

Regarding release of 75% of Arbitral Award challenged in Court. The format of procedural documents are uploaded for stakeholders comments to vrshrinivasan@nhai.org latest by 1200hrs. on 09.11.2016.

Final draft - SOP
8/11/2016

Arbitral Award – Key Assumptions & Structure

Background:

1. Pursuant to NITI Aayog's OM No. 14070/14/2016- PPPAU dated 5th September 2016, Ministry of Road Transport and Highways (MoRTH), vide its Office Order No. NH-35014/10/2016-H dated 16.09.2016 has directed NHAI that in case of claims where the Arbitration Tribunal has passed an arbitral award (the "Arbitral Award") and NHAI has challenged the Arbitral Award, an amount equal to 75% (seventy five percent) of the Arbitral Award awarded in favour of the Concessionaire / Contractor may be paid to the Concessionaire / Contractor against Bank Guarantee without prejudice to the rights and stand of NHAI and subject to the final order of the court in the matter under challenge.
2. The following paragraphs list the key assumptions / structure to be followed by NHAI for implementing the above mentioned directions.

Applicability in case of NHAI projects:

3. Applicable to all NHAI projects, where the Concessionaire / Contractor and NHAI have entered into a Concession Agreement / Construction Contract / Engineering Procurement Commissioning Contract for a PPP/ EPC project [hereinafter referred to as "the Project"], in which the Arbitral Tribunal has passed the Arbitral Award in favor of the Concessionaire / Contractor and NHAI has challenged the Arbitral Award.
4. Applicable to the Project in which the Arbitral Award has been announced and NHAI has challenged the same on or before the issue of MoRTH Office Order (No. NH-35014/10/2016-H) dated 16.09.2016.

Arbitral Award Escrow Account:

5. A separate designated Escrow Account [hereinafter referred to as "the Arbitral Award Escrow Account"], shall be opened and established by the Concessionaire / Contractor in accordance with Arbitral Award Escrow Account Agreement.
6. Arbitral Award Escrow Account Agreement shall include 4 (four) parties viz. the Concessionaire / Contractor, NHAI, Arbitral Award Escrow Bank and Lenders' Representative.
7. The Concessionaire / Contractor shall bear the Arbitral Award Escrow Bank's fee and expenses with respect to opening and operation of the Arbitral Award Escrow Account.

Bank Guarantees:

8. Arbitral Award shall be the total award decided by the Arbitral Tribunal on the date of award.
9. The Authority shall pay an amount equivalent to 75% of the Arbitral Award against the Bank Guarantee submitted by the Concessionaire / Contractor for the equivalent amount.

10. In case where the appeal is decided in favor of NHAI, apart from the principal, NHAI would also be entitled to recover interest on the amount paid to the Concessionaire / Contractor. The applicable interest rate in such cases shall be State Bank of India's One Year Marginal Cost of fund-based Lending Rate plus 2%. The interest rate shall be compounded monthly. The Concessionaire/Contractor will have to confirm their unqualified acceptance before release of the amount and would be in addition to any order of the Hon'ble Court in the pending proceedings.

11. As security for NHAI, the Concessionaire / Contractor shall submit two separate Bank Guarantees:

a) Bank Guarantee – 1

The Bank Guarantee shall be for an equivalent amount of 75% of Arbitral Award Amount. The validity of this Bank Guarantee shall be 3 years or 2 (two) months from the date of decision of the court, whichever is earlier. In case extension is needed, the Concessionaire / Contractor shall extend the validity of the Guarantee for a period of at least 1 (one) year at least 60 days prior to the expiry of the validity of the Guarantee and the process for extension of the Guarantee would be repeated as per the requirement, till the time that the Court has decided the appeal of NHAI.

b) Bank Guarantee - 2

The Bank Guarantee shall be for an equivalent amount of interest applicable on the 75% of Arbitral Award Amount. The rate of interest shall be as per point 10. The interest amount applicable for this Bank Guarantee shall be calculated in advance for a year, from the date of deposit of 75% of Arbitral Award Amount by NHAI. For renewal of this Bank Guarantee, the applicable interest amount shall be calculated for a period from the date of deposit of 75% of Arbitral Award Amount by NHAI till a year in advance from last day of validity of the existing Bank Guarantee. The Guarantee would have to be extended by the Concessionaire / Contractor at least 60 days prior to the expiry of the Guarantee, till the time that the Court has decided the appeal of NHAI.

Failure of the Concessionaire / Contractor to extend the validity of the any of the above two Guarantees at least 60 days prior to the expiry of the Guarantees' would lead to encashment and appropriation of both the Guarantees.

12. In case of claims where NHAI wins the appeal in the Court against the Arbitral Award, NHAI shall be entitled to encash the Bank Guarantees submitted by the Concessionaire / Contractor of an amount equivalent to 75% of the total Arbitral Award amount along with appropriate interest till the date of such encashment.

13. The Bank Guarantees shall come in force from the date on which NHAI deposits an amount equal to 75% of the Arbitral Award. The Bank Guarantees shall be renewed and resubmitted to NHAI, 60 (sixty) days prior to their expiry on default of which NHAI shall be entitled to encash both the Bank Guarantees.

Deposit and withdrawal of funds from Escrow Account:

14. After opening of the Arbitral Award Escrow Account and within 15 (fifteen) days of receipt of both the Bank Guarantees, NHAI shall deposit 75% of Arbitral Award Amount in the Arbitral Award Escrow Account.
15. The Arbitral Award Escrow Bank shall withdraw and appropriate the amounts from the Arbitral Award Escrow Account strictly in line with the instructions issued by NHAI to the Concessionaire / Contractor as mutually agreed / decided by NHAI, Lenders' Representative and the Concessionaire / Contractor; provided that such amounts shall be appropriated in the following order:
 - a) Debt service payments
 - b) All payments relating to construction/completion of the Project;
 - c) All payments relating to construction of other projects of NHAI being undertaken by the Concessionaire / Contractor; and
 - d) Balance, if any, in accordance with the instructions of the Concessionaire / Contractor after receiving the prior written approval of the Lenders' Representative and NHAI.
16. Debt Service Payments
 - a) The Concessionaire / Contractor shall provide NHAI with the details of Lender/s and their dues specific to the Project.
 - b) After withdrawal and payment of Lenders' dues, the Concessionaire / Contractor shall provide NHAI with a copy to the escrow banker the acknowledgement receipts of payment of dues from all the applicable lenders.
17. All payments relating to construction of the Project
 - a) The Concessionaire / Contractor shall provide NHAI with the details of the remaining works in the Project on part of the Concessionaire / Contractor, the estimated costs of the respective works and the schedule for completion of such remaining works.
 - b) The Concessionaire / Contractor shall provide the [monthly/ bi-annual/ annual or any other periodic schedule of funds, as decided by NHAI's technical division] required to complete the remaining works.
 - c) The Independent Engineer (IE) or equivalent authority for the project and NHAI shall verify the remaining works, the associated costs, the schedule and the [periodic] requirement of funds.
 - d) On approval of NHAI and subject to availability of funds in the Arbitral Award Escrow Account, the total requirement of funds shall be earmarked for the completion of the remaining works of the Project.
 - e) The Concessionaire / Contractor shall then be allowed to withdraw [periodic] requirement of funds keeping the physical progress work in view.

- f) Balance amounts in the Arbitral Award Escrow Account, if available, shall be earmarked and concurrently used for the completion of other projects of NHAI, as per conditions set forth in point 18 keeping the physical progress work in view.
18. All payments relating to construction of other projects of NHAI
- a) Shall be applicable to other projects of NHAI being undertaken by the Concessionaire / Contractor
 - b) For each of the other projects, sub-clauses a) to e) of point 17 shall be applicable.
19. Post debt service payments, completion of the Project and completion of other projects of NHAI, and subject to availability of funds in the Arbitral Award Escrow Account, balance funds shall be appropriated in accordance with the instructions of the Concessionaire / Contractor after receiving the prior written approval of the Lenders' Representative and NHAI.

Events of Arbitral Award Escrow Default

20. Following events shall constitute an event of default by the Concessionaire / Contractor unless such event of default has occurred as a result of Force Majeure or any act or omission of NHAI or the Lenders' Representative:

- a) The Concessionaire / Contractor causes the Arbitral Award Escrow Bank to transfer funds to any account of the Concessionaire / Contractor in breach of the terms of Arbitral Award Escrow Account Agreement;
 - b) The Concessionaire / Contractor fails to make any refund due to the Authority in breach of the terms of Arbitral Award Escrow Account Agreement within 5 (five) business days of such refund becoming due;
 - c) The Concessionaire / Contractor commits or causes any other breach of the provisions of Arbitral Award Escrow Account Agreement and fails to cure the same within a Cure Period of 5 (five) business days; or
 - d) The Concessionaire / Contractor does not extend the validity of Guarantees submitted to NHAI as security for principal as well as for interest thereon, in cases where such extension is required.
21. Upon occurrence of an Arbitral Award Escrow Default, the Authority shall be entitled to encash and appropriate the relevant amounts from the Bank Guarantee(s) as Damages for such Arbitral Award Escrow Default

Termination of Arbitral Award Escrow Account Agreement

22. Arbitral Award Escrow Agreement shall remain in full force and effect so long as Court decides the Appeal and a certified copy of the decision of the Court has been submitted to the Arbitral Award Escrow Bank.
23. In case the Court's decision is in favour of NHAI, NHAI shall suo moto encash both the Bank Guarantees against refunds from the Concessionaire / Contractor of an amount equivalent to

75% of the Arbitral Award amount along with appropriate interest till the date of such decision of the Court. The rate of interest shall be as per point 10.

24. Closure of Arbitral Award Escrow Account

The Arbitral Award Escrow Bank shall, at the request of the Concessionaire / Contractor and NHAJ made after decision on the Appeal by the Court close the Arbitral Award Escrow Account and pay any amount standing to the credit thereof to the Concessionaire / Contractor.

Monitoring Mechanism

25. There will be a robust monitoring mechanism for all cases where funds have been disbursed by NHAJ against bank guarantees. A consolidated list of all such cases will be tracked by the Legal Department of NHAJ with requisite inputs from the concerned Technical Divisions, Finance etc.
26. Disbursement of funds into Arbitral Award Escrow Accounts shall be tracked and consolidated.
27. The finance wing of the Authority will be provided requisite information for budgeting and release of funds.
28. NHAJ will have the right to impose any further condition/monitoring mechanism to ensure NHAJ interest are protected such as appointment of concurrent Auditor.
29. Since release of funds would be across various projects, hence, a Program Management Unit (PMU) under Member (P) (to be nominated) will be set up to coordinate release of funds for utilization under clause 17-19.
30. Disbursement of funds from Arbitral Award Escrow Accounts as per waterfall will be tracked and monthly statements / MIS reports shall be prepared by the Technical Divisions at HQ and Project Implementation Units (PIU) under RO at field level.
31. Validity and renewal of Bank Guarantees shall be tracked by the Technical Divisions / Project Implementation Units (PIU) and PMU in NHAJ HQ.

Bank Guarantee
(Security for interest)
Final draft
7/11/2016

**Bank Guarantee as security for interest on advance towards payment of Arbitral Award under
litigation
(On a stamp paper of appropriate amount)**

The Chairman,
National Highways Authority of India
New Delhi

WHEREAS:

- (A) [..... (the "**Concessionaire / Contractor**") and the Authority have entered into a [Concession Agreement / Construction Contract / Engineering Procurement Commissioning Contract] dated (the "**Agreement**") whereby the Authority has agreed to the [Concessionaire / Contractor] undertaking [Four-Laning of the _____ section of National Highway No. ____ from Km _____ to Km _____ under NHDP in the State of _____ on [build, operate and transfer/design, build, finance, operate and transfer]¹ [("**DBFOT**")]² basis (the "**Project**"), subject to and in accordance with the provisions of the Agreement.
- (B) During the course of implementation of the Project, disputes/claims arose in respect of the Agreement. As the disputes could not be resolved amicably, the same were referred to Arbitration and accordingly a three member Arbitral Tribunal, as per the terms of the Agreement, was constituted to resolve the disputes between Authority and the [Concessionaire/ Contractor] under the Agreement.
- (C) The Arbitration Tribunal on [Date] passed the Award in favour of the [Concessionaire / Contractor] (hereinafter referred to as the Arbitral Award) allowing [claims]³ of the [Concessionaire / Contractor] amounting to [Rs. _____]⁴ as on [Date]⁵ [along with interest @ ____% per annum till the date of Award]⁶ and the [total amount along with interest @ ____% as on _____ is Rs. _____ lakhs]⁷.
- (D) Authority have preferred appeal against the Award under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "**Appeal**") before the [_____] ⁸ (hereinafter referred to as the "**Court**"), challenging the Arbitral Award.

¹Name of the Project to be included

²Type of project development model to be included.

³Details of the claims to be inserted

⁴Amount in Figures and words to be inserted

⁵Date of Arbitral award to be inserted

⁶To be inserted, in case applicable.

⁷Interest rate, date of calculation of amount and total amount to be inserted

⁸Details of the court, where the appeal has been filed to be provided

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(E) Pursuant to NITI Aayog's OM No. 14070/14/2016- PPPAU dated 5th September 2016, Ministry of Road Transport and Highways, vide its Office Order No. NH-35014/10/2016-H dated 16.09.2016, , NITI Aayog has directed the Authority that, in case of claims where the Arbitration Tribunal has passed the Arbitral Award and the Authority has challenged the Arbitral Award, the Authority may pay an amount equal to 75% (seventy five percent) of the Arbitral Award as awarded in favour of the [Concessionaire /Contractor] to the [Concessionaire /Contractor] against Bank Guarantee without prejudice to the final order of the Court in the matter under challenge, subjected to the terms as stated herein

(F) The [Concessionaire / Contractor] has opened an account with the Arbitral Award Escrow Bank (the "**Arbitral Award Escrow Account**") and entered into an Arbitral Award Escrow Agreement with the Authority, Arbitral Award Escrow Bank and the Lenders Representative on _____ (the "**Arbitral Award Escrow Agreement**").

(G) The Arbitral Award Escrow Agreement requires the Concessionaire to furnish a Bank Guarantee to the Authority in a sum of Rs ***** (Rupees ***** only) (the "**Guarantee Amount**") as security for the interest on amount to be deposited by the Authority in the Arbitral Award Escrow Account and for due and faithful performance of its obligations under and in accordance with Arbitral Award Escrow Agreement.

(H) We,through our Branch at (the "**Bank**") have agreed to furnish this Bank Guarantee ("**Guarantee**").

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the [Concessionaire's / Contractor's] obligations under and in accordance with the Arbitral Award Escrow Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the [Concessionaire / Contractor], such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of General Manager in the Authority, that the Court has decided the appeal in favor of the Authority and the [Concessionaire / Contractor] needs to repay the Guaranteed Amount or that there has been an Arbitral Award Escrow Default by the [Concessionaire / Contractor] as per the provisions of Arbitral Award Escrow Agreement, shall be conclusive, final and binding on the Bank and the Bank shall immediately release the Guaranteed Amount to the Authority. The Bank further agrees

that the Authority's letter in this regard shall be final and binding on the Bank, notwithstanding any differences between the Authority and the [Concessionaire / Contractor].

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank is the principal debtor and any change in the constitution of the [Concessionaire / Contractor] and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the [Concessionaire / Contractor] before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Arbitral Award Escrow Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the [Concessionaire / Contractor] contained in Arbitral Award Escrow Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the [Concessionaire / Contractor], and either to enforce or forbear from enforcing any of the terms and conditions contained in Arbitral Award Escrow Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the [Concessionaire / Contractor] or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Arbitral Award Escrow Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the [Concessionaire / Contractor] under the Arbitral Award Escrow Agreement
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount. This Bank Guarantee shall come in force from the date on which the Authority deposits an amount equal to 75% of the Arbitral Award awarded to the [Concessionaire / Contractor] and shall remain in force until, the earlier of the [1 (one) year] from the date of such deposits or two (2) months from the date of the Court deciding the Appeal in favor of the [Concessionaire / Contractor].

8. Upon request made by the [Concessionaire / Contractor] for release of this Guarantee along with the particulars required hereunder, the Authority shall release the Guarantee forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
12. Notwithstanding anything contained herein:
 - (a) our liability under this Bank Guarantee shall not exceed (in words)
 - (b) this Bank Guarantee shall be valid upto; and
 - (c) we are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if the Authority serve upon us a written claim or demand on or before

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

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

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

NOTES:

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

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Escrow Account
Agreement
Final draft
7/11/2016

ARBITRAL AWARD ESCROW ACCOUNT AGREEMENT

THIS ARBITRAL AWARD ESCROW AGREEMENT is entered into on this theday of 20.....AMONGST

- 1 [_____]¹, a company incorporated under the provisions of the Companies Act, [1956/2013] and having its registered office at _____ (hereinafter referred to as the “[**Concessionaire/ Contractor**]” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 THE NATIONAL HIGHWAYS AUTHORITY OF INDIA, established under the National Highways Authority of India Act 1988, represented by its Chairman and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075 (hereinafter referred to as the “[**Authority**]” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns)
- 3 (insert name and particulars of the Arbitral Award Escrow Bank) and having its registered office at _____ (hereinafter referred to as the “[**Arbitral Award Escrow Bank**]” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 _____ (insert name and particulars of Lenders’ Representative) and having its registered office at _____ acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “[**Lenders’ Representative**]” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

WHEREAS:

(A) The “[**Concessionaire / Contractor**]” and the Authority have entered into a [Concession Agreement / Construction Contract / Engineering Procurement Commissioning Contract] dated (the “[**Agreement**]”) whereby the Authority agreed to the [Concessionaire / Contractor] undertaking [Two / Four/ Six -Laning of the _____ section of National Highway No. ___ from Km _____ to Km _____ under NHDP in the State of _____ on [build, operate and transfer/design, build, finance, operate and transfer]² [(“**DBFOT**”)]³ basis (the “[**Project**]”), subject to and in accordance with the provisions of the Agreement;

¹ Name of the concessionaire / contractor to be inserted

² Name of the Project to be included

³ Type of project development model to be included.

- (B) During the course of implementation of the Project, disputes/claims arose in respect of the Agreement. As the disputes could not be resolved amicably, the same were referred to Arbitration and accordingly a three member Arbitral Tribunal, as per the terms of the Agreement, was constituted to resolve the disputes between Authority and the [Concessionaire/ Contractor] under the Agreement;
- (C) The Arbitration Tribunal on [Date] passed the Award in favour of the [Concessionaire / Contractor] (hereinafter referred to as the “**Arbitral Award**”) allowing [claims]⁴ of the [Concessionaire / Contractor] amounting to [Rs. _____]⁵ as on [Date]⁶ [along with interest @ ___% per annum till the date of Award]⁷ and the [total amount along with interest @ ___% as on _____ is Rs. _____ lakhs]⁸;
- (D) The Authority have preferred appeal against the Award under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “**Appeal**”) before the [_____]⁹ (hereinafter referred to as the Court), challenging the Arbitral Award;
- (E) Pursuant to NITI Aayog’s OM No. 14070/14/2016- PPPAU dated 5th September 2016, Ministry of Road Transport and Highways, vide its Office Order No. NH-35014/10/2016-H dated 16.09.2016 (the “**Office Order**”), NITI Aayog has directed the Authority that, in case of claims where the Arbitration Tribunal has passed the Arbitral Award and the Authority has challenged the Arbitral Award, the Authority may pay an amount equal to 75% (seventy five percent) of the Arbitral Award as awarded in favour of the [Concessionaire /Contractor] to the [Concessionaire /Contractor] against Bank Guarantee, without prejudice to the final order of the Court in the matter under challenge;
- (F) The Office Order requires the payment to be made by the Authority into a designated Escrow Account to be opened for this purpose and the amount so released shall be used, *inter alia*, on the terms and conditions stated herein;
- (G) The Concessionaire has approached the Authority and vide letter no. _____ dated _____ has requested the Authority to release the amount equivalent to 75% of the Arbitral Award and has confirmed its acceptance to the terms and conditions as provided in the Office Order, including

⁴ Details of the claims to be inserted

⁵ Amount in Figures and words to be inserted

⁶ Date of Arbitral award to be inserted

⁷ To be inserted, in case applicable.

⁸ Interest rate, date of calculation of amount and total amount to be inserted

⁹ Details of the court, where the appeal has been filed to be provided

but not limited to its obligation of submission of the Bank Guarantee and payment of interest on the said amount;

(H) That Authority has favorably considered the above request of the Concessionaire and vide its letter dated ___ has agreed to deposit the said amount in the Escrow Account subject to the Concessionaire paying interest @ ___ in case the Authority is successful in the Appeal;

(I) The Concessionaire has conveyed its acceptance to the above terms vide its letter No. ___ dated ___.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Arbitral Award Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Arbitral Award**” shall have the meaning ascribed thereto in Recital C;

“**Arbitral Award Escrow Account**” means an escrow account established in terms of and under this Agreement;

“**Arbitral Award Escrow Default**” shall have the meaning ascribed thereto in Clause 7.1;

“**Bank Guarantee**” shall have the meaning ascribed thereto in Clause 4.1;

“**[Concession Agreement/Construction Contract / Engineering Procurement Commissioning Contract]**” means the [Concession Agreement/Construction Contract / Engineering Procurement Commissioning Contract] referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the [Concessionaire / Contractor], and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the

case may be, to the [Concessionaire / Contractor] asking the latter to cure the breach or default specified in such notice;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Title Clause;

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

“**Permitted Investments**” shall mean:

the investments (including encashment, re-investment and change in investment) in:

- (i) treasury bills or debt instruments or other securities issued by the Government of India or backed by full Government of India guarantee;
- (ii) deposits with or certificates of deposits issued by scheduled commercial banks;

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the [Concession Agreement/Construction Contract / Engineering Procurement Commissioning Contract] shall, unless repugnant to the context, have the meaning ascribed thereto in the [Concession Agreement/Construction Contract / Engineering Procurement Commissioning Contract].

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4¹⁰ [The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.]

2 ARBITRAL AWARD ESCROW ACCOUNT

2.1 Arbitral Award Escrow Bank to act as trustee

2.1.1 The [Concessionaire / Contractor] hereby appoints the Arbitral Award Escrow Bank to act as trustee for the Authority, the Lenders’ Representative and the [Concessionaire / Contractor] in connection herewith and authorizes the Arbitral Award Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Arbitral Award Escrow Bank by the terms hereof, together with all such rights, powers, authorities and discretion as are

¹⁰ To be updated with respect to the Concession Agreement / Contract

reasonably incidental hereto, and the Arbitral Award Escrow Bank accepts such appointment pursuant to the terms hereof.

- 2.1.2 The [Concessionaire / Contractor] hereby declares that all rights, title and interest in and to the Arbitral Award Escrow Account shall be vested in the Arbitral Award Escrow Bank and held in trust for the Authority, the Lenders' Representative and the [Concessionaire / Contractor], and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the [Concessionaire / Contractor] shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.2 Acceptance of Arbitral Award Escrow Bank

The Arbitral Award Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Arbitral Award Escrow Bank pursuant to the provisions of this Agreement. The Arbitral Award Escrow Bank shall hold and safeguard the Arbitral Award Escrow Account during the term of this Agreement and shall treat the amount in the Arbitral Award Escrow Account as monies deposited by the Authority with the Arbitral Award Escrow Bank or any interest thereon. In performing its functions and duties under this Agreement, the Arbitral Award Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the [Concessionaire / Contractor]. For the avoidance of doubt, in case there is a conflict between the interests of Authority, the Lenders' Representative and the [Concessionaire / Contractor] or their nominees, successors or assigns, the Arbitral Award Escrow Bank shall keep the interest of the Authority as paramount.

2.3 Establishment and operation of Arbitral Award Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, the [Concessionaire / Contractor] shall open and establish the Arbitral Award Escrow Account with the (name of Branch) Branch of the Arbitral Award Escrow Bank. The Arbitral Award Escrow Account shall be denominated in Indian Rupees.
- 2.3.2 The Arbitral Award Escrow Bank shall maintain the Arbitral Award Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Arbitral Award Escrow Bank and the [Concessionaire / Contractor] shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Arbitral Award Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Arbitral Award Escrow Bank's fee

The Arbitral Award Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Arbitral Award Escrow Bank and the [Concessionaire / Contractor]. For the avoidance of doubt, such fee and expenses shall be paid by the [Concessionaire / Contractor] directly to the Arbitral Award Escrow Bank and shall not seek any reimbursement for the same from the Authority.

2.5 Rights of the Parties

The rights of the Authority, the Lenders' Representative and the [Concessionaire / Contractor] in the monies held in the Arbitral Award Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the [Concessionaire / Contractor] shall have no other rights against or to the monies in the Arbitral Award Escrow Account.

[2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.]

3 DEPOSITS INTO ARBITRAL AWARD ESCROW ACCOUNT

3.1 Deposits by the Authority

The Authority agrees and undertakes that it shall deposit into and/or credit the Arbitral Award Escrow Account with an amount equivalent to 75 % of the amount equivalent to the Arbitral Award. A detailed statement of account on the amount to be deposited and breakup thereof is attached hereto as [Annex – B].

3.2 Interest on deposits

The Arbitral Award Escrow Bank agrees and undertakes that all interest accruing on the balances of the Arbitral Award Escrow Account from the Permitted Investments shall be credited to the Arbitral Award Escrow Account.

4 BANK GUARANTEES

4.1 The [Concessionaire / Contractor] in consideration of the Authority depositing the amount as stated in Clause 3, has provided a bank guarantee bearing No.***** issued by ***** Bank drawn in favour of the Authority, as security against 75% of the Arbitral Award, for a sum of Rs _____ (Rupees *****) (the "Bank Guarantee"). A certified copy of the Bank Guarantee is annexed hereto as [Annex-C].

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4.2 The [Concessionaire / Contractor] in consideration of the Authority depositing the amount as stated in Clause 3, has provided a bank guarantee bearing No.***** issued by ***** Bank drawn in favour of the Authority, as security against interest on 75% of the Arbitral Award, for a sum of Rs _____ (Rupees *****) (the "Bank Guarantee"). A certified copy of the Bank Guarantee is annexed hereto as [Annex-D].

5 WITHDRAWALS FROM ARBITRAL AWARD ESCROW ACCOUNT

5.1 Withdrawals during the Agreement

The Arbitral Award Escrow Bank shall withdraw and appropriate the amounts from the Arbitral Award Escrow Account strictly in line with the instructions issued by the Authority to the [Concessionaire / Contractor] as mutually agreed / decided by the Authority, Lenders' Representative and the [Concessionaire / Contractor]; provided that such amounts shall be appropriated in the following order:

- (a) Debt service payments
- (b) All payments relating to construction/completion of the Project;
- (c) All payments relating to construction/completion of other projects of the Authority being undertaken by the [Concessionaire / Contractor]; and
- (d) Balance, if any, in accordance with the instructions of the [Concessionaire / Contractor] after receiving the prior written approval of the Lenders' Representative and the Authority.

5.2 Application of insufficient funds:

Funds in the Arbitral Award Escrow Account shall be applied in the serial order of priority set forth in Clause 5.1. If the funds available are not sufficient to meet all the requirements, the Arbitral Award Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

[5.3 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 30¹¹ of the Concession Agreement. Any instructions given by the Authority to the Arbitral Award Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.]

6 OBLIGATIONS OF THE ARBITRAL AWARD ESCROW BANK

6.1 Segregation of funds

Monies and other property received by the Arbitral Award Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Arbitral Award

¹¹To be updated with respect to the Concession Agreement / Contract

Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Arbitral Award Escrow Bank.

6.2 Communications and notices

In discharge of its duties and obligations hereunder, the Arbitral Award Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the [Concessionaire / Contractor] upon a certificate signed by or on behalf of the [Concessionaire / Contractor];
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Arbitral Award Escrow Bank from the [Concessionaire / Contractor] or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the [Concessionaire / Contractor] of any notice or document received by it from the Lenders' Representative in connection herewith.

6.3 No set off

The Arbitral Award Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Arbitral Award Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Arbitral Award Escrow Bank that the monies and properties held by the Arbitral Award Escrow Bank in the Arbitral Award Escrow Account shall not be considered as part of the assets of the Arbitral Award Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Arbitral Award Escrow Bank, be wholly excluded from the assets of the Arbitral Award Escrow Bank in such bankruptcy or liquidation.

6.4 Regulatory approvals

The Arbitral Award Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Arbitral Award Escrow Account..

7 ARBITRAL AWARD ESCROW DEFAULT

7.1 Arbitral Award Escrow Default

- 7.1.1 Following events shall constitute an event of default by the [Concessionaire / Contractor] (an "Arbitral Award Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the [Concessionaire / Contractor] causes the Arbitral Award Escrow Bank to transfer funds to any account of the [Concessionaire / Contractor] in breach of the terms of this Agreement;
- (b) the [Concessionaire / Contractor] fails to make any refund due to the Authority in breach of the terms of this Agreement within 5 (five) business days from the date such refund becomes due; or
- (c) the [Concessionaire / Contractor] commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.
- (d) the [Concessionaire / Contractor] fails to extend the validity of Bank Guarantees, referred to in Clause 4.1 and Clause 4.2 of this Agreement, submitted to the Authority as security for principal as well as for interest thereon, in cases where such extension is required.

7.1.2 Upon occurrence of an Arbitral Award Escrow Default, the Authority shall be entitled to encash and appropriate the relevant amounts from the Bank Guarantee provided under Clauses 4.1 and 4.2 as Damages for such Arbitral Award Escrow Default.

8 TERMINATION OF ARBITRAL AWARD ESCROW AGREEMENT

8.1 Duration of the Arbitral Award Escrow Agreement and Arbitral Award Escrow Account

The Arbitral Award Escrow Bank shall, at the request of the [Concessionaire / Contractor] and the Authority, made after decision on the Appeal by the Hon'ble Court, but subject to any pending proceedings, pay any amount standing to the credit thereof as per the order of the Hon'ble Court and close the Arbitral Award Escrow Account. Upon closure of the Arbitral Award Escrow Account hereunder, this Arbitral Award Escrow Agreement shall be deemed to be terminated.

8.3 Substitution of Arbitral Award Escrow Bank

The [Concessionaire / Contractor] may, by not less than 45 (forty five) days prior notice to the Arbitral Award Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Arbitral Award Escrow Bank, provided that the new Arbitral Award Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Arbitral Award Escrow Account to a new Arbitral Award Escrow Account established with the successor Arbitral Award Escrow Bank pursuant to another Arbitral Award Escrow Agreement entered between such successor Arbitral Award Escrow Bank, the Authority, the [Concessionaire / Contractor] and the Lenders Representative in the same form as this Agreement.

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The termination of this Agreement shall take effect only upon coming into force of an Arbitral Award Escrow Agreement with the substitute Arbitral Award Escrow Bank.

9 SUPPLEMENTARY ARBITRAL AWARD ESCROW AGREEMENT

9.1 Supplementary arbitral award escrow agreement

There shall be no supplementary Arbitral Award Escrow Agreement.

10 INDEMNITIES

10.1 General indemnity

10.1.1 The [Concessionaire / Contractor] will indemnify, defend and hold the Authority, Arbitral Award Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the [Concessionaire / Contractor] of any of its obligations under this Agreement or on account of failure of the [Concessionaire / Contractor] to comply with Applicable Laws and Applicable Permits.

10.1.2 The Authority will indemnify, defend and hold the [Concessionaire / Contractor] harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the [Concessionaire's / Contractor's] obligations under the [Concession Agreement / Construction Contract / Engineering Procurement Commissioning Contract] or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

10.1.3 The Arbitral Award Escrow Bank will indemnify, defend and hold the [Concessionaire / Contractor] harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Arbitral Award Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the [Concessionaire's / Contractor's] obligations under the [Concession Agreement / Construction Contract / Engineering Procurement Commissioning Contract] other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Arbitral Award Escrow Bank, its officers, servants and agents.

10.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 10.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for

indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

11 DISPUTE RESOLUTION

11.1 Dispute resolution

11.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

11.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be Delhi and the language of the arbitration proceedings shall be English.

12. MISCELLANEOUS PROVISIONS

12.1 Governing law and jurisdiction

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

12.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated

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by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgment 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 judgment that may be made or given in connection therewith).

12.3 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.

12.4 Waiver

12.4.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

12.5 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

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12.6 Survival

12.6.1 Termination of this Agreement:

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

12.6.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

12.7 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 11.1 of this Agreement or otherwise.

12.8 Successors and assigns

This Agreement shall be binding on and shall enure_ to the benefit of the Parties and their respective successors and permitted assigns.

12.9 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy

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thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

12.10 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

12.11 Authorized representatives

Each of the Parties shall, by notice in writing, designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

12.12 Original Document

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

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

THE COMMON SEAL OF
[CONCESSIONAIRE / CONTRACTOR]
has been affixed pursuant to the resolution passed
by the Board of Directors of the [Concessionaire /
Contractor] at its meeting held on the day of 20
hereunto, in the presence
of....., Director, who has signed these
presents in token thereof and Company Secretary /
Authorized Officer who has countersigned the same
in token thereof^{*}

AND DELIVERED
For and on behalf of
SENIOR LENDERS by the
Lender's representative:

^{*}To be affixed in accordance with the articles of association of the Concessionaire / Contractor and the resolution passed by its Board of Directors.

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For and on behalf of [Concessionaire / Contractor] pursuant to the resolution passed by the Board of Directors of the [Concessionaire / Contractor]

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(E-mail address)

SIGNED, SEALED AND

DELIVERED

For and on behalf of

THE ARBITRAL AWARD ESCROW BANK by

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(E-mail address)

SIGNED, SEALED

In the presence of:

(Signature)

(Name)

(Designation)

(Address)

(Fax N^o)

(E-mail address)

SIGNED, SEALED AND

DELIVERED

for and on behalf of

THE AUTHORITY by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(E-mail address)

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Bank Guarantee ✓
Final draft
7/11/2016

**Bank Guarantee as security for advance towards payment of Arbitral Award under litigation
(On a stamp paper of appropriate amount)**

The Chairman,
National Highways Authority of India
New Delhi

WHEREAS:

- (A) [..... (the “**Concessionaire / Contractor**”)] and the Authority have entered into a [Concession Agreement / Construction Contract / Engineering Procurement Commissioning Contract] dated (the “**Agreement**”) whereby the Authority has agreed to the [Concessionaire / Contractor] undertaking [Four-Laning of the _____ section of National Highway No. ____ from Km _____ to Km _____ under NHDP in the State of _____ on [build, operate and transfer/design, build, finance, operate and transfer]¹ [“(DBFOT)”]² basis (the “**Project**”), subject to and in accordance with the provisions of the Agreement.
- (B) During the course of implementation of the Project, disputes/claims arose in respect of the Agreement. As the disputes could not be resolved amicably, the same were referred to Arbitration and accordingly a three member Arbitral Tribunal, as per the terms of the Agreement, was constituted to resolve the disputes between Authority and the [Concessionaire/ Contractor] under the Agreement.
- (C) The Arbitration Tribunal on [Date] passed the Award in favour of the [Concessionaire / Contractor] (hereinafter referred to as the Arbitral Award) allowing [claims]³ of the [Concessionaire / Contractor] amounting to [Rs. _____]⁴ as on [Date]⁵ [along with interest @ ____% per annum till the date of Award]⁶ and the [total amount along with interest @ ____% as on _____ is Rs. _____ lakhs]⁷.
- (D) Authority have preferred appeal against the Award under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “**Appeal**”) before the [_____]⁸ (hereinafter referred to as the “**Court**”), challenging the Arbitral Award.

¹Name of the Project to be included

²Type of project development model to be included.

³Details of the claims to be inserted

⁴Amount in Figures and words to be inserted

⁵Date of Arbitral award to be inserted

⁶To be inserted, in case applicable.

⁷Interest rate, date of calculation of amount and total amount to be inserted

⁸Details of the court, where the appeal has been filed to be provided

(E) Pursuant to NITI Aayog's OM No. 14070/14/2016- PPPAU dated 5th September 2016, Ministry of Road Transport and Highways, vide its Office Order No. NH-35014/10/2016-H dated 16.09.2016, , NITI Aayog has directed the Authority that, in case of claims where the Arbitration Tribunal has passed the Arbitral Award and the Authority has challenged the Arbitral Award, the Authority may pay an amount equal to 75% (seventy five percent) of the Arbitral Award as awarded in favour of the [Concessionaire /Contractor] to the [Concessionaire /Contractor] against Bank Guarantee without prejudice to the final order of the Court in the matter under challenge, subjected to the terms as stated herein

(F) The [Concessionaire / Contractor] has opened an account with the Arbitral Award Escrow Bank (the "**Arbitral Award Escrow Account**") and entered into an Arbitral Award Escrow Agreement with the Authority, Arbitral Award Escrow Bank and the Lenders Representative on _____ (the "**Arbitral Award Escrow Agreement**").

(G) The Arbitral Award Escrow Agreement requires the Concessionaire to furnish a Bank Guarantee to the Authority in a sum of Rs ***** (Rupees ***** only) (the "**Guarantee Amount**") as security for the amount to be deposited by the Authority in the Arbitral Award Escrow Account and for due and faithful performance of its obligations under and in accordance with Arbitral Award Escrow Agreement.

(H) We,through our Branch at (the "**Bank**") have agreed to furnish this Bank Guarantee ("**Guarantee**").

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the [Concessionaire's / Contractor's] obligations under and in accordance with the Arbitral Award Escrow Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the [Concessionaire / Contractor], such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of General Manager in the Authority, that the Court has decided the appeal in favor of the Authority and the [Concessionaire / Contractor] needs to repay the Guaranteed Amount or that there has been an Arbitral Award Escrow Default by the [Concessionaire / Contractor] as per the provisions of Arbitral Award Escrow Agreement, shall be conclusive, final and binding on the Bank and the Bank shall immediately release the Guaranteed Amount to the Authority. The Bank further agrees

that the Authority's letter in this regard shall be final and binding on the Bank, notwithstanding any differences between the Authority and the [Concessionaire / Contractor].

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank is the principal debtor and any change in the constitution of the [Concessionaire / Contractor] and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the [Concessionaire / Contractor] before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Arbitral Award Escrow Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the [Concessionaire / Contractor] contained in Arbitral Award Escrow Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the [Concessionaire / Contractor], and either to enforce or forbear from enforcing any of the terms and conditions contained in Arbitral Award Escrow Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the [Concessionaire / Contractor] or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Arbitral Award Escrow Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the [Concessionaire / Contractor] under the Arbitral Award Escrow Agreement
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount. This Bank Guarantee shall come in force from the date on which the Authority deposits an amount equal to 75% of the Arbitral Award awarded to the [Concessionaire / Contractor] and shall remain in force until, the earlier of the [3 (three) years] from the date of such deposits or two (2) months from the date of the Court deciding the Appeal in favor of the [Concessionaire / Contractor].

8. Upon request made by the [Concessionaire / Contractor] for release of this Guarantee along with the particulars required hereunder, the Authority shall release the Guarantee forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
12. Notwithstanding anything contained herein:
 - (a) our liability under this Bank Guarantee shall not exceed (in words)
 - (b) this Bank Guarantee shall be valid upto; and
 - (c) we are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if the Authority serve upon us a written claim or demand on or before

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

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

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

NOTES:

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

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