

CONCESSION AGREEMENT

This Agreement is entered into on this the 30th day of June, 2007 at Bhopal.

BETWEEN

MADHYA PRADESH ROAD DEVELOPMENT CORPORATION LIMITED a Company incorporated under the provisions of Companies Act 1956 vide Certificate of Incorporation No. U-45203/MP/2004.PIC/16758 dated 14.07.2004 as issued by the Registrar of Companies, Madhya Pradesh, Gwalior, and having its office at 16-A, Arera Hills, Bhopal – 462 011 (Madhya Pradesh) (hereinafter referred to as “MPRDC” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) of One Part,

AND

M/s Dewas Bhopal Corridor Pvt. Ltd. a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 4-B, Sweet Home Building, 2nd Floor, Shivaji Park Road No. 5, Mahim, Mumbai (hereinafter referred to as the “Concessionaire” or “Company” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted substitutes) of the Second Part

AND

M/s Chetak Enterprises Pvt. Ltd. a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Dak Bunglow Road, Patch Area, Nimbaheera, Distt. Chhitorgarh, Rajasthan (hereinafter referred to as the “Lead Member of Consortium” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted substitutes) of the Third Part

AND

M/s MSK Project India Ltd. a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 707, Sterling Centre, RC Dutt Road, Alkapuri, Baroda (hereinafter referred to as the “Member of Consortium” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted substitutes) of the Other Part

AND

M/s BSBK Pvt. Ltd. a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at International Trade Towers, Nehru Place, New Delhi (hereinafter referred to as the “Member of Consortium” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted substitutes) of the Other Part

WHEREAS

(Recitals)

- A) The Government of Madhya Pradesh has authorised and transferred to the MADHYA PRADESH ROAD DEVELOPMENT CORPORATION (hereinafter referred to as “MPRDC”) for the Reconstruction, Strengthening, Widening & Rehabilitation of Bhopal-Dewas section including existing bypasses of Bhopal and Dewas from km 6/8 (from Lalghat Sqaure at Bhopal) to km 151/6 (Dewas Bypass Junction) on SH-18 to 4-Lane section in the State of Madhya Pradesh , and its operation and maintenance to be executed through a Concession on build, operate and transfer (“BOT”) basis by its order No. 4917/4469/19/Yoj.2006 dated 28.07.2006 and vested the said stretch of Bhopal-Dewas with MPRDC as set forth in the said order.
- B) MPRDC had accordingly invited Request for Qualification (RFQ) Proposals for short listing of bidders for the aforesaid under its Notice vide Tender Advertisement No 3864/MPRDC/2006 dated 07.08.2006 (“the **Tender Notice**”), inter alia, for the detailed design, engineering, financing, procurement, construction, operation and maintenance of the above section on BOT basis subject to and on the terms and conditions contained in the Tender Notice.
- C) MPRDC after evaluation of the Request for Qualification Proposals short-listed eligible bidders and issued “Request for Proposal” for submission of their Bids vide letter No.5944 dated 10.11.2006.
- D) After evaluation of the Bids so received, MPRDC accepted the Bid of the Consortium comprising of M/s. Chetak Enterprises, M/s. MSK Projects India Ltd. and M/s. BSBK Pvt. Ltd. (the **Successful Bidder**) and issued its Letter of Acceptance No. MPRDC/BOT/2007/8935 dated 16.03.2007 (“LOA”) to the Successful Bidder requiring, inter alia, formation of Project SPV and execution of this Concession Agreement within 30 (Thirty) days of the date thereof.
- E) The Successful Bidder has promoted and incorporated the Concessionaire as a limited liability company to enter into this Concession Agreement pursuant to the LOA for undertaking, inter alia, the detailed design, engineering, financing, procurement, construction, operation and maintenance of the Project Highway, as defined hereinafter on BOT basis as referred to in Recital above and to fulfil other obligations of the Concessionaire pursuant to the LOA and has requested MPRDC to accept the Concessionaire as the entity which shall undertake and fulfil and perform the obligations and exercise the rights of the Successful Bidder under the LOA, including the obligation to enter into this Concession Agreement for the engineering, financing, procurement, construction, operation and maintenance of the Project Highway on BOT basis.
- F) MPRDC has agreed to the said request of the Successful Bidder and has accordingly agreed to enter into this Concession Agreement with the Concessionaire pursuant to the LOA for, inter alia, the detailed design, engineering, financing, procurement, construction, operation and maintenance of the said Project Highway on BOT basis. The Successful Single Bidder/ Consortium members are also party to this agreement and are responsible for fulfilment of the obligations and undertakings of the Concessionaire and bear the related consequences under this Agreement as are applicable to the concessionaire.

G) It is deemed necessary and expedient to enter into this Agreement to record the terms of the said Agreement between the Parties.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY AGREE AND THIS AGREEMENT WITNESSETH AS FOLLOWS:

CHAPTER – I: PRELIMINARY

DEFINITIONS AND INTERPRETATION

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:

1. **“Accounting Year”** means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.
2. **“Additional Facilities”** means the facilities which the Concessionaire may provide or procure for the benefit of the users of the Project Highway and which are (i) in addition to the Project Facilities, and (ii) not situated on the Site.
3. **“Affected Party”** shall have the meaning set out in Clause 28 being the party affected by Force Majeure Event.
4. **“Agreement”** means this Agreement, the Schedules 'A' through 'S' hereto, the documents (including RFQ & RFP Documents issued by MPRDC) and any amendments thereto made in accordance with the provisions contained in this Agreement.
5. **“Applicable Laws”** means all laws, promulgated or brought into force and effect by GoMP and/or the Government of India including rules, regulations and notifications made there-under, and judgments, decrees, injunctions, writs and orders of any court or 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.
6. **“Applicable Permits”** means all clearances, permits, authorisations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the detailed design, engineering, financing, procurement, construction, operation and maintenance of the Project Highway during the subsistence of this Agreement.
7. **“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof as in force from time to time.
8. **“Associates”** means in relation to of either Bidder and/ or Consortium Members, a person who controls, is controlled by, or is under the common control with such Bidder or Consortium Member and includes the directors, Shareholders and Promoters of the Concessionaire company or the Bidder. As used in this definition, the expression “control” means with respect to a person which is a corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such person, and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise. The investment in the Concessionaire Company shall be subject to approval

of proposed investors with prior approval of MPRDC and recorded by an agreement.

9. **“Bank”** means a Scheduled bank incorporated in India being a Scheduled Commercial Banks as per list of such Banks issued by RBI, and having a Net worth of more than Rs. 100 Crores (Rupees One Hundred Crores).
10. **“Bid”** means the documents in their entirety comprised in the bid/ the Proposal submitted by the Bidder in response to the Tender Notice in accordance with the provisions thereof.
11. **“Bid Security”** means the security provided by the Bidder to MPRDC along with the Bid, in the sum of Rs.4.27 crores (Rupees four crores twenty seven lacs only) in accordance with the RFP Document and which is to remain in force until substituted by the Performance Security.
12. **“Bidder”** means the Consortium referred to in Recital D and F above.
13. **“Change in Law”** means the occurrence of any of the following after the date of this Agreement affecting the agreement:
 - the enactment of any new Indian law;
 - the repeal, modification or re-enactment of any existing Indian law;
 - the commencement of any Indian law which has not entered into effect until the date of this Agreement;
 - a change in the interpretation or application of any Indian law by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement; or
 - any change in the rates of any of the Taxes other than those as specified in Clause 31
14. **“Change of Scope”** shall have the meaning ascribed thereto in Clause 15 which includes such additional and altered works and services on or about the Project Highway beyond the scope of the Project as contemplated in this agreement.
15. **“Company”** means the Company acting as the Concessionaire under this Agreement.
16. **“Commencement date”** means the date on which financial closure 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.
17. **“Completion Certificate”** means the Certificate issued by MPRDC pursuant to Clause 13, certifying the completion of all parts/ substantial parts of the Project Highway.
18. **“Concession”** shall have the meaning ascribed thereto in Clause 3
19. **“Concession Fee”** shall have the meaning ascribed thereto in Clause 6.10
20. **“Concession Period”** means the period beginning from the Commencement Date and ending at the end of 25 years or any valid extension granted thereof

by MPRDC or the Termination Date whichever is earlier. The term year means a period of 12 months here.

21. **“Concessionaire”** means M/s.Dewas Bhopal Corridor Pvt. Ltd., a Special Purpose Vehicle Company incorporated by its Consortium Members and its successors and substitutes and assigns expressly approved in writing by MPRDC.
22. **“Consortium”** shall have the meaning set forth in Recital D and F above.
23. **“Consortium Members”** means M/s Chetak Enterprises Pvt Ltd., M/s MSK Project India Ltd., and M/s BSBK Pvt. Ltd. as stated in Recital D above
24. **“Construction Period”** means the period beginning from the Commencement Date and ending on the Toll Date.
25. **“Construction Works”** means all works and things necessary to complete the Project Highway for use of the traffic and other users thereof in accordance with this Agreement.
26. **“Contractor”** means person with whom the concessionaire has entered into/may enter into all or any of the project agreements other than this agreement.
27. **“Rectification Period”** means the period specified in this Agreement for rectifying any breach or default of any provision of this Agreement by the Party responsible for such breach or default.
28. **“Damages”** shall have the meaning ascribed thereto in Clause 1.2(q) and includes damages payable by either party under the agreement excluding any penalty or liquidated damages.
29. **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees, outstanding and payable to the Lenders under the Financing Documents:
 - a) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project (the **“principle”**) which is outstanding as on the Termination Date; and
 - b) all accrued interest, financing fees and charges payable on or in respect of the debt reference to in sub-clause above, up to the date preceding the Termination Date but excluding any penal interest or charges, payable under the Financing Documents to any Lender.
30. **“Debt Service Payments”** means the sum of all principal and interest payments due and payable in an Accounting Year to the Lenders under the Financing Documents.
31. **“Agreement Period”** means the period from the date of this Agreement till the end of the concession period or the Termination Date or a date extended as per provision of this Agreement, whichever is earlier.

32. **“Dispute”** shall have the meaning set forth in Clause 33 including any dispute, difference and controversy, of whatever nature arising in relation to this agreement.
33. **“Dispute Settlement Procedure”** means the procedure for Dispute resolution set forth in Clause 33
34. **“Divestment Requirements”** means the obligations of the Concessionaire and MPRDC for and in respect of the Termination of this Agreement as set forth in Clause -30
35. **“Document” or “Documentation”** means documentation printed or in written form, tapes, discs, drawings, computer programmes, writings, reports, photographs, cassettes, or expressed in any other written, audio or visual form.
36. **“Drawings”** means all the drawings, calculations and documents pertaining to the Project Highway and shall include “as built” drawings of the Project Highway.
37. **“EPC Contract”** means contract or contracts entered into by the Concessionaire with one or more Contractors for the detailed working design, engineering, procurement of materials and equipment, construction, and completion of the Project Highway in accordance with the provisions of this Agreement, with the prior approval of MPRDC.
38. **“Emergency”** means a condition or situation that is likely to endanger the security of the individuals on or about the Project Highway including users thereof or which poses an immediate threat of material damage to any of the Project Assets.
39. **“Empowered Institution”** means the Empowered Institution as defined in the Scheme for Support to Public Private Partnerships in Infrastructure " promulgated by the Ministry of Finance in July, 2005
40. **“Encumbrances”** means any encumbrances on Project Assets such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Highway, physical encumbrances and encroachments on the Site where applicable herein.
41. **Equity** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost and shall include the funds advanced by any Member of the Consortium or by any of its associates to the concessionaire, convertible instruments or other similar forms of capital which shall compulsorily convert into equity share capital of the concessionaire and any interest free funds advanced by any shareholder of the company for meeting such equity component to the extent required by Change in Scope of Work or due to change in law or due to any Force Majeure conditions but does not include any grants or subsidies that may be given for the project by the MPRDC and/or Government of India.

- 42 **“Escrow Account”** means an Account which the Concessionaire shall open, and operate with a Bank in which all project related inflows and outflows of Cash/Negotiable Instruments will be routed during project construction and toll period commencing from Commencement Date The account will be called an “Escrow Account” and will have no-lien confirmed by the Bank during the construction period and during the Concession Period it will be Escrow under lien with the Lenders, and will be operated in accordance with the provisions of this Agreement.
- 43 **“Escrow Agreement”** shall have the meaning ascribed thereto in Clause 24
- 44 **“Exempted Vehicles”** means vehicles that shall be exempted from payment of Fees and include all the vehicles as detailed in the Notification No. F-23-12/2006/G/19 dated 30.12.2006 issued by GoMP
- 45 **“Fee”** means the charge levied on and payable for a vehicle using the Project Highway in accordance with the Fee Notification and this Agreement.
- 46 **“Fee Notification”** means the Notification No F-23-12/2006/G/19 dated 30.12.2006 issued by GoMP in exercise of the powers conferred by Section 2 of The Indian Tolls (Madhya Pradesh Amendment) Act, 1932 in respect of the levy and collection of the Fees and a copy of which is at **Schedule “C”** and includes any such subsequent notifications issued from time to time to give effect to the provisions of this Agreement.
- 47 **“Financial Closure”** means the date on which the Financing Documents providing for funding by the subscribers to equity, preference capital, unsecured loans (subordinated to the debt due to the lenders) and Lenders have become effective and the Concessionaire has complied with all the terms and conditions as required to have immediate access to such funding under the Financing Documents.
- 48 **“Financing Documents”** means the documents executed by the Concessionaire in respect of financial assistance to be provided by the subscribers to equity, preference capital, unsecured loans (subordinated to the debt due to the lenders) and 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- 21
- 49 **“Financing Package”** means the financing package of the Project furnished by the Concessionaire indicating the Total Project Cost and the means of financing thereof and shall be deemed to have been modified to the extent as submitted to the Lenders/MPRDC and as approved by the Lenders/MPRDC for the purposes of funding of the Project.
- 50 **“Force Majeure” or “Force Majeure Event”** shall mean an act, event, condition or occurrence specified which is not in the Control of any parties to the agreement as stated and described in Clause -28.

- 51 **“GOI”** means the Government of India.
- 52 **“GoMP”** means the Government of the State of Madhya Pradesh.
- 53 **“Good Industry Practice”** means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the provisions of applicable law, and would mean good engineering practices in the design, engineering, construction and project management and which would be expected to result in the performance of its obligations by the Concessionaire and in the operation and maintenance of the Project Highway in accordance with this Agreement, Applicable Laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency.
- 54 **“Governmental Agency”** means GOI, GoMP or any ministry, department, commission, board, authority, instrumentality or agency, under the control of GOI or GoMP having jurisdiction over all or any part of the Project Highway or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.
- 55 **“Grant”** means cash support by way of outright grant of a sum by MPRDC and GoI paid to the Concessionaire/lead financial institution towards meeting the Project Cost and shall have the meaning ascribed thereto in Clause –22.
- 56 **“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Clause -32.
- 57 **“Independent Consultant”** means a Consulting Engineering firm appointed by MPRDC to undertake various duties of Project Supervision and Management and shall have the meaning ascribed thereto in Clause-19
- 58 **“Indirect Political Event”** shall have the meaning ascribed thereto in Clause – 28.1
- 59 **“Lead Financial Institution”** means the Lead Financial Institutions as defined in the Scheme for Support to Public Private Partnerships in Infrastructure " promulgated by the Ministry of Finance in July, 2005.
- 60 **“Lenders”** means the financial institutions, banks, RBI registered NBFCs, mutual funds and agents or trustees of debenture/bond holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Documents for meeting costs of all or any part of the Project.
- 61 **“Lenders' Representative”** means the person(s) duly authorised by the Lenders to deal with the Parties to the Agreement with regard to the issues arising out of and contained in this Agreement.
- 62 **“Local Commercial Traffic”** means any commercial vehicle including buses, trucks, light motor vehicles or taxis engaged in carrying goods and passengers as plying routinely on the project highway without crossing

any one or not more than one of the Toll Plazas and travelling a distance of approx. 10.0 km on either or both sides of the toll plaza or approx. 20.0 km. on the project highway if not crossing the toll plaza as the case may be and to whom monthly passes have been issued by the Concessionaire.

- 63 **“Local Personal Traffic”** means and include personal vehicle which is registered with the Concessionaire by any person who normally resides or works at a place that can normally be approached only by using a part of the Project Highway and such person is, therefore, required to use such vehicle for commuting on a part of the Project Highway, without crossing more than one of the Toll Plazas, in the course of normal travel to and from his place of work or residence travelling a distance of approx. 10.0 km. on either or both sides of the toll plaza or approx. 20.0 km. on the project highway if not crossing the toll plaza as the case may be and to whom monthly passes have been issued by the Concessionaire
- 64 **“Maintenance Manual”** includes the repair and maintenance manual for periodic and regular maintenance and shall have the meaning ascribed to it in Clause -16.2.
- 65 **“Maintenance Programme”** includes the programme of preventive and schedule of maintenance and shall have the meaning ascribed to it in Clause-16.3
- 66 **“Material Adverse Effect”** means 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
- 67 **“Material Breach”** means a breach by either party of any of its obligations under this agreement which has a material adverse effect on the other party under/or such other party’s ability to perform its obligations under this agreement and which such party shall have failed to cure within the Cure period
- 68 **“Maintenance Fund”** means a designated fund as ascribed in the Clause-16.12 of this Agreement.
- 69 **“MPRDC Representative”** means such person or persons as may be authorised in writing by MPRDC to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of MPRDC under this Agreement.
- 70 **“Net Cash Flow”** means in any Accounting Year revenue income less tax payments, O&M Expenses, Concession Fee, and Debt Service Payments to Lenders.
- 71 **“Non Political Event”** means acts of God, natural calamities, strikes, boycotts, adverse court judgements and shall have the meaning ascribed thereto in Clause – 28.1 .
- 72 **“O&M”** means the operation and maintenance of the Project Highway during the Toll Period and includes but is not limited to functions of

maintenance, collection and appropriation of Fees and performance of other services incidental thereto.

- 73 **“O&M Contract”** means the Operation and Maintenance Contract that may be entered into between the Concessionaire and the O&M Contractor for O&M of the Project Highway.
- 74 **“O&M Contractor”** means the person or entity with whom the Concessionaire has entered into an O&M Contract for discharging O&M functions for and on behalf of the Concessionaire.
- 75 **“O&M Expense”** means expenses incurred by or on behalf of the Concessionaire duly certified by its Statutory Auditors or by MPRDC, as the case may be, for all regularly scheduled and reasonably anticipated O&M during Toll Period, including, without limitation (a) all cost of salaries and other employee compensation and contract fee payable to the O&M Contractor, if any (b) cost of materials, supplies, utilities and other services (c) premia for insurance (d) all franchise, excise, property and other similar taxes and all costs and fees incurred in order to obtain and maintain all Applicable Permits necessary for the O&M of the Project Highway at its full design capacity, (e) all repair, replacement and maintenance costs of the Project Highway, and (f) all other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the operation and maintenance of the Project Highway according to the Specifications and Standards at its full design capacity.
- 76 **“O&M Works”** means all works necessary to keep the Project Highway in operation during the Toll Period.
- 77 **“PCU”** shall have the meaning ascribed to the Passenger Car Unit in the 'Indian Roads Congress', Publication No.IRC-64, 1990, and for the purposes of this Agreement refers only to such PCUs which pay Fees in accordance with the Fee Notification.
- 78 **“Parties”** means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually.
- 79 **“Performance Security”** means the Performance Security for Construction and Maintenance Security for Operation and Maintenance as described in Clause -5.
- 80 **“Political Event”** includes change in law, compulsory acquisition, unlawful and avoidable refusal or withdrawal of any statutory or legal consent and shall have the meaning ascribed thereto in Clause – 28.3
- 81 **“Preliminary Notice”** includes the termination notice issued to the concessionaire on his breach of contract and shall have the meaning attributed thereto in Clause -29.3.2
- 82 **“Project”** means the Project Highway (including all works relating to or in respect of Project Highway, as described in Clause-2 which the Concessionaire is required to design, engineer, procure, finance, construct, operate, maintain and divest the Project Highway in accordance with the provisions of this Agreement.

- 83 **“Project Agreements”** means collectively this Agreement, the Financing Documents, the EPC Contract, if any, the O&M Contract, if any, the Tolling Contract, if any, and any other agreements or contracts entered into by the Concessionaire with MPRDC or others relating to the Project during the subsistence of this Agreement.
- 84 **“Project Assets”** means all physical and other assets relating to and forming part of the Project Highway including but not limited to (i) rights over the Site in the form of license, Right of Way or otherwise, (ii) tangible assets such as civil works including the foundation, embankments, pavements, road surface, interchanges, bridges, approaches to bridges and flyovers, road over bridges, drainage works, lighting facilities, traffic signals, sign boards, milestones, toll plazas, equipment for the collection of tolls or relating to regulation of traffic, electrical works for lighting on the Project Highway, telephone and other communication systems and equipment for the Project, rest areas, administration and maintenance depots, relief centres service facilities etc. (iii) Project Facilities situated on the Site (iv) the rights of the Concessionaire under any of the Project Agreements, (v) financial assets, such as security deposits for electricity supply, telephone etc. (vi) insurance proceeds subject to the Lenders’ rights thereto and (vii) Applicable Permits and authorisations relating to or in respect of the Project Highway, but does not include Additional Facilities.
- 85 **“Project Completion Date”** shall mean the date notified by MPRDC on completion/substantial completion of a part or full of the project for which the Independent Consultant shall submit the Project Completion/Provisional Certificate to MPRDC and shall have the meaning ascribed thereto in Clause -13.3.
- 86 **“Project Completion Schedule”** means the progressive Project milestones for the realisation of the Project Highway, complete in all respects by the Scheduled Project Completion Date.
- 87 **“Project Facilities”** means all the amenities and facilities situated with the Right of Way (ROW) of the Project Site for use of traffic by implementing the Project.
- 88 **“Project Highway”** means the site comprising the existing State Highway No 18 from Km 6/8 (from Lalghati Square at Bhopal) to 151/6 including existing bypasses of Bhopal and Dewas and all project assets and its subsequent development and augmentation during the Concession Period in accordance with the provisions of this Agreement.
- 89 **“Provisional Certificate”** means the certificate of completion/substantial completion of part/ full Project Highway and Project Facilities and whereon all tests are successful on all parts/ related part of Project Highway and the same can be placed safely for commercial operations, and shall have the meaning ascribed to it in Clause-14.5
- 90 **“Outstanding Items”** means the list of outstanding items required to be completed as on the date of issue of Provisional Certificate and shall have the meaning ascribed to it in Clause - 14.5

- 91 **“RBI”** means the Reserve Bank of India as constituted and existing under the Reserve Bank of India Act, 1946 including any statutory modification or replacement thereof, and its successors etc.
- 92 **“Realisable Fee”** means all the Fees, dues realisable under this Agreement but does not include Fees that the Concessionaire has not been able to realise after due diligence and best efforts.
- 93 **“Revenue Shortfall Loan”** means the loan required by the concessionaire to meet the shortfall of revenues to meet the subsistence revenue level and shall have the meaning ascribed to it in Clause -23.1.
- 94 **“Right of Way”** means the constructive possession of the site, together with all way leaves, easements, unrestricted access and other rights of way, as defined in clause-8.necessary for construction, operation and maintenance of the project highway in accordance with this agreement.
- 95 **“Rs.” Or “Rupees”** means the lawful currency of the Republic of India.
- 96 **“SBAR SBAR (State Bank Advance Rate)”** means the benchmark lending rate per annum for loans as fixed from time to time by the State Bank of India, and in the absence of such rate, the average of the benchmark lending rates fixed by the Central Bank of India and failing that any other arrangement that substitutes such prime lending rate as mutually agreed between the Parties.
- 97 **“Scheduled Project Completion Date”** the date of completion of construction of the project as per the Construction Period allowed under the agreement to achieve the completion of construction of the project and shall have the meaning set forth in Clause -13
- 98 **“Site”** means the Project Highway along with available ROW as handed over by MPRDC (as set out in **Schedule ‘E’**) to the Concessionaire under and in accordance with this Agreement.
- 99 **“Specifications and Standards”** means the relevant specifications and standards for development of roads issued by Ministry of Shipping Road Transport and highways and guidelines of Indian Road Congress as given in the Detailed Project Report (**Schedule ‘J’**) relating to the quality, quantity, capacity and other requirements for the Project Highway and any modifications thereof, or additions as included in the design and engineering for the Project Highway submitted by the Concessionaire to and expressly approved by MPRDC.
- 100 **“State Support Agreement”** means the agreement substantially in the form set out in the **Schedule ‘F’** to be entered into amongst the GoMP, MPRDC and the Concessionaire for provision of support, backup, assistance and services required from GoMP in connection with the Project.
- 101 **“Statutory Auditors or 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 27.2

- 102 **“Subordinated Debt”** means any borrowings by the Concessionaire subordinated to the financial assistance provided by the Lenders for meeting the Total Project Cost, Revenue Shortfall Loan, but does not include any interest thereon.
- 103 **“Subsistence Revenue Level”** means the total amount of Fee revenue that is required by the Concessionaire in an Accounting Year to meet the sum of (a) the O&M Expense subject to an annual ceiling of 3 % (three percent) of the Total Project Cost during the first Accounting Year after COD to be revised for each subsequent year to reflect the variations in WPI occurring between COD and commencement of such Accounting Year (b) Debt Service Payments in such Accounting Year
- 104 **“Substitution Agreement”** means the agreement referred to in Clause - 21.9 substantially in the form set-out in **Schedule ‘G’**. annexed to this agreement and to be entered into amongst the Concessionaire, MPRDC, and the Lenders providing, inter alia, for the substitution of the Concessionaire by any other person subject to and in accordance with the provisions of this Agreement and the Substitution Agreement.
- 105 **“Taxes”** means any Indian taxes, Sales tax, excise duties, customs duties, Service tax and local taxes and any impost of like nature (whether Central, State or local) charged, levied or imposed on the goods, materials, equipments and services incorporated in and forming part of the Project Highway, on the construction, operation and maintenance thereof and on the Project Assets, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever.
- 106 **“Toll date”** means the Commercial Operations Date (COD) of the Project Highway from which date the Concessionaire is entitled to collect the toll/fee under the toll/fee notification and shall be the date notified so by MPRDC upon completion of full/substantial completion/ of works on homogeneous sections of Project Highway in accordance with the Agreement.
- 107 **“Toll Period”** means the period commencing from Toll Date and ending on the date of completion of the Concession Period or the Termination Date whichever is earlier. The Toll Period shall commence from the Toll Date irrespective of the period taken by the Concessionaire for achieving the completion of construction.
- 108 **“Toll Plaza”** means the structures and barriers erected on the Project Highway for the purpose of regulating the entry/ exit of vehicles in accordance with the provisions of this Agreement.
- 109 **“Tolling Contract”** means the contract, if any, entered into by the Concessionaire with the Tolling Contractor for operation of the Toll Plazas including collection of Fees for and on behalf of the Concessionaire.
- 110 **“Tolling Contractor”** means the person, if any, with whom the Concessionaire has entered into a Tolling Contract for operation of Toll Plazas and collection of Fees for and on behalf of the Concessionaire.

- 111 **“Termination”** means the expiry or termination of this Agreement and the Concession hereunder.
- 112 **“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.
- 113 **“Termination Notice”** means the communication issued in accordance with this Agreement by any one Party to the other Party terminating this Agreement.
- 114 **“Termination Payment”** means the amounts payable by MPRDC to the Concessionaire and/or Lenders under this Agreement upon the Termination of this Agreement and may consist of payments relating to Debt Due, Subordinated Debt and Equity, after adjusting the grant which is disbursed and/or invested in the project and such other amounts as are expressly provided for under this agreement, Provided, however, that for purposes of determining Termination Payments to be made by MPRDC under this Agreement, the same shall at all times be reckoned as an amount not exceeding the Total Project Cost.
- 115 **“Tests”** mean the tests to be carried out to determine the Project Completion and its certification by the Independent Consultant for commencement of commercial operation of the Project Highway.
- 116 **“Total Project Cost”** for this agreement, means the lowest of the following:
- (a) a sum of Rs. 426.64 Crores as on Toll Date ;
 - (b) actual capital cost of the Project upon completion of the Project Highway as certified by the Auditors; or
 - (c) total project cost as set forth in Financing Documents.
- Provided further, that if part of the Total Project Cost is funded in foreign currency, in accordance with the Financing Package, then the rate of exchange shall be determined as on the date of Bid, and the Total Project Cost shall be computed as if such foreign currency were converted with reference to such exchange rate.
- The cost of land acquisition will not be taken for computation of Total Project Cost.
- 117 **“Tripartite Agreement”** means the agreement defined in clause 8.3 of Scheme for Support to Public Private Partnerships in Infrastructure " promulgated by the Ministry of Finance in July, 2005 to be entered into between the Empowered Institution, the concessionaire and the Lead Financial Institution.
- 118 **“Vesting Certificate”** means and includes conformity with all Divestment requirements and handing over of Project Highway to MPRDC and shall have the meaning attributed to it in Clause 30.2.4.
- 119 **“Scheme for Support to Public Private Partnerships in Infrastructure ”** means the promulgated by the Ministry of Finance in July, 2005 whereby which the Government of India had put into effect a scheme for providing

financial support to bridge the viability gap of infrastructure projects undertaken through Public Private Partnerships as given at schedule-O

120 “WPI” means the Wholesale Price Index published by the Ministry of Industry, GOI and shall include any index, which substitutes such the WPI.

1.2 In this Agreement, unless the context otherwise requires,

- a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b) references to Indian law shall include the laws, acts, ordinances, rules, regulations, or bye laws which have the force of law in any State or Union Territory forming part of the Union of India;
- c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- d) the headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- e) 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;
- f) the words “include” and “including” are to be construed without limitation;
- g) references to “construction” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i) any reference to day shall mean a reference to a calendar day;
- j) any reference to month shall mean a reference to a calendar month;
- k) any reference to year unless otherwise defined shall mean the calendar year
- l) the Schedules 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;
- m) any reference at any time to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of MPRDC hereunder or pursuant hereto in any manner whatsoever except as expressly provided in this agreement;

- n) references to Recitals, Articles, Clauses, Sub-clauses, Paragraphs, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Clauses, Sub-clauses, paragraphs, and Schedules of or to this Agreement;
- o) 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 effectual only if it is in writing under the hands of duly authorised representative of such Party or the Independent Consultant, as the case may be, in this behalf and not otherwise;
- p) 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;
- q) 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 pre-determined amount of indemnification of loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the “Damages”); and
- r) unless otherwise expressly provided in this Agreement any Documentation required to be provided or furnished by the Concessionaire to MPRDC and/ or the Independent Consultant shall be provided free of cost and in three copies and on a computer CD/floppy or such media as is required for a Soft Copy storage and if MPRDC and/ or the Independent Consultant are required to return any such Documentation with their comments and/ or approval, they shall be entitled to retain two copies thereof,.
- s) In the event of any dispute in respect of interpretation of any clause of the agreement, the decision of MPRDC shall be final and binding subject to the parties to this agreement taking recourse to legal action under any other law for the time being in force in the State of Madhya Pradesh in terms of the agreement.

1.3 Measurements and Arithmetic Conventions

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

1.4 Priority of contract documents and errors/ discrepancies

1.4.1. The several documents forming this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall in the event of any conflict between them be in the order they are set out:

- (i) this Agreement
- (ii) all other documents forming part of this Agreement i.e. document at (i) above shall prevail over the documents at (ii) above.

In case of ambiguities or discrepancies within this Agreement the following shall apply:

- (i) between two Clauses of this Agreement, the provisions of the specific clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (ii) between the Clauses and the Schedules, the Clauses shall prevail save as otherwise expressly set forth in Clause -1.4.1
- (iii) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (iv) Between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;
- (v) Between any value written in numerals and that in words, the latter shall prevail

CHAPTER – II SCOPE OF PROJECT

- 2.1 The scope of project (“**the Scope**”) shall mean and include during the concession period:
- 2.1.1. To undertake detailed design, engineering, procurement, finance & development of project highway in accordance with the terms of agreement.
 - 2.1.2 Construction of the project highway on the site in conformity with the specification and standards (Schedule-J) and as per the scope of work detailed in **Schedule-I.**”
 - 2.1.3 Operation and maintenance of the project highway in accordance with the provisions of this agreement (Schedule-M) and;
 - 2.1.4 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.

CHAPTER – III: GRANT OF CONCESSION

3. **GRANT OF CONCESSION**
- 3.1 Subject to and in accordance with the provisions of this agreement, the Applicable Laws and the Applicable Permits, MPRDC hereby grants to the Concessionaire the Concession set forth therein including the exclusive right, license and authority during the subsistence of this agreement to construct, operate and maintain the Project Highway (“The Concession”) for the concession period as defined in definition 20 of this agreement and the Concessionaire hereby accepts the concession and agrees to implement the project in accordance with the terms and conditions set forth herein.
- 3.2 The Concession hereby granted is for the Concession Period. Accordingly, subject to and in accordance with the provisions of this agreement, the concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to :-
- 3.2.1 access and license to the site to the extent conferred by the provisions of this agreement
- 3.2.2 to investigate, design in detail, and construct the Project Highway as per the scope of work and in accordance with standards and specifications defined in this agreement and scheduleJ annexed hereto.
- 3.2.3 upon completion of the Project Highway and during the Toll Period to manage, operate & maintain the Project Highway and so as to allow the use of road appropriately for toll collection and to regulate the use such that no traffic/ persons use the highway in a manner detrimental to the road condition
- 3.2.4 demand, collect, and appropriate fee from vehicles and persons liable for payment of fee for using the project highway or any part thereof and refuse entry of any vehicle if the fee due is not paid.
- 3.2.5 perform and fulfill all of the Concessionaire’s obligations under and in accordance with this agreement.
- 3.2.6 bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this agreement; and
- 3.2.7 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

CHAPTER - IV CONDITIONS PRECEDENT

- 4.1 Save and except as expressly provided in Clause- 4,8,9,21,28, & 33, 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 (“**Condition Precedent**”).
- 4.2 The Concessionaire may, upon providing the Performance Security to the MPRDC in accordance with Clause - 5.1 at any time after 90 (Ninety) days from the date of this agreement or on an earlier day acceptable to the MPRDC, by notice require the MPRDC to satisfy any or all of the conditions precedent set forth in this Clause 4.2 within a period of 30 (thirty) days of the notice, or such longer period as may be specified therein, and the obligations of the MPRDC hereunder shall be deemed to have been performed when the MPRDC shall have
- 4.2.1 procured for the Concessionaire the Right of Way to the site in accordance with the provisions of Clause – 9.1.
- 4.2.2 procured approval of the Railway authorities in the form of a general arrangement drawing that would enable the Concessionaire to construct road over-bridges/under-bridges at level crossings on the Project Highway in accordance with the Specifications and Standards and subject to the terms and conditions specified in such approval; and
- 4.2.3 procured all applicable permits relating to environmental protection and conservation of the site;
- 4.3. Provided that the MPRDC may from time to time by notice extend, for up to 6 (six) months, the period for procuring the approval set forth in Sub-clause 4.2.2 and/or Sub-clause 4.2.3 above and in that event the land to be covered by over bridges or the affected sections of the Project Highway, as the case may be, shall be included in the Appendix as referred to in Clause 9 and dealt with in accordance with the provisions thereof; and provided further that upon procurement of such approval, the Concessionaire shall be entitled to a period of 12 (twelve) months there from for completion of the over bridges.
- 4.4 The Conditions Precedent required to be satisfied by the Concessionaire prior to Commencement Date shall be deemed to have been fulfilled when the Concessionaire shall have :
- 4.4.1 Procured execution of the Escrow Agreement
- 4.4.2 procured execution of the Substitution Agreement;
- 4.4.3 procured all the applicable permits specified in **Schedule ‘A’**, 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;

- 4.4.4 provided performance security to the MPRDC;
- 4.4.5 executed the Financing Agreements and delivered to the MPRDC 3 (three) true copies thereof, duly attested by a Director of the Concessionaire.
- 4.4.6 delivered to the MPRDC from then Consortium Members, their respective confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clause (d), (m) & (o) of clause – 7.3.1 of this agreement; and
- 4.4.7 delivered to the MPRDC a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this agreement and the enforceability of the provisions thereof;

Provided that upon request in writing by the Concessionaire, the MPRDC may, in its discretion, waive any of the conditions precedent set forth in this Clause 4.4.

- 4.5 Each party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other party with such reasonable cooperation as may be required to assist the party in satisfying the conditions precedent for which that party is responsible.
- 4.6 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.
- 4.7 **Damages for delay by the MPRDC.**
In the event that MPRDC does not procure fulfillment of any or all of the conditions precedent set forth in Clause- 4.2 within the period specified in respect thereof in this Agreement, and the delay has not occurred as a result of breach of this agreement by the Concessionaire or due to Force Majeure, the MPRDC shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the performance security for each day's delay until the fulfillment of such conditions precedent, subject to a maximum of 20% (Twenty per cent) of the Performance Security.
- 4.8 **Satisfaction of conditions by Concessionaire.**
If the conditions precedents are not satisfied by the Concessionaire before financial close, MPRDC may terminate this agreement and forfeit the bid security/ performance security

CHAPTER – V SECURITY

Performance Security

- 5.1 The Concessionaire shall for due and faithful performance of its obligations during the Construction period provide to MPRDC a security for a sum equivalent to Rs. 2133.20 lacs) on or before signing this Agreement in the form of irrevocable and unconditional Bank Guarantee from Bank issued in favour of MPRDC in the form set forth in **Schedule ‘B’** (the “Performance Security”) on or before signing this agreement. Till such time the Concessionaire provides to MPRDC the Performance Security pursuant hereto, the Bid Security shall remain in full force and effect. Failure of the Concessionaire to provide the Performance Security in accordance with this Clause - 5.1 or before the execution of this Agreement shall entitle MPRDC to terminate this Agreement in accordance with the provisions of Clause - 29.3.4 without being liable in any manner whatsoever to the Concessionaire and to appropriate the Bid Security as Damages.
- 5.2 The Performance Security shall be released by MPRDC to the Concessionaire to upon the Concessionaire having spent on the Project an aggregate sum of not less than 50% (Fifty percent) of the Total Project Cost (at least Rs 213.32 crores) and 100% of its equity (whichever is earlier) as certified by the Independent Consultant and Auditors of the Concessionaire to the satisfaction of MPRDC, provided that 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 Toll Date or till the breach is rectified, whichever is later.
- 5.3 In the event of the Concessionaire being in default in the due and faithful within the Rectification Period, MPRDC shall without prejudice to its other rights and remedies hereunder be entitled to forfeit the Performance Security, appropriate the amount of such damages as stated by MPRDC from the Performance Security for such default. Upon such encashment and appropriation of the Performance Security, MPRDC shall grant a period of 30 (thirty) days to the Concessionaire to provide fresh Performance Security and the Concessionaire shall within the time so granted furnish to MPRDC such Performance Security failing which MPRDC shall be entitled to Terminate this Agreement under clause 29.3.4. The terms and conditions as set forth in Clause 5.2. and this Clause 5.3 shall apply mutatis-mutandis to such fresh Performance Security. MPRDC shall appropriate the performance security only to the extent of damages claimed and payable to MPRDC.
- 5.4 Notwithstanding anything to the contrary contained in clause 5.3 upon furnishing of fresh Performance Security in accordance with clause 5.3, the Concessionaire shall be granted an additional period of 60 (Sixty) days as Rectification Period for remedying the defaults and complying with his obligations under this Agreement. In the event of the Concessionaire continuing to be in breach of the provisions of this Agreement after such Rectification Period, MPRDC shall be entitled to terminate this Agreement under the provisions of Clause 29.3.4.

Maintenance Security:

- 5.6 The Concessionaire shall for due and faithful performance of its obligations during the Toll Period commencing from the Toll date, provide to MPRDC a security of Rs 4.27 crores (Rupees four cores twenty seven lacs only) in the form of irrevocable and unconditional Bank Guarantee on or before the issue of completion certificate and start of Toll date. Failure of the Concessionaire to provide the Maintenance Security in accordance with this Clause 5.6, shall entitle MPRDC to terminate this Agreement in accordance with the provisions of Clause 29.3.4, without being liable in any manner whatsoever to the Concessionaire.
- 5.7 The Maintenance Security for the Toll period shall be released by MPRDC to the Concessionaire on or before the issue of Vesting Certificate, after the completion of the Concession Period.
- 5.8 Upon termination of the Agreement by the concessionaire on account of an MPRDC event of default, MPRDC shall return the Performance Security/ Maintenance Security to the concessionaire along with the Termination Payments after due deduction there from of any dues or damages recoverable by MPRDC.

CHAPTER – VI FEES

- 6.1 The Concessionaire shall be entitled during the Toll Period to levy, collect and appropriate the Fees from the users of the Project Highway pursuant to and in accordance with the Fee Notification set forth in Schedule C of this Agreement. Provided, however, that such Fee shall be rounded off to the nearest rupee for ensuring ease of payment and collection.
- 6.2 The Concessionaire acknowledges that the Fee Notification, inter alia, provides for revision in the Fees by increase in the fees of , @ 7% per year based on the fees charged in the previous accounting year, as per the fee notification, and hereby confirms that save and except as provide in the fee notification, the Concessionaire is not entitled to and shall not seek any relief whatsoever from MPRDC, GoI or GoMP on account of increase or otherwise in WPI or on any other account except in accordance with the express provisions of this Agreement.
- 6.3 The Concessionaire shall collect fees from Local Personal Traffic and Local Commercial Traffic after reducing the fees by the following rates:
- 6.3.1. For Local Personal Traffic: 75% of the applicable fees for the specific category of vehicle.
- 6.3.2. For Local Commercial Traffic: 50% of the applicable fees for the specific category of vehicle
- 6.4 The Concessionaire shall issue appropriate passes in a manner that minimises the inconvenience to Local Traffic consistent with the Concessionaire's need to prevent any leakage of Fees. For carrying out provisions of this Clause, the Concessionaire shall formulate, publish and implement an appropriate scheme and carry out such modifications and improvements to such scheme as may reasonably be suggested by MPRDC or required by local circumstances from time to time in conformity with the objectives of this Agreement.. The rates of monthly passes shall be based on toll charges for return traffic (once) on the same day and calculated for the month consisting of 30 days or 31 days as the case may be.
- 6.5 Provided, however, that if a separate service lane is opened for free use by Local Traffic, the Concessionaire shall levy and collect Fees from such Local Traffic only in the event of they using the Project Highway.
- 6.4 The Concessionaire shall collect Fees only at the toll plaza and check post expressly permitted by MPRDC from the vehicle crossing the toll plaza or the check post as the case may be and using the whole or part of the project highway.
- 6.5 The Concessionaire shall not collect any Fees in relation to Exempted Vehicles.
- 6.6. The Fees collected by the Concessionaire or MPRDC's nominee pursuant hereto shall be deposited in the Escrow Account and appropriated in accordance with the provisions of Clause 24.

- 6.7 The Concessionaire may delegate its right to collect Fees to the O&M Contractor or the Tolling Contractor or to any other person provided, however, that notwithstanding such delegation, the Concessionaire shall be and remain solely liable and responsible for the collection of Fees in accordance with this Agreement and its deposit into the Escrow Account.
- 6.8 . Homogeneous section for the purpose of tolling and fee collection has been prescribed in Schedule M. Concessionaire can establish one toll plaza for each homogeneous section. The fee to be charged at such toll plaza will be for the total length of homogeneous section and as per the fee notification.
- 6.9 **Display of Fee Rates**
- 6.9.1 The Concessionaire shall, at least 30 days prior to the toll date of the Project Highway or part thereof and near the Toll Plaza (s), prominently display the applicable rates of Fee duly approved by MPRDC for information of users approaching from either side of the Project Highway.
- 6.9.2 The Concessionaire shall, from time to time, take approval from MPRDC of the applicable Fee and the detailed calculation thereof. Such revision shall be communicated at least 15 (fifteen) days prior to the revision of Fee under and in accordance with the Fee Notification.
- 6.9.3 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 of this effect from the MPRDC, refund such excess amounts to the MPRDC along with Damages equal to 25% (Twenty five percent) thereof. Besides this, in case of repeated instances of such nature, MPRDC will be lawful in taking action for termination of agreement under clause 29.3.4, as this will form major breach of the terms of the agreement.
- 6.9.4 In case of any levy or increase therein of any Stamp Duty or cess on fees/Toll collected by the concessionaire during the Toll Period becomes payable, the same shall be borne by MPRDC. .
- 6.10 **CONCESSION FEE/ PROJECT MONITORING FEE**
- 6.10.1 In consideration of the grant of Concession under this Agreement, the Concession Fee payable by the Concessionaire to the MPRDC shall be Re.1.00 (Rupee One) per year during the term of this Agreement.
- 6.10.2 The Concession Fee shall be paid in advance within 90 (ninety) days of the commencement of the year for which it is due and payable.
- 6.10.3 The Concessionaire shall pay to MPRDC till the end of concession period or the termination of this agreement whichever is earlier an amount equivalent to 1% of annual toll collected as a Project

Monitoring Fee for the first ten years to be counted from the commencement date and thereafter the amount will increase to 2% from the start of 11th year to the end of 15th year and to 3% from the 16th year till the end of concession period. This shall be paid every financial year through Escrow Account.

6.11 ADDITIONAL Check Posts

- 6.11.1 Notwithstanding anything to the contrary contained in this Agreement, if any bye-pass/road is built which results in loss of toll fees and leakage of revenue the Concessionaire may be allowed to shift the toll plazas and construct new check-posts to minimise such leakage of revenue.
- 6.11.2 Upon shifting of toll plazas the Concessionaire shall continue to levy and collect the Fee under this Agreement and shall continue to offer discounts or reductions in Fee as being granted earlier.
- 6.11.3 The Concessionaire with the prior approval of MPRDC may erect check posts on the intersection of the project highway or major leakage points in between two toll plazas on the project highway. For the purpose of avoiding traffic blockage and accidents, MPRDC can consider permitting such check posts on the 50 meters of intersecting roads which will be maintained by the Concessionaire. The function of the check post will be to check those users of the project highway who are not crossing any toll plaza but using a part of project highway. The concessionaire will have the right to deny entry on the project highway to the users who are neither carrying the toll receipt nor are willing to take it from the check post. However, the users who are not crossing any toll plaza but are using a part of homogeneous section of project highway will be charged fee at the rate prescribed for local commercial or local personal traffic, as the case may be and such fee will be levied on these uses on per trip basis. In case such users cross the toll plaza, the amount already paid will be adjusted in the fee payable by them at the toll plaza. The fee to be charged at check posts will need prior approval of MPRDC and will be prominently displayed at such check posts.

CHAPTER – VII. OBLIGATIONS AND UNDERTAKINGS

7.1 OBLIGATIONS OF THE CONCESSIONAIRE

7.1.1 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 necessary for obtaining all Applicable Permits, and obtain such Applicable Permits in conformity with the Applicable Laws;
- (b) notify to MPRDC forthwith the occurrence of Financial Closure;
- (c) submit to MPRDC true copies of each of the Project Agreements within 7 (seven) days of their execution/ amendments duly attested by a Director of the Concessionaire for its record;
- (d) Subject to the clause (g) below, submit to the MPRDC the drafts of all project agreement or any amendments or replacements thereto for its review and comments, and then MPRDC 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 draft Within 7 (seven) days of execution of any project agreement or amendment thereto, the concessionaire shall submit to the MPRDC 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 the MPRDC to review and/or comments hereunder shall not be construed or deemed as acceptance of any such agreement or document by the MPRDC
- (e) procure that each of the project agreements contains provisions that entitle the MPRDC to step into such agreement, in its sole discretion, in substitution of the concessionaire in the event of termination or suspension.
- (f) not to undertake or permit any change in ownership, except, with the prior written approval of the MPRDC
- (g) not to make any replacement, amendment or modifications to any of the Project Agreements without the prior written consent of MPRDC, where such replacement, amendment or modification has or may have the effect of increasing or imposing any financial liability or obligation on MPRDC in any manner, and where such

amendment or modification is made without such consent, not to enforce such amendment or modification nor permit enforcement thereof against MPRDC in any manner whatsoever;

- (h) In respect of project agreements covered by (g) above, give MPRDC not less than 30 (thirty) days written notice prior to entering into, amending or replacing any Project Agreement so as to enable MPRDC to provide its consent or offer its comments, if any thereon which, if made, shall be duly considered and given effect to by the Concessionaire before entering into, amending or replacing such Project Agreement;
- (i) remove promptly from the Project Highway all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris and shall keep the Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits;
- (j) repair the road by filling the potholes and making it motorable within 3 months of the handing over the physical possession of the Project Site to the Concessionaire by MPRDC or a period of 120 days after the date of execution of this agreement, whichever is earlier.
- (k) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Highway;
- (l) provide all assistance to the Independent Consultant as it may require for the performance of its duties and services;
- (m) provide to MPRDC reports on regular basis during the Construction Period and the Toll Period in the form and manner as directed by MPRDC.
- (n) obtain and maintain in force on and from the Commencement date all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- (o) acquire such real estate, as the Concessionaire may deem appropriate for the Additional Facilities and to indemnify and save harmless and defend GOI, MPRDC, and GoMP 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 real estate by the Concessionaire or any person claiming through or under the Concessionaire;

- (p) undertake Debt Service Payments in accordance with the Financing Documents;
- (q) levy and collect Fees from users of the Project Highway at the rates set forth in the Fee Notification and in accordance with this Agreement and regulate the traffic on the Project Highway in accordance with the Applicable Laws;
- (r) appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements as may be necessary;
- (s) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (t) comply with all Applicable Permits and Applicable Laws in the performance of the Concessionaire's obligations under this Agreement including those being performed by any of the Contractors;
- (u) develop, implement and administer a surveillance and safety program for the Project Highway, the users thereof, and the Contractors personnel engaged in the provision of any services under any of the Project Agreements including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with the requirements of this agreement and Applicable Laws and Good Industry Practice;
- (v) at all times, afford access to the Site to the authorised representatives of MPRDC, Lenders, and the Independent Consultant and to the persons duly authorised by any Governmental Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Highway and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide, to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the construction, operation and maintenance of the Project Highway consistent with the purpose for which such persons have gained such access to the Site.
- (w) without demur immediately enter into a Tripartite agreement in the prescribed format with an Empowered Institution and the Lead Financial Institution specified under the Public Private Partnerships in Infrastructure Scheme.

- (x) not to place or create and nor permit any Contractor or other person claiming through or under the Concessionaire to create or place any Encumbrance or security interest over all or any part of Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly set forth in this Agreement;
- (y) be responsible for safety, soundness and durability of the Project Highway including other structures forming part thereof and their compliance with the Specifications and Standards;
- (z) not claim or demand possession or control of any roads, structures or real estate which do not form part of the Project Highway;
- (aa) 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
- (ab) make its own arrangements for quarrying of materials needed for the project highway under and in accordance with the applicable laws and applicable permits.
- (ac) 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;
- (ad) indemnify the MPRDC 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
- (ae) comply with the Divestment Requirements and hand over the Project Highway to MPRDC upon Termination of the Agreement.

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

During the Construction period, the Concessionaire shall be responsible for maintaining the Site of the Project Highway at its own cost and expense and shall modify, repair or otherwise make improvements to the existing road of the Project Highway 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 Highway traffic-worthy and safe during the Construction Period.

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 agreement or any other agreement, and no default under any project agreement or agreement shall execute the Concessionaire from its obligations or liability hereunder.

7.1.3 Obligations of concessionaire prior to commencement of construction

7.1.3 The concessionaire shall, before commencement of construction of the Project Highway

- (a) submit to the MPRDC 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 Clause 10.2
- b) appoint its representative duly authorized to deal with the MPRDC in respect of all matters under or arising out of or relating to this agreement;
- (c) Undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this agreement, the applicable laws and applicable permits;
- (d) Select and appoint Auditor as per the provision of clause 27 of this agreement.
- (e) Provide all Facilities, Site Laboratory, Testing Equipments, means of Conveyance, records, measurements, test certificates, samples, drawings, designs, reports etc as required by MPRDC at his own cost,

7.1.4 Obligations of concessionaire in respect of the drawings

7.1.4 In respect of the Concessionaire's obligations with respect to the detailed and working Drawings of the Project Highway, 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, two copies each of all details Drawings to Independent Consultant for review and comments.
- (b) By forwarding the Drawings for review and comment to Independent Consultant, the Concessionaire represents that it has determined and verified that the design and engineering including field construction criteria related thereto is in conformity with the Specifications, Standards and quality norms set forth in this Agreement for and in respect of the Project Highway.

- (c) Within 15 (fifteen) 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, MPRDC 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 herein above.
- d) If the comments/observations of MPRDC/Independence 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 7 (seven) 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 confirm to such Specifications and Standards.
- e) 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 Drawing.
- f) Within 60 (sixty) days of the Toll Date, the Concessionaire shall furnish to the Independent Consultant and MPRDC with “**As Built**” Drawings reflecting the Project Highway as actually designed, engineered and constructed, including without limitation an “as built” survey illustrating the layout of the Project Highway and setback lines, if any, of the buildings and structures forming part of Project Facilities.
- g) Without prejudice to the foregoing provisions, in case of major bridges and deviations from the detailed project report, Independent Consultant will give its comments/observations only after prior consent of MPRDC. In such cases Independent Consultant will forward its comments/observations along with the drawings

submitted by the Concessionaire to MPRDC within 7 (seven) days of its receipt and MPRDC will give its consent/observations within 10 (ten) days to the Independent Consultant and the Concessionaire.

7.1.5 Obligations of concessionaire during construction of the Project Highway

7.1.5 Subject to the terms and conditions of this Agreement the Concessionaire will be required at its own cost and expense:

- (a) to undertake a review of the Detailed Project Report and the drawings as given in **Schedule – ‘K’** and suggest required changes if any in designs and drawings, along with detailed justification of the same to the Independent Consultant for obtaining the consent of MPRDC.
- (b) undertake the detailed design, engineering, procurement, financing, and construction of the Project Highway in accordance with the specifications and standards prescribed in this agreement.
- (c) to maintain, at its cost, the existing lane(s) of the project highway so that its traffic worthiness and safety standards are maintained reasonably up to the satisfaction of MPRDC and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, interrupt and diver the flow of traffic if such interruption and diversion is necessary for the efficient progress of construction works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Consultant which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project Highway.
- (d) to 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 requirement.
- (e) any change in the design will be the responsibility of the Concessionaire for which no compensation will be paid or deduction will be made by MPRDC.

7.2 OBLIGATIONS OF MPRDC

7.2.1. MPRDC agrees to observe, comply and perform in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the following:

- (a) hand over the physical possession of the Project Site and enable access to the Site, free from Encumbrances, in accordance with this Agreement;
- (b) permit peaceful use of the Site by the Concessionaire under and in accordance with the provisions of this Agreement without any let or hindrance from MPRDC or persons claiming through or under it;
- (c) assist and provide all reasonable support to the Concessionaire in obtaining Applicable Permits;
- (d) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (e) assist that no barriers are erected or placed by GoMP or any Governmental Agency on the Project Highway except on account of any temporary law and order situation or upon national security considerations;
- (f) enter into the State Support Agreement with the Concessionaire and the GoMP;
- (g) assist the Concessionaire in obtaining necessary assistance to regulate traffic on the Project Highway subject to and in accordance with the Applicable Laws;
- (h) assist the Concessionaire in obtaining Police assistance from GoMP against payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Highway;
- (i) observe and comply with its obligations set forth in this Agreement
- (j) make such instalment of the grant available for disbursement as accepted in the Bid, within 30 days of it's becoming due for payment to credit of "Escrow Account". However, MPRDC shall endeavour to make the subsidy/grant available for disbursement at the earliest possible.
- (k) honour the commitment to pay the respective termination payments under this agreement to the respective parties as specified under the agreement.

7.3 REPRESENTATIONS AND WARRANTIES:
Representations and Warranties of the Concessionaire

7.3.1. The Concessionaire represents and warrants to MPRDC that:

- (a) It is duly organised, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- (b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) It has taken all necessary actions under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (d) It has the financial standing and capacity to undertake the Project;
- (e) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (g) All the information furnished in the Bid is, and shall be, true and correct as on the date of submission of such information and the Balance Sheet and Profit and Loss Account of the Concessionaire for each of its Accounting Years after the Commencement date furnished to MPRDC shall give true and fair view of the affairs of the Concessionaire;
- (h) It shall furnish a copy of the audited accounts of the Company within 180 (one hundred eighty) days of the close of its each Accounting Year after the Commencement date and any material change subsequent to the date of such accounts shall be notified to MPRDC by the Concessionaire within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
- (i) 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 the Memorandum and Articles of Association of the Concessionaire or any Member of the Consortium or any Applicable Laws or any covenant, agreement, 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;
- (j) There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this

Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;

- (k) 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 Governmental Agency which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (l) It has complied with all Applicable Laws 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 Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- (m) The aggregate equity share holding of the bidder/Consortium Members (wherever applicable) and their associates in the issued and paid up equity share capital of the Concessionaire shall not be less than (a) 78% (Seventy eight percent) during the Construction Period and (b) not less than 26% (Twenty Six Percent) during the Toll Period; Provided that such reduction in the aggregate Equity Holding of the bidder/ consortium members and their associates if any, shall be with prior approval of MPRDC.
- (n) Each Consortium Member (wherever applicable) was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and requested MPRDC to enter into this Agreement with the Concessionaire pursuant to the LOA and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement; Each Consortium Member/Bidder jointly and severally also undertake to accept and honour all the obligations of the Concessionaire under this agreement, during the currency of this agreement and also upon the termination of this agreement,
- (o) All rights and interests of the Concessionaire in and to the Project Highway shall pass to and vest in MPRDC on the Termination Date free and clear of all liens, claims, and Encumbrances without any further act or deed on the part of the Concessionaire or MPRDC and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire 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;
- (p) No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to MPRDC, or to

any Governmental Agency 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

- (q) It warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, 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 MPRDC, or GoMP in connection therewith.

Representations and Warranties of MPRDC.

7.3.2. MPRDC represents and warrants to the Concessionaire which includes:

- (a) MPRDC is duly organised and validly existing under the laws of India;
- (b) MPRDC has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) MPRDC has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (d) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and
- e) MPRDC is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement.

7.4 DISCLAIMER

7.4.1 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 traffic volumes, Specifications and Standards, Site, scope of work, designs and all the information provided by MPRDC and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

7.4.2. 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 7.4.1.above and hereby confirms that MPRDC shall not be liable for the same in any manner whatsoever to the Concessionaire, the Consortium Members/Bidder or their Associates.

CHAPTER –VIII : RIGHT OF WAY

THE SITE:-

The Covenants governing the use and development of site include:-

- 8.1. MPRDC hereby grants to the Concessionaire for the Agreement Period access to the Site for carrying out such surveys, investigations and soil tests as the Concessionaire may deem necessary at the Concessionaire's cost, expense and risk without causing disruption in the traffic on the existing lanes of the Project Highway. It is expressly agreed and understood that the MPRDC shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the project site pursuant hereto in the event of termination or otherwise.
- 8.2. MPRDC hereby grants to the Concessionaire for the Concession Period the right and licence to enter upon all real estate comprised in the Site and to survey design, engineer, procure, construct, operate and maintain the Project Highway including the Project Facilities in accordance with the provisions of this Agreement. Such right and licence of the Concessionaire to use the Site shall be subject to:
 - 8.2.1. any existing utilities on, under or above the Site are kept in continuous satisfactory use, if necessary by the use of suitable temporary or permanent diversions with the authority of the controlling body of that utility;
 - 8.2.2. any existing roads or right of ways are kept in continuous satisfactory use, if necessary, by the use of suitable temporary or permanent diversions with the authority of the controlling body of that road or right of way. For any diversion or construction, of temporary roads, MPRDC will assist the Concessionaire in acquiring the Right of Way;
 - 8.2.3. the rights of the road users to use the road in accordance with this Agreement;
 - 8.2.4. a right of access by the MPRDC itself and any of its agents to perform their obligations and rights under the Concession Agreement or any other functions that they have, and to conduct any study or trial for the purpose of research;
- 8.3. It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the MPRDC to terminate the licence, upon the termination of this agreement for any reasons whatsoever.
- 8.4. the Concessionaire hereby appoints the MPRDC (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the concessionaire a transfer or surrender of the licence granted hereunder at any time after the concession period

has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the GoMP, and the concessionaire consents to it being registered for this purpose.

- 8.5 it is expressly agreed that the trees on the project site are property of the GoMP 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 license 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 and on or under the project site. For the avoidance of doubt mining rights mean rights to mine any or all minerals or interest therein.
- 8.6 The license and the right to use the Site shall be granted for the purpose of carrying out the functions placed upon the Concessionaire under the Agreement and not for any other purposes;
- 8.7 The Concessionaire shall allow access to, and use of the Site for telegraph lines, electric lines or such other public purposes as MPRDC may specify. Where such access or use causes any damage to the Project Highway and consequent financial loss to the Concessionaire, it may seek compensation or damages from such user of the Site as per Applicable Laws.
- 8.8 The Concessionaire shall not sublet the whole or any part of the Site save and except as may be expressly set forth in this Agreement provided however that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project Highway including Project Facilities.
- 8.9 For the purpose 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.
- 8.10. The Concessionaire shall bear all costs and charges for special and temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project Highway and the performance of its obligations under this Agreement.

CHAPTER – IX: PROCUREMENT OF SITE

- 9.1 Pursuant to the notice specified in Clause 4.2 the MPRDC's Representative and the concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix(the Appendix) specifying in reasonable detail those parts of the site to which vacant access and Right of Way has not been granted to the Concessionaire, Signing of the memorandum, in two counterparts(each of which shall constitute an original), by the authorized representatives of the Parties shall be deemed to constitute a valid licence and right of way to the concessionaire for free and unrestricted use and development of the vacant and unencumbered site during the concession period under and in accordance with the provisions of this agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and right of way with respect to the parts of the site as set forth in the appendix shall be deemed to have been granted to the concessionaire upon vacant access thereto being provided by the MPRDC to the concessionaire.
- 9.2 Without prejudice to the provisions of clause 9.1 the parties hereto agree that on or prior to the commencement date, the MPRDC shall have granted vacant access and right of way such that the appendix shall not include more than 20% (twenty per cent) of the total area of the site required and necessary for the (two lance) project highway.
- 9.3 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 take place, and in the event of any encroachment or occupation on any part thereof, the concessionaire shall report such encroachment or occupation forthwith to the MPRDC and undertake its removal at its cost and expenses.
- 9.4 The MPRDC shall make best efforts to provide and grant the right of way to the concessionary 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. 50.00 (Rupees Fifty) per day for every 1,000.00 (one thousand) square meters or part thereof, commencing from the 91st (ninety first) day of the commencement date and until such right of way is procured.
- 9.5 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 lands for which right of way is granted within 90 (ninety) days of the commencement date shall be completed before the project completion date. It is further agreed that the obligation of the Concessionaire to complete the affected construction works shall subsist so long as the MPRDC continues to pay the damages specified herein, and upon the MPRDC ceasing to pay such damages after giving 60 (sixty) days' notice thereof to the concessionaire, the obligation of the concessionaire to complete such work on such part of the site shall cease forthwith.

- 9.6 The Concessionaire shall, if so required by the MPRDC, procure on behalf of the MPRDC, on the terms and to the extent specified by the MPRDC, the additional land required for toll plazas, traffic aid posts, medical aid posts under passes and over passes or for construction of works specified in change of scope order issued under Clause 15 in accordance with this agreement and upon procurement, such land shall form part of the site and vest in the MPRDC; provided that the concessionaire may, be notice given to the MPRDC no later than 60 (sixty) days, from the commencement date or the date of change of scope order, as the case may be required the MPRDC to initiate and undertake proceedings for acquisition of such land under the provisions of the applicable laws and the MPRDC shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this clause 9.6 shall be borne by the MPRDC in accordance with the Act; provided also that the land to be acquired by the MPRDC hereunder shall be deemed to be included thereof. It is further agreed that the MPRDC may, at any time after the bid date, suo moto acquire the land required hereunder.
- 9.7 The concessionaire may procure at its cost and expenses and on its own the land that may be required by it for additional facilities and the MPRDC shall have non obligation or liability in respect thereof, For the avoidance of doubt, the concessionaire shall seek prior consent of the MPRDC to connect any additional facility to the project highway and such consent shall not be unreasonably withheld.
- 9.8 **Site to be free from Encumbrances**
Subject to the provisions of Clause 9 the site shall be made available by the MPRDC to the Concessionaire pursuant thereto free from all encumbrances and occupations and without the concessionaire being required to make any payment to the MPRDC on account of any costs, compensation, expenses and charges for the acquiring and use of such site for the duration of the concession period, except insofar as otherwise expressly provided in this agreement. For the avoidance of doubt, it is agreed that existing rights of way easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances.
- 9.9 **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 therein or under 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.

9.10 **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 purpose of the project highway and the performance of its obligations under this agreement.

9.11 **Access to the MPRDC 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 the MPRDC 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.

CHAPTER – X: CONSTRUCTION OF PROJECT HIGHWAY

- 10.1. On or after the Commencement date, the Concessionaire shall commence , undertake and complete the Construction Works on the Project Highway in accordance with this agreement.
- 10.2 Construction of the Project Highway shall be undertaken by the Concessionaire in conformity with the Project Completion Schedule (**Schedule – “Q”** annexed hereto) and the Project milestones for completion of the Project Highway on or before the Scheduled Project Completion Date.
- 10.3 If the Concessionaire fails to achieve any such Project milestone other than Project Completion, within a period of 90 (ninety) days from the date set forth in Schedule then it shall be liable to pay Damages to MPRDC, at the rate not exceeding Rs. 10000/- (Rs. Ten Thousand) per day until such milestone is achieved. MPRDC may either recover such Damages from the subsidy/grant or Performance Security or demand payment thereof from the Concessionaire. The Concessionaire shall make such payment within 7 (seven) days of receiving such demand from MPRDC and any delay in making such payment shall attract interest @ SBARSB AR plus two per cent.
- 10.4 If the Concessionaire fails to achieve Project completion as per the Scheduled Project Completion Date as set forth in this agreement, subject to any valid extension of time granted by MPRDC and also subject to fulfillment of the obligations by MPRDC as given under the Concession Agreement, then it shall pay damages to MPRDC as per Clause 13.4 MPRDC may however waive such damages on satisfactory explanation or if the Concessionaire is able to satisfy MPRDC that the delay occurred for reasons beyond the control of the Concessionaire. However, in the event that the Concessionaire achieves the Provisional Certificate or the Completion Certificate by Scheduled Project Completion Date, the damages recovered under this clause, if any, would be refunded (without interest) to the Concessionaire.

CHAPTER – XI : 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 the authority of the controlling body of that road, right of way or utility, and the MPRDC shall, upon written request from the Concessionaire, initiate and undertake at the concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2 Shifting of obstructing utilities

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

11.3 New utilities and roads

11.3.1 The concessionaire shall allow, subject to such conditions as the MPRDC may specify, access to, and use of the site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the concessionaire, it may require the user of the site to pay compensation or damages as per applicable laws. For the avoidance of doubt, it is agreed that use of the site under this clause shall not in any manner relieve the concessionaire of its obligation to maintain the project highway in accordance with this agreement and any damage caused by such use shall be restored forthwith.

11.3.2 The MPRDC may, by notice require the Concessionaire to connect any adjoining road to the project highway, and the connecting portion thereof falling within the site shall be constructed at the MPRDC's cost in accordance with Clause 15. The maintenance of such connecting portion shall be undertaken by the concessionaire in accordance with the provisions of clause 16.7.

11.3.3 The MPRDC may by notice require the Concessionaire to connect, through a paved road, any adjoining service station, hotel, motel or any other public facility or amenity to the project highway, whereupon the connecting portion thereof that falls within the site shall be constructed and maintained by the Concessionaire upon advance payment of the cost to be made by the beneficiary entity in accordance with the amount and period as determined by the Independent Consultant. For the avoidance of doubt, any connecting road constructed prior to the commencement date and falling within the site shall be maintained by the

Concessionaire upon advance payment to be made by the beneficiary entity in accordance with the provisions of this clause.

11.4 Felling of Trees

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

CHAPTER – XII : MONITORING AND SUPERVISION OF CONSTRUCTION

- 12.1 During the Construction Period, the Concessionaire shall furnish to MPRDC and the Independent Consultant monthly progress reports of actual progress of the Construction Works comprised in the Project Highway and shall give all such other relevant information as may be required by MPRDC and/or the Independent Consultant
- 12.2 The Independent Consultant shall inspect the Construction Works and the Project Highway at least once a fortnight or at such regular intervals as may be decided by MPRDC during the Construction Period and make out an Inspection Report of such inspection (the “Inspection Report”). It shall send a copy of its Inspection Report to MPRDC and the Concessionaire. The Concessionaire shall take necessary action to remedy the lapses, if any, stated in the Inspection Report for ensuring compliance with the provisions of this Agreement. 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.
- 12.3 For the purposes of determining that Construction Works are being undertaken in accordance with Specifications and Standards and Good Industry Practice, the Independent Consultant shall require the Concessionaire to carry out such Tests at such time and frequency and in such manner as may be necessary in accordance with Good Industry Practice for quality assurance. 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. The Concessionaire shall promptly carry out at his cost such remedial measures as may be necessary to cure the defects or deficiencies, if any, indicated in such test results and furnish a report to the Independent Consultant in this behalf.
- 12.4 If the Independent Consultant or MPRDC reasonably determine that the rate of progress of the Construction of the Project Highway is such that the Project Completion is not feasible on or before the Scheduled Project Completion Date by the Concessionaire, the Independent Consultant shall recommend to MPRDC for notifying the Concessionaire about the same and the Concessionaire shall within 15 (fifteen) days thereof notify the MPRDC and the Independent Consultant about the steps it proposes to take to expedite progress and the period within which it shall achieve Toll Date.
- 12.4.1 Upon recommendation of the Independent Consultant or suo-moto, MPRDC may by written notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if in the reasonable opinion of the MPRDC such work is being carried on in a manner which threatens the safety of the works or of the users of the Project Highway.

- 12.4.2 The Concessionaire, shall upon instructions of the MPRDC pursuant to sub-clause 12.4.1 above suspend the Construction Works or any part thereof for such time and in such manner as may be specified by MPRDC and subject to sub-clause 12.4.3 below, the costs incurred during such suspension to properly protect and secure the Construction Works or such part thereof as is necessary in the opinion of the Independent Consultant (“**Preservation Costs**”), shall be borne by the Concessionaire.
- 12.4.3 If the suspension pursuant to Sub-clause 12.4.1 above is caused by:
- (a) any reason other than default or breach of this Agreement by the Concessionaire including breach of any of the obligations of the Concessionaire under this Agreement, the Preservation Costs shall be borne by the Concessionaire.
 - (b) reason of default or breach of this Agreement by MPRDC the Preservation Costs shall be borne by MPRDC; or
 - (c) reason of any Force Majeure Event, the Preservation Costs shall be borne by the Concessionaire save and except to the extent otherwise expressly provided in Clause 28.
- 12.4.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Consultant shall determine any Extension to the Project Completion Schedule, the Scheduled Project Completion Date and the Concession Period, to which the Concessionaire is reasonably entitled and shall notify MPRDC accordingly. MPRDC shall extend the Project Completion Schedule, the Scheduled Project Completion Date and the Concession Period in accordance with the recommendations of the Independent Consultant.
- 12.4.5 The Concessionaire, within 15 days from the date of notice submit the methodology to overcome the material breach that has led to suspension to MPRDC/ IC. If the same is found reasonable then MPRDC/ IC may revoke the suspension on the Concessionaire.
- 12.4.6 The Concessionaire shall provide at his own cost, all the site laboratory and testing Equipments, facilities means of Transport, Conveyance, materials, reference Books standards and any tools, tackles, labour and manpower for carrying of all tests required for the Project at site by MPRDC or their Independent Consultants.

CHAPTER – XIII : COMPLETION

- 13.1 The Construction of all sections of the Project Highway has to be completed within 30 Months of signing of the Agreement unless otherwise extended as per the Provision of this agreement. A section of the Project shall be deemed to be completed and open to traffic only when the Completion Certificate or the Provisional Certificate for that section is issued in accordance with the provisions of Clause 15 (the “**Project Completion**”)
- 13.2 Toll Date of the Project shall be the date on which MPRDC has issued the Completion Certificate or the Provisional Certificate, as the case may be for any or all sections of the Project Highway, under this Agreement and the Concessionaire shall not levy and collect any Fee until it has received such Completion Certificate or the Provisional Certificate.
- 13.3 The Concessionaire guarantees that the Project Completion of all sections of Project Highway shall be achieved in accordance with the provisions of this Agreement on a date not later than 30 months from the Commencement date (“**Scheduled Project Completion Date**”).
- 13.4 If the Project Completion of all sections of Project Highway is not achieved by the Scheduled Project Completion Date or such extended date by MPRDC, for any reason other than conditions constituting Force Majeure or for reasons attributable to MPRDC, the Concessionaire shall be liable to pay to MPRDC as weekly Damages for delay in the achievement of the Toll Date, up to an amount calculated at the rate of Rs.20,000/- per day (Rupees Twenty Thousand Only) for such delay. MPRDC may either recover such Damages from the subsidy/grant or Performance Security or demand payment thereof from the Concessionaire.
- 13.5 If the Project Completion of all sections of Project Highway is not achieved by the Scheduled Project Completion Date, then the toll date and the toll period shall commence there from without any increase in the Concession Period and if the Project completion is achieved before the Scheduled Project Completion date, then the Toll Period shall commence there from without any reduction in Concession Period.
- 13.6 If the Toll Date does not occur within 12 (twelve) months from the Scheduled Project Completion Date for any reason other than occurrence of Force Majeure or for reasons attributable to MPRDC or any Governmental Agency, MPRDC shall be entitled to Terminate this Agreement in accordance with the provisions of Clause 29.3.4

CHAPTER – XIV : TESTS

- 14.1 All Tests shall be conducted in accordance with the Applicable Laws and Applicable Permits. MPRDC shall designate a MPRDC Representative to witness and observe the Tests. All Tests shall be held in accordance with the Schedule notified by the Concessionaire to the Independent Consultant and the MPRDC Representative who may either witness the Test themselves or designate their representatives for this purpose if they choose.
- 14.2 The Independent Consultant shall monitor the results of the Tests to determine the compliance of the Project Highway with the Specifications and Standards. The Concessionaire shall provide to the Independent Consultant and the MPRDC with copies of all Test data including detailed Test results.
- 14.3 At least 30 (thirty) days prior to the likely completion of the Project Highway, the Concessionaire shall notify the Independent Consultant and MPRDC of the same and shall give notice of its intent to conduct any final Tests. The Concessionaire shall give to MPRDC and the Independent Consultant at least 10 (ten) days' prior notice of the actual date on which it intends to commence the Tests and at least 7 (seven) days' prior notice of the commencement date of any subsequent Tests. The Independent Consultant shall have the right to suspend or delay any Test if it is reasonably anticipated or determined during the course of the Test that the performance of the Project Highway or any part thereof does not meet the Specifications and Standards.
- 14.4 Upon the Independent Consultant determining the Tests to be successful and all parts of the Project Highway to have been completed and the Project Highway can be legally, safely and reliably placed in commercial operations, the Independent Consultant shall forthwith submit to MPRDC the report and MPRDC, based upon the report and such other verification as deemed fit may issue a Certificate (called the “**Completion Certificate**”).
- 14.5. MPRDC may on the recommendation of Supervision Consultant and the request of the Concessionaire issue a provisional certificate of completion (“**Provisional Certificate**”) if the Tests are successful and all parts of Project Highway can be legally, safely and reliably placed in commercial operation though certain works or things forming part thereof are not yet complete. In such an event such Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Consultant and the Concessionaire (“**Outstanding Items**”). All Outstanding Items shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of such Provisional Certificate. The Concessionaire may be at its sole discretion, granted by MPRDC a further period of up to 60 (sixty) days for completion of Outstanding Items after levying a penalty @ Rs. 10,000/- (Rupees Ten Thousand) per day for such delay . Upon completion of all Outstanding Items to the satisfaction of the Independent Consultant, the MPRDC shall issue the Completion Certificate to the Concessionaire. Failure to complete the Outstanding Items in the manner set forth in this Clause 14.5 shall entitle MPRDC to suspend the toll without any compensation of any form thereof or any extension in concession period. Such

suspension will continue till all the outstanding items are completed to the satisfaction of MPRDC. Non completion of outstanding items in the manner prescribed shall also entitle MPRDC to terminate this Agreement if the same are not completed within 150 (one hundred fifty) days from the date of issue of Provisional Completion Certificate in accordance with the provisions of Clause 29.3.4.

- 14.6. If the Independent Consultant certifies to MPRDC that it is unable to issue the Completion Certificate or Provisional Certificate because of events or circumstances which prevents the performance of the Concessionaire's obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Concessionaire shall re-schedule the Tests and hold the same as soon as reasonably practicable.
- 14.7. Upon receipt of a report from the Independent Consultant or after conducting its own review or inspection, if MPRDC is not satisfied with the results of any Tests, it shall within 7 (seven) days thereof notify the Concessionaire of its reasons to conclude that the Completion Certificate should not be issued, in which case the Concessionaire shall promptly take such action as will achieve such satisfaction. Such procedure shall be repeated as necessary after rectification and remedy of reasons/ causes by the Concessionaire on account of which the Tests were unsuccessful, until the Completion Certificate or Provisional Certificate has been issued in accordance with this Agreement by the Independent Consultant.
- 14.8. The Concessionaire shall bear all the expenses relating to Tests under this Agreement. Provided, however, that if the MPRDC Representative requires any Test to be conducted which is not specified in this Agreement and such Test is not necessary in the opinion of the Independent Consultant, then the expenses on such Test may be reimbursed by MPRDC to the Concessionaire.

CHAPTER – XV : CHANGE OF SCOPE

- 15.1 MPRDC may, require provision of such additional works and services on or about the Project Highway which are beyond the scope of the Project (Schedule-I) as contemplated by this Agreement (“Change of Scope”), to be carried out by the concessionaire at his own cost during the concession period and that there shall be no change in concession period or any compensation payable if such changes do not require expenditure exceeding Rs 2.14 crores (0.5% of the project cost) (Rs. 2.14 cores and do not adversely affect the Toll Date.
- 15.2 All such changes shall be made by MPRDC by an order (the “Change of Scope Order”) issued in accordance with the procedure set forth in this Clause 15. MPRDC shall not increase/decrease the Scope of Work under normal circumstances. However, in the exceptional circumstances any increase in the Scope of Work shall lead to increase in the Concession Period to the extent such changes require expenditure exceeding Rs. 2.14 crores. However, in case the demand of grant is more than 20% of Project cost, any reduction in the Scope of Work under exceptional circumstances shall not alter the Concession Period and will result in reduction in the subsidy to the extent that grant remains 20% of Total Project cost and beyond that the same will result in reduction in concession period., to the extent such change in scope requires reduction in expenditure exceeding Rs. 2.14 crores. In case the demand of grant is equal or less than 20%, the reduction in change of scope under exceptional circumstances will result in reduction of concession period.
- 15.3 Scope of work is final and binding on the concessionaire. Items and quantities in BOQs are indicative and change in BOQ is the responsibility of Concessionaire for which no additional concession period will be provided or reduction in period or grant will be done as the case may be. Any work executed out of the scope of work like new bridges, (repair/reconstruction/strengthening), new additional culverts, additional lane, by-pass, additional length of road, , sub-way, Railway over Bridge, new bridge, under bridge, under pass, will be considered as change of scope irrespective of cost..
- 15.4 Any change in specifications at the instance of the Concessionaire and approved by the MPRDC shall not contribute a change of scope,. In case of increase in length of the road on account of some additional scope of work, toll right on this increased length will be granted to the Concessionaire and the concessionaire will be required to maintain the same like the initial length. However, concessionaire will also be entitled to the compensation by increase of concession period as per the procedure detailed in this clause.
- The recommendation by the Steering Group consisting of the representatives of Concessionaire and MPRDC based upon the recommendation from the Independent Consultant shall be final and binding in this regard.
- 15.5 Change of Scope after the project completion shall be limited to 20% of The Total Project Cost (based on the Schedule of Rates given in the Detailed Project Report). 0

15.6 Procedure for Change of Scope

15.6.1 MPRDC shall whenever it desires provision of additional works and services referred to in Clause 15.1 issue to the Concessionaire a notice of change of scope (the “**Change of Scope Notice**”).

15.6.2 Upon receipt of such Change of Scope Notice, the Concessionaire shall provide to MPRDC and the Independent Consultant such information as is necessary and reasonable together with preliminary documentation in support of the following:

(a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the work is required to be carried out before Toll Date, and

(b) the cost to the Concessionaire of complying with such Change of Scope Notice (including, without limitation, material and labour cost information furnished in accordance with the current schedule of rates applicable to the works assigned by MPRDC to its contractors, including the premium on such rates) as on the date of change of scope.

(c) the options suggested for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time for the implementation thereof including a detailed breakdown by work classifications.

15.6.3 If MPRDC desires, after receipt of information set forth in sub-clause (b) as above, to proceed with the Change of Scope, it shall convey the desired option to the Concessionaire by issuing a Change of Scope Order and thereupon the Parties shall make good faith efforts to mutually agree upon the costs and extension or reduction of time to be granted for implementing of the same. Upon reaching an agreement relating to such costs and time, MPRDC shall issue a written confirmation of the Change of Scope Order and thereupon the Concessionaire shall proceed with performance of such order. In the event, the Parties are unable to agree, MPRDC may, by issuing a confirmation in writing of such Change of Scope Order, require the Concessionaire to proceed with the performance of the Change in Scope Order pending resolution of such dispute, as per dispute resolution procedure set forth in this proposed Concession Agreement.

15.7 A change of Scope Order will be effective and binding upon issuance of a confirmation of such Change of Scope Order by MPRDC. Notwithstanding a dispute regarding cost and time for implementation of such Change of Scope Order, the Concessionaire shall proceed with the performance of such Change of Scope Order promptly following MPRDC's confirmation pursuant to Clause 15.6.3

- 15.8 All claims by the Concessionaire pursuant to this Clause shall be supported by such documentation as is reasonably sufficient for MPRDC to determine the accuracy thereof, including invoices from Contractors and subcontractors and certification of such claims by the Auditors.
- 15.9 The calculation for computing the extension or reduction in concession period on account of increase or decrease in scope of work as prescribed in clause 15.1 beyond Rs. 2.14 crores will be done on the basis of following formula :

Mathematically the steps would be as follows :

1. $A =$ Average daily toll in the first 6 months
2. $B = A \times (1 + \text{annual traffic growth}) \times (1.07)^{\text{Toll period in year}}$
3. $C = B / (1 + \text{discount rate})^{\text{Year between expenses and end of toll period}}$
4. $D = \text{Cot of change of scope} / C$

D is the number of days to be added to the toll period, rounded to the nearest whole day.

For the purpose, it is proposed that traffic growth will be estimated at actual traffic growth or 4% per annum whichever is higher. For computation of traffic growth, the average annual traffic growth for a period of at least 2 years or actual whichever is higher will be taken. The discount factor will be the rate of SBARSB AR prevalent on the date of such order becoming effective.

- 15.10 During the construction period the computation will be done on the basis of SOR used in the Detailed Project Report (Schedule-K), to evaluate the tentative cost of the additional work. During the toll period the computation will be done on the basis of latest SOR of NH prevalent in Madhya Pradesh at the time of issue of change of scope order and such order becoming effective.

CHAPTER - XVI. OPERATION AND MAINTENANCE

- 16.1 The Concessionaire shall operate and maintain the Project Highway by itself, or through O&M Contractors and if required, modify, repair or otherwise make improvements to the Project Highway to comply with Specifications and Standards, and other requirements set forth in this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits and manufacturer's guidelines and instructions with respect to toll systems, and more specifically.
- 16.1.1 permitting safe, smooth and uninterrupted flow of traffic during normal operating conditions;
 - 16.1.2 charging, collecting and retaining the Fees in accordance with this Agreement;
 - 16.1.3 minimise disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Highway by providing a rapid and effective response and maintaining liaison procedures with emergency services;
 - 16.1.4 undertaking routine maintenance including prompt repairs of potholes, cracks, concrete joints, drains, line marking, lighting and signage;
 - 16.1.5 undertaking major maintenance such as resurfacing of pavements, repairs to structures, repairs and refurbishment of tolling system and hardware and other equipment;
 - 16.1.6 carrying out periodic preventive maintenance to Project Highway including tolling system;
 - 16.1.7 preventing with the assistance of concerned law enforcement agencies unauthorised entry to and exit from the Project Highway;
 - 16.1.8 preventing with the assistance of the concerned law enforcement agencies encroachments on the Project Highway including Site and preserve the Right of Way of the Project Highway;
 - 16.1.9 maintaining a public relations unit to interface with and attend to suggestions from users of the Project Highway, the media, Government Agencies, and other external agencies; and
 - 16.1.10 adherence to the safety standards specified by MPRDC.
- 16.2 The Concessionaire shall in consultation with the Independent Consultant prepare not later than 180 (One hundred and eighty) days before the Scheduled Project Completion Date, the repair and maintenance manual (the "Maintenance manual") which shall be based on the Operation and Maintenance Specifications laid down in Schedule M annexed hereto this agreement for regular and periodic maintenance, and shall ensure and

procure that at all times, during the Toll Period, the Project Highway is maintained in a manner that it complies with the Specifications and Standards and the minimum maintenance requirements as provided in this agreement and schedules thereof and as approved by MPRDC.

Concessionaire shall supply, at least two months before the Toll Date, 6 (six) copies of the Maintenance Programme and 3 (three) copies each to the MPRDC, and Independent Consultant.

16.3 Not later than forty five (45) days before the beginning of each Accounting Year, the Concessionaire, shall in consultation with the Independent Consultant prepare and provide to MPRDC, its proposed programme of preventive and other scheduled maintenance of the Project Highway subject to the minimum maintenance requirements set forth in Maintenance Manual as approved by MPRDC necessary to maintain the Project Highway at all times in conformity with the Specifications and Standards (the “**Maintenance Programme**”). Such Maintenance Programme shall include but not be limited to the following:

16.3.1 intervals and procedures for the carrying out of inspection of all elements of the Project Highway;

16.3.2 criteria to be adopted for deciding maintenance needs;

16.3.3 preventive maintenance schedule;

16.3.4 intervals at which the Concessionaire shall carry out periodic maintenance;

16.3.5 intervals for major maintenance and the scope thereof; and

16.3.6 lane closures schedule for each type of maintenance (length and time).

16.4 Maintenance shall include replacement of equipment/ consumables, horticultural maintenance and upkeep of all Project Assets in good order and working condition. Maintenance shall not include the extension of any existing pavements, bridges, structures and other civil works unless part of the Project.

16.5 The Concessionaire shall keep the carriageways, rest areas and other Project Facilities and Toll Plazas in a clean, tidy and orderly condition free of litter and debris.

16.6 During the Toll Period, the Concessionaire shall not carry out any material modifications to the Project Highway save and except where such

16.6.1. modification is required by Good Industry Practice; or

16.6.2. modification is necessary for the Project Highway to operate in conformity with the Specifications and Standards prescribed under this Agreement. Provided that the Concessionaire shall notify MPRDC of the proposed modifications along with details thereof at least fifteen

days before commencing work on such modifications and shall reasonably consider such suggestions as MPRDC may make within 15 (fifteen) days of receipt of such details by MPRDC.

16.7 The Concessionaire shall be responsible for the maintenance of the approach roads to and underpasses and overpasses up to 50 mtrs from the Project Highway in accordance with Good Industry Practice.

16.8 Emergency De-commissioning

16.8.1 If, in the reasonable opinion of the Concessionaire there exists an emergency which warrants decommissioning and closure to traffic of whole or any part of the Project Highway, the Concessionaire shall be entitled to de-commission and close the whole or the relevant part of the Project Highway to traffic for so long as such emergency and the consequences thereof warrant, provided however that such emergency decommissioning will be notified to MPRDC promptly. MPRDC may issue directions to the Concessionaire for dealing with such situations and the Concessionaire shall abide by such directions. MPRDC reserve the rights not to permit such modifications.

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

16.8.3 The Concessionaire shall not close any lane of the Project Highway for undertaking maintenance or repair works except with the prior written approval of the MPRDC. 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 indicating the nature and extent of repair works, the length and section required to be closed and the period of closure. The Concessionaire shall also furnish particulars indicating the minimum time required for completing such repair works. Within 5 (five) days of receiving such request, MPRDC, shall grant permission with such modifications, as it may deem necessary. Upon receiving such permission, the Concessionaire shall be entitled to close the lane in accordance with such permission and re-open it within the period stipulated in such permission. For any delay in re-opening such lane during the Concession Period, the Concessionaire may be liable to pay Damages to MPRDC up to an amount calculated at the rate of Rs.1000/- (Rupees One thousand), per day or part thereof for every stretch of 100 (one hundred) meters or part thereof in each lane until such time the stretch has been re-opened for traffic. Provided, however, that these provisions shall not apply to Emergency decommissioning under Clause 16.8.

16.9 Save and except as otherwise be expressly provided in this Agreement, if the Project Highway including Construction Works or any part thereof shall suffer

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 in a manner so as to make the Project Highway conform in every respect to the Specifications and Standards, quality and performance as prescribed by this Agreement. The decision of MPRDC shall be final and conclusive regarding the satisfactory operation and maintenance of the Project Highway as per the Agreement.

16.10 In the event the Concessionaire does not maintain and/ or repair the Project Highway or a part thereof up to and in accordance with the Specifications and Standards and/ or in accordance with the Maintenance Manual, and shall have failed to commence remedial works within 15 (fifteen) days of receipt of notice in this behalf from MPRDC based upon the O&M Inspection Report, MPRDC shall, without prejudice to its rights under this Agreement, including Termination thereof, be entitled to have the repair and maintenance of the Project Highway performed at the risk and cost of the Concessionaire and to recover the same from the Concessionaire in the following order ;

16.10.1 recovery from the “Maintenance Fund”.

16.10.2 recovery by invoking the Maintenance Security

16.10.3 recovery from the “Escrow Account”

16.10.4 recovery by collection of toll by MPRDC through its authorised representatives, till the recovery of the total amount of repairs and maintenance cost after suspension of the toll collection by MPRDC of the Concessionaire.

16.11 In the event the Concessionaire does not maintain and/ or repair the Project Highway or a part thereof up to and in accordance with the Specifications and Standards and/ or in accordance with the Maintenance Manual, and shall have failed to commence remedial works within 15 (fifteen) days of receipt of notice in this behalf from MPRDC based upon the O&M Inspection Report, MPRDC shall, without prejudice to its rights under this Agreement, including Termination thereof, be entitled to recover damages from the Concessionaire for such default payable after period of 15 days and until the default is cured. The damages shall be calculated for each day of default @ Rs.5000/- (Rupees Five Thousand Only).

16.12 The Concessionaire shall for due and faithful performance of its Obligations during the Toll Period and to cover the cost of repairs and maintenance of the Project Highway shall maintain a “Maintenance Fund” in a separate designated account (in the form of Fixed Deposit with the Bank) in the bank with the lien of MPRDC recorded with the Bank and to be operated by MPRDC. 3% (Three Percent) of the monthly toll collection shall be deposited within 7 days of the end of each month, commencing from the Toll Date, till such time the total amount deposited in the “Maintenance Fund” is not less than Rs.1% of project cost rounded off to higher Rs. 5.00 lakhs (excluding the interest thereon). The interest accrued on the Fixed Deposit of the Maintenance Fund shall also be retained in

the “Maintenance Fund”. The “Maintenance Fund” shall be refunded within 15 days of the expiry of the Concession Period. Any withdrawal from the “Maintenance Fund” by MPRDC for the purposes of Operation and Maintenance shall be recouped from the Toll Collection.

- 16.13 If the Concessionaire commences any works for curing any defects or deficiencies in the Project Highway, it shall complete such works expeditiously in accordance with Good Industry Practice. If such works are carried out in a manner that results in a delay of more than 30 (thirty) days as compared to the time required in accordance with Good Industry Practice, MPRDC shall recover Damages from the Concessionaire as if a default had occurred, as per Clause 16.11 above.
- 16.14 The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project Highway is not available to traffic after the Toll Date on account of any of the following for the duration thereof:
- 16.14.1 an event of Force Majeure;
 - 16.14.2 measures taken to ensure the safe use of the Project Highway except when unsafe conditions on the road occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
 - 16.14.3 compliance with a request from MPRDC or the directions of any Governmental Agency the effect of which is to close all or any part of the Project Highway.
- 16.15 Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project Highway open to traffic and use provided they can be safely operated and kept open to traffic.

CHAPTER – XVII : MONITORING AND SUPERVISION DURING OPERATION

- 17.1 The Concessionaire shall undertake periodic (at least once every calendar month but once every week during monsoons) inspection of the Project Highway to determine the condition of the Project Highway including its compliance or otherwise with the Maintenance Manual, the Maintenance Programme, Specifications and Standards and the maintenance required and shall submit reports of such inspection (“**Maintenance Reports**”) to MPRDC and Independent Consultant. Records maintenance requirements are prescribed in **Schedule – ‘M’** to this agreement.
- 17.2 The Independent Consultant shall review the Maintenance Reports and inspect the Project Highway at least once a fortnight during the Toll Period and make out an Inspection Report of such inspection (the “**O&M Inspection Report**”). The Independent Consultant shall send a copy of its O&M Inspection Report to MPRDC. The Concessionaire shall within 30 (thirty) days of the receipt of the O&M Inspection Report from MPRDC remedy the defects and deficiencies, if any, set forth in such O&M Inspection Report and submit its report in respect thereof to MPRDC within the said 30 (thirty) days period. Where the remedying of such defects or deficiencies is likely to take more than 30 (thirty) days in accordance with Good Industry Practice, the Concessionaire shall undertake the works in accordance with such practice and submit progress reports of such works every fortnight. The O&M Inspection Report may also require the Concessionaire to undertake such tests as may be specified by the Independent Consultant for the purpose of determining that the Project Highway is at all times in conformity with the Specifications and Standards. The Concessionaire shall undertake such Tests without any delay and furnish a copy of the results thereof to MPRDC along with a written statement specifying in reasonable detail the measures, if any, that it proposes to undertake for curing the defaults or deficiencies indicated in such results. Such inspection or submission of O&M Inspection Report by the Independent Consultant or submission of O&M Inspection Compliance Report by the Concessionaire shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.
- 17.3 The concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, lane closures, diversions, vehicle breakdowns and accidents, it shall follow the relevant operating procedures including the setting up of temporary traffic cones and lights, and removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.
- 17.4. MPRDC may inspect the Project Highway at any time for a review of the compliance by the Concessionaire with its maintenance obligations under this Agreement.
- 17.5 The Concessionaire shall furnish to MPRDC within 7 (seven) days of completion of each calendar month during the Toll Period, a statement of Fees (called the “**Monthly Fee Statement**”).

- 17.6. MPRDC shall recover from “Escrow Account”@1% of the toll collection (non-refundable) for each accounting year towards MPRDC establishment expenses.

CHAPTER – XVIII : SAFETY REQUIREMENT

18. Safety, Vehicle Breakdown and Accident

- 18.1. The Concessionaire shall comply with the provisions of this agreement, applicable laws and applicable permits and conform to Good Industry Practice for securing the safety of the users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the project highway, and shall comply with the safety requirements set forth in **Schedule – ‘L’** (the **“Safety Requirement”**).
- 18.2. Independent Consultant have a team of road safety expert and traffic planners for carrying out safety audit of the project highway in accordance with the Safety requirement, and shall take all other actions necessary for securing compliance with the safety requirement.
- 18.3. In the case of unsafe conditions, vehicle breakdowns and accidents, the Concessionaire shall follow the relevant operating procedures, which shall include the setting up of temporary traffic cones and lights as well as the removal of obstruction and debris expeditiously. Such procedures shall be in accordance with Applicable Laws, Applicable Permits and provisions of this Agreement.
- 18.4. The Concessionaire shall ensure that any diversion or interruption of traffic is remedied without delay. The Concessionaire's responsibility for rescue operations on the Project Highway shall be limited to the removal of vehicles or debris or any other obstruction, which may endanger or interrupt the smooth traffic flow on the Project Highway.
- 18.5. The Concessionaire shall ensure that safety standards specified by MPRDC and as included in this agreement are strictly complied with in the event of any lane closure or diversion of traffic. Compliance with safety standards will be monitored by the Independent Consultant and a breach by the Concessionaire of its obligations in respect of this Schedule identified by the Independent Consultant shall be notified immediately and is required to be cured within 24 hours of its notification notwithstanding inspection, reporting procedures outlined elsewhere in this Agreement. In addition, each notified breach shall lead to the award of a penalty point to the Concessionaire. A total of five penalty points in any continuous period of 365 days shall constitute a Material Breach of this Agreement.

18.6 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 work and services included in the Scope of the project.

CHAPTER – XIX : INDEPENDENT CONSULTANT

- 19.1 MPRDC shall appoint through a transparent bidding process a Consulting Engineering Firm or body corporate being consultants selected by MPRDC to act as Independent Consultant to undertake and perform the duties, work, services and activities set forth in **Schedule ‘D’** to this agreement.
- 19.2 The appointment of the Independent Consultant pursuant to Clause 19.1 shall initially be for a period of 30 months from the date of its appointment. The date of such appointment shall be no later than 45 (forty-five) days from the date of this Agreement. After the expiry of the aforesaid appointment, MPRDC shall appoint for a term of 3 (three) years at a time, as Independent Consultant such person as it may deem appropriate from the list drawn by MPRDC as amended from time to time, who may or may not be the same person, who was Independent Consultant during the initial term. MPRDC may in its discretion thereafter renew such appointment or appoint another person out of the list determined by MPRDC, as MPRDC may deem appropriate to be the Independent Consultant for a term of three years at a time.
- 19.3. The Independent Consultant shall report to MPRDC about their work, services, and activities pursuant hereto through regular periodic reports (at least once every month) as the situation may warrant. Such report of Independent Consultant shall include but not be limited to the matters and things set forth in said **Schedule – ‘D’**
- 19.4 The remuneration, cost and expenses of the Independent Consultant shall be paid by MPRDC and such remuneration, cost and expenses shall be borne by the Concessionaire. During the Construction Period, the remuneration, cost and expenses to be borne by the Concessionaire shall be equal to 1.30% of the project construction cost as stated in this Concession Agreement. The said cost shall be payable by the concessionaire in 4 equal instalments (First instalment to be paid on or before signing the concession agreement and balance 3 instalments every 4 months thereafter).
- 19.5 During the Toll Period, the cost of Supervising Authority to be borne by the concessionaire shall be equal to Rs.15,000.00 per crores of the Total Project Cost per year (duly increased every three years by increase in WPI). The said cost for a block of three years shall be payable by the concessionaire in 6 equal instalment (First instalment to be paid on toll date and balance 5 instalments every 6 months thereafter).
- 19.6 If either party disputes any advice or, instruction of the Independent Consultant, the dispute shall be resolved in accordance with the Dispute Settlement Procedure.

CHAPTER – XX : TRAFFIC SAMPLING

- 20.1 For the purpose of determination and/ or verification of the actual traffic on the Project Highway, MPRDC shall, directly or through the independent consultant appointed by MPRDC, in addition to inspection of Concessionaire's records, be entitled to undertake traffic sampling at such frequency and in such manner as MPRDC may deem appropriate. The Concessionaire shall provide all facilities and assistance as MPRDC may reasonably require for undertaking such traffic sampling.
- 20.2 If the data collected from traffic sampling undertaken pursuant to Clause 20.1 demonstrates that actual traffic is more than the traffic according to the records of the Concessionaire, the actual traffic for the purposes of this Agreement shall be deemed to be the traffic as determined by sampling.
- 20.3 The Concessionaire may, in consultation with MPRDC, commission an independent agency to conduct traffic sampling under this Article. The report of such agency shall be furnished to MPRDC for such use as it may deem fit.
- 20.4 In the event of any dispute arising as to the actual traffic on the Project Highway the same shall be resolved in accordance with the Dispute Settlement Procedure under this Agreement.

CHAPTER – XXI: FINANCING ARRANGEMENTS FINANCIAL CLOSURE

- 21.1 The Concessionaire shall provide to MPRDC, a copy of the Financing Package furnished by it to the prospective Lenders. As and when such Financing Package is approved by the Lenders, with or without modifications, a copy of the same shall be furnished by the Concessionaire to MPRDC forthwith. The financing Package should factor for the disbursement of grant as per the provisions of clause 22 of this agreement and should recognise that the disbursement under the scheme (**GoI Scheme**) shall be made to the Lead Financial Institution
- 21.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire covenants with MPRDC that it shall achieve financial closure within 180 (One hundred eighty) days from the date of this Agreement. If the Concessionaire shall fail to achieve financial closure within the said 180 (One hundred eighty) days period, the Concessionaire may be entitled to a further period of 60 (Sixty) days subject to any extension of time granted by MPRDC. For any delay beyond the said extension 60 (Sixty) day period, besides the concessionaire being liable for termination on account of such delay in achieving financial closure, he shall be liable to pay damages of Rs. 5000/- (Rs. Five thousand) per day for the delay. However, if in the opinion of MPRDC based upon the revised alternative financing package proposed by the Concessionaire, delay or non-achievement of financial closure does not materially affect the project implementation and completion thereof, then MPRDC may approve the Concessionaire to undertake the project implementation as scheduled.
- 21.3 MPRDC shall be entitled to terminate this Agreement forthwith, without being liable in any manner whatsoever to the Concessionaire, by a communication in writing to the Concessionaire pursuant to Clause 29.3.2 wherein in such notice, the rectification period specified by MPRDC shall not exceed 60 days for the cure of such breach/default of the obligation to achieve financial closure and/or if the Concessionaire shall have failed to pay in advance the Damages to MPRDC under and in accordance with Clause 21.2 above.
- 21.4 On issue of such notice of termination, due to failure of the Concessionaire to achieve Financial Closure, all rights, privileges, claims and entitlements, if any, of the Concessionaire under or arising out of this Agreement be deemed to have been waived by and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement may be terminated by MPRDC.
- 21.5 Upon Termination of this Agreement under Clauses 21.3 and 21.4 MPRDC shall be entitled to encash the Performance Security, and appropriate the proceeds thereof as Damages.
- 21.6 MPRDC may amend the scope of the Agreement, it's terms and conditions suitably to suit the Lenders requirements for achieving financial Closure, unless such change significantly prejudices the rights of MPRDC.
- 21.7 The financial Closure shall not be deemed to have been achieved if the Concessionaire fails to enter into a Tripartite Agreement with an Empowered

Institution and the Lead Financial Institution specified under the Public Private Partnerships in Infrastructure Scheme

21.8 ASSIGNMENTS AND CHARGES

21.8.1 Subject to Clauses 21.8.3 and 21.9 this Agreement shall not be assigned by the Concessionaire save and except with prior consent in writing of MPRDC, which consent MPRDC shall be entitled to decline without assigning any reason whatsoever.

21.8.2 Subject to Clause 21.8.3 the Concessionaire shall neither create nor permit to subsist any encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreements to which Concessionaire is a party except with prior consent in writing of MPRDC, which consent MPRDC shall be entitled to decline without assigning any reason whatsoever.

21.8.3 Restraint set forth in Clauses 21.8.1 and 21.8.2 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project Highway;
- (b) mortgages/pledges/hypothecation of goods/ assets other than Project Assets, and those covered by the Substitution Agreement and their related documents of title arising or created in the ordinary course of business of the Project Highway and as security only for indebtedness to the Lenders under the Financing Documents and/ or for working capital arrangements for the Project Highway;
- (c) assignment of rights, title and interest to or in favour of the Lenders pursuant to in respect of financing by the Lenders under the Financing Documents for the Project; and
- (d) liens or encumbrances required by any Applicable Law.

21.9 Lenders' Right of Substitution of the Concessionaire :

The Substitution Agreement covering substantially the provisions as given in the **Schedule 'G'** in this agreement shall be entered amongst the Lenders, the Concessionaire and MPRDC. Lenders may exercise the rights of substitution as provided in the Substitution Agreement that the person substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations under this Agreement as if it were the Concessionaire. Provided, however, that in the event of such substitution, an additional Rectification Period of 90 (ninety) days shall be provided by MPRDC to enable the Concessionaire to rectify any breach or default subsisting on the day of such substitution.

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

CHAPTER XXII : GRANT/ SUBSIDY:

- 22.1 MPRDC agrees to pay to the Concessionaire Grant/ Subsidy as cash support by way of an outright Grant (the “Grant”) equal to the sum, if any, set forth in the Bid of the Bidder and accepted by MPRDC namely, Rs. 81.00 crores (Rupees Eighty One Crores only) in accordance with the provisions of this Clause. Out of the Grant for the project, up to 20% of Total Project Cost is to be provided by Government of India as per the provisions of Scheme for support to Public Private Partnerships in Infrastructure. Rest of the grant will be disbursed by MPRDC in accordance with clause 22 of this agreement.
- 22.2 Grant shall in no case be more than 40% of Total Project Cost as set forth in this agreement.
- 22.3 Grant shall be disbursed to the Concessionaire as per the procedure prescribed in the Scheme for support to Public Private Partnerships in Infrastructure and as per the terms and conditions of the tripartite agreement. . The Grant over and above 20% of Total Project Cost shall be disbursed by MPRDC by adopting the following procedure:-
- 22.3.1 First tranche of 20% of grant will be released when the Concessionaire has contributed and spent on the project his total equity (excluding grant/subsidy) as per the proposed/approved financing package. Balance tranches of grant will be released in proportion to the debt disbursement remaining to be disbursed by the Lead Financial Institution.
- 22.3.2. For the portion of grant to be disbursed by MPRDC, the Concessionaire shall submit to MPRDC along with each disbursement request a certificate from its Statutory Auditors and Independent Consultant certifying the required particulars and MPRDC has been given at least 7 (seven) days to process such disbursement request. On the acceptance of the disbursement request by MPRDC, MPRDC shall disburse each tranche of the grant/subsidy as stated in Clause 22.1 aforesaid, by credit to the Escrow Account within 30 (Thirty) days of such acceptance.
- 22.4 If MPRDC fails to disburse any tranche of the Grant/ Subsidy within 30 days of such acceptance by MPRDC for the payment thereof to the Concessionaire, MPRDC shall pay interest on such delayed tranche @ SBAR plus two per cent. Besides MPRDC shall compensate the Concessionaire for the time overrun through suitable extension of Concession Period.
- 22.5 The Grant under the Scheme for support to Public Private Partnerships in Infrastructure shall be disbursed under the provisions of tripartite agreement and on only after the Concessionaire has subscribed and expended the equity contribution required for the Project. This Grant will be released by the Empowered Institution to the Lead Financial Institution in proportion to debt disbursements remaining to be disbursed thereafter.

*** In case the premium is quoted to be payable by the Concessionaire to MPRDC, clauses 22.1 to 22.5 will be non-operative.**

22.6 Premium *

The Concessionaire acknowledges and agrees that as set forth in the financial bid, it shall pay to the MPRDC for each year of the concession period commencing from the scheduled project completion date of the project, a premium equal to Rs. for the respective financial years. The premium amount will be payable for the entire concession period after this date and will increase @ 5% (five percent) per annum for every subsequent year w.e.f. the start of the next financial year of the scheduled project completion date. The premium payable under the provisions of this clause shall be due and payable in monthly instalments within 7 (seven) days of the close of each month. The term financial year here means the period starting from 1st of April of any year and ending on 31st of March, of the next succeeding year. For the first and last financial year of the concession period, the premium for the balance part period of the financial year, if any, will be proportionately arrived. The premium for the last year will be deposited fully at least one month before the vesting.

The premium payable under this Clause shall be deemed to be concession fee for the purpose of this agreement and will be exclusive of any other fee/charges payable by the Concessionaire to MPRDC under the provisions of this agreement.

*** In case the grant is demanded by the Concessionaire, clause 22.6 will be non-operative**

CHAPTER – XXIII : REVENUE SHORTFALL LOAN

- 23.1 If the Realisable Fees in any Accounting Year during the Concession Period shall fall below the Subsistence Revenue Level, MPRDC agrees to allow the Concessionaire to avail accommodation for such shortfall, by way of a loan (“Revenue Shortfall Loan”) from any Bank. Any balance of Maintenance Fund of the Concessionaire or any sums received or likely to be received by the Concessionaire through insurance claims (except insurance payments for physical loss used to carry out requisite repairs) or payments by MPRDC under Clause 28 shall first be deducted and only the balance amount remaining shall be availed as the Revenue Shortfall Loan.,
- 23.2 For the purposes of availing of any loan on account of Revenue Shortfall loan pursuant to Clause 23.1 above in any Accounting Year, the Concessionaire shall:
- 23.2.1 Submit a detailed account of the Event, and its impact on total revenues of the Concessionaire as soon as feasible and submit weekly reports thereafter.
 - 23.2.2 Provide to MPRDC, the Schedule of Debt Service Payments under then Financing Documents for the Accounting year for which Revenue Shortfall Loan are claimed.
 - 23.2.3 Provide to MPRDC the details of O^M Expenses budget for such Accounting Year and the expenditure incurred in that year out of such budget.
 - 23.2.4. Within 15 (fifteen) days of the close of each Accounting Year in which the shortfall in the referred to in Clause 23.1 shall occur, provide a certificate from the Statutory Auditors of the Concessionaire certifying the Subsistence Revenue Level , the Realisable Fees and the Revenue Shortfall Loan requirement after deducting reserves of the Concessionaire, if any; and
 - 23.2.5. Submit a written request to MPRDC under the hands of a Director of the Concessionaire requesting for permission of MPRDC for availing of Revenue Shortfall Loan from the Bank by payment thereof into the Escrow Account.
- 23.3. Upon the receipt of the request and documents as set forth in Clause 23.1 above and provided the same is not found by MPRDC to be wrong or incorrect, MPRDC shall approve the amount of Revenue Shortfall Loan within 30 days (thirty) thereof.
- 23.4 The Revenue Shortfall Loan and the interest thereon shall be repaid by the Concessionaire, before the termination of Concession Period, in a sum equal to 50% (fifty per cent) of the Net Cash flow of the Concessionaire and such repayments shall be made in one or more years as necessary, or as per the stipulations of the Lenders.

- 23.5. Notwithstanding anything to the contrary contained in Clause 23.4 the Concessionaire shall repay the entire Revenue Shortfall Loan and interest thereon at least one year before the expiry of the Concession Period.
- 23.6 If any sum remains due or outstanding from the Concessionaire under this Clause 23 at any time during a period of one year preceding the Termination Date, MPRDC shall allow the increase in the concession period only in the event of such loans being taken to cover the shortfall in Subsistence Revenue Level, proportionately and to the extent approved by MPRDC, to allow the concessionaire to be compensated for the loss of Revenue and to be able to repay such Revenue shortfall loan. In any case, such extended period shall not exceed 3 years. The extension of Concession Period up to 3 years may be considered with prior approval of MPRDC.

CHAPTER – XXIV : ESCROW AGREEMENT

24.1 Escrow Account.

24.1.1. The Concessionaire shall within 30 days from the date of this Agreement open and establish the Escrow Account with a Bank (the “Escrow Bank”) and all funds constituting the Financing Package for meeting the Total Project Cost shall be credited to such Escrow Account. All disbursements or payments by MPRDC pursuant hereto shall also, subject to the rights of deductions and appropriations there from of MPRDC under this Agreement, be made out of the. Escrow Account. During Concession period, the Escrow Account shall be funded by;

- a) deposits by MPRDC/GOI (DEA) of the instalments of subsidy/grant under Scheme for Support to Public Private Partnerships in Infrastructure, as required by the Concessionaire as per the Concession Agreement,
- b) equity, preference, unsecured loans etc. by the Concessionaire, representatives of Concessionaire and the Associates of the Concessionaire
- c) the instalments of the loans by the lenders as per the disbursement schedule approved by the lenders,
- d) all its fees, after incomes and receivables;
- e) all proceeds received pursuant to any insurance claims;
- f) all monies received from any other sources in relation to and in respect of the Project.
- g) All termination payments, if any. and
- h) The Concessionaire may make other deposits of the Company's other funds into the Escrow Accounts at any time.

24.2. Disbursement from Escrow Account.

24.2.1. The Concessionaire shall give, at the time of the opening of the Escrow irrevocable instructions through an Escrow Agreement of the Escrow Bank instructing inter alia that the deposits into Escrow Account shall be appropriated in the following order every month and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due unless otherwise expressly provide in the instruction letter.

- (a) All taxes due and payable statutory payments and insurance payable by the concessionaire;
- b) All expenses in connection with and relevant to the Construction of Project Highway by way of payment to the EPC Contractor and such other persons as may be specified in the Financing Documents;
- c) O&M Expenses including Fees collection expenses incurred by the Concessionaire directly or through O&M Contractor and/ or Tolling Contractor, if any, subject to the items and ceiling in respect thereof as set forth in the Financing Documents.

- d) The whole or part of the expense on repair work or O&M Expense including Fees collection expenses incurred by MPRDC on account of exercise of any of its rights under this Agreement provided MPRDC certifies to the Escrow Bank that MPRDC had incurred such expenses in accordance with the provisions of this Agreement;
- e) All Concession Fees, costs and reimbursements due to MPRDC from the Concessionaire under this Agreement;
- (f) Any payments and Damages due and payable by the Concessionaire pursuant to this Agreement, or any payment to MPRDC;
- g) Quarterly provision of Debt Service Payments due in the next quarter.
- h) Quarterly provision of Revenue shortfall loan due in next quarter.
- i) 3% of the Toll Collection to be deposited in the “Maintenance Fund” to the extent required in accordance with the provisions of the agreement.
- j) 1% of the annual Toll Collection of the previous accounting year payable to MPRDC towards the project supervision and monitoring charges, to be paid to MPRDC in the month succeeding the accounting year.
- k) Unless MPRDC issues a notice for retention/appropriation of any amount required for the fulfillment of any statutory /financial dues, the balance amount in the Escrow account shall be withdrawn in accordance with the instructions of the Concessionaire.

24.2.2. The Concessionaire shall obtain prior approval from MPRDC of the detailed schedule of payments during the quarter to avoid any delays thereon. The approval or otherwise by MPRDC shall be granted within 7 days from the date of intimation by the Concessionaire, otherwise the approval is deemed to have been given.

24.2.3. The Concessionaire shall not in any manner modify the order of payment specified in this Clause 24.2.1 except with the prior written approval of MPRDC.

24.3 Disbursement from Escrow Accounts on Termination

24.3.1. Notwithstanding anything to the contrary contained in the Escrow Agreements and subject to the provisions contained in Clauses 30.6 upon Termination of this Agreement, all amounts standing to the credit of the Escrow Account and shall be appropriated and dealt with in the following order:

- a) all Taxes due and payable statutory payments, and insurance payable by the Concessionaire;
 - b) all Concession Fees, costs and reimbursements due and payable to MPRDC under this Agreement;
 - c) any payments and Damages due and payable by the Concessionaire to MPRDC pursuant to this Agreement, including Termination claims
 - d) any unutilised grant/subsidy in the Escrow Account to be refunded to MPRDC.
 - e) All Debt Due as on the date of termination
 - f) All expenses related to and in connection with the construction of project highway as required in financing documents.
 - g) all accrued O&M Expenses;
 - h) any other payments required to be made under this Agreement; and
 - i) balance, if any, on the instructions of the Concessionaire.
- 24.4. The instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clauses 24.3 have been discharged.

CHAPTER – XXV : STATE SUPPORT AGREEMENT

- 25.1. The Concessionaire acknowledges that for the performance of its obligations under this Agreement, it requires support and certain services from GoMP. The nature and scope of such support and services required by the Concessionaire from GoMP shall be fully described in the State Support Agreement. The State Support Agreement shall be executed substantially in the form are stated in **Schedule ‘F’** to this Agreement.
- 25.2 The Concessionaire shall enter into the State Support Agreement at its cost and expense with MPRDC and GoMP.

CHAPTER – XXVI : INSURANCE

26.1 Insurance during the Construction period:

The Concessionaire shall effect and maintain, or cause to be effected and maintained, at no cost to MPRDC

26.1 Insurance during the Construction Period: The Concessionaire shall effect and maintain, or cause to be effected and maintained, at no cost to MPRDC during the Construction Period such insurance up to such maximum sums as may be required under and in accordance with the Financing Documents, Applicable Laws and such insurance to cover the entire cost incurred on the project as is considered necessary by MPRDC in accordance with Good Industry Practice.. The Concessionaire shall also include insurance of all insurable Force Majeure events as defined in Clause 28. The Concessionaire shall also effect and maintain such insurance as may be necessary for mitigating the risks that may devolve on MPRDC as a consequence of any act of omission by the Concessionaire during the Construction Period.

26.2 Insurance during the Toll Period: Not later than 4 months prior to the anticipated Completion of the Project Highway, the Concessionaire shall obtain and maintain at no cost to MPRDC during the Toll Period in respect of the Project Highway and its operations such insurance as may be required under any of the Financing Documents, Applicable Laws and such insurance as the Concessionaire may insure such risks and such costs as is considered necessary by MPRDC in accordance with Good Industry Practice. Provided, however, the amount and risks covered as well as the level of insurance to be maintained after satisfaction of Lenders' dues in full, shall be determined on the same principles as applicable for determining the level of Insurance prior to such date. This level shall be agreed with MPRDC within 90 days of date of this Agreement. The Concessionaire shall also include insurance of all insurable Force Majeure events as defined in Clause 28. The Concessionaire shall also effect and maintain such insurance as may be necessary for mitigating the risks that may devolve on MPRDC as a consequence of any act of omission by the Concessionaire during the Construction Period.

26.3 For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Concessionaire pursuant to this Clause 26. are herein referred to as the “Insurance Cover”.

26.4 Evidence of Insurance Cover: All insurance obtained by the Concessionaire in accordance with this Clause 26 shall be maintained with insurer or re-insurers, and on terms consistent with Good Industry Practice. Within 30 (thirty) days of obtaining any insurance cover, the Concessionaire shall furnish to MPRDC, copies of certificates of insurance, copies of the insurance policies signed by an authorised representative of the insurer and copies of all premia payment receipts in respect of such insurance received from each insurance carrier, and such insurance will not be cancelled, changed or not renewed until the expiration of at least 45 (forty five) days after written notice of such cancellation, change of non-renewal has been received by MPRDC.

- 26.5 **Remedy on Failure to Insure:** If the Concessionaire shall fail to effect and keep in force the insurance for which it is responsible pursuant hereto, MPRDC shall have the option to keep in force any such insurance at the risks and cost of the Concessionaire.
- 26.6 **Waiver of Subrogation:** All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers thereunder against, inter alia, MPRDC, and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of 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.
- 26.7 **Concessionaire Waiver:** The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the MPRDC, and its affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss 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.
- 26.8 **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 (unless otherwise required by the Financing Documents) who shall, subject to its obligations under the Financing Documents, and notwithstanding anything contained in Clause 24, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Highway.

CHAPTER – XXVII : ACCOUNTS AND AUDIT

- 27.1 The Concessionaire shall maintain full accounts of all Fees including Realisable Fees and other revenues derived/ collected by it from and on account of use of the Project Highway and of O&M Expenses and other costs paid out of the Escrow Account and shall provide copies of the said accounts duly audited and certified by the Concessionaire's Auditors within 180 (one hundred Eighty) days of the close of each Accounting Year to which they pertain, during the subsistence of this Agreement. Such audited accounts shall form the basis of various payments by either Party under this Agreement. The Concessionaire shall also furnish, within one week of its publication, a certified copy of the audited accounts and annual report published by the Company under the Applicable Laws.
- 27.2 The Concessionaire shall appoint and have during the subsistence of this Agreement as its Auditors a firm of Chartered Accountants duly licensed to practice in India with mutual agreement of MPRDC out of the list of Chartered Accountants in India (the “**List of Chartered Accountants**”). The qualification for selection and preparing a short List of Chartered Accountants for such purpose shall be as per the qualification mentioned in **Schedule ‘O’** Concessionaire will suggest ten names of give names of such firms who fulfils the criteria as per **Schedule – ‘O’** and MPRDC will nominate any one of them. Concessionaire will have the right to change the 1st auditors any time but the appointment of new auditors will again be as per the procedure detailed in this clause 27 of the Agreement.
- 27.3 On or before the fifteenth day of May each Year, the Concessionaire shall provide for the preceding Accounting Year a statement duly audited by its Auditors giving summarised vehicle/ user wise information on (i) the traffic count for each category of vehicles using the Project Highway and liable for payment of Fees therefore, and (ii) Fees charged and the amount of Fees received, Realisable Fees and other revenues derived from the Project Highway and such other information as MPRDC may reasonably require.
- 27.4 Notwithstanding anything to the contrary contained in this Agreement, MPRDC shall have the right but not the obligation to appoint at its cost, another firm of chartered accountants from the List of Chartered Accountants (the “**Additional Auditor**”) to audit and verify all those matters, expense, costs, realisations and things which the Auditors of the Concessionaire, are required to do, undertake or certify pursuant to this Agreement.
- 27.5 MPRDC shall have the right to appoint for the duration of the Construction Period as Concurrent Auditor a firm of Chartered Accountants from the List of Chartered Accountants (the “**Concurrent Auditor**”) who may undertake concurrent audit of the Concessionaire during the Construction Period. The charges and expenses of such Concurrent Auditor be borne by the MPRDC. After such Construction Period, MPRDC may at its option have concurrent audit done at such time and for such period as MPRDC may deem appropriate at its cost and expenses.

- 27.6 In the Event of their being any difference between the finding of the Additional Auditor or the Concurrent Auditor, as the case may be, and the certification provided by the Statutory Auditors of the Concessionaire, such Auditors shall meet to resolve such differences and if they are unable to resolve the same such disputed certification shall be resolved by recourse to the Dispute Settlement Procedure.

CHAPTER – XXVIII : FORCE MAJEURE

FORCE MAJEURE

- 28 Force Majeure Event: As used in this Agreement, a Force Majeure Event shall mean occurrence in India of any or all of Non Political Event, Indirect Political Event and/ or Political Event as defined in Clauses 28.1, 28.2, and 28.3 respectively hereinafter which prevent the Party claiming Force Majeure (the “**Affected Party**”) from performing its obligations under this Agreement and which act or event is (i) beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sums of money and (iii) has a Material Adverse Effect on the Project.
- 28.1 **Non Political Force Majeure Events:** For purposes of Clause 28.1 Non-Political Events shall mean and include one or more of the following acts or events:
- 28.1.1 acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire (to the extent originating from a source external to the Site or beyond design specifications for the Construction Works) or landslide;
- 28.1.2 radioactive contamination or ionising radiation;
- 28.1.3 strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/ representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Project Highway for a period exceeding a continuous period of 7 (Seven) days and not being an Indirect Political Event set forth in Clause 28.3 hereof;
- 28.1.4 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;
- 28.1.5 any judgement or order of any court of competent jurisdiction or statutory authority in India, or any order, rule, promogulation, ordinance of any State Government, Central Government, statutory bodies or local bodies made against the Concessionaire in any proceedings for reasons other than failure of the Concessionaire to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by MPRDC; or

- 28.1.6 Any event or circumstance of a nature analogous to any of the foregoing events.
- 28.2 **Indirect Political Force Majeure Events:** For purposes of Clause Indirect Political Event shall mean and include one or more of the following acts or events:
- 28.2.1 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 which prevents collection of Fees by the Concessionaire for a continuous period exceeding a period of 7 (Seven) days
 - 28.2.2 industry wide or state wide or India wide strikes or industrial action which prevent collection of Fees by the Concessionaire for a period exceeding a continuous period of 7 (seven) days or
 - 28.2.3 any public agitation which prevents collection of Fees by the Concessionaire for a period exceeding a continuous period of 7 (Seven) days
- 28.3 **Political Force Majeure Events:** For purposes of Clause 28.1 Political Event shall mean and include one or more of the following acts or events by or on account, MPRDC, GoMP or any other Governmental Agency:
- 28.3.1 change in Law, only when provisions of Clause 31 cannot be applied;
 - 28.3.2 expropriation or compulsory acquisition or any other kind of acquisition by any Governmental Agency of any Project Assets or rights of the Concessionaire or of the Contractors; or
 - 28.3.3 unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or statutory approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreements provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.
- 28.4 **Effect of Force Majeure Event before Financial Closure:** Upon the occurrence of any Force Majeure Event prior to Financial Closure as set forth in Clause 21, the following shall apply:
- 28.4.1 There shall be no Termination except as provided in Clause 21.3

- 28.4.2 The date for achieving Financial Closure shall be extended by the period for which such Force Majeure event shall subsist.
- 28.5 **Effect of Force Majeure Event after Financial Closure:** Upon occurrence of any Force Majeure Event after Financial Closure, the following shall apply:
- 28.5.1 There shall be no Termination of this Agreement except as provided in Clause 29
- 28.5.2 Where the Force Majeure Event occurs before Toll Date, the dates set forth in the Project Completion Schedule, and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- 28.5.3 Where a Force Majeure Event occurs after Toll Date, the Concessionaire shall continue to make all reasonable efforts to collect Fees, but if he is unable to collect Fees during the subsistence of such Force Majeure Event, the Concession Period shall be extended by the period for which collection of Fees remains suspended on account thereof; and
- 28.5.4 Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of Clause 28.7
- 28.6 **Allocation of costs during subsistence of Force Majeure:** Subject to the provisions of clause 28.6 upon occurrence of a Force Majeure Event after Financial Closure, the costs arising out of such event shall be allocated as follows:
- 28.6.1 When the Force Majeure Event is a Non Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such Force Majeure Event;
- 28.6.2 Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the “Force Majeure Costs”) shall be borne by the Concessionaire to the extent of the Insurance Claims received or recoverable, and to the extent such Force Majeure Costs exceed the Insurance Claims, one half of the same to the extent actually incurred and duly certified by the Auditors of Concessionaire shall be compensated by MPRDC to the Concessionaire. MPRDC however has option to compensate for such cost by suitable extension of Concession Period as approved by MPRDC.
- 28.6.3 Where the Force Majeure Event is a Political Event, the Force Majeure Costs to the extent actually incurred and certified by the Auditors of Concessionaire shall be compensated by MPRDC to the Concessionaire within 180 days of such amount accepted by

MPRDC. MPRDC however shall have option to compensate for such cost by suitable extension of Concession Period as approved by MPRDC.

- 28.6.4 For avoidance of doubt, Force Majeure Costs shall not include loss of Fee revenues but shall include interest payments, debt repayment obligations on such debt in proportion to the period of FM event subsisting, O&M Expenses and all other costs directly attributable to the Force Majeure Event.
- 28.7 Termination Notice: If a Force Majeure Event subsists for a period of 120 (One hundred Twenty) days or more within a continuous period of 365 (three hundred sixty five) days, either Party may in its sole discretion terminate this Agreement by giving 90 (Ninety) days Termination Notice in writing to the other Party without being liable in any manner whatsoever.
- 28.8 Termination Payment for Force Majeure Events: Upon Termination of this Agreement pursuant to Clause 28. Termination Payment shall be made by MPRDC subject to the conditions of the Escrow Agreement and also Clause 24.3 of this agreement and in accordance with the following:
- 28.8.1 If the Termination is on account of a Non Political Event, the termination payments shall be made by MPRDC, of an amount equal to
- (a) 90% of the Debt Due less pending insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 80% of the amount of such claims shall qualify for being included in the computation of Debt Due and
 - (b) the entire Subordinated Debt (excluding debt forming part of Equity) less pending insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 80% of the amount of such claims shall qualify for being included in the computation of Debt Due and
 - (c) 100% (one hundred per cent) of the Equity (subscribed in cash and actually spent on the Project but excluding the amount of Grant/ Subsidy referred to in Clause 22 if such Termination occurs at any time during two years commencing from the Commencement date and for each successive years 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 determined.
 - (d) MPRDC shall make the payments as specified under (i) and (ii) above directly to the respective lenders. All the payments made by MPRDC in this connection shall constitute valid discharge of the obligation to pay by MPRDC.

- 28.8.2 If the Termination is on account of an Indirect Political Event, the termination payments shall be made by MPRDC, of an amount equal to:
- (a) The total Debt Due, pending insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 80% of the amount of such claims shall qualify for being included in the computation of Debt Due and plus
 - (b) the outstanding Subordinated Debt (excluding debt forming part of Equity), pending insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 80% of the amount of such claims shall qualify for being included in the computation of Debt Due and plus 100% (one hundred per cent) of the Equity (subscribed in cash and actually spent on the Project but excluding the amount of Grant/ Subsidy referred to in Clause 22 if such Termination occurs at any time during two years commencing from the Commencement date and for each successive years 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 determined.
 - (d) MPRDC shall make the payments as specified under (i) and (ii) above directly to the respective lenders. All the payments made by MPRDC in this connection shall constitute valid discharge of the obligation to pay by MPRDC.
- 28.8.3 If the Termination of this Agreement is on account of a Political Event, the termination payments shall be made by MPRDC, of an amount equal to:
- (a) the total Debt Due pending insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 80% of the amount of such claims shall qualify for being included in the computation of Debt Due and, plus
 - (b) the entire of the Subordinated Debt (excluding debt forming part of Equity), pending insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 80% of the amount of such claims shall qualify for being included in the computation of Debt Due and plus
 - (c) 100% (one hundred per cent) of the Equity (subscribed in cash and actually spent on the Project but excluding the amount of Grant/ Subsidy referred to in Clause 22 if such Termination occurs at any time during two years commencing from the Commencement date and for each successive years 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 determined.

- (d) MPRDC shall make the payments as specified under (i) and (ii) above directly to the respective lenders. All the payments made by MPRDC in this connection shall constitute valid discharge of the obligation to pay by MPRDC. It is clarified that the deduction of pending insurance claims shall exclude any prior Insurance Claims during the Concession Period, for which the Concessionaire has already incurred the cost of rectification thereof, for which the Insurance Claims are pending prior to the FM event leading to termination of the agreement under Clause 28.

28.9 Substitution of Concessionaire by MPRDC

Upon Termination by MPRDC on account of occurrence of Force Majeure Events the MPRDC shall if it deems fit, subject to the rights of the lenders under the Substitution Agreement, substitute another Concessionaire to take over the Debts and subordinate Debts of the Project and maintain the facilities for the balance Concession Period. In such event MPRDC reserves the right to substitute itself as Concessionaire. However, in the event of non-substitution of the Concessionaire as referred above, MPRDC shall pay to the Lenders subject to the provisions in the Escrow Account , by way of Termination Payments as stated above.

- 28.10 Dispute Settlement under FM events: 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 Settlement Procedure, provided however 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.
- 28.11 Liability for other losses, damages etc under FM events: Save and except as expressly provided in this Clause 28 neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any other 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 to this Clause 28.
- 28.12 Duty to Report: The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:
- 28.12.1 The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- 28.12.2 Any notice pursuant to this Clause 28.6 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 Clause 28 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, to alleviate the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

28.12.3 For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Clause 28 and such other information as the other Party may reasonably request the Affected Party to provide.

28.13 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:

28.13.1 The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

28.13.2 The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence, and

28.13.3 When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.

CHAPTER – XXIX : SUSPENSION AND TERMINATION

29.1 MATERIAL BREACH AND SUSPENSION

29.1.1 If the Concessionaire shall be in Material Breach of this Agreement, MPRDC shall be entitled in its sole discretion and without prejudice to its other rights and remedies under this Agreement, including its right of Termination hereunder, to

- (i) suspend all or any of the rights of the Concessionaire under this Agreement including the Concessionaire's right to collect and appropriate all Fees and other revenues from the Project Highway, and
- (ii) exercise the rights of the Concessionaire under this Agreement itself or authorise any other person to exercise the same during such suspension.

29.1.2 Such suspension by MPRDC shall be by a communication in writing to the Concessionaire and shall be effective forthwith upon the issue thereof to the Concessionaire. Any Fees or revenues collected by or on behalf of MPRDC during such suspension shall be deposited in the Escrow Account to the exclusion of the Concessionaire. However, the period of such suspension under this Clause 29 shall not exceed 120 (one hundred twenty) days from the date of issue of such notice; Provided that upon written request from the Concessionaire and the Lenders' Representative, the MPRDC shall extend the aforesaid period of 120 (one hundred twenty) days by a further period not exceeding 60 (sixty) days.

29.1.3 Subject to clause 29 MPRDC shall have the right to utilise the proceeds of Fees and other revenues for meeting the costs incurred by MPRDC to remedy and rectify the cause of such suspension and for defraying the O&M Expenses during such suspension period. Provided, however, that if the Concessionaire is making diligent efforts to remedy and rectify such cause, then MPRDC shall allow the Concessionaire reasonable time and opportunity for such remedy or rectification.

29.1.4 The suspension of the rights of the Concessionaire by MPRDC pursuant to Clause 29.1.1 above may be revoked by MPRDC forthwith upon the Concessionaire having remedied the Material Breach during such suspension period to the satisfaction of MPRDC unless in the meantime this Agreement has been terminated by MPRDC in accordance with Clause 29.3.

29.1.5 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, MPRDC shall withhold Termination for a period not exceeding 120 (one hundred twenty) days from the date of Suspension, and any extension thereof under Clause 29.1.2 for enabling the Lenders'

Representative to exercise its rights of substitution on behalf of Senior Lenders.

29.1.6 At any time during the period of Suspension under this clause 29, the Concessionaire may be notice require the MPRDC 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 29.1.5, the MPRDC shall within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with clause 29.3.

29.1.7 Notwithstanding anything to the contrary contained in this Agreement in the event that Suspension is not revoked within 120 (one hundred twenty) days from the date of Suspension hereunder or within the extended period, if any, set forth in clause 29.1.2, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the parties and all the provisions of this agreement shall apply, *mutatis, mutandis*, to such Termination as if a termination notice had been issued by the MPRDC upon occurrence of a Concessionaire Default.

29.2 **COMPENSATION FOR BREACH OF AGREEMENT**

29.2.1 In the event of Concessionaire being in material default of this Agreement and such default is cured before Termination, the Concessionaire shall pay to MPRDC as compensation, all direct additional costs suffered or incurred by MPRDC arising out of such material default by the Concessionaire, in one lump-sum within 120 (One Hundred twenty Days Only) days of receiving the demand or at the Concessionaire's option in 3 (three) equal semi-annual instalments with interest @ SBAR plus 2% (two per cent) per annum on the amount outstanding/ due.

29.2.2 In the event of MPRDC being in material default of this Agreement and such default is cured before Termination, MPRDC shall pay to the Concessionaire as compensation, all direct additional costs suffered or incurred by the Concessionaire arising out of such material default by MPRDC, in one lump-sum within 120 (One Hundred twenty Days Only) days of receiving the demand or at MPRDC's option in 3 (three) equal semi-annual instalments with interest @ SBAR plus 2% (two per cent) per annum on the amount outstanding/ due.

29.3 **TERMINATION**

29.3.1 **Termination for the Concessionaire Event of Default. Concessionaire Event of Default (EOD)**

(a) The following events shall constitute an event of default by the Concessionaire (a "Concessionaire Event of Default") unless such Concessionaire Event of Default has occurred as a result of MPRDC Event of Default or a Force Majeure Event;

- (i) The Concessionaire fails to achieve Financial Closure in accordance with the provisions of Clause 21
- (ii) The Concessionaire fails to complete the repair of the road by filling the potholes and making it motorable within 3 months of the handing over the physical possession of the Project Site to the Concessionaire by MPRDC or a period of 120 days after the date of execution of this agreement, whichever is earlier.
- (iii) The Concessionaire fails to achieve any Project milestone other than Scheduled Project Completion Date within the period set forth and fails to cure such default within a period of 90 (ninety days) days from the date of its occurrence.
- iv) Project completion date does not occur within 270 days of scheduled date excluding any valid extension of time granted.
- (v) The Concessionaire is in Material Breach of this Agreement;
- (vi) The Concessionaire commits breach in complying with any of the terms and conditions of this Agreement, (save and except those breach in respect of which Rectification Period has been expressly provided in this Agreement) and fails to remedy or rectify the same within the period provided in a notice in this behalf from MPRDC which shall:
 - (vi-a) require the Concessionaire to remedy the breach or breaches referred to in such notice within 1 (one) month (or such longer period as may be agreed by the MPRDC at its absolute discretion); or
 - (vi-b) permit the Concessionaire to put forward within 15 days of such notice a reasonable programme for the remedying of the breach or breaches, such programme to specify in reasonable detail the manner in which such breach or breaches is or are proposed to be remedied and the latest date by which it is proposed that such breach or all such breaches shall be remedied.
- (vii) The Concessionaire creates any encumbrance, charges or lien in favour of any person save and except as otherwise expressly permitted under Clause 21.8.2.

- viii) The shareholding of the Consortium Members falls below the minimum prescribed under Clause 7.3.1 and the Concessionaire does not suo moto cure such default within 90 (ninety) days of its occurrence;
- ix) The Concessionaire is in breach of the maintenance requirement.
- x) The transfer, pursuant to law or otherwise, either (a) the rights and/ or obligations of the Concessionaire under any of the Project Agreements, or (b) all or material part of the assets or undertaking of the Concessionaire except where such transfer in the reasonable opinion of MPRDC does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform, its material obligations under the Project Agreements;
- xi) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;
- xii) The Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project;
- xiii) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction 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 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 further that:
 - (xiii-a) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements and
 - (xiii-b) 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 Financial Closure; and

- (xiii-c) each of the Project Agreements remains in full force and effect;
- xiv) The Concessionaire is in Material Breach of any of the Project Agreements;
- xv) An event of default of the concessionaire under any of the financing document has occurred or any of the senior lenders has recalled its loan. due from the Concessionaire under any of the Financing Documents
- xvi) The Concessionaire is in breach of its obligations to repay the revenue shortfall loan in accordance with this agreement.
- xvii) The Concessionaire abandons the operations of the Project Highway for more than 15 (fifteen) consecutive days without the prior consent of MPRDC, provided that the Concessionaire shall be deemed not to have abandoned such operation if such abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations by MPRDC after due notice is given to MPRDC.
- xviii) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- xix) The Concessionaire suffers an execution being levied on any of its assets/ equipment causing a Material Adverse Effect on the Project and allows it to be continued for a period of 15 (fifteen) days;
- xx) The Concessionaire has delayed any payment that has fallen due under this Agreement if such delay exceeds 90 (ninety) days; or

29.3.2 Without prejudice to any other right or remedy which MPRDC may have in respect thereof under this Agreement, upon the occurrence of any breach by the Concessionaire under this Agreement including any Concessionaire Event of Default, MPRDC shall be entitled to encash and appropriate the performance guarantee and to terminate this Agreement by a communication in writing (the "Termination Notice") to the Concessionaire if the Concessionaire has failed to cure such breach or default within the period provided for the same in this

Agreement provided that before issuing the Termination Notice, MPRDC shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the "Preliminary Notice") and grant 15 (fifteen) days time to the Concessionaire to make its representation, if any, against such intended Termination Notice and shall after the expiry of said 15 (fifteen) day period whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice, subject to the provisions of clause 29.3.4.

29.3.3 The following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement.

- a) The Rectification Period shall commence from the date on which a notice in writing is delivered by MPRDC to the Concessionaire asking the latter to cure the breach or default specified in such notice.
- b) The Rectification Period provided in this Agreement shall not relieve the Concessionaire from liability for Damages caused by its breach or default;
- c) The Rectification Period shall not in any way be extended by any period of suspension under this Agreement;
- d) If the cure of any breach by the Concessionaire requires any reasonable action by Concessionaire that must be approved by MPRDC and the applicable Rectification Period (and any liability of the Concessionaire for damages incurred) shall be extended by the period taken by MPRDC to accord their required approval.

Provided that in matters where no Rectification period is expressly prescribed in this agreement, such period of Rectification will not be more than 60 days.

29.3.4 MPRDC shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 29.3.2 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 the MPRDC receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 120 days (one hundred twenty) 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 120 (one hundred twenty) days, and upon such curing thereof, MPRDC shall withdraw its notice referred to above and restore all the rights of the Concessionaire.

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the MPRDC shall extend the aforesaid period of 120 (one hundred twenty) days by such further period not exceeding 60 (sixty) days, as the MPRDC may deem appropriate.

- 29.3.5 Upon Termination by MPRDC on account of occurrence of Concessionaire Event of Default during the toll period MPRDC shall pay to the Lenders subject to the provisions in the Escrow Account), by way of Termination Payment an amount equal to 90% (ninety per cent) of the Debt Due less pending insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 80% of the amount of such claims shall qualify for being 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 event of default occurring prior to the Project Completion Date.

29.4 Termination for MPRDC Event of Default.

- 29.4.1 The Concessionaire may after giving 90 (ninety) days notice in writing to MPRDC terminate this Agreement upon the occurrence and continuation of any of the following events (each a "MPRDC Event of Default"), unless any such MPRDC Event of Default has occurred as a result of Concessionaire Event of Default or due to a Force Majeure Event.
- a) MPRDC is in breach of this Agreement and such breach has a Material Adverse Effect on the Concessionaire and MPRDC has failed to cure such breach or take effective steps for curing such breach within 90 (ninety) days of receipt of notice in this behalf from the Concessionaire;
 - b) MPRDC repudiates this Agreement or otherwise evidences an irrevocable intention not to be bound by this Agreement;
 - c) GoMP have by an act of commission or omission has committed material breach and/ or default of any of the provisions under the State Support Agreement and thereby created circumstances that have a Material Adverse Effect on the performance of its obligations by the Concessionaire and have failed to cure the same within 90 (ninety) days of receipt of notice by MPRDC in this behalf from the Concessionaire;
 - d) MPRDC has delayed any payment that has fallen due under this Agreement if such delay exceeds 180 (One Hundred Eight Days Only) days.

29.4.2 Upon Termination by the Concessionaire on account of an MPRDC Event of Default, the termination payments shall be made by MPRDC, a sum equal to:

- a) Debt Due less pending insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 80% of the amount of such claims shall qualify for being included in the computation of Debt Due and
- b) the entire Subordinated Debt (Including interest accrued but not paid up to the date of termination and excluding debt forming part of Equity).
- c) 100% (One Hundred per cent only) of the Equity (subscribed in cash and actually spent on the Project but excluding the amount of Grant/ Subsidy referred to in Clause 22 if such Termination occurs at any time during two years commencing from the Commencement date and for each successive years 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 determined.

29.4.3 MPRDC shall make the payments as specified under (a) & (b) above directly to the respective lenders. All the payments made by MPRDC in this connection shall constitute valid discharge of the obligation to pay by MPRDC.

29.4.4 It is clarified that the deduction of pending insurance claims referred in Clause 29.4 shall exclude any prior Insurance Claims during the Concession Period, for which the Concessionaire has already incurred the cost of rectification thereof, for which the Insurance Claims are pending prior to the MPRDC event of default leading to termination of the agreement.

29.5 Other rights and obligations of the MPRDC:

Upon termination for any reason whatsoever, MPRDC shall ;

- 29.5.1. be deemed to have taken possession and contrail of the Project Highway forthwith.
- 29.5.2 take possession and control of all materials, stores, implements, construction plants and equipment on or about the site
- 29.5.3. 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;
- 29.5.4 require the Concessionaire to comply with the Divestment Requirements set forth in Clause 30.2 and

- 29.5.4 succeed upon election by MPRDC without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as MPRDC may in its discretion deem appropriate and shall upon such election be liable to the Concessionaire only for compensate accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date MPRDC elects to succeed to the interests of the Concessionaire For the avoidance of doubts, it hereby agreed, and the Concessionaire hereby acknowledges, that all sums claimed by such contractors and 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 MPRDC shall not in any manner be liable for such sums. It is further agreed that in event the MPRDC elects to cure and outstanding default under such project agreements, the amount expended by MPRDC for this purpose shall deducted from the termination payment.
- 29.6 Termination Payments: The Termination Payment pursuant to this Agreement shall become due and payable to the Concessionaire by MPRDC within 180 (One Hundred and Eighty Only) days of acceptance of demand made by the Concessionaire with the necessary particulars duly certified by the Statutory Auditors and Independent Consultant. If MPRDC fails to disburse the full Termination Payment within 180 (One Hundred and Eighty Only) days, the amount remaining unpaid shall be disbursed along with interest @ SBAR plus two per cent for the period of delay on such amount.
- 29.7 Mode of Payment: Payment of compensation of costs by MPRDC pursuant to this Clause 29 may be made by way of credit to the Escrow Account as the case may be and such payment shall constitute valid discharge of MPRDC's obligations for Termination Payment hereunder.
- 29.8 Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. All rights and obligations of either Party under this Agreement, including without limitation Termination Payments and Divestment procedures, shall survive the Termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.
- 29.9 Upon Termination of this Agreement except in case of Non Political Force Majeure, where divestment requirements shall be mutually agreed, the Concessionaire shall comply and conform to the following Divestment Requirements in respect of the Project Highway:

CHAPTER – XXX : DIVESTMENT

30.1 DEFECTS LIABILITY

- 30.1.1 Not less than 12 months or more than 15 months prior to the expiry of the Concession Period, the Concessionaire and the Independent Consultant shall conduct a joint inspection (the “Initial Inspection”) of the Project Highway and all Project Facilities.
- 30.1.2 Within 90 days after the completion of the Initial Inspection, the Concessionaire shall provide to the Independent Consultant a report on the condition of the Project Highway and the Project Facilities and a notice setting out the Concessionaire's proposals as to the renewal works required to comply with the Divestment Requirements.
- 30.1.3 The Independent Consultant may, within 60 days after receipt of the notice from the Concessionaire in accordance with Clause 30 by notice to the Concessionaire object to the proposals giving details of the grounds for such objection and shall give the Independent Consultant's proposals in respect of the renewal works.
- 30.1.4 If no agreement is reached between the Concessionaire and the Independent Consultant within 30 days of receipt of such notice, then either the Concessionaire or the Independent Consultant may refer the matter to the Disputes Resolution Procedure.
- 30.1.5. Upon agreement or determination in accordance with the Disputes Resolution Procedure, the Concessionaire shall carry out the renewal works at its own cost.
- 30.1.6 Not less than 9 months nor more than 12 months prior to the expiry of the Concession Period, the Concessionaire and the Independent Consultant shall conduct a joint inspection (the “Second Inspection”) of all elements of the Project Highway and Project Facilities (whether or not the Renewal Works have been carried out).
- 30.1.7 Within 30 days after the completion of the Second Inspection, the Concessionaire shall provide to the Independent Consultant a report on the condition of the Project Highway and Project Facilities and a notice setting out any revisions or additions to the renewal works required in order to ensure compliance with the Divestment Requirements.
- 30.1.8 The Independent Consultant may, within 30 days after receipt of the notice from the Concessionaire in accordance with Clause 30, by notice to the Concessionaire object to the proposed revisions giving details of the grounds for such objection and shall give the Independent Consultant proposals in respect of such matters.

- 30.1.9 If no agreement is reached between the Concessionaire and the Independent Consultant within 30 days of receipt of such notice, then either the Concessionaire or the Independent Consultant may refer the matter to the Dispute Settlement Procedure.
- 30.1.10 Upon agreement or determination in accordance with the Disputes Resolution Procedure, the Concessionaire shall carry out the renewal works (as so revised) at its own cost.
- 30.1.11 From the date which is 1 year prior to the expiry of the Concession Period, a sum of Rs.7000/- (value as on the date of execution of the Concession Agreement) per day during the last one year, adjusted to WPI or a higher sum estimated by the Independent Consultant for Renewal Works, shall notwithstanding anything to the contrary contained in this Agreement, be retained in the Escrow Account for Defect Liability. Provided that if a Bank Guarantee of an equivalent sum in the form and content acceptable to MPRDC has been furnished by the Concessionaire to MPRDC, no such retention shall be made.
- 30.1.12 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 retained in accordance with Clause 30.1.11 shall be released from the Escrow Account to the Concessionaire.
- 30.1.13 Within 14 days after the issue of the Vesting Certificate issued in accordance with Clause 30.5 the sums retained in accordance with Clause 30.1.12 shall be released from the Escrow Account to the Concessionaire.

30.2 DIVESTMENT OF RIGHTS AND INTERESTS

- 30.2.1 Upon Termination of this Agreement, the Concessionaire shall comply with the following:
- (a) notify to MPRDC forthwith the location and particulars of all project assets
 - (b) deliver forthwith actual or constructive possession of the Project Highway free and clear of all Encumbrances and execute such deeds, writings and documents as may be required by the MPRDC for fully and effectively divesting the Concessionaire of all of the rights, title and interest of the Concessionaire in the Project Highway and conveying the Project Highway free of any charge or cost to MPRDC; and
 - (c) comply with the Divestment Requirements set out in Clause 30.5
- 30.2.2 all Project Assets including the road, pavement, structure and equipment shall have been renewed and cured of all defects and

deficiencies as necessary so that the Project Highway is compliant with the Specifications and Standards set forth in this Agreement;

- (a) all sections of each traffic lane (the “Carriageway”) of the Project Highway shall have a roughness index of as specified in the Maintenance Manual and shall be free from defects in accordance with O&M requirements;
- (b) all lamps shall be in working condition;
- (c) the Concessionaire delivers relevant records and reports pertaining to the Project Highway and its detailed design, engineering, construction, operation, and maintenance including all operation and maintenance records and programmes and manuals pertaining thereto and complete as built Drawings on the Divestment Date;
- (d) The Concessionaire executes such deeds of conveyance, documents and other writings as the MPRDC may reasonably require to convey, divest and assign all the rights, title and interest of the Concessionaire in the Project Highway free from all Encumbrances absolutely and free of any charge or tax unto the MPRDC or its Nominee; and
- (e) the Concessionaire complies with all other requirements as may be prescribed under Applicable Laws to complete the divestment and assignment of all the rights, title and interest of the Concessionaire in the Project Highway free from all Encumbrances absolutely and free of any charge or tax to MPRDC or its nominee.

30.2.3 Not earlier than 3 (three) months before the expiry of the Concession Period but not later than 30 (thirty) days before such expiry, or in the event of earlier Termination of this Agreement, immediately upon but not later than 15 (fifteen) days from the date of issue of Termination Notice, the Independent Consultant shall verify, in the presence of a representative of the Concessionaire, compliance by the Concessionaire with the Divestment Requirements set forth in Clause 30.5 in relation to the Project Highway and, if required, cause appropriate tests to be carried out at the Concessionaire's cost for determining the compliance therewith. If any shortcomings in the Divestment Requirements are found by either Party, it shall notify the other of the same and the Concessionaire shall rectify the same at its cost. The provisions of Clause 30.1 shall apply mutatis mutandis in relation to repair or rectification of defects under this Clause 30.2.

30.2.4 Upon the Concessionaire conforming to all Divestment Requirements and handing over actual or constructive possession of the Project Highway to MPRDC or a person nominated by MPRDC in this regard, MPRDC shall issue a certificate substantially in the form set forth in Schedule – ‘T’ (the “Vesting Certificate”) within 3 months of concessionaire confirming to all

divestment requirement and handing over actual or constructive possession of the project highway to MPRDC which will have the effect of constituting evidence of divestment of all rights, title and lien in the Project Highway by the Concessionaire and their vesting in MPRDC pursuant hereto. Issue of the Vesting Certificate shall not be unreasonably withheld by MPRDC. The divestment of all rights, title and lien in the Project Highway shall be deemed to be complete on the date when all the Divestment Requirements have been fulfilled or the Vesting Certificate has been issued, whichever is earlier, it being expressly agreed that any defect or deficiency in any Divestment Requirement shall not in any manner be construed or interpreted as restricting the exercise of any rights by MPRDC or its nominee on or in respect of the Project Highway on the footing as if all Divestment Requirements have been complied with by the Concessionaire.

- 30.2.5 Notwithstanding anything to the contrary contained in this Agreement, any Termination Payments made by MPRDC into the Escrow Account shall not be withdrawn there from for any purpose whatsoever until the Vesting Certificate has been issued by MPRDC under this Article. Provided, however, that the aforesaid restriction shall not apply to withdrawals from the Escrow Accounts in favour of the Lenders to the extent of Debt Due.

CHAPTER – XXXI: CHANGE IN LAW

- 31.1 If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in Revenues or other financial burden, the aggregate financial effect of which exceeds Rs. 35 Lacs or 0.5% of the realisable fee (in any accounting year) whichever is higher. , the Concessionaire may notify MPRDC and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in revenue or other financial burden as aforesaid. Upon notification by the Concessionaire as aforesaid, the Parties shall meet as soon as reasonably practicable but no later than 30 (thirty) days and either agrees on amendments to this Agreement or on alternative arrangements to implement the foregoing.

Provided that the Change in Law shall not be applicable to any change in taxes and other fiscal policies of Go MP/GOI affecting the cost of the materials and expenses used for the Construction, Operation and Maintenance of the Project Highway.

Provided that if no agreement is reached as aforesaid by the Parties within 90 (ninety) days of the meeting pursuant to this Clause 31.2 the Concessionaire may by notice in writing require MPRDC to pay as compensation an amount that would put the Concessionaire in the same financial position it would have occupied had there been so such Change in Law resulting in such cost increase, reduction in revenue or other financial burden as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by the Statutory Auditors of the Concessionaire. MPRDC shall make payment of such compensation within 30 (thirty) days of receiving such notice or with interest @ SBAR if the payment thereof is delayed beyond such 30 (thirty) days. If MPRDC shall dispute the quantum of such compensation claim of the Concessionaire, the same shall be finally settled in accordance with the Dispute Resolution Procedure.

- 31.2 If as a result of Change in Law, the Concessionaire enjoys a reduction in costs or increase in Revenue or other financial benefit, the aggregate financial effect of which exceeds the amount mentioned in clause 31.1 above in any Accounting Year, MPRDC may so notify the Concessionaire and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in revenue or other financial benefit as aforesaid. Upon notification by the MPRDC as aforesaid, the Parties shall meet as soon as reasonably practicable but not later than 30 (thirty) days and either agree on such amendments to this Agreement or on alternative arrangements to implement the foregoing.
- 31.3 Provided the Change in law shall not be applicable to any changes in taxes and other fiscal policies of GOMP/GOI affecting the cost of material and expenses used for the construction, Operation and Maintenance of the project Highway.

MPRDC also has a right and option to compensate for the said change in law by way of suitable increase/ decrease of Concession Period as approved by MPRDC.

Provided that if no agreement is reached as aforesaid by the Parties within 90 (ninety) days of the meeting pursuant to this Clause 31.2 MPRDC may by notice in writing require the Concessionaire to pay as compensation 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 the MPRDC Representative. The Concessionaire shall make such payment within 30 (thirty) days of receiving such notice or with interest @ SBAR if the payment is delayed beyond such 30 (thirty) days. If the Concessionaire shall dispute such claim of MPRDC, the same shall be finally settled in accordance with the Dispute Settlement Procedure.

- 31.4 Notwithstanding anything to the contrary contained in this Agreement, MPRDC 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 Highway, or if the aggregate financial effect of such changes in any Accounting Year is less than or equal to the amount mentioned in clause 31.1 above.

CHAPTER – XXXII : LIABILITY AND INDEMNITY

32.1 General Indemnity

32.1.1. The Concessionaire shall be entirely responsible for and bear the cost of and shall indemnify, hold MPRDC not liable for and defend any and all proceedings, actions and, third party claims (other than a claim by GoMP or GOI) for loss, damage and expense of whatever kind and nature arising out of the design, engineering, construction, procurement, Operation and Maintenance of the Project Highway or any arising out of a breach by Concessionaire of any of its obligations under this Agreement except to the extent that any such claim has arisen due to MPRDC Event of Default.). It is agreed that no liability or general indemnity would be upon MPRDC.

32.1.2. MPRDC shall be entirely responsible for and bear the cost of and shall indemnify, defend and hold the Concessionaire not liable against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/ or the rights of MPRDC in the land comprised in the Site adversely affecting the performance of the Concessionaire's obligations under this Agreement and/ or arising out of acts done in discharge of their lawful functions by MPRDC, its Officers, servants, agents, subsidiaries and contractors (“MPRDC Indemnified Persons”) including MPRDC Events of Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Concessionaire, its Subsidiaries, affiliates, contractors, servants or agents including due to Concessionaire Event of Default.

32.2 Without limiting the generality of Clause 32.1 the Concessionaire shall fully indemnify, defend, hold MPRDC not liable including its officers, servants, agents and subsidiaries, from and against any and all loss and damages arising out of or with respect to (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits, (b) payments of taxes relating to the Concessionaire contractors, suppliers and representatives, income or other taxes required to be paid by the Concessionaire without reimbursement hereunder, 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.

32.3 Without limiting the generality of the provisions of this Clause 32 the Concessionaire shall be entirely responsible for and bear the cost of and shall indemnify, defend and hold MPRDC not liable from and against any and all damages which the MPRDC 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, 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 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 MPRDC a licence, at no cost to MPRDC, authoring 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 parts or process, or modify the same so that it becomes non-infringing.

32.4 In the event that either Party receives a notice of claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Clause 32 (the `Indemnified Party') it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject the Indemnified Party being secured against any costs involved to its reasonable satisfaction.

32.5 **Defence of Claims**

32.5.1 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 their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this Clause 32 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 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, 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.

- 32.5.2 If the Indemnifying Party has exercised its rights under Clause 32.4 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).
- 32.5.3 If the Indemnifying Party exercises its rights under Clause 32.4 then 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 such Indemnified Party, when and as incurred, unless:
- a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
 - b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
 - c) the Indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defence of such action and shall have been so notified by the Indemnified Party; or
 - d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement
- 32.5.4. provided that if clauses (ii), (iii) or (iv) shall be applicable, counsel for the Indemnified Party shall have the right to direct the defence of such claim, 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.

CHAPTER – XXXIII : DISPUTE RESOLUTION

- 33.1 Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including non completion of the Project Highway, between the Parties and so notified in writing by either Party to the other (the “Dispute”) in the first instance shall be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 33.3 below.
- 33.2 **Amicable Resolution**
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.
- 33.3 **Steering Group:**
- 33.3.1 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 Steering Group constituted by MPRDC and the Chairman of the Board or Directors of the Concessionaire, and a representative of GoMP,. Upon such reference, the said three persons shall meet not later than 7 (seven) days of the date of such request to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the said period or the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the said three persons, either Party may refer the dispute to arbitration in accordance with the provisions of Clause 33.4.
- 33.3.2 If the Dispute is not resolved as evidenced by the signing of the written terms of settlement within 30 (thirty) working days of the aforesaid notice in writing or such longer period as may be mutually agreed by the Parties then the provisions of Clause 33.4 shall apply.
- 33.4 **Arbitration**
- 33.4.1 Any Dispute, which is not resolved amicably as provided in Clause 33.2 and clause 33.3 shall be finally decided by reference to Arbitration by a Board of Arbitrators appointed as per the provisions of the Arbitration & Conciliation Act, 1996 and any subsequent amendment thereto. Such arbitration shall be held in accordance with the Rules of Arbitration of the Indian Council of Arbitration and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 and as amended from time to time thereafter.
- 33.4.2 The citing of all challenges arising out of the agreement or to its implementation shall be the district court of Bhopal and High Courts in the state of Madhya Pradesh.
- 33.5 **Arbitration Awards to be binding**
- 33.5.1 The Concessionaire and MPRDC undertake to carry out any decision or award of the arbitrators (the “Award”) without delay. Awards

relating to any Dispute shall be final and binding on the Parties as from the date they are made.

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

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

33.6 DISCLOSURE

The Concessionaire shall make available for inspection during normal business hours on all working days copies of all records and reports to MPRDC as and when required.

CHAPTER – XXIV : REDRESSAL OF PUBLIC GRIEVANCES

- 34.1 The Concessionaire shall maintain a public relations office adjacent to each Toll Plaza and keep it open to public access at all times. At each such office, the Concessionaire shall maintain a register/suggestion box (the “Complaints Register”) for recording of complaints/suggestions by any person (the Complainant”) at any time of the day.
- 34.2 The Complaints Register shall be securely bound and kept in proper custody at the public relations office. Each page of the Register shall be duly numbered and each complaint recorded therein shall also be duly numbered. Soon after a complaint is registered the Complainant shall be given a receipt by such office stating the date and complaint number, which the Complainant may refer to in any subsequent correspondence or claim. The Complaints Register shall have appropriate columns including but not limited to the complaint number and date, name and address of the Complainant, the complaint and the action taken by the Concessionaire thereon.
- 34.3 The Concessionaire shall inspect the Complaints Register at reasonable intervals and take prompt steps for redressal of the grievances stated in each complaint. The action so taken by the Concessionaire shall be briefly noted in the ‘Action taken’ column of the Complaints Register and a suitable reply shall also be sent to the Complainant by post under a certificate of posting.
- 34.4 Within one week following the close of each calendar month, the Concessionaire shall send to MPRDC a true photocopy of such pages of the Complaints Register on which any entries have been recorded of any Complaint on the Concessionaire during the course of such month. MPRDC may in its discretion direct the concessionaire to take such further reasonable action as MPRDC may deem appropriate for a fair and just redressal of any grievance.

CHAPTER – XXXV : GOVERNING LAW AND JURISDICTION

35. This Agreement shall be construed and interpreted in accordance with the Applicable Laws and the Courts in Madhya Pradesh shall have jurisdiction over all matters arising out of or relating to this Agreement.

CHAPTER - XXXVI : MISCELLANEOUS

36.1 Video Recording

During the Construction Period, the Concessionaire shall provide a video recording with date and time to MPRDC every quarter which will be compiled into a 3 (three) hour cassette, covering the construction of the Project Highway in that quarter. Such video recording shall be provided no later than fifteen days after the close of each quarter. During the Toll Period the Concessionaire shall prepare the video recording once in a Calendar Year.

36.2. Waiver

Waiver by either Party of any default by other Party in the observance and performance of any provision of or obligations of or under this Agreement;

36.2.1.1. 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;

36.2.1.2. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

36.2.1.3. shall not affect the validity or enforceability of this Agreement in any manner.

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

36.3 Survival

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

36.3.2. All obligations surviving the cancellation, expiration or Termination of this Agreement shall only survive for a period of 5 (five) years following the date of such Termination or expiry of this Agreement.

36.4 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

expressly previously approved in writing by MPRDC and executed by the person expressly authorised by a resolution of MPRDC in this behalf.

36.5 Notices

36.5.1. Any notice or other communication to be given by 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 letter delivered by hand to the address given and marked for the attention of the person set out opposite the corresponding signature below or to such other address marked for such other attention as the Concessionaire may from time to time designate by notice to MPRDC, provided that notices or other communications to be given to an address outside New Delhi may (if they are subsequently confirmed by sending a copy thereof by first class registered airmail or by courier) be sent by facsimile to the number as the Concessionaire may from time to time designate by notice to MPRDC; and
- (b) in the case of MPRDC, be given by letter delivered by hand and be addressed to the Chairman, MPRDC.

36.5.2 Copies of all notices shall also be sent by facsimile and by registered acknowledgement due pre-paid post or courier.

36.5.3 Copies of all notices shall also be sent to the MPRDC Representative.

36.5 Advertisement on Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on then site if such advertising display or hoarding shall be visible to the users while driving on such highway; provided that this restriction shall not apply to the Toll Plaza(s), rest areas, bus shelters and telephone booths located on the project highway if the advertising thereon does not, in the opinion of the MPRDC, distract the users or violates extant guidelines of PWD. For the avoidance of doubt, it is agreed that the rights of the concessionaire hereunder shall be subject to applicable laws, as enforce and effect from time to time, and no compensation shall be claimed on account thereof.

36.7 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

36.8 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

36.9 Language

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

36.10 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.

36.11 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of

MADHYA PRADESH ROAD DEVELOPMENT CORPORATION LTD.

By

_____ (Signature)

MADHYA PRADESH ROAD DEVELOPMENT CORPORATION LTD.

(A Govt. of M.P. Undertaking) A-16, Arera Hills,

Bhopal -462 011 (Madhya Pradesh)

Phone: 91-0755-2765196, 205

Fax: 91-0755-2572643

_____ (Name)

_____ (Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of

CONCESSIONAIRE by:

_____ (Signature)

_____ (Name)

_____(Designation)

In the presence of:

1.

2.

For and on behalf of

Lead Member of Consortium by:

_____(Signature)

_____(Name)

_____(Designation)

In the presence of:

1.

For and on behalf of

Member of Consortium by:

_____(Signature)

_____(Name)

_____(Designation)

In the presence of:

1.

2.

For and on behalf of

Member of Consortium by:

_____(Signature)

_____(Name)

_____(Designation)

In the presence of:

1.

2.