shall be made in the Federal Republic of Nigeria Official Gazette, the Federal Tenders Journal and any two newspapers with national circulation in Nigeria;
 - (d) review and evaluate applications submitted by any company, or pool of companies operating through a Fund Manager or representative and institutional investor to participate in the Scheme;
 - (e) register Participants in the Scheme pursuant to the execution of appropriate Memorandum of Understanding executed between the relevant Participants and the Minister of Finance, as Chairman of the Committee;

(f) register and designate as an infrastructure fund any special purpose vehicle set up by a Fund Manager for the sole purpose of managing the funds mobilised and received from a pool of companies operating as a Participant in the Scheme, provided that, for this purpose, the Committee shall liaise with and apply the set procedures of the Securities and Exchange Commission for registering a Fund or Infrastructure Fund in Nigeria, as appropriate.

(g) facilitate the review, evaluation and approval the Project Cost and Completion Timeline bid submitted by a Participant in the Scheme and for this purpose, the Committee shall liaise with and apply the set procedures of the Ministry responsible for Works for approving Project Cost and Completion Timelines and shall also consider whether the contracts for road construction and maintenance included in the “Project Cost” bid submitted by Participants were, in the first instance, obtained through a competitive bidding process;

provided that where required, the Federal Ministry of Finance, directly or through any of its agencies, may engage reputable consultants to undertake value engineering studies to ensure value-for-money with respect to any Eligible Road project;

(h) facilitate the certification of Project Costs and approval of procurement expenditure by a Participant with respect to an approved Eligible Road project bid, and for this purpose, the Committee shall liaise with and apply set procedures of the Bureau of Public Procurement for certifying and approving procurement for Federal Government contracts;

(i) recommend road projects to the Minister of Finance, following approval and certification of an Eligible Road Project Cost and Timeline Bid:

Provided that where there are competing applications for same proposed Eligible Road project, the Committee will engage with the applicants to consider merging their applications and working collaboratively on the proposed Eligible Road project, failing which the most optimal application will be selected on a competitive basis by the Committee having due regard to project scale, completion timeframe, cost and other relevant value-for-money considerations;

(j) facilitate the notification, by the Minister of Finance, as the Committee’s Chairman, to Participants of Project Costs and Completion Timeline approval or refusal by the President. For this purpose,

- (i) a notice of certification/approval for procurement or refusal to certify/ approve procurement of the Project Costs and road infrastructure development contract shall be issued to a Participant within two (2) weeks of approval of Project Costs and Completion Timelines by the President;
 - (ii) Provided, however that a Participant shall be entitled to commence work on a road project under this Scheme if after two weeks of issuance of approval by the President, the Committee has failed to notify the Participant of its approval to commence the road project; and
 - (iii) a notice of refusal to approve shall contain the grounds on which the Project Cost approval for procurement has not been granted and any additional information that must be provided (if any) to secure an approval.
- (k) facilitate the preparation of an appropriate Memorandum of Understanding to be executed with the relevant Project Sponsors, once the President has approved a relevant Eligible Road project, and the Minister of Finance as Chairperson of the Committee, has conveyed the Presidential approval to the relevant Eligible Road Sponsors; provided that the Committee shall, in the Memorandum of Understanding to be executed with the relevant Eligible Road Sponsors, indicate the terms and conditions on which the Eligible Road project will be subsequently agreed upon, in form and substance consistent with the indicative Memorandum of Understanding set out in the Second Schedule to this Order;
- (l) facilitate the issuance of a contract award letter, by the Ministry responsible for Works, or otherwise, to participants following approval of road infrastructure development contract by the President, where this may be required;
- (m) facilitate the carrying out of periodic quality control inspection exercises, by the Ministry responsible for Works in respect of approved Eligible Road infrastructure project. For this purpose, the Committee shall liaise with and apply the set procedures of the Ministry responsible for Works for certifying the work done;
- In respect of periodic quality control/periodic inspection exercises, the Committee shall issue a report identifying issues with the Eligible Road project and ensure that all queries raised during each inspection are addressed and closed out before the next scheduled inspection exercise;
- (n) facilitate the evaluation, by the Ministry responsible for Works, of the degree of completion of an Eligible Road infrastructure development project and issue, on

an annual basis, a certificate of work done which shall contain the degree (percentage) of completion of the Eligible Road infrastructure development project. For this purpose, the Committee shall liaise with and apply the set procedures of the Ministry responsible for Works for certifying the work done;

Provided, however, that a Participant shall be entitled to notify the Federal Inland Revenue Service directly of its entitlement to a tax credit in the event of failure of the Committee to issue a certificate of work done after fourteen (14) days of completing the inspection/verification exercise and addressing any queries raised during the exercise;

- (o) Facilitate the issuance, by the Federal Inland Revenue Service, of a Road Infrastructure Tax Credit, on an annual basis, to a Participant or Beneficiary within fourteen (14) days of issuance of certificate of work done by the Committee;

The Value of the Road Infrastructure Tax Credit Certificate shall be in proportion to the percentage of project completion as evaluated by the Ministry responsible for Works or the Committee plus a proportion of the 'uplift' due to the Participant. The proportion of the 'uplift' shall be determined as a percentage of the total uplift due to the Participant and shall correspond to the percentage of work done, in accordance with the Memorandum of Understanding executed between the Participant and the Committee.

Provided, however, that a Participant shall be immediately entitled to claim its Road Infrastructure Tax Credit in its Companies Income Tax Return upon failure of the Federal Inland Revenue Service to issue a Road Infrastructure Tax Credit Certificate within fourteen (14) days of issuance of the certificate of work done by the Committee.

- (p) facilitate the maintenance, by the Federal Inland Revenue Service, of a register of Participants and Beneficiaries, and a Record of Issue of Road Infrastructure Tax Credits to Participants and Beneficiaries in the Scheme. The Record of Issue shall contain:

- i. details of the Road Infrastructure Tax Credits issued to a Participant or Beneficiary;
- ii. the amount utilised, transferred or disposed of by a Participant or Beneficiary;
- iii. the amount of issued but unutilised Road Infrastructure Tax Credits by a Participant or Beneficiary; and

- iv. the amount of Road Infrastructure Tax Credits yet to be issued to a Participant or Beneficiary.
- (q) facilitate the preparation, by the Federal Inland Revenue Service, of annual return of all Road Infrastructure Tax Credits issued and utilised in every fiscal year, which may be submitted, by the Minister of Finance, to the Federation Accounts Allocation Committee, and may form the basis for the Evaluation of the Fiscal Implications of the Scheme that the Minister of Finance may be required by law to render to the National Assembly;
- (r) facilitate the acceptance, by the Federal Inland Revenue Service, of a notification of disposal of the whole or part of a Road Infrastructure Tax Credit Certificate, update the Record of Issue of Road Infrastructure Tax Credit Certificate, de-register the 'old' Participant as the Beneficiary of the whole or part of the Road Infrastructure Tax Credit Certificate and re-issue a Road Infrastructure Tax Credit Certificate in the name of the 'new' Beneficiary;
- (s) advise the Minister of Finance, as may be appropriate, on applications by two or more Participants, to collaborate together on Eligible Road projects, and support the Minister of Finance, who may decide to direct, where deemed necessary, that two or more Participants shall come together as a pool of companies for the purpose of developing the relevant road infrastructure project; and
- (t) perform such other functions as may be deemed necessary from time to time for the administration and operation of the Scheme.

3. Information required to be submitted to the Committee

- (1) An applicant may become eligible to participate in the Scheme upon provision of the following documents to the Committee:
 - (a) a written notification of expression of interest in the construction or refurbishment of an identified road project, duly signed by a Principal Officer of the Company;
 - (b) a valid and current Tax Clearance Certificate duly issued by the Federal Inland Revenue Service; and
 - (c) Project Cost and Timeline bids which shall include design and specification for identified road project in line with Ministry responsible for Works approved specification.

- (2) The Committee shall recommend the eligibility of an Applicant to participate in the Scheme where it determines that the Applicant's proposed road project is economically viable, cost efficient and can be completed in a timely manner (that is, within twelve [12] to forty-eight [48] months). The recommendation shall be made to the Minister of Finance, who shall, if deemed appropriate, make further recommendations to the President in accordance with the provisions of this Order.
- (3) Without prejudice to Paragraph 2, sub-paragraph 3(f) of this Schedule, a Fund Manager shall only be eligible to represent a pool of companies wishing to participate in the Scheme, upon presentation of evidence of registration with the Securities and Exchange Commission and a letter of authorization to act for and on behalf of the pool of companies.

4. Issuance of Road Infrastructure Tax Credit Certificate

- (1) The Federal Inland Revenue Service shall, through the Committee, issue a Road Infrastructure Tax Credit to a Participant or its representative or a Beneficiary of the Scheme upon presentation of:
 - (a) a confirmation of authorization to participate in the Scheme issued by the Committee;
 - (b) approval of the Project Cost and Completion Timeline bid by the Committee;
 - (c) contract award letter; and
 - (d) certification of work done issued by the Committee.
- (2) The Federal Inland Revenue Service shall, through the Committee, issue a Road Infrastructure Tax Credit Certificate to a Participant or Beneficiary in proportion to the work done in that financial year, as evidenced by a certification of work done issued by the Ministry responsible for Works or the Committee.

The Value of the Road Infrastructure Tax Credit Certificate shall be in proportion to the percentage of project completion as evaluated by the Committee, plus a proportion of the 'uplift' due to the Participant. The proportion of the 'uplift' shall be determined as a percentage of the total uplift due to the Participant and shall correspond to the percentage of work done.

- (3) The Federal Inland Revenue Service shall, through the Committee, issue a Road Infrastructure Tax Credit Certificate in the name of a registered Participant or its Beneficiary.

- (4) In the case of a pool of companies represented by a Fund Manager or any other person, the Federal Inland Revenue Service shall, through the Committee, issue separate Road Infrastructure Tax Credits to each company in the pool in proportion to their contribution on the advice of the Fund Manager or representative.
- (5) The Federal Inland Revenue Service shall, upon determination by the Committee that there is a variation between the Project Cost of an Eligible Road project and actual expenditure incurred by the Participant in completing a road project, make any necessary adjustment to the Road Infrastructure Tax Credit issued to the Participants or Beneficiaries.

5. Transfer of a Road Infrastructure Tax Credit Certificate

- (1) A Participant wishing to transfer the whole or part of its Road Infrastructure Tax Credit shall issue a notice in writing to the Committee authorizing the transfer of the whole or part of its Road Infrastructure Tax Credit to a named Beneficiary.
- (2) The Committee shall, upon receipt of such notification of transfer, effect the transfer of the whole or part of a Road Infrastructure Tax Credit Certificate in the Record of Issue and immediately issue a Road Infrastructure Tax Credit Certificate to the named Beneficiary.

SECOND SCHEDULE

[Paragraph 2(3)(k), First Schedule]

Memorandum of Understanding ('MOU')

Each Eligible Road Project shall be concluded on terms and conditions customary for roads infrastructure projects of this nature, as appropriately documented in the Eligible Road Project Contract Documents. This Memorandum of Understanding is non-exhaustive and all other terms and conditions are subject to mutual agreement as may be documented in the Eligible Road Project Contract Documents. This Memorandum of Understanding is documented subject to contract, on terms and conditions that may be subsequently set out in the relevant Eligible Road Project Contract Documents.

Summary of Terms and Conditions

Parties

Federal Government of Nigeria: [Honourable Minister of Finance, Chairperson of the Road Infrastructure Development and Refurbishment Investment Tax Credit Scheme Management Committee]

Project Sponsor(s): [•]

Project Contractor(s): [•]

Other Relevant Parties: [•]

Purpose

Eligible Road Project Title: [•]

Estimated Project Cost: [•]

Location: [•]

Project Description: [•]

Other Terms

Conditions Precedent: Conditions Precedent to include but not be limited to the

following:

- Eligible Road Project Technical Documents
- Eligible Road Project Financial Documents
- All necessary corporate board consents and approvals
- Evidence that all necessary regulatory and other third-party consents and approvals have been obtained
- Specimen signatures
- Certification of all copy documents
- Eligible Road Project Contracts and other Legal Documents to be executed and delivered
- Latest audited financial statements of the Eligible Road Project Corporate Sponsor(s)

Representations and Warranties

Such Representations and Warranties are to be given by the Sponsor(s) as are customary for roads infrastructure projects of this nature, including but not limited to:

- Status
- Binding obligations
- Non-conflict with other obligations
- Power and authority
- Validity and admissibility in evidence
- Governing law and enforcement
- Insolvency
- No event of default or potential event of default
- No misleading information
- Evidence of financial standing / Performance Bond
- No litigation, arbitration or proceedings pending or threatened likely to have a material adverse effect
- No breach of laws / due compliance with licences
- No material adverse change or adverse consequences

Governing Law:

The Eligible Road Projects Contracts and other relevant Documents shall be governed and construed in accordance with Nigerian Law.

Jurisdiction:

Nigerian courts and Nigerian arbitration panels.