



**Public Private Partnership in
National Highways
MODEL CONCESSION AGREEMENT
(For 4- Laning)
Government of India**

Signature

Updated on 09.05.2016

Part I Preliminary

Sum 21

Updated on 09.05.2016

CONCESSION AGREEMENT

THIS AGREEMENT¹ is entered into on this the day of, 20.....

BETWEEN

1 **THE NATIONAL HIGHWAYS AUTHORITY OF INDIA**, established under the National Highways Authority of India Act 1988, represented by its Chairman and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075 (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 {..... LIMITED}[§], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at, (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) The Government of India had [entrusted to the Authority the development, maintenance and management of National Highway No. **² including this section from km ** to km ** (approx. *** km)]³.
- (B) The Authority had resolved to [augment the existing road from km ** to km ** (approximately *** km) on the *** section of National Highway No. ** (hereinafter called the “NH -**”) in ***** by Four-Laning and subsequent Six-Laning thereof] on design, build, finance, operate and transfer (“**DBFOT**”) basis in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.
- (C) The Authority had accordingly invited proposals by its [Notice/ Request for Qualification No. *** dated ***] (the “**Request for Qualification**” or “**RFQ**”) for short listing of bidders for construction, operation and maintenance of the above referred section of NH -** on DBFOT basis and

¹ Serially numbered footnotes in this Model Concession Agreement are for guidance of the Authority and should be omitted from the draft Concession Agreement forming part of Bid Documents. Footnotes marked “§” or in other non-numerical characters shall be retained in the draft Concession Agreement.

[§] The provisions in curly parenthesis and the blank spaces shall be retained in the draft Concession Agreement and shall be suitably modified/ filled after completion of the bid process to reflect the particulars relating to the selected bidder.

² All asterisks in this Model Concession Agreement should be substituted by project-specific particulars in the draft Concession Agreement forming part of Bid Documents.

³ All project-specific provisions in this Model Concession Agreement have been enclosed in square parenthesis and may be modified, as necessary, before issuing the draft Concession Agreement forming part of Bid Documents.



had shortlisted certain bidders including, *inter alia*, the {the selected bidder/ consortium comprisingand(collectively the “Consortium”) with as its lead member (the “Lead Member”)}.

- (D) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “Request for Proposals” or “RFP”) from the bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (E) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} and issued its Letter of Award No. dated (hereinafter called the “LOA”) to the {selected bidder/ Consortium} requiring, *inter alia*, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue thereof.
- (F) {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- (G) {By its letter dated, the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.}
- (H) The Authority has agreed to the said request of the {selected bidder/ Consortium and the} Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:



ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 48) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- (f) references to "construction" or "building" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" or "build" shall be construed accordingly;



- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Delhi are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (q) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that



agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages"); and
- (x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.



1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements, clauses and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein;

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.



Part II

The Concession

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ARTICLE 2
SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the "Scope of the Project") shall mean and include, during the Concession Period:

- (a) construction of the Project Highway on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;
- (b) operation and maintenance of the Project Highway in accordance with the provisions of this Agreement; and
- (c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.



ARTICLE 3
GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project (the "Concession") for a period of [20 (twenty)]⁴ years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein:

[Provided that in the event Six-Laning is not undertaken for any reason in accordance with the provisions of this Agreement, the Concession Period shall be 12 (twelve) years.]

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- (a) Right of Way, access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) finance and construct the Project Highway;
- (c) manage, operate and maintain the Project Highway and regulate the use thereof by third parties;
- (d) demand, collect and appropriate Fee from vehicles and Users liable for payment of Fee for using the Project Highway or any part thereof and refuse entry of any vehicle if the Fee due is not paid;
- (e) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
- (f) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (g) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Highway nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

⁴To be fixed by reference to the year in which the projected traffic would exceed the design capacity of the Project Highway.

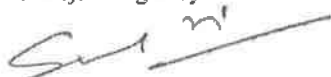


3.2 Waiver of [Six-Laning]⁵

- 3.2.1 At any time before the [8th (eighth)] anniversary of the Appointed Date, the Concessionaire may, by a notice in this behalf to the Authority, excuse itself from all obligations relating to [Six-Laning] and thereupon operate the [Four-Lane] Project Highway for a Concession Period of [12 (twelve)]⁶ years. Upon delivery of such notice, the Agreement shall be deemed to be modified as if it were a Concession Agreement restricted to a [Four-Lane] Project Highway for a Concession Period of [12 (twelve)] years.
- 3.2.2 At any time before the [8th (eighth)] anniversary of the Appointed Date, the Authority may, in the event it is satisfied that [Six-Laning] is not required on the Scheduled [Six-Laning] Date or within two years therefrom, by a notice in this behalf to the Concessionaire, restrict this Concession to [Four-Laning], thereby reducing the Concession Period to [12 (twelve)] years. Upon delivery of such notice, the Agreement shall be deemed to be modified as if it were a Concession Agreement restricted to a [Four-Lane] Project Highway for a Concession Period of [12 (twelve)] years. For the avoidance of doubt, the Parties hereto agree that in the event a concession is to be granted for commencing construction of [Six-Laning] at any time before the expiry of this Agreement, the Concessionaire shall have the first right to such concession on the terms specified in this Agreement.

⁵ Clause 3.2 may be omitted if two-stage capacity augmentation is not contemplated.

⁶ To be fixed by reference to the year in which the projected traffic would cross the design capacity of the Project Highway.



ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 24, 34, 44 and 47, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).

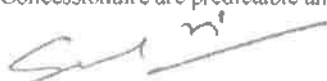
The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after [90 (ninety)] days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 90 (ninety) days of the notice, or such longer period not exceeding 120 (one hundred and twenty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1;
- (b) issued the Fee Notification;
- [(c) procured for the Concessionaire the Right of Way to *****;]⁷
- [(d) procured approval of the Railway authorities in the form of a general arrangement drawing that would enable the Concessionaire to construct road overbridges/ underbridges at level crossings on the Project Highway in accordance with the Specifications and Standards and subject to the terms and conditions specified in such approval; and]
- [(e) procured all Applicable Permits relating to environmental protection and conservation of the Site;]⁸

[Provided that the Authority may from time to time by notice extend, for up to an aggregate of 6 (six) months, the period for procuring the approval set forth in Sub-clause (d) and/or Sub-clause (e) above and in that event the land to be covered by overbridges or the affected sections of the Project Highway, as the case may be, shall be included in the Appendix referred to in Clause

⁷ If completion of construction on any part of the Site is considered critical for issue of Provisional/ Completion Certificate, such part shall be specified in this Sub-clause so that it does not form part of the Appendix referred to in Clause 10.3.1, on or after the Appointed Date.

⁸ In projects where environmental clearance is restricted to small portions of the Site or to the felling of trees, this Condition Precedent may be deleted and such portions may be included, as necessary, in the Appendix specified in Clause 10.3.1. The guiding principle should be that the obligations of the Concessionaire are predictable and not beyond its control.



10.3 and dealt with in accordance with the provisions thereof; and provided further that upon procurement of such approval, the Concessionaire shall be entitled to a period of 12 (twelve) months therefrom for completion of the overbridges. For the avoidance of doubt, the approval specified in Sub-clauses (d) and (e) above shall cease to be a Condition Precedent upon the extension of time under this Proviso.]

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) provided Performance Security to the Authority;
- (b) executed and procured execution of the Escrow Agreement;
- (c) executed and procured execution of the Substitution Agreement;
- (d) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (f) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model, which is workable, formulae linked and interactive, in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (g) delivered to the Authority from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (k), (l) and (m) of clause 7.1 of this Agreement; and
- (h) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.



- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

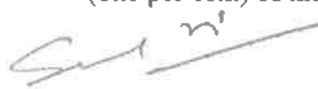
In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security, provided further that such Damages for delay by the Concessionaire for non-fulfilment of Conditions Precedent shall be payable within 15 (fifteen) days of achievement of fulfilment of Conditions Precedent.

4.4 Deemed Termination upon Delay

Without prejudice to the provisions of Clause 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1st (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority to the extent of an amount calculated as 1% (one per cent) of the Total Project Cost.



ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project Highway and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Highway;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) make reasonable efforts to facilitate the acquisition of land required for the purposes of the Agreement;
 - (f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;



- (h) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (i) transfer the Project Highway to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 30 (thirty) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.
- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "Covenant"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The



Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

- 5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority.

- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or
- (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the



avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.



5.5 Employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.6 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.7 Branding of Project Highway

The Project Highway or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project Highway to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Project Highway shall be known, promoted, displayed and advertised by the name of *****.

5.8 Facilities for physically challenged and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Project Highway.



ARTICLE 6
OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
- (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (c) procure that no barriers are erected or placed on or about the Project Highway by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
- (d) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Project Highway;
- (e) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Project Highway;
- (f) assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Project Highway;
- (g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and



- (i) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

6.2 Maintenance obligations prior to Appointed Date

During the Development Period, the Authority shall maintain the Project Highway, at its own cost and expense, so that its traffic worthiness and safety are at no time materially inferior as compared to its condition 7 (seven) days prior to the last date for submission of the Bid, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof, or pay to the Concessionaire the cost and expense, as determined by the Independent Engineer, for undertaking such repair after the Appointed Date. For the avoidance of doubt, the Authority shall undertake only routine maintenance during the Development Period, and it shall undertake special repairs only for ensuring safe operation of the Project Highway, or in the event of excessive deterioration or damage caused due to unforeseen events such as floods or torrential rain.

6.3 Obligations relating to Competing Roads

The Authority shall procure that during the subsistence of this Agreement, neither the Authority nor any Government Instrumentality shall, at any time before the 10th (tenth) anniversary of the Appointed Date, construct or cause to be constructed any Competing Road; provided that the restriction herein shall not apply if the average traffic on the Project Highway in any year exceeds 90% (ninety percent) of its designed capacity specified in Clause 29.2.3. Upon breach of its obligations hereunder, the Authority shall be liable to payment of compensation to the Concessionaire under and in accordance with Clause 35.4, and such compensation shall be the sole remedy of the Concessionaire.

6.4 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall be utilized for the project purpose only and shall always be subject to the prior approval of the Authority, which shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Authority, but the repayment thereof shall be completed no later than 1(one) year prior to the expiry of Concession Period.



ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material



impairment of its ability to perform any of its obligations under this Agreement;

- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/ Consortium Members}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualifications shall hold less than 26% (twenty six per cent) of Equity during the Construction Period and two years thereafter;

Provided further that any such request made under art 7.1(k) and / or art 48, at the option of the authority, may be required to be accompanied by a suitable no objection letter from lenders,

- (l) {the selected bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) {the selected bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Project Highway shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be



acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
- (q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) it has the right, power and authority to manage and operate the Project Highway up to the Appointed Date; and



- (h) it has good and valid right to the Site, and has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

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ARTICLE 8
DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.



Part III
Development and Operations

Sum

Sum 21

Updated on 09.05.2016

ARTICLE 9
PERFORMANCE SECURITY

9.1 Performance Security

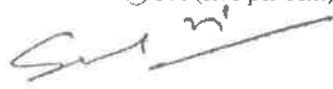
9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority no later than 180 (one hundred and eighty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)⁹ in the form set forth in Schedule-F (the "Performance Security"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 37. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 37.

⁹ Calculated @ 5% (five per cent) of the amount specified in the definition of Total Project Cost.



9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 20% (twenty per cent) of the Total Project Cost; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

Signature

Updated on 09.05.2016

ARTICLE 10
RIGHT OF WAY

10.1 The Site

The site of the Project Highway shall comprise the real estate described in Schedule-A and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the "Site"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for [Four-Laning] of the Project Highway as set forth in Schedule-A, [and in the event of Six-Laning thereof, references to the Site shall be construed as references to the real estate required for such Six-Laning in accordance with the said Schedule].

10.2 Licence, Access and Right of Way

- 10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the "Licensed Premises"), on an "as is where is" basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in anyway appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.2.3 The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that [two existing lanes of the Project] Highway or an alternative thereof are open to traffic at all times during the Construction Period.
- 10.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by



the Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the licence in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

- 10.2.5 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.3 Procurement of the Site

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.
- 10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 20% (twenty per cent) of the total area of the Site required and necessary for the [Four-Lane] Project Highway, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.



- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4 The Authority shall make best efforts to procure and grant, no later than 120 (one hundred twenty) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 100(Rupees hundred) per day for every 1,000 (one thousand) square metres or part thereof, commencing from the 121st (one hundred and twentyfirst) day of the Appointed Date and until such Right of Way is procured. Provided further that upon payment of Damages mentioned hereinabove, the Authority shall not be liable for payment of any consequential loss arising out of the delay in handing over remaining portion of the Right of Way.
- 10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 120(hundred and twenty) days of the Appointed Date shall be completed before the Project Completion Date. It is further agreed that the obligation of the Concessionaire to complete the affected Construction Works shall subsist so long as the Authority continues to pay the Damages specified herein, and upon the Authority ceasing to pay such Damages after giving 60 (sixty) days' notice thereof to the Concessionaire, the obligation of the Concessionaire to complete such works on such part of the Site shall cease forthwith. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.4.2.
- 10.3.6 The Concessionaire shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for [Toll Plazas, Traffic Aid Posts, Medical Aid Posts, under passes and over passes or for] construction of works specified in Change of Scope Order issued under Article 16, in accordance with this Agreement and upon procurement, such land shall form part of the Site and vest in the Authority; provided that the Concessionaire may, by notice given



to the Authority no later than 60 (sixty) days from [the Appointed Date or the date of Change of Scope Order, as the case may be,] require the Authority to initiate and undertake proceedings for acquisition of such land under the provisions of the National Highways Act, 1956 and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Authority in accordance with the Act; provided also that the land to be acquired by the Authority hereunder as a part of the Site shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with in accordance with the provisions thereof. [For the avoidance of doubt, it is agreed that the minimum area of land to be acquired for the Toll Plazas and approach roads thereof shall conform to the provisions of Schedule - B and Schedule - C. It is further agreed that the Authority may, at any time after the Bid Date, *suo moto* acquire the land required hereunder.]

10.3.7 The Concessionaire may procure at its cost and expense and on its own the land that may be required by it for Additional Facilities and the Authority shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Concessionaire shall seek prior consent of the Authority to connect any Additional Facility to the Project Highway and such consent shall not be unreasonably withheld. Provided that cost of procuring such land for construction of additional facilities shall not be the part of Financial Package and the Financial Model.

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Protection of Site from encroachments

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.



10.6 Special/temporary right of way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project Highway and the performance of its obligations under this Agreement.

10.7 Access to the Authority and Independent Engineer

The licence, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

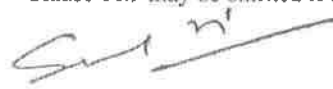
10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Government shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

10.9 Additional land for [Six-Laning]¹⁰

The additional real estate required for [Six-Laning] shall be acquired by the Authority and granted to the Concessionaire no later than 3 (three) years prior to the Scheduled [Six-Laning] Date and the provisions of this Article 10 shall apply, *mutatis mutandis*, to such real estate and to any other land over which Right of Way is procured and granted by the Authority to the Concessionaire at any time during the Concession Period.

¹⁰ Clause 10.9 may be omitted if two-stage capacity augmentation is not contemplated.



ARTICLE 11
UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Project Highway. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3 New utilities and roads

11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Project Highway in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.3.2 The Authority may, by notice require the Concessionaire to connect any adjoining road to the Project Highway. Upon receipt of a notice hereunder, the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at the Authority's cost in accordance with Article 16, and the maintenance thereof shall be undertaken by the Concessionaire in accordance with the provisions of Clause 17.1.3.

11.3.3 The Authority may by notice require the Concessionaire to connect, through a paved road, any adjoining service station, hotel, motel or any other public



facility or amenity to the Project Highway, whereupon the connecting portion thereof that falls within the Site shall be constructed and maintained by the Concessionaire upon advance payment of the cost to be made by the beneficiary entity in accordance with the amount and period as determined by the Independent Engineer. For the avoidance of doubt, any connecting road constructed prior to the Appointed Date and falling within the Site shall be maintained by the Concessionaire upon advance payment to be made by the beneficiary entity in accordance with the provisions of this Clause.

11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project Highway. The cost of such felling shall be borne by the Authority, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

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ARTICLE 12

CONSTRUCTION OF THE PROJECT HIGHWAY

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials needed for the Project Highway under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Maintenance during Construction Period

During the Construction Period, the Concessionaire shall maintain, at its cost, the existing lane(s) of the Project Highway so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition 7 (seven) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project Highway.

12.3 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Project Highway as set forth in Schedule-H, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project



Completion Schedule, three copies each of all Drawings to the Independent Engineer for review;

- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards;
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;
- (f) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to alignment of the Project Highway, finished road level, location and layout of the Toll Plaza[s] and general arrangement drawings of major bridges, flyovers and grade separators, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.3 shall apply *mutatis mutandis* to the review and comments hereunder; and
- (g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project Highway as actually designed, engineered and constructed, including an as-built survey illustrating



the layout of the Project Highway and setback lines, if any, of the buildings and structures forming part of Project Facilities.

12.4 [Four-Laning] of the Project Highway

12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of [Four-Laning] as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The [650th (six hundred and fiftieth) day] from the Appointed Date shall be the scheduled date for completion of [Four-Laning] (the “**Scheduled [Four-Laning] Date**”) and the Concessionaire agrees and undertakes that [Four-Laning] shall be completed on or before the Scheduled [Four-Laning] Date.

12.4.2 The Concessionaire shall construct the Project Highway in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled [Four-Laning] Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled [Four-Laning] Date, the Damages paid under this Clause 12.4.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

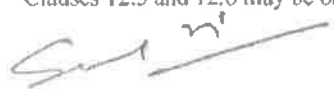
12.4.3 In the event that [Four-Laning] is not completed within 270 (two hundred and seventy) days from the Scheduled [Four-Laning] Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.5 [Six-Laning] of the Project Highway¹¹

12.5.1 The Concessionaire shall undertake construction of [Six-Laning] as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D, so that the Project Highway shall have [Six-Lanes] on or before the [11th (eleventh)] anniversary of the Appointed Date (the “**Scheduled [Six-Laning] Date**”).

12.5.2 In the event that the Concessionaire has not been excused from its obligations of [Six-Laning] in accordance with Clause 3.2 or Clause 30.2, as

¹¹ Clauses 12.5 and 12.6 may be omitted if two-stage capacity augmentation is not contemplated.



the case may be, and it fails to complete [Six-Laning] on or before the Scheduled [Six-Laning] Date, it shall pay to the Authority Damages equal to 3% (three per cent) of the Average Daily Fee for each day's delay until [Six-Laning].

- 12.5.3 The provisions of this Agreement, insofar as they relate to [Four-Laning], shall apply, *mutatis mutandis*, to [Six-Laning] of the Project Highway, save and except where express provisions to the contrary have been made for [Six-Laning].
- 12.5.4 Notwithstanding anything to the contrary contained in this Agreement, in the event of an Additional Tollway or Competing Road being constructed prior to the Scheduled [Six-Laning] Date, the Concessionaire shall be deemed to be relieved of its obligation to undertake construction of [Six-Laning] under this Agreement.

12.6 Termination due to failure to complete [Six-Laning]

In the event that [Six-Laning] is not completed on or before the [12th (twelfth)] anniversary of the Appointed Date, the Concession Period shall, notwithstanding anything to the contrary contained in this Agreement, be deemed to be [12 (twelve)] years and accordingly such [12th (twelfth)] anniversary shall be the Transfer Date.

12.7 Construction of service roads by the Authority¹²

The Authority shall, at any time after the [8th (eighth)] anniversary of the Appointed Date, be entitled in its discretion to undertake at its cost, construction of service roads on the Project Highway in accordance with the specifications and standards applicable to other district roads (ODRs) in the State. Such construction shall be undertaken without causing undue disruption to traffic and upon its completion, the Concessionaire shall have the obligation to maintain the service roads in accordance with Good Industry Practice and regulate the use thereof in accordance with the provisions of this Agreement.

¹² Clause 12.7 may be omitted if the option of adding service roads is not to be retained for the Project.



ARTICLE 13
MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on physical and financial progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Project Highway at least once a month and make a report of such inspection (the "Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests prescribed by IRC and/or MORTH for the construction works undertaken by the Authority through their contractors. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require



the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.4.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that [Four-Laning] is not likely to be achieved by the Scheduled [Four-Laning] Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users and pedestrians.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 34.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "Preservation Costs"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.



13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled [Four-Laning] Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled [Four-Laning] Date.

13.6 Video recording

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

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ARTICLE 14
COMPLETION CERTIFICATE

14.1 Tests

14.1.1 At least 30 (thirty) days prior to the likely completion of the Project Highway, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project Highway to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Engineer.

14.1.2 All Tests shall be conducted in accordance with Schedule-I. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project Highway with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project Highway or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Highway with Specifications and Standards.

14.2 Completion Certificate

Upon completion of Construction Works and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-J (the "Completion Certificate").

14.3 Provisional Certificate

14.3.1 The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the "Provisional Certificate") if the Tests are successful and the Project Highway can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the



Independent Engineer and the Concessionaire (the “Punch List”); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

- 14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project Highway, if at least 75% (seventy five per cent) of the total length of the Project Highway has been completed. Provided further no such Provisional Certificate would be issued if the Concessionaire has not completed the construction on the Site handed over to it within 120 days of the Appointed Date. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part.

14.4 Completion of Punch List items

- 14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

- 14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.5 Withholding of Provisional Certificate

- 14.5.1 If the Independent Engineer determines that the Project Highway or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire within 15 (fifteen) days of conducting such tests. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project Highway



is not fit and safe for commercial service, it shall, within 30 (thirty) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project Highway and direct the Independent Engineer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.



ARTICLE 15
ENTRY INTO COMMERCIAL SERVICE

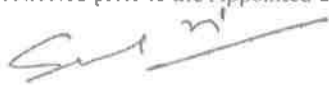
15.1 Commercial Operation Date (COD)

[Four-Laning shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued]¹³ (the "COD"). The Project Highway shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article 27.

15.2 Damages for delay

Subject to the provisions of Clause 12.4, if COD does not occur prior to the 91st (ninety first) day after the Scheduled [Four-Laning] Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

¹³ This provision may be suitably modified in case of a project where Fee is being levied and collected prior to the Appointed Date. In such a case, clause 15.2 shall be omitted.



ARTICLE 16
CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the "Change of Scope"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project Highway and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "Change of Scope Notice").
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed



by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "Change of Scope Order") requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

16.3.1 Within 30 (thirty) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 16.3.1. In the event that the total cost arising out of Change of Scope Orders (if any) issued prior to the Project Completion Date is less than 0.25% (zero point two five per cent) of the Total Project Cost, the difference thereof shall be credited by the Concessionaire to the Safety Fund within a period of 180 (one hundred and eighty) days of the Project Completion Date. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.



16.4 Restrictions on certain works

- 16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of [Four-Laning]; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of [Four-Laning] and issuing the Provisional Certificate.
- 16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.

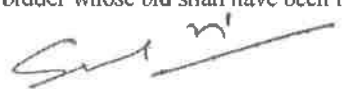
16.5 Power of the Authority to undertake works

- 16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority⁵, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.
- 16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Project Highway. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

16.6 Reduction in Scope of the Project

- 16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty percent) of the sum saved therefrom, and upon such

⁵The Authority shall transfer 75% (seventy five percent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire.



payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project. It is further agreed that the liability of the Authority under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.

- 16.6.2 For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.





ARTICLE 17
OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project Highway in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project Highway to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) permitting safe, smooth and uninterrupted flow of traffic on the Project Highway during normal operating conditions;
- (b) collecting and appropriating the Fee;
- (c) minimising disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Highway by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (d) carrying out periodic preventive maintenance of the Project Highway;
- (e) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement markings, lighting, road signs and other traffic control devices;
- (f) undertaking major maintenance such as resurfacing of pavements, repairs to structures, and repairs and refurbishment of tolling system and other equipment;
- (g) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Project Highway;
- (h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Highway;
- (i) protection of the environment and provision of equipment and materials therefore;
- (j) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project Highway;
- (k) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and



(l) complying with Safety Requirements in accordance with Article 18.

17.1.2 The Concessionaire shall remove promptly from the Project Highway all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Highway in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice. [For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at ****]

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, over-passes, under-passes or other structures situated on the Site but not forming part of the carriageway.

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project Highway conforms to the maintenance requirements set forth in Schedule-K (the "Maintenance Requirements").

17.3 Maintenance Manual

17.3.1 No later than 180 (one hundred and eighty) days prior to the Scheduled [Four-Laning] Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the "Maintenance Manual") for the regular and preventive maintenance of the Project Highway in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

17.4 Maintenance Programme

17.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the "Maintenance Programme") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:



- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Project Highway;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures; and
- (g) intervals for major maintenance works and the scope thereof.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

17.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply *mutatis mutandis* to such modifications.

17.5 Safety, vehicle breakdowns and accidents

17.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, lane closures, diversions, vehicle breakdowns and accidents, it shall follow the relevant operating procedures including the setting up of temporary traffic cones and lights, and removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.5.2 The Concessionaire's responsibility for rescue operations on the Project Highway shall be limited to an initial response to any particular incident until such time that the competent authority takes charge and shall include prompt removal of vehicles or debris or any other obstruction, which may endanger or interrupt the smooth flow of traffic. [For this purpose, it shall maintain and operate a round-the-clock vehicle rescue post with one mobile crane having the capacity to lift a truck with a Gross Vehicle Weight of 30,000 (thirty thousand) kilograms; provided that on and after the Scheduled Six-Laning Date, the Concessionaire shall maintain and operate two such vehicle rescue posts, with one crane each, and such posts shall be located at each of the Toll Plaza(s).]



17.6 De-commissioning due to Emergency

- 17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure to traffic of the whole or any part of the Project Highway, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project Highway to traffic for so long as such Emergency and the consequences thereof warrant; provided that such decommissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.
- 17.6.2 The Concessionaire shall re-commission the Project Highway or the affected part thereof as quickly as practicable after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project Highway and shall notify the Authority of the same without any delay.
- 17.6.3 Any decommissioning or closure of any part of the Project Highway and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.7 Lane closure

- 17.7.1 The Concessionaire shall not close any lane of the Project Highway for undertaking maintenance or repair works except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure of such lane and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem necessary and a copy of such permission shall be sent to the Authority.
- 17.7.2 The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to closure of any lane for a period not exceeding 2 (two) hours in a day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak hours when the flow of traffic is comparatively lower.
- 17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated lane for the period specified therein, and in the event of any delay in re-opening such lane, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of the Average Daily Fee for every stretch of 250 (two hundred and fifty) metres, or part thereof, for each day of delay until the lane has been re-opened for traffic.



17.8 Damages for breach of maintenance obligations

- 17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Fee, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer.

Notwithstanding anything contained in this agreement, should the actual traffic exceed the design capacity, during any year or part thereof and the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled, from such date, to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 5% (five per cent) of Average Daily Fee, and (b) 1% (one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer, for the balance period of the concession.

Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 17.8.2 The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.9 Authority's right to take remedial measures

- 17.9.1 In the event the Concessionaire does not maintain and/or repair the Project Highway or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.9.1 shall be without prejudice to its rights and remedies provided under Clause 17.8.



17.9.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.9.2 and debit the same to O&M Expenses under para 4.1.1 (h) and 4.2 (d) of the Escrow Agreement.

17.10 Overriding powers of the Authority

17.10.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein.

17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 34.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project Highway or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 34. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.



17.11 Restoration of loss or damage to Project Highway

Save and except as otherwise expressly provided in this Agreement, in the event that the Project Highway or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project Highway conforms to the provisions of this Agreement.

17.12 Modifications to the Project Highway

The Concessionaire shall not carry out any material modifications to the Project Highway save and except where such modifications are necessary for the Project Highway to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.13 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project Highway is not available to traffic on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Project Highway except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project Highway.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project Highway open to traffic provided they can be operated safely.

17.14 Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Project Highway except for reasons of Emergency, national security, law and order or collection of inter-state taxes. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or



cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions of traffic from, or closing down of approach roads to the Project Highway that may cause a material adverse effect on the flow of traffic to and from the Project Highway.

17.15 Advertising on the Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall be visible to the Users while driving on such Highway; provided that this restriction shall not apply to the Toll Plaza[s], rest areas, bus shelters and telephone booths located on the Project Highway if the advertising thereon does not, in the opinion of the Authority, distract the Users or violates extant guidelines of MoRT&H. All advertising on the Project Highway shall also conform to Good Industry Practice. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time, and no compensation shall be claimed on account thereof.

Signature

ARTICLE 18

SAFETY REQUIREMENTS

18.1 Safety Requirements

- 18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Highway, and shall comply with the safety requirements set forth in Schedule-L (the "Safety Requirements").
- 18.1.2 The Authority shall appoint an experienced and qualified firm or organisation (the "Safety Consultant") for carrying out safety audit of the Project Highway in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 16. Costs and expenses on works and services not covered hitherto before and arising out of Safety Requirements shall, subject to the provisions of Clause 16.3.2, be borne from out of a dedicated safety fund (the "Safety Fund") to be funded, owned and operated by the Authority or a substitute thereof.



ARTICLE 19

MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report stating in reasonable detail the condition of the Project Highway including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 Inspection

The Independent Engineer shall inspect the Project Highway at least once a month. It shall make a report of such inspection (the "O&M Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.3 Tests

For determining that the Project Highway conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire.

19.4 Remedial measures

- 19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.



19.4.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project Highway into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project Highway conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

19.5 Monthly Fee Statement

During the Operation Period, the Concessionaire shall furnish to the Authority, within 7 (seven) days of completion of each month, a statement of Fee substantially in the form set forth in Schedule-M (the "Monthly Fee Statement"). The Concessionaire shall also furnish to the Authority such other information as the Authority may reasonably require, at specified intervals, in discharge of its statutory functions.

19.6 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project Highway relating to the safety and security of the Users and Project Highway. A weekly and monthly summary of such reports shall also be sent within three days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.6, accidents and unusual occurrences on the Project Highway shall include:

- (a) death or injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) any obstruction on the Project Highway, which results in slow down of the services being provided by the Concessionaire;
- (d) disablement of any equipment during operation;
- (e) communication failure affecting the operation of Project Highway;
- (f) smoke or fire;
- (g) flooding of Project Highway; and
- (h) such other relevant information as may be required by the Authority or the Independent Engineer.



ARTICLE 20

TRAFFIC REGULATION

20.1 Traffic regulation by the Concessionaire

The Concessionaire shall regulate traffic on the Project Highway in accordance with the Applicable Laws, and subject to the supervision and control of the State authorities [or a substitute thereof] empowered in this behalf under the Applicable Laws.

20.2 Police assistance

For regulating the use of Project Highway in accordance with the Applicable Laws and this Agreement, the Authority shall assist the Concessionaire in procuring police assistance from the State Police Department [or a substitute thereof]. The police assistance shall include setting up of a traffic aid post (the "Traffic Aid Post") [at each of the Toll Plazas with a mobile Police squad for round-the-clock patrolling of the Project Highway].

20.3 Buildings for Traffic Aid Posts

The Concessionaire shall, in accordance with the type designs prescribed for such police outpost buildings by [the State Government or a substitute thereof, construct buildings not exceeding 25 (twenty five) square metres of plinth area, for each of the Traffic Aid Posts, and hand them over to the Authority no later than 60 (sixty) days prior to the Scheduled Four-Laning Date]. The Traffic Aid Post[s] shall be deemed to be part of the Site and shall vest in the Authority.

20.4 Recurring expenditure on Police assistance

[On or before the Scheduled Four-Laning Date, the Concessionaire shall provide to the State Police Department or a substitute thereof one Jeep or similar vehicle in good working condition along with chauffeurs for round-the-clock patrolling as set forth in Clause 20.2 and shall meet the operating costs of such vehicle including the salaries and allowances of the chauffeurs. During the Operation Period of Six-Laning, the Concessionaire shall also reimburse to the State Police Department or a substitute thereof the actual expenditure incurred in each Accounting Year on the pay, allowances and equipment of up to 5 (five) police personnel deployed for the traffic aid posts, and shall maintain the Traffic Aid Post buildings in accordance with Good Industry Practice. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State Police Department or a substitute thereof.]



ARTICLE 21

EMERGENCY MEDICAL AID

21.1 Medical Aid Posts

For providing emergency medical aid during the Operation Period, as set forth in this Agreement, the Concessionaire shall assist the State Government [or a substitute thereof to be designated by the Authority] in setting up and operating a medical aid post (the "Medical Aid Post") at [each of the Toll Plazas with round-the-clock ambulance services for victims of accidents on the Project Highway.]

21.2 Buildings for Medical Aid Posts

The Concessionaire shall, at its cost [and in accordance with the type designs prescribed for such buildings by the State Medical Department (or a substitute thereof to be designated by the Authority), construct an aid post building and 2 (two) residential quarters, and hand them over to the Authority, no later than 30 (thirty) days prior to Scheduled Six-Laning Date. The Medical Aid Post(s)] shall be deemed to be part of the Site and shall vest in the Authority.

21.3 Recurring expenditure on Medical Aid Posts

[On or before COD, the Concessionaire shall provide to the State Medical Department or a substitute thereof to be designated by the Authority one ambulance in good working condition along with chauffeurs for round-the-clock ambulance services as set forth in Clause 21.1 and meet the operating costs of such ambulance including the salaries and allowances of the chauffeurs. The Concessionaire shall also reimburse to the State Medical Department (or a substitute thereof to be designated by the Authority) the actual expenditure incurred by it in each Accounting Year on the medical equipment, and the pay and allowances of up to 2 (two) medical personnel deployed exclusively for the Medical Aid Posts and ambulance, and shall maintain the Medical Aid Post buildings in accordance with Good Industry Practice. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State Medical Department or a substitute thereof to be designated by the Authority.]



ARTICLE 22

TRAFFIC CENSUS AND SAMPLING

22.1 Traffic census

The Concessionaire shall install, maintain and operate electronic/computerised traffic counters at [each of] the Toll Plaza[s] and collect data relating to the number and types of vehicles using the Project Highway. [The Concessionaire shall also install, maintain and operate weighing platforms (weigh-in-motion type) for recording, on a sample basis, the weight of commercial goods vehicles using the Project Highway.] A weekly statement of such data shall be compiled and furnished forthwith by the Concessionaire to the Authority substantially in the form specified in Schedule-N.

22.2 Traffic survey

The Authority may require the Concessionaire to conduct, during each year of the Concession Period, a detailed traffic survey at such frequency and on such days as the Authority may specify, provided that the cumulative period of such survey shall not exceed 14 (fourteen) days in a year. The Concessionaire shall, at its own cost, carry out or cause to be carried out, the survey in the form and manner reasonably specified by the Authority and furnish a detailed report thereof within 15(fifteen) days of the completion of each survey. For the avoidance of doubt, the Authority may also conduct traffic surveys, in such manner as it deems fit and at its own cost, through any agency designated by it for this purpose.

22.3 Traffic sampling

22.3.1 For determining the actual traffic on the Project Highway, the Authority shall be entitled to inspect the relevant records of the Concessionaire, and may, at its own cost, undertake traffic sampling substantially in the manner set forth in Schedule-O at such frequency as it may deem appropriate, but in no case for less than a continuous period of 7 (seven) days. The Concessionaire shall provide such assistance as the Authority may reasonably require for such traffic sampling.

22.3.2 If the traffic sampling pursuant to this Clause 22.3 demonstrates that the actual traffic is more than the traffic reported by the Concessionaire, the traffic determined by the traffic sampling shall be deemed to be the traffic for purposes of this Agreement and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, Realisable Fee for any comparable period shall be calculated with reference to the traffic determined hereunder.



22.4 Computer systems and network

The Concessionaire shall install, operate and maintain a computer system with round-the-clock connections to the networks of the Authority and other related entities for exchange of data and information useful or necessary for efficient and transparent regulation and management of traffic. For this purpose, it shall follow such protocol for Electronic Data Interchange (the "EDI") as the Authority may specify. For the avoidance of doubt, it is agreed that the form specified in Schedule-N may be modified by the Authority from time to time for conforming to the requirements and output of EDI.

Signature

ARTICLE 23

INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm from a panel of 10 (ten) firms or bodies corporate, constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule-P, to be the independent consultant under this Agreement (the "Independent Engineer"). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-P to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

23.2 Duties and functions

23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-Q.

23.2.2 A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.

23.2.3 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

23.2.4 Independent Engineer shall periodically submit data on the progress / status of construction works, financial progress and other requisite details at such interval, as mentioned in the TOR, which shall enable the Authority for updating the project specific website, substantially in the format prescribed at Appendix – IV*.

23.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in Schedule-P, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

* A sample format is enclosed as Appendix-IV in Clause 23.2.4 and Schedule Q. The format may be modified as per the requirements of the project.



23.4 Termination of appointment

23.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 23.1.

23.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

23.5 Authorised signatories

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

23.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.



Sum ^m

Updated on 09.05.2016

Part IV
Financial Covenants

Sub 3'

Sum ⁿⁱ

ARTICLE 24
FINANCIAL CLOSE

24.1 Financial Close

24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [120 (one hundred and twenty)] days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, or for a further period not exceeding 200 (two hundred) days, subject to payment of Damages specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

24.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

24.2 Termination due to failure to achieve Financial Close

24.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 34.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 24.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 24.2.1 shall not apply.

24.2.2 Upon Termination under Clause 24.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination, return the Bid Security forthwith along with the



Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

Sum n'

ARTICLE 25

GRANT

25.1 Grant

25.1.1 The Authority agrees to provide to the Concessionaire cash support by way of an outright grant equal to the sum set forth in the Bid, namely, [Rs. (Rupeesin words.....)], in accordance with the provisions of this Article 25 (the "Grant").

25.1.2 The Grant shall be disbursed to the Concessionaire by way of Equity Support in accordance with the provisions of Clause 25.2.

25.2 Equity Support

25.2.1 Subject to the conditions specified in this Clause 25.2, the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost (the "Equity Support").

25.2.2 The Equity Support shall not exceed the sum specified in the Bid and as accepted by the Authority, but shall in no case be greater than twice the Equity, and shall be further restricted to a sum not exceeding 40% (forty per cent) of the Total Project Cost. For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause 25.2.2 shall include Equity Support.

25.2.3 Equity Support shall be due and payable to the Concessionaire after it has expended the Equity, and shall be disbursed proportionately along with the loan funds to be disbursed by the Senior Lenders under the Financing Agreements. The Authority shall disburse each tranche of the Equity Support as and when due, but no later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars. Provided further, within 30 (thirty) days of Lenders Representative certifying the final drawdown of the last instalment of the debt, all the balance Equity Support shall be disbursed by the Authority.

25.2.4 In the event of occurrence of a Concessionaire Default, disbursement of Equity Support shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

25.3 Deleted

{PREMIUM}^s

{25.4 Premium

^s In the event that the Concessionaire does not seek any Grant from the Government and offers to pay a Premium instead, the provisions of Clauses 25.1, 25.2 and 25.3 relating to Grant shall be substituted by the provisions of Clause 25.4 relating to Premium, which Clause shall be renumbered.



The Concessionaire acknowledges and agrees that as set forth in the Bid, it shall pay to the Authority for each year of the Concession Period, a premium (the "Premium") in the form of an additional Concession Fee, as set forth in Clause 26.2.1, and in the manner set forth in Clause 26.4.}

Sum

ARTICLE 26
CONCESSION FEE

26.1 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee (the "Concession Fee") a sum of Re. 1 (Rupee one) per annum {and the Premium specified in Clause 26.2}.

26.2 Additional Concession Fee⁵

26.2.1 Without prejudice to the provisions of Clause 26.1, the Concessionaire agrees to pay to the Authority immediately after the third (3rd) anniversary year of COD, a Premium in the form of an additional Concession Fee equal to Rs. _____ (in words) as due to the authority during that year, due and payable for the period remaining in that year; and for each subsequent year till the 9th anniversary of COD, , the Premium shall be determined by increasing the amount of Premium in the respective year by an additional 3 % (three percent) as compared to the immediately preceding year and for each subsequent year of the Concession Period, the premium shall be determined by increasing the amount of Premium in the respective year by an additional 8% (eight percent) as compared to the immediately preceding year.

For the avoidance of doubt, it is clarified the term 'Premium' as referred in para above shall be as applicable for one financial year. In accordance with and in compliance with the terms of this agreement, if payment of such 'Premium' is due and payable only for part of such financial year, then only pro-rata payments @ 1/12th of such Premium shall be payable for each month of such part financial year for which such Premium payments is due as payable. For the purpose of assessing the amount due for payment on such payment of Premium, part of the month shall be deemed to be a full month. In such circumstances the subsequent year as referred to in para above, for the purpose of annual escalation, shall fall to commence on 1st of April of the immediately succeeding financial year.

⁵ In the event of the Concessionaire seeking a Grant under Clause 25.1 of this Agreement, Clauses 26.2 to 26.5 shall be omitted.



26.2.2 The Premium payable under Clause 26.2.1 shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

26.3 Deleted

26.4 Payment of Concession Fee

The Concession Fee payable under the provisions of this Article 26 shall be due and payable in monthly instalments. Within 7 (seven) days of the close of each month.

26.5 Verification of Realisable Fee

26.5.1 The Authority may, in order to satisfy itself that the Concessionaire is reporting its Realisable Fee honestly and faithfully, depute its representatives to the Toll Plaza[s] and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary, to ascertain the actual Fee revenues.

26.5.2 If the verification of Fee revenues pursuant to this Clause 26.5 demonstrates that the Realisable Fee is more than the amount reported by the Concessionaire, the Authority shall, for the purpose of determining the Fee revenues, be entitled to undertake traffic sampling for a continuous period of 7 (seven) days in accordance with Clause 22.3. The Parties hereto agree that if the average daily Fee revenue determined under this Clause 26.5.2 exceeds the average daily Realisable Fee reported by the Concessionaire during the preceding month by 1% (one percent) thereof, the difference between such Fee revenue and Realisable Fee shall be multiplied by 180 (one hundred and eighty) and the product thereof shall be paid as Damages by the Concessionaire to the Authority, and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, it is agreed that seasonal variations in traffic volume shall be determined by the Independent Engineer on the basis of past trends and other relevant information, and due weightage shall be assigned to such variations in computing the Realisable Fee under this Clause 26.5.2.



ARTICLE 27

USER FEE

27.1 Collection and appropriation of Fee

- 27.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the Users subject to and in accordance with this Agreement and the National Highways Fee (Determination of Rates and Collection) Rules, 2008 read with National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2010 issued vide Notification No. G.S.R. 950(E) dated 03.12.2010, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2011 issued vide Notification No. G.S.R. 15(E) dated 12.01.2011, National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2011 issued vide Notification No. G.S.R. 756(E) dated 12.10.2011, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2013 issued vide Notification No. G.S.R. 778(E) dated 16.12.2013, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2014 issued vide Notification No. G.S.R. 26(E) dated 16.01.2014, National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2014 issued vide Notification No G.S.R. 831 (E) dated 21.11.2014, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2015 issued vide Notification No. G.S.R. 220(E) dated 23.03.2015, and its subsequent amendments upto the Bid Due Date (the "Fee Rules"); provided that for ease of payment and collection, such Fee shall be rounded off to the nearest 5 (five) rupees in accordance with the Fee Rules; provided further that the Concessionaire may determine and collect Fee at such lower rates as it may, by public notice to the Users, specify in respect of all or any category of Users or vehicles.
- 27.1.2 The Parties acknowledge that a notification for levy and collection of Fee shall be issued by the Government under Section 8A of the Act read with Rule 3 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 (the "Fee Notification") within 90 (ninety) days hereof, substantially in the form set forth in Schedule-R.
- 27.1.3 The Concessionaire acknowledges and agrees that upon payment of Fee, any Users shall be entitled to use the Project Highway and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.
- 27.1.4 The Concessionaire acknowledges and agrees that any User who is not liable for payment of the Fee shall be entitled to use the Project Highway without any restrictions, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement. For the avoidance of doubt, the Concessionaire hereby acknowledges that Exempted Vehicles are not liable to payment of Fee.



27.2 Revision of Fee

27.2.1 The Parties hereto acknowledge and agree that the Fee shall be revised annually on April 1 subject to and in accordance with the provisions of the Fee Rules; provided, however, that no revision shall be effected within a period of 6 (six) months from the date of the preceding revision of Fee.

27.2.2¹⁴[The Parties hereto acknowledge and agree that in conformity with the Fee Rules, the Fee to be levied and collected upon completion of Four-Laning shall be revised from the date of Four-Laning.]

27.2.3 The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Fee or other relief from the Authority or any Government Instrumentality except in accordance with the express provisions of this Agreement.

27.3 Exemption for Local Users

The Concessionaire shall not collect any Fee from a Local User for non-commercial use of the Project Highway, and shall issue a pass in respect thereof for commuting on a section of the Project Highway as specified in such pass and for crossing the Toll Plaza specified therein. For carrying out the provisions of this Clause 27.3, the Concessionaire shall formulate, publish and implement an appropriate scheme, and make such modifications to the scheme as may reasonably be suggested by the Authority or by Local Users from time to time; provided that for defraying its expenses on issuing of passes and handling of Local Users, the Concessionaire shall be entitled to charge a monthly fee of Rs.150 (Rupees one hundred and fifty), with reference to the base year 2007-08, to be revised annually in accordance with the Fee Rules to reflect the variation in WPI, and then rounded off to the nearest 5 (five) rupees; provided further that no passes will be required or Fee collected from a vehicle that uses part of the Project Highway and does not cross a Toll Plaza.

27.4 Free use of service road¹⁵

27.4.1 The Concessionaire shall not permit entry of Local Users, Tractors, animal-drawn vehicles, three-wheelers and Motor Cycles on the carriageway of the Project Highway where a service road or alternative road is available in conformity with the provisions of Fee Rules; provided that a Motor Cycle shall be permitted to use such carriageway upon payment of Fee. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to set up temporary or permanent Fee collection booths, entry barriers or such other restrictions on the service roads, as may reasonably be necessary for

¹⁴ Clause 27.2.2 may be omitted if two-stage capacity augmentation from Two-laning to Four-laning is not specified in the Agreement.

¹⁵ Clause 27.4 may be omitted if the option of adding service roads is not to be retained for the Project.



preventing evasion of Fee by vehicles which are otherwise liable to payment of Fee.

27.4.2 Any motorised vehicle, not being a Tractor, animal-drawn vehicle, three-wheeler, Motor Cycle or a vehicle of Local User, using the service road forming part of the Project Highway shall be liable to payment of Fee as if it was using the Project Highway. For the avoidance of doubt, a vehicle which is not liable to payment of Fee for use of any section of the Project Highway shall not be required to pay Fee if it is using a service road in that section of the Project Highway.

27.5 Discounted Fee for frequent Users

27.5.1 The Concessionaire shall, upon request from any person, issue a return pass on payment of a sum equal to 150% (one hundred and fifty per cent) of the Fee payable for the respective vehicle if it were to undertake a single one-way trip on the Project Highway. Such return pass shall entitle the specified vehicle to undertake a return journey within 24 (twenty four) hours from the time of payment of Fee.

27.5.2 The Concessionaire shall, upon request from any person for issue of 50 (fifty) or more one-way toll tickets, issue such tickets at a discounted rate equivalent to two-thirds of the Fee payable for the respective vehicle. Such discounted tickets shall entitle the specified vehicle to commute on the Project Highway by using one ticket for a single one-way trip at any time during a period of one month from the date of payment of Fee..

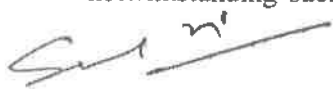
27.6 Reappropriation of excess Fee

27.6.1 In the event that the average daily traffic of PCUs in any Accounting Year shall have reached a level equivalent to 120% (one hundred and twenty percent) of the designed capacity specified in Clause 29.2.3 (the "Traffic Cap"), the Fee levied and collected from the traffic exceeding the Traffic Cap shall, notwithstanding anything to the contrary contained in this Agreement, be deemed to be due and payable to the Authority in accordance with the provisions of Clause 27.6.2.

27.6.2 If traffic in any Accounting Year exceeds the Traffic Cap, the Concessionaire shall be entitled to collect and appropriate the Realisable Fee for traffic not exceeding the Traffic Cap and for all traffic exceeding the Traffic Cap, the Concessionaire shall collect and deposit the same into the Safety Fund within 60 (sixty) days of the close of the relevant Accounting Year; provided that the balance remaining in respect of the excess traffic of the last Accounting Year of the Concession Period shall be credited to the Safety Fund within 30 (thirty) days of the Transfer Date.

27.7 Tolling Contractor

The Concessionaire may appoint a Tolling Contractor or any other person to collect the Fee for and on behalf of the Concessionaire, provided that notwithstanding such appointment, the Concessionaire shall be and remain



solely liable and responsible for the collection of Fee in accordance with this Agreement and its deposit into the Escrow Account and for compliance with the provisions of this Agreement.

27.8 Fee collection points

Fee shall ordinarily be collected at the Toll Plaza[s] from vehicles crossing the Toll Plaza[s] and using the whole or part of the Project Highway; provided that for preventing evasion of Fee by any vehicle circumventing [one or both of] the Toll Plaza[s] and using the whole or part of the Project Highway [located between such Toll Plazas], the Concessionaire shall be entitled to set up at its own risk and cost, and in consultation with the Independent Engineer, its temporary or permanent Fee collection booths, as may reasonably be necessary for preventing such evasion. For the avoidance of doubt, the Concessionaire hereby acknowledges and agrees that it shall not determine or collect Fee from Users who [only use part of the Project Highway which is situated between the two Toll Plazas OR *only use part of the Project Highway situated on any one side of the Toll Plaza*]. It is further acknowledged and agreed that the restrictions hereunder shall not extend beyond a distance of 10 (ten) kilometres from the Toll Plaza[s] and the provisions of this Clause 27.8 shall be so enforced as to minimise inconvenience to Users who are not liable to payment of Fee.

27.9 Additional charge for evasion of Fee

In the event that any vehicle uses the Project Highway without payment of Fee due, the Concessionaire shall be entitled to determine and collect from such vehicle the Fee due and an equivalent amount towards predetermined liquidated damages for unauthorised use of the Project Highway; provided that the determination and collection of such liquidated damages shall be at the risk and cost of the Concessionaire and the Authority shall not in any manner be liable on account thereof; provided that upon failure of the driver of such vehicle to pay Fee, the Concessionaire may prevent such vehicle from using the Project Highway and may have such vehicle removed therefrom.

27.10 Additional fee for overloaded vehicles

Without prejudice to the liability incurred under the Applicable Laws by any person driving a vehicle that is loaded in excess of the permissible limit set forth in such laws, the Concessionaire may recover Fee for such overloaded vehicle equal to ten times of the fee applicable to such category of mechanical vehicle.

Provided that such Fee shall be levied on the basis of actual Gross Vehicle Weight as measured by a standardised static weighing machine to be installed by the Concessionaire at [each of] the Toll Plaza[s] and where no such weighing machine has been installed, the Concessionaire shall not be entitled to collect additional Fee for the mechanical vehicle under the provisions of this Clause.



Provided further that upon detection of overloading, the Concessionaire shall prevent the vehicle from using the Project Highway until the excess load has been removed from such vehicle and the Authority shall not be liable for any act of omission of the Concessionaire in relation to such vehicle or person driving such vehicle.

27.11 Display of Fee rates

27.11.1 The Concessionaire shall, one kilometre before the Toll Plaza, 500 (five hundred) metres before the Toll Plaza and 50 (fifty) metres before entry to the Toll Plaza[s], prominently display the applicable rates of Fee for information of Users approaching the Toll Plaza and shall also publish and display such other information in such manner as may be prescribed under the Fee Rules.

27.11.2 The Concessionaire shall, from time to time, inform the Authority of the applicable Fee and the detailed calculation thereof. Such information shall be communicated at least 15 (fifteen) days prior to the revision of Fee under and in accordance with the Fee Rules.

27.11.3 The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Fee payable under Fee Notification. In the event any excess amounts are collected by or on behalf of the Concessionaire, or collect Fee during periods when it is not entitled to do so, it shall, upon receiving a notice to this effect from the Authority, deposit with the Authority such excess amounts to the Authority along with Damages equal to 200% (two hundred percent) thereof.

27.12 Fee collection through electronic devices

The Concessionaire agrees and undertakes to migrate, as its own cost and expense, to electronic toll collection by means of such methods and devices as the Authority may determine from time to time.

27.13 Real time data for toll collection

The Concessionaire shall install appropriate mechanism to ensure that a real time data of traffic count and corresponding revenue collection shall be shared with the Authority at all times during the Operations period.

Signature

ARTICLE 28
REVENUE SHORTFALL LOAN

28.1 Revenue Shortfall Loan

28.1.1 If the Realisable Fee in any Accounting Year shall fall short of the Subsistence Revenue as a result of an Indirect Political Event, a Political Event or an Authority Default, as the case may be, the Authority shall, upon request of the Concessionaire, provide a loan for meeting such shortfall (the "Revenue Shortfall Loan") at an interest rate equal to 2% (two per cent) above the Bank Rate.

28.1.2 If the half-yearly results of the Concessionaire indicate that the shortfall referred to in Clause 28.1.1 and contemplated for an Accounting Year has arisen in respect of the first 6 (six) months thereof, the Concessionaire shall be entitled to a provisional Revenue Shortfall Loan; provided that, no later than 60 (sixty) days after the close of such Accounting Year, the Concessionaire shall either repay the provisional loan with interest or adjust it against the Revenue Shortfall Loan, if any, as may be due to it under this Clause 28.1.

Provided further if the Realisable Fee in any Accounting Year shall fall short of the Subsistence Revenue as a result of a judicial pronouncement not related to the default of the concessionaire the Authority shall, upon request of the Concessionaire, provide "Revenue Shortfall Loan" at an interest rate equal to 2% (two per cent) above the Bank Rate. The entire surplus cash, after meeting the subsistence expenditure shall be used for repayment of such Revenue Shortfall Loan.

28.1.3 The Authority shall disburse the Revenue Shortfall Loan or the provisional Revenue Shortfall Loan, as the case may be, within 60 (sixty) days of receiving a valid request from the Concessionaire along with the particulars thereof including a detailed account of the Indirect Political Event, Political Event or the Authority Default, as the case may be, and its impact on the collection of Fee.

28.2 Repayment of Revenue Shortfall Loan

A sum equal to 50% (fifty per cent) of the 'profit before tax' of the Concessionaire, as and when made, shall be earmarked for repayment of the Revenue Shortfall Loan and interest thereon, and paid by the Concessionaire to the Authority within 90 (ninety) days of the close of the Accounting Year in which such profits have been made; provided that the Concessionaire shall repay the entire Revenue Shortfall Loan and interest thereon no later than one year prior to the expiry of the Concession Period and in the event that any sum remains due or outstanding at any time during such period of one year, the Authority shall be entitled to terminate this Agreement forthwith. For the avoidance of doubt, it is agreed that the repayment of Revenue Shortfall Loan shall be in accordance with and subject to the provisions of Article 31.



ARTICLE 29

EFFECT OF VARIATIONS IN TRAFFIC GROWTH

29.1 Effect of variations in traffic growth

29.1.1 The Authority and the Concessionaire acknowledge that the traffic as [on October 1, 2020] (the "Target Date")¹⁶ is estimated to be ***** PCUs per day (the "Target Traffic")¹⁷, and hereby agree that for determining the modifications to the Concession Period under this Article 29, the actual traffic on the Target Date shall be derived by computing the average of the traffic as determined by traffic sampling to be undertaken, in accordance with Clause 22.3, on the date that falls one year prior to the Target Date, on the Target Date and on the first anniversary of the Target Date (the "Actual Average Traffic"). For the avoidance of doubt, it is agreed that traffic sampling shall be undertaken for a continuous period of 7 (seven) days during anytime within 15 (fifteen) days prior to the date specified herein and the average thereof shall be deemed to be the actual traffic. It is further agreed that if the Project Highway shall have two or more Toll Plazas, the average traffic thereof shall be computed for determining the Actual Average Traffic hereunder.

29.1.2 In the event that the Actual Average Traffic shall have fallen short of the Target Traffic by more than 2.5% (two point five per cent) thereof or exceeded the Target Traffic by more than 2.5% (two point five per cent) thereof, the Concession Period shall be deemed to be modified in accordance with Clause 29.2. For the avoidance of doubt, in the event of any Dispute relating to Actual Average Traffic, the Dispute Resolution Procedure shall apply.

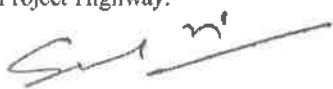
29.2 Modification in the Concession Period

29.2.1 Subject to the provisions of Clause 29.1.2, in the event Actual Average Traffic shall have fallen short of the Target Traffic, then for every 1% (one per cent) shortfall as compared to the Target Traffic, the Concession Period shall, subject to payment of Concession Fee in accordance with this Agreement, be increased by 1.5% (one point five per cent) thereof; provided that such increase in Concession Period shall not in any case exceed 20% (twenty per cent) of the Concession Period. For the avoidance of doubt, and by way of illustration, it is agreed that in the event of a shortfall of 10.6% (ten point six per cent) in Target Traffic, the Concession Period shall be increased by 15% (fifteen per cent) thereof.

29.2.2 Subject to the provisions of Clause 29.1.2, in the event Actual Average

¹⁶ The Target Date to be specified here shall be about 10 (ten) years from the date of this Agreement, but shall in no case be later than 3 years prior to the date of expiry of the Concession Period for [Four Laning].

¹⁷ The Target Traffic shall be a number based on 5% CAGR over the base traffic assumed for the Project Highway.



Traffic shall have exceeded the Target Traffic, then for every 1% (one per cent) excess as compared to the Target Traffic, the Concession Period shall be reduced by 0.75% (zero point seven five per cent) thereof; provided that such reduction in Concession Period shall not in any case exceed 10% (ten per cent) thereof. For the avoidance of doubt and by way of illustration, it is agreed that in the event of an excess of 8.7% (eight point seven per cent) in Target Traffic, the Concession Period.1 shall be reduced by 6% (six per cent) thereof:

Provided further that in lieu of a reduction in Concession Period under this Clause 29.2.2, the Concessionaire may elect to pay, in addition to the Concession Fee that would be due and payable if the Concession Period were not reduced hereunder, a further premium equal to [25% (twenty five per cent)] of the Realisable Fee in the respective year(s), and upon notice given to this effect by the Concessionaire no later than 2 (two) years prior to the Transfer Date contemplated under this Clause 29.2.2, the Authority shall waive the reduction in Concession Period hereunder and recover the Concession Fee and the aforesaid premium for the period waived hereunder.

- 29.2.3 Notwithstanding anything to the contrary contained in this Agreement, if the average daily traffic of PCUs in any Accounting Year shall exceed the designed capacity of the Project Highway, the authority at its option may cause preparation of a detailed project report (DPR). The said DPR, inter-alia will assess the cost as may have to be incurred for augmenting the capacity of the project highway such that its capacity shall have increased sufficiently for carrying the then current traffic in accordance with the corresponding provisions of the Indian roads congress publication no. IRC - 64, 1990 or any substitute thereof and extension of concession period, if any, that may be required to yield the concessionaire a post-tax return on equity (Equity IRR) of 16% per annum, such assessment being made at an assumed debt:equity ratio of 70:30. Such extension of Concession period shall be however limited to 5 (five) years. For avoidance of doubt it is stated that there shall be no reduction in the concession period as originally accepted. The authority may thereafter, at their sole option, issue a notice to the Concessionaire, (to be responded within a period of three months from the date of such notice), to undertake within six months of such notice, augmentation so determined by the authority. On refusal or non-acceptance by the Concessionaire to undertake such augmentation, either absolutely or on such extension of concession period as assessed under the DPR, or on the failure of the Concessionaire to undertake such augmentation on the due date so intimated by the authority, an indirect political event shall be deemed to have occurred and the authority may in its discretion terminate this agreement by issuing a termination notice and making a termination payment under and in accordance with the provisions of clause 34.9.2; without the authority being liable to issue any further notice under this provision.

For the avoidance of doubt, the Parties agree that an average daily traffic of 60000 PCUs and 120000 PCUs shall be deemed to be the designed capacity of the Four-Lane Project Highway and Six-Lane Project Highway



respectively."

- 29.2.4 If the Concessionaire shall have, prior to issue of a Termination Notice under Clause 29.2.3, completed the construction works necessary for augmenting the capacity of the Project Highway such that its capacity shall have increased sufficiently for carrying the then current traffic in accordance with the relevant provisions of the Indian Roads Congress Publication No. IRC - 64, 1990 or any substitute thereof, the Indirect Political Event specified in Clause 29.2.3 shall be deemed to have been cured.

Sum

ARTICLE 30

CONSTRUCTION OF ADDITIONAL TOLLWAY

30.1 Restriction on construction of Additional Tollway

30.1.1 Notwithstanding anything to the contrary contained in this Agreement but subject always to Clause 30.2, the Authority shall not construct, and shall procure that no Government Instrumentality shall construct or cause to be constructed, any expressway or other toll road between, *inter alia*, ***** and ***** i.e.km *** and km *** on National Highway No. ** (collectively the "Additional Tollway") for use by traffic at any time before the [12th (twelfth) anniversary of the Appointed Date; provided that in the event of the Concession Period being reduced to 12 (twelve) years, the Additional Tollway may be opened to traffic at any time after the 8th (eighth)] anniversary of the Appointed Date. For the avoidance of doubt, Additional Tollway does not include any expressway or other toll road connecting, *inter alia*, ***** and *****i.e.km *** and km *** on National Highway No. ** if the length of such expressway or toll road exceeds the length of the existing route comprising the Project Highway by 20% (twenty per cent) thereof.

30.1.2 If the Authority shall be in breach of the provisions of Clause 30.1.1, the Concessionaire shall, without prejudice to its other rights and remedies under this Agreement including Termination thereof, be entitled to receive compensation from the Authority under and in accordance with the provisions of Clause 35.4.

30.2 Modification in the Concession Period

In the event of the Authority or any Government Instrumentality constructing or causing construction of any Additional Tollway, the following shall apply:

- [(a) if the Additional Tollway is proposed to be opened to traffic between the 8th (eighth) and the 12th (twelfth) anniversary of the Appointed Date, the Authority shall, by notice to be communicated before the 8th (eighth) anniversary of the Appointed Date, require the Concessionaire not to undertake Six-Laning and to operate the Four-Lane Project Highway for a Concession Period of 12 (twelve) years. Upon delivery of such notice, the Concession Period shall be deemed to be 12 (twelve) years for purposes of this Agreement;]
- [(b) if the Concession Period is reduced to 12 (twelve) years and the Additional Tollway is opened to traffic between the 8th (eighth) and 12th (twelfth) anniversary of the Appointed Date, the Concessionaire shall be entitled to an additional Concession Period which shall be equal in duration to the period between the opening of the Additional Tollway and the 12th (twelfth) anniversary;]¹⁸

¹⁸ Sub-clauses (a) and (b) may be omitted if two-stage capacity augmentation is not specified in the Agreement.



- (c) if the Additional Tollway is opened to traffic between the [12th (twelfth)] and [20th (twentieth)] anniversary of the Appointed Date, the Concessionaire shall be entitled to an additional Concession Period, which shall be equal in duration to the period between the opening of the Additional Tollway and the [20th (twentieth)] anniversary. For the avoidance of doubt, if the Additional Tollway is opened on the [17th (seventeenth)] anniversary, the Concession Period shall be deemed to be [23 (twenty three)] years; and
- (d) if the Concession Period is to be increased in accordance with the provisions of this Clause 30.2, the same shall be added to the Concession Period due to the Concessionaire under and in accordance with all other provisions of this Agreement, save and except the provisions relating to Termination.

30.3 Minimum Fee for the Project Highway

Upon commissioning of the Additional Tollway, the Concessionaire shall continue to collect the Fee, and shall not offer any discounts or reductions in such Fee except with the prior written consent of the Authority; provided that the Concessionaire may continue, in the same form and manner, any discounts or reductions that it had offered to any general or special class of Users or vehicles for a continuous period of three years prior to the opening of the Additional Tollway to traffic.

30.4 Minimum Fee for Additional Tollway

The Authority agrees and undertakes to procure that the fee to be levied and collected during the subsistence of this Concession from any vehicle or class of vehicles using the Additional Tollway shall at no time be less than 25% (twenty five percent) higher than the Fee levied and collected from similar vehicles using the Project Highway.

Sum

ARTICLE 31
ESCROW ACCOUNT

31.1 Escrow Account

31.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "Escrow Bank") in accordance with this Agreement read with the Escrow Agreement.

31.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "Escrow Agreement") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule-S.

31.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all funds constituting the Financial Package;
- (b) all Fee and any other revenues from or in respect of the Project Highway, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payments by the Authority, after deduction of any outstanding Concession Fee:

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

31.3 Withdrawals during Concession Period

31.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project Highway;
- (b) all payments relating to construction of the Project Highway, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;



- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (e) Concession Fee due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan; Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under Clause 17.9.2 and debit the same to O&M Expenses.
- (h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

31.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 31.3.1, except with the prior written approval of the Authority.

31.4 Withdrawals upon Termination

31.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project Highway;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan; Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under Clause 17.9.2 and debit the same to O&M Expenses.

Sum n'

- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 39;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 31.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 38.

31.4.2 The provisions of this Article 31 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 31.4.1 have been discharged.

Signature

ARTICLE 32
INSURANCE

32.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

32.2 Notice to the Authority

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 32. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

32.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 32 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

32.4 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to



either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

32.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 32 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

32.6 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

32.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 31.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Highway, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.



ARTICLE 33
ACCOUNTS AND AUDIT

33.1 Audited accounts

33.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Realisable Fees and other revenues derived/collected by it from or on account of the Project Highway and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

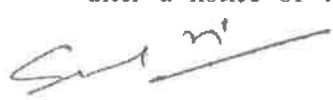
33.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

33.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the traffic count for each category of vehicles using the Project Highway and liable for payment of Fee therefor, (b) Fee charged and received, Realisable Fee and other revenues derived from the Project Highway, and (c) such other information as the Authority may reasonably require.

33.2 Appointment of auditors

33.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the "Panel of Chartered Accountants"), such list to be prepared substantially in accordance with the criteria set forth in Schedule-T. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

33.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the



replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the "Additional Auditors") as may be decided by the Authority to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

33.2.4 The Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the "Concurrent Auditors") as may be decided by the Authority to undertake concurrent audit of the Concessionaire's accounts.

33.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of Monthly Fee Statements under Clause 19.5.

33.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

33.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.



Part V

Force Majeure and Termination

Signature

Sun 21

ARTICLE 34
FORCE MAJEURE

34.1 Force Majeure

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 34.2, 34.3 and 34.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

34.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project Highway for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 34.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) the discovery of geological conditions, toxic contamination or



archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or

- (f) any event or circumstances of a nature analogous to any of the foregoing.

34.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

34.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 41 and its effect, in financial terms, exceeds the sum specified in Clause 41.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the



Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

34.5 Duty to report Force Majeure Event

34.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 34 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

34.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

34.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 34.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

34.6 Effect of Force Majeure Event on the Concession

34.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed



Date, the period set forth in Clause 24.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

34.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Concessionaire is unable to collect Fee despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fee on account thereof; provided that in the event of partial collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

34.7 Allocation of costs arising out of Force Majeure

34.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

34.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest



payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Fee revenues or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

34.7.3 Save and except as expressly provided in this Article 34, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

34.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 34, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

34.9 Termination Payment for Force Majeure Event

34.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

34.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

(a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and

(b) 110% (one hundred and ten per cent) of the Adjusted Equity.

34.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 37.3.2 as if it were an Authority Default.

34.10 Dispute resolution



In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

34.11 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.



ARTICLE 35

COMPENSATION FOR BREACH OF AGREEMENT

35.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 35.6, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 35.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

35.2 Compensation for default by the Authority

Subject to the provisions of Clause 35.6, in the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of Fee revenues, debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

35.3 Extension of Concession Period

Subject to the provisions of Clause 35.6, in the event that a material default or breach of this Agreement set forth in Clause 35.2 causes delay in achieving COD or leads to suspension of or reduction in collection of Fee, as the case may be, the Authority shall, in addition to payment of compensation under Clause 35.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the collection of Fee remained suspended on account thereof, as the case may be; and in the event of reduction in collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall, in addition to payment of compensation under Clause 35.2, extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.



35.4 Compensation for Competing Roads

35.4.1 Subject to the provisions of Clause 35.6, in the event that an Additional Tollway or a Competing Road, as the case may be, is opened to traffic in breach of this Agreement, the Authority shall pay to the Concessionaire, for each day of breach, compensation in a sum equal to the difference between the average daily Realisable Fee and the projected daily Fee (the "Projected Fee") until the breach is cured. The Projected Fee hereunder shall be an amount equal to the Average Daily Fee, increased at the close of every month by 0.5% (zero point five per cent) thereof and revised in accordance with Clause 27.2. For the avoidance of doubt, the Average Daily Fee for the purposes of this Clause shall be the amount so determined in respect of the Accounting Year or period, as the case may be, occurring prior to such opening or operation of an Additional Tollway or a Competing Road, as the case may be.

35.4.2 Payment of compensation under this Clause 35.4 shall be deemed to cure the breach of this Agreement so long as the Authority continues to pay compensation hereunder. [In the event that the Concessionaire is relieved of its obligation to undertake construction of Six-Laning in accordance with the provisions of Clause 12.5.4, the waiver of Six-Laning shall be deemed to cure the breach of this Agreement as from the Scheduled Six-Laning Date]

35.5 Compensation to be in addition

Compensation payable under this Article 35 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

35.6 Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.



ARTICLE 36

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

36.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Fee, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

36.2 Authority to act on behalf of Concessionaire

- 36.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 31.3.
- 36.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 36.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project Highway and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

36.3 Revocation of Suspension

- 36.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of



the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

36.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

36.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 36.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

36.5 Termination

36.5.1 At any time during the period of Suspension under this Article 36, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 36.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 37.

36.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 36.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.



ARTICLE 37
TERMINATION

37.1 Termination for Concessionaire Default

37.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the "**Concessionaire Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 120 (one hundred and twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project Highway without the prior written consent of the Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 12.4.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders' Representative



has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (s) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;



- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
- (iii) each of the Project Agreements remains in full force and effect;
- (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (u) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (w) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Authority.

37.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of clause 37.1.3.

37.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 37.1.2 to inform the Lenders' Representative and grant 30 (thirty) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:



Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

37.2 Termination for Authority Default

37.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "Authority Default") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include: .

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or
- (d) the State commits a material default in complying with the provisions of the State Support Agreement if such default has a Material Adverse Effect on the Concessionaire and the breach continues for a period of 90 (ninety) days from the date of notice given in this behalf by the Concessionaire to the Authority.

37.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 30 (thirty) days to the Authority to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

37.3 Termination Payment



37.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD.

37.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

(a) Debt Due; and

(b) 150% (one hundred and fifty per cent) of the Adjusted Equity.

Provided that the Termination Payment shall not be less than an amount equal to the product of 6 (six) and the average monthly Fee actually realised 12 (twelve) months prior to the Transfer Date.

37.3.3 Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

37.3.4 The Concessionaire expressly agrees that Termination Payment under this Article 37 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

37.4 *Other rights and obligations of the Authority*

Upon Termination for any reason whatsoever, the Authority shall:

(a) be deemed to have taken possession and control of the Project Highway forthwith;

(b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;

(c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or



38.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

38.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 39 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 38.

38.3 Cooperation and assistance on transfer of Project

38.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.

38.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

38.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 38.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

38.4 Vesting Certificate

The divestment of all rights, title and interest in the Project Highway shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay,



thereupon issue a certificate substantially in the form set forth in Schedule-U (the "Vesting Certificate"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project Highway, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project Highway on the footing that all Divestment Requirements have been complied with by the Concessionaire.

38.5 Additional Facilities

Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities shall continue to vest in the Concessionaire upon and after Termination.

38.6 Divestment costs etc.

- 38.6.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Highway in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 38.6.2 In the event of any dispute relating to matters covered by and under this Article 38, the Dispute Resolution Procedure shall apply.



ARTICLE 39

DEFECTS LIABILITY AFTER TERMINATION

39.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project Highway for a period of 120 (One hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project Highway during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project Highway conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account.

39.2 Retention in Escrow Account

- 39.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 39.2.3, a sum equal to 5% (five per cent) of the total Realisable Fee for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 39.1.
- 39.2.2 Without prejudice to the provisions of Clause 39.2.1, the Independent Engineer shall carry out an inspection of the Project Highway at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project Highway is such that a sum larger than the amount stipulated in Clause 39.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.
- 39.2.3 The Concessionaire may, for the performance of its obligations under this Article 39, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 39.2.1 or 39.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "Performance Guarantee"), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 39. Upon furnishing of a



Performance Guarantee under this Clause 39.2.3, the retention of funds in the Escrow Account in terms of Clause 39.2.1 or 39.2.2, as the case may be, shall be dispensed with.

Smt. M. S.

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Part VI

Other Provisions

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ARTICLE 40
ASSIGNMENT AND CHARGES

40.1 Restrictions on assignment and charges

- 40.1.1 Subject to Clauses 40.2 and 40.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 40.1.2 Subject to the provisions of Clause 40.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

40.2 Permitted assignment and charges

The restraints set forth in Clause 40.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project Highway;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, a charge on the Escrow account arising or created in the ordinary course of business of the Project Highway and a charge on Receivables of the Concessionaires as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project Highway;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

40.3 Substitution Agreement

- 40.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-V.



40.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

40.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

Sum n'

ARTICLE 41
CHANGE IN LAW

41.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore)¹⁹ and 0.5% (zero point five percent) of the Realisable Fee in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

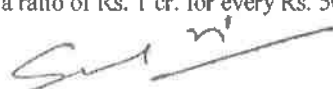
Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

41.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.5% (zero point five percent) of the Realisable Fee in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the

¹⁹ This amount may, in the discretion of the Authority, be suitably increased, but in no case exceeding a ratio of Rs. 1 cr. for every Rs. 500 cr. of Total Project Cost.



aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

41.3 Protection of NPV

Pursuant to the provisions of Clauses 41.1 and 41.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

41.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 41 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than two years from the close of such Accounting Year.

41.5 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users.



ARTICLE 42
LIABILITY AND INDEMNITY

42.1 General indemnity

42.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the "Authority Indemnified Persons") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

42.1.2 The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

42.2 Indemnity by the Concessionaire

42.2.1 Without limiting the generality of Clause 42.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or



- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

42.2.2 Without limiting the generality of the provisions of this Article 42, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project Highway, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

42.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 42 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 30 (thirty) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

42.4 Defence of claims

42.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by



the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 42, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

42.4.2 If the Indemnifying Party has exercised its rights under Clause 42.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

42.4.3 If the Indemnifying Party exercises its rights under Clause 42.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 42.4.3 shall be



applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

42.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 42, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

42.6 Survival on Termination

The provisions of this Article 42 shall survive Termination.



ARTICLE 43
RIGHTS AND TITLE OVER THE SITE

43.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as sole licensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Project Highway by third parties in accordance with and subject to the provisions of this Agreement.

43.2 Access rights of the Authority and others

43.2.1 The Concessionaire shall allow free access to the Site at all times for the authorised representatives and vehicles of the Authority, Senior Lenders, and the Independent Engineer, and for the persons and vehicles duly authorised by any Government Instrumentality to inspect the Project Highway or to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

43.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility or road.

43.3 Property taxes

All property taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority.

43.4 Restriction on sub-letting

The Concessionaire shall not sublicense or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project Highway.



ARTICLE 44
DISPUTE RESOLUTION

44.1 Dispute resolution

- 44.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 44.2.
- 44.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

44.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 30 (thirty) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 30 (thirty) day period or the Dispute is not amicably settled within 30 (thirty) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 60 (sixty) days of the notice in writing referred to in Clause 44.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 44.3.

44.3 Arbitration

- 44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally settled by arbitration as set forth below:
- i. The Dispute shall be finally referred to Society for Affordable Resolution of Disputes (hereinafter called as SAROD), a Society registered under Society’s Act, 1860 vide Registration no. S/RS/SW1049/2013 duly represented by Authority and National Highways Builders Federation (NHBF). The dispute shall be dealt with in terms of Rules of SAROD. The detailed procedure for conducting Arbitration shall be governed by the Rules of SAROD and provisions of Arbitration & Conciliation Act, 1996, as amended



from time to time. The Dispute shall be governed by Substantive Law of India.

- ii. The appointment of Tribunal, Code of conduct for Arbitrators and fees and expenses of SAROD and Arbitral Tribunal shall also be governed by the Rules of SAROD as amended from time to time. The rules of SAROD are placed at Appendix-III*
- iii. Arbitration may be commenced during or after the Concession Period, provided that the obligations of Authority and the Concessionaire shall not be altered by reason of the Arbitration being conducted during the Concession Period.
- iv. The seat of Arbitration shall be New Delhi or a place selected by governing body of SAROD and the language for all documents and communications between the parties shall be English.
- v. The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be shared by each party itself.

44.3.2 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

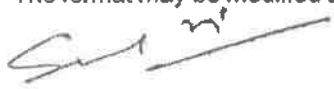
44.3.3 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

44.3.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

44.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 44.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

* The format may be modified as per the requirements of the project



ARTICLE 45
DISCLOSURE

45.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the “Specified Documents”), free of charge, during normal business hours on all working days at the Toll Plaza[s] and Concessionaire’s Registered Office. The Concessionaire shall prominently display at [each of] the Toll Plaza[s] and toll booths, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

45.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project Highway, free of charge, during normal business hours on all working days, at the Concessionaire’s Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

45.3 Notwithstanding the provisions of Clauses 45.1 and 45.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined hereinbelow) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 45.1 and 45.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.



ARTICLE 46
REDRESSAL OF PUBLIC GRIEVANCES

46.1 Complaints Register

- 46.1.1 The Concessionaire shall maintain a public relations office at each of the Toll Plazas where it shall keep a register (the "**Complaint Register**") open to public access at all times for recording of complaints by any person (the "**Complainant**"). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at each Toll Plazas so as to bring it to the attention of all Users.
- 46.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 46.1.3 Without prejudice to the provisions of Clauses 46.1.1 and 46.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

46.2 Redressal of complaints

- 46.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 46.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.



ARTICLE 47
MISCELLANEOUS

47.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Delhi shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

47.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

47.3 State Support Agreement

The Concessionaire acknowledges that it has received from the Authority a certified true copy of the agreement executed between MORTH and the State Government for providing the support and services specified therein (the "State Support Agreement"), and the Parties hereto agree to make their best endeavours to procure the support of the State Government.

47.4 Depreciation and Interest

- 47.4.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For



the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

47.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

47.5 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

47.6 Waiver

47.6.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

47.6.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

47.7 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project Highway nor the failure to review, approve, comment, observe or inspect



hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

47.8 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

47.9 Survival

47.9.1 Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

47.9.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

47.10 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

47.11 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent



jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

47.12 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

47.13 Third Parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

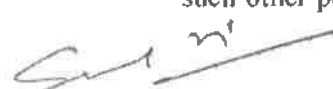
47.14 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

47.15 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Chairman of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate



by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Delhi it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

47.16 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

47.17 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

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ARTICLE 48
DEFINITIONS

48.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

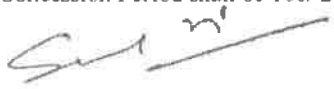
“Additional Facilities” means the facilities such as service stations, motels, restaurants, shopping areas and amusement parks which the Concessionaire may, in its discretion and subject to Applicable Laws, provide or procure for the benefit of the Users, and which are in addition to the Project Facilities, and not situated on the Site;

“Additional Tollway” shall have the meaning set forth in Clause 30.1.1;

“Adjusted Equity” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **“Base Adjusted Equity”**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42% (zero point four two per cent)²⁰ thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

²⁰ This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Concession Period. For example, the figure for a 20 year Concession Period shall be $100/240 = 0.416$ rounded off to two decimal points i.e. 0.42.



[and the aforesaid shall apply, *mutatis mutandis*, to the Equity funded in Indian Rupees and expended for Six-Laning]. For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

“**Affected Party**” shall have the meaning set forth in Clause 34.1;

“**Agreement**” or “**Concession Agreement**” means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“**Appendix**” shall have the meaning set forth in Clause 10.3.1;

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“**Applicable Permits**” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project Highway during the subsistence of this Agreement;

“**Appointed Date**” means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“**Associate**” or “**Affiliate**” means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of

more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Authority Default**” shall have the meaning set forth in Clause 37.2.1;

“**Authority Representative**” means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“**Average Daily Fee**” means the amount arrived at after dividing the total Realisable Fee of the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the result thereof by 5% (five per cent);

provided that the Average Daily Fee for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Fee collected every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Fee payable by any segment of traffic has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Fee for such period;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore)“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. ***** crore (Rupees ***** crore)²¹, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“**Bus**” means any passenger motor vehicle with a registered carrying capacity exceeding 32 (thirty two), excluding the driver;

“**COD**” or “**Commercial Operation Date**” shall have the meaning set forth in Clause 15.1;

²¹ Calculated @1% (one per cent) of the amount specified in the definition of Total Project Cost. The Authority may, if deemed necessary, prescribe a higher Bid Security not exceeding 2% of the Total Project Cost. In the case of a project having a Total Project Cost of Rs. 2,000 cr. or above, the Authority may reduce the Bid Security, but not less than 0.5% of the Total Project Cost in any case.



“Car” means and includes any mechanical vehicle being alight motor vehicle, car, jeep, van, omnibus, or three-wheeled motor vehicle with a Gross Vehicle Weight not exceeding 7,500 (seven thousand five hundred) kilograms or a registered carrying capacity not exceeding 12 (twelve), excluding the driver, but does not include a Motor Cycle, Tractor or road roller;

“Change in Law” means the occurrence of any of the following after the date of Bid:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/Consortium Members}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and two years thereafter; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/any Consortium Member} to the total Equity, if it occurs prior to completion of a period two years after COD, shall constitute Change in Ownership;

“Change of Scope” shall have the meaning set forth in Clause 16.1;



"Company" means the company acting as the Concessionaire under this Agreement;

"Competing Road" means a road connecting the two end points of the Project Highway and serving as an alternative route thereof, such road being an existing paved road, which has been widened by more than 2 (two) metres of paved road for at least 75% (seventy five per cent) of the total length thereof at any time after the date of this Agreement, or a new road, which is constructed after such date, as the case may be, but does not include any road connecting the aforesaid two points if the length of such road exceeds the length of the Project Highway by 20% (twenty per cent) thereof;

"Completion Certificate" shall have the meaning set forth in Clause 14.2;

"Concession" shall have the meaning set forth in Clause 3.1.1;

"Concessionaire" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

"Concession Fee" shall have the meaning set forth in Clause 26.1;

"Concession Period" means the period starting on and from the Appointed Date and ending on the Transfer Date;

"Concessionaire Default" shall have the meaning set forth in Clause 37.1.1;

"Conditions Precedent" shall have the meaning set forth in Clause 4.1.1;

{**"Consortium"** shall have the meaning set forth in Recital (C);}

{**"Consortium Member"** means a company specified in Recital (C) as a member of the Consortium;}

"Construction Period" means the period beginning from the Appointed Date and ending on the COD;

"Construction Works" means all works and things necessary to complete the Project Highway in accordance with this Agreement;

"Contractor" means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, the Tolling Contract or any other material agreement or contract for construction, operation and/or maintenance of the Project Highway or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

(a) commence from the date on which a notice is delivered by one Party



to the other Party asking the latter to cure the breach or default specified in such notice;

- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

“DBFOT” or **“Design, Build, Finance, Operate and Transfer”** shall have the meaning set forth in Recital (B);

“Damages” shall have the meaning set forth in Sub-clause (w) of Clause 1.2.1;

“Debt Due” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the **“principal”**) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“Debt Service” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

“Development Period” means the period from the date of this Agreement



until the Appointed Date;

“Dispute” shall have the meaning set forth in Clause 44.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 44;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 38.1;

“Document” or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Drawings” means all of the drawings, calculations and documents pertaining to the Project Highway as set forth in Schedule-H, and shall include ‘as built’ drawings of the Project Highway;

“EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project Highway in accordance with the provisions of this Agreement;

“EPC Contractor” means the person with whom the Concessionaire has entered into an EPC Contract;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project Highway, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Project Highway, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Highway, where applicable herein but excluding utilities referred to in Clause 11.1;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component, but does not include Equity Support;

“Equity Support” shall have the meaning set forth in Clause 25.2.1;

“Escrow Account” means an Account which the Concessionaire shall open

and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“Escrow Agreement” shall have the meaning set forth in Clause 31.1.2;

“Escrow Bank” shall have the meaning set forth in Clause 31.1.1;

“Escrow Default” shall have the meaning set forth in Schedule-S;

“Exempted Vehicle” means a vehicle exempted from payment of Fee under and in accordance with the Fee Rules;

“Fee” means the charge levied on and payable for a vehicle using the Project Highway or a part thereof, in accordance with the Fee Rules and this Agreement;

“Fee Notification” means the Notification to be issued by the Government, prior to the Appointed Date, in exercise of the powers conferred by Section 8A of the National Highways Act, 1956 read with Rule 3 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008, in respect of the levy and collection of Fee during the Concession Period, substantially in the form at Schedule-R;

“Fee Rules” mean the National Highways Fee (Determination of Rates and Collection) Rules, 2008 read with National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2010 issued vide Notification No. G.S.R. 950(E) dated 03.12.2010, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2011 issued vide Notification No. G.S.R. 15(E) dated 12.01.2011, National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2011 issued vide Notification No. G.S.R. 756(E) dated 12.10.2011, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2013 issued vide Notification No. G.S.R. 778(E) dated 16.12.2013, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2014 issued vide Notification No. G.S.R. 26(E) dated 16.01.2014, National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2014 issued vide Notification No. G.S.R. 831 (E) dated 21.11.2014 and National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2015 issued vide Notification No. G.S.R. 220(E) dated 23.03.15, and its subsequent amendments upto the Bid Due Date;

“Financial Close” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“Financial Default” shall have the meaning set forth in Schedule-V;

“Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been

determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“Financial Package” means the financing package indicating the total capital cost of [Four-Laning] and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt and Equity Support, if any;

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 34.1;

“Four-Laning” or **“Four-Lane”**] means the construction and completion of all works included in or constituting a [Four-lane] Project Highway, as specified in Article 2 read with Schedule-B and Schedule-C;

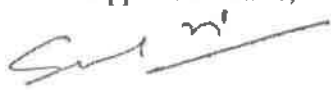
“GOI” or **“Government”** means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government Instrumentality” means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project Highway or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Grant” shall have the meaning set forth in Clause 25.1.1;

“Gross Vehicle Weight” or **“GVW”** means in respect of any vehicle the total weight of the vehicle and load certified and registered under the Applicable Laws;



“Heavy construction machinery” or “Earth moving equipment” or “Multi-axle vehicle” means heavy construction machinery or earth moving equipment or mechanical vehicle including a multi-axle vehicle with four to six axles or vehicle (inclusive of the axle of the trailer, if any) with a gross vehicle weight exceeding 25,000 (twenty five thousand) kilograms but less than 60,000 (sixty thousand) kilograms;

“IRC” means the Indian Roads Congress;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 42;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 42;

“Independent Engineer” shall have the meaning set forth in Clause 23.1;

“Indirect Political Event” shall have the meaning set forth in Clause 34.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 32, and includes all insurances required to be taken out by the Concessionaire under Clause 32.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Intellectual Property” means all patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“LOA” or “Letter of Award” means the letter of award referred to in Recital (E);

“Lead Member” shall have the meaning set forth in Recital (C);

“Lenders’ Representative” means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“Light Commercial Vehicle” or “LCV” means any mechanical vehicle being a passenger vehicle, minibus, light goods vehicle or goods carrier with a Gross Vehicle Weight exceeding 7,500 (seven thousand five hundred) kilograms but less than 12,000 (twelve thousand) kilograms or a registered passenger carrying capacity exceeding 12 (twelve) but less than 32 (thirty

two), excluding the driver, and includes a Tractor with Trailer;

“Local User” means a person using a vehicle registered for non-commercial purposes and used as such for commuting on a section of the Project Highway, provided that (a) such vehicle is owned by a person who resides within a distance of 20 km (twenty kilometres) from the nearest Toll Plaza; (b) its use of such section of the Project Highway does not extend beyond a Toll Plaza other than such nearest Toll Plaza; and (c) such section of the Project Highway has no service road or alternative road; and shall include a vehicle that uses a section of the Project Highway but does not cross a Toll Plaza;

“MORTH” means the Ministry of Road Transport and Highways or any substitute thereof dealing with National Highways;

“Maintenance Manual” shall have the meaning ascribed to it in Clause 17.3;

“Maintenance Programme” shall have the meaning ascribed to it in Clause 17.4.1;

“Maintenance Requirements” shall have the meaning set forth in Clause 17.2;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

[**“Medical Aid Post”** shall have the meaning set forth in Clause 21.1;]

“Motor Cycle” means and includes any two-wheeled motor vehicle;

“Nominated Company” means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“Non-Political Event” shall have the meaning set forth in Clause 34.2;

“O&M” means the operation and maintenance of the Project Highway and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Fee in accordance with the provisions of this Agreement;

“O&M Contract” means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

“O&M Contractor” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M

obligations for and on behalf of the Concessionaire;

“O&M Expenses” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract, Tolling Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“O&M Inspection Report” shall have the meaning set forth in Clause 19.2;

“O&M Support” Deleted;

“Operation Period” means the period commencing from COD and ending on the Transfer Date;

“Oversized Vehicle” means any mechanical vehicle having 7 (seven) or more axles or a Gross Vehicle Weight exceeding 60,000 (sixty thousand) kilograms;

“PCU” shall have the meaning ascribed to a passenger car unit in the Indian Roads Congress Publication No. IRC-64, 1990 or any substitute or modification thereof, and when used in this Agreement, shall include only motorised vehicles liable to payment of user charges at the Toll Plaza[s] in accordance with the Fee Rules and the Exempted Vehicles specified therein, but does not include Tractors, Motor Cycles and non-motorised vehicles;

“Panel of Chartered Accountants” shall have the meaning set forth in Clause 33.2.1;

“Parties” means the parties to this Agreement collectively and **“Party”** shall mean any of the parties to this Agreement individually;

“Performance Security” shall have the meaning set forth in Clause 9.1;

“Political Event” shall have the meaning set forth in Clause 34.4;

{**“Premium”** shall have the meaning set forth in Clause 25.4;}

“Project” means the construction, operation and maintenance of the Project Highway in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, Tolling Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with

any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of upto Rs.[5(five)] crore;

“Project Assets” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of licence, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road overbridges, drainage works, traffic signals, sign boards, kilometre-stones, toll plaza[s], electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project Highway, but does not include Additional Facilities;

“Project Completion Date” means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule-G for completion of the Project Highway on or before the Scheduled [Four-Laning] Completion Date;

“Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule-C;

“Project Highway” means the Site comprising the existing road comprising NH-** from km ** to km ** and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement;

“Project Milestones” means the project milestones set forth in Schedule-G;

“Provisional Certificate” shall have the meaning set forth in Clause 14.3;

“Punch List” shall have the meaning ascribed to it in Clause 14.3;

“RBI” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

“Re.”, “Rs.” or “Rupees” or “Indian Rupees” means the lawful currency of the Republic of India;

“Realisable Fee” means all the Fee due and realisable under this Agreement, but does not include fees that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Fee shall, save as provided in Clause 26.5, be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited



accounts, as the case may be, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply;

“Reference Exchange Rate” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“Request for Proposals” or **“RFP”** shall have the meaning set forth in Recital (D);

“Request for Qualification” or **“RFQ”** shall have the meaning set forth in Recital (C);

“Revenue Shortfall Loan” shall have the meaning set forth in Clause 28.1.1;

“Right of Way” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project Highway in accordance with this Agreement;

“Safety Consultant” shall have the meaning set forth in Clause 18.1.2;

“Safety Requirements” shall have the meaning set forth in Clause 18.1.1;

“Safety Fund” shall have the meaning set forth in Clause 18.2;

“Scheduled [Four-Laning] Date” shall have the meaning set forth in Clause 12.4.1;

[**“Scheduled Six-Laning Date”** shall have the meaning set forth in Clause 12.5.1;]

“Scope of the Project” shall have the meaning set forth in Clause 2.1;

“Senior Lenders” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

“Site” shall have the meaning set forth in Clause 10.1;

[**“Six-Laning”** or **“Six-Lane”** means the construction and completion of all works included in or constituting a Six-lane Project Highway as specified in Article 2, read with Schedule-B and Schedule-C;]



“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project Highway, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project Highway submitted by the Concessionaire to, and expressly approved by, the Authority;

“State” means the State of ***** and **“State Government”** means the government of that State;

“State Support Agreement” shall have the meaning set forth in Clause 47.3;

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 33.2.1;

“Subordinated Debt” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“Subsistence Revenue” means the total amount of Fee revenue that is required by the Concessionaire in an Accounting Year to meet the sum of (a) O&M Expenses, subject to an annual ceiling of 3% (three per cent) of the Total Project Cost, {plus Grant, if any,} during the first Accounting Year after COD, to be revised for each subsequent year to reflect the variations in WPI occurring between COD and commencement of such Accounting Year, and (b) Debt Service in such Accounting Year, but excluding any interest paid by the Authority under clause 34.7.2 or 35.2;

Sum

"Substitution Agreement" shall have the meaning set forth in Clause 40.3;

"Suspension" shall have the meaning set forth in Clause 36.1;

"Taxes" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project Highway charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"Termination" means the expiry or termination of this Agreement and the Concession hereunder;

"Termination Notice" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"Termination Payment" means the amount payable by the Authority to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost;

"Tests" means the tests set forth in Schedule-I to determine the completion of [Four-Laning] in accordance with the provisions of this Agreement [and shall, *mutatis mutandis*, include similar Tests to determine completion of Six-Laning];

"Three-Axle Vehicle" means any mechanical vehicle having three-axles (inclusive of the axle of the trailer, if any) and with a gross vehicle weight, less than or equal to 25000 (twenty five thousand) kilograms

"Toll Plaza" means the structures and barriers erected [near each of the two ends of] the Project Highway for the purpose of regulating the entry and exit of vehicles in accordance with the provisions of this Agreement and shall include all land, buildings, equipment, and other facilities required in accordance with or incidental to the provisions of this Agreement; [provided that such Toll Plaza(s) shall not ordinarily be located within a distance of 10



(ten) kilometres²² from the limits of the municipal or local area of the nearest city or town respectively, as applicable on the date of this Agreement,] and shall be situated at location(s) specified in the Bid or within a distance of 1 (one) kilometre thereof;

"Tolling Contract" means the contract, if any, entered into by the Concessionaire with the Tolling Contractor for collection of Fee for and on behalf of the Concessionaire and matters incidental thereto;

"Tolling Contractor" means the person, if any, with whom the Concessionaire has entered into a Tolling Contract;

"Total Project Cost" means the lowest of:

- (a) the capital cost of the Project, {less Equity Support} as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion of [Four-Laning] of the Project Highway {less Equity Support}; and
- (c) a sum of Rs. ***** crore (Rupees ***** crore), less Equity Support²³;

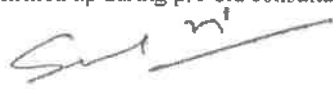
provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost;

[provided further that the additional capital cost for Six-Laning as may be approved by the Senior Lenders and set forth in the Financing Agreements, and to the extent expended, shall form part of the Total Project Cost in addition to the capital cost set forth above for Four-Laning of the Project Highway;]

"Tractor" means a motor vehicle which is not itself constructed to carry any load other than the equipment used for the purpose of propulsion, but does not include a road roller; and **"Tractor with Trailer"** means a Tractor with an attached vehicle used for carrying goods;

²² The distance should be determined so as to ensure that nearby suburban and rural areas from where people commute regularly are excluded.

²³ This amount may be indicated on the basis of project-specific cost estimates, including financing charges; and this amount shall, after bidding, be reduced by a sum equivalent to the Equity Support. In determining this amount, the estimated cost of construction shall be increased by 25% thereof to account for contingencies, risk premia and financing costs. These costs should be reviewed and firmed up during pre-bid consultations.



"Traffic Aid Post" shall have the meaning set forth in Clause 20.2;

"Transfer Date" means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

"Truck" means any mechanical vehicle being a goods carrier with a Gross Vehicle Weight exceeding 12,000 (twelve thousand) kilograms, but less than 20,000 (twenty thousand) kilograms;

"User" means a person who travels or intends to travel on the Project Highway or any part thereof in/on any vehicle on payment of Feeor in accordance with the provisions of this Agreement and Applicable Laws;

"Vesting Certificate" shall have the meaning set forth in Clause 38.4; and

"WPI" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.



SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE AUTHORITY by:

(Signature)
(Name)
(Designation)

THE COMMON SEAL OF
CONCESSIONAIRE has been affixed
pursuant to the resolution passed by the
Board of Directors of the Concessionaire
at its meeting held on the day of
20..... hereunto affixed in the presence of
....., Director, who has
signed these presents in token thereof and
....., company Secretary /
Authorised Officer who has countersigned
the same in token thereof⁵:

In the presence of:

1.

2.

⁵ To be affixed in accordance with the articles of association of the Concessionaire.



Schedules

Sum 21

Updated on 09.05.2016

Sum 21

SCHEDULE – A
(See Clause 10.1)

SITE OF THE PROJECT

1 The Site

- 1.1 Site of the [Four-Lane] Project Highway shall include the land, buildings, structures and road works as described in Annex-I of this Schedule-A.
- 1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3 Additional land required for [Toll Plazas, Traffic Aid Posts, Medical Aid Posts and vehicle rescue posts or for] construction of works specified in the Change of Scope Order issued under Clause 16.2.3 of this Agreement shall be acquired in accordance with the provisions of Clause 10.3.6 of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.

2 Additional land for [Six-Laning]

- 2.1 Additional land required for [Six-Laning] has been described in Annex-II of this Schedule-A. Such land shall be acquired by the Authority, at its own cost, no later than 3 (three) years prior to the Scheduled [Six-Laning] Date, and shall thereupon form part of the Site. Any delay in granting Right of Way in respect of the land included in Annex-II or part thereof shall entitle the Concessionaire to Damages in accordance with Clause 10.3.4.
- 2.2 If any land not forming part of this Schedule-A is required for construction of any bypass, bridge, overpass, underpass, underbridge, overbridge, intersection, interchange or any other structure forming part of [Six-Laning], the same shall be acquired by the Authority no later than two years prior to the Scheduled [Six-Laning] Date. The location and alignment of such land shall be determined by the Authority, in consultation with the Concessionaire, before proceedings for its acquisition are initiated. In the event of any delay in the acquisition of land hereunder, the Concessionaire shall be entitled to complete and commission the Construction Works thereon within a period of two years from the date of such acquisition.

[Note: Paragraph 2 may be omitted if two-stage capacity augmentation is not contemplated.]



Annex - I
(Schedule-A)

Site for [Four-Laning]

[Note: Through suitable drawings and description in words, the land, buildings, structures and road works comprising the Site shall be specified briefly but precisely in this Annex-I.]

1. Site

The Site of the [Four-Lane divided] Project Highway comprises the section of National Highway ** commencing from Km *** to Km *** i.e. the *** - *** section in the State of ***. The land, carriageway and structures comprising the Site are described below.

2. Land

The Site of the Project Highway comprises the land described below:

S. No.	Chainage (In Km)		Total ROW (In m)	Remarks
	From	To		

3. Carriageway

The present carriageway of the Project Highway is a [4-lane divided carriageway with paved shoulders in its entire length].

4. Major Bridges

The Site includes the following Major Bridges:

S.No	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

5. Railway Over Bridges

The Site includes the following Railway Over Bridges:

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Updated on 09.05.2016

S.No.	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

6. Grade Separators

S:

S.No	Chainage (In Km)	Type of Structure	Width (In m)

The Site includes the following Minor Bridges:

S. No.	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

The total number of structures:

- | | | |
|---------------------------------|---|----|
| [(a) No. of Major Bridges | - | ** |
| (b) No. of Railway Over Bridges | - | ** |
| (c) No. of Grade Separators | - | ** |
| (d) No. of Minor Bridges | - | ** |

Signature

dated on 09.05.2016

(e)	No. of Vehicular and Non Vehicular Underpasses	-	**
(f)	No. of Box Culverts	-	**
(g)	No. of Pipe Culverts	-	**
(h)	No. of Slab Culverts	-	**]

9. Bus bays and Truck Lay byes

The total number of bus bays and truck lay byes on the Project Highway is noted below:

[(a)	No. of Bus bays on LHS	-	**
(b)	No. of Bus bays on RHS	-	**
(c)	No. of Truck lay-byes on LHS	-	**
(d)	No. of Truck lay-byes on RHS	-	**]

10. Permanent Bridge, Tunnel or Flyover having length more than 60 meters

The Site includes the following permanent bridge/ tunnel / flyoverwith length as noted below:

- [(a) Bridge at km *** to km *** of NH-** with length** meters
- (b) Tunnelat km *** to km *** of NH-** with length** meters
- (c) Flyoverat km *** to km *** of NH-** with length** meters]

11. Bypass costing Rs. 10 crore or more

The Site includes the following bypasswhich was constructed at the cost noted below:

- (a) Bypass at km *** to km *** of NH-** costing Rs.** crore



Annex - II
(Schedule-A)

Site for [Six-Laning]

[**Note 1:** Through suitable drawings and description in words, the additional land required for Six-Laning shall be specified briefly but precisely in this Annex-II. In particular, Annex-II shall indicate the requirement of additional land for (a) rural sections, (b) semi-urban sections, (c) urban sections, (d) ROBs, bridges, overpasses and underpasses, (e) interchanges, and (f) bypasses.]

[**Note 2:** This Annex-II may be omitted if two-stage capacity augmentation is not contemplated.]

1. Site

The Site of the [Six-Lane divided] Project Highway comprises the section of National Highway ** commencing from Km *** to Km *** i.e. the *** - *** section in the State of***.

2. Land

The Site of the Project Highway comprises the land described below:

S. No.	Chainage (In Km)		Total ROW (In m)	Remarks
	From	To		

Signature

SCHEDULE - B
(See Clause 2.1)

DEVELOPMENT OF THE PROJECT HIGHWAY

1 Development of the Project Highway

Development of the Project Highway shall include construction of the Project Highway as described in this Schedule-B and in Schedule-C.

2 [Four-Laning]

2.1 [Four-Laning] shall include the [Four-Lane] Project Highway as described in Annex-I of this Schedule-B and Annex-I of Schedule-C.

2.2 [Four-Laning] shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Annex-I of Schedule-D.

3 [Six-Laning]

3.1 [Six-Laning] shall include the [Six-Lane] Project Highway as described in Annex-II of this Schedule-B and Annex-II of Schedule-C.

3.2 [Six-Laning] shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Annex-II of Schedule-D.

[Note: Paragraph 3 may be omitted if two-stage capacity augmentation is not contemplated.]



Annex - I
(Schedule-B)

Description of [Four-Laning]

1 Width of Carriageway

1.1 The paved carriageway [shall be 17.5 metres wide excluding the median]:

Provided that in the following urban stretches, the width of carriageway shall be:

S.No.	Name of Township	Location (chainage)	Width
-------	------------------	---------------------	-------

[Provide details here]

1.2 Except as otherwise provided in this Agreement, [but subject to the provisions of Annex-II of this Schedule-B,] the width of the paved carriageway shall conform to Clause 1.1 above.

2 Project Facilities

Project facilities shall be constructed in conformity with Annex-I of Schedule-C.

3 Specifications and Standards

The Project Highway shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

Signature

Annex - II
(Schedule-B)

Description of [Six-Laning]

1 Width of Carriageway

1.1 The paved carriageway [shall be 24.5 metres wide excluding the median]:

Provided that in the following urban stretches, the width of carriageway shall be:

S.No.	Name of Township	Location (chainage)
-------	------------------	---------------------

Width

[Provide details here]

1.2 Except as otherwise provided in this Agreement, the width of the paved carriageway shall, at all times on and after the Scheduled [Six-Laning] Date, conform to Clause 1.1 above.

2 Project Facilities

Project facilities shall be constructed in conformity with the Specifications and Standards specified in Annex-II of Schedule-C.

3 Standards and Specifications

The Project Highway shall be constructed in conformity with the Specifications and Standards specified in Annex-II of Schedule-D.

[Note: This Annex-II may be omitted if two-stage capacity augmentation is not contemplated.]



SCHEDULE – C
(See Clause 2.1)

PROJECT FACILITIES

1 Project Facilities

The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement. Such Project Facilities shall include:

- (a) toll plaza[s];
- (b) roadside furniture;
- (c) street lighting;
- (d) pedestrian facilities;
- (e) landscaping and tree plantation;
- (f) rest areas;
- (g) truck lay-bys;
- (h) bus-bays and bus shelters;
- (i) cattle crossings;
- [(j) development of site for wayside amenities;]
- [(k) traffic aid posts;]
- [(l) medical aid posts;]
- [(m) vehicle rescue posts;]
- [(n) telecom system; and]
- [(o) highway traffic management system.]

2 Project Facilities for [Four-Laning]

Project Facilities forming part of [Four-Laning] and to be completed on or before the Project Completion Date have been described in Annex-I of this Schedule-C.

3 Project Facilities for [Six-Laning]

Project Facilities forming part of [Six-Laning] and to be completed on or before the Scheduled [Six-Laning] Date have been described in Annex-II of this Schedule-C.

[**Note 1:** A lower level of facilities shall be provided in the [Four-Laning] phase. As a general rule, the capital cost of Project Facilities for the [Four-Laning] phase shall not exceed one-half of the total cost of all Project Facilities, at constant prices.]

[**Note 2:** Paragraph 3 may be omitted if two-stage capacity augmentation is



not contemplated.]

Annex - I
(Schedule-C)

Project Facilities for [Four-Laning]

1 Project Facilities

The Concessionaire shall construct the Project Facilities described in this Annex-I to form part of the [Four-Lane] Project Highway. The Project Facilities shall include:

- (a) toll plaza[s];
- (b) roadside furniture;
- (c) pedestrian facilities;
- (d) tree plantation;
- (e) truck lay-bys;
- (f) bus-bays and bus shelters; and
- [(g) others (to be specified)]

2 Description of Project Facilities

Each of the Project Facilities is briefly described below:

[To be described briefly. See Note below.]

[Note: Description of the Project Facilities shall be in conformity with the Note below Schedule-C]

Sum

Annex - II
(Schedule-C)

Project Facilities for [Six-Laning]

1 Project Facilities

The Concessionaire shall construct the Project Facilities described in this Annex-II to form part of the [Six-Lane] Project Highway. The Project Facilities shall include:

- (a) toll plaza[s];
- (b) roadside furniture;
- (c) street lighting;
- (d) pedestrian facilities;
- (e) landscaping and tree plantation;
- (f) rest areas;
- (g) truck lay-bays;
- (h) bus-bays and bus shelters;
- (i) cattle crossings;
- (j) development of site for wayside amenities;
- (k) traffic aid posts;
- (l) medical aid posts;
- (m) vehicle rescue posts;
- (n) telecom system; and
- (o) highway traffic management system.

2 Description of Project Facilities

[Each of the Project Facilities is briefly described below:]

[To be described briefly.]

[Note: This Annex-II may be omitted if two-stage capacity augmentation is not contemplated.]



SCHEDULE – D
(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1 [Four-Laning]

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-D for construction of the [Four-Lane] Project Highway.

2 [Six-Laning]

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-II of this Schedule-D for construction of the [Six-Lane] Project Highway.

[Note 1: The Authority/MORTH shall prepare a “**Manual of Specifications and Standards for National Highways**”. Only the basic/fundamental requirements of design and construction shall be laid down in the Manual, and greater emphasis shall be placed on prescribing the output specifications that have a direct bearing on the level and quality of service for Users. The Manual shall be published and applied to all DBFOT road projects of the Authority/MORTH. This would remove the element of uncertainty in project design and help in laying down cost-effective specifications and standards across the country.]

[Note 2: Paragraph 2 may be omitted if two-stage capacity augmentation is not contemplated.]

Sum

Annex - I
(Schedule-D)

Specifications and Standards for [Four-Laning]

1 Manual of Specifications and Standards to apply

Subject to the provisions of Paragraph 2 of this Annex-I, [Four-Laning] of the Project Highway shall conform to the Manual of Specifications and Standards for DBFOT Road Projects published by [the Authority/MORTH on ****.] (An authenticated copy of the Manual has been provided to the Concessionaire as part of the bid documents.)

2 [Deviations from the Manual]

Notwithstanding anything to the contrary contained in the aforesaid Manual, the following Specifications and Standards shall apply to the [Four-Lane] Project Highway, and for purposes of this Agreement, the aforesaid Manual shall be deemed to be amended to the extent set forth below:]

[Note 1: Deviations from the aforesaid Manual shall be listed out here. Such deviations shall be specified only if they are considered essential in view of project-specific requirements. Approval of the MORTH/Executive Committee of the Authority shall be obtained if such deviations increase the Project costs by more than Rs. 5 lakh per km.]

[Note 2: See Note 1 below Schedule-D.]



Annex - II
(Schedule-D)

Specifications and Standards for [Six-Laning]

1 Manual of Specifications and Standards to apply

Subject to the provisions of Paragraph 2 of this Annex-II, [Six-Laning] of the Project Highway shall conform to the Manual of Specifications and Standards for DBFOT Road Projects published by the Authority/MORTH on ****. (An authenticated copy of the Manual has been provided to the Concessionaire as part of the bid documents.)

2 [Deviations from the Manual]

Notwithstanding anything to the contrary contained in the aforesaid Manual, the following Specifications and Standards shall apply to the [Six-Lane] Project Highway, and for purposes of this Agreement, the aforesaid Manual shall be deemed to be amended to the extent set forth below:]

[Note 1: Deviations from the aforesaid Manual shall be listed out here. Such deviations shall be specified only if they are considered essential in view of project-specific requirements. Approval of the Executive Committee of the Authority/ MORTH shall be obtained if such deviations increase the Project costs by more than 1% (one percent) of the cost per kilometre.]

[Note 2: See Note 1 below Schedule-D.]

[Note 3: This Annex-II may be omitted if two-stage augmentation is not contemplated.]

Sum

SCHEDULE -E
(See Clause 4.1.3)

APPLICABLE PERMITS

- 1 Applicable Permits**
- 1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement:
- (a) Permission of the State Government for extraction of boulders from quarry;
 - (b) Permission of Village Panchayat and Pollution Control Board for installation of crushers;
 - (c) Licence for use of explosives;
 - (d) Permission of the State Government for drawing water from river/reservoir;
 - (e) Licence from Inspector of factories or other competent authority for setting up Batching Plant;
 - (f) Clearance of Pollution Control Board for setting up Batching Plant;
 - (g) Clearance of Village Panchayats and Pollution Control Board for Asphalt Plant;
 - (h) Permission of Village Panchayat and State Government for borrow earth;
 - (i) Permission of State Government for cutting of trees; and
 - (j) Any other permits or clearances required under Applicable Laws.
- 1.2 Applicable Permits, as required, relating to environmental protection and conservation shall have been procured by the Authority as a Condition Precedent.

Signature

SCHEDULE -F
(See Clause 9.1)

PERFORMANCE SECURITY

The Chairman,
National Highways Authority of India
New Delhi

WHEREAS:

- (A) (the "Concessionaire") and the Chairman, National Highways Authority of India (the "Authority") have entered into a Concession Agreement dated (the "Agreement") whereby the Authority has agreed to the Concessionaire undertaking [Four-Laning of the ***** section of National Highway No. **] on design, build, finance, operate and transfer ("DBFOT") basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. ***** cr.(Rupees ***** crore) (the "Guarantee Amount") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, through our Branch at (the "Bank") have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of General Manager in the National Highways Authority of India, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the



Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the earlier of the 1st (first) anniversary of the Appointed Date or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the



Concessionaire shall have expended on Project construction an aggregate sum not less than 20% (twenty per cent) of the Total Project Cost which is deemed to be Rs.*** cr. (Rupees ***** crore) for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security alongwith the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter



Updated on 09.05.2016

of issuing Branch.

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Updated on 09.05.2016

SCHEDULE -G
(See Clause 12.1)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled [Four-Laning] Date (the "Project Completion Schedule"). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the [180th (one hundred and eightieth)] day from the Appointed Date (the "Project Milestone-I").

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Project Highway and expended not less than 10% (ten per cent) of the total capital cost set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

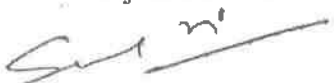
3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the [365th (three hundred and sixty fifth)] day from the Appointed Date (the "Project Milestone-II").

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced [construction of all bridges and expended not less than 35% (thirty five per cent)] of the total capital cost set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least 25% (twenty five per cent) of the total capital cost set forth in the Financial Package shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the [550th (five



hundred and fiftieth)] day from the Appointed Date (the “**Project Milestone-III**”).

- 4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced [construction of all Project Facilities and expended not less than 70% (Seventy per cent)] of the total capital cost set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least 60% (sixty per cent) of the total capital cost set forth in the Financial Package shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

5 Scheduled [Four-Laning] Date

- 5.1 The Scheduled [Four-Laning] Date shall occur on the [650th (six hundred and fiftieth)] day from the Appointed Date.
- 5.2 On or before the Scheduled [Four-Laning] Date, the Concessionaire shall have completed [Four-Laning] in accordance with this Agreement.

6 Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled [Four-Laning] Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.



SCHEDULE -H
(See Clause 12.3)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 12.3 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-H.

2 Additional drawings

If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of Annex-I of this Schedule-H.



Annex - I
(Schedule-H)

List of Drawings

[Note: The Authority shall describe in this Annex-I, all the Drawings that the Concessionaire is required to furnish under Clause 12.3. The list shall be in two parts, namely, Part-A specifying the Drawings for Four-Laning and Part-B specifying the Drawings for Six-Laning.]

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SCHEDULE -I
(See Clause 14.1.2)

TESTS

1 Schedule for Tests

- 1.1 The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of [Four-Laning], notify the Independent Engineer and the Authority of its intent to subject the Project Highway to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of [Four-Laning].
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Project Highway to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

2 Tests

- 2.1 Visual and physical Test: The Independent Engineer shall conduct a visual and physical check of [Four-Laning] to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.2 Test drive: The Independent Engineer shall undertake a test drive of the Project Highway by a Car and by a fully loaded Truck to determine that the quality of service conforms to the provisions of the Agreement.
- 2.3 Riding quality Test: Riding quality of each lane of the carriageway shall be checked with the help of a calibrated bump integrator and the maximum permissible roughness for purposes of this Test shall be [1,800 (one thousand and eight hundred)] mm for each kilometre.
- 2.4 Pavement Composition Test: The thickness and composition of the pavement structure shall be checked on a sample basis by digging pits to determine conformity of such pavement structure with Specifications and Standards. The sample shall consist of one pit in each direction of travel to be chosen at random in each stretch of 5 (five) kilometres of the Project Highway. The first pit for the sample shall be selected by the Independent Engineer through an open draw of lots and every fifth kilometre from such first pit shall form part of the sample for this pavement quality Test.
- 2.5 Cross-section Test: The cross-sections of the Project Highway shall be checked on a sample basis through physical measurement of their dimensions for determining the conformity thereof with Specifications and



Standards. For the road portion, the sample shall consist of one spot to be selected at random in each stretch of 1 (one) kilometre of the Project Highway. The first spot for the sample shall be selected by the Independent Engineer through an open draw of lots and the spots located at every one kilometre from such first spot shall form part of the sample. For the bridge portion, one spot shall be selected at random by the Independent Engineer in each span of the bridge.

- 2.6 **Structural Test for structures:** All major and minor bridges and all structures with a span of 15 (fifteen) meters or more constructed by the Concessionaire shall be subjected to the all requisite tests, as recommended by Independent Engineer in accordance with the procedure described in Special Report No. 17: 1996 of the IRC Highway Research Board on Non-destructive Testing Techniques, at two spots in every span, to be chosen at random by the Independent Engineer. All Structures with a span of 15 (fifteen) metres or more shall also be subjected to load testing.
- 2.7 **Other Tests:** The Independent Engineer may require the Concessionaire to carry out or cause to be carried additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Highway with Specifications and Standards.
- 2.8 **Environmental audit:** The Independent Engineer shall carry out a check to determine conformity of the Project Highway with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.9 **Safety review:** Safety audit of the Project Highway shall have been undertaken by the Safety Consultant as set forth in Schedule-L, and on the basis of such audit, the Independent Engineer shall determine conformity of the Project Highway with the provisions of this Agreement.

3 Agency for conducting Tests

All Tests set forth in this Schedule-I shall be conducted by the Independent Engineer or such other agency or person as it may specify in consultation with the Authority.

4 Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.



SCHEDULE -J
(See Clauses 14.2 & 14.3)

COMPLETION CERTIFICATE

- 1 I, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the "Agreement"), for [Four-Laning] [and subsequent Six-Laning] of the ****section (km ** to km **) of National Highway No. *** (the "Project Highway") on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Project Highway with the provisions of the Agreement, and I am satisfied that the Project Highway can be safely and reliably placed in commercial service of the Users thereof.

- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of [Four-Laning] have been completed, and the Project Highway is hereby declared fit for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED
For and on behalf of
the INDEPENDENT ENGINEER by:

(Signature)
(Name)
(Designation)
(Address)



PROVISIONAL CERTIFICATE

- 1 I, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the "Agreement"), for [Four-Laning] [and subsequent Six-Laning] of the ****section (km ** to km **) of National Highway No. *** (the "Project Highway") on design, build, finance, operate and transfer (DBFOT) basis through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken to determine compliance of the Project Highway with the provisions of the Agreement.

- 2 Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,)[@] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project Highway, pending completion thereof.

- 3 In view of the foregoing, I am satisfied that the Project Highway can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project Highway is hereby provisionally declared fit for entry into commercial operation on this the day of 20.....

ACCEPTED, SIGNED, SEALED
AND DELIVERED
For and on behalf of
CONCESSIONAIRE by:
by:

SIGNED, SEALED AND
DELIVERED
For and on behalf of
INDEPENDENT ENGINEER

(Signature)
(Name and Designation)
Designation)
(Address)

(Signature)
(Name and
Designation)
(Address)



@ Strike out if not applicable.

SCHEDULE -K
(See Clause 17.2)

MAINTENANCE REQUIREMENTS

1 Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Project Highway in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-K (the "Maintenance Requirements").
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2 Repair/rectification of defects and deficiencies

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule - K within the time limit set forth therein.

3 Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule-K, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.
- 3.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule-K, the Independent Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Independent Engineer.

4 Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-K, if the nature and extent of any defect or deficiency justifies more time for its repair



or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

5 Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-K, if any defect, deficiency or deterioration in the Project Highway poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

6 Daily Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a daily visual inspection of the Project Highway and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Engineer at any time during office hours.

7 Divestment Requirements

All defects and deficiencies specified in this Schedule-K shall be repaired and rectified by the Concessionaire so that the Project Highway conforms to the Maintenance Requirements on the Transfer Date.

8 Display of Schedule - K

The Concessionaire shall display a copy of this Schedule-K at the Toll Plaza[s] along with the Complaint Register stipulated in Article 46.



Annex - I
(Schedule-K)

Repair/Rectification of Defects and Deficiencies

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-I of Schedule-K within the time limit set forth herein.²⁴

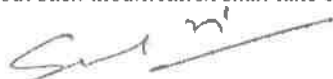
Nature of defect or deficiency	Time limit for repair/ rectification
---------------------------------------	---

ROADS

(a) Carriageway and paved shoulders

- | | |
|--|---|
| (i) Breach or blockade | - Temporary /restoration of traffic within 24 hours; permanent restoration within 15 days |
| (ii) Roughness value exceeding 2,500 mm in a stretch of 1 km (as measured by a standardised roughometer/bump integrator) | - 180 days |
| (iii) Pot holes | - 48 hours |
| (iv) Cracking in more than 5% of road surface in a stretch of 1 km | - 30 days |
| (v) Rutting exceeding 10 mm in more than 2% of road surface in a stretch of 1 km (measured with 3 m straight edge) | - 30 days |
| (vi) Bleeding/skidding | - 7 days |
| (vii) Ravelling/Stripping of bitumen surface exceeding 10 sq m | - 15 days |
| (viii) Damage to pavement edges exceeding 10 cm | - 15 days |
| (ix) Removal of debris | - 6 hours |

²⁴MORTH may, in consultation with IRC, by order modify the values and periods specified herein, but such modification shall take effect only if it is included in the respective bidding documents.



- (b) Hard/earth shoulders, side slopes, drains and culverts**
- (i) Variation by more than 2% in the prescribed slope of camber/cross fall - 30 days
 - (ii) Edge drop at shoulders exceeding 40 mm - 7 days
 - (iii) Variation by more than 15% in the prescribed side (embankment) slopes - 30 days
 - (iv) Rain cuts/gullies in slope - 7 days
 - (v) Damage to or silting of culverts and side drains during and immediately preceding the rainy season - 7 days
 - (vi) Desilting of drains in urban/semi-urban areas - 48 hours
- (c) Road side furniture including road signs and pavement marking**
- (i) Damage to shape or position; poor visibility or loss of retro-reflectivity - 48 hours
- (d) Street lighting and telecom (ATMS)**
- (i) Any major failure of the system - 24 hours
 - (ii) Faults and minor failures - 8 hours
- (e) Trees and plantation**
- (i) Obstruction in a minimum head-room of 5 m above carriageway or obstruction in visibility of road signs - 24 hours
 - (ii) Deterioration in health of trees and bushes - Timely watering and treatment
 - (iii) Replacement of trees and bushes - 90 days
 - (iv) Removal of vegetation affecting sight line and road structures - 15 days
- (f) Rest areas**
- (i) Cleaning of toilets - Every 4 hours

Signature

- (ii) Defects in electrical, water and sanitary installations - 24 hours
- (g) Toll plaza[s]**
 - (i) Failure of toll collection equipment or lighting - 8 hours
 - (ii) Damage to toll plaza - 7 days
- (h) Other Project Facilities and Approach roads**
 - (i) Damage or deterioration in Approach Roads, [pedestrian facilities, truck lay-bys, bus-bays, bus-shelters, cattle crossings, Traffic Aid Posts, Medical Aid Posts and other works] - 15 days

BRIDGES

- (a) Superstructure of bridges**
 - (i) Cracks
 - Temporary measures - within 48 hours
 - Permanent measures - within 45 days
 - (ii) Spalling/scaling - 15 days
- (b) Foundations of bridges**
 - (i) Scouring and/or cavitation - 15 days
- (c) Piers, abutments, return walls and wing walls of bridges**
 - (i) Cracks and damages including settlement and tilting - 30 days
- (d) Bearings (metallic) of bridges**
 - (i) Deformation - 15 days
- (e) Joints in bridges**
 - (i) Loosening and malfunctioning of joints - 15 days
- (f) Other items relating to bridges**
 - (i) Deforming of pads in elastomeric bearings - 7 days

Sum

- (ii) Gathering of dirt in bearings and joints; or clogging of spouts, weep holes and vent-holes - 3 days
- (iii) Damage or deterioration in parapets and handrails - 3 days
- (iv) Rain-cuts or erosion of banks of the side slopes of approaches - 15 days
- (v) Damage to wearing coat - 15 days
- (vi) Damage or deterioration in approach slabs, pitching, apron, toes, floor or guide bunds - 30 days
- (vii) Growth of vegetation affecting the structure or obstructing the waterway - 15 days

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SCHEDULE -L
(See Clause 18.1.1)

SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Project Highway, irrespective of the person(s) at fault.
- 1.2 Users of the Project Highway include motorised and non-motorised vehicles as well as pedestrians and animals involved in, or associated with accidents. Vulnerable Road Users (VRU) include pedestrians as well as riders of motorised two-wheelers, bicycles and other vehicles which do not provide adequate occupant protection.
- 1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include measures associated with traffic management and regulation such as road signs, pavement marking, traffic control devices, roadside furniture, highway design elements, enforcement and emergency response.

2 Obligations of the Concessionaire

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Manual for Safety in Road Design, issued by MORTH;
- (c) relevant Standards/Guidelines of IRC relating to safety, road geometrics, bridges, culverts, road signs, pavement marking and roadside furniture;
- (d) provisions of this Agreement; and
- (e) Good Industry Practice.



3 Appointment of Safety Consultant

For carrying out safety audit of the Project Highway under and in accordance with this Schedule-L, the Authority shall appoint from time to time, one or more qualified firms or organisations as its consultants (the "Safety Consultant"). The Safety Consultant shall employ a team comprising, without limitation, one road safety expert and one traffic planner to undertake safety audit of the Project Highway.

4 Safety measures during Development Period

- 4.1 No later than 90 (ninety) days from the date of this Agreement, the Authority shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Project. The Safety Consultant shall collect data on all fatal crashes and other road accidents which occurred on the Project Highway in the preceding two years by obtaining copies of the relevant First Information Reports (FIRs) from the police stations having jurisdiction. The information contained in such FIRs shall be summarised in the form prescribed by IRC/MORTH for this purpose and the data shall be analysed for the type of victims killed or injured, impacting vehicles, location of accidents and other relevant factors.
- 4.2 The Concessionaire shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the "Safety Drawings"). Such design details shall include horizontal and vertical alignments; sightlines; layouts of intersections; interchanges; road cross-section; bridges and culverts; side drains; provision for parked vehicles, slow moving vehicles (tractors, bullock carts, bicycles) and pedestrians; bus bays; truck lay-bys; and other incidental or consequential information. The Safety Consultant shall review the design details and forward three copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward one copy each to the Authority and the Concessionaire.
- 4.3 The accident data and the design details shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Project Highway. The safety audit shall be completed in a period of three months and a report thereof (the "Safety Report") shall be submitted to the Authority, in five copies. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer forthwith.
- 4.4 The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the design of the Project Highway, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of MORTH and IRC, Specifications and Standards, and Good Industry Practice. If the Concessionaire does not agree with any or all



of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Concessionaire shall make a report thereon and seek the instructions of the Authority for funding such works in accordance with the provisions of Article 18.

- 4.5 Without prejudice to the provisions of Paragraph 4.4, the Concessionaire and the Independent Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same alongwith the Safety Report and by notice direct the Concessionaire to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 18.

5 Safety measures during Construction Period

- 5.1 A Safety Consultant shall be appointed by the Authority, no later than 4 (four) months prior to the expected Project Completion Date, for carrying out a safety audit of the completed Construction Works.
- 5.2 The Safety Consultant shall collect and analyse the accident data for the preceding two years in the manner specified in Paragraph 4.1 of this Schedule-L. It shall study the Safety Report for the Development Period and inspect the Project Highway to assess the adequacy of safety measures. The Safety Consultant shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional road safety measures, if any, that are considered essential for reducing accident hazards on the Project Highway. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-L.
- 5.3 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and road Users in accordance with the guidelines of IRC for safety in construction zones, and notify the Authority and the Independent Engineer about such arrangements.

6 Safety measures during Operation Period

- 6.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 6.2 The Concessionaire shall establish a Highway Safety Management Unit (the "HSMU") to be functional on and after COD, and designate one of its



officers to be in-charge of the HSMU. Such officer shall have specialist knowledge and training in road safety and traffic engineering by having attended a course conducted by a reputed organisation on the subject.

- 6.3 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Project Highway. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police but where a vehicle rolled over or had to be towed away. The information so collected shall be summarised in the form prescribed by IRC/ MORTH for this purpose. The Concessionaire shall also record the exact location of each accident on a road map. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter and to the Safety Consultant as and when appointed.
- 6.4 The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 6.1 of this Schedule-L for averting or minimising such accidents in future.
- 6.5 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Authority. It shall review and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Project Highway. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made to the road, bridges, culverts, markings, signs, road furniture and Project Facilities, including cattle crossings and pedestrian crossings. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-L.

7 Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule, shall be met in accordance with Article 18, and in particular, the remuneration of the Safety Consultant, safety audit, and costs incidental thereto, shall be met out of the Safety Fund.

Sum

SCHEDULE -M
(See Clause 19.5)

MONTHLY FEE STATEMENT

Project Highway:

Month:

Type of Vehicle	For corresponding month of previous		For preceding month		For the month reported upon		
	No. of Vehicles	Fee collected (in lakh Rs.)	No. of Vehicles	Fee collected (in lakh Rs.)	Fee per Vehicle (in Rs.)	No. of Vehicles	Fee collected (in lakh Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
A Car							
B LCV							
C Bus							
D Truck							
E Three-Axle Vehicle							
F Heavy construction machinery or Earth moving equipment or Multi-axle vehicle							
G Oversized vehicle							
HTotal							

Sum

Note 1: The above statement does not include Local Users and vehicles travelling on Passes

Note 2: Monthly Fee Statements for Passes have been prepared separately in the above format and are enclosed.

Remarks, if any:

Sun

SCHEDULE -N

(See Clause 22.1)

WEEKLY TRAFFIC CENSUS

Project Highway:

Week ending:

Type of Vehicle	No. of vehicles using the Project Highway during		
	Corresponding week/last year	Preceding week	Week of report
(1)	(2)	(3)	(4)
A Fee paying Traffic			
A1 Car			
A2 LCV			
A3 Bus			
A4 Truck			
A5 Three-Axle Vehicle			
A6 Heavy construction machinery or Earth moving equipment or Multi-axle vehicle			
A7 Oversized vehicle			
Total (A)			
B Local Users			
B1 Car			
Total (B)			
C Exempted Vehicles			
C1 Motor Cycle			
C2 Car			
C3 LCV			
C4 Bus			
C5 Truck			
C6 Three-Axle Vehicle			
C7 Heavy construction machinery or Earth moving equipment or Multi-axle vehicle			
C8 Tractor			
Total (C)			
D Total Traffic (A+B-C)			
D1 Motor Cycle			
D2 Car			
D3 LCV			
D4 Bus			
D5 Truck			
D6 Three-Axle Vehicle			

Sum

D7 Heavy construction machinery or Earth moving equipment or Multi-axle vehicle			
D8 Oversized vehicle			
D9 Tractor			
Grand Total (E)			

Remarks, if any:

WEEKLY REPORT FOR WEIGH STATIONS

Project Highway:

Week ending:

Type of Vehicle	Permitted Gross Vehicle Weight (Tonnes)	No. of Vehicles weighed (Sample size)	No. of Vehicles carrying load:			
			Within permissible limits	Up to 10% in excess	Over 10% and up to 20% in excess	Over 20% in excess
(1)	(2)	(3)	(4)	(5)	(6)	(7)
A LCV						
B Truck						
C Three-Axle Vehicle						
D Heavy construction machinery or Earth moving equipment or Multi-axle vehicle						
ETotal						

Note: Sample size shall not be less than 200 Trucks per week and 20 Trucks per day, and should include a proportionate number of Multi-axle Trucks.

Remarks, if any:

Sun

Updated on 09.05.2016

SCHEDULE -O
(See Clause 22.3.1)

TRAFFIC SAMPLING

1 Traffic sampling

The Authority may, in its discretion and at its own cost, undertake traffic sampling, pursuant to Clause 22.3, in order to determine the actual traffic on the Project Highway. Such traffic sampling shall be undertaken through the Independent Engineer in the manner set forth below.

2 Manual traffic count

The Independent Engineer shall employ the required number of enumerators who shall count, classify and record all the vehicles as they pass by, and divide the survey into fixed time periods. The count stations shall be located near the Toll Plaza[s] on a straight section of the road with good visibility. The survey shall be conducted continuously for a minimum of 24 (twenty four) hours and maximum of 7 (seven) days at a time. The count period shall be 15 (fifteen) minutes with results summarised hourly.

3 Automatic traffic count

For automatic traffic count to be conducted on intermittent (non-continuous) basis, the Independent Engineer shall use suitable and standardised equipment to classify and record the range of vehicles passing through the Toll Plaza[s]. For this purpose, the counter shall be checked with at least 100 (one hundred) vehicles, including all major vehicle types, over a range of speeds to ensure that all vehicles are being counted and classified correctly.

4 Variation between manual and automatic count

Average Daily Traffic (ADT) for each type of vehicle shall be determined separately by the aforesaid two methods and in the event that the number of vehicles in any category, as counted by the manual method, varies by more than 1% (one per cent) of the number of such vehicles as counted by the automatic method, the manual and automatic count of such category of vehicles shall be repeated, and in the event of any discrepancy between the two counts in the second enumeration, the averagethereof shall be deemed to be the actual traffic. For the avoidance of doubt, it is expressly agreed that the Authority may, in consultation with the Concessionaire, adopt modified or alternative processes of traffic sampling for improving the reliability of such sampling.

Signature

SCHEDULE -P
(See Clause 23.1)

SELECTION OF INDEPENDENT ENGINEER

1 Selection of Independent Engineer

- 1.1 The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 or any substitute thereof shall apply, *mutatis mutandis*, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 1.2 The Authority shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in Schedule-Q and thereupon shortlist 10 (ten) qualified firms in accordance with pre-determined criteria. The Authority shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Authority shall, after considering all relevant factors, finalise and constitute a panel of 10 (ten) firms (the "Panel of Firms") and convey its decision to the Concessionaire.
- 1.3 The Authority shall invite the aforesaid firms in the Panel of Firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall shortlist 3 (three) eligible firms on the basis of their technical scores. The financial bids in respect of such 3 (three) firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted evaluation where technical and financial scores shall be assigned respective weights of 80:20.
- 1.4 In the event that the Authority shall follow the selection process specified in the Model RFP for selection of Technical Consultants, as published by the Ministry of Finance/ Planning Commission, the selection process specified in this Schedule-P shall be deemed to be substituted by the provisions of the said Model RFP and the Concessionaire shall be entitled to scrutinise the relevant records forming part of such selection process.

2 Fee and expenses

- 2.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed 2% (two per cent) of the Total Project Cost. Payments not exceeding such 2% (two



per cent) shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.

- 2.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Operation Period, [including the construction of Six-Laning,] shall be borne equally by the Authority and the Concessionaire.

3 Constitution of fresh panel

No later than three years from the date of this Agreement, and every three years thereafter, the Authority shall prepare a fresh panel of firms in accordance with the criteria set forth in this Schedule-P; provided that the Authority may, at any time, prepare a fresh panel with prior written consent of the Concessionaire.

4 Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the Authority and/or MORTH shall not be eligible for appointment as Independent Engineer.



SCHEDULE -Q
(See Clause 23.2.1)

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (the "TOR") are being specified pursuant to the Concession Agreement dated (the "Agreement"), which has been entered into between the Authority and (the "Concessionaire") for [Four-Laning and subsequent Six-Laning] of the ****section (km ** to km **) of National Highway No. ** in the State on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the [Four-Lane] Project Highway, and shall apply, *mutatis mutandis*, to [Six-Laning] thereof.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
- (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (iii) conducting Tests on completion of construction and issuing Completion/Provisional Certificate as set forth in Paragraph 5;
 - (iv) review, inspection and monitoring of O&M as set forth in Paragraph 6;



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- (v) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
- (vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (vii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (viii) assisting Authority in review and inspection of the books of accounts submitted by the Concessionaire to the Authority and the records maintained by Concessionaire as set forth in Paragraph 12
- (ix) providing all requisite data on monthly basis within a period of 7 days from the close of month, as required by Authority, for updating the project specific website substantially in the format prescribed at **Appendix – IV***
- (x) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and
- (xi) undertaking all other duties and functions in accordance with the Agreement.

3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Development Period

4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 30 (thirty) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within

* A sample format is enclosed as Appendix-IV in Clause 23.2.4 and Schedule Q. The format may be modified as per the requirements of the project.



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15 (fifteen) days of receiving such Drawings or Documents.

- 4.3 The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-L and furnish its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 30 (thirty) days of receiving such report.
- 4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 30 (thirty) days of receipt thereof.
- 4.5 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project Highway, and furnish its comments within 15 (fifteen) days from receipt of such reference from the Authority.

5 Construction Period

- 5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works and the Project Highway once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project Highway. The Inspection Report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Project Highway more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to



carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the IRC Special Publication-11 (Handbook of Quality Control for Construction of Roads and Runways) and the Specifications for Road and Bridge Works issued by MORTH (the "Quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

- 5.6 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project Highway is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be



suspended for ensuring safety in respect thereof.

- 5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.
- 5.14 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6 Operation Period

- 6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall inspect the Project Highway once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the



Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project Highway. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

- 6.5 The Independent Engineer may inspect the Project Highway more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project Highway is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 6.7 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-K, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.9 The Independent Engineer shall examine the request of the Concessionaire for closure of any lane(s) of the carriageway for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in traffic and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such lane(s), and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.7.
- 6.10 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.4.
- 6.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project Highway, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.
- 6.12 The Independent Engineer shall undertake traffic sampling, as and when



required by the Authority, under and in accordance with Article 22 and Schedule-O.

7 Termination

7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project Highway for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 38.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project Highway is such that its repair and rectification would require a larger amount than the sum set forth in Clause 39.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.

7.2 The Independent Engineer shall inspect the Project Highway once in every 15(fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 39, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

8 Determination of costs and time

8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9 Assistance in Dispute resolution

9.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10 Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11 Miscellaneous



- 11.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.
- 11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

12. Assistance to Authority in review of book of accounts

12.1 Upon receipt of copy of books of accounts from Authority, the Independent Engineer shall review the Escrow account statements with respect to the provisions of the Escrow agreement, books of accounts for information pertaining (a) the traffic count (b) Fee determination thereof, and (c) Project costs, and (d) such other information relating or resulting from other duties and functions of Independent Engineer in accordance with the Agreement, as the Authority may reasonably require and submit its report within 10 days.



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SCHEDULE -R
(See Clause 27.1.1)

FEE NOTIFICATION

MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

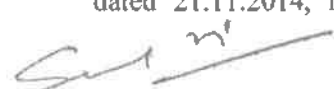
NOTIFICATION

New Delhi, the 20...

S.O. Whereas, by the notification of the Government of India in the Ministry of Road Transport and Highways, number ***** dated the *****, issued under section 11 of the National Highways Authority of India Act, 1988 (68 of 1988), the Central Government has entrusted the section of National Highway from Km *** to Km *** (***** - ***** Section) of National Highway No. *** in the state of ***** to the National Highways Authority of India (hereinafter referred to as the "Authority");

And Whereas, pursuant to the provisions of section 14 of the said Act, the Authority has entered into an agreement with, having its Registered Office at (hereinafter referred to as "Concessionaire") for the development of the ***** - ***** section from Km *** to Km *** (hereinafter referred to as the said section) of the National Highway No. *** on Design, Build, Finance, Operate and Transfer (DBFOT) basis;

Now, therefore, in exercise of the powers conferred by section 8A of the National Highways Act, 1956 (48 of 1956), read with Rule 3 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 read with National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2010 issued vide Notification No. G.S.R. 950(E) dated 03.12.2010, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2011 issued vide Notification No. G.S.R. 15(E) dated 12.01.2011, National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2011 issued vide Notification No. G.S.R. 756(E) dated 12.10.2011, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2013 issued vide Notification No. G.S.R. 778(E) dated 16.12.2013, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2014 issued vide Notification No. G.S.R. 26(E) dated 16.01.2014, National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2014 issued vide Notification No. G.S.R. 831 (E) dated 21.11.2014, National Highways Fee (Determination of Rates and



Collection) Amendment Rules, 2015 issued vide Notification No. G.S.R. 220(E) dated 23.03.2015, and its subsequent amendments upto the Bid Due Date, the Central Government, having regard to the expenditure involved in building, maintenance, management and operation of the said section of the said national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of said agreement between the Authority and the Concessionaire, hereby notifies that there shall be levied and collected fees on mechanical vehicles for the use of the section from Km *** to Km *** (***** - *****) of National Highway No. ***, [including the permanent bridge/ tunnel / flyover having an estimated length of more than 60 (Sixty) meters and bypass (having an estimated cost of Rs 10 crore or more) of total length of ***** km]⁵, in the State of ***** at the rates specified in the aforesaid Rules and authorises the said Concessionaire to collect and retain the said fees on and from the date of commercial operation of the said section of national highway, subject to and in accordance with the said Rules and the provisions of the aforesaid agreement.

The fee levied and collected hereunder shall be due and payable at the following Toll Plaza(s) for the distance specified for each such Toll Plaza:

S. No.	Location of Toll Plaza (chainage)	Length (in km) for which Fee is payable
**	***	***

[In addition to the above, the fee levied and collected hereunder for the bridge or tunnel or flyover, as the case may be, having length of more than 60 (Sixty) meters as specified below shall be due and payable at the following Toll Plaza(s)

S. No.	Location of Toll Plaza	Location of Structure	Normal Length of Structures (mtrs)	Equivalent Length of Structures (in kms)
(A)	(B)	(C)	(D)	(E) = (D/100)
**	***	***	***	***

[In addition to the above, the fee levied and collected hereunder for the bypass(es) costing Rs. 10 crore or more as specified below shall be due and payable at the following Toll Plaza(s), and the rate of fee shall be 1.5 times of the rate of fee as specified in Rule 4(2) of the Fee Rules.

⁵. Only a bridge or tunnel or flyover having length of more than 60 (Sixty) meters or bypass having an estimated capital cost of Rs 10 crore or more may be specified here.



Location of Toll Plaza (chainage)	Name of the Bypass	Design Chainage (km)		Length(in km)
		From	To	
***	***			***

F.No. RW/NH-.....

(Name)

Deputy Secretary,

Government of India

Signature

SCHEDULE -S
(See Clause 31.1.2)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the day of
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AMONGST

- 1LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2name and particulars of Lenders' Representative and having its registered office atacting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3name and particulars of the Escrow Bank and having its registered office at(hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The National Highways Authority of India, established under the National Highways Authority Act 1988, represented by its Chairman and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075 (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the "**Concession Agreement**") for [Four-Laning and subsequent Six-Laning] of the ****section (km ** to km **) of National Highway No. ** in the State[s] of **** on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW THEREFORE, in consideration of the foregoing and the respective



covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Agreement” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Concession Agreement” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Clause 6.1;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually;

“Payment Date” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context



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or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case



prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;



- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project Highway; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Grant and any other monies disbursed by the Authority to the Concessionaire;
- (b) Revenue Shortfall Loan;
- (c) all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (d) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

Sum

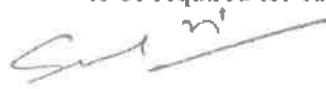
4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project Highway;
- (b) all payments relating to construction of the Project Highway, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
- (e) Concession Fee due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- {(g) Premium due and payable to the Authority;}
- (h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including repayment of Revenue Shortfall Loan;
- (i) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1;



provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project Highway;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including {Premium,} repayment of Revenue Shortfall Loan and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 39 of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds



Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Highway, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 36 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;



- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure



Period of 5 (five) business days.

- 6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement



or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

- 9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.



10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever



irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

11.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 Alteration of terms

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

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either



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Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives



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Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof⁵:

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of ESCROW BANK by:

(Signature)
(Name)
(Designatio
(Address)
(Fax No.)
(e-mail
address)

SIGNED, SEALED AND DELIVERED For and on behalf of NATIONAL HIGHWAYS AUTHORITY OF INDIA by:

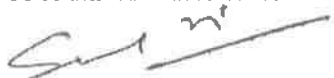
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

2.

⁵To be affixed in accordance with the articles of association of the Concessionaire.



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SCHEDULE -T
(See Clause 33.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 33.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 10 (ten) reputable firms of Chartered Accountants having their registered offices in India (the "Panel of Chartered Accountants"). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-T.

2 Invitation for empanelment

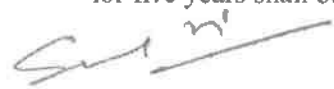
2.1 The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 100,00,00,000 (Rs. one hundred crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3 Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).



- 3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 10 (ten) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4 Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5 Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 10 (ten) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule - T.

Smt. M.

SCHEDULE -U
(See Clause 38.4)

VESTING CERTIFICATE

- 1 The Chairman, National Highways Authority of India (the "Authority") refers to the Concession Agreement dated (the "Agreement") entered into between the Authority and (the "Concessionaire") for [Four-Laning and subsequent Six-Laning] of the ***** Section of National Highway No.*** (the "Project Highway") on design, build, finance, operate and transfer ("DBFOT") basis.
- 2 The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 38.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project Highway shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20..... at Delhi.

AGREED, ACCEPTED AND SIGNED
For and on behalf of
CONCESSIONAIRE by:

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
NATIONAL HIGHWAYS
AUTHORITY OF INDIA by:

(Signature)
(Name)
(Designation)
(Address)

In the presence of:

1.

2.



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SCHEDULE -V
(See Clause 40.3.1)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the day of 20....

AMONGST

- 1 The National Highways Authority of India, established under the National Highways Authority Act 1988, represented by its Chairman and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075 (hereinafter referred to as the "Authority" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at, (hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 3name and particulars of Lenders' Representative and having its registered office at, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the "Concession Agreement") for [Four-Laning and subsequent Six-Laning] of the ****section (km ** to km **) of National Highway No. ** in the State of ***** on design, build, finance, operate and transfer basis (DBFOT), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with



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the provisions of this Agreement and the Concession Agreement.

- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Substitution Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Agreement” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

- 1.2.1 References to Lenders’ Representative shall, unless repugnant to the context



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or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

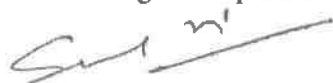
3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project Highway as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its



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information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project Highway in accordance with the provisions of Article 36 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the



aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project Highway including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project Highway in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within



15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate



the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 37 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.



7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such



other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this



Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

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

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other



Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.



9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof[§]:

SIGNED, SEALED AND DELIVERED For and on behalf of NATIONAL HIGHWAYS AUTHORITY OF INDIA by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

1. 2.

[§] To be affixed in accordance with the articles of association of the Concessionaire.



Appendices

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Updated on 09.05.2016

APPENDIX I

LIST OF BID-SPECIFIC CLAUSES²⁵

A. Clauses with serially numbered footnotes

1. Appendix 1 (Footnote no 27)

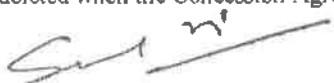
B. Clauses with non-numerical footnotes

1. Recital Para 2
2. Clause 16.5.1: Power of the Authority to undertake works
3. Clause 25.4: Premium
4. Clause 26.2: Additional Concession Fee
5. Clause 26.2.1: Additional Concession Fee
6. Signature/Execution Page of the Concession Agreement
7. Schedule J: Provisional Certificate
8. Schedule R: Fee Notification
9. Schedule V: Substitution Agreement Signature /Execution Page

C. Clauses where curly brackets are used

1. Recitals Para 2
2. Recitals C, E, F, G and H :
3. Clause 4.1.3(g): Conditions Precedent
4. Clause 7.1(g), (k), (l), (m) and (q): Representations and Warranties of the Concessionaire
5. Clause 8.1.2: Disclaimer
6. Clause 25.4: Premium
7. Clause 26.1: Concession Fee
8. Clause 26.2.1: Additional Concession Fee
9. Clause 31.4.1(d): Withdrawals upon Termination
10. Article 48: Definitions
 - “Associate or Affiliate”
 - “Bid”
 - “Change in Ownership”
 - “Consortium”
 - “Consortium Member”
 - “Premium”
 - “Subsistence Revenue”
 - “Total Project Cost”
11. Schedule S: Escrow Agreement: Clause 4.2(d)

²⁵This Appendix-I contains a list of clauses that would need to be suitably modified for reflecting bid-specific provisions after the Concessionaire has been selected. This Appendix-I may be included in the draft concession agreement forming part of the bid documents. It may however, be deleted when the Concession Agreement is to be executed.



D. Clauses with blank spaces

1. Recital Para 2
2. Recitals C, E and G
3. Clause 25.1: Grant
4. Clause 26.2.1: Additional Concession Fee
5. Execution/Signature Page of the Concession Agreement
6. Schedule F: Performance Security
7. Schedule J: Completion Certificate and Provisional Certificate
8. Schedule Q: Terms Of Reference For Independent Engineer: Clause 1.1
9. Schedule R: Fee Notification
10. Schedule S: Escrow Agreement: Para 1, 2 and 3 and Recitals A, Clause 2.3.1, 4.2(d)
11. Schedule U: Vesting Certificate
12. Schedule V: Substitution Agreement

Sum

APPENDIX II

LIST OF PROJECT-SPECIFIC CLAUSES²⁶

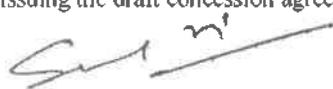
A. Clauses with serially numbered footnotes

1. Recital: First Line (Footnote No 1)
2. Recital Para A (Footnote No 2, 3)
3. Clause 3.1.1: The Concession (Footnote No 4)
4. Clause 3.2 Heading: Waiver of Six-Laning (Footnote No 5)
5. Clause 3.2.1: Waiver of Six-Laning (Footnote No 6)
6. Clause 4.1.2 (c) (Footnote No 7)
7. Clause 4.1.2 (e) (Footnote No 9)
8. Clause 9.1.1: Performance Security (Footnote No 9)
9. Clause 10.9 : Heading: Additional land for Six-Laning (Footnote No 10)
10. Clause 12.5: Six-Laning of the Project Highway (Footnote No 11)
11. Clause 12.7 : Construction of service roads by the Authority (Footnote No 12)
12. Clause 15.1: Commercial Operation Date (COD) (Footnote No 13)
13. Clause 25.3.2: O&M Support (Footnote No 14)
14. Clause 26.3: Determination of Concession Fee (Footnote No 15)
15. Clause 27.2.2: Revision of Fee (Footnote No 16)
16. Clause 27.4: Free use of service road (Footnote No 17)
17. Clause 29.1.1: Effect of variations in traffic growth (Footnote No 18 and 19)
18. Clause 30.2(b): Modification in the Concession Period (Footnote No 20)
19. Article 48 Definitions:
 - “Adjusted Equity” (Footnote No 22)
 - “Bid Security” (Footnote No 23)
 - “Toll Plaza” (Footnote No 24)
 - “Total Project Cost” (Footnote No 25)
20. Annex - I, Schedule K (Footnote No 26)
21. Appendix II (Footnote no 28)

B. Clauses with square parenthesis

1. Recitals A, B and C
2. Clause 3.1.1: The Concession
3. Clause 3.2, 3.2.1 and 3.2.2 –Waiver of Six Laning
4. Clause 4.1.2 and sub clauses (c), (d), (e) and Proviso to Conditions Precedent

²⁶This Appendix –II contains a list of clauses that would need to be suitably modified prior to issue of bid documents for reflecting project-specific provisions. This Appendix-II should be omitted before issuing the draft concession agreement, forming part of the bid documents.



5. Clause 10.1: The Site
6. Clause 10.2.3: Licence, Access and Right of Way
7. Clause 10.3.2: Procurement of Site
8. Clause 10.3.6: Procurement of the Site
9. Clause 10.9: Additional land for Six-Laning
10. Clause 12.3 (f) : Drawings
11. Clause 12.4.1: Four Laning of the Project Highway
12. Clause 12.4.2: Four Laning of the Project Highway
13. Clause 12.4.3: Four Laning of the Project Highway
14. Clause 12.5: Six-Laning of the Project Highway
15. Clause 12.5.1: Six-Laning of the Project Highway
16. Clause 12.5.2: Six-Laning of the Project Highway
17. Clause 12.5.3: Six-Laning of the Project Highway
18. Clause 12.5.4: Six-Laning of the Project Highway
19. Clause 12.6: Termination due to failure to complete Six-Laning
20. Clause 12.7: Construction of service roads by the Authority
21. Clause 13.4: Delays during construction
22. Clause 13.5.4: Suspension of unsafe Construction Works
23. Clause 15.1: Commercial Operation Date (COD)
24. Clause 15.2: Damages for delay
25. Clause 16.4.1: Restrictions on certain works
26. Clause 17.1.2: O&M obligations of the Concessionaire
27. Clause 17.3.1: Maintenance Manual
28. Clause 17.5.2: Safety, vehicle breakdowns and accidents
29. Clause 17.15: Advertising on the Site
30. Clause 20.1: Traffic regulation by the Concessionaire
31. Clause 20.2: Police assistance
32. Clause 20.3: Buildings for Traffic Aid Posts
33. Clause 20.4: Recurring expenditure on Police assistance
34. Clause 21.1: Medical Aid Posts
35. Clause 21.2: Buildings for Medical Aid Posts
36. Clause 21.3: Recurring expenditure on Medical Aid Posts
37. Clause 22.1: Traffic census
38. Clause 24.1.1: Financial Close
39. Clause 25.1.1: Grant
40. Clause 26.2.1: Additional Concession Fee
41. Clause 26.5.1: Verification of Realisable Fee
42. Clause 27.2.2: Revision of Fee
43. Clause 27.8: Fee collection points
44. Clause 27.10: Additional fee for overloaded vehicles
45. Clause 27.11.1: Display of Fee rates
46. Clause 29.1.1: Effect of variations in traffic growth
47. Clause 29.2.2: Modification in the Concession Period

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48. Clause 29.2.3: Modification in the Concession Period
49. Clause 30.1.1: Restriction on construction of Additional Tollway
50. Clause 30.2(a), (b) and (c): Modification in the Concession Period
51. Clause 35.4.2: Compensation for Competing Roads
52. Clause 45.1: Disclosure of Specified Documents
53. Article 48: Definitions
 - “Adjusted Equity”
 - “Financial Package”
 - “Four-Laning or Four-Lane”
 - “Medical Aid Post”
 - “PCU”
 - “Project Agreements”
 - “Project Assets”
 - “Project Completion Schedule”
 - “Scheduled Four-Laning Date”
 - “Scheduled Six-Laning Date”
 - “Six- Laning or Six-Lane”
 - “Tests”
 - “Toll Plaza”
 - “Total Project Cost”
54. Schedule A: Clause 1.1 1.3, and 2
55. Annex - I, Schedule A: Site for Four-Laning
56. Annex -II, Schedule A: Site for Six Laning
57. Schedule B: Development of the Project Highway
58. Annex - 1, Schedule B: Description of Four Laning
59. Annex -II, Schedule B: Description of Six Laning
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**Appendix-III: Arbitration Rules of the Society for Affordable Redressal of
Disputes (SAROD)(SAROD' ARBITRATION RULES)**

Under Clause 44.3.1

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Updated on 09.05.2016

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Updated on 09.05.2016

ARBITRATION RULES OF SAROD

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PREAMBLE

In order to seek speedy, affordable, just and reasonable Redressal of Dispute/Differences between NHAI and Concessionaire/Contractor arising out of and during the course of execution of various contracts, a Society for Affordable Redressal of Disputes (SAROD) has been formed as a Society under Societies Registration Act, 1860 with registration No.S/RS/SW/1044/2013. It has been formed by National Highways Authority of India (NHAI) and National Highways Builders Federation (NHBF) with founding members as mentioned in the Memorandum of Association of SAROD.

SAROD ARBITRATION

RULES

Rule 1- Scope of Application

- 1.1 Where any agreement, submission or reference provides for arbitration at the Society for Affordable Redressal of Disputes ("SAROD"), or under the Arbitration Rules of the SAROD and where the case is a domestic arbitration shall be conducted in accordance with the following Rules, or such Rules as amended by the SAROD where the amendments take effect before the commencement of the Arbitration. Parties may adopt following clause for inclusion in the contract:-

"Any dispute or difference whatsoever arising between the parties and of or relating to the construction, interpretation, application, meaning, scope, operation or effect of this contract or the validity or the breach thereof, shall be settled by arbitration in accordance with the rules of arbitration of the "SAROD" and the award made in pursuance thereof shall be final and binding on the parties subject to Provisions of The Arbitration and Conciliation Act, 1996".

- 1.2 These rules shall come into effect from the day of approval by Governing Body of SAROD.

Rule 2- Definitions

- 2.1 These Rules shall be referred to as "the SAROD Arbitration Rules".

- 2.2 In these Rules:

"Act" means the 'Arbitration and Conciliation Act 1996' of India and any statutory modifications or re-enactments thereof.

"SAROD" means the Society for Affordable Redressal of Disputes.

"SAROD Arbitrator Panel" means the list of persons admitted to serve as arbitrators under these Rules.

"NHAI" means National Highways Authority of India.

"NHBF" means the National Highways Builders Federation.

"GOVERNING BODY" means Governing Body of SAROD as defined in Article 9 of Memorandum of Association.

"PRESIDENT" means President of Governing Body of SAROD as defined in Rules & Regulation of SAROD.

"SECRETARY" means Secretary of SAROD as defined in Rules & Regulation of



"TRIBUNAL" means either a Sole Arbitrator or all arbitrators when more than one is appointed.

PARTY means a party to an arbitration agreement,

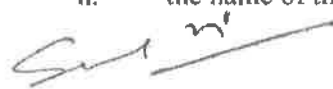
"E-Arbitration" means submission of pleadings, defence statement etc by E-mail and holding of proceedings via video conferencing.

Rule 3 - Notice, Calculation of periods of Time

- 3.1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
- 3.2 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Gazetted public holidays or non-business days occurring during the running of the period of time are included in calculating the period.
- 3.3 Without prejudice to the effectiveness of any other form of written communication, written communication may be made by fax, email or any other means of electronic transmission effected to a number, address or site of a party.
- 3.4 The transmission is deemed to have been received on the day of transmission.

Rule 4- Commencement of Arbitration

- 4.1 Any party wishing to commence an arbitration under these Rules ("the Claimant") shall file with the Secretary and serve on the other party {"the Respondent"}, a written Notice of Arbitration ("the Notice of Arbitration") which shall include the following:
 - a. a request that the dispute be referred to arbitration;
 - b. the names, addresses, telephone numbers, fax numbers and email addresses of the parties to the dispute;
 - c. a reference to the arbitration clause or any separate arbitration agreement that is invoked and provide a copy of the arbitration clause or arbitration agreement;
 - d. a reference to the contract out of which the dispute arises and provide a copy of the contract where possible;
 - e. a brief statement describing the nature and circumstances of the dispute;
 - f. the relief or remedy sought, including the amount of claim if quantifiable at the time the Notice or Arbitration is filed;
 - g. a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed on the number; and
 - h. the name of the Claimant's nominated arbitrator.



4.2 A filing fee of Rs. 10,000/- (Ten thousand) or any amount decided by Governing Body from time to time is payable at the time of filing the Notice of arbitration.

4.3 The date of filing of the Notice of Arbitration with the Secretary is the date of commencement of the arbitration for the purpose of these Rules.

Rule 5 - Response by Respondent

5.1 Within 14 days of receipt of the Notice of Arbitration, the Respondent shall file with the Secretary and serve upon on the Claimant, a Response including

- a. A confirmation or denial of all or part of the claims;
- b. Brief statement of the nature and circumstances of any envisaged counterclaims
- c. A comment in response to any proposals contained in the Notice of Arbitration;
and
- d. The name of the respondent's nominated arbitrator.

5.2 A filing fee of Rs. 10,000/- or any amount decided by Governing Body from time to time is payable at the time of filing the Response.

5.3 In case parties have objection to the jurisdiction of Arbitral Tribunal, such objection shall be raised not later than 15 days of the commencement of Arbitration proceedings failing which it will be deemed that parties have waived their right to objection.

Rule 6- Filing of Case Statements

6.1 Within 30 days after the filing of the Notice of Arbitration, the claimant must file with the Secretary and serve on the Respondent, a Statement of Claimant's Case alongwith all documents to be relied upon by the Claimant.

6.2 Within 30 days after the service of the statement of Claimant's Case, the Respondent must file with the Secretary and serve on the Claimant, a statement of respondent's defence and counterclaim (if any) alongwith all documents to be relied upon by the Respondent.

6.3 Within 30 days after the service of the statement of Respondent's defence, if the Claimant intends to challenge anything in the statement of Respondent's defence and/or counterclaim, the Claimant must then file with the Secretary and serve on the Respondent, a statement of claimant's reply and if necessary, defence to counterclaim.

6.4 No further case statements may be filed without the leave of the Tribunal or if a Tribunal has not been appointed, the Secretary.

6.5 The Tribunal or if a Tribunal has not been appointed, the Secretary, may upon the written application of a party, extend the time limits provided under this Rule,

6.6 Thy party required to file a case statement must at the same time deposit with the Secretary for eventual transmission to the Tribunal an additional copy or additional copies of the case statement, according to the number of arbitrators constituting or who will constitute the Tribunal.



Rule 7 - Contents of Case Statements

- 7.1 The case statements must contain the detailed particulars of the party's claim, defence or counterclaim and must thus contain a comprehensive statement of the facts and contentions of law supporting the party's position.
- 7.2 It must:
- a. Set out all items of relief or other remedies sought together with the amount of all quantifiable claims and detailed calculations.
 - b. State fully its reasons for denying any allegation or statement of the other party.
 - c. State fully its own version of events if a party intends to put forward a version of events different from that given by the other party.
- 7.3 A case statement must be signed by or on behalf of the party making it.

Rule 8 - Default in Filing and Serving Case Statements

- 8.1 If the Claimant fails within the time specified under these Rules or as may be fixed by the Tribunal or by the Secretary, to submit its Statement of Case, the Tribunal or if a Tribunal has not been appointed, the Governing Body may issue an order for the termination of the arbitral proceedings or make such other directions as may be appropriate in the circumstances.
- 8.2 If the Respondent fails to submit a Statement of Respondent's Defence, the Tribunal may nevertheless proceed with the arbitration and make the award.

Rule 9 - Further Written Statements

- 9.1 The Tribunal will decide which further written statements, in addition to the case statement(s) already filed, are required from the parties and shall fix the periods of time for giving, filing and serving such statements.
- 9.2 All such further statements must be given to the Tribunal, filed with the Secretary and served on the Claimant or Respondent, whichever is applicable.

Rule 10 - SAROD to Provide Assistance

- 10.1 At the request of the Tribunal or either party, the Secretary will render such assistance as is required for the conduct of the arbitration, including arranging for facilities, suitable accommodation for sittings of the Tribunal, secretarial assistance or interpretation of these rules.
- 10.2 Any additional expenses incurred or to be incurred for any such arrangements shall be borne by the parties.

Rule 11- Appointment of Tribunal

- 11.1 The disputes shall be decided by a Sole Arbitrator when the total claim of dispute is Rs. 3 Crores or less.
- 11.2 In all cases of disputes claimed for more than Rs. 3 Crores, the tribunal shall consist of odd number of Arbitrators to be nominated by the parties. The Presiding Arbitrator shall be appointed by the Arbitrators nominated by the parties from amongst the panel maintained by SAROD. For deciding the Presiding Arbitrator, a draw of lots can be carried out from amongst the names suggested by the Arbitrators nominated by the Parties. The eligibility criteria for empanelment of Arbitrators will be decided by the Governing Body.



- 11.3 If a Sole Arbitrator is to be appointed, the Governing Body will appoint the Arbitrator within 21 days from the date the Respondent's Statement of Defence and Counterclaim (if any) is filed or falls due, whichever is earlier. The Governing Body will appoint the Arbitrator from the panel of Arbitrators by draw of lots,
- 11.4 An Arbitrator/Presiding Arbitrator to be appointed under these Rules shall be a person on the SAROD Arbitration Panel as at the date of the appointment,
- 11.5 In the event of any party failing to appoint Arbitrator within 30 days of receipt of the notice of Arbitration, the Governing Body shall appoint the Arbitrator or Presiding Arbitrator as the case may be by a draw of lots.

Rule 12- Multiparty appointment of the Tribunal

12.1 If there are more than 2 parties in the arbitration, the parties shall agree on the procedure for appointing the Tribunal within 21 days of the receipt of the Notice of Arbitration.

12.2 If the parties are unable to do so, upon the lapse of the 21 day time period mentioned herein, the Tribunal shall be appointed by the Governing Body as soon as practicable.

Rule 13-Appointment of Substitute Arbitrator

In the event of the death or resignation of any of the arbitrators, a substitute arbitrator must be appointed by the same procedure as in Rule 11 by which the arbitrator concerned was appointed, failing which, the Governing Body will make the appointment.

Rule 14- Independence and Impartiality of the Tribunal

- 14.1 The Tribunal conducting arbitration under these Rules shall be and remain at all times independent and impartial, and shall not act as advocate for any party.
- 14.2 A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.
- 14.3 An arbitrator, once nominated or appointed, shall disclose any such circumstance referred to in Rule 14.2 to the Secretary and/ or to all parties.

Rule 15 - Code of Ethics for Arbitrators

An Arbitrator is a fountain of justice and emblem of equity, fairness and good conscience. Therefore he/she is expected to exhibit a noble conduct. The code of conduct prescribed by the Governing Body has to be adopted.

Appointment

- 15.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect,
- 15.2 In this code, the masculine includes the feminine.



Disclosure

- 15.3 A prospective arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue thorough out the arbitral proceedings with regard to new facts and circumstances,
- 15.2 A prospective arbitrator shall disclose to the Secretary and any party who approaches him for a possible appointment:
- (a) Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;
 - (b) The extent of any prior knowledge he may have of the dispute.

Bias

- 15.5 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favours one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.
- 15.6 Any close personal relationship or current direct or indirect business relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

Communications

- 15.7 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.
- 15.8 No arbitrator shall confer with any of the parties or their Counsel until after the Secretary gives notice of the formation of the Tribunal to the parties.
- 15.9 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

Fees

- 15.10 In accepting an appointment, an arbitrator agrees to the remuneration as prescribed in the rules of SAROD, and he shall make no unilateral arrangements with any of the parties or their Counsel for any additional fees or expenses without the agreement of all the parties and the consent of the Secretary of SAROD.

Conduct

- 15.11 Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.



Confidentiality

- 15.12 The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.
- 15.13 This Code is not intended to provide grounds for the setting aside of any award.

Rule 16- Challenge of Arbitrators

- 16.1 An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartiality or independence and also if he or she has committed any misconduct
- 16.2 An arbitrator may also be challenged if he does not possess the qualifications required by the agreement of the parties,
- 16.3 A party may challenge an arbitrator appointed on its nomination or with its agreement only for reasons of which it becomes aware after the appointment has been made.
- 16.4 A party who intends to challenge an arbitrator shall file with the Secretary and serve on the other party or all other parties, whichever is applicable, a Notice of Challenge.
- 16.5 The Notice of challenge must be filed and served within 14 days from the appointment of the arbitrator or within 14 days after the circumstances mentioned in Rule 15.1 became known to that party.
- 16.6 The Notice of Challenge must state the reasons for the challenge.
- 16.7 The arbitration shall be suspended until the challenge is resolved or decided upon.
- 16.8 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. However, it is not implied in either case that there has been an acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 11 read with Rule 13, shall be used for the appointment of a substitute arbitrator.

Rule 17 - Decision on Challenge

- 17.1 If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge will be made by the Governing Body.
- 17.2 If the Governing Body sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment of an arbitrator as provided in Rule 11 read with Rule 13. If the Governing Body dismisses the challenge, the arbitrator shall continue with the arbitration.



Rule 18 - Removal of the Tribunal

- 18.1 The Governing Body may on the application of a party remove an arbitrator:
- a. Who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his ability to do so; or
 - b. Who has refused or failed to use all reasonable dispatch in conducting the arbitration or making an award.
 - c. Who has continuously absented from attending the proceedings for more than 3 sitting without prior permission of Presiding Arbitrator/Governing Body of SAROD.
- 18.2 The arbitrator(s) concerned is entitled to appear and be heard at the hearing of the application to remove him.
- 18.3 Upon the removal of the arbitrator, a substitute arbitrator shall be appointed in accordance with Rule 11 read with Rule 13.
- 18.4 The Governing Body's decision on the application is final and is not subject to appeal or review.

Rule 19 - Re-hearing in the Event of Replacement of the Tribunal

If the sole or presiding Arbitrator is replaced, there shall be a re-hearing. If any other arbitrator is replaced, such re-hearing may take place at the discretion of the Tribunal.

Rule 20 - Jurisdiction of the Tribunal

- 20.1 The Tribunal shall have the power to rule on its own jurisdiction, including any objection with respect to the existence, termination or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement.
- 20.2 The plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority. In either case the Tribunal may nevertheless admit a late plea under this Rule if it considers the delay justified. A party is not precluded from raising such a plea by the fact that he has nominated, or participated in the appointment of an arbitrator.
- 20.3 The Tribunal must rule on an objection that it lacks jurisdiction as a preliminary question upon the objection being raised. It may rule on an objection that it exceeds the scope of its authority either as a preliminary question or in an award on the merits, as it deems just and convenient.
- 20.4 In addition to the jurisdiction to exercise the powers defined elsewhere in these Rules, the Tribunal shall have jurisdiction to determine any question of law arising in the arbitration; proceed with the arbitration not with sanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that it intends to do so; and to receive and take into account such written or oral evidence as it shall determine to be relevant, whether or not strictly admissible in law.



Rule 21 - Fees of SAROD and Arbitral Tribunal

Fee Schedule

Registration Fee (Non - Refundable): Rs, 10,000/- or any amount fixed by Governing Body from time to time. The Schedule of Fees and allied expenditure shall be decided by Governing Body.

Rule 22- Transmission of File to the Tribunal

- 22.1 The Secretary shall, as soon as practicable transmit to the Tribunal, a file containing the Notice of Arbitration, the Response and all case statements.
- 22.2 The Tribunal shall as soon as practicable, after consultation with the parties, issue such orders and/or directions as are necessary for the conduct of the arbitration to conclusion, including a timetable for steps to be taken in the arbitration and for the hearing of the arbitration.

Rule 23- Judicial Seat of Arbitration

- 23.1 Unless otherwise agreed by the parties, the judicial seat of arbitration shall be New Delhi.
- 23.2 Notwithstanding Rule 22.1 and 22.2, the Tribunal may, unless otherwise agreed by the parties, hold hearings and meetings anywhere convenient, subject to the provisions of Rule 28.2.

Rule 24 - Language of Arbitration

The language of arbitrators shall be English. In case of material existing are in any other language, other than English the same has to be translated to English language.

Rule 25 - Conduct of the Proceedings

The Tribunal shall have the widest discretion allowed by the Act to ensure the just, expeditious, economical and final determination of the dispute. The proceedings shall be conducted from 10.AM to 5PM with a recess of one hour.

Rule 26 - Communication between Parties and the Tribunal

- 26.1 Where the Tribunal sends any written communication to one party, it shall send a copy to the other party or parties as the case may be.
- 26.2 Where a party sends any written communication (including Statements, expert reports or evidentiary documents) to the Tribunal, the same shall be copied to the other party or all other parties, whichever is applicable, and show to the Tribunal that the same has been so copied.
- 26.3 The address of the parties for the purpose of all communications during the proceedings shall be those set out in the Notice of Arbitration, or as either party may at any time notify the Tribunal and the other party or parties, whichever is applicable.
- 26.4 A copy of correspondence between the parties and the Tribunal shall be sent to the Secretary.



Rule 27 - Party Representatives

Any party may be represented by legal practitioners or any other representatives, subject to such proof of authority as the Tribunal may require. The names and addresses of such representatives must be notified to the other party or parties. In case one party is represented by non-legal person, another party will also be represented by non-legal person so as to maintain natural justice.

Rule 28 - Hearings

28.1 Unless the parties have agreed on documents-only arbitration, the tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions.

28.2 The Tribunal shall fix the date, time and place of any meetings and hearings in the arbitrations on the first hearing, and complete time table pertaining to all the activities of the Arbitration e.g submission of statement of claim, reply, counter claim, reply therein, admission and denial of documents, visit/inspection of site if any. The tribunal shall stick to the time table with without any deviations unless there are unavoidable circumstances warranting such deviation which will be with the prior permission of the tribunal.

28.3 Prior to the hearing, the Tribunal may provide the Parties with matters or questions to which it wishes them to give special consideration.

28.4 In the event that a party to the proceedings without sufficient cause, fails to appear at a hearing of which the notice has been given, the Tribunal may proceed with the arbitration and may make the Award after the party present has submitted evidence to prove its case.

28.5 All meetings and hearing shall be in private unless the parties agree otherwise.

Rule 29 - Documents Only Arbitration

29.1 The Disputes may be decided without an oral hearing if it is so agreed by the parties.

29.2.1 Where the parties agree to dispense with oral hearing, the Tribunal must be promptly informed by either of the parties, as soon as is practicable. The Tribunal must also be promptly informed if, at a later stage, the parties or either of them intends to apply for an oral hearing.

29.2.2 Parties may seek discovery of documents if they are not satisfied with existence of documents annexed with statement of claim, reply and counter claim by giving self contained request to the Tribunal justifying the necessity for such documents. Decision of tribunal shall be final and binding upon the parties.

Rule 30 - Witnesses

30.1 The Tribunal may require each party to give notice of the names and designations of the witnesses it intends to call and reasons for legal necessity of such witness.

30.2 No party shall call any expert witness without the leave of the Tribunal.

30.3 Any witness who gives evidence may be questioned by each party or its representative subject to any rulings made by the Tribunal,

30.4 A Witness may be required by the Tribunal to testify under oath or affirmation..



- 30.5 Subject to such order or direction which the Tribunal may make, the testimony of witness may be presented in written form, either as signed statements or by duly sworn or affirmed affidavits,
- 30.6 Any party may require a witness to attend an oral examination at a hearing. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, or may exclude it altogether,
- 30.7 The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence given by any witness.

Rule 31- Experts Appointed by the Tribunal

- 31.1 Unless otherwise agreed by the parties, the Tribunal may:
- a. appoint one or more experts to report the Tribunal on specific issues;
 - b. require a party to give any such expert any relevant information or to produce, or to provide access to, any relevant documents, goods or property for inspection by the expert.
- 31.2 Unless otherwise agreed by the parties, if a party so requests or if the Tribunal deem it fit, the expert shall, after delivery of his written or oral report, participate in an oral hearing, at which the parties may question him and present expert witnesses in order to testify on the points at issue.
- 31.3 Rule 30.2 shall not apply to an assessor appointed by agreement of the parties, or to an expert appointed by the Tribunal to advise solely in relation to procedural matters.


Rule 32- Rules applicable to substance of dispute- (1) Where the place of arbitration is situated in India,

- 32.1 In an arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

Rule 33 - Closure of Hearing

- 33.1 The Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submission to make and, if there are none, declare the hearing closed.
- 33.2 The Tribunal may also, in view of exceptional circumstance, reopen the hearings at any time before the award is made.

Rule 34- Additional Powers of the Tribunal


- 34.1 In addition to the powers conferred by the Act, the Tribunal shall also have the power to:-
- a. Allow any party, upon such terms (as to costs and otherwise) as it shall determine, to amend claims or counterclaims;
 - b. Extend or abbreviate any time limits provided by these Rules;
 - c. Conduct such enquires as may appear to the Tribunal to be necessary or expedient;
 - d. Order the parties to make any property or thing available for inspection
-  produce to the Tribunal, and to the other parties for

- f. Make orders or give directions to any party for interrogatories;
 - g. Make orders or give directions to any party for an interim injunction or any other interim measure;
 - h. Make such orders or give such directions as it deems fit in so far as they are not inconsistent with the Act or any statutory re-enactment thereof or such law which is applicable or these Rules.
- 34.2 If the parties so agree, the Tribunal shall also have the power to add other parties (with their consent) to be joined in the arbitration and make a single Final Award determining all disputes between them.

Rule 35- Deposits to Costs and Expenses

- 35.1 The Tribunal's fees and SAROD administration fees shall be ascertained in accordance with the Schedule of Fees in Force at the time of commencement of the arbitration.
- 35.2 The Claimant shall deposit with the SAROD half of the fees payable at the time of filing of the Statement of Case. The Respondent shall deposit with the SAROD one-half of the fees payable at the time of filing the Statement of Respondent's Defence and Counterclaim (if any). The balance of fees payable shall be paid 60 days before the date of the final hearing or on such other date that the Secretary may direct.
- 35.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, the Secretary will make a provisional estimate. The fees will be adjusted in the light of such information as may subsequently become available. If the arbitration is settled or disposed of without a hearing, the amount of the Tribunal's fees and SAROD administration fees shall be finally determined by the Secretary who will have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or otherwise disposed of.
- 35.4 The Secretary may from time to time direct parties to make one or more deposit(s) towards any further expenses incurred or to be incurred on behalf of or for the benefit of the parties.
- 35.5 All deposit(s) shall be made to and held by the SAROD. Any interest which may accrue on such deposit(s) shall be retained by the SAROD.
- 35.6 If a party fails to make the payments or deposits required or directed, the Tribunal may refuse to hear the claims or counterclaims, whichever is applicable, by the non-complying party, although it may proceed to determine claims or counterclaims by any party who has complied with orders.
- 35.7 The parties shall remain jointly and severally liable to the SAROD for payment of all such fees and expenses until they have been paid in full even if the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final Award is made.

Rule 36 - Decision Making by the Tribunal

- 36.1 Where a Tribunal has been appointed, any direction, order, decision or award of the Tribunal must be made by the whole Tribunal or a majority. If an arbitrator refuses or fails to sign the Award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.
- 36.2 If there is no unanimity, the same shall be made by the majority arbitrators as well as the arbitrator alone as if acting as a sole arbitrator.
36.  a three-member Tribunal the presiding arbitrator may, after consulting the other arbitrators, make procedural rulings alone.

Rule 37 - The Award

- 37.1 It will be mandatory for the parties to submit written synopsis of their arguments respectively which will form part of the arbitral proceedings.
- 37.2 The Tribunal shall assemble at the assigned place in SAROD and shall exercise utmost secrecy and confidentiality in writing the award,
- 37.3 Unless the Secretary extends the time or the parties agree otherwise, the Tribunal shall make its Award in writing within 30 days from the date on which the hearings are closed and shall state the reasons upon which its award is based. The award shall contain the date and shall be signed by the arbitrator or arbitrators.
- 37.4 The Tribunal may make interim awards or separate awards on different issues at different times.
- 37.5 All Awards must be submitted by the Tribunal to the Secretary and they shall be issued through the Secretary.
- 37.6 The Tribunal must deliver to the Secretary number of originals of the award sufficient for the parties and for filing with the Secretary.
- 37.7 The Secretary shall release the award to the parties only upon receipt of sufficient deposits to cover the fees and expenses due to the Tribunal and to the SAROD.
- 37.8 By agreeing to have arbitration under these Rules, the parties undertake to carry out the award without delay.
- 37.9 Stamp duty on award shall be payable by the party in whose favor the award has been pronounced.

Rule 38- Additional Award

- 38.1 Within 30 days after the receipt of the award, either party, with notice to the Secretary and the other party may request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
- 38.2 If the Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall notify all the parties within 7 days of the receipt of the request, that it will make an additional award, and complete the additional award within 30 days after the receipt of the request.

Rule 39 - Correction of Awards

- 39.1 Within 30 days of receiving an Award, unless another period of time has been agreed upon by the parties, a party may by notice to the Secretary and the other party request the Tribunal to correct in the Award, any errors in computation, any clerical or typographical errors or any errors of similar nature.
- 39.2 If the Tribunal considers the request to be justified, it shall make the corrections) within 30 days of receiving the request. Any correction shall be notified in writing to the parties and shall become part of the Award.
- 39.3 The Tribunal may correct any error of the type referred to in Rule 37.1 on its own initiative within 30 days of the date of the Award.



Rule 40- Settlement

- 40.1 If, the parties arrived at amicable settlement of the dispute during the currency proceedings, the parties shall file memo of settlement before the tribunal who shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award,
- 40.2 The Parties shall:
- a. Notify the Tribunal and the Secretary immediately if the arbitration is settled or otherwise terminated:
 - b. Make provision in any settlement for payment of all the costs of the arbitration and fees and expenses due to the SAROD and the Tribunal.
- 40.3 If the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Rule 38.1, before the award is made, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless party raises justifiable grounds for objection.
- 40.4 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Tribunal, shall be communicated by the Tribunal to the parties through the Secretary.

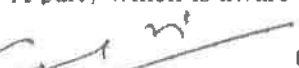
Rule 41- Interest

The Tribunal may award interest on any sum awarded at such rate as applicable in fixed deposits of Sate Bank of India in respect of such periods ending not later than the date of the award as the Tribunal considers just.

Rule 42- Costs

- 42.1 The Tribunal shall specify in the final award, the costs of the arbitrations and decide which party shall bear them and in what proportion they shall be borne.
- 42.2 In this Rule, "costs of the arbitration" shall include:
- a. The fees and expenses of the Tribunal and the administration fees of the SAROD as determined by the Secretary in accordance with the Schedule of Fees;
 - b. The costs of tribunal appointed experts or of other assistance rendered: and
 - c. All expenses which are reasonably incurred by the SAROD in connection with the arbitration.
- 42.3 The Tribunal has power to order in its Award, that all or part of the legal or other costs (such as legal fees and expenses, costs incurred in respect of party appointed experts etc) of one party shall be paid by the other party.

Rule 43- Waiver

A party which is aware of non-compliance with these Rules and yet proceeds with promptly stating its objection in writing to such non-
 med to have waived its right to object.

Update: 09.05.2016

Rule 44- Exclusion of Liability

- 44.1 The Tribunal, the President, the SAROD and any of its officers, employees or agents shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules,
- 44.2 After the Award as been made and the possibilities of corrections and additional Awards have lapsed or been exhausted, neither the Tribunal nor the President shall be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make any arbitrator or the President or the SAROD and any of its officers a witness in any legal proceedings arising out of the arbitration.

Rule 45- General Provisions

- 45.1 In all matters not expressly provided for in these Rules, the President, the Secretary and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the just, expeditious and economical conclusion of the arbitration.
- 45.2 The Secretary may from time to time issue Practice Notes on the implementation of these Rules.

Rule 46- Amendment to Rules

These Rules may from time to time be amended by the Governing Body of SAROD.



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APPEDIX-IV

FORMAT FOR THE PROGRESS OF THE PROJECT

(It is a sample format and may be modified as per the requirements of the project)

(under clause 23.2.4 and para 3.1 (ix) of Schedule-Q)

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Updated on 09.05.2016

APPEDIX-IV*

FORMAT FOR THE PROGRESS OF THE PROJECT

(under clause 23.2.4 and para 3.1 (ix) of Schedule-Q)

Name of the Project:..... State:..... Length (in km):.....

NH No.....

Authority TPC (INR in crore) Concessionaire TPC (INR in crore)..... Amount of Advances (INR in crore):.....

Month and Year:.....

BOQ item	Unit	As per the work programme at appointed date		Physical progress actual achieved (%)		Deficiency in the progress	Financial Expenditure excluding advances (INR in crore)			Remarks
		Physic al (%)	Financial	Upto last month	Current Month		Upto last month	Current month	Total	
Clearing and grubbing	km									
Earthwork	Cum									
Subgrade	Cum									
Structural work	Culverts and Bridges									
	Sub-structure	m								
	Super structure	Cum								
	VUP, PUP, CUP etc.	Cum								
Pavement layer	Pavement layer 1	Cum								
	Pavement layer 2	Cum								
	Payment layer 3.....	Cum								
Drainage and protection work	km									
Project facilities										
Miscellaneous items										

• It is a sample format and may be modified as per the requirements of the project

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Updated on 09.05.2016