CONCESSION AGREEMENT

FOR

Tolling, Operation, Maintenance & Transfer of

Project comprising of Six – Lane Chennai Outer Ring Road (CORR) for Phase-I i.e. Vandalur to Nemilichery (29.65Km) and Phase-II i.e. Nemilichery to Minjur in TTP Road (30.50Km); totalling 60.15 km in the State of Tamil Nadu on Toll Operate Transfer (TOT) Model

VOLUME-II

TAMIL NADU STATE HIGHWAYS AUTHORITY

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Part I Preliminary

CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the …. day of …., 20_____

BETWEEN

1. **Tamil Nadu State Highways Authority,** represented by its Member - Technical, having its principal office at HRS Campus, 76, Sardar Patel Rd, Little Mount, Guindy, Chennai, Tamil Nadu 600025 (hereinafter referred to as the **"Authority"** which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) of **One Part**;

AND

2. ……Limited, a new company incorporated by the Selected Bidder under the provisions of the Companies Act, 2013 and having its registered office at …… (hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes) of the **Second Part**.

WHEREAS:

(A) The Government of Tamil Nadu had undertaken the development, operation, maintenance and management of six lane Chennai Outer Ring Road (CORR) Phase-I i.e. Vandalur to Nemilichery (29.65 km) and Phase-II i.e. Nemilichery to Minjur in Tiruvotriyur Ponneri Panchetti (TPP) Road (30.50 Km), for a total length of 60.15 Km (the "**Project**").

(B) Subsequently, the Government has entrusted the management of the Project to the Authority. The Authority intends to engage a private operator for undertaking operation, maintenance and management of the Project subject to and in accordance with the terms hereof.

(C) The Authority had invited proposals by its single stage RFP for selection of suitable bidder for undertaking for tolling, operation, maintenance and transfer ("**TOT**") for the above-mentioned Project.

(D) The Authority had prescribed the technical and commercial terms and conditions and invited bids (the "**Request for Proposals**" or "**RFP**") from the bidders for undertaking the Project.

(E) After evaluation of the bids received and pursuant to fulfilment by the Selected Bidder of the stipulated financial (Net Worth/Asset Under Management/Available Capital for Deployment) criteria as set forth in the RFP, the Authority had accepted the bid of the Selected Bidder and issued its letter of acceptance No. ……. dated ……. (hereinafter called the "**LOA**") to the Selected Bidder requiring, *inter alia*, execution of this Concession Agreement within 30 (Thirty) days of the date of issue thereof and the following:

(i) Incorporate a SPV under [Indian] Companies Act, 2013 (and rules framed thereunder) as the Concessionaire to execute the Concession Agreement along with the Selected Bidder (who would join and execute the same as confirming party thereto).

(F) The Selected Bidder has fulfilled the aforesaid precondition subject to and in accordance with the terms of the LOA, and has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act, 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.

(G) The Authority has since procured the Right of Way for the site of the Project Highway comprising the real estate described in Schedule-A.

(H) {By its letter dated ……, the Concessionaire has also joined in the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof.}

(I) The Authority has agreed to the said request of the Selected Bidder and the Concessionaire and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 41 shall, unless the context otherwise requires, have the meaning ascribed thereto herein and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2. Interpretation

1.2.1. In this Agreement, unless the context otherwise requires,

(a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re- enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

(c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

(d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

(e) the words "**include**" and "**including**" are to be construed, without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;

(f) references to "**building**" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental thereto and "**build**" shall be construed accordingly;

(g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;

(h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(i) any reference to day shall mean a reference to a calendar day;

(j) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday) on which banks in Chennai are generally open for business;

(k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

(l) references to any date, period shall mean and include such date, period as may be extended pursuant to this Agreement;

(m) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

(n) the words importing singular shall include plural and vice versa;

(o) references to any gender shall include the other and the neutral gender;

(p) "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);

(q) "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

(r) references to the "winding-up", "dissolution", "insolvency", or "reorganisation" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

(s) save and except as otherwise provided in this Agreement, any reference at any time to any agreement, deed, instrument, license 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 Sub- clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

(t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of

a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;

(u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

(v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;

(w) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages"); and

(x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 and the Tamil Nadu General Clauses Act, 1891 shall not apply.

1.3. Measurements and arithmetic conventions

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

1.4. Priority of agreements, clauses and schedules

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

following order

(a) this Agreement; and

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

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

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

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(c) between any two Schedules, the Schedule relevant to the issue shall prevail; and

(d) between any value written in numerals and that in words, the latter shall prevail.

Part II The Concession

ARTICLE 2
SCOPE OF THE PROJECT

2.1. Scope of the Project

(a) The scope of the Project, as defined in Schedule A and Schedule B hereto, (the "**Scope of the Project**") shall mean and include, during the Concession Period Tolling, operation, management, maintenance and transfer of the Project Highway subject to and in accordance with the provisions of this Agreement; and

(b) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3
GRANT OF CONCESSION

3.1. The Concession

3.1.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority to demand, collect and appropriate Fee, operate, manage and maintain the Project Highway (the "**Concession**") subject to and in accordance with terms hereof, for a period of 25 (twenty five) years commencing from the Appointed Date **(**the "**Concession Period**") and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

Notwithstanding anything to the contrary in this Agreement, the Parties expressly agree that the Concession Period shall not be reduced by more than 5 (five) years or shall not be increased by more than 10 (ten) years on any account or for any reason whatsoever.

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

(a) Right of Way, access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;

(b) manage, operate and maintain the Project Highway and regulate the use thereof by third parties in accordance with terms hereof;
provided that the O&M operations shall be vested with the Concessionaire for the stretches km. 0/00 – 29/65 from 16.12.2030 and km. 29/65 – 60/15 from 28.10.2034 after the end of respective concession agreements with the existing concessionaires for the stretches. However, the O&M of all Toll Plazas shall commence from the Appointed date.

(c) demand, collect and appropriate Fee from vehicles and Users liable for payment of Fee for using the Project Highway or any part thereof and refuse entry of any vehicle if the Fee due is not paid;

(d) perform and fulfill all of the Concessionaire's obligations under and in accordance with this Agreement;

(e) 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

(f) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Highway nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.

3.1.3. The provisions in relation to the Escrow Account in this Agreement shall only be applicable if the obligations of the Concessionaire under this Agreement are financed by the Lenders.

ARTICLE 4
CONDITIONS PRECEDENT

4.1. Conditions Precedent

4.1.1. Save and except as expressly provided in Articles 4, 9, 10, 27, 37 and 40, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**").

4.1.2. The Concessionaire may, upon signing the LOA, by notice require the Authority to satisfy the Conditions Precedent set forth in this Clause. The Conditions Precedent obligations of the Authority shall be fulfilled when Authority shall have procured notification of the Fee Notification as a Condition Precedent to be fulfilled within a period of 45 (forty five days) from the date of this Agreement

4.1.3. The Conditions Precedent required to be satisfied by the Concessionaire within, unless specifically stated, a period of 150 one hundred and fifty) days from the date of this Agreement or within any extended date agreed by the Authority, and in any case prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

(a) executed and procured execution of the Escrow Agreement; and

(b) executed and procured execution of the Substitution Agreement with Lenders (if any) financing the Debt component of the Concession Fee, in the format as enclosed with this Agreement (Schedule P); and

(c) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof; and

(d) executed the Financing Agreements with Lenders, fulfilled the preconditions set out therein, and achieved Financial Closure and delivered to the Authority 3 (three) true copies each of the Financial Agreements, Financial Package and the Financial Model acceptable to Lenders in respect of financing of the Debt, duly attested by a Director of the Concessionaire

(e) Pay to the Authority within "150" (one hundred and fifty) days of date of execution of Agreement, or any extended date agreed to by Authority but in any case prior to Appointed Date, the Concession Fee (equivalent to its financial bid quote) of an amount of Rs. ……. (Rupees .....) by way of a (i) demand draft drawn on a Scheduled Commercial bank in India in favour of the Authority, and payable at Chennai or (ii) online payment to the Authority's designated account. Details of the designated bank account will be provided in the Letter of Award (LoA).

4.1.4. Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which it is responsible.

4.2. Damages for delay

4.2.1. In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security, provided further that such damages for delay by the Concessionaire for non-fulfilment of Conditions Precedent shall be payable within 15 (fifteen) days of achievement of fulfilment of Conditions Precedent.

4.2.2. In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire, or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

4.3 Deemed Termination upon Delay

Without prejudice to the provisions of Clause 4.1 and 4.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1st (first) anniversary of the date of this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the non-occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Bid Security or the Performance Security shall be encashed by the Authority.

Upon termination under this Clause the Authority shall, within 30 (thirty) days, refund the Concession Fee to the Concessionaire, if deposited by the Concessionaire, without interest.

ARTICLE 5
OBLIGATIONS OF THE CONCESSIONAIRE

5.1. Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance and undertake the {*Tolling Obligations from Appointed Date, and O&M obligations (in terms hereof) from ……{Date}…….. (km …….. to km),……..{Date}…….. (km …….. to km) or from the date notified by the Authority in due course (*"***O&M Handover Date**"[1]*) in respect of the*} operation and maintenance of the Project Highway and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice, Applicable Laws and Applicable Permits, and as a reasonable and prudent person.

5.1.3. The Concessionaire shall at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;

(b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Highway;

(c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by the Concessionaire or its Contractors in connection with the performance of the Concessionaire's obligations under this Agreement;

1

Stretch	**State**	**Start (Km)**	**End (km)**	**Length O&M (km) Handover Date**
Six – Lane Chennai Outer Ring Road (Phase I) i.e. Vandalur to Nemilichery	Tamil Nadu	0	29.65	29.65 on 16/12 /2030
Six – Lane Chennai Outer Ring Road (Phase II) i.e. Nemilichery to Minjur	Tamil Nadu	29.65	60.15	30.50 on 28/10 /2034
Toll Plaza Area and its appurtenances	Tamil Nadu	Varadharajapuram, Kollapancheri,		All the components of Toll Plaza on Appointed date

(d) provide reasonable support and assistance to facilitate the acquisition of land and/ or Capacity Augmentation if undertaken by Authority for the purposes of and in terms of the Agreement;

(e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;

(f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

(g) undertake the O&M obligations in terms of Clause 15.1, and support, cooperate with and facilitate the Authority in the monitoring of operation and maintenance of the Project Highway in accordance with the provisions of this Agreement;

(h) furnish to the Authority in each year of the Concession Period, and every 3 (three) months prior to expiry of annual Performance Security, rolled over and renewed Performance Security (escalated at Price Index from last value), subject to and in accordance with terms hereof;

(i) without prejudice to the requirement under clause 5.2 below, ensure and procure that through the Concession Period, the O&M Contractor engaged by the Concessionaire from time to time or at any time, if any, shall fulfill the threshold technical eligibility criteria prescribed for the same under the relevant RFP, to the complete satisfaction of the Authority, and in the event Concessionaire fails to comply with the same at any time during term hereof, the same shall be deemed as Concessionaire's Default which shall make the Agreement liable for termination; for the avoidance of doubt, it is clarified that the Concessionaire should engage the O&M Contractor no later than 90 days before the O&M Handover Date detailed in Article 5.1.1.

(j) transfer the possession of Project Highway to the Authority in good operational condition as per Good Industry Practice, upon Termination of this Agreement, in accordance with the provisions thereof; and

(k) pay the applicable Stamp Duty and registration fees with respect to execution of this Agreement.

5.2. Obligations relating to Project Agreements

5.2.1. It is expressly agreed that the Concessionaire shall at all times be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2. The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have

the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3. The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

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

5.3. Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that the obligation under this Clause 5.3.1 and the representation in Clause 7.1(k) shall apply to the Concessionaire's company in the event the aggregate shareholding of the Selected Bidder together with {its/their} Associates, in the issued and paid-up equity share capital of the Concessionaire declines below 51% (fifty one percent) thereof during the first 2 (two) years of the Concession Period;

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

(i) all acquisitions of equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any equity, in aggregate of not less than 25% (twenty-five per cent) of the total equity of the Concessionaire, or

(ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision within a period of 60 (sixty) days from the date of receipt of such request. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement. For the avoidance of doubt, it is expressly agreed that merger of the Concessionaire with its parent company and/or the Selected Bidder and/or any of the constituents thereof shall also constitute Change in Ownership.

For the purposes of this Clause 5.3.2:

(a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

(b) the indirect transfer or control of legal or beneficial ownership of equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and

(c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 25% (twenty five percent) of the equity of the Concessionaire shall constitute acquisition of control directly or indirectly

of the Board of Directors of the Concessionaire.

5.4. Employment of foreign nationals

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

5.5. Employment of trained personnel

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

5.6. Branding of Project Highway

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

5.7. Facilities for physically challenged and elderly persons

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

ARTICLE 6
OBLIGATIONS OF THE AUTHORITY

6.1. Obligations of the Authority

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

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

(a) upon written request from the Concessionaire and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project Highway subject to and in accordance with terms hereof;

(b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;

(c) procure that no barriers are erected or placed on or about the Project Highway by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order or collection of inter-state taxes;

(d) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Project Highway;

(e) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Project Highway;

(f) assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Project Highway;

(g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

(h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

(i) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits in such

manner as may be necessary to facilitate the compliance of this Agreement and the Project Agreements.

6.2. Maintenance obligations prior to O&M Handover Date

Prior to O&M Handover Date, the Authority shall maintain and/or cause to be maintained through existing annuity/ contractor the Project Highway, at its own cost and expense, so that its traffic worthiness and safety are at no time materially inferior as compared to its condition 7 (seven) days prior to the last date for submission of the Bid, and in the event of any material deterioration or damage other than normal wear and tear, undertake routine and special repair thereof, or pay to the Concessionaire the cost and expense, as determined by the Independent Engineer, for undertaking such repair after the O&M Handover Date. For the avoidance of doubt, it is hereby clarified that the existing Annuity Concessionaire of the respective stretches of the Project Highway shall operate and maintain the respective stretches of the Project Highway in accordance with their respective Concession Agreements and shall be liable for any breach of their O&M obligations during the term of their Annuity Concession Agreements.

6.3. Obligations relating to Competing Roads

The Authority shall procure that during the subsistence of this Agreement, neither the Authority nor any Government Instrumentality shall construct or cause to be constructed any Competing Road; provided that the restriction herein shall not apply if the average traffic on the Project Highway in any 3 (three) consecutive years exceeds 90% (ninety percent) of its designed capacity as stipulated in the Specifications and Standards. Upon breach of its obligations hereunder, the provisions of the Fee Rules shall apply.

6.4. Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the State Government or the Government of India or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior consent of the Authority, which consent shall not be unreasonably withheld. The Authority shall endeavour to convey its decision on such request of the Concessionaire within 30 (thirty) days of receipt of the proposal by the Authority.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1. Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

(a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

(c) it has the financial standing and capacity to undertake the O&M of the Project Highway in accordance with the terms of this Agreement;

(d) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof and the obligations of the Concessionaire under this Agreement will be legally valid, binding and enforceable obligations against the Concessionaire in accordance with the terms hereof;

(e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

(f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

(g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(h) there are no actions, suits, proceedings, or investigations pending or, to 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 this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

(i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Concessionaire's ability to perform

its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

(k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the aggregate holding of the Selected Bidder together with its Associates, in the issued and paid-up equity share capital of the Concessionaire shall not decline below 51% (fifty one percent) thereof during the first 2 (two) years of the Concession Period; and that each member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the RFP shall hold at least 26% (twenty six per cent) of such equity during the first 2 (two) years of the Concession Period along with its Associates;

Provided further that any such request made under this Clause 7.1(k) and/ or Article 41, at the option of the Authority, shall be required to be accompanied by a suitable no objection letter from Lender;

(l) the selected bidder/ Consortium Members and its/ their Associates have the financial standing and resources to fund the required equity and to raise the debt necessary to undertake and implement the Project in accordance with this Agreement;

(m) the selected bidder/ each Consortium Member is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(n) all rights and interests of the Concessionaire in the Project Highway shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on the part of the Concessionaire or the Authority, and that none of the Project Assets 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;

(o) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

(p) no sums, in cash or kind, have been paid or will be paid, by 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 the Authority in connection therewith; and

(q) all information provided by the selected bidder/ Consortium Members in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2. Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

(a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement

(b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;

(c) it has the financial standing and capacity to perform its obligations under this Agreement;

(d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;

(f) it has complied with Applicable Laws in all material respects;

(g) it has the right, power and authority to manage and operate {cause to be managed and operated through relevant existing contractor the Project Highway up to the O&M Handover Date; and

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

7.3. Disclosure

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

ARTICLE 8
DISCLAIMER

8.1. Disclaimer

8.1.1. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Maintenance Requirements, Safety Requirements, as built drawings, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained, procured or gathered otherwise and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.

8.1.2. The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire or any person claiming through or under it.

8.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.

8.1.4. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

8.1.5. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III Operations & Maintenance

ARTICLE 9
PERFORMANCE SECURITY

9.1. Performance Security

9.1.1 The Concessionaire shall, for the due performance of its obligations hereunder during the respective relevant Accounting Year of the Concession Period, provide to the Authority no later than 45 (forty five) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Scheduled Commercial Bank in India with a minimum validity of 12 (twelve) months at a time for a sum equivalent to **Rs. 6,00,00,000 (Rs six crore only)** escalating at Price Index annually from first anniversary of the Appointed Date, in the form set forth in Schedule-E (the "**Performance Security**")**.** The Performance Security shall be rolled over periodically and shall be renewed 3 (three) months prior to its expiry so as to keep it valid and subsisting with full force and effect until 60 days prior to the O&M Handover Date.

The Concessionaire shall no later than 90 (ninety) days prior to the O&M Handover Date, provide to the Authority an irrevocable and unconditional guarantee from a Scheduled Commercial Bank in India with a minimum validity of 12 (twelve) months at a time for a sum equivalent to **Rs. 10,00,00,000 (Rs ten crore only)** escalating at Price Index annually from first anniversary of the O&M Handover Date, in the form set forth in Schedule-E (the "**Performance Security**"). The Performance Security shall be rolled over periodically and shall be renewed 3 (three) months prior to its expiry so as to keep it valid and subsisting with full force and effect until issue of Vesting Certificate by Authority and thereafter until expiry of two months from end of the Defects Liability Period.

In the event the Concessionaire failing to renew and furnish the Performance Security in terms hereof and by the time period specified herein, the existing Performance Security shall become liable for forfeiture and the same shall be deemed to be Concessionaire Default, in which case the Authority shall be entitled to terminate the Agreement in terms hereof.

Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.2. Appropriation of Performance Security

The whole or part of the Performance Security shall be encashable inter alia in the following Concessionaire Default:-

I. Any breach or non-observance of Tolling Obligations set out herein including among others installation, operation and maintenance of electronic/computerized tolling counter, round the clock computer network with Authority's network as per prevailing EDI protocol, prompt repair and rehabilitation of tolling system as per Good Industry Practice, and complying with reporting obligations; in accordance with terms hereof.

II. The Concessionaire abandons or manifests intention to abandon the Tolling Obligations and/or O&M obligations.

III. The Concessionaire is in breach of Maintenance Requirements or Safety Requirements or does not comply with remedy of defect/deficiency instructions of Independent Engineer or Authority or is in breach of Maintenance Programme.

IV. The Concessionaire does not renew and furnish Performance Security in accordance with terms hereof.

V. The Concessionaire creates any Encumbrances in breach of this Agreement.

VI. Change in ownership has occurred in breach of the Agreement or the concessionaire is adjudged bankrupt or insolvent or in the process of being liquidated, dissolved, wound up or provisional liquidator or receiver is appointed pursuant to order of a competent court.

VII. The Concessionaire fails to undertake the tolling activities as per Good Industry Practices i.e. such skills, diligence, service levels, efficiency, innovation, as prevailing in the relevant Industry and changes from time to time.

VIII. Failure to meet any condition precedent within time specified.

IX. The Concessionaire has committed any other Concessionaire Default which has been specified in this Agreement as ground for termination.

Upon occurrence of a Concessionaire Default the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security, provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 30. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 30.

9.3. Release of Performance Security

The Performance Security shall remain in force and effect for the Concession Period and thereafter until expiry of 2 (two) months from the end of Defects Liability Period.

ARTICLE 10
RIGHT OF WAY

10.1. The Site

The site of the Project Highway shall comprise the real estate described in Schedule-A and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the "**Site**").

10.2. License, Access and Right of Way

10.2.1. The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary prior to Appointed Date, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2. In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date the license to undertake tolling activities in terms hereof, and with effect from "O&M Handover Date" the leave and license rights in respect of all the remaining land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the "**Licensed Premises**"), on an "as is where is" basis, free of any Encumbrances, to operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3. The license, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that Project Highway or an alternative thereof are open to traffic at all times during the Concession Period.

10.2.4. It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5. The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been

terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6. It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

10.3. Process of Handover of the Site

10.3.1. The Authority's Representative, the Concessionaire and the Independent Engineer shall, on a mutually agreed date and time inspect the portion of Site as required for tolling activities and prepare a memorandum containing an inventory of such portion to be handed over for undertaking Tolling Obligations, including the structures, and any other immovable property on or attached to such portion of Site. The Authority's Representative and the Concessionaire shall prior to O&M Handover Date, on a mutually agreed date and time, inspect the remaining portion of the Site and prepare a memorandum containing an inventory of the balance portion of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the said portion of Site. Signing of the aforesaid respective memorandums, in two counterparts each of which shall constitute an original, by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid license and Right of Way to the Concessionaire for free and unrestricted use of the vacant and unencumbered Site or portion thereof, as the case may be, during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

10.3.2. On and after signing the memorandum(s) referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses. The Concessionaire besides using manpower, shall use appropriate technology for the purpose of maintaining round-the-clock vigil over the Site.

10.4. Site to be free from Encumbrances

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

10.5. Protection of Site from encroachments

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

10.6. Special/temporary right of way

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

10.7. Access to the Authority and Independent Engineer

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

10.8. Geological and archaeological finds

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

ARTICLE 11
UTILITIES, ASSOCIATED ROADS AND TREES

11.1. Existing utilities and roads

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

11.2. Shifting of obstructing utilities

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

11.3. New utilities and roads

11.3.1. The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or such other 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. In case the Authority requires the connection of any adjoining road to the Project Highway or to connect, through a paved road, any adjoining service station, hotel, motel or any other public facility or amenity to the Project Highway, it shall issue to the Concessionaire a notice specifying in reasonable detail the works required thereunder and notwithstanding anything to the contrary contained in this Article, the provisions of Article 21 shall apply to such request of the Authority.

It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder as per good industry practice.

The works undertaken in accordance with this Clause shall be carried out in a manner that minimizes the disruption in operation of the Project Highway.

For the avoidance of doubt and in case the works required under this Clause are undertaken by the Concessionaire, the construction and maintenance thereof shall be at the Authority's cost, in accordance with the provisions of Clause 15.1.3.

11.3.3. For the avoidance of doubt, any connecting road constructed prior to the Appointed Date and falling within the Site shall be maintained by the Concessionaire upon advance payment to be made by the beneficiary entity in accordance with the provisions of this Clause.

11.4. Felling of trees

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

ARTICLE 12
CONSTRUCTION OF ADDITIONAL TOLLWAY

12.1 Restriction on construction of Additional Tollway or Competing Road
Notwithstanding anything to the contrary contained in this Agreement but subject always to provisions of this Agreement including Clause 12.2, the Authority shall not construct, and shall procure that no Government Instrumentality shall construct or cause to be constructed, any Competing Road or other toll road between, inter alia, connection

Stretch	Start (Km)	End (Km)	Length (km)
Six – Lane Chennai Outer Ring Road, (Phase I) i.e. Vandalur to Nemilichery, Tamil Nadu	0.00	29.65	29.65
Six – Lane Chennai Outer Ring Road, (Phase II) i.e. Nemilichery to Minjur, Tamil Nadu	29.65	60.15	30.50

(collectively the "Additional Tollway") for use by traffic at any time during the Concession Period.

For the avoidance of doubt, Additional Tollway does not include any competing expressway or other toll road connecting, inter alia above, if the length of such expressway or toll road exceeds the length of the existing route comprising the Project Highway by 20% (twenty per cent) thereof.

12.2 Modification in the Concession Period

It is expressly agreed that in cases when toll collection is impacted by Additional Tollway or Competing Road, the Concessionaire shall be compensated in accordance with Article 24.

12.3. Minimum Fee for the Project Highway

Upon commissioning of the Additional Tollway/Competing Road, the Concessionaire shall continue to collect the Fee, and shall not offer any discounts or reductions in such Fee except with the prior written consent of the Authority; provided that the Concessionaire may continue, in the same form and manner, any discounts or reductions that it had offered to any general or special class of Users or vehicles for a continuous period of 3 (three) years prior to the opening of the Additional Tollway/ Competing Road to traffic.

12.4. Minimum Fee for Additional Tollway/Competing Road

The Authority agrees and undertakes that it would make reasonable effort to procure that the fee to be levied and collected during the subsistence of this Concession from any vehicle or class of vehicles using the Additional Tollway/Competing Road shall at no time be less than 25% (twenty

five percent) higher than the Fee levied and collected from similar vehicles using the Project Highway. It is expressly agreed between the Authority and the Concessionaire that the Authority shall not be liable or responsible for any loss to the Concessionaire apart from compensating Concessionaire in accordance with Article 24.

ARTICLE 13
ENTRY INTO COMMERCIAL SERVICE

13.1 Appointed Date

13.1.1 The rights, privileges, liberties and obligations of the Concessionaire, particularly the Concession shall commence from the date on which all Conditions Precedent have been satisfied in accordance with Article 4 (the "**Appointed Date**"), and determination of the Appointed Date by the Authority shall be final, conclusive and binding on the Concessionaire. The Project Highway shall for the purposes of this Agreement enter into commercial service on the Appointed Date whereupon the Concessionaire shall be entitled to demand and collect Fee and perform its O&M Obligations from the O&M Handover Date, subject to and in accordance with the provisions of this Agreement.

ARTICLE 14
CAPACITY AUGMENTATION

14.1. Capacity Augmentation of Project Highway

14.1.1. The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the Capacity Augmentation for any homogenous/ tollable section(s)[2] of the Project Highway in case the average daily traffic of PCUs for that homogenous/tollable section(s), in any Accounting Year shall exceed the designed capacity Target Traffic[3] for Project Highway and shall continue to exceed the designed capacity for 3 (three) consecutive Accounting Years following thereafter. Any such Capacity Augmentation shall be made in accordance with the provisions of this Article 14.

The Authority shall bear the costs towards required land acquisition, shifting of utilities/ facilities as would be necessary for undertaking the Capacity Augmentation.

14.1.2. In the event, at any time during the Concession Period, the average daily traffic increases beyond Target Traffic, the Authority may, decide to cause preparation of a Detailed Project Report (DPR). The said DPR, inter-alia will assess the cost as may have to be incurred for augmenting the capacity of the homogenous/tollable section(s) of the Project Highway in accordance with the provisions of the Indian Roads Congress publication or any substitute thereof.

14.1.3. In case the Authority determines that Capacity Augmentation is reasonably required by reason of the then current traffic reaching the Target Traffic as aforesaid, then the Authority may undertake the required Capacity Augmentation, at its own cost and expense by engaging a EPC Contractor selected through competitive bidding process; provided however that the Concessionaire shall have the option of matching the first ranked bid, subject to the Concessionaire's bid being within 10% (ten percent) of the first rank bid, and thereupon securing the award of EPC works contract, and the Concessionaire shall be eligible to exercise such right/option, if Concessionaire participates in the said bidding process and fulfils the eligibility criteria to undertake such work without compromising with its overall liability. For avoidance of doubt, it is clarified that if the Concessionaire decides to participate in the competitive bidding, it shall be required to demonstrate technical capability as set forth in the bidding documents either as a single entity or by forming a consortium with an EPC contractor; provided that in such a case, the technical capability of such EPC contractor shall only be considered for the purpose of evaluation.

14.1.4. In case of augmentation by third party, the Concessionaire shall promptly render all support and assistance as would be required by the Authority inter-alia including making suitable arrangements for ensuring efficient diversion of the Traffic.

During the period wherein EPC Contractor is responsible for all defects and deficiencies, including undertaking maintenance on account of regular wear and tear arising in the augmented stretch, as defined in Clause 14.1.5, Concessionaire shall be entitled to collect the additional revenues from the augmented stretch. Over time, the homogeneous sections might change which shall be determined based on annual traffic survey and as per the provisions of IRC Code - IRC 108:2015

[2] Currently the homogeneous sections are as provided in Schedule A
[3] Target Traffic to be determined for [LOS B]: For Expressway: as per IRC Code - IRC: SP:99-2013 or any amendments thereof

or any amendments thereof and the traffic data collected through electronic toll collection, whichever is higher. In this regard, the Concessionaire clearly understands and agrees that such entitlement is being vested in the Concessionaire on account of good faith bonafide representation by the Concessionaire that it has factored the same in its bid quote. Upon completion of the period of the EPC Contractor's liability mentioned herein above, or in case the Capacity Augmentation is undertaken by the Concessionaire, the operation and maintenance of the augmented stretch shall be undertaken by Concessionaire, as if the augmented stretch were part of the Project Highway.

14.1.5. The EPC Contractor shall be responsible for all defects and deficiencies, excluding undertaking maintenance on account of regular wear and tear arising in the augmented stretch, for a period of [5 (five)][4] years after such augmentation, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer during the aforesaid period. For the avoidance of doubt, it is hereby agreed by and between the Parties that the Independent Engineer shall act as the Authority Engineer for the purpose of the EPC Contract executed for such Capacity Augmentation. In the event that the EPC Contractor fails to repair or rectify such defect or deficiency within a period of 60 (sixty) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at its cost so as to make the Project Highway conform to all requirements. All costs incurred by the Authority hereunder shall be reimbursed by the EPC Contractor to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover damages at the rate of 1% (one per cent) of the cost of the EPC Contract. For avoidance of doubt, the right to levy user fee for the entire project highway during the defect liability period of the EPC Contractor appointed for Capacity Augmentation, if any, shall continue to be with the Concessionaire.

14.1.6 It is expressly agreed that after all the obligations required for commercial operations of augmented Project Highway including issuance of revised Fee notification are complete, notwithstanding anything to the contrary contained in the Agreement, user fee collection in accordance with revised Fee notification shall be done by Concessionaire. It is also agreed that the given toll plaza(s) may undergo addition / relocation as a result of Capacity Augmentation, as may be decided by the Authority. Notwithstanding anything to the contrary contained in the Agreement, the Concessionaire agrees to conduct tolling from new set of toll plaza(s), if applicable.

14.1.7. The Concessionaire acknowledges and agrees that no Fee shall be charged from the vehicles used by or on behalf of the Authority or the EPC Contractor for execution of the works of Capacity Augmentation.

14.1.8. If as a result of execution of the works of Capacity Augmentation, the Concessionaire, unless the

[4] The figure may be updated based on the following:

(a) 5 (five) years from the date of completion in case of a road being constructed with flexible pavement.
(b) 10 (ten) years from the date of completion in case of road being constructed with rigid pavement.
(c) 10 (ten) years from the date of completion in case of road being constructed with flexible pavement using perpetual design
(d) 10 (ten) years from the date of completion in case of all stand-alone structures, e.g. Major Bridges/ and Tunnels
(e) 10 (ten) years from the date of completion for the stretches where new technology/ material has been/ is proposed to be used.

The categorization whether the augmented stretch is constructed with flexible pavement or rigid pavement shall depend on the basis of the majority of the length of the augmented stretch to be covered with that type of pavement.

same is attributable to the Concessionaire, suffers any monetary loss due to closure of lanes / diversion of traffic, the Concessionaire will be compensated in-line with Clause 14.2.

14.2 Compensation for monetary loss

14.2.1 The Authority and the Concessionaire acknowledge that if the Concessionaire suffers monetary loss in the event of lane closure/ traffic diversion on account of Capacity Augmentation, the Authority may, in its discretion and at its own cost, undertake traffic sampling, in accordance with Schedule-J hereto, during the period of such lane closure / traffic diversion and a second survey, post opening of the lanes/ removal of traffic diversion, in order to determine the actual traffic on the Project Highway. For the avoidance of doubt, the compensation in the case of monetary loss shall be determined by the Authority based on traffic volumes arrived by increasing the previous years' traffic volumes during the same period by 2% (two percent) per annum. It is hereby agreed between the Parties that the Concessionaire shall only be entitled to any compensation under this Clause and the Authority shall only be obliged to pay compensation hereunder in case it is determined by the Authority that the monetary loss suffered by the Concessionaire in the event of such lane closure / traffic diversion on account of Capacity Augmentation is greater than 10% (ten percent) thereof.

14.2.2 In the event of any Dispute between the Parties under Clause 14.1, the Dispute Resolution Procedure shall apply.

14.2.3 Notwithstanding to anything contrary present in the Agreement, during the period of Capacity Augmentation, if the Concessionaire incurs any financial loss due to modification in toll rates for the Project Highway, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no reduction in toll rates due to Capacity Augmentation. The Authority shall pay the amount specified therein to the Concessionaire on a quarterly basis. For the avoidance of doubt, it is clarified that compensation will be limited to reduction in toll rates and shall not include any loss due to reduction in traffic. The amount of compensation shall be calculated using the following formula:

A*(B-C) where

A= Traffic calculated as per Article 19
B= Existing toll rate before the beginning of Capacity Augmentation
C= Reduced toll rate at the time of Capacity Augmentation

14.3 Financial gains or loss due to Capacity Augmentation

Notwithstanding anything to the contrary present in the Agreement, during the period of Capacity Augmentation or thereafter;

(a) if the Equivalent Tollable Length of the Project Highway increases, the increased revenue realised by the Concessionaire shall be paid to the Authority on a quarterly basis. For avoidance of doubt, increase in revenue refers to increase in revenue due to increase in

Equivalent Tollable Length of the Project Highway;

(b) if the Equivalent Tollable Length of the Project Highway decreases, the loss in revenue to the Concessionaire due to such reduction in length shall be compensated by the Authority to the Concessionaire on quarterly basis. For avoidance of doubt, loss in revenue shall only include the loss due to reduction in the Equivalent Tollable Length of the Project Highway;

The amount of payment shall be calculate using the following formula:

|A*(B-C)| where

A= Traffic calculated as per Article 19
B= Toll rate based on the existing Equivalent Tollable Length of the Project Highway C= Revised toll rate based on revised Equivalent Tollable Length of the Project Highway

Provided that any dispute arising from clause 14.3 shall be settled in accordance with Dispute Resolution Procedure

ARTICLE 15
OPERATION AND MAINTENANCE

15.1. O&M obligations of the Concessionaire

15.1.1. With effect from the O&M Handover Date and thereafter during the remaining Concession Period the Concessionaire shall operate and maintain the Project Highway in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project Highway to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

(a) permitting safe, smooth and uninterrupted flow of traffic on the Project Highway during normal operating conditions;

(b) collecting and appropriating the Fee;

(c) minimising disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Highway by providing a rapid and effective response and maintaining liaison with emergency services of the State;

(d) carrying out periodic preventive maintenance of the Project Highway;

(e) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement markings, lighting, road signs and other traffic control devices;

(f) undertaking major maintenance such as resurfacing of pavements, repairs to structures, and repairs and refurbishment of tolling system and other equipment;

(g) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Project Highway;

(h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Highway;

(i) protection of the environment and provision of equipment and materials therefore;

(j) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project Highway;

(k) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and

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

15.1.2. The Concessionaire shall remove promptly from the Project Highway all surplus machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Highway in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

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

15.2. Maintenance Requirements

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

15.3. Maintenance Manual

15.3.1. No later than 90 (ninety) days Prior to O&M Handover Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Project Highway in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 15.3 shall apply, *mutatis mutandis*, to such revision.

15.3.2. Without prejudice to the provision of Clause 15.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of the Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Asset, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

15.4. Maintenance Programme

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

(a) preventive maintenance schedule;
(b) arrangements and procedures for carrying out urgent repairs;
(c) criteria to be adopted for deciding maintenance needs;

(d) intervals and procedures for carrying out inspection of all elements of the Project Highway;
(e) intervals at which the Concessionaire shall carry out periodic maintenance;
(f) arrangements and procedures for carrying out safety related measures; and
(g) intervals for major maintenance works and the scope thereof.

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

15.4.3. The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clause 15.4.1 and 15.4.2 shall apply *mutatis mutandis* to such modifications.

15.5. Safety, vehicle breakdowns and accidents

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

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

15.6 De-commissioning due to Emergency

15.6.1. If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure to traffic of the whole or any part of the Project Highway, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project Highway to traffic for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

15.6.2. The Concessionaire shall re-commission the Project Highway or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project Highway and shall notify the Authority of the same without any delay.

15.6.3. Any decommissioning or closure of any part of the Project Highway and the re- commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

15.7. Lane closure

15.7.1. The Concessionaire shall not close any lane of the Project Highway for undertaking maintenance or repair works except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure of such lane and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem necessary, and a copy of such permission shall be sent to the Authority.

15.7.2. The provisions of Clause 15.7.1 shall not apply to de-commissioning under Clause 15.6.1 or to closure of any lane for a period not exceeding 2 (two) hours in a day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak hours when the flow of traffic is comparatively lower.

15.7.3. Upon receiving the permission pursuant to Clause 15.7.1, the Concessionaire shall be entitled to close the designated lane for the period specified therein, and in the event of any delay in re-opening such lane, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of Performance Security for every stretch of 500 (five hundred) metres or part thereof for each day of delay until the lane has been re-opened for traffic, and in the event of non –payment of such delinquent amount forthwith and in any case within 7 (seven) days of issue of written notice by Authority, the same shall be recovered by encashment of the Performance Security in which case the provisions of Clause 9 hereof shall apply. For the avoidance of doubt, the Damages under this Clause 15.7.3 shall not apply to any Capacity Augmentation undertaken by the Concessionaire pursuant to Article 14 hereunder.

15.8. Damages for breach of O&M obligations

15.8.1. In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein or is in breach of the Maintenance Programme, Maintenance Manual and/or Safety Requirements, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Performance Security, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof, and in the event of non– payment by Concessionaire of such delinquent amount forthwith and in any case within seven days of issue of written notice by Authority, the same shall be recovered by encashment of Performance Security in which case the provisions of clause 9 hereof shall apply.

15.8.2. The Damages set forth in Clause 15.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such

Damages forthwith.

15.9. Authority's right to take remedial measures

15.9.1. In the event the Concessionaire does not maintain and/or repair the Project Highway or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme or Safety Requirements, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 50% (fifty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 15.9.1 shall be without prejudice to its rights and remedies provided under Clause 15.8.

15.9.2. In the event of non–payment by Concessionaire of such delinquent amount forthwith and in any case within seven days of issue of written notice by Authority the Authority shall have the right and the Concessionaire hereby expressly grants to the Authority the right to recover the costs and Damages specified in Clause 15.9.1 directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 15.9.2.

15.10 Overriding powers of the Authority

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

15.10.2. In the event that the Concessionaire, upon notice under Clause 15.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 15.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be recovered from the Concessionaire in accordance with the provisions of Clause 15.9 along with the Damages specified therein.

15.10.3. In the event of a national emergency, civil commotion or any other act specified in Clause 27.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project Highway or give such

directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding powers by the Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of Article 27. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 15.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

15.11. Restoration of loss or damage to Project Highway

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

15.12. Modifications to the Project Highway

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

15.13. Excuse from performance of obligations

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

(a) an event of Force Majeure;

(b) measures taken to ensure the safe use of the Project Highway except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

(c) compliance with a request from the Authority or the directions of any Government Instrumentality the effect of which is to close all or any part of the Project Highway.

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

15.13.2. The Concessionaire shall not be liable or responsible for any defect or deficiency in the Project

Highway if such defect or deficiency is to be rectified or repaired by the contractor who had constructed the Project Highway or any part thereof.

15.14. Barriers and diversions

The Authority shall procure that during the Concession Period, no barriers are erected or placed by any Government Instrumentality on the Project Highway except for reasons of Emergency, national security, law and order or collection of inter-state taxes. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions of traffic from, or closing down of approach roads to the Project Highway that may cause a material adverse effect on the flow of traffic to and from the Project Highway.

15.15. Advertising on the Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site except at the Toll Plazas. Only TANSHA shall have the right to undertake any form of commercial advertising at Site/Project Highway . All advertising on the Project Highway shall conform to Good Industry Practice. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time and no compensation shall be claimed on account thereof.

15.16. Additional Facilities

The Authority shall have the right to construct, manage and operate Additional Facilities along the Project Highway at its own cost and expense and the Concessionaire shall connect such facilities with the Project Highway as and when such facilities are constructed by the Authority. The Concessionaire shall also manage the connecting roads to such facilities throughout the Concession Period.

ARTICLE 16
MONITORING OF OPERATION AND MAINTENANCE

16.1. Monthly status reports

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

16.2. Inspection

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

16.3. Tests

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

16.4. Remedial measures

16.4.1. The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 16.3 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

16.4.2. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project Highway into compliance with the Maintenance Requirements and the procedure set forth in this Clause 16.4 shall be repeated until the Project Highway conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the

provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 15.8.

16.5. Monthly Fee Statement

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

16.6. Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project Highway relating to the safety and security of the Users and Project Highway. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 16.6, accidents and unusual occurrences on the Project Highway shall include:

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

16.7. Video Recording

The Concessionaire shall carryout video recording of biannually.

Authority has finalized specifications/methodology for video recording and identified zone–wise agencies & rates for the same. The Concessionaire may use appropriate agency empanelled with State Government or Central Government entities so as to ensure uniformity in data collection. Recording shall have to be done in the presence of Team Leader of Independent Engineer. Recording of previous videos and current running side by side shall be stored in a hard disk/secured server hosted in India and made accessible to the Authority for easily capturing various developments during the period Capturing Ortho- image for approx. 10% equivalent length of critical structures or any other specific area should be decided by the Authority and be conveyed to the drone agency in the site-specific work order. Independent Engineer shall ensure that the features and quality of drone video is acceptable, and video is not distorted/tampered with.

Independent Engineer shall analyse these drone videos and give their comments in its digital MPRs

covering inter-alia but not limited to the encumbrances/lands not available, sites of COS demands, progress of project, mobilisation of plant & equipment, mobilisation of camp sites, progress on rectification of NCRs etc. along with the proposed action plan. The Authority shall cross-check drone videos during the monthly physical inspections and notify the discrepancies noticed, if any, between drone video, on Independent Engineer comments and ground reality. The discrepancies shall be examined and addressed through joint site inspections.

Network Survey Vehicle (NSV) survey shall be carried out twice in a year. The Authority should plan drone based video recording twice a year during O&M period in such a manner so that there is no overlap. Digital data of O&M period shall be made available at regular intervals (quarterly) through NSV and drone videography.

Notwithstanding anything to the contrary contained in this document, the Concessionaire shall also develop a Project specific website. The website must be accessible to the public. In addition, the Authority can also undertake need based drone videography as and when required. Project Director shall ensure development of a project specific website/secured server hosted in India by the Concessionaire. In case of default on this account, the PD shall appropriate an amount equivalent to Rs. 5 Lakhs plus a penalty arrived as under:

drone rate X length of project X no. of defaulting week

from the Performance Security.

As the drone videos/ reports will be permanent record and will be used as evidences during dispute resolution process before Arbitral Tribunals/ Courts including Supreme Court, the drone video shall be carried out carefully and correctly without distortions/ tampering by all parties concerned. The amount spent on recording shall be charged to Concessionaire to the extent covered in the agreement.

ARTICLE 17
TRAFFIC REGULATION

17.1. Traffic regulation by the Concessionaire

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

17.2. Police assistance

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

17.3. Buildings for Traffic Aid Posts

The Concessionaire shall, if required by Authority in writing, in accordance with the type designs prescribed for such police outpost buildings by the State Government or a substitute thereof, construct buildings not exceeding 25 (twenty five) square metres of plinth area, for each of the Traffic Aid Posts, and hand them over to the Authority no later than 120 (one hundred and twenty) days from the O&M Hand over Date. The Traffic Aid Post(s) shall be deemed to be part of the Site and shall vest in the Authority.

17.4. Recurring expenditure on Police assistance

No later than 7 (seven) days from the O&M Hand over Date, the Concessionaire shall provide to the State Police Department or a substitute thereof one Jeep or similar vehicle in good working condition along with chauffeurs for round-the-clock patrolling as set forth in Clause 17.2 and shall meet the operating costs of such vehicle including the salaries and allowances of the chauffeurs. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State Police Department or a substitute thereof.

ARTICLE 18
SAFETY REQUIREMENTS AND MEDICAL AID

18.1. Safety Requirements

18.1.1. The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Highway, and shall comply with the safety requirements set forth in Schedule-H (the "**Safety Requirements**").

18.1.2. The Authority shall appoint an experienced and qualified firm or organisation (the "**Safety Consultant**") for carrying out safety audit of the Project Highway in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.1.3. All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire. Costs and expenses on works not covered in the scope of the Project or otherwise under the Agreement and arising out of Safety Requirements shall be borne in accordance with Article 21.

18.1.4. Notwithstanding anything to the contrary contained in the Agreement, the Authority at any time, may also appoint any other experienced and qualified firm or organization to carry out work not covered in the scope of Project and arising out of Safety Requirements not covered under the Agreement. The Concessionaire shall provide all required support, assistance and access to facilitate such firm or organization to discharge its obligations.

18.2. Medical Aid Posts

18.2.1. For providing emergency medical aid during the Concession Period, as set forth in this Agreement, the Concessionaire shall assist the State Government or a substitute thereof to be designated by the Authority in setting up and operating a medical aid post (the "**Medical Aid Post**") at each of the Toll Plazas with round-the-clock ambulance services for victims of accidents on the Project Highway. The Concessionaire shall, at its cost, maintain the Medical Aid Post buildings in accordance with Good Industry Practice.

18.2.2. No later than 7 (seven) days from the O&M Hand over Date, the Concessionaire shall provide to the State Medical Department or a substitute thereof to be designated by the Authority one ambulance in good working condition along with chauffeurs for round-the-clock ambulance services as set forth in Clause 18.1 and meet the operating costs of such ambulance including the salaries and allowances of the chauffeurs. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State Medical Department or a substitute thereof to be designated by the Authority.

ARTICLE 19
TRAFFIC CENSUS AND SAMPLING

19.1. Traffic census

19.1.1. The Concessionaire shall install, maintain and operate electronic/ computerised traffic counters at each of the Toll Plazas and collect data relating to the number and types of vehicles using the Project Highway. The Concessionaire shall also install, maintain and operate weighing platforms (weigh-in- motion type) for recording, on a sample basis, the weight of commercial goods vehicles using the Project Highway. A monthly statement of such data shall be compiled and furnished forthwith by the Concessionaire to the Authority substantially in the form specified in Schedule-I. This data shall normally be used for the purposes of Articles 14 and 24.

19.1.2. The Authority shall however have the right to conduct traffic census or appoint an independent agency to conduct traffic census where the Authority considers it necessary. It is hereby agreed by and between the Parties that the census conducted by the Authority or conducted by the independent agency and confirmed by the Authority, as the case may be, shall be considered final and binding for the purpose of this Agreement.

19.2. Traffic survey

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

19.3. Traffic sampling

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

19.3.2. If the higher of the traffic estimated through electronic/ computerized traffic counters at each of the Toll Plazas and traffic sampling pursuant to this Clause 19.3 demonstrates that the actual traffic is more than the traffic reported by the Concessionaire, the traffic determined as per the aforesaid methodology shall be the traffic determined by the traffic sampling shall be deemed to be the traffic for purposes of this Agreement and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, Realisable Fee for any comparable period shall be calculated with reference to the traffic determined hereunder.

19.4. Computer systems and network

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

ARTICLE 20
INDEPENDENT ENGINEER

20.1 Appointment of Independent Engineer

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

20.2. Duties and functions

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

20.2.2. The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule- K.

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

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

20.3. Remuneration

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

20.4. Termination of appointment

20.4.1. The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 20.1.

20.4.2. If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire

and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 20.1.

20.5. Authorised signatories

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

20.6. Dispute resolution

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

ARTICLE 21
CHANGE OF SCOPE

21.1 Change of Scope

21.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement but subject to Clause 21.4.1, require the Concessionaire to make alterations/ modifications in the Scope of the Project (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article 21 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 21.3.

21.1.2. Change of Scope shall mean:

(a) any change in the Specifications and Standard; and/or

(b) omission of any work from the Scope of the Project; provided that the Authority shall not omit any work under this Clause in order to get it executed by any other person; and / or

(c) any additional works or services which are not included in the Scope of the Project, including any associated Tests as per this Agreement.

21.1.3. Any works or services done pursuant to Change of Scope of the Project in accordance with this Article 21 shall form part of the Project Highway and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

21.2. Procedure for Change of Scope

21.2.1. In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder.

21.2.2. If the Concessionaire determines at any time that a Change of Scope is necessary, it shall by notice in writing require the Authority to consider such Change of Scope (the "**Change of Scope Request**"). The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 21 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope Request.

21.2.3. The notice issued by the Authority under Clause 21.2.1 or the acceptance by the Authority under Clause 21.2.2, as the case may be, shall be considered as the notice of change of Scope (the "**Change of Scope Notice**").

21.2.4. Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with detailed documentation in support of:

(a) the impact, if any, which the Change of Scope is likely to have on the Project; and

(b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

21.2.5. Upon receipt of information set forth in Clause 21.2.4, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Concessionaire to proceed with the performance thereof.

21.2.6. The Authority shall, on receipt of a Change of Scope Request from the Concessionaire, within 30 (thirty) days of receipt of such proposal require the Concessionaire to provide all such information within 15 (fifteen) days as would be required by the Authority to finalize its decision with regard to the approval or rejection to the Change of Scope Request and upon consideration of the same, either accept such Change of Scope Request with modifications, if any, as deemed necessary by the Authority (the "**Change of Scope Acceptance**") or reject the Change of Scope Request and inform the Concessionaire of its decision. It is also agreed between the Parties that the Authority shall not be liable, in any manner whatsoever, on account of grant or rejection of such Change of Scope Request.

21.2.7. It is agreed by and between the Parties that in the event the Change of Scope Order entails construction on any part of the Project Highway, the Concessionaire, with the approval of the Authority, or the Authority as the case may be, can get such work undertaken through a sub-contractor; provided however that the said sub-contractor has the requisite experience in executing such works and the Concessionaire has obtained the approval of the Authority for engagement of such sub-contractor.

21.3 Payment for Change of Scope

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

and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

21.4. Restrictions on certain works

21.4.1. Notwithstanding anything to the contrary contained in this Article 21, if the cumulative costs relating to all the Change of Scope Orders exceed 5% (five percent) of the Concession Fee in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five percent) of the Concession Fee at any time during the Concession Period, the provisions of Clause 21.5 shall apply and the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria either by itself where such work requires tolling, operation and maintenance, or through another company where such work requires construction on any part of the Project Highway, subject to payment of 2% (two percent) of the bid amount to the Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if the Selected Bidder or the Concessionaire, as the case may be, has participated in the bidding process either individually or as a consortium or JV with another company and fulfils the eligibility criteria to undertake such work without compromising with its overall liability.

The Concessionaire may, in its sole discretion, accept or reject any Change of Scope Order, without assigning any reason whatsoever, such Change of Scope Order being within 5% (five percent) of the Concession Fee in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs is within 25% (twenty five percent) of the Concession Fee at any time during the Concession Period. Upon refusal by the Concessionaire hereto, the provisions of Clause 21.5 shall apply. However, in case the Concessionaire decides to take up the Change of Scope works, it shall proceed with the same within such timelines as agreed between the Parties and the provisions of Clause 21.3 shall apply thereto.

21.4.2. For the avoidance of doubt, the Parties agree that no Change of Scope shall be executed unless the Authority has issued the Change of Scope Order or a Change of Scope Acceptance, as the case may be, save and except any works necessary for meeting any Emergency.

21.5. Power of the Authority to undertake works

21.5.1. Notwithstanding anything to the contrary contained in Clauses 21.1, 21.2 and 21.3 but subject to the conditions provided in Clause 21.4, the Authority may award any works or services, contemplated under Clause 21.1.1, to any person on the basis of open competitive bidding and the Concessionaire shall be entitled to take part in such competitive bidding. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder as per good industry practice.

21.5.2. The works undertaken in accordance with this Clause 21.5 shall be carried out in a manner that minimizes the disruption in operation of the Project Highway.

21.6 Reduction in Scope of the Project

21.6.1 If the Concessionaire or the entity appointed by the Concessionaire shall have failed to complete any construction works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty percent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in the net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty percent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project. It is further agreed that the liability of the Authority under this Clause 21.6 shall not extend beyond waiver of the aforesaid 80% (eighty percent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.

Part IV Financial Covenants

ARTICLE 22
CONCESSION FEE

22.1 Concession Fee

22.1.1 In consideration of the grant of Concession, the Concessionaire shall pay to the Authority, in accordance with terms hereof and prior to the Appointed Date, the lump sum upfront concession fee ("**Concession Fee**") of an amount equivalent to Rs. ……
(.....) (as per Selected Bidder's quote in its financial bid), by way of a demand draft drawn on a Scheduled Commercial Bank in India, in favor of Authority payable at Chennai or (ii) online payment to the Authority's designated account. Details of the designated bank account will be provided in the Letter of Award (LoA). The Concessionaire expressly agrees that this constitutes essential condition of the Agreement, failing which the consequences set out under clause 4.2 shall apply.

ARTICLE 23
USER FEE

23.1. Collection and appropriation of Fee

23.1.1. On and from the Appointed Date till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the Users subject to and in accordance with this Agreement and the _____[Insert the details of the fee notification here]

(a) the fee notified by the Authority shall be shall be rounded off and levied in multiples of nearest Rupee One;
(b) monthly pass for non-commercial vehicles for owners living in the revenue villages notified by the Authority shall be allowed; (collectively, the "Fee Rules")

The Parties acknowledge that a notification for levy and collection of Fee shall be issued by the Government _____[Insert fee notification reference] (the "**Fee Notification**"); within 30 (thirty) days hereof, substantially in the form set forth in Schedule-M.

23.1.2. The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the Project Highway and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

23.1.3 The Concessionaire acknowledges and agrees that any User who is not liable for payment of the Fee shall be entitled to use the Project Highway without any restrictions, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement. For the avoidance of doubt, the Concessionaire hereby acknowledges that Exempted Vehicles are not liable to payment of Fee.

23.2. Revision of Fee

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

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

23.3. Deleted

23.3.1. .

23.4. Deleted

23.4.1. Deleted

23.5. Free use of service road

23.5.1. The Concessionaire shall not permit entry of Tractors, animal-drawn vehicles, three- wheelers and Motor Cycles on the carriageway of the Project Highway where a service road or alternative road is available in conformity with the provisions of Fee Rules. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to set up temporary or permanent Fee collection booths, entry barriers or such other restrictions on the service roads as may reasonably be necessary for preventing evasion of Fee by vehicles which are otherwise liable to payment of Fee.

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

23.6. Deleted

23.7. Tolling Contractor

The Concessionaire may appoint with the approval of the Authority, a Tolling Contractor or any other person to collect the Fee for and on behalf of the Concessionaire, provided that notwithstanding such appointment, the Concessionaire shall be and remain solely liable and responsible for the collection of Fee in accordance with this Agreement.

23.8. Fee collection points

Fee shall ordinarily be collected at the Toll Plazas from vehicles crossing the Toll Plazas and using the whole or part of the Project Highway; provided that for preventing evasion of Fee by any vehicle circumventing one or both of the Toll Plazas and using the whole or part of the Project Highway located between such Toll Plazas, the Concessionaire shall be entitled to set up at its own risk and cost, and in consultation with the Independent Engineer and upon approval of the Authority, its temporary or permanent Fee collection booths, as may reasonably be necessary for preventing such evasion. For the avoidance of doubt, the Concessionaire hereby acknowledges and agrees that it shall not determine or collect Fee from Users who do not use any part of the Project Highway which is situated between the two Toll Plazas OR only use part of the Project Highway situated on any one side of the Toll Plaza. It is further acknowledged and agreed that the restrictions hereunder shall not extend beyond a distance of 10 (ten) kilometres from the Toll Plazas and the provisions of this Clause 23.7 shall be so enforced as to minimise inconvenience to Users who are not liable to payment of Fee

23.8. Additional charge for evasion of Fee

In the event that any vehicle uses the Project Highway without payment of Fee due, the Concessionaire shall be entitled to determine and collect from such vehicle the Fee due and an equivalent amount towards predetermined liquidated damages for unauthorised use of the Project

Highway; provided that the determination and collection of such liquidated damages shall be at the risk and cost of the Concessionaire and the Authority shall not in any manner be liable on account thereof; provided that upon failure of the driver of such vehicle to pay Fee, the Concessionaire may prevent such vehicle from using the Project Highway and may have such vehicle removed therefrom.

23.9. Additional Fee for overloaded vehicles

Without prejudice to the liability incurred under the Applicable Laws by any person driving a vehicle that is loaded in excess of the permissible limit set forth in such laws, the Concessionaire shall, in accordance with the Fee Rules, be entitled to collect from such person or driver or owner in charge of such overloaded vehicle, a penalty.

23.10. Display of Fee rates

23.10.1. The Concessionaire shall, 1 (one) kilometre before the Toll Plaza, 500 (five hundred) metres before the Toll Plaza and 50 (fifty) metres before entry to the Toll Plazas, prominently display the applicable rates of Fee for information of Users approaching the Toll Plaza and shall also publish and display such other information in such manner as may be prescribed under the Fee Rules.

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

23.10.3. The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Fee payable under the Fee Rules. In the event any excess amounts are collected by or on behalf of the Concessionaire, it shall, upon receiving a notice to this effect from the Authority, refund such excess amounts to the Authority along with Damages equal to 25% (twenty five per cent) thereof, and in the event of non–payment by Concessionaire of such delinquent amount forthwith and in any case within seven days of issue of written notice by Authority, the same shall be recovered by encashment of Performance Security in which case the provisions of Clause 9 hereof shall apply in respect of replenishment of the Performance Security upon such encashment.

23.11. Intelligent Tolling System

The Concessionaire shall be encouraged to switch over to intelligent tolling system (closed tolling) or equivalent mechanism as and when these are introduced by the Authority. In case of any substantial variation in the revenue collection due to such adoption of intelligent tolling system or equivalent tolling mechanism, the same shall be mutually settled as per the provisions of the

ARTICLE 23A
ESCROW ACCOUNT

23A.1 Escrow Account

23A.1.1The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.

23A.1.2The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank the Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule N.

23A.2 Deposits into Escrow Account

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

(a) all funds constituting the Financial Package;

(b) all Fee and any other revenues from or in respect of the Project Highway, including the proceeds of any rentals, deposits, capital receipts or insurance claims;

(c) all payments by the Authority including, if any, in relation to the change of scope in the Project;

23A.3 Withdrawals during Concession Period

23A.3.1The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

(a) all taxes due and payable by the Concessionaire for and in respect of the Project Highway;
(b) O&M Expenses;
(c) O&M Expenses (after the O&M Handover Date) and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
(d) monthly proportionate provision of debt service payment due in an Accounting Year;
(e) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire; and
(f) balance, if any, in accordance with the instructions of the Concessionaire.

23A.3.2The Concessionaire shall not in any manner modify the order of payment specified in Clause 23A.3.1 except with the prior written approval of the Authority and the Lenders.

23A.4 Withdrawals upon Termination

23A.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

(a) all taxes due and payable by the Concessionaire for and in respect of the Project Highway;

(b) payment due to Lenders;

(c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

(d) retention and payments relating to the liability for defects and deficiencies set forth in [Article 32];

(e) incurred or accrued O&M Expenses;

(f) any other payments required to be made under this Agreement; and

(g) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (g) of this Clause 23A.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 30.

23A.4.2 The provisions of this Article 23A and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 23A.4.1 have been discharged.

ARTICLE 24
EFFECT OF VARIATION IN TOLL COLLECTION

24.1. Variation in Toll collection

The Authority and the Concessionaire acknowledge that the toll collections in the financial year ended 31st March 2032 (6th year) (the "**Target Point 1**") is estimated to be Revenue at target point 1; _____ (the "**Target Fee 1**")

Stretch	State	Start (Km)	End (Km)	Length (km)	Revenue at Target Point 1 (Rs.)
Six – Lane Chennai Outer Ring Road (Phases I and II) i.e. Vandalur to Minjur via Nemilichery	Tamil Nadu	0	60.15	60.15	

and the toll collections in the financial year ended 31st March 2038 (12th year) (the "**Target Point 2**") is estimated to be _____

Stretch	State	Start (Km)	End (Km)	Length (km)	Revenue at Target Point 2 (Rs.)
Six – Lane Chennai Outer Ring Road (Phases I and II) i.e. Vandalur to Minjur via Nemilichery	Tamil Nadu	0	60.15	60.15	

and the toll collections in the financial year ended 31st March 2044 (18th year) (the "**Target Point 3**") is estimated to be _____

Stretch	State	Start (Km)	End (Km)	Length (km)	Revenue at Target Point 3 (Rs.)
Six – Lane Chennai Outer Ring Road (Phases I and II) i.e. Vandalur to Minjur via Nemilichery	Tamil Nadu	0	60.15	60.15	_____

and hereby agree that for determining the modifications to the Concession Period under this Clause, the annual toll collection at Target Points 1, 2 or 3, as the case may be, shall be derived from the aggregate of the toll collections of all the months of the **Target Year after adjustments**

subject to clause 14.3 (the "**Actual Fee 1**", "**Actual Fee 2**" and **"Actual Fee 3"**).

NOTE:

The Target Fee is the sum total of revenue of all the four toll plazas at Varadharajapuram, Kolappancheri, Palavedu and Chinnamullaivoyal for the respective financial years for Target points 1, 2 and 3 respectively.

24.2. Modification of Concession period due to decrease in Target Fee

Subject to the provisions of Clause 14, in the event that the Actual Fee shall have fallen short of the Target Fee by more than 10% (ten percent) thereof, the remaining Concession Period shall be modified in accordance with Clause 24.5.1. The Authority shall issue such a notification for modification in the Concession Period within 6 months from the applicable Target Point. For the avoidance of doubt, in the event of any Dispute, the Dispute Resolution Procedure shall apply.

24.3. Modification of Concession period due to increase in Target Fee

Subject to the provisions of Clause 14, in the event that the Actual Fee shall have exceeded the Target Fee by more than 10% (ten percent) thereof, the Concession Period shall be deemed to be modified in accordance with Clause 24.5.2. For the avoidance of doubt, in the event of any Dispute, the Dispute Resolution Procedure shall apply.

24.4. Capacity Augmentation

It is hereby acknowledged and agreed by and between the Concessionaire and the Authority that the Target Point(s) shall not be revised in the event the Authority undertakes Capacity Augmentation pursuant to Clause 14.

24.5. Quantum of modification in the Concession Period

24.5.1. Subject to the provisions of Clause 24.2 and Clause 3.1, in the event Actual Fee shall have fallen short of the Target Fee by more than 10% (ten percent), then for every 1% (one percent) shortfall beyond 10% as compared to the Target Fee, the remaining Concession Period, subject to fulfilment of terms of this Agreement, shall be increased by 1.5% (one and a half percent) thereof; provided that such increase in Concession Period shall not in any case exceed not more than limits specified in Clause 3.1. Further, it is clarified that the subsequent Target Fee as specified in 24.5.2 shall be changed by the same percentage. The decrease in target fee in fraction of one percent or part thereof beyond 10% variation shall result in increase in remaining Concession period on pro-rata basis.

For the avoidance of doubt, and by way of illustration, it is agreed that in the event the Target Fee is expected to be as follows:

S. No	Target Point	Remaining Concession Period (years)	Target Fee (Rs. Cr)
1	Target Fee 1	19	100
2	Target Fee 2	13	150
3	Target Fee 3	7	200

And in case the Actual Fee for Target Fee 1 is Rs. 85 Cr, then the remaining Concession Period shall be increased by 7.5% (seven and half percent) to 20.43 years and the subsequent Target Fee shall be revised to:

S. No	Target Point	Remaining Concession Period (years)	Target Fee (Rs. Cr)
1	Target Fee 2	13	138.75
2	Target Fee 3	7	185

24.5.2. Subject to the provisions of Clause 24.3 and Clause 3.1, in the event Actual Fee shall have exceeded the Target Fee by more than 10% (ten percent), then for every 1% (one percent) increase beyond 10% as compared to the Target Fee, the remaining Concession Period, subject to fulfilment of terms of this Agreement, shall be decreased by 0.75% (point seven five percent) thereof; provided that such increase or decrease in Concession Period shall not in any case exceed not more than limits specified in Clause 3.1. For increase in target fee in fraction of one percent or part thereof **beyond 10% variation** shall result in decrease in Concession period on pro-rata basis. For the avoidance of doubt, and by way of illustration, it is agreed that in the event the overall Concession Period is 25 years and Target Fee is expected to be as follows:

S. No	Target Point	Remaining Concession Period (years)	Target Fee (Rs. Cr)
1	Target Fee 2	13	150
2	Target Fee 3	7	200

And in case the Actual Fee for Target Point 2 is Rs. 180 Cr, then the remaining Concession Period shall be decreased by 7.5% (seven and half percent) to 12.025 years and the subsequent Target Fee shall be revised to

S. No	Target Point	Remaining Concession Period (years)	Target Fee (Rs. Cr)
2	Target Fee 3	7	215.06

24.6. Effect of variation in Toll Collection due to changes in Fee Rules pertaining to certain vehicle categories

Notwithstanding anything to the contrary in this Agreement, if the Concessionaire incurs any financial loss due to modification in toll rates or exemptions for certain categories of vehicles for use of the Project Highway, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such reduction in toll rates or exemptions. The Authority shall pay the amount specified therein to the Concessionaire on a quarterly basis. For the avoidance of doubt, it is clarified that compensation will be limited to reduction

in toll rates and shall not include any loss due to reduction in traffic. The amount of compensation shall be calculated using the following formula:

A*(B-C) where

A= Traffic calculated as per Article 19
B= Existing toll rate before the exemption

ARTICLE 25
INSURANCE

25.1. Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice to cover third party claims and Force Majeure Events including Non Political Event (the "**Insurance Cover**"**)**. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Concession Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account.

25.2. Notice to the Authority

No later than 45 (forty-five) days prior to commencement of the Concession Period and the O&M Handover Date, the Concessionaire shall, by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 25. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

25.3. Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 25 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

25.4. Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

25.5. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 25 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

25.6. Concessionaire's waiver

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

25.7. Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and the Concessionaire shall mandatorily apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Highway and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements. Any failure in aforesaid mandatory application shall be deemed to be Concessionaire Default entitling Authority to terminate the Agreement in terms hereof; provided however in case of such termination the insurance proceeds received from the insurer and not applied as aforesaid shall be set off from the Termination Payments, and the Concessionaire hereby expressly agrees and consents to the same.

ARTICLE 26
ACCOUNTS AND AUDIT

26.1. Audited accounts

26.1.1. The Concessionaire shall maintain books of accounts recording all its receipts (including all Realisable Fees and other revenues derived/collected by it from or on account of the Project Highway and/or its use), income, expenditure, payments, (including payments from the Escrow Account) assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts duly certified by the Statutory Auditors to be provided to the Authority for verification of basis of payments and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

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

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

26.2. Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. In the event of there being any difference or dispute in respect thereof, such Dispute shall be resolved by recourse to the Dispute Resolution Procedure. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of Monthly Fee Statements under Clause 16.5.

26.3. Set-off

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

Part V Force Majeure and Termination

ARTICLE 27
FORCE MAJEURE

27.1. Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 27.2, 27.3 and 27.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

27.2. Non-Political Event

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

(a) act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project Highway for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 27.3;

(c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

(e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or

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

27.3 Indirect Political Event

An Indirect Political Event shall mean 1 (one) or more of the following acts or events:

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty- four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

(c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;

(d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(e) any act or action by Government of India which is analogous to the provisions of this Agreement;

(f) any Indirect Political Event that causes a Non-Political Event; or

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

27.4. Political Event

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

(a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 34;

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;

(c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any clearance, license, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorisation, no objection certificate, exemption, consent, approval or permit;

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

(e) any event or circumstance of a nature analogous to any of the foregoing.

27.5. Duty to report Force Majeure Event

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

(a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 27 with evidence in support thereof;

(b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

(c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

(d) any other information relevant to the Affected Party's claim.

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

27.5.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 27.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

27.6. Effect of Force Majeure Event on the Concession

27.6.1. Upon the occurrence of any Force Majeure Event prior to Appointed Date, the period set forth in Clause 13.1 for achieving the Appointed Date shall be extended by a period equal in length to the duration of the Force Majeure Event.

27.6.2. If any Force Majeure Event occurs after the Appointed Date, whereupon the Concessionaire is unable to collect Fee despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was

prevented from collection of Fee on account thereof; provided that in the event of partial collection of Fee where the daily collection is less than 90% (ninety percent) of the Average Daily Fee, the Authority shall extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five percent) in collection of Fee as compared to the Average Daily Fee for 4 (four) days shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period.

27.7. Allocation of costs arising out of Force Majeure

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

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

(a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; or

(b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event and not exceeding Insurance Cover for such Indirect Political Event, shall be borne by Concessionaire, and to the extent Force Majeure Costs exceeds such Insurance Cover one half of such costs shall be reimbursed by the Authority to the Concessionaire.

(c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on Debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Fee revenues or debt repayment obligations, and for determining such costs in respect of interest payment on Debt, information contained in the copy of certified Financing Agreement and financial package furnished by Concessionaire may be relied upon to the extent it is relevant.

27.7.3. Save and except as expressly provided in this Article 27, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

27.8. Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 120 (one hundred and twenty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever save as provided in this Article 27, and upon issue of such Termination

Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

27.9. Termination Payment for Force Majeure Event

27.9.1. If Termination is on account of a Non-Political Event, the Authority shall, subject to terms of clause 30.3.3 hereof, make a Termination Payment to the Concessionaire in an amount equal to 80% (eighty percent) of the Unexpired Cashflow less Insurance Cover.

27.9.2. If Termination is on account of an Indirect Political Event, the Authority shall subject to terms of Clause 30.3.3 hereof, make a Termination Payment to the Concessionaire in an amount equal to 100% (hundred percent) of Unexpired Cashflow less Insurance Cover.

27.9.3. If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 30.3.2 as if it were an Authority Default.

27.10. Dispute resolution

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

27.11. Excuse from performance of obligations

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

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

(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 28
COMPENSATION FOR BREACH OF AGREEMENT

28.1. Compensation for default

28.1.1. Subject to the provisions of Clause 28.4, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 28.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

28.1.2. Subject to the provisions of Clause 28.4, in the event of the Authority being in material default or breach of this Agreement at any time after Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include O&M Expenses and all other costs directly attributable to such material breach or default but shall not include loss of Fee revenues or debt repayment or other consequential losses.

28.2. Extension of Concession Period

Subject to the provisions of Clause 28.4, in the event that a material default or breach of this Agreement set forth in Clause 28.1.2 leads to suspension of or reduction in collection of Fee, as the case may be, the Authority shall, in addition to payment of compensation under Clause 28.1.2, extend the Concession Period, such extension being equal in duration to the period for which the collection of Fee remained suspended on account thereof; and in the event of reduction in collection of Fee where the daily collection is less than 90% (ninety percent) of the Average Daily Fee, the Authority shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five percent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

28.3. Compensation to be in addition

Compensation payable under this Article 28 shall be in addition to, and not in substitution for, or derogation of Termination Payment, if any.

28.4. Mitigation of costs and damage

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

ARTICLE 29
SUSPENSION OF CONCESSIONAIRE'S RIGHTS

29.1. Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Fee, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 120 (one hundred and twenty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders, the Authority shall extend the aforesaid period of 120 (one hundred and twenty) days by a further period not exceeding 90 (ninety) days.

29.2. Authority to act on behalf of Concessionaire

29.2.1. During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement and pay the balance remaining after setting off the costs incurred by it for remedying and rectifying the cause of Suspension.

29.2.2. During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorised by it under Clause 29.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project Highway and its, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

29.3. Revocation of Suspension

29.3.1. In the event that the Authority shall have rectified or removed the cause of Suspension within the period not exceeding the notice period provided under Clause 29.1 for Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

29.3.2. Upon the Concessionaire having cured the Concessionaire Default within the period not exceeding the notice period provided under Clause 29.1 for Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

29.4. Substitution of Concessionaire

At any time during the period of Suspension, the 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', the Authority shall withhold Termination for a period not exceeding 120 (one hundred and twenty) days from the date of Suspension, and any extension thereof under Clause 29.1, for enabling the Lenders' to exercise its rights of substitution

29.5. Termination

Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 120 (one hundred and twenty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 29.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 30
TERMINATION

30.1. Termination for Concessionaire Default

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

(a) the Performance Security, as applicable, has been encashed and appropriated in accordance with Clause 9 and the Concessionaire fails to replenish or provide fresh performance security within a Cure Period of 15 (fifteen) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 60 (sixty) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;

(c) the Concessionaire abandons or manifests intention to abandon the operation and maintenance of the Project Highway without the prior written consent of the Authority;

(d) the Concessionaire fails to roll over, renew and furnish new bank guarantee for Performance Security subject to and in accordance with terms of Clause 9, at least 3 (three) months prior to expiry of subsisting bank guarantee;

(e) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;

(f) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;

(g) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

(h) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

(i) the Concessionaire creates any Encumbrance in breach of this Agreement;

(j) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

(k) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

(l) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;

(m) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

(n) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;

(o) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;

(p) a resolution for winding up of the Concessionaire is passed or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

(i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at Appointed Date; and

(iii) each of the Project Agreements remains in full force and effect;

(q) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading;

(r) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(s) the Concessionaire has failed to fulfil any obligation, for which failure Termination has

been specified in this Agreement;

(t) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority;

(u) an Escrow Default has occurred, and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;

30.1.2. Termination Notice

(a) Without prejudice to any other right or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to issue a notice of its intention to terminate this Agreement ("**Notice of Intention to Terminate**") with a copy thereof to the Lenders. Immediately upon the issue by Authority of the Notice of Intention to Terminate, the Lenders shall have the right to nominate an entity to replace the Concessionaire and perform the Concessionaire's obligations hereunder (the "**Substitute Entity**"). The Concessionaire shall procure that Lenders shall notify Authority about whether they are exercising their right of substitution within 60 (sixty) days of receipt of Notice of Intention to Terminate, or the Lenders' Notice of Default (as defined in the Substitution Agreement). Any such Substitute Entity shall have the legal, financial and technical capability reasonably necessary to perform the obligations of the Concessionaire in accordance with the terms of this Agreement. Any such Substitute Entity shall be nominated in accordance with the procedure as set out in the Substitution Agreement.

(b) In the event:

(i) Lenders have chosen not to exercise their right of substitution, or

(ii) a Substitute Entity has not been nominated by the Lenders within time period set forth in the Substitution Agreement; or

(iii) a nominated Substitute Entity/ alternate Substitute Entity has not been approved by Authority within the time period set forth in the Substitution Agreement; or

(iv) a selected Substitute Entity has not been able to remedy the breach of the Concessionaire leading to the Notice of Intention to Terminate within time period set forth in the Substitution Agreement

then the Authority shall issue a notice to the Concessionaire terminating this Agreement.

30.2. Termination for Authority Default

30.2.1. In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this

Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include the following:

(a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

(b) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or

(c) the State commits a material default in complying with the provisions of the State Support Agreement if such default has a Material Adverse Effect on the Concessionaire and the breach continues for a period of 90 (ninety) days from the date of notice given in this behalf by the Concessionaire to the Authority.

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

30.3. Termination Payment

30.3.1 Subject to terms herein below, upon Termination on account of a Concessionaire Default during the Concession Period, the Performance Security shall be forfeited, and the Concessionaire would continue to be liable towards any antecedent liability, all obligations accrued before the effective date of the termination and also for the obligations including Divestment Requirements that must be fulfilled in terms hereof after termination. In the event of Authority terminating the Agreement on account of Concessionaire Default and in addition to the Authority forfeiting the Performance Security, as stated above, the Authority shall pay to Concessionaire 70% (seventy percent) of the Unexpired Cash Flow.

30.3.2 Subject to terms herein below, upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire by way of Termination Payment an amount equal to:

(a) 105% (one hundred and five percent) of the Unexpired Cash Flow.

30.3.3. The Authority and the Concessionaire hereby acknowledge and agree that, notwithstanding anything to the contrary contained in this Agreement, and without prejudice to their any other respective right or remedy, the Concessionaire shall be entitled to receive Termination Payment only upon furnishing to the Authority No Objection Certificate (NOC) issued by Lenders/Lenders' Representative recording/effecting release, vacation/discharge of the charge on Project receivables (if any) created by Concessionaire for securing repayment of the Debt. Further, the Parties agree that in the event of failure of Concessionaire to procure vacation/discharge of such charge as

evidenced by NOC, Authority shall be entitled to procure the same by paying the Termination Payment directly to Lenders/Lenders Representative to the extent of outstanding Debt due, without any further reference to or consent of Concessionaire, and such payment by Authority shall be due discharge of payment obligations towards Concessionaire in terms herein; and for this purpose, the Concessionaire hereby appoints, nominates and constitutes the Authority its duly constituted attorney to do all acts, things, deeds required for paying directly to Lenders, the Lenders Debt due, and procuring discharge of charge, pursuant to terms above. In this regard, it is hereby further agreed by Concessionaire that in case Termination Payment falls short of amount required to vacate the charge, Authority shall be entitled to encash and tap the Performance Security for the same, and balance if still outstanding shall be promptly paid by Concessionaire. Termination Payment shall, subject to terms hereof, become due and payable to the Concessionaire within 30 (thirty) days of furnishing NOC to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three percent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment to be paid subject to and in accordance with terms hereof shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder. For the purposes of this clause and the Agreement, the Lender's Debt due shall mean the outstanding principal amount and interest thereon, financial fees as due and payable as on Transfer Date, and for the determination of the same, the Financing Documents may be relied upon by the Authority.

30.3.4. The Concessionaire expressly agrees that Termination Payment to be paid subject to terms under this Article 30 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

30.4. Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

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

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

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

(d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 31.1; and

(e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the

Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

30.5. Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 30.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 31
DIVESTMENT OF RIGHTS AND INTEREST

31.1. Divestment Requirements

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

(a) notify to the Authority forthwith the location and particulars of all Project Assets;

(b) deliver forthwith the actual or constructive possession of the Project Highway free and clear of all Encumbrances;

(c) cure all Project Assets, including the road, bridges, structures and equipment, of all defects and deficiencies so that the Project Highway is compliant with the Maintenance Requirements;

(d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project Highway and its operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' drawings in respect of maintenance works, if applicable, as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the operation and maintenance of the Project Highway and shall be assigned to the Government free of any encumbrance;

(e) transfer and/ or deliver all Applicable Permits to the extent permissible under Applicable Laws;

(f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Highway, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and

(g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project Highway, free from all Encumbrances, absolutely to the Authority or to its nominee.

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

31.2. Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 32 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 31.

31.3. Cooperation and assistance on transfer of Project

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

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

31.3.3. The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project, but which does not form part of the assets specified in Clause 31.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

31.4. Vesting Certificate

The divestment of all rights, title and interest in the Project Highway shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-O (the "**Vesting Certificate**") which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project Highway, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on or in respect of the Project Highway on the footing that all Divestment Requirements have been complied with by the Concessionaire.

31.5. Divestment costs etc.

31.5.1. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Highway in favour of the Authority upon Termination save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

31.5.2. In the event of any dispute relating to matters covered by and under this Article 31, the Dispute Resolution Procedure shall apply.

ARTICLE 32
DEFECTS LIABILITY AFTER TERMINATION

32.1. Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project Highway for a period of 60 (sixty) days after Termination, provided such Termination is after the O&M Handover Date and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project Highway during the aforesaid period (the "**Defects Liability Period**"). In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project Highway conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account.

32.2. Retention in Escrow Account

32.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.2, a sum equal to the Performance Security shall be retained in the Escrow Account for a period of 90 (ninety) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 32.1.

Part VI Other Provisions

ARTICLE 33
ASSIGNMENT AND CHARGES

33.1. Restrictions on assignment and charges

33.1.1. Subject to Clauses 33.2 and 33.3, this Agreement shall not be assigned by the Concessionaire to any person save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

33.1.2. Subject to the provisions of Clause 33.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

33.2. Permitted assignment and charges

The restraints set forth in Clause 33.1 shall not apply to:

(a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project Highway;

(b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title arising or created in the ordinary course of business of the Project Highway and as security only for indebtedness to the Lenders for financing the Debt component of the Concession Fee paid upfront by Concessionaire; and

(c) liens or encumbrances required by any Applicable Law;

(d) This Agreement shall not be assigned by the Concessionaire; provided however that Lender may be given a right of substitution by execution of the Substitution Agreement. Provided further that at any given time, the Authority shall enter into only one (1) Substitution Agreement with one (1) Lender/Lenders' agent; such Lenders' agent being an agent for one consortium of Lenders. The Lenders shall be free to modify the composition of the consortium of Lenders. It is further expressly clarified that lenders that provide financing for purposes other than meeting Debt component of Concession Fee shall not be given any right of substitution.

(e) Subject to Applicable Laws, the Concessionaire shall be entitled to create security over the Project receivables through by way of hypothecation/charge thereon, for the purposes of securing repayment of the financial assistance availed from Lenders, for the purposes of financing the Debt contributions towards meeting the payment obligations of upfront Concession Fee and, such security creation shall not require prior approval by the Authority. The Concessionaire hereby agrees to and shall procure and cause that the Lenders promptly submit to the Authority within 7 (seven) days of every month, monthly statement for last month in respect of the Debt service and occurrence of any breach under the Financing Agreement including Financial Default (as defined under Substitution

Agreement). This constitutes an essential condition under this Agreement.

It is clarified that upon occurrence of an enforcement event under the relevant financing agreement between the Concessionaire and the lenders who have financed the Debt, the bank or financial institutions shall be allowed to undertake assignment/substitution of Concessionaire rights and obligations hereunder including Debt obligations, as per terms of Substitution Agreement; provided however that the Lenders/its agent shall not in any case be entitled and/or be permitted to exercise the assignment rights and/or operate the Project Highway as the Concessionaire.

It is hereby clarified and the Concessionaire expressly agree and understand and it shall procure that Lenders also fully understand and agree that aforesaid charge on Project receivables to be created as security for repayment of Debt can only be enforced by Lenders (as per mechanism under Applicable Laws), only in favour of Substitute Entity selected in accordance with terms of Substitution Agreement and such Substitute Entity shall compulsorily assumes to discharge liabilities and obligations of the Concessionaire towards the Authority under this Agreement.

33.3. Assignment by the Authority

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

ARTICLE 34
CHANGE IN LAW

34.1. Increase in costs or reduction in net after-tax return or other financial burden

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after- tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 Cr (Rupees one crore) and 0.5% (zero point five per cent) of the Realisable Fee in any Accounting Year, the Concessionaire may so notify the Authority within 45 (forty five) days of knowledge of applicability of such Change in Law and propose amendments to this Agreement so as to place the Concessionaire in no better and no worse financial condition had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 34.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

34.2. Reduction in costs or increase in net after-tax return or other financial gains

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 1 Cr (Rupees one crore) and 0.5% (zero point five per cent) of the Realisable Fee in any Accounting Year, the Authority may so notify the Concessionaire within 45 days of knowledge of applicability of such Change in Law and propose amendments to this Agreement so as to place the Concessionaire in no better and no worse financial condition had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 34.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

34.3. Protection of NPV

Pursuant to the provisions of Clauses 34.1 and 34.2 and for the purposes of placing the Concessionaire in no better and no worse financial condition had there been no such Change in Law affecting the cost's, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "**NPV**") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. Authority may invite Lenders' representative in the meetings conducted, in this regard.

34.4. Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 34 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than 1 (one) year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

34.5. No claim in the event of recovery from Users

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

ARTICLE 35
LIABILITY AND INDEMNITY

35.1. General indemnity

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

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

35.2. Indemnity by the Concessionaire

35.2.1. Without limiting the generality of Clause 35.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

(a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

(b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or

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

35.2.2. Without limiting the generality of the provisions of this Article 35, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority

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

35.3. Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 35 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

35.4. Defence of claims

35.4.1. The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 35, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

35.4.2. If the Indemnifying Party has exercised its rights under Clause 35.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

35.4.3. If the Indemnifying Party exercises its rights under Clause 35.3, the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 35.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

35.5. No consequential claims

Notwithstanding anything to the contrary contained in this Article 35, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect or consequential nature except as expressly provided in this Agreement.

35.6. Survival on Termination

The provisions of this Article 35 shall survive Termination.

ARTICLE 36
RIGHTS OVER THE SITE

36.1. Licensee rights

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

36.2. Access rights of the Authority and others

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

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

36.3. Property taxes

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

36.4. Restriction on sub-letting

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

ARTICLE 37
DISPUTE RESOLUTION

37.1. Dispute resolution

37.1.1. In the event of any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**"), either Party may call upon the Independent Engineer, to mediate and assist the Parties in arriving at an amicable settlement thereof.

37.1.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

37.2. Conciliation

Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 37.3 but before resorting to such arbitration, the parties agree to explore conciliation by the Chairperson of the Authority and MD of the Concessionaire. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996. In case of failure of the conciliation process even at the level of the Conciliation Committee, either party may refer the Dispute to arbitration in accordance with the provisions of Clause 37.3.

37.3. Arbitration

37.3.1. Any Dispute which is not resolved amicably shall be finally settled by arbitration as set forth below:

i. The Dispute shall be finally dealt with in terms of Rules of Provisions of Arbitration & Conciliation Act, 1996, as amended from time to time. The Dispute shall be governed by Substantive Law of India.

ii. Subject to the provisions of THE LIMITATION ACT, 1963, as amended from time to time, Arbitration may be commenced during or after the Concession Period, provided that the obligations of Authority and the Concessionaire shall not be altered by reason of the Arbitration being conducted during the Concession Period.

iii. The venue of Arbitration shall be Chennai and the language for all documents and communications between the parties shall be English.

iv. The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be shared by each party itself.

37.3.2. The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 37 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

37.3.4. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.

37.4. Adjudication by Regulatory Authority, Tribunal or Commission

In the event of constitution of a statutory Regulatory Authority, tribunal or Commission, as the case may be with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 37.3, be adjudicated upon by such regulatory authority, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or Court of competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 38
DISCLOSURE

38.1. Disclosure of Specified Documents

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

38.2. Disclosure of Documents relating to safety

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

38.3 Notwithstanding the provisions of Clauses 38.1 and 38.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 38.1 and 38.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 39
REDRESSAL OF PUBLIC GRIEVANCES

39.1. Complaints Register

39.1.1. The Concessionaire shall maintain a public relations office at each of the Toll Plazas where it shall keep a register (the "**Complaint Register**") open to public access at all times for recording of complaints by any person (the "**Complainant**"). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at each Toll Plazas so as to bring it to the attention of all Users.

39.1.2. The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.

39.1.3. Without prejudice to the provisions of Clauses 39.1.1 and 39.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

39.2. Redressal of complaints

39.2.1. The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.

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

ARTICLE 40
MISCELLANEOUS

40.1. Governing law and jurisdiction

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

40.2. Waiver of immunity

Each Party unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

40.3. Depreciation and interest

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

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

40.4. Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 3% (three per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination

thereof.

40.5. Waiver

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

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

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

(c) shall not affect the validity or enforceability of this Agreement in any manner.

40.5.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to 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.

40.6. Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, any document submitted by the Concessionaire nor any observation or inspection of the operation or maintenance of the Project Highway nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

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

40.7. Exclusion of implied warranties etc.

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

40.8. Survival

40.8.1. Termination shall:

(a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

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

40.10. Severability

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

40.11. No partnership

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

40.12. Third parties

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

40.13. Successors and assigns

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

successors and permitted assigns.

40.14. Notices

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

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

(b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Chairman of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Chennai it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and

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

40.15. 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.

40.16. Counterparts

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

ARTICLE 41
DEFINITIONS

41.1. Definitions

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

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

"**Actual Fee**" shall have the meaning set forth in Clause 24.1.

"**Additional Facilities**" means the facilities such as service stations, motels, restaurants, shopping areas and amusement parks which the Authority may, in its discretion and subject to and in accordance with full compliance with Applicable Laws, provide or procure for the benefit of the Users, and not situated on the Site;

"**Affected Party**" shall have the meaning set forth in Clause 27.1;

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

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

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

"**Appointed Date**" shall have the meaning set forth in Clause 13.1, and shall be deemed to be the date of commencement of the Concession Period;

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

"**Associate**" or "**Affiliate**" means in relation to either Party{and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression "control" means with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether

by operation of law or by contract or otherwise);

"**Authority Default**" shall have the meaning set forth in Clause 30.2.1;

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

"**Average Daily Fee**" means the amount arrived at after dividing the total Realisable Fee of the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the result thereof by 5% (five percent); provided that the Average Daily Fee for any period prior to completion of the first Accounting Year following Appointed Date shall be a simple average of the Fee collected every day during the period between Appointed Date and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Fee payable by any segment of traffic has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Fee for such period;

"**Bank**" means a scheduled bank as listed in the second schedule of the Reserve Bank of India Act, 1934, incorporated in India and having a minimum net worth of Rs. 1000 crore (Rupees one thousand crore);

"**Bank Rate**" means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect.

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

"**Bid Security**" means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. 6,00,00,000 (Rupees six crore only) in accordance with the Request for Proposals and which is to remain in force until substituted by the Performance Security;

"**Bus**" shall have the meaning set forth in National Highways Fee (Determination of Rates and Collection) Rules, 2008

"**Car**" shall have the meaning set forth in National Highways Fee (Determination of Rates and Collection) Rules, 2008

"**Capacity Augmentation**" shall have the meaning set forth in Article 14 and/or it may include any other improvement work, such as construction, renovation, refurbishing, augmentation, upgradation, etc., of any road, structure, etc., and other activities incidental thereto, being undertaken by the Authority at its own cost.;

"**Change in Law**" means the occurrence of any of the following after the date of Bid:

(a) the enactment of any new Indian law;

(b) the repeal, modification or re-enactment of any existing Indian law;

(c) the commencement of any Indian law which has not entered into effect until the date of Bid;

(d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid;

(e) any change in the rates of any of the Taxes that have a direct effect on the Project

(f) any addition or deletion to the list of villages notified under Local Traffic

"**Change in Ownership**" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the selected bidder, together with {its/their} Associates, in the total equity share capital of the Concessionaire to decline below 51% (fifty one percent) of the subscribed and issued share capital of the Concessionaire during the first two years of the Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the Selected Bidder/ any Consortium Member} to the total equity, if it occurs during the Concession Period, shall constitute Change in Ownership;

"**Change of Scope**" shall have the meaning set forth in Clause 21.

"**Competing Road**" means either an existing paved road built by or on behalf of the Authority or any other Government Instrumentality, which is two-laned with paved shoulder or of higher configuration/dimension, and has atleast 75% (seventy five percent) of the total length within 15 (fifteen) kms of Project highway and which has been widened by more than 2 (two) metres of paved road for at least 75% (seventy five percent) of the total length thereof at any time after the date of this Agreement, or a new road built by or on behalf of the Authority or any other Government Instrumentality, which is two-laned paved shoulder or of higher configuration/dimension, and has atleast 75% (seventy five percent) of the total length within 15 (fifteen) kms of Project highway and which is constructed after the date of this Agreement, as the case may be. It is expressly clarified that the Chennai Peripheral Ring Road (CPRR) from Mamallapuram to Ennore shall not be considered as a "Competing Road" for the purposes of this Agreement;

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

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

"**Concession Fee**" shall have the meaning set forth in Clause 22.1;

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

the Transfer Date;

"**Concessionaire Default**" shall have the meaning set forth in Clause 30.1.1;

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

"**CPI**" shall mean the Consumer Price Index, as published by Central Statistical Office and released on 12th of every month**.**

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

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

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

(c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

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

"**Debt**" shall mean the financial assistance provided by Lenders in terms of the Financial Agreement, relevant financial package, towards meeting the debt component of the Concession Fee amount that is paid by Concessionaire to the Authority in terms hereof.

For avoidance of doubt, it is hereby clarified that Concessionaire shall be entitled to undertake/procure Refinancing of Debt only with prior written permission of the Authority

"**Defects Liability Period**" shall have the meaning set forth in Clause 32.1

"**Development Period**" means the period from the date of this Agreement until the Appointed Date;

"**Dispute**" shall have the meaning set forth in Clause 37.1.1;

"**Dispute Resolution Procedure**" means the procedure for resolution of Disputes set forth in Article 37;

"**Divestment Requirements**" means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 31.1;
"**Document**" or "**Documentation**" means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

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

"**Encumbrances**" means, in relation to the Project Highway, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Highway, where applicable herein but excluding utilities referred to in Clause 11.1 and charge on Project receivables only for purposes of securing Debt repayment and for no other purpose;

"**EPC Contract**" for the purpose of Capacity Augmentation shall mean the engineering, procurement and construction contract entered into by and between the Authority and the EPC Contractor for the purpose of Capacity Augmentation pursuant to Clause 14;

"**EPC Contractor**" for the purpose of Capacity augmentation shall mean a company appointed by the Authority for the purpose of undertaking Capacity Augmentation pursuant to Clause 14

"**Equivalent Tollable Length**" shall be calculated as per the mechanism provided in Schedule M.

"**Escrow Account**" means an Account which the Concessionaire shall open and maintain with a Bank in which inflows and outflows of monies shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

"**Escrow Agreement**" shall have the meaning set forth in Clause 23A.1.2;

"**Escrow Bank**" shall have the meaning set forth in Clause 23A.1.1;

"**Escrow Default**" shall have the meaning set forth in Schedule-[N];

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

"**Fee**" means the charge levied on and payable for a vehicle using the Project Highway or a part thereof in accordance with the Fee Notification and this Agreement;

"**Fee Notification**" means the notification issued by Government of Tamil Nadu, prior to the Appointed Date, in respect of levy and collection of Fee during the Concession Period, substantially in the form at Schedule - M;

"**Fee Rules**" shall have the meaning ascribed to it in clause 23.1.1;
"**Force Majeure**" or "**Force Majeure Event**" shall have the meaning ascribed to it in Clause 27.1;

"**Financing Agreement**" means the documents executed by the Concessionaire with Lenders solely for financing (including refinancing) the Debt component of the Concession Fee.

"**Financial Closure**" shall mean the fulfilment by Concessionaire of all condition precedents set out under the Financing Agreement, so that the financial assistance sought to be disbursed thereunder, are ready and available to be disbursed on demand.

"**Financial Default**" shall have the meaning set forth in Schedule-P;

"**Financial Model**" means the financial model adopted by Lenders, setting forth the costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

"**Financial Package**" means the financing package indicating the total Concession Fee and other costs related to the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Lenders, and includes equity, all financial assistance specified in the Financing Agreements and subordinated debt, if any;

"**GOI**" means the Government of India;

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

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

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

"**IRC**" means the Indian Roads Congress;

"**Indemnified Party**" means the Party entitled to the benefit of an indemnity pursuant to Article 35;

"**Indemnifying Party**" means the Party obligated to indemnify the other Party pursuant to Article 35;
"**Independent Engineer**" shall have the meaning set forth in Clause 20.1;

"**Indirect Political Event**" shall have the meaning set forth in Clause 27.3;

"**Insurance Cover**" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 25, and includes all insurances required to be taken out by the Concessionaire under Clause 25.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

"**Initial Estimated Concession Value of Authority**" shall mean the discounted value (discounted at rate equal to 3% (three percent) above the Bank Rate for debt and a normative rate for equity return) of the free cash flow expected to be generated by the Project Highway from the valuation date until end of concession period of 25 (twenty five) years, as estimated by the Authority and enclosed to the RFP and particularly annexed herein as Schedule Q.

"**Lenders**" means the financing institutions, banks, multilateral funding agencies and similar bodies undertaking lending business or their trustees/ agents including their successors and assignees, who have provided financial assistance to the Concessionaire under the Financing Agreement for meeting Debt component utilized by Concessionaire for part financing the Concession Fee as per the terms hereof.

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

"**Local User**" means a person using a vehicle registered for non-commercial purposes and used as such for commuting on a section of the Project Highway, provided that (a) such vehicle is owned by a person who resides in the revenue village notified by the Authority with respect to the specific Toll Plaza; (b) its use of such section of the Project Highway does not extend beyond a Toll Plaza other than such Toll Plaza which is nearest to the notified village where the person resides; and (c) such section of the Project Highway has no service road or alternative road; and shall include a vehicle that uses a section of the Project Highway but does not cross a Toll Plaza;

"**Light Commercial Vehicle**" shall have the meaning set forth in National Highways Fee (Determination of Rates and Collection) Rules, 2008

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

"**Maintenance Manual**" shall have the meaning ascribed to it in Clause 15.3;

"**Maintenance Programme**" shall have the meaning ascribed to it in Clause 15.4.1;

"**Maintenance Requirements**" shall have the meaning set forth in Clause 15.2;

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

"**Medical Aid Post**" shall have the meaning set forth in Clause 18.2;

"**Motor Cycle**" means and includes any two-wheeled motor vehicle;

"**Heavy construction machinery**" **or** "**Earth moving equipment**" **or** "**Multi- axle vehicle** "shall have the meaning set forth in National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2011 issued vide Notification No. G.S.R. 15(E) dated 12.01.11;

"**Net present value (NPV)**" is defined as the sum of the present values (PVs) of incoming and outgoing cash flows over the Concession Period. Incoming and outgoing cash flows can also be described as Toll Revenues and Cost Cash flows, respectively

"**Non-Political Event**" shall have the meaning set forth in Clause 27.2;

"**Notice of Intention to Terminate**" shall have the meaning ascribed in clause 30.1.2;

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

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

"**O&M Contractor**" means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

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

Applicable Permits or this Agreement;

"**O&M Inspection Report**" shall have the meaning set forth in Clause 16.2;

"**O&M Handover Date**" shall have the meaning as ascribed thereto in clause 5.1.1;

"**Oversized Vehicle**" shall have the meaning set forth in National Highways Fee (Determination of Rates and Collection) Rules, 2008;

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

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

"**Performance Security**" shall have the meaning set forth in Clause 9.1;

"**Political Event**" shall have the meaning set forth in Clause 27.4;

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

"**Project Agreements**" means this Agreement, O&M Contract, Tolling Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, or any agreement for procurement of goods and services involving a consideration of upto Rs. 5 (five) crore;

"**Project Assets**" means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of license, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road overbridges, drainage works, traffic signals, sign boards, kilometre- stones, toll plazas, electrical systems, communication systems, rest areas, relief centers, maintenance depots and administrative offices; (d) all rights of the Concessionaire under the Project Agreements; (security deposits (e) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project Highway

"**Project Highway**" means the Site comprising the existing road comprising

Stretch	**State**	**Start (Km)**	**End (Km)**	**Length (km)**
Six – Lane Chennai Outer Ring Road (Phase I) i.e. Vandalur to Nemilichery	Tamil Nadu	0.00	29.65	29.65

Six – Lane Chennai Outer Ring Road (Phase II) i.e. Nemilichery to Minjur	Tamil Nadu	29.65	60.15	30.50

and all Project Assets, and its operation and maintenance subject to and in accordance with this Agreement;

"**Price Index**" shall comprise the annual variation over immediately preceding year in the following Indices as per assigned Weightage**:-**

I. 70% (seventy percent) of WPI; and
II. 30% (thirty percent) of CPI

"**Re.**", "**Rs.**" or "**Rupees**" or "**Indian Rupees**" means the lawful currency of the Republic of India;

"**Realisable Fee**" means all the Fee due and realisable under this Agreement but does not include fees that the Concessionaire has not been able to realise after due diligence and best efforts; For the avoidance of doubt, Realisable Fee shall be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited accounts, as the case may be, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply;

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

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

"**Safety Consultant**" shall have the meaning set forth in Clause 18.1.2;

"**Safety Requirements**" shall have the meaning set forth in Clause 18.1.1;

"**Scope of Augmentation** "means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Capacity Augmentation of the homogenous/tollable section(s) of the Project Highway as set forth in Schedule-C and any modifications thereof, or additions thereto as expressly approved by the Authority;

"**Scope of the Project**" shall have the meaning set forth in Clause 2.1;

"**Site**" shall have the meaning set forth in Clause 10.1;

"**Specifications and Standards**" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project Highway as set forth in Schedule-C and any modifications thereof, or additions thereto as included in the operations, maintenance and other related obligations of the Concessionaire under this Agreement;

"**State**" means the State of Tamil Nadu and "**State Government**" **/** "**Government**" means the government of that State of Tamil Nadu;

"**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 26.1.1;

"Subordinated Debt" means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:
(a) the principal amount of debt provided by lenders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
(b) all accrued interest on the debt referred to in Sub-Article (a) above but restricted to the lesser of actual interest rate and a rate equal to 2% (two per cent) above the prevailing SBI MCLR in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six) month Secured Overnight Financing Rate (SOFR) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date; provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"**Substitution Agreement**" shall mean the agreement to be entered into between the Authority, the Concessionaire and the Lenders in the form set forth in Schedule P hereof.

"**Suspension**" shall have the meaning set forth in Clause 29.1;

"**Target Fee**" shall have the meaning set forth in Clause 24.1

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

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

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

"**Termination Payment**" means the amount payable by the Authority to the Concessionaire, in accordance with the provisions of this Agreement, upon Termination of this Agreement;

"**Three-axle Vehicle**" shall have the meaning set forth in National Highways Fee Determination of Rates and Collection) Amendment Rules, 2011 issued vide Notification No. G.S.R. 15(E) dated 12.01.11;

"**Toll Plaza**" means the structures and barriers erected [near each of the 2 (two) ends/ on each entry and exit] of the Project Highway for the purpose of regulating the entry and exit of vehicles in

accordance with the provisions of this Agreement and shall include all land, buildings, equipment, and other facilities required in accordance with or incidental to the provisions of this Agreement; provided that such Toll Plaza(s) shall not ordinarily be located within a distance of 10 (ten) kilometres from the limits of the municipal or local area of the nearest city or town respectively, as applicable on the date of this Agreement, and shall be situated at location(s) specified in the Agreement (Schedule B and C) or within a distance of 1 (one) kilometre thereof;

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

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

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

"**Tractor with Trailer**" means a Tractor with an attached vehicle used for carrying goods;

"**Traffic Aid Post**" shall have the meaning set forth in Clause 17.2;

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

"**Tolling Obligations**" shall mean the toll connection related obligations including among others installation, operation and maintenance of electronic/computerized tolling counter, round the clock computer network with Authority's network as per prevailing EDI protocol, prompt repair and rehabilitation of tolling system as per Good Industry Practice, and complying with reporting obligations; in accordance with terms hereof.

"**Truck**" shall have the meaning set forth in National Highways Fee (Determination of Rates and Collection) Rules, 2008;

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

"**Unexpired Cash Flow**" shall mean the amount arrived by discounting the unrealized free cash flow after taxes for unexpired period, as per the average of Initial Estimated Concession Value of the Authority and the Bid Concession Fee, at rate equal to 3% (three percent) above the Bank Rate for debt and a normative rate for equity return.

"**Vesting Certificate**" shall have the meaning set forth in Clause 31.4; and

"**WPI**" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI

published no later than 30 (thirty) days prior to the date of consideration hereunder.

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

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:	SIGNED, SEALED AND DELIVERED For and on behalf of THE CONCESSIONAIRE by:
(Signature), (Name) (Designation)	(Signature), (Name) (Designation)
	THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ….. day of …… 20…… hereunto affixed in the presence of ……., Director, who has signed these presents in token thereof and ……., company Secretary / Authorised Officer who has countersigned the same in token thereof[5]
In the presence of: 1.	1.
2.	2.

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