

SERVICE AGENCY AGREEMENT

BETWEEN

FGN ROADS SUKUK COMPANY 1 PLC

AND

THE FEDERAL GOVERNMENT OF NIGERIA

REPRESENTED BY

THE HONOURABLE MINISTER OF WORKS AND HOUSING

IN RESPECT OF THE ISSUANCE OF UP TO

N[*] (_____ BILLION

NAIRA) SUKUK BY

FGN ROADS SUKUK COMPANY 1 PLC

DATED THE ___ TH DAY OF, 2022

PREPARED BY

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THIS SERVICE AGENCY AGREEMENT (this “**Agreement**”) is made this ___th day of 2022

BETWEEN

FGN ROADS SUKUK COMPANY 1 PLC, a public limited liability company incorporated under the laws of the Federal Republic of Nigeria with registration number RC 1424371, whose registered office is situate at NDIC Building (First Floor), Plot 447/448 Constitution Avenue, Central Business District, Garki, Abuja (hereinafter referred to as the “**SPV**”, which expression shall where the context so admits include its successors-in-title and assigns) of the first part;

AND

THE FEDERAL GOVERNMENT OF NIGERIA (“**FGN**”) represented by **The Honourable Minister of Works and Housing** (the “**Minister**”) of the Federal Ministry of Works and Housing whose head office is situate at Mabushi, Abuja (hereinafter referred to as the “**Service Agent**” which expression shall where the context so admits include its successors-in-office and assigns) of the second part.

(The **SPV** and the **Service Agent** are, where the context so admits herein, individually referred to as a “**Party**” and collectively referred to as the “**Parties**”).

WHEREAS

- (A) The SPV is a special purpose vehicle incorporated by the FGN as a public limited liability company for the purpose of issuing Sukuk which proceeds will be used to finance the construction of the Roads.
- (B) The Sukuk Issuance is up to ₦000,000,000,000 (_____ Billion Naira)
- (C) Pursuant to the Construction Agency Agreement dated on or about the date of this Agreement, the SPV appointed the FGN to procure on its behalf, the Trust Assets.
- (D) The SPV now wishes to appoint the FGN as the service agent in respect of the Trust Assets from the Lease Asset Delivery Date and throughout the Lease Period and subject to the terms set out in this Agreement.
- (E) The Parties have agreed to enter into this Agreement and now wish to be bound by the terms and conditions hereinafter contained.

THIS SERVICE AGENCY AGREEMENT WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1. Definitions

Capitalised terms shall have the meanings given to them under the Prospectus, the Construction Agency Agreement, the Forward Ijarah (Lease) Agreement, and the Purchase Undertaking unless otherwise defined herein. In this Agreement, the following expressions have the following meanings:

“Business Day” means a day (other than a Saturday or Sunday or public holiday declared by the Federal Government of Nigeria) on which banks are open for general business ;

“Major Maintenance” means road improvements, structural restoration, and other major repairs required in respect of the Trust Assets to be undertaken by the Lessor; and

“Ownership Expenses” means all outstanding expenses incurred by the Service Agent and associated with the Major Maintenance under this Agreement and required to be reimbursed by the SPV to the Service Agent as described in Clause 5.

1.2. Clauses

Any reference in this Agreement to a Clause is unless otherwise stated, to a clause hereof.

1.3. Headings

Headings and sub-headings are for ease of reference only and shall not affect the construction of this Agreement.

1.4. Legislation

Any reference in this Agreement to any legislation (whether primary legislation or regulation or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been, or may from time to time be, amended or re-enacted.

2. APPOINTMENT OF SERVICE AGENT

2.1 The SPV in its capacity as the lessor of the Trust Assets under the Forward Ijarah (Lease) Agreement hereby appoints the FGN to be its service agent in respect of the Major Maintenance

of the Trust Assets from the commencement of the Usufruct Period and the FGN hereby accepts such appointment on the terms and conditions set out herein.

- 2.2 Pursuant to Section 1(2) of the Federal Highways Act Chapter F13 LFN 2004 (“**FHA**”), the Minister shall be responsible for the maintenance of federal highways. For the purposes of this Agreement, all powers relating to the construction and maintenance of roads vested in the Minister pursuant to the FHA, shall be exercised by the Federal Ministry of Works & Housing (“**FMW&H**”) and/or the Federal Roads Maintenance Agency.
- 2.3 The Parties hereby agree that the FMW&H shall be the executing agency for the implementation of this Agreement.

3. DUTIES OF THE SERVICE AGENT

The Service Agent agrees to carry out the following services for and on behalf of the SPV:

- (a) it shall promptly pay and discharge all Ownership Expenses;
- (b) it shall be responsible for and shall attend to all Major Maintenance as are necessary to maintain, and take or cause to be taken any action necessary to manage and maintain the Trust Assets:
 - (i) in good condition and repair (ordinary wear and tear excepted);
 - (ii) in accordance with prudent industry practice; and
 - (iii) in all material respects in accordance with all applicable laws, rules, and regulations, where failure to do so would have a material adverse effect.
- (c) enter into contractual arrangements with sub-contractors and consultants in order to assist it in performing the Services and its other obligations under this Agreement, provided that the entry into any such arrangement shall not release the Service Agent from its obligations under this Agreement.
- (d) The duties contained in this Clause 3 (*Duties of the Service Agent*) are continuing ones and shall remain in full force and effect until revoked on termination of this Agreement.

4 DURATION OF APPOINTMENT

- 4.1 The Service Agent agrees that it will continue as the service agent of the SPV in respect of the Trust Assets so long as any Periodic Distribution Amount in respect of the Trust Assets shall remain outstanding.
- 4.2 This Agreement shall terminate automatically upon the termination of the Forward Ijarah (Lease) Agreement, and neither Party shall have any further rights or obligations in respect of each other in relation to the Trust Assets save and except for:
- (a) any antecedent breaches; and
 - (b) the Service Agent's right to be reimbursed pursuant to Clause 5 below which shall be dealt with in accordance with Clause 5.2.

5 OWNERSHIP EXPENSES

- 5.1 The Service Agent shall, in respect of all the Trust Assets under the Forward Ijarah (Lease) Agreement:
- (a) bear, defray and pay for all expenses associated with the ownership, maintenance, subscription for takaful and pay relevant takaful contributions (or insurance premium(s), in the absence of takaful) in relation to the Trust Assets, including, without limitation, all taxes, quit rent, assessment, fees and all other charges and impositions imposed by any public utility or authority;
 - (b) perform all Major Maintenance at its own cost and expenses; and
 - (c) bear, defray and pay all other costs and expenses associated with and required for the carrying out of its duties as set out in Clause 3,

and shall only have the right to be reimbursed in accordance with Clause 5.2 below.

- 5.2 The Service Agent shall be entitled to be reimbursed for the entire amount of the Ownership Expenses in relation to the Trust Assets upon expiry of the Usufruct Period.
- 5.3 The Service Agent agrees that the Ownership Expenses in respect of the Trust Assets payable to it hereunder may be set-off from the Purchase Price payable by the FGN in respect of the Trust Assets and such set-off shall, to the extent it reduces the amount of such Ownership Expenses owed to the Service Agent, be a complete discharge of the SPV's obligation to pay such amount of Ownership Expenses to the Service Agent under this Agreement.

6 SERVICE AGENT'S COVENANTS AND UNDERTAKINGS

- 6.1 The Service Agent covenants to the SPV that notwithstanding the agency relationship set out in this Agreement, the Service Agent shall not be entitled to, except as otherwise stated in this Agreement, incur any liability on behalf of the SPV or bind the SPV to any obligation in respect of which it has not expressly consented to in writing.
- 6.2 The Service Agent undertakes and agrees that it will not do or allow or permit to be done or omit to do or be done any act or thing that may or will expose the SPV to any liability or cause the interest of the SPV in the Trust Assets to be prejudiced except as otherwise stated in this Agreement.
- 6.3 The Service Agent undertakes not to take any step or action in relation to this Service Agency Agreement inconsistent with the principles of Islamic law.
- 6.4 The Service Agent undertakes to ensure that all payments by the Service Agent to the SPV under this Agreement ranks and will rank *pari passu* with all other outstanding unsecured and unsubordinated obligations of the Service Agent, present and future.

7. REPRESENTATIONS AND WARRANTIES

The Service Agent represents and warrants to the SPV on the date of this Agreement that:

- (a) the Service Agent has the requisite power and authority to enter into and perform its obligations under this Agreement;
- (b) the making and the performance of this Agreement and the other documents required to be executed pursuant to this Agreement:
- (i) are within the powers of the Service Agent and have been duly authorised by all necessary actions; and
 - (ii) do not contravene:
 - (A) by virtue of any applicable law, regulation, order, permit, or other restriction binding upon the Service Agent or any of the properties and assets of the Service Agent;
 - (B) any agreement, mortgage, bond, contract, or other undertaking or instrument to which the Service Agent is a party or which is binding upon the Service Agent or any of the properties and assets of the Service Agent which affects the ability of the Service Agent to meet its obligations under this Agreement and the documents related hereto; and
- (c) the Service Agent has obtained all the necessary statutory, governmental, or other

The Managing Director
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The Managing Director
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Attention: Mr. Adekunle Awojobi
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E-mail: adekunle.awojobi@fbnquest.com

The Service Agent: The FMW&H
The Federal Ministry of Works and Housing Headquarters
Mabushi
Abuja, Federal Capital Territory

Attention: The Honourable Minister of Works and Housing

10 WAIVER OF INTEREST

- 10.1 Each Party irrevocably agrees that no interest will be payable or receivable under or in connection with this Agreement and in the event that it is determined that any interest is payable or receivable in connection with this Agreement by a Party, whether as a result of any judicial award or by operation of any applicable law or otherwise, such Party agrees to waive any rights it may have to claim or receive such interest and agrees that if any such interest is actually received by it, it shall promptly donate the same to a registered or otherwise officially recognised charitable organisation.

- 10.2 For the avoidance of doubt, nothing in this Clause 10 shall be construed as a waiver of rights in respect of rentals or any other amounts payable under the Forward Ijarah (Lease) Agreement, howsoever such amounts may be described or re-characterised by any court or arbitral tribunal.

11 SHARIA COMPLIANCE

At all times, the Parties are satisfied that this Agreement and the Sukuk structure comply with applicable Islamic law of commercial transactions and each Party agrees that it will not seek to challenge the enforceability of this Agreement at any time for reasons of non-compliance with Islamic law principles or non-applicability of Islamic law.

12 GOVERNING LAW

- 12.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in all respects in accordance with the laws of the Federal Republic of Nigeria including relevant Islamic Commercial jurisprudence.
- 12.2 The Parties agree that the provisions of this agreement shall also be governed by the provisions of Islamic commercial jurisprudence and are satisfied that this Agreement complies with applicable Islamic law of commercial transactions
- 12.3

13 ARBITRATION

- 13.1 In the event of any allegation of breach or question of interpretation or dispute or controversy relating to this Agreement, the parties to the dispute shall meet and negotiate in good faith with a view to settling the matter amicably. If the parties are unable to settle the matter or dispute within 2 (two) weeks after the afore-mentioned meeting, then the matter or dispute shall be referred to an arbitration panel (appointed in accordance with Clause 13.2 below), whose decision shall be final and binding on the Parties.
- 13.2 Each Party to the dispute shall be entitled to appoint an arbitrator and the two party-appointed arbitrators shall appoint a third arbitrator who shall be knowledgeable in Islamic law of commercial transactions. If either Party to the dispute fails to nominate an arbitrator within 5 (five) Business Days of receiving the notice of the appointment of an arbitrator by the other party, the President of the Chartered Institute of Arbitrators, Nigeria shall, at the request of either Party to the dispute, appoint an arbitrator on behalf of the defaulting party. If the first and second arbitrator appointed fail to agree upon the appointment of a third arbitrator within 5 (five) Business Days of the appointment of the second arbitrator, the third arbitrator shall at the request of either party be appointed by the President of the Chartered Institute of Arbitrators, Nigeria.

- 13.3 The arbitral proceedings shall be conducted in the Federal Capital Territory, Abuja, Nigeria in English Language and shall be governed by the Arbitration and Conciliation Act, Chapter A18, LFN 2004.
- 13.4 The arbitral award shall be binding on the Parties to the dispute and the cost of the arbitration shall be borne as determined by the arbitrators. Each Party to the dispute, however, shall bear its legal fees.
- 13.5 The arbitral panel shall have a maximum number of 30 (thirty) Business Days, following the exchange of pleadings by the Parties to the dispute, to resolve the dispute; failing which the Parties to the dispute can institute claims at any competent court of law.
- 13.6 Each party hereby agrees that this Agreement is founded on the principle of interest-free and each party agrees to donate any penalty interest arising from any judgment or award to charity that neither of the parties shall stand to benefit from it.

14 ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of and be enforceable by the SPV. The SPV may assign all or any part of its rights or transfer all or any part of its obligations and/or commitments under this Agreement to any third party.

15 TRANSPARENCY AND ANTI-CORRUPTION

- 15.1 The Parties agree that they will, at all times, comply with and take reasonable measures to ensure that their subcontractors, agents, or other third parties, subject to their control or determining influence, comply with all relevant and applicable laws, particularly Anti-Bribery and Anti- Corruption Laws.
- 15.2 No part of the Ownership Expenses shall be used, directly or indirectly, for any payments to any person including any governmental official or employee, political party, official of a political party, candidate for political office, official of any private organisation, or anyone else acting in an official or other capacity in violation of any Anti-Bribery and Anti- Corruption Laws.

16 ENTIRE AGREEMENT

This Agreement and the Transaction Documents constitute the entire agreement between the Parties in relation to the matters herein and supersede all prior understandings between the Parties, whether oral or written. The terms of this Agreement shall not be altered, varied, and or amended except by a written instrument duly executed by the Parties hereto.

17 COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

17 CHANGES IN STATUS

The rights and obligations of each Party to this Agreement shall continue to be valid and binding notwithstanding any change in name or change by amalgamation, reconstruction, reorganisation, restructuring, or otherwise which may be made in or to the constitution of such Party.

18 AMENDMENTS

This Agreement can only be amended, modified, or terminated with the prior written consent of the SPV, and no amendment, modification, or termination of any provision of this Agreement shall be effective unless it is in writing and signed by the SPV and the Service Agent.

IN WITNESS whereof the Parties have caused this Agreement to be executed on the day and year first written above.

THE COMMON SEAL of the within named
FGN ROADS SUKUK COMPANY 1 PLC
was hereunto affixed

In the presence of:

Name:
DIRECTOR

Name:
DIRECTOR

SIGNED, SEALED, AND DELIVERED
BY THE HONOURABLE MINISTER OF WORKS AND HOUSING
FOR AND ON BEHALF OF THE FEDERAL GOVERNMENT OF
THE FEDERAL REPUBLIC OF NIGERIA

BABATUNDE RAJI FASHOLA (SAN)

IN THE PRESENCE OF

NAME:
DESIGNATION:
ADDRESS:
SIGNATURE: