

CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the day of 200 at Mumbai

BETWEEN

MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LIMITED, a corporation fully owned by the Government of Maharashtra and its nominees and incorporated as a limited company under the Companies Act 1956 and having its registered office at Priyadarshini Park, Nepean Sea Road, Mumbai-400 036, Maharashtra, of India, (hereinafter referred to as the “**MSRDC**” which expression shall unless repugnant to the context or meaning thereof includes its administrators, successors and assigns) of First Part,

AND

KOLHAPUR MUNICIPAL CORPORATION a Corporation constituted and established under the Bombay Provincial Municipal Corporation Act 1949 and having its office at Kolhapur hereinafter referred to as “**the Confirming Party**” (which expression shall unless repugnant to the context or meaning thereof include its Administrator successors and assigns) of the Second Part:

AND

IRB KOLHAPUR INTEGRATED ROAD DEVELOPMENT COMPANY PRIVATE LIMITED, a Company, incorporated under the provisions of the Companies Act, 1956 and having its registered office at IRB complex, Chandivali farm, Chandivali Village, Andheri (East), Mumbai 400 072 (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 Third Part.

WHEREAS:

- A. The Government of Maharashtra has entrusted to MSRDC, the implementation of IRDP Kolhapur on BOT basis (hereinafter referred to as “the said project”)
- B. MSRDC and the Confirming Party entered into an agreement dated 14.02.2008 to implement the said project as per mutually agreed revised scheme/arrangement which has been approved by the Confirming Party under Resolution No. 180 dated 31st March 2006.
- C. The obligations of the MSRDC and the Confirming Party and the funding arrangement of the said project are elaborated in the said agreement.

- D. The Confirming Party in the said agreement dated 14.02.2008 has agreed and undertaken to discharge financial liabilities, if any, arising for any reason whatsoever out of the concession agreement for implementation of the said project and to compensate and reimburse all costs and liabilities.
- E. MSRDC had resolved to implement approx. 50 km of Roads in the city of Kolhapur on Build, Operate and Transfer (BOT) basis on the terms and conditions set forth in a Concession Agreement.
- F. MSRDC had accordingly invited Applications for Pre-qualification by its PQ Notice dated 28th December 2006 (the “**PQ Notice**”) for shortlisting of bidders for Design Construction, Operation and Maintenance of the project on BOT Basis. However, MSRDC later decided to go in for post qualification.
- G. MSRDC had prescribed the technical and commercial terms and conditions, and invited bids from the bidders pursuant to the Tender Notice for undertaking the Project.
- H. After evaluation of the bids received, MSRDC had accepted the bid of the Consortium comprises of IRB Infrastructure Developers Limited and Modern Road Makers Pvt. Ltd., and ATR Infrastructure Pvt. Ltd., (hereinafter referred to as “the Consortium”) and issued its Letter of Acceptance (LOA) No. MSRDC/01/JMD (II)/IRDP-K/BID/LOA/08/1103 dated 27 March 2008.(hereinafter called the LOA) to the Consortium requiring, interalia, the execution of this Concession Agreement within 30 days of issue thereof.
- I. The Consortium has since promoted and incorporated a limited liability company under the Companies Act, 1956, and has requested MSRDC to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium under the LOA including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- J. By its letter dated 20th May 2008, the Concessionaire has also joined in the said request of the Consortium to MSRDC to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA.
- K. The MSRDC has agreed to the said request of the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on BOT 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 sufficiency and adequacy 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:

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:

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise require, 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:

“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 corresponding calendar year:

“Additional Facilities” means the facilities such as 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;

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

“Agreement” or **“Concession Agreement”** means this Agreement, its Recitals, the Schedules A to W annexed hereto and any amendments thereto made in accordance with the provisions contained in this Agreement read with the Agreement between MSRDC and Confirming Party and the General, Technical and Financial submission.

“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, licenses, permits, authorizations, 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 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 provided further that this date shall not be later than 180 days from the date of signing of the concession agreement; as such extended date which MSRDC may allow;

“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);

“Bank” means any Nationalized Bank/State Bank of India or its subsidiary Bank/ ICICI Bank/IDBI Bank/HDFC Bank/ UTI Bank

“Bank Rate” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of 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 (Concessionaire / Consortium) in response to the Tender Notice in accordance with the provisions thereof;

“Bid Security” means the security provided by the Concessionaire/Consortium to MSRDC along with the proposal for sum of Rs 22.00 Million (Rupees Twenty Two Million), in single or multiple part in accordance with the Notice inviting proposals and which is to remain in force until substituted by the Performance Security;

“Bus” means any passenger motor vehicle with a Gross Vehicle Weight exceeding 12,000 (twelve thousand) kilograms;

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

“Car” means and includes any motor transport vehicle, car, jeep, van, omnibus, or three-wheeled motor vehicle with a Gross Vehicle Weight not exceeding 7500 (seven thousand five hundred) kilograms, 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 in to shares, that causes the aggregate holding of the [existing Developer/Consortium Members] together with their Associates in the total Equity to decline below (i) 51% (fifty one per cent) thereof during Construction Period, (ii) 33% (thirty three per cent) thereof during a period of 3 (three) years following Project Completion Date, and (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by MSRDC during the remaining Concession Period; provided that any material variation (as compared to the representation made by the Consortium during the bidding process) in the proportion of the equity holding of any Consortium Member to the total Equity, if it occurs prior to the Project Completion Date, shall constitute Change in Ownership unless it is preceded by written consent of MSRDC, which consent MSRDC may in its discretion refuse;

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

“Chief Engineer” (C.E.) means the Chief Engineer of MSRDC, in-Charge of the work.

“City Roads” are synonymous with “Project Roads”..

“Company” (**“Project Company”**) means the Company acting as the Concessionaire under this Agreement;

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

“Commencement Date” means the date on which order to start Construction work is given which shall be after payment of upfront money and performance security.

“Commencement Order” means order to start the work, which includes construction, operation & Maintenance of the Project.

“Commercial Plot” means the land admeasuring 30,000 sq. m. belonging to Kolhapur Municipal Corporation from Timber Market Area indicated in Schedule-W.;

“Concession” shall have the meaning set forth in Clause 3.1.1;

“Concessionaire” shall have the meaning attributed thereto in the array of Parties herein above 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;

“Confirming Party”: means the Party sharing some responsibilities as agreed between it and Implementing Party (MSRDC), financial or otherwise, to facilitate the MSRDC in speedy completion of the project and gives its confirmation to that effect to the Concessionaire by entering into Concession Agreement executed between MSRDC and the Concessionaire.

“Consortium” shall have the meaning set forth in Recital (H);

“Consortium Member” means a company specified in Recital (I) as a member of the Consortium;

“Construction Period” means the period beginning from the Appointed Date and ending on the Project Completion Date;

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

“Corporation/MSRDC” shall mean Maharashtra State Road Development Corporation Ltd, Mumbai, a Government of Maharashtra undertaking incorporated under the Companies Act 1956.

“Contractor” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of EPC Contract, the O&M Contract, the Tolling Contract or any other agreement or contract for construction of the Project or operation and / or maintenance of the Project or matters incidental thereto;

“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 MSRDC or the Independent Consultant hereunder, the applicable Cure Period shall be extended by the period taken by MSRDC or the Independent Consultant to accord their approval;

“**Damages**” shall have the meaning set forth in Sub-clause (v) of Clause 1.2;

“**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 MSRDC 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 be deemed to be Debt Due even after such conversion and 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 programs, 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 as set forth in Schedule-H, and shall include ‘as built’ drawings of the Project:

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project, 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, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or propriety 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, where applicable herein but excluding utilities referred to in Clause 11.1:

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

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

“Equity” means the sum expressed in Indian Rupees representing the equity share capital of the Concessionaire and shall include the funds advanced by any Member of the Consortium or by any of its Associates to the Concessionaire for meeting the equity component of the Total Project Cost. Provided, however, that for purposes of computing Termination Payments under this Agreement, Equity shall be reckoned as an amount that is arrived at after excluding from the equity share capital of the Concessionaire the sum by which the capital cost of the Project as stated by the Concessionaire for purposes of claiming Termination Payments exceeded the Total Project Cost, unless such excess cost has been incurred with the approval of the Lenders and MSRDC 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;

“Executive Engineer” means Executive Engineer of MSRDC.

“Exempted Vehicle” means a vehicle exempted from payment of Fees under and in accordance with the Fee Notification vide Schedule-G.

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

“Fee (Toll) Notification” means the notification issued by the Government of Maharashtra in exercise of the powers conferred by Section 20, Sub Section (1-A), (1-B), (1-C), (1-D), and (1-E) of the Bombay Motor Vehicles Tax Act, 1958 in respect of the levy and collection of Toll / Fee during the Concession Period, and a copy of which is at Schedule-R, and includes any subsequent notifications issued from time to time for levy and collection of the Fee contemplated by the provision of this Agreement;

“Financial Close” means the fulfillment 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;

“Financing Documents” means the documents 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 Project and includes amendments or modifications made in accordance with Clause 5.2.2.

“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 Project 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;

“Financial 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, risk participation, take out financial or any other credit enhancement 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;

“GOI” means the Government of India;

“GOM” means the Government of Maharashtra;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected and accepted internationally 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” means the Government of India or the State Government as may be relevant.

“Government Instrumentality” means any department, division or sub-division of the Government or the State Government and includes any commission, board, MSRDC, agency or municipal and other local authority or statutory body [including MMRDA, MCGM] 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 or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Grant” shall have meaning set forth in clause 25.

“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 Truck” or **“Multi-axle truck”** means any goods carrier with a Gross Vehicle Weight exceeding 20,000 (twenty thousand) kilograms and includes a truck with three or more axles;

“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 Consultant” (“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 when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;

“KIRD P” means Kolhapur Integrated Road Development Programme.

“KMC” means Kolhapur Municipal Corporation which is Confirming Party for this Project.

“LOA” or **“Letter of Acceptance”** means the letter of acceptance referred to in Recital (F)

“Lead Financial Institution” means the Financial Institution (FI) that is funding the PPP Project, and in case there is a consortium of FI s, the FI designated as such by the consortium;

“Lenders” or **“Representative”** means the person duly authorized 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 passenger vehicle or goods carrier with a Gross Vehicle Weight exceeding 7500 (seven thousand five hundred) kilograms and includes a Tractor with Trailer but does not include a Tractor, Bus, Truck or Heavy Truck;

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

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

“Maintenance Programme” shall have the meaning ascribes to it in Clause 17.4;

“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;

“Material Breach” means a breach by either Party of any of its obligations in this Agreement which shall be deemed to have a Material Adverse Effect on the Project and which it shall have failed to cure within the Cure Period.

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

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

“MSRDC” means Maharashtra State Road Development Corporation Limited, Mumbai, a Government of Maharashtra undertaking incorporated under the Companies Act 1956.

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

“MSRDC Representative” means such person or persons as may be authorized in writing by MSRDC to act on its behalf under this Agreement and shall include any person or persons having MSRDC to exercise any rights or perform and fulfill any obligations of MSRDC under this Agreement;

“Negative Grant” shall have meaning set forth in sub clause 25.4.

“Net Cash Flow” means in any Accounting Year revenue income less tax payments, O & M Expenses, Concession Fee, Negative Grant and Debt Service Payments to Senior Lenders.

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

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

“O&M” means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Toll / 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 MSRDC, 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) premium 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;

“Operations Period” means the period commencing from the Project Completion Date and ending on the Transfer Date;

“PCU” shall have the meaning ascribed to a passenger car unit in the Indian Road Congress Publication No. IRC-106, 1990 or any substitute or modification thereof, and when used in this Agreement, shall include only motorized vehicles liable to payment of user charges at the Toll Plaza [s] in accordance with the Toll / Fee Notification and the Exempted Vehicles specified therein, but does not include Tractors, Tractors with Trailer, 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;

“Private Sector Company” means a company in which 51% or more of the subscribed and paid up equity is owned and controlled by a private entity;

“Project” means Implementation of Integrated Road Development Programme (IRDP) in the City of Kolhapur comprising the development, design, financing, procurement, engineering, construction, operation, maintenance and transfer of the Project roads 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 (Article 2), but doesn't include development of lease hold plot admeasuring 30,000 sq.m in Timber Market in KMC limits.

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, Tolling Contract, and any other agreements or contracts that may be entered into by the Concessionaire with any person in connection with matter relating to, arising out of or incidental to the project, but does not include the Escrow Agreement and the Substitution Agreement;

“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, approaches to bridges and flyovers, road over bridges, drainage works, lighting facilities, traffic signals, sign boards, Kilometre stones, toll plazas, equipment for collection of tolls or relating to regulation of traffic, electrical systems, communication systems, software for toll collection, surveillance equipment and equipment for the project, rest areas, monitoring and maintenance depots, relief centres, administrative offices, service facilities etc;(c) The Project Facilities situated on the Site (d) all design, drawings, plans, sketches, graphs, models, construction information and other materials used, prepared or to be prepared by or on behalf of Concessionaire, any books and records (including operation and maintenance manuals, health and safety manuals and other know-how) and any intellectual property rights; (e) all rights of the Concessionaire under the Project Agreements; (f) financial assets, such as receivables, security deposits etc; (g) insurance proceeds; and (h) Applicable Permits and authorizations relating to or in respect of the Project, but does not include Additional Facilities;

“Project Completion” shall have the meaning ascribed thereto in Clause 14.1;

“Project Completion Schedule” means the progressive Project Milestone set forth in Schedule 'G' for the realization of the Project Roads complete in all respects by the Scheduled Project Completion Date.

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

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

“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;

“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;

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

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

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

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

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

“Scheduled Project Date” shall have the meaning set forth in Clause 12.4.1;

“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 assigns, 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 Project Cost and who hold *pari passu* charge on the assets, rights, title and interest of the Concessionaire;

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

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

“SPV”- “Special Purpose Vehicle” means Project Company formed under Companies Act 1956 by Consortium, before entering into Concession Agreement.

“State” means the **“State of Maharashtra”** and **“State Government”** means the Government of Maharashtra;

“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

“S.E. or Superintending Engineer” means Superintending Engineer of MSRDC.

“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:

the principal amount of debt provided by lenders or the Concessionaire for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

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 lenders and/or the Concessionaire, it shall 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 Toll / 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, during the first Accounting Year after the Project Completion Date, to be revised for each subsequent year to reflect the variations in WPI occurring between the Project Completion Date and commencement of such Accounting Year, and (b) Debt Service in such Accounting Year, but excluding any interest paid by MSRDC under clause 34.7.2 or 35.2;

“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 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;

“Tender Notice” shall have the meaning set forth in Recital ‘D’

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

“Termination 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.

“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 MSRDC 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 date of Termination payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from the Project Completion Date, the Concessionaire shall notify to MSRDC, the Total Project Cost as on the Project Completion Date 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 MSRDC, Equity shall be deemed to be the product arrived at by subtracting Debt Due from Total Project Cost;

“Tests” means the test set forth in Scheduled-I to determine the completion of the Project in accordance with the provisions of this Agreement;

“THE PAYMENT” means payment of Rs. 25 crores to be made by the Concessionaire in accordance with sub clause 4.1.3(i) of Concession Agreement, Volume-II.

“Toll” means the charge levied on and payable for a vehicle using the Project or part thereof, in accordance with the Fee (Toll) Notification and this Agreement.

“Toll Plaza” means the structures and barriers erected on the Project Roads for the purpose of regulating the entry and exit of vehicles in accordance with the provisions of this Agreement and shall include all adjacent Areas, buildings, equipment, and other facilities required in accordance with or incidental to the provisions of this Agreement;

“Tolling Contract” means the contract, if any, entered into by the Concessionaire with the Tolling Contractor for collection of Toll / 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, as set forth in the Financial Package;
- b. the actual capital cost of the Project upon completion of the Project; and
- c. a sum of Rs.2200.00 Million (Rupees Two thousand two Hundred point Zero Million,);

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;

“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

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

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

“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 goods carrier with a Gross Vehicle Weight exceeding 12,000 (twelve thousand) kilograms and includes a road roller, but does not include a Heavy Truck;

“User” means a person who travels on the Project or any part thereof in/on vehicle;

“V.C. & M.D.” means Vice Chairman and Managing Director of MSRDC.

“**Vesting Certificate**” shall have the meaning set forth in Clause 38.3; 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 deems otherwise, be construed as a reference to the WPI published for the period ending with the preceding month.

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, heading 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**” 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**” shall be construed accordingly.
- g) any reference to any period of time shall mean a reference to that according to Indian Standard Time.

- h) any reference to day shall mean a reference to a calendar day'
- i) references to a **“business day”** shall be construed as a reference to a day (other than a Sunday) on which banks in Mumbai are generally open for business;
- j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- k) reference 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;
- l) 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;
- m) the words importing singular shall include plural and vice versa.
- n) references to any gender shall include the other and the neutral gender;
- o) **“lakh”** means a hundred thousand (100,000) and **“crore”** means ten million (10,000,000);
- p) **“Indebtedness”** shall be construed so as to include any obligation (whether incurred as principal or surety) for payment or repayment of money, whether present or future, actual or contingent;
- q) 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;
- r) any references, 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 MSRDC hereunder or pursuant hereto in any manner whatsoever.

- s) 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 Consultant 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 Consultant, as the case may be, in this behalf and not otherwise;
- t) 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;
- u) 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; and
- v) 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**”)
- w) Terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein and the terms and words defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to MSRDC and/or the Independent Consultant shall be provided free of cost and in three copies, and if MSRDC and/or the Independent Consultant 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 and Errors/Discrepancies

1.4.1 This Agreement, and all other agreements and documents forming part of 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 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;
i.e., the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 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 the written description on the drawings and the specifications and standards the latter shall prevail'
- d) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- e) between any value written in numerals and that in words, the latter shall prevail.

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:

- 2.1.1 The Project shall be executed on the Site, which is described in Schedule ‘A’ of this Agreement. The scope of the Project shall include performance and execution by the Concessionaire of all design, engineering, financing, procurement, construction, completion, operation and maintenance of the Project Roads as described in Schedule ‘B’ and Schedule ‘C’ of this Agreement. It shall include Improvement, O&M and Toll collection in the City of Kolhapur in Maharashtra” in accordance with the Specifications and Standards set forth in Schedule ‘D’ and operation and maintenance thereof in accordance with Schedule ‘L’. It shall also include the performance and fulfilment of other obligations by the Concessionaire under this Agreement.
- 2.1.2 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, MSRDC hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority during the subsistence of this Agreement to construct, operate and maintain the Project (as detailed in Schedule B) (the “**Concession**”) for a fixed Concession period of 30 (thirty) years commencing from the Appointed Date and the Concessionaire hereby accepts the Concession and agrees to implement the Project in accordance with the terms and conditions set forth herein:
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as they case may be) the Concessionaire to:
- a) Right of Way, access and licence to the Site to the extent conferred by the provisions of this Agreement;
 - b) design, finance and construct the Project;
 - c) manage, operate and maintain the Project and regulate the use thereof either by itself or through third parties;
 - d) demand, collect and appropriate Fee (Toll) from vehicles and persons liable for payment of Fee / Toll for using the Project or any part thereof and refuse entry of any vehicle if the Fee / Toll due is not paid.
 - e) refuse entry of any vehicles to the Project if any vehicle has more than standard axles and stipulated by the Independent Consultant.
 - f) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
 - g) 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.
 - h) not 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 nor transfer, lease or part possession therewith, save and except as expressly permitted by this Agreement or the Substitution Agreement.
 - i) waiver of payment of octroi on any construction equipments, materials (electrical & civil and ancillary items), required for the project during construction.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 10, 24, 34, 44, and 47, 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**”).
- 4.1.2 The Concessionaire may, upon providing the Performance Security to MSRDC in accordance with Article 9, within 30 (thirty) days from the date of this Agreement or on an earlier day acceptable to MSRDC, by notice require MSRDC to satisfy any or all of the Conditions precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period as may be specified therein, and the obligations of MSRDC hereunder shall be deemed to have been performed when MSRDC shall have:
- (a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1; provided that the conditions set forth in Clause 10.3.2 shall be satisfied on or prior to the Appointed Date;
 - (b) rendered necessary assistance in procuring approval of the Railway authorities in the form of a General Arrangement Drawing (GAD) (proposed by Concessionaire) that would enable the Concessionaire to construct road over bridges at level crossings on the Project Road in accordance with the specifications and standards and subject to the terms and conditions specified in such approval.
 - (c) procure for the Concessionaire in getting the land admeasuring 30,000 sqm from KMC on lease for commercial exploitation, proposed by KMC as specified in T.R.S.. No. 19(part), 20 (part), 22 (part), 23 (part), 24 (part), 30 (part), 37 (part) indicated in Schedule-W, on lease for a period of 99 years for Commercial purposes, to meet project cost partially
- 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) procured execution of the Escrow Agreement;
 - (b) procured execution of the Substitution Agreement;

- (c) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (d) provided Performance Security to MSRDC, form SPV and sign the Concession Agreement;
- (e) executed the Financing Agreements and delivered to MSRDC 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (f) delivered to MSRDC 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 M S Excel version or any substitute thereof, which is acceptable to the Senior Lenders.
- (g) delivered to MSRDC 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 MSRDC a legal opinion from his legal counsel with respect to KMC (the Confirming Party) and MSRDC (the Implementing Party) to enter into this Agreement and the enforceability of the provisions thereof:
- (i) made "THE PAYMENT" of Rs.25 (Twenty Five) crores to MSRDC as given below:

Rs.10 (Ten) crores to be paid to MSRDC within 30 days of Financial Close	}	Condition Precedent
Rs.5 (Five) crores to be paid to MSRDC within 120 days of Financial Close		

Rs.10 (Ten) crores to be paid to MSRDC within 360 days of COD.

Provided that upon request in writing by the Concessionaire, MSRDC may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3.

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 co-operation 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 MSRDC

In the event that (i) MSRDC 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 in this Agreement, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure. MSRDC shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.01% (zero point zero one per cent) of the Bid Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 1% (One percent) of the Bid Security, alternatively or MSRDC/KMC may decide to reduce the scope of work proportionally in lieu of such payment.

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 cost and expense procure finance for and undertake the design, consulting, procurement, construction, operation and maintenance of the Project 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 Without prejudice to Clause 5.1.1 and 5.1.2 above, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 Without prejudice to Clauses 5.1.1, 5.1.2 and 5.1.3 above, the Concessionaire shall, at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the following:
- (a) make, or cause to be made, necessary applications to the relevant Governmental Agencies with such particulars and details, as may be required for obtaining all Applicable Permits (other than those set forth in Clause 4.1.2 above) and obtain 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;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) ensure and procure that his competent Design Consultant complies with all applicable (latest) design standards and gets proof checked from the competent Design Engineer approved by MSRDC/IC, for the components of the work as specified in Schedule-B.
 - (e) 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;

- (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, co-operate with and facilitate MSRDC in the implementation and operation of the Project in accordance with the provisions of this agreement; and
- (i) transfer the Project to MSRDC/IC upon termination / fulfilment of this Agreement, in accordance with the provisions thereof.
- (j) hand over the construction of ROB in Railways land to Railway Authorities at his cost, if required.
- (k) to construct the premises to be let out/out right sale for commercial purposes on ownership for 99 years to raise fund for speedy completion of the project from the leasehold land earmarked by KMC as specified in Schedule-W.
[construction as per the provisions of KMC's Bye-Laws]
- (l) to make payment of Rs.5* lakhs in advance per month during construction period and Rs.2* lakhs per month towards supervision and monitoring during operation period till completion/ termination of Concession to MSRDC.
[*Amount shall be increased as per WPI during Concession Period]

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 MSRDC/IC the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and MSRDC/IC shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) 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 MSRDC/IC 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 any failure or omission of MSRDC/IC to review and/or comment hereunder shall

not be construed or deemed as acceptance of any such agreement or document by MSRDC/IC

5.2.3 The Concessionaire shall not make any replacement or amendments to any of the Financing Agreements without the prior written consent of MSRDC/IC if such replacement or Amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on MSRDC/IC, 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 MSRDC/IC.

5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle MSRDC/IC to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension.

5.3 Obligations Relating to Change in Ownership

The Concessionaire shall not undertake or permit any change in Ownership, except with the prior written approval of MSRDC/IC

5.4 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 MSRDC/IC be or become directly or indirectly engaged, concerned or interest in any business other than as envisaged herein.

5.5 General Obligations

The Concessionaire shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation or substitution of any of its obligations elsewhere set out in this Agreement, the following:

- (1) inspect, investigate, study, design, construct, finance, operate, monitor, maintain and transfer the Project Assets/Project Facility in accordance with the provisions of this Agreement, Good Industry Practice and Applicable Laws and handover the Project at the end of the Concession Period or upon termination of this Agreement in accordance with the terms and conditions of this Agreement;
- (2) undertake the design, construction and financing of the Project in accordance with this Agreement including but not limited to **Schedule-D [Specifications & Standards]**, **Schedule-H [Contractual Drawings]**, **Schedule-I [Tests]** and **Schedule-L [Safety Requirements]**;

- (3) operate, monitor and maintain the Project at all times in conformity with this Agreement including but not limited to **Schedule-D [Specifications & Standards]**, **Schedule-K [Maintenance Requirements]** and **Schedule-L [Safety Requirements]** and good industry practice.
- (4) implement the Quality Management System in line with **Schedule-D [Specification and Standards]**.
- (5) obtain and keep in force all Applicable Permits in conformity with the Applicable Laws and be in compliance with thereof at all times during the Concession Period;
- (6) achieve Financial Closure as per **Article-24 [Financial Close]** and notify to MSRDC/IC forthwith the occurrence of Financial Close;
- (7) the Concessionaire shall give MSRDC/IC not less than 30 (thirty) days written notice prior to entering into, amending or modifying or replacing any Project Agreement. The Concessionaire shall submit to MSRDC/IC the drafts of the Project Agreements including in particular the EPC Contract, the Financing Documents, the OM&M Contract and the Tolling Contract for its review and in case of any amendment, modification or replacement the drafts of the proposed amendment and/or modification or replacement so as to enable MSRDC/IC to provide its consent or offer its comments, if any, in respect thereto. MSRDC/IC shall have the right but not the obligation to provide its comments and observations within 30 (thirty) days of the receipt thereof by MSRDC/IC. If any comments or observations are made by MSRDC/IC, the Concessionaire shall duly consider and give effect to all such comments or observations. Notwithstanding anything contained herein, any such comments/ observations by MSRDC/IC on any Project Agreements or the proposed amendment or modification or the failure to provide such comments shall not relieve or absolve in any manner whatsoever the Concessionaire of its obligations, duties and liabilities under this Agreement nor shall it make MSRDC/IC and/or Independent Consultant liable to the Concessionaire in any manner whatsoever and shall be without prejudice to the rights of MSRDC/IC hereunder. Further, if any such execution, amendment, modification or replacement has the effect of increasing the Total Project Cost or the OM&M Expenses beyond the maximum limit set forth in this Agreement or has the effect of binding MSRDC/IC in any way or manner, such execution, amendment, modification or replacement shall not be binding on MSRDC/IC nor shall it be considered or taken into account in any way or manner for the purposes of either Party's rights and obligations under this Agreement unless expressly agreed to by MSRDC/IC.
- (8) ensure that performance security is kept always in full force during entire period of concession.

- (9) ensure and procure that each Project Agreement contains provisions that entitle MSRDC/IC to step into such agreement in its discretion in place and substitution of the Concessionaire in the event of Termination of this Agreement on account of default or breach by the Concessionaire;
- (10) remove promptly from the Project all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including without limitation accident debris) and shall keep the Site of the Project in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits;
- (11) procure and maintain in full force, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- (12) provide all assistance to the Independent Consultant as it may require for the performance of its duties and services;
- (13) provide to MSRDC/IC all reports on regular basis during the Construction Period and the Operations Period in the form and manner set forth in this Agreement and **Schedule-D [Specifications and Standards]**.
- (14) obtain and maintain in force on and from the Appointed Date all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- (15) acquire such land, as the Concessionaire may deem at his risk and cost appropriate for the Additional Facilities and to indemnify and save harmless and defend, MSRDC/IC, and GOM from and against all proceedings, claims, demands, costs, expenses, losses and damages arising out of or relating to the securing of rights to use such land by the Concessionaire or any person claiming through or under the Concessionaire;
- (16) undertake Debt Service Payments in accordance with the Financing Documents;
- (17) levy and collect Toll from users of the Project at the rates set forth in the Toll Notification and in accordance with this Agreement and regulate the traffic on the Project in accordance with the Applicable Laws;
- (18) appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements as may be necessary;
- (19) take all reasonable precautions for the prevention of accidents on or about the Project and provide all reasonable assistance and emergency medical aid to accident victims;

- (20) make its own arrangements for quarrying, and observe and fulfill the environmental and other requirements under the Applicable Laws and Applicable Permits at Concessionaire's own cost and expense;
- (21) not claim or demand possession or control of any roads, structures or land which do not form part of the Project;
- (22) after receiving vacant possession of the Site or part thereof, ensure that such Site remains free from all encroachments and take all steps necessary to remove encroachments, if any
- (23) make payment to Police department or any Government Agency, if required, for provision of such services as are not provided in the normal course or are available on payment;
- (24) indemnify MSRDC/IC against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Concessionaire in connection with the performance of its obligations under this Agreement; and
- (25) comply with the Divestment Requirements and hand over the Project to MSRDC/IC upon Termination of the Agreement.
- (26) ensure free and smooth flow of traffic along Project.
- (27) during the Concession Period, the Concessionaire shall be responsible for maintaining the Site at its own cost and expense.
- (28) the Concessionaire shall, at all times, afford access to the Site to the authorized representatives of MSRDC/IC, Senior Lenders, and the Independent Consultant and to the persons duly authorized by any Governmental Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within MSRDC and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose for which such persons have gained such access to the Site.
- (29) hand over properly the Project to MSRDC at the Termination Date

5.6 Obligations of the Concessionaire During Pre-Construction Period

The Concessionaire shall, before commencement of construction of the Project:

- i. submit its design and construction time schedule and shall formulate and provide CPM/PERT charts to achieve Project Completion on or before the Scheduled Project Completion Date to MSRDC within 15 (Fifteen) days of the date of this Agreement with due regard **Schedule-G [Project Completion Schedule]**;
- ii. finalise the design and detailed engineering basis;
- iii. have requisite organization and designate and appoint a Project Manager, Quality Manager and such other managers, officers and representatives as it may deem appropriate to supervise the Project and to deal with MSRDC Representative and be responsible for all necessary exchanges of information required pursuant to this Agreement; and
- iv. undertake, do and perform such acts, deeds and things as may be necessary or required to adhere to the Project Completion Schedule for construction of the Project and to achieve Project completion under and in accordance with this Agreement.
- v. provide and maintain an adequately equipped field laboratory as required for the Site control on the quality of materials and the Construction Works.
- vi. 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 MSRDC and the Independent Consultant for review and comments.
- vii. by forwarding the Drawings for review and comment to Independent Consultant, the Concessionaire represents that it has determined and verified that the design including field construction criteria related thereto is in conformity with the Specifications & Standards and quality set forth in this Agreement for and in respect of the Project.
- viii. within 30 (thirty) days of the receipt of the Drawings, Independent Consultant shall review the same and convey its comments/observations to the Concessionaire with particular reference to the conformity or otherwise with the Specifications and Standards set forth in this Agreement. It is expressly agreed that notwithstanding any review and comment/ observations of Independent Consultant on any Drawings or failure of Independent Consultant to provide comments/ observations thereon, Independent Consultant / MSRDC shall not be liable for the same in any manner whatsoever and the Concessionaire shall remain solely responsible for and shall not be relieved or absolved in any

manner whatsoever of its obligations, duties and liabilities as set forth in this Agreement. The Concessionaire shall not be obliged to await the comments/observations of Independent Consultant on the Drawings submitted pursuant hereto beyond the period set forth hereinabove.

- ix. If the comments/observations of Independent Consultant indicate that the Drawings are not in conformity with the Specifications and Standards set forth in this Agreement, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to Independent Consultant for review, observations and comments. Independent Consultant shall give its observations and comments, if any, within 15 (fifteen) days of the receipt of such revised Drawings provided, however, that any observations or comments of Independent Consultant or failure of Independent Consultant to give any observations or comments on such revised drawings shall not relieve or absolve the Concessionaire of its obligation to conform to such Specifications and Standards.
- x. The Concessionaire shall be responsible for delays in Project Completion Schedule caused by reasons of any Drawings not being in conformity with the Specifications and Standards, and the Concession Period shall not be extended in any manner whatsoever on account of submission or revision of any Drawings.

5.7 Obligations of the Concessionaire during Construction Period

The Concessionaire shall,

- i. Undertake Geotechnical investigation as per IRC codal requirements, to provide the pavement design before construction. The Concessionaire will prepare GAD for ROB, obtain approval to GAD, Structural Design of ROB falling in Railway corridor, carry out the work under supervision of railway authorities. MSRDC will provide necessary assistance in obtaining the clearances. The scrutiny charges, Design Consultancy charges, proof checking fee to approved proof consultant of Railway necessary statutory fees/deposits as well as maintenance charges for railway portion for entire period as desired by Railway Authorities shall be paid by the Concessionaire.

Responsibility to obtain timely approval of all drawings of ROB from Railway Authorities shall lie with the Concessionaire.

- ii. operate and maintain the Project Facility at desired Level of Service appropriate to traffic volume at all times in conformity with this condition including but not limited to the Specifications and Standards set forth in this agreement and as per Maintenance and operation requirements and Good Industry Practice.

- iii. submit to MSRDC/IC with due regard to Project Completion Schedule and Scheduled Project Completion Date its design, and construction time schedule and shall formulate and provide Critical Path Method (CPM)/ Project Evaluation and Review Technique (PERT) charts for the completion of the said activities;
- iv. construct, provide and maintain a furnished (with electric equipments, computer etc.) accommodation, with communication for MSRDC/IC for the management of the project;
- v. shall be responsible for ensuring that any existing utility on, under or above the Project Site is kept in continuous satisfactory use, if necessary by the use of suitable temporary or permanent diversions.
- vi. various utility agencies carryout repair work. During the repair work or in emergencies such as damages to chambers or covers etc, which become a traffic hazard, the Concessionaire shall promptly undertake to provide safety measures such as temporary barricades, warning signs, lights, cones etc and maintain these till such hazard is removed.
- vii. to maintain the areas affected by leakages as well restore the surfaces and to maintain the road till shifting of water pipe line is done.
- viii. To carry out all restoration work due to shifting without any extra cost before strengthening / concreting work.
- ix. shall be responsible for providing additional works and services on or about the Project and within the jurisdiction of the Project which are beyond the Scope of the Project as contemplated by this Agreement under Change of Scope at his cost.
- x. shall bear all costs and changes for special or temporary rights of way required by it in connection with access to the Project Facility. The Concessionaire shall obtain at its cost such facilities on or outside the Project Site as may be required by it for the purposes of the Project and the performance of its obligations under these Conditions of Concession Agreement.
- xi. shall be responsible for identifying and shifting all the utilities along or across the Project at his risk and cost with the supervision and to the standards of the concerned departments / authorities
- xii. Within 90 (ninety) days of the COD, the Concessionaire shall furnish MSRDC/IC with "as built" Drawings reflecting the Project as actually designed, and constructed, including without limitation an "as built" survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

- xiii. During the Construction Period, the Concessionaire shall be responsible for maintaining the Site including the existing lanes of the Project Roads at its own cost and expense. During this period, the Concessionaire shall modify, repair or otherwise make improvements to the existing lanes before expiry of six months from the Appointed Date so that the existing lanes comply with requirements provided in Schedule 'L' and at least 2 (two) lanes of the Project Roads are ordinarily open to traffic at all times. The Concessionaire shall promptly undertake all such repairs and maintenance works as may be necessary to keep the Project Roads traffic-worthy and safe during the Construction Period.

5.8 Concessionaire's Obligation during Maintenance Period

The Concessionaire shall,

- i. carryout all command and control functions including control and monitoring of all subordinate organizations, development of maintenance programme for the Concession period, study the relevance of activities that are being carried out, preparation of proposal for safety.
- ii. monitor inspection programme
- iii. prepare programme for repairs of damages
- iv. make payment of all electricity, water used by the Concessionaire and other charges (except energy consumed by street lights, high masts, garden lamp and decorative lamps illumination).
- v. prepare daily work reports
- vi. maintain at all times during the maintenance activities safety of the moving traffic, workers engaged in the operation
- vii. take special precaution during the night operations and to maintain adequate lights, reflectors as specified,
- viii. maintain cleanliness as specified,
- ix. report promptly such damages which needs urgent attention of MSRDC/IC and which are potential threat to the traffic and to take necessary steps for traffic safety.
- x. maintain security on the project facility.
- xi. carry out any other repair works in case of emergency
- xii. maintain adequate number of equipments, machinery, plant, vehicles for the activity
- xiii. maintain the existing structures of the Project and to repair / replace / reconstruct the structures if required during the Concession Period.
- xiv. observe and comply with its all obligations set fourth in this Agreement.
- xv. replace electric bulbs when fused, on all electric poles erected on the project roads.
- xvi. Concessionaire shall deposit Rs. 3 (three) Crore in the form of Bank Guarantee, after completion of the work towards maintenance and shall be renewed after every 5 (five) years. If Concessionaire fails to maintain any component of work then MSRDC will carry out the work at the risk and cost (actual maintenance cost + 20%) of the Concessionaire by encashing the Maintenance Guarantee.

5.9 Concessionaire's obligations for collection of Toll

- i. to construct toll plaza of standard specified in Vol III.
- ii. to issue receipt for the amount of toll collected to vehicle operator in the form prescribed by MSRDC/IC
- iii. to arrange collection of toll efficiently in such a manner that the traffic at the said site is not unreasonably detained resulting in blocking up of traffic and there shall be no complaints from travellers about undue waste of time or detention of vehicles for more time than due or exertion.
- iv. to use the toll station for the purpose of collection of toll only and for no other purpose whatsoever and to protect, preserve and maintain it.
- v. to collect and submit data of exempted vehicles in the form prescribed by MSRDC/IC on request of MSRDC/IC.
- vi. upon expiration or termination of Concession to hand over peaceful possession of the toll stations including all machinery and toll collection equipments, fixture & fittings etc to MSRDC/IC in the same condition in which it was used during concession period by the Concessionaire.
- vii. to make the necessary arrangement for lighting to ensure proper working of the toll station and traffic near by it.
- viii. to make provision of own electric arrangement and electric lighting etc. in sufficient numbers including all expenses required therefore for the entire period of the Concession for Toll Plazas.
- ix. to pay punctually the electricity charges payable in respect of consumption of electricity at the toll station
- x. to replace at his cost bulbs and tubes in the toll station.
- xi. to make his own arrangement for water supply and sanitary arrangements required for his staff etc. at his own cost.
- xii. not to make or retain any secret profit or margin during collection of toll. To return balance, if any, in the form of currency notes, coins and not to retain it at all.
- xiii. to permit the officers duly authorized by MSRDC/IC on its behalf any time or times during the subsistence of this Contract to enter upon any part of the toll station for the purpose of inspection.

- xiv. to give all required information and inspection of records to the officers of MSRDC/IC regarding the collection of toll, if asked for.
- xv. in all respect to carry out and observe the directions that may from time to time be given to him by the Officers of MSRDC.
- xvi. to exhibit at a place to be indicated by MSRDC/IC in the vicinity of the said project, boards of such size and design as may be prescribed in the Contract by MSRDC/IC on which the rates at which tolls have been levied on the said sections of roads and conditions of levy are written and to preserve and take care of such boards at his cost.
- xvii. to comply with provisions of the Bombay Motor Vehicles Tax Act 1958 (Bom LXV of 1958) and rules made there under and any other law .
- xviii. to maintain all electronic and electric equipments and computers in good working condition till the entire period of agreement.
- xix. to replace spare parts of electrical and electronic equipments at his own cost for the equipments supplied by MSRDC/IC.
- xx. to provide such uniform, to the persons engaged in toll collection work at toll plazas as approved by MSRDC/IC

5.10 Concessionaire's Obligation Towards Providing Facilities to MSRDC/ Independent Consultant

- 5.10.1 The Concessionaires shall provide (within 30 days of Financial Close) and maintain following facilities to MSRDC/ Independent Consultant and KMC for co-ordination and effective management of the Project during entire period of Concession:
- One no. Vehicle with Driver inspection vehicle of AC Honda City/AC Esteem or equivalent. The vehicle shall be brand new. The Concessionaire shall bear the cost of procurement, operation and maintenance charges of the vehicle limited to 3000 km. per month. The Concessionaire shall replace the vehicles by similar or superior make after every 5th year during the Concession Period.

ARTICLE 6

OBLIGATIONS OF MSRDC

6.1 Obligations of MSRDC

- 6.1.1 MSRDC 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 MSRDC 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 the Applicable Laws, provide all 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, assist 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 the Project 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; (except on the property developed for commercial use on the land leased as specified in Schedule-W)
 - e) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Project;
 - f) assist the Concessionaire in procuring Police assistance for regulation of traffic, removal of trespassers and security of Project;
 - 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; and

- h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement.
- i) provide commercial plot admeasuring 30,000 sq. m. as given in Schedule W.
- j) waiver of payment of octroi on any construction equipments, materials (electrical & civil and ancillary items), required for the project during concession period.
- k) provide No Objection Certificate (NOC) for getting Electricity, Telephone and Water Supply, etc., connections from Appropriate Department.
- l) provide RCC design to the Concessionaire
- m) approval for design and other necessary sanctions at MSRDC's cost.
- n) to pay to the Railway deposits for approval of ROB work
- o) shall give advertisement rights on street light poles, bus shelters, overhead gantries and rent out or use the utility ducts that will be constructed/provided along the roads for laying cables, OFC etc. during the Concession period.

6.2 Confirmation by KMC

The KMC agrees to perform the followings:

- i. KMC will provide 30,000 sq. m of land in the Timber market area on lease to Concessionaire for a period of 99 years, for commercial purpose.
- ii. KMC shall act its own cost remove/rehabilitates the project affected households and shall make available encumbrance free land required for the IRDP, Kolhapur.
- iii. KMC will render the necessary Technical and other assistance, if required, by MSRDC or Concessionaire during execution of the IRDP, Kolhapur without any charges whatsoever.
- iv. KMC shall not levy octroi on any construction equipments, materials (electrical and civil) and ancillary items required for IRDP, Kolhapur.
- v. The KMC shall extend all co-operation as is within its powers for diversion and regulation of traffic, closure of roads, establishments of toll stations at all

approved locations, fixing caution boards regarding traffic diversion, etc., as may be required to facilitate improvement/construction of various works of IRDP Kolhapur.

- vi. Payment of Electrical charges in respect of street lights shall be the sole responsibility of the KMC at all times.
- vii. KMC undertake to discharge financial liabilities, if any, arising out of this Concession Agreement signed between MSRDC and the Concessionaire for the implementation of IRDP, Kolhapur as agreed in agreement dated 14.02.2008 signed between the MSRDC and KMC and further all financial liabilities that may arise in implementation of this project will be exclusively borne by KMC.
- viii. KMC shall provide hindrance free and obstruction free land/roads during construction and shall provide hindrance free and obstruction free atmosphere in collection of toll, otherwise the entire responsibility of payment of damages, compensations, claims etc., arising from any events including force majeure events will that be exclusively of KMC, and not MSRDC at all. This responsibility may be discharged by KMC by payment of compensation and/or grant of suitable and proportionate extension of concession period as may be mutually agreed between MSRDC and the concessionaire subject to approval of GOM.
- ix. KMC will be responsible for day-to-day cleaning and sweeping of roads, footpaths, drains etc., completed by the Concessionaire during the Concession period.
- x. In case of grant required, which is to be given to the Concessionaire it will be given by the KMC to MSRDC not later than 15 months from the date of LOA.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to MSRDC 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 law 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 the 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 circumstances 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) [the existing promoters/Consortium Members] together with 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 the respective holding of each Consortium Member conforms to the representation made by the Consortium and accepted by MSRDC as part of the Bid, (out of 51% (fifty one percent) of its issued and paid up and subscribed capital of the Concessionaire the lead member shall hold not less than 26% (Twenty Six percent) of paid up and subscribed equity share capital of the Concessionaire, the consortium member meeting Technical criteria should hold not less than 10% (ten percent) of the issued and paid up and subscribed equity share capital of the Concessionaire during construction period and 2 (two) years following COD) and that no other member of the Consortium shall hold less than 7.5% (seven point five percent) of such Equity during the Construction period; and 2 (two) years following COD.
- l) [the Consortium Members and 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) [each Consortium Member] is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested MSRDC to enter into this Agreement with the Concessionaire pursuant to the Letter of Acceptance, 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 shall pass to and vest in MSRDC 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 MSRDC, 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 MSRDC or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- 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 MSRDC in connection therewith.

7.2 Representations and Warranties of MSRDC

MSRDC represents and warrants to the Concessionaire that:

- a) it has full power and the 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 action 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 the Agreement;
- d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e) there are no actions, suits or proceedings 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 default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- f) 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 MSRDC's ability to perform its obligations under this Agreement;
- g) it has complied with Applicable Laws in all material respects;

- h) all information provided by it in invitation to bid in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;
- i) it has the right, power and the authority to manage operate the Project upto the Appointed Date;
- j) it has good and valid right to the Site, and has power and MSRDC to grant a licence, interest in respect thereto to the Concessionaire; and
- k) upon the Concessionaire paying the Concession Fee and performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful enjoyment of the Site by the Concessionaire, in accordance with the provisions of this Agreement.

7.3 Disclosure

In the event that any occurrence or circumstances 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 obligation of either Party under this Agreement.

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 Tender Notice, Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by MSRDC including that of Project 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. Save as provided in Clause 7.2, MSRDC makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and / or completeness of the information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against MSRDC 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 MSRDC 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.

ARTICLE 9 PERFORMANCE SECURITY

9.1 Performance Security

The Concessionaire shall, for the performance of its obligations hereunder during the Construction period, provide to MSRDC within 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to [Rs.11 Crores (Rupees Eleven Crores only)] 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, MSRDC shall release the Bid Security to the Concessionaire.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default MSRDC 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. 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 MSRDC 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 60 (sixty) days for remedying Concessionaire Default, and in the event of the Concessionaire not curing its default within such Cure Period, MSRDC shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 37.

9.3 Release of Performance Security

The 50% of Performance Security shall be released by MSRDC to the Concessionaire upon the Concessionaire having completed the construction of the project as per this Agreement as certified by MSRDC and provided the Concessionaire is not in breach of this Agreement. If the Concessionaire is in breach of this agreement, the Performance Security shall be continued till the COD or until the breach is cured; whichever is earlier. The balance 50% of the Performance will be retained by MSRDC till the end of Defect Liability Period, i.e. 12 (twelve) months after expiry of Concession Period.

ARTICLE 10

RIGHT OF WAY

10.1 The Site

The site of the Project shall comprise of the real estate described in Schedule-A and in respect of which the Right of Way shall be provided and granted by MSRDC 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 implementation of the Project as set forth in Schedule-A, the site shall also be construed as reference to the real estate required for operation & maintenance of the Project in accordance with the Provisions in the said Schedule.

10.2 Licence, Access and Right of Way

10.2.1 MSRDC 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 MSRDC shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of Upfront Payment, this Agreement and the covenants and warranties on the part of the Concessionaire herein, MSRDC, 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 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 right of way and the Concessionaire shall perform its obligations in a manner that the Project Roads 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 MSRDC to

terminate the Licence, upon the Termination of this Agreement for any reason whatsoever.

- 10.2.5 The Concessionaire hereby appoints MSRDC (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 License 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 MSRDC, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that (i) trees on the Site are property of the KMC, Kolhapur except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period, and (ii) mining 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 any interest in the underlying minerals on or under the Licensed Premises. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

10.3 Procurement of the Site

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, MSRDC 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 CD Works and 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 be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and legalize 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 MSRDC to the Concessionaire.

The land acquisition within Right Of Way (ROW) as per proposed DP width will be done by KMC. The land available on the day one will be handed over to the Concessionaire and the balance land will be made available within a period of 6 (six) months from LOA.

- 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, MSRDC shall have granted vacant access and the Right of Way such that the Appendix shall not include more than 20% (twenty

percent) of the total area of the Site required and necessary for the Project, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, MSRDC / KMC shall be liable to payment of Damages in accordance with the provisions of Clause 4.2.

- 10.3.3 On and after signing the memorandum 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 MSRDC and undertake its prompt removal at the Concessionaire's cost and expenses.
- 10.3.4 MSRDC/KMC shall make best efforts to provide and grant 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.5/- (Rupees Five only) per day for every 1,000 (one thousand) square meters or part thereof, commencing from 91st (ninety first) day of the Appointed Date and until such Right of Way is procured or in lieu of such payment of such sum MSRDC may decide to reduce the scope of work proportionately.
- 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 Consultant 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 Land for which Right of Way is granted within 90 (ninety) 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 MSRDC continues to pay the Damages specified herein, and upon MSRDC 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.
- 10.3.6 The Concessionaire shall, if so required by MSRDC, procure on behalf of MSRDC, on the terms and to the extent specified by MSRDC, the additional Land required for Toll plazas 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 Area shall form part of the Site and vest in MSRDC; provided that the Concessionaire may, by notice given to MSRDC no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be require MSRDC to initiate and undertake proceedings for acquisition of such Land Area under the provisions of applicable Land Acquisition Act, and MSRDC shall

take all such steps as may be reasonably necessary for such Land acquisition forthwith; provided further that the cost of such area acquired under this clause 10.3.6 shall be borne by MSRDC in accordance with the Act, provided also that the Land Area to be acquired by MSRDC hereunder 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. It is further agreed that MSRDC may, at any time after the Bid Date, suo moto acquire such land required hereunder or, if procured under the Clause 10.3.6 at its sole discretion may require to reduce the scope of work proportionately towards such payment to the Concessionaire.

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 MSRDC shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Concessionaire shall seek prior consent of MSRDC to connect any Additional Facility to the Project and such consent shall not be unreasonably withheld.

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the site shall be made available by MSRDC to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to MSRDC 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 in so far 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.

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 and the performance of its obligations under this Agreement.

10.7 Access to MSRDC and Independent Consultant

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 MSRDC and the Independent Consultant and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

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 all existing roads, right of way or utilities on, under or above the Site are kept in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with MSRDC of the controlling body of that road, right of way or utility, and MSRDC 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 MSRDC, undertake shifting of any utility including electric lines, water pipes, gas lines, drainage lines, sewer lines and telephone cables etc, to an appropriate location or alignment within or outside the Site if and only if such utility causes a material adverse effect on the construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the Concessionaire or by the entity owning such utility, if MSRDC so directs.

The Telecommunication lines and Optical Fibre Cable (OFC) shall be shifted by the Owner of such utilities. The Concessionaire may cause the phasing and execute the work in the event when VSNL and OFC utilities are not shifted by the respective owner in a reasonable time.

11.3 New Utilities and Roads

11.3.1 The Concessionaire shall allow, subject to such conditions as MSRDC 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 absolve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.3.2 MSRDC may, by notice require the Concessionaire to connect any adjoining road to the Project, and the connecting portion thereof falling within the Site as shown in Typical Drawings (Vol.III) shall be constructed at MSRDC's cost in accordance with Article 16. The maintenance of such connecting portion shall be undertaken by the Concessionaire in accordance with the provisions of Clause 17.1.3. It is agreed that

MSRDC/KMC may decide to reduce the scope of the work proportionately towards such cost.

11.3.3 MSRDC may by notice require the Concessionaire to connect, through a paved road, any other public facility or amenity to the Project, 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 Consultant. 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

MSRDC through KMC shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by MSRDC for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the Concessionaire.

11.5 Transplantation of Trees

The Concessionaire shall transplant and maintain the trees as per the stipulations of the appropriate 'Statutory Authority'. Maintenance shall be carried out by the Concessionaire as per the norms laid down by the appropriate Statutory Authority.

ARTICLE 12

CONSTRUCTION OF THE PROJECT

12.1 Obligations Prior to Commencement of Construction

Prior to commencement of Construction works, the Concessionaire shall:

- a) submit to MSRDC and the Independent Consultant 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) to appoint representative duly authorized to deal with the MSRDC in respect of all matters under or arising out of or relating to this Agreement.
- c) undertake, do and perform such acts, deeds and things as may be necessary or required to adhere to the Project Completion Schedule for construction of the Project and to achieve Project completion under and in accordance with this Agreement.
- d) make its own arrangements for quarrying 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 access to the Project so that its traffic worthiness and safety are at no time materially inferior as compared to its 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 prior written approval of the Independent Consultant which approval shall not be unreasonably withheld for the avoidance of doubt, it is agreed that the Concessionaire shall at all time be responsible for ensuring safe operation of the Project.

12.3 Drawings

In respect of the Concessionaire's obligations with respect to the Drawings of the Project 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 Consultant for review.
- b) By submitting the Drawings for review to the Independent Consultant, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and Consulting, including field construction criteria related thereto, are in conformity with the Specifications and Standards.
- c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Consultant 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 the Standards. The Concessionaire shall not be obliged to await the observations of the Independent Consultant 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 observations of the Independent Consultant 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 Consultant for review. The Independent Consultant 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 Consultant 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 Consultant or MSRDC 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 MSRDC for review and comments, its drawings relating to alignment of the Project, finished road level, location and layout of the Toll Plaza(s) within city road network and MSRDC 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.

- g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to MSRDC and the Independent Consultant 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 MSRDC, reflecting the Project as was actually designed and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

12.4 The Project

12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of Project as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The 24 months (731 days) from the Appointed Date shall be the scheduled date for completion of Project (the “**Scheduled Project Date**”) and the Concessionaire agrees and undertakes that shall be completed on or before the Scheduled Project Date.

12.4.2 The Concessionaire shall construct the Project 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 MSRDC, it shall pay damages to MSRDC in a sum calculated at the rate of 0.1% (zero point one percent) 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 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 Project Date, the Damages paid under this Clause 12.4.2 shall be refunded by MSRDC 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 MSRDC under this Agreement, including the right of Termination thereof.

No extension in Concession Period will be given on account of delay in construction of whatsoever nature and whatsoever reasons.

12.4.3 In the event that Project is not completed within 120 (One hundred twenty) days from the Scheduled Project Date, unless the delay is on account of reasons solely attributable to MSRDC or due to Force Majeure, MSRDC shall be entitled to terminate this Agreement.

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 MSRDC and the Independent Consultant a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Consultant.

13.2 Inspection

During the Construction period, the Independent Consultant shall inspect the Project 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 MSRDC 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 Consultant 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 Consultant 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 Consultant from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall normally comprise 10% (ten percent) of the quantity and/or number of tests prescribed by IRC and/or MORTH for the construction works undertaken by MSRDC 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 Consultant. 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 the 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 Consultant in this behalf. The Independent Consultant 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 Consultant forthwith.

13.4 Delays During Construction

If the Concessionaire, does not achieve any of the Project Milestones or the Independent Consultant shall have reasonably determined that the rate of progress of Construction works is such that Project is not likely to be achieved by the Scheduled Project 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 Consultant 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 Consultant to this effect, MSRDC may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction works if, in the reasonable opinion of MSRDC such work threatens the safety of the existing 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 MSRDC and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Consultant to inspect such remedial measures forthwith and make a report to MSRDC recommending whether or not the suspension hereunder may be revoked. Upon receiving recommendations of the Independent Consultant, MSRDC shall either revoke such suspension or instruct the Concessionaire to carry out such remedial measures as may be necessary in the reasonable opinion of MSRDC, 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 MSRDC, the Preservation Costs shall be borne by MSRDC. MSRDC at its sole discretion may extend the concession period proportionately against such cost.

13.5.4 If the suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Consultant shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify MSRDC accordingly whereupon MSRDC shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Consultant. In the event that the Scheduled 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 Project Date.

13.6 Video Recording

During the Construction Period, the Concessionaire shall provide to MSRDC 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 MSRDC within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

- 14.1.1 At least 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Consultant of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Consultant in consultation with the Concessionaire, and notified to MSRDC who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Consultant may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Consultant fail 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 Consultant.
- 14.1.2 All tests shall be carried in accordance with Schedule-I. The Independent Consultant shall observe, monitor and review the results of the Tests to determine compliance of the Project with the Specifications and Standards. If it is reasonably anticipated or determined by the Independent Consultant during the course of any Test that the performance of the Project 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 Consultant shall provide to the Concessionaire and MSRDC copies of all Test data including detailed Test results.

14.2 Provisional Certificate

The Independent Consultant may at the request of the Concessionaire, issue a provisional certificate of 95% completion in the form set forth in Schedule-J (the “**Provisional Certificate**”) if the tests are successful and the Project can be safely and reliably placed in commercial operation even 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 Consultant and the Concessionaire (the “**Punch List**”); provided that the Independent Consultant shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to MSRDC.

14.3 Completion Certificate

Upon Independent Consultant (IC) determining the Tests to be successful and all items in punch list completed by the Concessionaire, IC shall forthwith issue to the

Concessionaire and MSRDC a Certificate of Completion of the project in the form set forth in Schedule – J (the “**Completion Certificate**”).

14.4 Completion of Punch List Items

14.4.1 All items in the Punch List shall be completed by the Concessionaire within 60 (sixty) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to MSRDC or due to Force Majeure, MSRDC shall be entitled to recover Damages equal to Rs.200,000 (Rs.Two Hundred Thousand) per day from the Concessionaire to be calculated and paid for each day of delay until all items are completed. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 30 (thirty) days for completion of the Punch List items subject to the payment of damages equal to Rs.300,000 per day. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to MSRDC or due to Force Majeure, the completion date thereof shall be determined by the Independent Consultant in accordance with the 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 Consultant 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 MSRDC shall entitle MSRDC to terminate this Agreement.

14.5 Withholding of Provisional Certificate

If the Independent Consultant determines that the Project 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 MSRDC and the Concessionaire. Upon receipt of such a report from the Independent Consultant and after conducting its own inspection, if MSRDC is of the opinion that the Project is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Consultant to withhold issuance of the Provisional Certificate. Upon receipt of such notice the Concessionaire shall remedy and rectify such defects or deficiencies and thereon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

Notwithstanding anything to the contrary contained in Clause 14.5.1, MSRDC may, at any time after receiving a report from the Independent Consultant under that Clause, direct the Independent Consultant to issue a Provisional Certificate under Clause 14.3.

14.6 Rescheduling of Tests

If the Independent Consultant certifies to MSRDC 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)

Project shall be deemed to be complete when the Completion Certificate is issued under the provisions of Article 14, whereas the commercial operation date of the Project shall be the date on which the Provisional Certificate is issued (the 'COD').

15.2 Damages for delay

If COD does not occur prior to the 31st (thirty first) day from the Scheduled Project Date, unless the delay is on account of reasons solely attributable to MSRDC or due to Force Majeure, the Concessionaire shall pay damages to MSRDC in a sum calculated at the rate of 0.1% (zero point one percent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 16

CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 MSRDC may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are beyond the Scope of the Project as contemplated by this Agreement (“**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provision of this Article 16 and costs thereof shall be expended by the Concessionaire and reimbursed to it by MSRDC 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 MSRDC to consider such Change of Scope. MSRDC shall, within 30 (thirty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.

16.2 Procedure for Change of Scope

16.2.1 In the event of MSRDC 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 there under (the “**Change of Scope Notice**”).

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to MSRDC 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 MSRDC to its contractors, along with the premium of 5% discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by MSRDC to the extent such cost is certified by the Independent Consultant as reasonable.

16.2.3 If upon receipt of information set forth in Clause 16.2.2, MSRDC 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 Consultant, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an Agreement, MSRDC shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the implementation thereof. In the event that the Parties are unable to agree, MSRDC 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 7 (seven) days of issuing a Change of Scope Order, MSRDC/KMC 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 Consultant. The Concessionaire shall, after commencement of work, present to MSRDC 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 MSRDC to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, MSRDC shall disburse to the Concessionaire such amounts as are certified by the Independent Consultant 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. MSRDC/KMC may decide to reduce the scope of work proportionately towards the cost of the Change of Scope.

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 MSRDC/KMC in accordance with Clause 16.3.1. In the events 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 90 (Ninety) days of the Project Completion Date.

16.4 Restriction on certain works

16.4.1 Notwithstanding anything to the contrary contained in the Article 16, MSRDC shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of Project; provided that in the event that MSRDC 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 purpose of determining completion of Project 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 6 (six) months immediately preceding the date of such Change of Scope Order or if such cumulative cost exceed 20% (twenty per cent) of Total Project Cost at any time during the Concession Period.

16.5 Power of MSRDC to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.2 and 16.3, the MSRDC may, after giving notice to the Concessionaire and considering its reply thereto, award such works or services 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 MSRDC¹², 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 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.

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. 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.

¹² MSRDC shall transfer 75% (seventy five percent) of the amount so received to the first ranked bidder whose bid has been matched by the Concessionaire.

16.6 Reduction in Scope of the Project

If the Concessionaire shall have failed to complete any Construction Work on account of Force Majeure or for reasons attributable to MSRDC, MSRDC may, in its discretion, require the Concessionaire to pay 80% (eighty percent) of the sum saved there from, and upon such payment to MSRDC, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

For determining the obligation 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 MSRDC hereunder, the Concessionaire shall pay forthwith the sum specified therein.

ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligation of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project 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 to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Good Industry Practice. The obligations of the Concessionaire hereunder shall include;

- a) permitting safe, smooth and uninterrupted flow of traffic on the Project during normal operating conditions;
- b) collecting and appropriating the Toll / Fee;
- c) minimising disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project 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.
- e) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement marking, lighting, road signs and other traffic control devices;
- f) undertaking major maintenance such as resurfacing of pavements, repairs to structure, and repairs and refurbishment of tolling systems and other equipment;
- g) preventing with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- h) providing adequate security arrangements to safeguard all the project assets fixed as well as mobile;
- i) preventing with the assistance of the concerned law enforcement agencies, any encroachments on the Project; including the Refuge Areas, Toll Plazas and Dispersal areas;
- j) maintaining a public relations unit to interface with and attend to suggestion from the users, government agencies, media and other agencies.
- k) Complying with Safety Requirements in accordance with Article 18.

17.1.2 The Concessionaire shall remove promptly from the Project 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 in a clean, tidy and orderly condition and in conformity with the Applicable Laws, Applicable Permits and Goods Industry Practice.

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, connectors, interchanges, refuge lanes or other structures situated on the Site but not forming part of the carriageway.

17.1.4 The Concessionaire shall be responsible for development and maintenance of cross roads at junctions to minimum 50 metres on both sides in accordance with the good industry practice.

17.2 Maintenance Requirements

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

17.3 Maintenance Manual

Not later than 90 (Ninety) days prior to the Scheduled COD, the Concessionaire shall, in consultation with the Independent Consultant, evolve an inspection, maintenance and repair manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project in conformity with the Maintenance Requirement, Safety Requirements and Goods Industry Practice, and shall provide 5 (five) copies thereof to MSRDC and 2(two) copies to the Independent Consultant. 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.

17.4 Maintenance Programme

Not later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operating Period, the Concessionaire shall provided to MSRDC and the Independent Consultant, 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;
- e) intervals at which the Concessionaire shall carry out periodic Maintenance;
- f) arrangement 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 Consultant shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenances Requirements, Maintenance Manual and Safety Requirements.

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 condition, lane closures, diversion, vehicle breakdowns and accidents, it shall follow the relevant operating procedure 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 operation on the Project shall be limited to prompt removal of vehicles or debris or any other obstruction, which may endanger or interrupt the smooth flow or traffic.

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, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project to traffic for so long as such Emergency and consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to MSRDC without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that MSRDC may give for dealing with such Emergency.

17.6.2 The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist.

17.7 Lane closure

- 17.7.1 The Concessionaire shall not close any lane of the Project for undertaking maintenance or repair works except with the prior written approval of the Independent Consultant. Such approval shall be sought by the Concessionaire through a written request to be made at least 7 (seven) days before the proposed closure of lane and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Consultant shall grant permission with such modifications as it may deem necessary and a copy of such permission, and with such modifications as it may deem necessary and a copy of such permission shall be sent to the MSRDC.
- 17.7.2 The provision 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 Consultant 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 event of any delay in re-opening such lane, the Concessionaire shall pay Damages to MSRDC calculated at the rate of Rs.10,000 (Rs. Ten thousand) per day for every stretch of 100 (One hundred) meters, or part thereof, for each day of delay until the lane has been re-opened for traffic. These damages of Rs.10,000 per day shall be applicable in the first Operational year and shall be increased by a 6% in each subsequent operational years. Provided, however, that these provisions shall not apply to emergency decommissioning under cl.17.6.

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 MSRDC shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the highest of (a) Rs.1,10,000/- (Rs. One lakh Ten Thousand only) per day and (b) 0.1% (Zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Consultant. Recovery of such Damages shall be without prejudice to the rights of MSRDC 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 Consultant; provided that MSRDC may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and 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.

- 17.8.3 The response times for various maintenance activities are stipulated under Project Asset Deliverables and Tolerance Criteria of Schedule L. If the Concessionaire fails / defaults twice in a month, he will attract one (1) penalty point. Every such penalty point will lead to a reduction in the Concession Period by one day.
- 17.8.4 MSRDC at its sole discretion may require to curtail the Concession period proportionately if the project roads are not maintained as per the requirements set forth in this Agreement.
- 17.8.5 The Concessionaire will be given the bonus by the way of incentive if he maintains the project as per the requirements set forth in this Agreement. The package of Bonus whether one time or periodical will be at the sole discretion of MSRDC, if he does the repair and maintenance work weekly and above the general level of acceptance of such work.

17.9 MSRDC's right to take remedial measures

- 17.9.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with 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 MSRDC or the Independent Consultant, as the case may be, MSRDC 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 such 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 MSRDC as Damages.
- 17.9.2 MSRDC shall have the right, and the Concessionaire hereby expressly grants to MSRDC 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 MSRDC under this Clause 17.9.2 and debit the same to O&M Expenses.

17.10 Overriding powers of the MSRDC

- 17.10.1 If in the reasonable opinion of MSRDC, 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, MSRDC 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, MSRDC 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 MSRDC 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 MSRDC in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and MSRDC shall be entitled to recover them from the Concessionaire in accordance with the Provisions of Clause 17.9 along with the Damages specified therein.

17.11 Restoration of loss or damage to Project

Save and except as otherwise expressly provided in this Agreement, in the event that the Project 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 conforms to the Provisions of this Agreement.

17.12 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project to operate in conformity with the maintenance Requirements and Good Industry Practice; provided that the Concessionaire shall notify the Independent Consultant 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 Consultant may make within 15 (fifteen) days of receiving the Concessionaire for the duration thereof:

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 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 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 MSRDC or the direction of any Government Instrumentality, the effect of which is to close all or any part of the Project.

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

17.14 Barriers and Diversions

MSRDC shall procure that during the Operation Period, no barriers erected or placed by any Government Instrumentality on the Project except for reasons of Emergency, national security, law and order or collection of inter-state taxes. The MSRDC shall also make best endeavors 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 that may cause a material adverse effect on the flow of traffic to and from the Project.

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 except advertisement on Bus shelters, street light poles and over head gantries (locations as per Schedule B of Volume-II A.) 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, and no compensation shall be claimed on account thereof.

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, and shall comply with the safety requirements set forth in **Scheduled-L** (the “**Safety Requirements**”)

18.1.2 MSRDC shall appoint an experienced and qualified firm or organisation (the “**Safety Consultant**”) for carrying out safety audit of the Project in accordance with the Safety Requirement, 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, work, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Articles 16. Costs and expenses on the Project and services not covered hitherto before and arising out of Safety Requirements shall be borne out of a dedicated safety fund (the “**Safety Fund**”) to be managed and operated by MSRDC 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 MSRDC and the Independent Consultant a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirement, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Consultant.

19.2 Inspection

The Independent Consultant shall inspect the Project at least once a month. It shall make a report of such inspection (the “**O&M Inspection Report**”) starting in reasonable detail the effects 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 MSRDC and the Concessionaire within 7 (seven) days of such inspection.

19.3 Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Consultant shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The cost of such test shall be borne by the Concessionaire. 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 Consultant and furnish the results of such tests forthwith to the Independent Consultant.

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 Consultant and MSRDC 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 report of the repair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Independent Consultant 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 into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project conforms to the Maintenance requirement. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, MSRDC shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8

19.5 Monthly Fee /Toll Statement

During the Operation Period, the Concessionaire shall furnish to MSRDC, within 7 (seven) days of completion of each month, a statement of Toll / Fee substantially in the form set forth in Schedule-M (the “**Monthly Toll Collection Statement**”).

ARTICLE 20

TRAFFIC REGULATION

20.1 Traffic regulation by the Concessionaire

The Concessionaire shall regulate traffic on the Project 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.

ARTICLE 21

EMERGENCY MEDICAL AID

21.1 Medical Aid

For providing emergency medical aid during the Operation Period, as set forth in this Agreement, the Concessionaire shall keep first Aid Medical Facility available with contacts round-the-clock with Civil Hospital for victims of accidents on the Project.

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 Plazas and collect data relating to the numbers and types of vehicles using the Project. A weekly statement of such data shall be compiled and furnished forthwith by the Concessionaire to MSRDC substantially in the form specified in Schedule-N

22.2 Traffic survey

MSRDC 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 MSRDC 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 MSRDC and furnish a detailed report thereof within 15 (fifteen) days of the completion of each survey. For the avoidance of doubt, MSRDC may also conduct traffic surveys, in such manner as it deems fit, through any agency designated by it for this purpose. The cost of such traffic surveys shall be borne by the Concessionaire.

22.3 Traffic sampling

22.3.1 For determining the actual traffic on the Project, MSRDC 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 less than a continuous period of 7 (seven) days. The Concessionaire shall provide such assistance as MSRDC 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 purpose 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.

ARTICLE 23

INDEPENDENT CONSULTANT

23.1 Appointment of Independent Consultant

MSRDC shall appoint a consulting firm from a panel of 10 (ten) firms or bodies corporate, constituted by MSRDC substantially in accordance with the selection criteria set forth in **Schedule-P**, to be the Independent consultant under this Agreement (the “**Independent Consultant**”). 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 of the aforesaid period, MSRDC may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-P to be the Independent Consultant 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 Consultant shall discharge its duties and functions substantially in accordance with the terms of reference set forth in **Schedule-Q**.

23.2.2 The Independent Consultant shall submit regular periodic reports (at least once every month) to MSRDC in respect of its duties and functions set forth in **Schedule-Q**.

23.3 Remuneration

The remuneration, cost and expenses of the Independent Consultant shall be paid by MSRDC and subject to the limits set **Schedule-P**; entire such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the MSRDC within 15 (fifteen) days of receiving a statement of expenditure from the MSRDC.

23.4 Termination of appointment

23.4.1 MSRDC may, in its discretion, terminate the appointment of the Independent Consultant at any time, but only after appointment of another Independent Consultant in accordance with Clause 23.1

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

appointment of the Independent Consultant is terminated hereunder, MSRDC shall appoint forthwith another Independent Consultant in accordance with Clause 23.1.

23.5 Authorised signatories

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

23.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction of the Independent Consultant in amicable settlement by him the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE 24

FINANCIAL CLOSE

24.1 Financial Close

24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 60 (sixty) days from the date of this Agreement and in the event of delay, it shall, be entitled to further period not exceeding 30 (thirty) days, subject to payment of Damages to the MSRDC in a sum calculated at the rate of 0.1% (Zero point one per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 60 (sixty) 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 MSRDC in procuring satisfaction of the Condition Precedent specified in Clause 4.1.2 or due to Force Majeure.

24.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify MSRDC forthwith, and shall have provided to MSRDC, at least 2 (two) days prior to Appointed Date, 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 Leaders.

24.2 Termination due 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 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 24.2.1, MSRDC shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of MSRDC being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security within 30 (thirty) days without any interest.

ARTICLE 25

GRANT

25.1 Grant

- 25.1.1 The MSRDC through KMC agrees to provide to the Concessionaire Grant by way of making available any additional Land/other revenue sources, as set forth in Bid in accordance with the provisions of this Article 25.
- 25.1.2 The leasing of the above land/other revenue sources to the Concessionaire shall be reckoned as Equity Support in accordance with the Provisions of Clause 25.2.
- 25.1.3 Of the Minimum Grant Requirement indicated by the Concessionaire, the balance remaining, if any, shall be suitably adjusted with mutual agreement by reducing the scope of work suitably to adjustable the amount without altering the Concession Period.

25.2 Equity Support

- 25.2.1 Subject to the conditions specified in this Clause 25.2, the funds raised by the Concessionaire through development of the said land/other revenue sources shall be credited in 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 be equal to the sum specified in the Bid and as accepted by MSRDC, but in no case greater than the Equity, and shall be further restricted to a sum not exceeding 20% (twenty 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 be exclusive of Equity Support.
- 25.2.3 The Equity Support by way of additional land on lease shall be due and expendable by the Concessionaire after it has expended the Equity, and shall be utilized proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. MSRDC shall disburse each tranche of the Equity Support as aforesaid by credit to the ESCROW Account within 15 (fifteen) days of the release of each loan installment by the Senior Lenders to the Concessionaire provided the Concessionaire has submitted to MSRDC along with each disbursement request a certificate from its Statutory Auditors certifying the above particulars and has given at least 7 (seven) days to MSRDC for processing the request.
- 25.2.4 In the event of occurrence of a Concessionaire Default, utilization of Equity Support shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

25.3 Negative Grant

25.3.1 The Concessionaire agrees to provide to MSRDC cash payment (the “Negative Grant”) equal to the sum, if any, set forth in the financial proposal (Appendix F6-A) in the Bid of the Bidder and accepted by MSRDC, namely, Rs.27.00 crores (Rs Twenty Seven crores) in accordance with the provision of this Article 25.

25.3.2 The Concessionaire shall pay to MSRDC “the Negative Grant” proposed in its Bid as set forth below:

Time Schedule for Negative Grant	180 th day	360 th day	540 th day	Before or at COD
Negative Grant as stated in Appedix-F6-A	Rs.27 Crores	Nil	Nil	Nil

Note: The time schedule for payment of Negative Grant shall be reckoned from LOA.

ARTICLE 26

CONCESSION FEE

26.1 Concession Fee

26.1.1 In consideration of the grant of Concession, the Concessionaire shall pay to the MSRDC the following sums by way of concession fee (the "Concession Fee")

- (a) the Concession Fee from the 1st (first) anniversary of Appointed Date till expiry of the Concession Period shall be Rs.100 per annum.

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 of the Project in accordance with this Agreement and the Toll Notification set forth in **Schedule-R**; provided that for ease of payment and collection, such Fee shall be rounded off to the nearest 5 (five) rupees in accordance with the Toll Notification; 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 Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the Project as the case may be 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.

27.1.3 The Concessionaire acknowledges and agrees that any User who is not liable for payment of the Fee shall be entitled to use the Project 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 Toll Notification, inter alia, provides for annual revision in the Toll linked to the extent of variation in WPI (all commodities) as per the Toll Notification from the Base Year and hereby confirm that same and except as provided in the Toll Notification, the Concessionaire is not entitled to and shall not seek any relief whatsoever from MSRDC, GOI or GOM on account of increase or otherwise in WPI or in any other account except in accordance with the express provisions of this Agreement and as per toll notification issued by GOM.

27.2.2 The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of fee or other relief from MSRDC or any Government instrumentality, except in accordance with the express provision of this agreement.

27.3 Discounted Fee for frequent Users

The Concessionaire shall, upon request from any person, allow discounts in accordance with the provisions of the Toll Notification.

27.4 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 for compliance with the provisions of this Agreement.

27.5 Fee collection points

Fee shall ordinarily be collected at the Toll Plaza [s] situated on the Project from vehicles crossing the Toll Plaza [s] and using the whole or part of the Project; provided that for preventing evasion of Fee by any vehicle circumventing the Toll Plaza[s], and using the whole or part of the Project [located between such Toll Plazas], the Concessionaire shall be entitled to set up at its own risk and cost with prior approval of MSRDC/KMC, and in consultation with the Independent Consultant, its temporary or permanent Fee collection booths, or impose such other restrictions on entry to the Project, 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 use any part of the Project which is situated between the two Toll Plazas or use only part of the project situated on any one side of Toll Plaza. It is further acknowledged and agreed that the provisions of this Clause 27.5 shall be so enforced as to minimize inconvenience to Users who are not liable to payment of Fee.

27.6 Additional charge for evasion of Fee

In the event that any vehicle uses the Project without payment of Fee due; the Concessionaire shall, subject to Applicable Law and Applicable Permits, be entitled to determine and collect from such vehicle the Fee due and an equivalent amount towards predetermined liquidated damages for attempt to make unauthorised use of the Project; provided that the determination and collection of such Fee and liquidated damages shall be at the risk and cost of the Concessionaire and MSRDC shall not in any manner be liable on account thereof.

27.7 Display of Fee rates

27.7.1 The Concessionaire shall, at the beginning of the Project Roads and near the Toll Plaza[s], prominently display the applicable rates of Fee for information of the Users.

27.7.2 The Concessionaire shall, from time to time, inform MSRDC of the applicable Fee and 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 Notification.

27.7.3 The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Fee payable under the Fee Notification. In the event any excess amounts are collected by or on behalf of the Concessionaire, it shall, upon receiving a notice to this effect from MSRDC, refund such excess amounts to MSRDC along with Damages equal to 25%(twenty five percent) thereof.

ARTICLE 28

**REVENUE SHORTFALL LOAN
(Deleted)**

ARTICLE 29

**EFFECT OF VARIATIONS IN TRAFFIC GROWTH
(Deleted)**

ARTICLE 30

**CONSTRUCTION OF ADDITIONAL TOLL WAY
(Deleted)**

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 and 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, MSRDC, 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, including the proceeds of insurance claims;
- c) all payments (excepting the amount payable to KMC/MSRDC for additional FSI-if any permitted due to change in local regulations, & if used) received by Concessionaire from sub-lease of space in the developed commercial plot; and
- d) all payments by MSRDC, 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 there from in the month when due:

- a. all taxes due and payable by the Concessionaire;
- b. all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreement;
- c. O&M Expenses in respect to the Project, subject to the ceiling, if any, set forth in the Financing Agreements;
- d. O&M Expenses and other costs and expenses in respect of the Project incurred by MSRDC in accordance with the provisions of this Agreement, and certified by MSRDC as due and payable to it;
- e. Monthly proportionate provision of Debt Service due in an Accounting Year;
- f. Premium due and payable to MSRDC;
- g. all payments and Damages certified by MSRDC as due and payable to it by the Concessionaire.
- h. debt service 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 MSRDC

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 apportioned in the following order:

- a) all taxes due and Payable by the Concessionaire;
- b) outstanding Concession Fee;
- c) 90% (ninety percent) of Debt Due excluding Subordinated Debt;
- d) all payments and Damages certified by MSRDC as due and payable to it by Concessionaire, including repayment of Revenue Shortfall Loan;

- e) retention and payments relating to the liability for defects and deficiencies set forth in Article 40;
- f) outstanding Debt Service including the balance of Debt due;
- g) incurred or accrued O&M Expenses;
- h) outstanding Subordinated Debt;
- i) any other payments required to be made under this Agreement; and
- j) balance, if any accordance with the instruction 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 MSRDC under the provisions of Article 38.

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

31.4.3 From the date, which is two years prior to the expiry of the Concession period, a sum estimated by Independent Consultant for renewal works, shall not withstanding anything to the contrary contained in this Agreement, be retained in the Escrow Account provided that if a Bank Guarantee of an equivalent sum in the form and content acceptable to MSRDC has been furnished by the Concessionaire to MSRDC, no such retention shall be made. If following the second Inspection, it is agreed or determined that no renewal works are required, then within 14 days of such agreement, 50% of the sums thus retained shall be released from the Escrow account to the Concessionaire. Within 14 days after the issue of Vesting Certificate (in accordance with **Article-38 [Divestment of Rights and Interests]** of the Concession agreement) the sums thus retained shall be released from the Escrow account to the Concessionaire.

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 “**Insurance Cover**”). These shall include, but not limited to (A) During Construction Period: (i) Contractor’s All Risk, including design defect (ii) Workmen Compensation (iii) Construction Plant and Machinery (iv) Advance Loss of Profits and (v) Third Party Liability (vi) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (v) and (B) During Operation Period: (i) Standard Fire and Special Perils (ii) Business Interruption (iii) General Public Liability (iv) Construction Plant and Machinery (v) Accident (vi) Automobile (vii) Workmen Compensation, loss damage or destruction of the project facility replacement value (viii) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (vii). The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on MSRDC as a consequence of any act or omission of the Concessionaire during the Construction Period. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lender’s 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. This level shall be agreed with MSRDC within 120 days of the date of this agreement or within such time as may be decided by MSRDC, but not later than the financial close.

32.2 Notice to MSRDC

Not 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 MSRDC, in reasonable detail, information in respect of the insurance that it proposes to effect and maintain in accordance with this Article 32. Within 30 (thirty) days of receipt of such notice, MSRDC 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 MSRDC, notarised true copies of the certificate(s) of insurance, copies of insurance

policies and premium 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 MSRDC.

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, MSRDC shall have the option to either keep in force any such insurance, and pay such premia and recover the cost 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 there under against, inter alia, MSRDC, 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, MSRDC and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or form 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 of installation of the Project, 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 receipt (including all Realizable Fees and other revenues derived/collected by it from or on account of the Project 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, and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 60 (sixty) days of the close of the Accounting Year to which they pertain and such audited accounts shall form the basis of payments by either Party under this Agreement. MSRDC shall have a right to require copies of relevant extracts of books of accounts, duly certified 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 MSRDC 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 result 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 MSRDC, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (a) the traffic count for each category of vehicles using the Project and liable for payment of Fee therefore, (b) Fee charged and received, Realizable Fee and other revenues derived from the Project, and (c) such other information as MSRDC may reasonable 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 Accounts**”), 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 MSRDC, 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, MSRDC 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") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

33.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to MSRDC 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.

33.4 Dispute resolution

In the event of there being any difference between the finding 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 difference and if they are unable to resolve the same, such Dispute shall be resolved by MSRDC by recourse to the Dispute Resolution Procedure.

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 or plague, extremely adverse weather conditions, lightning, earthquake, Landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire 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 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 MSRDC;

- (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

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 30 (thirty) 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

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) expropriation or compulsory acquisition of any Project Assets or right of the Concessionaire or of the Contractors:
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, 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 Agreement; 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, authorization, 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

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 not 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 35.5.1, 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 the Project Completion Date, 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 the Project Completion Date, whereupon the Concessionaire is unable to collect Fee despite making best efforts or it is directed by MSRDC 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, MSRDC 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 cost 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 MSRDC to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by MSRDC 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, MSRDC 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, MSRDC 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 Equity (subscribed in cash and actually spent on the Project if such Termination occurs at any time during three years commencing from the Appointed Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in WPI during such year and the adjusted amount so arrived at shall be reduced every year by 7.5% (seven and a half per cent) per annum.

34.9.3 If Termination is on account of a Political Event, MSRDC 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 MSRDC 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 and to cure the same with due diligence. In case the Concessionaire fails to take all necessary steps to mitigate the effects of the Force Majeure Event or remedy the failure to perform, MSRDC shall not be liable to pay its portion of the Force Majeure cost under clause 34.7 or shall pay such portion of the Force Majeure Cost as it deems fit; 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

In the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to MSRDC by way of compensation, all direct costs suffered or incurred by MSRDC as a consequence of such material default, 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 breach or default in respect of which Damages are expressly specified and payable under this Agreement.

35.2 Compensation for default by MSRDC

In the event of MSRDC being in material default or breach of this Agreement at any time after the Appointed Date and such default is cured before Termination, 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 either in one lump sum within 30 (thirty) days of receiving the demand or at MSRDC's option in three equal semi-annual instalments with interest @ SBI-PLR per annum in which case the first semi-annual instalment shall be made within 30 (thirty) days as referred hereinabove. Provided that no such compensation shall be payable for any 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 default but shall not include loss of Fee revenues or debt repayment obligations, 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

In the event that a material default or breach of this Agreement set forth in Clause 35.2, MSRDC at its sole discretion may, in lieu of payment of compensation under Clause 35.2, extend the Concession Period proportionately.

35.4 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.

ARTICLE 36

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

36.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, MSRDC 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 or authorize any other person to exercise the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by MSRDC to the Concessionaire and may extend up to a period not exceeding 120 (one hundred and twenty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, MSRDC shall extend the aforesaid period of 120 (one hundred twenty) days by a further period not exceeding 60 (sixty) days.

36.2 MSRDC to act on behalf of Concessionaire

36.2.1 During the period of Suspension MSRDC 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. MSRDC 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 assets and liabilities in relation to the Project shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by MSRDC 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 MSRDC for all costs incurred during such period.

36.3 Revocation of Suspension

36.3.1 In the event that MSRDC shall have rectified or removed the cause of Suspension within a period not exceeding 60 (sixty) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

36.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 60 (sixty) days from the date of Suspension, MSRDC 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 thereunder, MSRDC shall withhold Termination for a period not exceeding 120 (one hundred and twenty) 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 MSRDC 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, MSRDC shall within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 36.

36.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 120 (one hundred and twenty) 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 MSRDC 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 (a “**Concessionaire Default**”), unless the default has occurred solely as a result of any breach of this Agreement by MSRDC 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 90 (ninety) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of MSRDC;
- (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;
- (h) the Concessionaire has failed to make any payment to MSRDC 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 MSRDC to undertake Suspension in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified in the Substitution Agreement;
- (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 and the Concessionaire does not suo-moto cures such default within 90 days of its occurrence;
- (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 / attachment levied on any of the assets / equipment of the Concessionaire has caused a Material Adverse Effect and allows it to be continued for a period of 45 days;
- (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 MSRDC, 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) the Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement; or
- (u) the Concessionaire commits a material default in complying with any other provision of this Agreement.
- (v) an event of default of the Concessionaire under any of the financing documents has occurred or any of the Senior Lenders has recalled its loan under any of the financing documents.
- (w) the Concessionaire fails to achieve Financial Close in accordance with the provisions of Article 24.
- (x) any representation made or warranties given by the Concessionaire under this agreement are found to be false or misleading.

37.1.2 Without prejudice to any other rights or remedies which MSRDC may have under this Agreement, upon occurrence of a Concessionaire Default, MSRDC shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, MSRDC 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 MSRDC 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 15 (fifteen) 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 MSRDC 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 eighty) days, and upon such curing thereof, MSRDC 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, MSRDC shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as MSRDC may deem appropriate.

37.2 Termination for MSRDC Default

37.2.1 In the event that any of the defaults specified below shall have occurred, and MSRDC 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, MSRDC shall be deemed to be in default of this Agreement ("**MSRDC 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) MSRDC 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) MSRDC has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- (c) MSRDC 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 MSRDC.

37.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an MSRDC Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to MSRDC; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform MSRDC of its intention to issue the Termination Notice and grant 15 (fifteen) days to MSRDC 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.

37.3 Termination Payment

37.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, MSRDC 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 the Project Completion Date.

37.3.2 Upon Termination on account of an MSRDC Default, MSRDC 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 Equity (subscribed in cash and actually spent on the Project if such Termination occurs at any time during three years commencing from the Appointed Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in WPI during such year and the adjusted amount so arrived at shall be reduced every year by 7.5% (seven and a half per cent) per annum.

Termination Payment shall become due and payable to the Concessionaire within 60 (sixty) days of a demand being made by the Concessionaire to MSRDC with the necessary particulars, and if MSRDC fails to disperse the full termination payment within 180 (one hundred and eighty) days, MSRDC shall pay interest at a rate equal to SBI PLR on the amount of Termination Payment remaining unpaid. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by MSRDC of its payment obligations in respect thereof hereunder. Any demand for Termination Payment shall be made not later than 21 (twenty one) days after the Termination of this Agreement.

37.4 Other rights and obligations of MSRDC

Upon Termination for any reason whatsoever, MSRDC shall:

- (a) be deemed to have taken possession and control of the Project 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 any part of the Project;

- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 39.1; and
- (e) step in and succeed upon election by MSRDC, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as MSRDC may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date MSRDC elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, it is hereby agreed, and the Concessionaire hereby acknowledges, that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and MSRDC shall not in any manner be liable for such sums. It is further agreed that in the event MSRDC elects to cure any outstanding defaults under such Project Agreements, the amount expended by MSRDC for this purpose shall be deducted from the Termination Payment.

Take possession and control of all agreements entered in by Concessionaire with the Users of Space in the Commercial plot sub leased to Concessionaire along with space not allotted/out right sold on leasehold.

37.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 38

DIVESTMENT OF RIGHTS AND INTEREST

38.1 Divestment Requirements

Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) notify to MSRDC forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project*, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, including the road, bridges, structures and equipment, of all defects and deficiencies so that the Project is compliant with the Standards and Specifications, Maintenance Requirements set forth in this document; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition except Inspection Vehicle which shall not be more than 2 years old by make.
- (d) deliver relevant records and reports pertaining to the (related to the Project alone) Project and its design, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date;
- (e) execute such deeds of conveyance, documents and other writings as MSRDC may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project including the right to receive outstanding insurance claims to the extent due and payable to MSRDC, absolutely unto MSRDC or its nominee; and
- (f) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto MSRDC or to its nominee.
- (g) Deliver all the agreements entered in with users of space in the commercial plot duly transferred in the name of MSRDC along with space not allotted/outright sold on lease.

* Project– Project refers to position of work after achieving COD of Project as per definition

38.2 Inspection and Cure

Not earlier than 90 (ninety) days before Transfer Date but not later than 30 (thirty) days before the Transfer Date or in the event of earlier Termination of the agreement, the Independent Consultant shall verify, in the presence of a representative of the Concessionaire, 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 40 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 39.

38.3 Vesting Certificate

38.3.1 The divestment of all rights, title and interest in the Project and commercial plot shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and MSRDC 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 its rights, title and interest in the Project, and their vesting in MSRDC, or person nominated by MSRDC in this regard 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 MSRDC or its nominee on, in the respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

38.3.2 Notwithstanding anything to the contrary contained in this agreement, any Termination Payments made by MSRDC into the Escrow Account shall not be withdrawn there from for any purpose whatsoever until vesting certificate has been issued by MSRDC under this Article. Provided however the aforesaid restriction shall not apply to withdrawals from the Escrow Account in favour of the Senior Lenders to the extent of Debt Due and payments for complying with Divestment Requirements under this agreement.

38.3.3 Notwithstanding anything to the contrary contained in this agreement, the Concessionaire operate and maintain the Project till MSRDC or its nominee takes over the possession of the Project. All the Toll / Fee collected by the Concessionaire or its contractor after the Termination Notice shall be deposited in the Escrow Account.

38.4 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.

38.5 Divestment Costs etc.

38.5.1 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 in favour of MSRDC upon Termination, including but not limited to stamp duties payable on any deeds or documents executed by the Concessionaire in connection with such divestment.

38.5.2 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 for a period of 3 (three) years after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Consultant in the Project 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 MSRDC in this behalf, MSRDC shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by MSRDC hereunder shall be reimbursed by the Concessionaire to MSRDC within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, MSRDC 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 38.2.3, 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 for Clause 38.1.
- 39.2.2 Without prejudice to the provisions of Clause 38.2.1, the Independent Consultant shall carry out an inspection of the Project 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 is such that a sum larger than the amount stipulated in Clause 38.2.1 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 Consultant 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 MSRDC 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 Security**"), to be modified, *mutatis mutandis*, for this purpose, and MSRDC 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 Security 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 Security 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.

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 MSRDC, which consent MSRDC 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 MSRDC, which consent MSRDC 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;
- (b) mortgages / pledges / hypothecation of goods / assets other than Project Assets, and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and / or for working capital arrangements for the Project;
- (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.
- (e) commercial spaces/spaces allotted in commercial plot in Timber Market.

40.3 Substitution Agreement

40.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire in accordance with the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the

Concessionaire, MSRDC 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, MSRDC 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 MSRDC

Notwithstanding anything to the contrary contained in this Agreement, MSRDC may, assign any of its rights and benefits and / or obligations under this Agreement, pursuant to any direction of the GOM or by operation of law or in the course of its own business.

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. 50 (Rupee Fifty) Million the Concessionaire may so notify MSRDC in writing within 15 days of event of such Change in law 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 as aforesaid by the Parties within 90 (ninety) days of the meeting pursuant to as specified in **Clause 41.1**, the Concessionaire may, by notice in writing require MSRDC to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid. MSRDC shall within 15(fifteen) days of such notice, assess the change in the financial position of the Concessionaire as a result of such Change of Law and after such assessment it shall quantify the quantum of financial assistance required to be given to the Concessionaire so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law and decide at its sole option, either to compensate the Concessionaire by way of reimbursement of such financial assistance or by way of extension to the Concession Period and depending upon its decision, MSRDC shall either make payment of such financial assistance or grant the extension of Concession Period within 30 (thirty) days of such decision . In case of any delay beyond the said period of 30 (thirty) days by MSRDC, the Concessionaire shall be entitled to interest on the financial assistance @ SBI PLR per annum which shall be granted to it in accordance with the procedure laid down in this Clause. MSRDC as its sole discretion, may also require to extend the concession period proportionately towards such payment. In case of any dispute regarding the quantum of financial assistance or the period of extension to the Concession Period, the same shall be finally settled in accordance with the Dispute Resolution procedure.

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 Rs. 50 (Fifty) Million, MSRDC may so notify the Concessionaire within 15 of such event of Change in Law 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 MSRDC, 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 agreement:

Provided that if no agreement is reached as aforesaid by the Parties within 90 (ninety) days of the meeting pursuant to this **Clause 41.1**, MSRDC may by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by MSRDC representative. The Concessionaire shall make such payment within 30 (thirty) days of receiving such notice or with interest @ SBI-PLR per annum if the payment is delayed beyond such 30 (thirty) days. If the Concessionaire shall dispute such claim of MSRDC, the same shall be finally settled in accordance with the Dispute Resolution Procedure. The Concessionaire may at its sole discretion opt to grant reduction in Concession Period in lieu of such payment and such decision will be conveyed by the Concessionaire within 30 days of the notice by MSRDC as provided herein.

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, MSRDC shall not be liable to reimburse to the Concessionaire any sums on account of any Change in Taxes if the same are recoverable from the users of the Project or if the aggregate financial effect of such changes in any Accounting Year is less than or equal to Rs. 50 (Fifty) Million only.

ARTICLE 42

LIABILITY AND INDEMNITY

42.1 General indemnity

42.1.1 The Concessionaire will indemnify, defend, save and hold harmless MSRDC and its officers, servants, agents, Government Instrumentalities and Government owned and / or controlled entities / enterprises, (“**MSRDC Indemnified Persons**”) against any and all suits, proceedings, actions, demands 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 any related agreement, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of MSRDC Indemnified Persons.

42.1.2 MSRDC will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and / or the rights of MSRDC in the land comprised in the Site, and / or (ii) breach by MSRDC 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 MSRDC and MSRDC 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 MSRDC Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which MSRDC 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 suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, 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 MSRDC a licence, at no cost to MSRDC, authorizing 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 15 (fifteen) 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. Upon receipt of such notice the Indemnifying Party shall decide either to settle or pay the claim or to contest or dispute the claims and shall notify the Indemnified Party of its decision within 15 (fifteen days) or such other time as may be mutually decided between the Parties in writing. 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 right 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 right 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 authorized in writing by the Indemnifying Party; or
 - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict or 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 or 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 is 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 or 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

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

43.2 Access rights of MSRDC and others

43.2.1 The Concessionaire shall allow free access to the Site at all times for the authorized representatives and vehicles of MSRDC, Senior Lenders, and the Independent Consultant, and for the persons and vehicle duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their MSRDC, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions. The Concessionaire shall allow access to, and use of the Site for telegraph lines, electric lines or such other public purposes as MSRDC may specify. Where such access or use causes any damage to the Project and consequent financial loss to the Concessionaire, it may seek compensation or damages from such user of the Site as per Applicable Laws.

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 authorized persons and vehicles of the controlling body of such utility or road.

43.3 Property taxes

The Concessionaire shall be liable to pay any property taxes for the Site including for the Commercial plot.

43.4 Restriction on sub-letting

The Concessionaire shall not part with, sublet or create any Encumbrance on the whole or any part of the Site save and except as may be expressly set forth and permitted under this Agreement provided however that nothing contained herein shall be construed or interpreted as restriction on the right of the Concessionaire to appoint any Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project including Project Facilities.

For the purposes of claiming tax depreciation, the property representing the capital investment made by the Concessionaire shall be deemed to be acquired and owned by the Concessionaire.

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 Consultant to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Consultant or without the intervention of the Independent Consultant, either Party may require such Dispute to be referred to the V.C. & M.D. of MSRDC 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 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. The views of the KMC will be obtained, by MSRDC if any financial liability is involved in the dispute. The decision of the VC & MD shall be final and binding on both the parties.

ARTICLE 45

DISCLOSURE

45.1 Dispute of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme, 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 during subsistence of the agreement. The information shall be put on website also. 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 make copies of the same available 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, 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.

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 Plaza(s) 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 Plaza(s) 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.

46.2 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 MSRDC and to the Independent Consultant 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, MSRDC may, in its discretion, advise the Concessionaire to take further action as MSRDC may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform MSRDC of its decision thereon, and if MSRDC 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.

* Provisions under this Article shall not be applicable to the users of the Commercial space/space allotted/sold on outright sale on leasehold in Commercial Plot.

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 Mumbai shall have 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 Depreciation

For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project (except in commercial plot) shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, MSRDC 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 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 15 (fifteen) 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 in the manner stipulated or in the event where no such rate is stipulated, at rate equal to 2% (two 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. Alternatively, MSRDC through KMC may decide to reduce the scope of work proportionately, if MSRDC is defaulting party. If Concessionaire fails /defaults beyond 15 days, he will attract one (1) penalty point. Every such penalty point will lead to the reduction in the Concession Period by one day.

47.5 Waiver

47.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provisions 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 authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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.

There will not be any liability on MSRDC except on record.

47.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by MSRDC or the Independent Consultant 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 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) MSRDC shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

47.7 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.

47.8 Survival

47.8.1 Termination shall:

- (a) not relieve Concessionaire or MSRDC, as the case may be, or 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.

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

47.9 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.

47.10 Severability

If for any reasons 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.

47.11 No partnership

This Agreement shall not be interpreted or construed to create any 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 MSRDC 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.

47.12 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.

47.13 Successors and Assigns

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

47.14 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 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 MSRDC; provided that notices or other communications to be given to an address outside Mumbai may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile to the number as the Concessionaire may from time to time designate by notice to MSRDC;
- (b) in the case of MSRDC, be given by facsimile and by letter delivered by hand and be addressed to the Chairman of MSRDC with a copy delivered to MSRDC's Representative or such other person as MSRDC may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Mumbai it may send such notice by facsimile 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.

47.15 Language

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

47.16 Counterparts

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

47.17 Video/Compact Disc Recording

During the Construction Period, the Concessionaire shall provide a video/compact disc recording to MSRDC every calendar quarter, which will be compiled into a compact disc, covering the construction of the Project in that quarter. Such video/compact disc recording shall be provided no later than fifteen days after the close of each quarter.

47.18 Stamp Duty

All charges and expenses including Stamp Duty and registration charge if any relating to amendment of this agreement or substitution agreement shall be borne by concessionaire or the selectee as the case may be.

47.19 Commercial Exploitation

The Concessionaire can collect revenue by giving the utility ducts on rent.

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 MAHARASHTRA STATE ROAD
DEVELOPMENT CORPORATION LTD

By;

(Signature)

(Name) Mr. Satish M. Gavai

(Designation) Vice Chairman and Managing Director

In the presence of:

1. Mr. K. S. Pandav, Secretary and Financial Advisor, MSRDC, Mumbai
2. Mr. S. B. Nage, Chief Engineer, MSRDC, Mumbai

SIGNED, SEALED AND
DELIVERED

For and on behalf of
KOLHAPUR MUNICIPAL CORPORATION,
KOLHAPUR

By;

(Signature)

(Name) Vijay Singhal

(Designation) Commissioner, KMC

In the presence of:

1. Ganesh N. Deshmukh, Dy. Commissioner, KMC
2. Netradeep S. Sarnobat, City Engineer, KMC

SIGNED, SEALED AND
DELIVERED

For and on behalf of
IRB KOLHAPUR INTEGRATED ROAD
DEVELOPMENT COMPANY PRIVATE LIMITED
THE CONCESSIONAIRE

By;

(Signature)

(Name) Mr. Virendra D. Mhaiskar

Director IRB Kolhapur Integrated Road Development Project Company Pvt. Ltd., Mumbai

In the presence of:

- 1.
- 2.