

MODEL CONCESSION
AGREEMENT

FOR

SMALL ROAD PROJECTS

CONCESSION AGREEMENT

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is entered into on this the----- day of -----
-(Month) ----- (Year) at -----.

BETWEEN,

THE PRESIDENT OF INDIA in his executive capacity for the Government of India, represented by the Ministry of Surface Transport, Government of India, hereinafter referred to as '**GOI**' (which expression shall include its successors and assigns),

AND

M/s XXXX Limited, a company incorporated under the Companies Act, 1956, having its registered office at ----- hereinafter referred to as the "**Concessionaire**" (which expression shall include its permitted successors and assigns).

WHEREAS,

- A. GOI is keen to implement a project envisaging construction, operation and maintenance of ----- (more particularly described in Schedule 'A' and hereinafter referred to as "the Project") with private sector participation on Build, Operate and Transfer (BOT) basis and has carried out feasibility study for the Project;
- B. The Ministry of Surface Transport, Government of India (MOST) is responsible for development and maintenance of National Highways in India;

- C. For and on behalf of MOST, the Roads and Buildings Department¹ of Government of ----- invited tenders from eligible persons for implementing the Project;
- D. In response to the aforesaid invitation for tenders, MOST received bids from several persons including the Concessionaire/the Consortium² (as hereinafter defined) for implementing the Project;
- E. MOST, after evaluating the aforesaid bids, accepted the bid submitted by the Concessionaire/the Consortium and issued the Letter of Acceptance dated ----- (LOA) to the Concessionaire/the Consortium;
- F. ³In accordance with the requirements of the said tender/bid submitted by the Consortium, the Consortium has incorporated the Concessionaire as a special purpose vehicle to implement the Project on BOT basis, and GOI has agreed to grant to the Concessionaire, the Concession (as hereinafter defined) on the terms, conditions and covenants hereinafter set forth in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Accounting Year" means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.

"Agreement" means this agreement including Schedules 'A' through 'U' hereto, and any amendments thereto made in accordance with the provisions of this Agreement.

"Applicable Laws" means all laws, promulgated or brought into force and effect by GOI or STG including regulations and rules made thereunder, and judgements, decrees, injunctions, writs and orders of

¹ This recital would need changes depending on who invites tender.

² Reference to Consortium and the related provisions would be relevant only if the successful bidder was a Consortium.

³ This recital is Project specific – would be relevant only where the successful bidder being a consortium of bidders has floated SPV to implement the Project in accordance with bid conditions.

any court of record, as may be in force and effect during the subsistence of this Agreement.

"Applicable Permits" means all clearances, permits, authorisations, consents and approvals under or pursuant to Applicable Laws, required to be obtained and maintained by the Concessionaire, in order to implement the Project and to provide Project Facility in accordance with this Agreement.

"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.

"Bill of Quantities" means bill of quantities set forth in Schedule 'E'.

"Cashflow Projections" means the estimates of cashflows of the Project as set out in Schedule 'H'.

"Change in Law" means the occurrence of any of the following after the date of this Agreement :

- 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 this Agreement;
- d. a change in the interpretation or application of any Indian law by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement; or
- e. any change in the rates of any of the Taxes.

"COD" means the commercial operations date of the Project which shall be the date on which the Independent Engineer has issued the Completion Certificate or the Provisional Certificate upon completion of construction of the Project and which shall, subject to the provisions of this Agreement, be not later than-----.

"Commencement Date" means the date on which the physical possession of the Project Site is delivered by GOI to the Concessionaire, which shall not be later than 30 days from the date of this Agreement.

"Completion Certificate" means the certificate issued by the Independent Engineer pursuant to Article 9.3(d).

"Concession" shall have the meaning ascribed thereto in Article 2.1.

"Concession Period" means the period as applicable specified in Article 2.2.

"Concessionaire" means M/s. XXXX and shall include its successors and permitted assigns expressly approved by GOI.

"Consortium"⁴ means the consortium consisting of (i) AAAA (ii) BBBB and (iii) CCCC formed/ acting pursuant to the Memorandum of Understanding dated ----- (Schedule 'U') entered into by them, for the purpose of bidding for the Project and in the event of being successful to implement the Project through a special purpose vehicle to be formed and incorporated by them in India.

"Construction Works" means all works and things necessary to achieve commercial operation of the Project in accordance with this Agreement.

"Contractor" means Person with whom the Concessionaire has entered into/ may enter into all or any of the Project Agreements.

"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.

"Debt Due" means the aggregate of the following sums expressed in Rupees outstanding and payable to the Lenders under the Financing Documents:

- (i) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project (the "principal") which is outstanding as on the Termination Date but excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of GOI; and
- (ii) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-clause (i) above up to the date preceding the Termination Date but excluding (a) any interest, fees or charges that had fallen due one year prior to the Termination Date, and (b) penal interest or charges payable under the Financing Documents to the Lenders.

"Dispute" shall have the meaning ascribed thereto in Article 19.1.

"Dispute Resolution Procedure" means the procedure for resolution of Dispute set forth in Article 19.

⁴ This definition is project specific – would be required only where a consortium is the successful bidder and not otherwise.

"Drawings" means all of the drawings, designs, calculations and documents pertaining to the Project as set forth in Schedule 'K' and shall include "as built" drawings of the Project.

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

"Encumbrance" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site.

"Equity" means the sum expressed in Rupees representing the equity share capital of the Concessionaire and shall include the funds advanced by any member of the Consortium or by any of its shareholders to the Concessionaire for meeting equity component of the Total Project Cost. Provided, however, that for purposes of computing Termination Payment under this Agreement, Equity shall be reckoned as an amount that is arrived at after excluding from the equity share capital of the Concessionaire the sum by which the capital cost of the Project as stated by the Concessionaire for purposes of claiming Termination Payment exceeded the Total Project Cost unless such excess cost has been incurred with the approval of the Lenders and GOI.⁵ Provided further, any equity brought in after COD shall not be considered or taken into account for the purpose of Termination Payment.

"Exempted Vehicles" means vehicles specified as such in the Fee Notification.

"Fee" means the fee chargeable for a vehicle using the Project Facility in accordance with the Fee Notification.

"Fee Notification" means the notification as per draft appended hereto as Schedule 'F' to be published by GOI in the Extra Ordinary Gazettee of India, in exercise of the powers conferred by the relevant provisions of the National Highways Act, 1956 (the NH Act) and the rules framed thereunder, authorising the levy and collection of the Fee by the Concessionaire in accordance with the provisions of this Agreement and includes a revised Fee Notification, if any, issued pursuant to Article 4.2..

⁵ This would ensure that only genuine cost overrun funded by equity is included in the term 'Equity'. We recommend that this Agreement should recognise and address the issue of genuine cost overruns.

"Financing Documents" means the documents executed by the Concessionaire in respect of financial assistance (including refinancing) for the Project to be provided by the Lenders by way of loans, advances, subscription to debentures and other debt instruments and guarantees, risk participation, take-out financing or any other form of credit enhancement and shall include loan agreements, guarantee agreements, subscription agreements, notes and any documents providing security for such financial assistance, and includes amendments or modifications made thereto.

"Financial Close" means the date on which the Financing Documents providing for funding by the Lenders have become effective and the Concessionaire has immediate access to such funding under the Financing Documents.

"Force Majeure Event" shall have meaning ascribed thereto in Article 15.1.

"GOI" means the Government of India.

"Good Industry Practice" means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the provisions of the NH Act, and would mean good engineering practices in the design, engineering, construction and project management and which would be expected to result in the performance of its obligations by the Concessionaire and in the operation and maintenance of the Project in accordance with this Agreement, Applicable laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency.

"Government Agency" means GOI, STG or any state government or governmental, department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project Assets or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

"Implementation Period" means the period beginning from the Commencement Date and ending on the COD

"Independent Engineer" means the Independent Engineer appointed pursuant to Article 6.1.

⁶ Implementation Period shall be estimated construction period plus a reasonable time of say 46 months required for the Concessionaire for all preconstruction activities such as investigation/study, designing, obtaining necessary approvals and arrangement of finance.

“Indirect Political Event” shall have the meaning ascribed thereto in Article 15.3.

“Initial Investment” shall have the meaning ascribed thereto in Schedule ‘H’

“Internal Rate of Return” shall have the meaning ascribed thereto in Schedule ‘H’.

“Lenders” means financial institutions, banks, funds, trusts or trustees of the holders of debentures or other securities their successors and assigns, who provide financial assistance to the Concessionaire under any of the Financing Documents.

“Maintenance Manual” shall have the meaning ascribed to it in Article 9.5.

“Maintenance Programme” shall have the meaning ascribed to it in Article 9.6.

“Material Adverse Effect” means material adverse effect on (a) the ability of the Concessionaire to observe and perform any of its rights and obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

“Material Breach” means a breach by either Party of any of its obligations under this Agreement which has/ likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure within the Cure Period.

“Minimum Maintenance Requirements” means minimum maintenance requirements for the maintenance of the Project as set forth in Schedule ‘O’.

“Non Political Event” shall have the meaning ascribed thereto in Article 15.2.

“O&M” means the operation and maintenance of the Project during Operations Period including but not limited to functions of maintenance, collection and retention of Fees and performance of other services incidental thereto.

“O&M Contract” means the Operation and Maintenance Contract that may be entered into between the Concessionaire and the O&M Contractor for O&M of the Project/Project Facility.

“O&M Contractor” means the person or entity with whom the Concessionaire has entered into an O&M Contract for discharging O&M functions for and on behalf of the Concessionaire.

"O&M Expense" means expenses incurred by or on behalf of the Concessionaire, duly certified by its Statutory Auditors for all regularly scheduled and reasonably anticipated O&M during Operations Period, including, without limitation (a) all cost of salaries and other employee compensation and contract fee payable to the O&M Contractor, if any, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all franchise, excise, property and other similar taxes and all costs and fees incurred in order to obtain and maintain all Applicable Permits necessary for the O&M of the Project/Project Facility at its full design capacity, (e) all repair, replacement and maintenance costs of the Project/Project Facility, and (f) all other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the operation and maintenance of the Project according to the Specifications and Standards at its full design capacity.

"Operations Period" means the period commencing from COD and ending at the expiry of the Concession Period.

"Parties" means the parties to this Agreement collectively and "Party" shall mean either of the Parties to this Agreement individually.

"Performance Security" means the Performance Security for construction or Performance Security for operation and maintenance as applicable in terms of Article 3.

"Person" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or Government Agency or any other legal entity.

"Political Event" shall have the meaning ascribed thereto in Article 15.4.

"Project" means the project described in Schedule 'A' which the Concessionaire is required to design, engineer, procure, finance, construct, operate, maintain and transfer in accordance with the provisions of this Agreement.

"Project Agreements" means collectively this Agreement, any contract for the design, engineering, procurement and construction of the Project, O&M Contract and any other material contract (other than the Financing Documents) entered into or may hereafter be entered into by the Concessionaire in connection with the Project.

"Project Assets"⁷ means all physical and other assets relating to and forming part of the Project including but not limited to (i) rights over the Project Site in the form of license, right of way or otherwise, (ii) tangible assets such as civil works including foundations, embankments,

⁷ Some of the assets mentioned here may or may not be relevant to a specific project, hence suitable deletion/addition which are project specific needs to be made.

pavements, road surface, interchanges, bridges, approaches to bridges and flyovers, road overbridges, drainage works, lighting facilities, traffic signals, sign boards, milestones, Toll Plaza, equipment for the collection of tolls or relating to regulation of traffic, electrical works for lighting on the Project, telephone and other communication systems and equipment for the Project, rest areas, wayside amenities, administration and maintenance depots, relief centers, service facilities etc. (iii) Project Facility situate on the Project Site, (iv) the rights of the Concessionaire under any Project Agreements, (v) financial assets, such as security deposits for electricity supply, telephone and other utilities, etc., (vi) insurance proceeds subject to Lenders' rights thereto and (vii) Applicable Permits and authorisations relating to or in respect of the Project.

"Project Completion" shall have the meaning ascribed thereto in Article 9.2.

"Project Completion Schedule" means the progressive Project milestones set forth in Schedule 'D' for the implementation of the Project.

"Project Facility" means collectively the facilities on the Project Site to be constructed, built, installed, erected or provided by the Concessionaire for use of the traffic by implementing the Project and more specifically set out in Schedule 'C'.

"Project Site" means the real estate particulars whereof are set out in Schedule 'B' on which the Project is to be implemented and the Project Facility is to be provided in accordance with this Agreement.

"Provisional Certificate" shall have the meaning ascribed to it in Article 9.3(e).

"Punch List" shall have the meaning ascribed thereto in Article 9.3(e).

"PWD Engineer" means the Engineer in the Public Works Department/ Roads and Building Department of STG designated by GOI under written communication to the Concessionaire, to undertake, perform, carry out such functions, duties, responsibilities, services and activities set forth in Part 'B' of Schedule 'J' hereto and elsewhere in this Agreement.

"Rs." or "Rupees" refers to the lawful currency of the Republic of India.

"SBI PLR" means the prime lending rate per annum for loans with 1 (one) year maturity as fixed from time to time by the State Bank of India, and in the absence of such rate, the average of the prime lending rates for loans with 1 (one) year maturity fixed by the Bank of India and the Bank of Baroda and failing that any other arrangement that substitutes such prime lending rate as mutually agreed between the Parties.

"Scheduled Project Completion Date" shall have the meaning set forth in Article 9.2(c).

"Specifications and Standards" means the specifications and standards relating to the quality, capacity and other requirements for the Project as set forth in Schedule 'L' and any modifications thereof, or additions thereto as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by GOI.

"Sponsors" shall mean (i) ----- (ii) ----- (iii) ----- and (iv)-----.

"STG" means the government of the State of -----.

"State Support Agreement" means the agreement substantially in the form set out in Schedule 'I' to be entered into amongst STG, GOI and the Concessionaire.

"Statutory Auditors" means a reputed firm of Chartered Accountants duly licensed to practice in India acting as statutory auditors of the Concessionaire.

"Steering Group" means the Steering Group constituted pursuant to Article 7.1.

"Substitution Agreement" means the agreement to be entered into among the Concessionaire, GOI, STG and the Lenders in the form set forth in Schedule 'T' providing, inter alia, for the substitution of the Concessionaire by another Person subject to and in accordance with the provisions of this Agreement and the Substitution Agreement.

"Termination" means termination of this Agreement and the Concession hereunder pursuant to a Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include the expiry of this Agreement/Concession due to expiry to the Concession Period in the normal course.

"Termination Date" means the date on which the Termination occurs which shall be the date on which Termination Notice has been delivered or deemed to have been delivered by a Party issuing the same to the other Party in accordance with the provisions of this Agreement.

"Termination Notice" means a communication in writing by a Party to the other Party regarding Termination in accordance with the applicable provisions of this Agreement.

"Termination Payment" means the aggregate of the amounts payable by GOI to the Concessionaire under this Agreement upon Termination

including Termination Payment receivable by the Concessionaire pursuant to Article 14.1.

“Tests” means the tests to be carried out as set forth in and in accordance with Schedule ‘M’ to determine the Project Completion and its certification by the Independent Engineer prior to commencement of commercial operation of the Project.

“Toll Plaza” means collectively the structures, equipment, system or mechanism and barriers erected or installed for the purpose of regulating the entry/exit of vehicles using the Project and for collection of Fee in accordance with the provisions of this Agreement.

“Total Project Cost” means the lowest of the following :

- (a) a sum of Rs. [] millions⁸;
- (b) actual capital cost of the Project upon completion of the Project as certified by the Statutory Auditors; or
- (c) total project cost as set forth in Financing Documents.

“WPI” means the wholesale price index published monthly by the Ministry of Industry, GOI and shall include any index which substitutes the WPI.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (b) references to Indian law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in any State or Union Territory forming part of the Union of India;
- (c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity) ;
- (d) the headings are for convenience of reference only and shall not be used in, and shall not affect, the/construction or interpretation of this Agreement;

⁸ A very conservative estimation of this amount would considerably impact the bankability of this Agreement. It is rather recommended that the definition be modified by omitting reference to project cost specified in the bid. In the alternative a realistic estimation of the sum to be specified in (a) should be ensured.

- (e) terms and words beginning with capital letters and defined in this Agreement including the Schedules;
- (f) the words "include" and "including" are to be construed without limitation;
- (g) references to "construction" include, unless the context otherwise requires investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) any reference to month shall mean a reference to a calendar month;
- (k) the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (l) 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;
- (m) references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- (n) 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 effectual only if it is in writing under the hands of duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (o) 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; and
- (p) 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 or liquidated damages;

- (q) unless otherwise expressly provided in this Agreement, any documentation required to be provided or furnished by the Concessionaire to GOI/Steering Group and/or the Independent Engineer shall be provided free of cost and in three copies and if GOI/Steering Group 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.

1.2.2 Measurements and Arithmetic Conventions

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

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

- (i) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- (ii) between the Articles and the Schedules, the Articles shall prevail;
- (iii) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (iv) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;
- (v) between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2

CONCESSION AND PROJECT SITE

2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, GOI hereby grants and authorises the Concessionaire to investigate, study, design, engineer, procure, finance, construct, operate and maintain the Project/Project Facility and to exercise and/or enjoy the rights, powers, privileges, authorisations and entitlements as set forth in this Agreement, including but not limited to the right to levy, demand, collect and appropriate Fee from vehicles and Persons liable

to payment of Fee for using the Project/ Project Facility or any part thereof (collectively "the Concession").

2.2 Concession Period

The Concession hereby granted is for a period of ----- years --- months and ----- days commencing from the Commencement Date (the Concession Period) during which the Concessionaire is authorised to implement the Project and to operate Project Facility in accordance with the provisions hereof.

Provided that ;

- (a) in the event of the Concession being extended by GOI beyond the said period of ---- years ---- months and ----- days in accordance with the provisions of this Agreement, the Concession Period shall include the period/aggregate period by which the Concession is so extended, and
- (b) in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Commencement Date and ending with the Termination.

2.3 Acceptance of the Concession

The Concessionaire hereby accepts the Concession and agrees and undertakes to implement the Project/provide Project Facility, and to perform/discharge all of its obligations in accordance with the terms and conditions set forth in this Agreement.

2.4 Project Site

- (a) GOI hereby undertakes to handover to the Concessionaire physical possession of the Project Site free from Encumbrance within 30 days from the date of this Agreement together with the necessary rights of way/way leaves for the purpose of implementing the Project in accordance with this Agreement.
- (b) GOI confirms that upon the Project Site being handed over pursuant to the preceding sub-article (a) the Concessionaire shall have the exclusive right to enter upon, occupy and use the Project Site and to make at its costs, charges and expenses such development and improvements in the Project Site as may be necessary or appropriate to implement the Project and to provide Project Facility subject to and in accordance with the provisions of this Agreement.

2.5 Use of the Project Site

The Concessionaire shall not without prior written consent or approval of GOI use the Project Site for any purpose other than for the purposes of the Project/the Project Facility and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by GOI.

2.6 Information about the Project Site

The information about the Project Site set out in Schedule 'B' is provided by GOI in good faith and with due regard to the matters for which such information is required by the Concessionaire. GOI agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site, which GOI may now possess or may hereafter come to possess. Subject to this GOI makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Project Site.

2.7 Peaceful Possession

GOI warrants that :

- (a) the Project Site together with the necessary right of way/ way leaves having been acquired through the due process of law belongs to and vested in GOI, and that GOI has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement;
- (b) the Concessionaire shall have no obligation/liability as to payment of any compensation whatsoever to or the rehabilitation and resettlement of any Person from whom the Project Site or any part thereof had been acquired and that the same shall be the sole responsibility of GOI; and
- (c) the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/ charge on the Project Site or any part thereof, GOI shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any direct or consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

2.8 Rights and Title over the Project Site

- (a) The Concessionaire shall have exclusive rights to the use of the Project Site in accordance with the provisions of this Agreement

and for this purpose it may regulate the entry and use of the same by third parties.

- (b) The Concessionaire shall allow access to, and use of the Project Site/ Project Facility for telegraph lines, electric lines or such other public purposes as GOI may specify, provided that such access or use does not result in a Material Adverse Effect or closure of Project Facility for a period exceeding 120 days and that GOI undertakes to ensure that the Project Facility is restored at the cost and expenses of GOI as per the Specifications and Standards. Where such access or use causes any loss of Fee to the Concessionaire, GOI shall compensate the Concessionaire for such loss of Fee by increasing the Concession Period suitably.
- (c) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement provided however that nothing contained herein shall be construed or interpreted as restriction on the right of the Concessionaire to appoint any Contractor for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project / Project Facility.

2.9 Environmental Clearance

GOI confirms that the Project/Project Site has been granted clearances relating to environmental protection and conservation as listed in Schedule 'G'⁹. The Concessionaire shall, however, apply for and obtain any other Applicable Permits related to environmental matters that may be necessary or required for the Project under any Applicable Laws.

ARTICLE 3

PERFORMANCE SECURITY

3.1 Performance Security

- (a) The Concessionaire shall, for due and punctual performance of its obligations during the Implementation Period, deliver to GOI, simultaneously with the execution of this Agreement a bank guarantee from a scheduled bank acceptable to GOI, in the form set forth in Schedule 'Q', (the "Performance Security for construction") for a sum of Rs. -----¹⁰.
- (b) The Concessionaire shall for due and punctual performance of obligations during the Operations Period deliver to GOI, on or before the COD, the bank guarantee from a scheduled bank

⁹ The environmental clearances required for the Project.

¹⁰ 3% of estimated project cost, to be indicated in the Bid Document

acceptable to GOI in form set forth in Schedule 'R' (Performance Security for operation and maintenance) for a sum of Rs. -----¹¹.

3.2 Fresh Performance Security

In the event of the encashment of the Performance Security by GOI pursuant to Encashment Notice issued in accordance with the provisions of Article 16 the Concessionaire shall within 30 (thirty) days of the Encashment Notice furnish to GOI fresh Performance Security failing which GOI shall be entitled to terminate this Agreement in accordance with the provisions of Article 16. The provisions set forth in Article 3.1 above shall apply mutatis mutandis to such fresh Performance Security.

ARTICLE 4

FEE

4.1 Levy, Collection and appropriation of Fee

- (a) Subject to the provisions of this Agreement, the Concessionaire shall during Operations Period be entitled to levy, demand and collect Fee in accordance with the Fee Notification¹² and to appropriate the same.
- (b) GOI undertakes to publish the Fee Notification as per Schedule 'F' within 180 days from the Scheduled Project Commencement Date.
- (c) ¹³Subject to the Fee Notification, the Concessionaire may formulate, publish and implement appropriate scheme(s) for frequent users as may reasonably be required by local circumstances from time to time.
- (d) The Concessionaire shall not levy and collect any Fee until it has received Completion Certificate or the Provisional Certificate.
- (e) The Concessionaire shall not collect any Fee in relation to Exempted Vehicles.
- (f) The Concessionaire shall conspicuously display the Fee at the Toll Plazas and also at a distance about 200 meters ahead of Toll Plazas on either side of Project Facility.

¹¹ 1% of estimated project cost, to be indicated in the Bid Document.

¹² Besides the initial fee, this would take into account increase in Fee biannually at 10% of the prevailing Fee – Revised Fee calculated and rounded off to nearest rupee shall be indicated for each 2 year period commencing from 2 years after COD.

¹³ Depending on the feasibility study for a specific project, it might be possible to stipulate a special toll regime for frequent users of the Project Facility and the same could be specified in the bid document.

4.2 Revision of Fee

In the event of extension in Concession Period in accordance with provisions of this Agreement, GOI shall issue revised Fee Notification(s) taking into account increase in Fee @ 10% every two years.

ARTICLE 5

OBLIGATIONS AND UNDERTAKINGS

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement, the Parties agree and undertake as under :

5.1 General Obligations of the Concessionaire

The Concessionaire shall at its own cost and expense :

- (i) investigate, study, design, construct, operate and maintain the Project Assets/Project Facility in accordance with the provisions of this Agreement, Good Industry Practice and Applicable Laws;
- (ii) obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance with thereof at all times during the Concession Period;
- (iii) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (iv) ensure and procure that each Project Agreement contains provisions that would entitle GOI or a nominee of GOI to step into such agreement at GOI's discretion, in place and substitution of the Concessionaire in the event of Termination pursuant to the provisions of this Agreement;
- (v) provide all assistance to the Independent Engineer/PWD Engineer and Steering Group as they may reasonably require for the performance of their duties and services under this Agreement;
- (vi) provide to the Steering Group reports on a regular basis during the Implementation Period and the Operations Period in accordance with the provisions of this Agreement;
- (vii) appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements as may be necessary;

- (viii) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (ix) develop, implement and administer a surveillance and safety program for the Project/Project Facility and the users thereof and the Contractors personnel engaged in the provision of any services under any of the Project Agreements including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (x) take all reasonable precautions for the prevention of accidents on or about the Project Site/Project Facility and provide all reasonable assistance and emergency medical aid to accident victims;
- (xi) not to place or create nor to permit any Contractor or other person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Project Assets, or on any rights of the Concessionaire therein, save and except as expressly set forth in this Agreement;
- (xii) make its own arrangements for quarrying, if necessary, and observe and fulfill the environmental and other requirements under the Applicable Laws and Applicable Permits;
- (xiii) be responsible for safety, soundness and durability of the Project Facility including all structures forming part thereof and their compliance with the Specifications and Standards;
- (xiv) ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (xv) make payment to Police Department or any Government Agency, if required, for provision of such services as are not provided in the normal course or are available only on payment;
- (xvi) operate and maintain the Project at all times during the Operations Period in conformity with this Agreement including but not limited to the Specifications and Standards, the Maintenance Programme and Good Industry Practice;
- (xvii) remove promptly according to Good Industry Practice, from the Project Site, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including without limitation accident debris) and keep the

Project Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits.

5.2 Obligations of the Concessionaire during Implementation Period

- (a) The Concessionaire shall, before commencement of construction of the Project;
- (i) submit to the Independent Engineer with due regard to Project Completion Schedule and Scheduled Project Completion Date, its design, engineering and construction time schedule and shall formulate and provide Critical Path Method (CPM)/ Project Evaluation and Review Technique (PERT) charts for the completion of the said activities;
 - (ii) have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project and to deal with the Independent Engineer/the Steering Group and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (iii) undertake, do and perform all such acts, deeds and things as may be necessary or required to adhere to the Project Completion Schedule and to achieve Project Completion under and in accordance with this Agreement;
 - (iv) construct, provide and maintain a furnished site office accommodation for the Independent Engineer at the Project Site; and
 - (v) provide and maintain an adequately equipped field laboratory as required for the Project Site control on the quality of materials and the Construction Works.
- (b) The Concessionaire shall, at all times, afford access to the Project Site, to the Steering Group, the authorised representatives of GOI, the Independent Engineer and officer of any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.
- (c) ¹⁴The Concessionaire shall:

¹⁴ This would be project specific where construction of road over bridge across a rail line or rail under pass would be involved.

- (i) apply for and obtain all necessary clearances and/or approvals for the construction of Road Over Bridge (ROB)/ Road Under Bridge (RUB) from the Ministry of Railways;
 - (ii) shall apply for and obtain all necessary approvals of the General Arrangement Drawing (GAD), detailed designs and all construction drawings for the construction of ROB from the concerned zone of Railways;
 - (iii) make payments, if any, to Railways for (a) for approval of designs, (b) shifting of utilities, (c) safety features, (d) supervision of construction and (e) maintenance during the Concession Period;
 - (vi) shall also make arrangements for entering into an agreement with the concerned State Government and/or railway zone for construction of the ROB/RUB as per the requirements of the Ministry of Railway. A model agreement is provided at Schedule 'S'.
- (d) The Concessionaire shall be responsible for ensuring that any existing utility on, under or above the Project Site is kept in continuous satisfactory use, if necessary, by the use of suitable temporary or permanent diversions.
- (e) The Concessionaire shall bear all costs and charges for special or temporary rights of way required by it in connection with access to the Project Site. The Concessionaire shall obtain at its cost such facilities on or outside the Project Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement .

5.3 Obligations of GOI.

GOI shall:

- (i) hand over the physical possession of Project Site together with necessary right of way/ way leaves to the Concessionaire within 30 days from the date of this Agreement, free from any Encumbrance;
- (ii) procure execution of the State Support Agreement within 30 days from the date of this Agreement;
- (iii) grant or where appropriate provide necessary assistance to the Concessionaire in securing Applicable Permits;
- (iv) grant in a timely manner all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek from GOI in connection with implementation

of the Project and the performance of the Concessionaire's obligations under this Agreement;

- (v) subscribe to the Substitution Agreement within 15 days of intimation by the Concessionaire regarding Financial Close;
- (vi) not include any additional category of vehicles in the list of Exempted Vehicles during the Concession Period;
- (vii) ensure peaceful use of the Project Site by the Concessionaire under and in accordance with the provisions of this Agreement without any let or hindrance from GOI or persons claiming through or under it;
- (viii) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities/utilities;
- (ix) procure that no barriers are erected or placed by GOI or any Governmental Agency on the Project Facility/Project Site, except on account of any law and order situation or upon national security considerations;
- (x) assist the Concessionaire in obtaining necessary authority to regulate traffic on the Project Site/Project Facility subject to and in accordance with the Applicable Laws;
- (xi) assist the Concessionaire in obtaining police assistance against payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Site/Project Facility and implementing this Agreement in accordance with the provisions hereof;
- (xii) observe and comply with all its obligations set forth in this Agreement.

ARTICLE 6

INDEPENDENT ENGINEER

6.1 Appointment of Independent Engineer

- (a) The Concessionaire shall within 30 days from the date hereof submit to GOI a panel consisting of atleast three reputed firms or companies or body corporates or a combination thereof, having necessary expertise for appointment of the Independent Engineer,

to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Part A of Schedule 'J' and elsewhere in this Agreement.

- (b) GOI shall within 30 days from the date of receipt of such panel, appoint the Independent Engineer from out of such panel, and communicate the same to the Concessionaire. The tenure and the scope of work and the reports to be submitted by the Independent Engineer shall be as set out in Part A of Schedule 'J'.
- (c) The Independent Engineer shall submit to the Steering Group reports at least once every month or more frequently as the situation may warrant on the progress of implementation of the Project. Such reports of Independent Engineer shall include but not be limited to the matters and things set forth in said Schedule 'J'.
- (d) The Independent Engineer shall submit bills for periodic payment in accordance with terms of its appointment to GOI. Upon certification of such bills being intimated in writing by GOI, the Concessionaire shall within 15 days of such intimation, pay to GOI 50% of the amount of bills certified by GOI.
- (e) If either party disputes any advice, instruction or decision of the Independent Engineer, the same shall be resolved in accordance with the Dispute Resolution Procedure.

6.2 Termination and Fresh Appointment

If GOI or the Concessionaire have reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, GOI may terminate the appointment of the Independent Engineer and appoint another Independent Engineer in accordance with the preceding sub - articles (a) and (b) of Article 6.1 above.

ARTICLE 7

STEERING GROUP

7.1 Constitution

GOI shall through an office order, constitute a Steering Group comprising of a representative each of the GOI, STG and the Concessionaire within 60 days of this Agreement.

7.2 Functions

The Steering Group shall hold meetings atleast once every three months to review the progress during the Implementation Period and every six months during the Operations Period. The Steering Group shall carry out such functions and exercise such powers as are prescribed/conferred under this Agreement.

ARTICLE 8

DRAWINGS

8.1 Preparation of Drawings.

The Concessionaire shall, at its cost, charges and expenses, cause Drawings to be prepared in accordance with the Specification and Standards. The Concessionaire may, for this purpose, adopt with or without any modifications the Drawings, if any, made available by GOI, provided, notwithstanding such adoption, the Concessionaire shall be solely responsible for the adequacy of the Drawings.

8.2 Review and Approval of Drawings.

- (a) The Concessionaire shall promptly and in such sequence as is consistent with the Project Completion Schedule, submit a copy each of all Drawings to the Independent Engineer and the Steering Group .
- (b) By forwarding the Drawings to the Independent Engineer and the Steering Group pursuant to sub-article (a) above, the Concessionaire represents that it has determined and verified that the design and engineering including field construction criteria related thereto are in conformity with the Specifications and Standards.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, Independent Engineer shall review the same taking into account, interalia, comments of the Steering Group, if any, on such Drawings made available to the Independent Engineer, and convey its comments/observations, if any, thereon to the Concessionaire with particular reference to the conformity or otherwise with the Specifications and Standards. It is expressly agreed that notwithstanding any review or failure to review by the Independent Engineer or the Steering Group or any comments/observations of the Independent Engineer/ Steering Group, GOI shall not be liable for the adequacy of the Drawings and that the Concessionaire shall solely be responsible therefor and shall not be relieved or absolved in any manner whatsoever of its obligations, duties and liabilities as set forth in this Agreement.
- (d) If the comments/observations of Independent Engineer indicate that the Drawings are not in conformity with the Specifications and Standards, such Drawings shall be revised by the Concessionaire

to the extent necessary and resubmitted to Independent Engineer for further review. Independent Engineer shall give its observations and comments, if any, within 15 (fifteen) days of the receipt of such revised Drawings. Provided, however, that any observations or comments of Independent Engineer or failure of Independent Engineer to give any observations or comments on such revised Drawings shall not relieve or absolve the Concessionaire of its obligation to conform to such Specifications and Standards.

- (e) If the Independent Engineer does not object to the Drawings submitted to it by the Concessionaire within a period stipulated in above sub-article (c) or (d) as applicable, the Concessionaire shall be entitled to proceed with the Project accordingly.
- (f) The Concessionaire shall be responsible for delays in Project Completion and consequences thereof caused by reason of any Drawings not being in conformity with the Specifications and Standards and shall not be entitled to seek any relief in this regard from GOI.
- (g) Within 90 (ninety) days of the COD, the Concessionaire shall furnish to GOI three copies of "as built" Drawings duly vetted by the Independent Engineer reflecting the Project as actually designed, engineered and constructed, including without limitation an "as built" survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facility.

ARTICLE 9

PROJECT IMPLEMENTATION AND OPERATIONS

9.1 Monitoring and Supervision during Implementation

- (a) During the Implementation Period, the Concessionaire shall furnish to the Steering Group quarterly reports on actual progress of the Construction Works and furnish any other relevant information as may reasonably be required by the Steering Group.
- (b) For the purposes of determining that Construction Works are being undertaken in accordance with Specifications and Standards and Good Industry Practice and for quality assurance, the Concessionaire shall carry out such Tests at such time and frequency and in such manner as may be required by the Independent Engineer or as may be necessary in accordance with Good Industry Practice. The Concessionaire shall with due diligence carry out all such Tests in accordance with the instructions and under the supervision of the Independent Engineer. The Concessionaire shall promptly carry out such remedial measures as may be necessary to cure the defects or deficiencies, if any, indicated in such Test results. The Independent Engineer shall furnish the results of such Tests to the Steering

Group within seven days thereof and also promptly report to the Steering Group the remedial measures taken by the Concessionaire to cure the defects/deficiencies if any indicated in the Test results.

- (c) If the Independent Engineer reasonably determines that the rate of progress of the construction of the Project is such that the Project Completion is not feasible on or before the Scheduled Project Completion Date, it shall so notify the Concessionaire and the Steering Group. Thereupon, the Concessionaire shall within 15 (fifteen) days thereof notify the Steering Group and the Independent Engineer about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.
- (d) Upon recommendation of the Independent Engineer, Steering Group may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if in the reasonable opinion of the Steering Group such work is being carried on in a manner which threatens the safety of the Construction Works or the users of the Project.
- (e) The Concessionaire shall upon, instructions of the Steering Group pursuant to sub-article (d) above suspend the Construction Works or any part thereof as the case may be, for such time and in such manner as may be specified by Steering Group and the costs if any incurred by GOI during such suspension to properly protect and secure the Construction Works or such part thereof as is necessary in the opinion of the Steering Group ("Preservation Costs"), shall be borne by the Concessionaire.
- (f) If the Steering Group issues any instructions requiring suspension of Construction Works for any reason other than default or breach of this Agreement by the Concessionaire –
 - (i) the Project Completion Schedule and the Scheduled Project Completion Date shall be extended by the period of suspension, and
 - (ii) the Concession Period shall be extended in accordance with the recommendations of the Independent Engineer pursuant to and in accordance with sub-article (g) below.
- (g) Independent Engineer shall add the Preservation Costs if any incurred by the Concessionaire to the Initial Investment in the Cashflow Projections taking into account the resultant loss of revenue due to suspension of Construction Works and determine extension to the Concession Period in order to maintain the Internal Rate of Return. Provided, that the projections for years beyond the Concession Period shall be average of three years immediately preceding the last year of the original Cashflow

Projections. Thereupon the Independent Engineer shall communicate its recommendation to the Steering Group.

9.2 Project Completion

- (a) The Project shall be deemed to be complete and open to traffic only when the Completion Certificate or the Provisional Certificate is issued by the Independent Engineer in accordance with the provisions of Article 9.3 (the "Project Completion").
- (b) The Concessionaire guarantees that the Project Completion shall be achieved in accordance with the provisions of this Agreement on a date not later than ----- months from the Commencement Date ("the Scheduled Project Completion Date").
- (c) If the Project Completion is not achieved by the Scheduled Project Completion Date for any reason other than Force Majeure or reasons attributable to GOI, the Concessionaire shall be liable to pay liquidated damages for delay beyond the Scheduled Project Completion Date, to the extent of Rs. ----- per day for every day of delay. Provided that such liquidated damages do not exceed in aggregate ¹⁵Rs. ----- . Provided further that nothing contained in this sub-article (d) shall be deemed or construed to authorise any delay in achieving Project Completion.
- (d) If the COD does not occur within 180 days from the Scheduled Project Completion Date, GOI shall subject to the provisions of this Agreement relating to excuse from performance of the Concessionaire's obligations hereunder, be entitled to Terminate this Agreement in accordance with the provisions of Article 16.2.

9.3 Tests

- (a) At least 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer and the Steering Group of the same and shall give notice to them of its intent to conduct Tests. The Concessionaire shall give the Independent Engineer and the Steering Group at least 10 (ten) days prior notice of the actual date on which it intends to commence the Tests and at least 7 (seven) days prior notice of the commencement date of any subsequent Tests.
- (b) All Tests shall be conducted in accordance with Schedule 'M' and the Applicable Laws and Applicable Permits. The Steering Group shall have the right to suspend or postpone any Test if it is reasonably anticipated or determined during the course of the Test that the performance of the Project or any part thereof does not meet the Specifications and Standards. The Steering Group may designate a representative with suitable qualifications and experience to witness and observe the Tests.

¹⁵ Maximum 5% of the estimated project cost evenly spread over 180 day period.

- (c) The Independent Engineer shall monitor the results of the Tests to determine the compliance of the Project with the Specifications and Standards and shall provide to the Steering Group copies of all Test data including detailed Test results.
- (d) Upon the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire a certificate substantially in the form set forth in Schedule 'N' (the "Completion Certificate").
- (e) The Independent Engineer may at the request of the Concessionaire issue a provisional certificate of completion ("Provisional Certificate") if the Tests are successful and all parts of Project can be legally, safely and reliably opened commercial operation though certain works or things forming part thereof are not yet complete. In such an event, Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire ("Punch List"). All Punch List items shall be completed by the Concessionaire within 120 (one hundred twenty) days of the date of issue of such Provisional Certificate. Upon completion of all Punch List items to the satisfaction of the Independent Engineer, it shall issue the Completion Certificate to the Concessionaire with a copy each marked to GOI and STG. In the event of the Concessionaire's failure to complete the Punch List items within the said period of 120 days, GOI may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Concessionaire. The Concessionaire shall reimburse to GOI on demand the entire costs incurred by GOI in completing the Punch List items.
- (f) If the Independent Engineer certifies that it is unable to issue the Completion Certificate or Provisional Certificate because of events or circumstances which excuse the performance of the Concessionaire's obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Concessionaire shall re-schedule the Tests and hold the same as soon as reasonably practicable.
- (g) The Concessionaire shall bear all the expenses relating to Tests under this Agreement.

9.4 Operation and Maintenance

The Concessionaire shall operate and maintain the Project/Project Facility by itself, or through a Contractor and if required, modify, repair or otherwise make improvements to the Project/ Project Facility to comply with Specifications and Standards, and other requirements set forth in this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits and manufacturer's

guidelines and instructions with respect to Toll Plaza. More specifically, the Concessionaire shall be responsible for :

- (i) ensuring smooth and uninterrupted flow of traffic during normal operating conditions;
- (ii) charging, collecting and appropriating Fee in accordance with the Fee Notification and this Agreement;
- (iii) minimizing disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project/ Project Facility by providing a rapid and effective response and for this purpose maintaining liaison with emergency services;
- (iv) undertaking routine maintenance including prompt repairs of potholes, cracks, concrete joints, drains, line marking, lighting and signage;
- (v) undertaking maintenance works in accordance with Maintenance Manual and the Maintenance Programme;
- (vi) preventing with the assistance of concerned law enforcement agencies where necessary, any unauthorised entry to and exit from the Project;
- (vii) preventing with the assistance of the concerned law enforcement agencies where necessary, any encroachments on the Project/Project Site and preserving the right of way of the Project;
- (viii) adherence to the Safety Standards set out in Schedule 'P'.

9.5 Maintenance Manual

The Concessionaire shall in consultation with the Steering Group evolve not later than 120 (one hundred twenty) days before the Scheduled Project Completion Date, a manual for the regular and preventive maintenance (the "Maintenance Manual"), and shall ensure and procure that at all times during the Operations Period, the Project is maintained in a manner that it complies with the Specifications and Standards. The Concessionaire shall supply, at least two months before the COD, 10 (ten) copies of the Maintenance Manual to the Steering Group.

9.6 Maintenance Programme

- (a) Not later than forty five (45) days before the beginning of each Accounting Year, the Concessionaire shall provide to PWD Engineer, its proposed programme of preventive and other scheduled maintenance of the Project subject to the Minimum Maintenance Requirements set forth in Schedule 'O' necessary to maintain the Project at all times in conformity with the

Specifications and Standards (the "Maintenance Programme"). Such Maintenance Programme shall include but not be limited to the following:

- (i) intervals and procedures for the carrying out of inspection of all elements of the Project;
 - (ii) criteria to be adopted for deciding maintenance needs;
 - (iii) preventive maintenance schedule;
 - (iv) intervals at which the Concessionaire shall carry out periodic maintenance; and
 - (v) intervals for major maintenance and the scope thereof.
- (b) Maintenance shall include replacement of equipment, consumables, horticultural maintenance and repairs to equipment, pavements, bridges, structures and other civil works which are part of the Project/Project Facility.
- (c) The Concessionaire shall keep the Project Facility in a clean, tidy and orderly condition free of litter and debris.
- (d) The Concessionaire shall be responsible for the maintenance of the approach roads to and underpasses, overpasses and drainages within the Project Site in accordance with Good Industry Practice.

9.7 Vehicle Breakdown and Accident

- (a) In the case of unsafe conditions, vehicle breakdowns and accidents, the Concessionaire shall follow the relevant operating procedures, which shall include the setting up of temporary traffic cones and lights as well as the removal of obstruction and debris expeditiously. Such procedures shall be in accordance with Applicable Laws, Applicable Permits and the provisions of this Agreement.
- (b) The Concessionaire shall ensure that any diversion or interruption of traffic is remedied without delay. The Concessionaire's responsibility for rescue operations on the Project shall be limited to the removal of vehicles or debris or any other obstruction, which may endanger or interrupt the smooth traffic flow on the Project.

9.8 Emergency De-commissioning

- (a) If, in the reasonable opinion of the Concessionaire there exists an Emergency which warrants decommissioning and closure to traffic of whole or any part of the Project/Project Facility, the

Concessionaire shall be entitled to de-commission and close the whole or the relevant part of the Project to traffic for so long as such Emergency and the consequences thereof warrant. Provided, however, that such decommissioning will be notified to the PWD Engineer promptly. The PWD Engineer may issue such directions as it may deem appropriate to the Concessionaire for dealing with such Emergency and the Concessionaire shall abide by the same.

- (b) The Concessionaire shall re-commission the Project/Project Facility or the affected part thereof as quickly as practicable after the Emergency leading to its de-commissioning and closure has ceased to exist.
- (c) The Concessionaire shall not close any part/ lane of the Project/Project Facility for undertaking maintenance or repair works except with the prior written approval of the PWD Engineer. Such approval shall be sought by the Concessionaire through a written request to be made at least 7 (seven) days before the proposed closure of part / lane and shall be accompanied by particulars indicating the nature and extent of repair works and the arrangements made for safe movement of traffic, the length and section required to be closed and the period of closure. The Concessionaire shall also furnish particulars indicating the minimum time required for completing such repair works. Within 5 (five) days of receiving such request, the PWD Engineer shall grant permission with such modifications as he may deem necessary. Upon receiving such permission, the Concessionaire shall be entitled to close the part / lane in accordance with such permission and re-open it within the period stipulated in such permission.
- (d) Save and except as otherwise expressly provided in this Agreement, if the Project or any part thereof shall suffer any loss or damage during the Concession Period, from any cause whatsoever, the Concessionaire shall, at its cost and expense rectify and remedy such loss or damage in a manner so as to make the Project conform in every respect to the Specifications and Standards, quality and performance as prescribed by this Agreement.
- (e) In the event the Concessionaire does not maintain and/ or repair the Project or part thereof upto and in accordance with the Specifications and Standards and / or in accordance with the Maintenance Programme or the Maintenance Manual or the O&M Inspection Report, as the case may be, and shall have failed to commence remedial works within (30) thirty days of notice in this behalf from the PWD Engineer , GOI shall, without prejudice to its rights/remedies under this Agreement, including Termination, be entitled to undertake to cause the repair and maintenance of the Project at the risk and cost of the Concessionaire. The Concessionaire shall, reimburse to GOI within seven days of

demand the costs and expenses incurred for undertaking such repairs and maintenance. .

- (f) If the Concessionaire commences any works for curing any defects or deficiencies in the Project, it shall complete such works expeditiously in accordance with Good Industry Practice.
- (g) The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available to traffic on account of any of the following for the duration thereof:
 - (i) Force Majeure Event;
 - (ii) measures taken to ensure the safe use of the Project except when unsafe conditions on the road occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
 - (iii) compliance with a request from GOI/STG or the directions of any Government Agency the effect of which is to close all or any part of the Project.

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

9.9 Monitoring and Supervision during Operations

- (a) The Concessionaire shall undertake periodic inspection of the Project in accordance with the Maintenance Manual, the Maintenance Programme, Specifications and Standards and this Agreement and shall submit reports of such inspection ("Maintenance Reports") to the Steering Group and the PWD Engineer.
- (b) The PWD Engineer shall undertake periodic (at least once every calendar quarter but once every week during monsoon) inspection of the Project jointly with the Concessionaire to determine the condition of the Project including its compliance or otherwise with the Maintenance Manual, the Maintenance Programme, Specifications and Standards and this Agreement and make out a report of such inspection (the "O&M Inspection Report") and forward it to the Concessionaire with a copy thereof to the Steering Group. The O&M Inspection Report shall set forth defects and deficiencies, if any, and may also require the Concessionaire to undertake such tests as may be specified by the PWD Engineer for the purpose of determining that the Project is at all times in conformity with the Specifications and Standards. The Concessionaire shall within 30 (thirty) days of the receipt of the O&M Inspection Report from the PWD Engineer remedy the defects and deficiencies and undertake such tests, if any, set forth

therein, without any delay and furnish compliance thereto and/or results thereof to the PWD Engineer along with a report (O&M Inspection Compliance Report) with a copy to the Steering Group specifying in reasonable detail the measures, if any, that have been undertaken for curing the defects or deficiencies indicated in such results. Such inspection or submission of O&M Inspection Compliance Report by the Concessionaire shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever. Where the remedying of such defects or deficiencies and/or undertaking such tests is likely to take more than 30 (thirty) days in accordance with Good Industry Practice, the Concessionaire shall undertake the works in accordance with such practice and submit progress reports of such works every fortnight and finally the O&M Inspection Compliance Report.

ARTICLE 10

FINANCING ARRANGEMENT

10.1 Financing Arrangement

- (a) The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to finance the Project and to meet its obligations under this Agreement in a timely manner.
- (b) In the event of the Concessionaire employing the funds borrowed from the Lenders to finance the Project, the provisions relating to Lenders including those relating to Financial Close and Substitution Agreement shall apply.
- (c) The Concessionaire shall within 7 days of achieving Financial Close submit to GOI one set of Financing Documents evidencing Financial Close.

10.2 Amendments to Financing Documents

For the avoidance of doubt the Parties agree that no amendment made to the Financing Documents without express consent of GOI shall have the effect of enlarging in any manner, the obligation of GOI in respect of Termination Payment under this Agreement.

ARTICLE 11

SUPERVISION CHARGES

11.1 Supervision Charges

- (a) All works under or in course of execution/ or executed in pursuance of this Agreement shall at all times be open to the inspection and supervision by the authorised representatives of GOI/STG. The Concessionaire shall at all the times during the usual working hours and at all other times at which reasonable notice of the intention of the representatives of STG and/or GOI to visit the work shall have been given to the Concessionaire, have a responsible agent/representative present at the Project for that purpose.
- (b) The Concessionaire shall pay supervision charges not exceeding in aggregate Rs. XX¹⁶ Lakh (Rupees ----- Lakh) towards supervision contemplated by the preceding sub-article (a). The supervision charges may be paid in equal annual instalments over the original Concession Period with the first instalment being paid on the Commencement Date and every subsequent instalment on the date of respective anniversary of the Commencement Date by way of a cheque/demand draft(s) drawn in favour of -----.

11.2 Project Monitoring Expenses

The Concessionaire shall also pay towards Project monitoring and co-ordination expenses of GOI a sum of Rs. ¹⁷ZZ Lakh (Rupees ----- Lakh) per annum by way of cheque/demand draft(s) drawn/issued in favour of -----. The amounts paid by the Concessionaire pursuant to this Article shall be held in a separate account and appropriated /utilised as per instructions of GOI.

ARTICLE 12

INSURANCES

12.1 Insurance during the Implementation Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Implementation Period such insurances as are necessary, including but not limited to the following:

- (a) builders' all risk insurance;

¹⁶ 1.5% of the estimated project cost is recommended – The amount shall be specified in the bid document.

¹⁷ Total payout to be capped at 0.5% of the estimated project cost.

- (b) comprehensive third party liability insurance including injury or death to personnel of Persons who may enter the Project Site;
- (c) workmen's compensation insurance;
- (d) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d).

12.2 Insurance during the Operations Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Operations Period insurance to cover against:

- (a) loss, damage or destruction of the Project Facility, at replacement value;
- (b) the Concessionaire's general liability arising out of the Concession;
- (c) liability to third parties; and
- (d) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (c).

12.3 Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Project Assets and/or the Project Facility through Indian insurance companies and if so permitted by GOI, through foreign insurance companies, to the extent that insurances are necessary to be effected through them.

12.4 Evidence of Insurance Cover

The Concessionaire shall, from time to time, provide to GOI copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

12.5 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Project Facility or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the

Lenders as the loss payees under the insurance policies/assign the insurance policies in their favour as security for the financial assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facility or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

12.6 Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish copies of the same to GOI. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 Days' clear notice of cancellation is provided to GOI in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, GOI may at its option purchase and maintain such insurance and all sums incurred by the GOI therefor shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by the GOI by exercising right of set off or otherwise.

ARTICLE 13

CHANGE OF SCOPE

13.1 Change of Scope

GOI may, notwithstanding anything to the contrary contained in this Agreement, require provision of such addition/deletion to the works and services on or about the Project which are beyond the scope of the Project as contemplated by this Agreement ("Change of Scope"), Provided such changes do not require expenditure exceeding ¹⁸Rs. ---- and do not adversely affect the Scheduled Project Completion Date. All such changes shall be made by GOI by an order (the "Change of Scope Order") issued in accordance with the procedure set forth in Article 13.2.

13.2 Procedure for Change of Scope

- (a) GOI shall whenever it desires provision of addition/deletion of works and services referred to in Article 13.1 above, issue to the Concessionaire a notice of Change of Scope (the "Change of Scope Notice") through the Independent Engineer.
- (b) Upon receipt of Change of Scope Notice, the Concessionaire shall, within a period of 15 (fifteen) days, provide to the Independent Engineer such information as is necessary and

¹⁸ 5% of estimated project cost.

reasonable together with preliminary documentation in support of the following:

- (i) the impact which the Change of Scope is likely to have on the Project Completion Schedule if the work is required to be carried out before COD, and
 - (ii) the cost to the Concessionaire of complying with such Change of Scope Notice on account of increases in quantities of items of work mentioned in the Bill of Quantities at the rate mentioned therein. In case the Bill of Quantities does not carry certain items of work required under the Change of Scope, the Concessionaire shall provide the analysis of rates for carrying out such items of work.
- (c) Independent Engineer shall review the information provided by the Concessionaire, assess the change in quantities of items of work, verify the analysis of rates if required, determine the additional cost to the Concessionaire as a result of such Change of Scope, add such additional cost to Initial Investment in the Cashflow Projections and determine the extension, if any, to the Concession Period in order to maintain the Internal Rate of Return. Provided, that the projections for years beyond the Concession Period shall be average of three years immediately preceding the last year of the original Cashflow Projections. The Independent Engineer shall communicate its recommendation to the Steering Group within a period of 15(fifteen) days from the receipt of information from the Concessionaire.
- (d) GOI shall issue the Change of Scope Order within a period of 15 (fifteen) days from the date of recommendation made by the Independent Engineer in accordance with preceding sub-article (c) above.
- (e) The Change of Scope Order shall be effective and binding upon receipt thereof by the Concessionaire. Notwithstanding a Dispute regarding cost and time for implementation of such order, the Concessionaire shall proceed with the performance of such order promptly following receipt thereof. Any Dispute regarding the extension in the Concession Period recommended by the Independent Engineer shall be resolved in accordance with the Dispute Resolution Procedure.
- (f) All claims by the Concessionaire pursuant to this Article 13.2 shall be supported by such documentation as is reasonably sufficient for Independent Engineer to determine the accuracy thereof, including invoices from Contractors and certification of such claims by the Statutory Auditors.

ARTICLE 14

CAPACITY AUGMENTATION AND ADDITIONAL FACILITY

14.1 Capacity Augmentation of the Project

- (a) The GOI may following a detailed traffic study conducted by it, at any time after COD decide to augment/increase the capacity of the Project (Capacity Augmentation) with a view to provide the desired level of service to the users of the Project Facility.
- (b) The GOI shall invite proposals from eligible Persons for Capacity Augmentation. The Concessionaire shall have option to submit its proposal for Capacity Augmentation.
- (c) The bid document for Capacity Augmentation shall specify a Termination Payment to be made to the Concessionaire in case the Concessionaire chooses not to submit its proposal or fails or declines to match the preferred offer as mentioned in sub-article (e) below.
- (d) In case the Concessionaire, after participating in the bidding procedure, fails to give the lowest offer, the Concessionaire shall be given the first right of refusal to match the preferred offer. If the Concessionaire matches the preferred offer the Parties shall enter into a suitable agreement supplemental to this Agreement to give effect to the changes in scope of the Project, Concession Period and all other necessary and consequential changes. In such an event the Concessionaire shall pay to the bidder who had made the lowest offer sum of Rs.¹⁹ ----- towards bidding costs incurred by such bidder.
- (e) In case the Concessionaire (i) chooses not to submit its proposal for Capacity Augmentation or (ii) is not the preferred bidder and also fails or declines to match the preferred offer, GOI shall be entitled to terminate this Agreement upon payment to the Concessionaire of the Termination Payment.
- (f) The Termination Payment referred to in the preceding sub-articles (c) and (e) above shall be the amount equivalent to the amount of Termination Payment set out in Article 16.2(b).

14.2 Additional Facility

GOI shall not construct and operate either itself or have the same, interalia, built and operated on BOT basis or otherwise a competing facility, either toll free or otherwise during the Concession Period Provided, GOI may build and operate such a facility subject to the fee charged for vehicles using such facility being at any not less than 133%

¹⁹ 0.1% of the estimated project cost subject to maximum of Rs. 10 Lacs which shall be indicated in the bid document.

of Fee for the time being charged for the vehicles using the Project Facility.

ARTICLE 15

FORCE MAJEURE

15.1 Force Majeure Event

As used in this Agreement, a Force Majeure Event shall mean occurrence in India of any or all of Non Political Event, Indirect Political Event and/or Political Event as defined in Article 15.2, 15.3 and 15.4 respectively which prevent the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event (i) is beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, and (iii) has a Material Adverse Effect on the Project.

15.2 Non Political Event.

For purposes of Article 15.1 hereinabove, Non-Political Event shall mean one or more of the following acts or events:

- (i) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire (to the extent originating from a source external to the Project Site or beyond design specifications for the Construction Works) or landslide;
- (ii) radioactive contamination or ionizing radiation;
- (iii) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 15.3;
- (iv) 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;
- (v) any judgement or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than

failure of the Concessionaire to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by GOI;

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

15.3 Indirect Political Event

For purposes of Article 15.1 hereinabove, Indirect Political Event shall mean one or more of the following acts or events :

- (i) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion, or politically motivated sabotage which prevents collection of Fee by the Concessionaire for a period exceeding a continuous period of 7 (seven) days in an Accounting Year;
- (ii) Industry wide or state wide or India wide strikes or industrial action which prevent collection of Fees by the Concessionaire for a period exceeding a continuous period of 7(seven) days in an Accounting Year; or
- (iii) Any public agitation which prevents collection of Fee by the Concessionaire for a period exceeding a continuous period of 7 (seven) days in an Accounting Year.

15.4 Political Event

For purposes of Article 15.1 hereinabove, Political Event shall mean one or more of the following acts or events by or on account of GOI, STG or any other Government Agency:

- (i) Change in Law, only when provisions of Article 17 cannot be applied;
- (ii) Expropriation or compulsory acquisition by any Government Agency of any Project Assets or rights of the Concessionaire or of the Contractors; or
- (iii) Any unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreements (other than a consent the obtaining of which is condition precedent) provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.

15.5 Effect of Force Majeure Event.

Upon occurrence of any Force Majeure Event, the following shall apply:

- (a) There shall be no Termination of this Agreement except as provided in Article 15.7 hereinafter;
- (b) Where the Force Majeure Event occurs before COD, the dates set forth in the Project Completion Schedule, and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- (c) Where a Force Majeure Event occurs after COD, the Concessionaire shall continue to make all reasonable efforts to operate the Project and/or to collect Fee, but if it is unable or prevented from doing so, the Concession Period shall, having due regard to the extent of the impact thereof as determined by the Steering Group, be extended by the period for which collection of Fee remains affected on account thereof; and
- (d) Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of the Article 15.6 hereinafter.

15.6 Allocation of costs during subsistence of Force Majeure

Subject to the provisions of Article 15.5 hereinabove, upon occurrence of a Force Majeure Event, the costs arising out of such event shall be allocated as follows:

- (a) When the Force Majeure Event is a Non Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such Force Majeure Event;
- (b) Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the "Force Majeure Costs") shall be borne by the Concessionaire to the extent of the Insurance Cover, and to the extent Force Majeure Costs as duly certified by the Statutory Auditors exceed the Insurance Cover, one half of the same shall be reimbursed by GOI to the Concessionaire within 90 days from the date of receipt of Concessionaire's claim therefor;
- (c) Where the Force Majeure Event is a Political Event, the Force Majeure Costs to the extent actually incurred and certified by the statutory Auditors of Concessionaire shall be reimbursed by GOI to the Concessionaire within 90 days from the date of receipt of Concessionaire's claim therefor; and

- (d) GOI may at its option reimburse the Force Majeure Costs to the Concessionaire in cash or compensate the Concessionaire for such costs by appropriate extension of the Concession Period, which extension shall also be given effect within the period of 90 days specified in preceding sub-article (b) or (c) as the case may be.

For avoidance of doubt, Force Majeure Costs shall not include loss of Fee revenues or any debt repayment obligations but shall include interest payments on such debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event.

15.7 Termination.

If a Force Majeure Event continues or is in the reasonable judgement of the Parties is likely to continue beyond a period 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement by issuing Termination Notice.

15.8 Termination Payment for Force Majeure Events

Upon Termination of this Agreement pursuant to Article 15.7 hereinabove, Termination Payment to the Concessionaire shall be made in accordance with the following:

- (a) If the Termination is on account of a Non Political Event, the Concessionaire shall be entitled to receive from GOI by way of Termination Payment an amount equal to 90% of the Debt Due less pending insurance claims, if any. Provided that in the event such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from GOI further sum equal to 90% of amount of such claims not admitted.
- (b) If the Termination is on account of an Indirect Political Event, the Concessionaire shall be entitled to receive from GOI by way of Termination Payment an amount equal to:
 - (i) the total Debt Due, less pending Insurance claims, if any. Provided, however, that if any of such insurance claims are not admitted and paid, the Concessionaire shall be entitled to receive from GOI further sum equal to 80%(eighty percent) of such claims not admitted, plus
 - (ii) 110% (one hundred ten percent) of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during three

years commencing from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in WPI during such year, and the adjusted amount so arrived shall be reduced every year by 7.5%(seven and half percent) per annum.

- (c) If the Termination of this Agreement is on account of a Political Event, the Concessionaire shall be entitled to receive from GOI by way of Termination Payment an amount equal to:
- (i) the total Debt Due, plus
 - (ii) 150% (one hundred fifty percent) of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during three years commencing from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in WPI during such year, and the adjusted amount so arrived at shall be reduced by 7.5% (seven and half percent) per annum.

15.9 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 however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

15.10 Liability for other losses, damages etc.

Save and except as expressly provided in this Article 15, neither Party hereto 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 to this Article 15.

15.11 Duty to Report

The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

- (a) The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material affect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

- (b) Any notice pursuant to this Article 15.11 shall include full particulars of:
 - (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 15 with evidence in support thereof;
 - (ii) 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;
 - (iii) the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and
 - (iv) any other information relevant to the Affected Party's claim.
- (c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Article 15.11 and such other information as the other Party may reasonably request the Affected Party to provide.

15.12 Excuse from performance of obligations

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

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

ARTICLE 16

EVENTS OF DEFAULT AND TERMINATION

16.1 Event of Default

Event of Default means the Concessionaire Event of Default or the GOI Event of Default or both as the context may admit or require.

a) Concessionaire Event of Default

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

- (1) The Concessionaire fails to commence the Construction Works within 30 days from the Commencement Date.
- (2) The Concessionaire fails to achieve COD within 180 days from the Scheduled Project Completion Date.
- (3) Any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading.
- (4) The Concessionaire creates any Encumbrance on the Project Site/ Project Facility in favour of any Person save and except as otherwise expressly permitted under Article 21.1.
- (5) The aggregate shareholding of the members of the Consortium/Sponsors falls below the minimum prescribed under Article 20.1 (xi).
- (6) The transfer, pursuant to law of either (a) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or (b) all or material part of the Concessionaire except where such transfer in the reasonable opinion of GOI does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform, its material obligations under the Project Agreements.
- (7) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire.
- (8) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the

amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and provided that:

- (i) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (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 Commencement Date; and
 - (iii) each of the Project Agreements remains in full force and effect.
- (9) A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable.
- (10) The Concessionaire suspends or abandons the operations of the Project without the prior consent of GOI, provided that the Concessionaire shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations under this Agreement by GOI or of STG under the State Support Agreement.
- (11) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
- (12) The Concessionaire suffers an attachment being levied on any of its assets causing a Material Adverse Affect on the Project and such attachment continues for a period exceeding 45 days.
- (13) The Concessionaire has delayed any payment that has fallen due under this Agreement and if such delay exceeds 90(ninety) days.
- (14) The Concessionaire is otherwise in Material Breach of this Agreement.

(b) GOI Event of Default.

The following events shall constitute events of default by GOI (each a "GOI Event of Default"), unless any such GOI Event of Default has

occurred as a result of Concessionaire Event of Default or due to a Force Majeure Event:

- (1) GOI is in breach of this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice in that behalf from the Concessionaire;
- (2) GOI repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
- (3) GOI is in breach of any of its obligations under the State Support Agreement, and such breach has not been cured within 30 days from the date of written notice thereof by the Concessionaire.
- (4) GOI or STG or any Governmental Agency has by an act of commission or omission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Concessionaire and has failed to cure the same within 60 days of notice thereof by the Concessionaire.
- (5) GOI has delayed payment of any amount that has fallen due in terms of this Agreement beyond 90 (ninety) days.
- (6) Any representation made or warranties given by the GOI under this Agreement is found to be false or misleading

16.2 Termination due to Event of Default

(a) Termination for Concessionaire Event of Default

- (1) Without prejudice to any other right or remedy which GOI may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, GOI shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire, provided that before issuing the Termination Notice, GOI shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the "Preliminary Notice"). In case the underlying breach/default is not cured within a period of 60(sixty) days from the date of the Preliminary Notice (Cure Period) GOI shall be entitled, to terminate this Agreement by issuing the Termination Notice. Provided further, that
 - (a) if the default is not cured within 30(thirty) days of the Preliminary Notice, GOI shall be entitled to encash the Performance Security with a notice to the Concessionaire (Encashment Notice),
 - (b) if the default is not cured within 30(thirty) days of the Encashment Notice and a fresh

Performance Security is not furnished within the same period in accordance with Article 3.2, GOI shall subject to the provisions of the Substitution Agreement be entitled to issue the Termination Notice.

- (2) The following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement :
 - (i) The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages caused by its breach or default;
 - (ii) The Cure Period shall not in any way be extended by any period of suspension under this Agreement;
 - (iii) If the cure of any breach by the Concessionaire requires any reasonable action by Concessionaire that must be approved by GOI or the Government Agency hereunder the applicable Cure Period shall be extended by the period taken by GOI or the Government Agency to accord the required approval.
- (3) Upon Termination by GOI on account of occurrence of a Concessionaire Event of Default during the Operations Period, the GOI shall pay to the Concessionaire by way of Termination Payment an amount equal to 90% of the Debt Due less pending insurance claims, if any. Provided, however, that in the event of such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from GOI further sum equal to 80%(eighty percent) of amount of such claims not admitted.

(b) Termination for GOI Events of Default

- (1) The Concessionaire may, upon the occurrence and continuation of any of GOI Event of Default terminate this Agreement by issuing Termination Notice to GOI.
- (2) Upon Termination of this Agreement by the Concessionaire due to a GOI Event of Default, the Concessionaire shall be entitled to receive from GOI, by way of Termination Payment a sum equal to:
 - (i) the total Debt Due, plus
 - (ii) 150% (one hundred fifty percent) of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during three years commencing from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the

changes in WPI during such year and the adjusted amount so arrived at shall be reduced by 7.5% (seven and half percent) per annum.

16.3 Rights of GOI on Termination

Upon Termination of this Agreement for any reason whatsoever, GOI shall have the power and authority to

- (i) take possession and control of Project Assets forthwith;
- (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Assets/dealing with or any part thereof;
- (iii) step in and succeed upon election by GOI without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as GOI may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Agreements. Provided any sums claimed by such counter party as being due and owing for work and services performed or accruing on account of any act, omission or event prior to such date of election shall and shall always constitute debt between the Concessionaire and such counter party and GOI shall in no way or manner be liable or responsible for such sums. The Concessionaire shall ensure that the Project Agreements contain provisions necessary to give effect to the provision of this Article 16.3.

16.4 Termination Payments

The Termination Payment pursuant to Article 15 or 16 as the case may be, shall be payable to the Concessionaire by GOI within thirty days of demand being made by the Concessionaire with the necessary particulars duly certified by the Statutory Auditors. If GOI fails to pay Termination Payment in full within the said period of 60 days, the amount remaining unpaid shall be paid along with interest @ SBI PLR plus two percent from the Termination Date till payment.

16.5 Mode of Payment

Notwithstanding any instructions to the contrary issued or any dispute raised by the Concessionaire, the Termination Payment, and all other payments that would become payable by GOI under any of the provisions of this Agreement shall, so long as the Debt Due is remaining outstanding, be made only by way of credit directly to a bank account designated therefor by the Lenders and advised to GOI and the Concessionaire in writing. Any payment so made shall to the extent of such payment constitute a valid discharge to GOI of its obligations

towards the Concessionaire with regard to the Termination Payment and payment of any other monies due hereunder.

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

ARTICLE 17

CHANGE IN LAW

17.1 Change in Law

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 Rs. ²⁰----- (Rupees -----) in any Accounting year, the Concessionaire may notify the same to GOI/the Steering Group and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid.

17.2 Extension of Concession Period

The Steering Group shall upon being notified by the Concessionaire of the Change in Law and the proposed amendments to this Agreement, assess the change in the financial position as a result of such Change of Law and determine the extension to the Concession Period so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law and recommend the same to GOI. GOI shall, within 30 days of receipt of such recommendation, extend the Concession Period by such period as has been recommended by the Steering Group.

ARTICLE 18

HANDOVER AND DEFECT LIABILITY PERIOD

18.1 Handing Over of the Project Assets

²⁰ Rs. 2-3 million recommended.

Upon the expiry of the Concession by efflux of time and in the normal course, the Concessionaire shall at the end of the Concession Period, hand over vacant and peaceful possession of the Project Assets including Project Site/Facility at no cost to GOI.

18.2 Joint Inspection and Removal of Deficiency

The handing over process shall be initiated atleast ²¹12 months before the actual date of expiry of the Concession Period by a joint inspection by the PWD Engineer and the Concessionaire. The PWD Engineer shall, within 15 days of such inspection prepare and furnish to the Concessionaire a list of works/jobs/additions/alterations, if any, to be carried out to bring the Project to the prescribed level of service condition at least two months prior to the date of expiry of the Concession Period. In case the Concessionaire fails to carry out the above works, within the stipulated time period the GOI shall be at liberty to have these works executed by any other Person at the risk and cost of the Concessionaire and any cost incurred by GOI in this regard shall be reimbursed by the Concessionaire to GOI within 7 days of receipt of demand. For this purpose, GOI shall without prejudice to any other right/remedy available to it, under this Agreement, have the right to appropriate the Performance Security and/or to set off any amounts due, if any, and payable by GOI to the Concessionaire to the extent required/ available and to recover deficit amount, if any, from the Concessionaire.

ARTICLE 19

DISPUTE RESOLUTION

19.1 Amicable Resolution

- (a) Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including incompleteness of the Project between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably by the Steering Group and failing resolution of the same in accordance with the procedure set forth in sub-article (b) below.
- (b) Either Party may require the Dispute to be referred to the Director General (Road Development) Government of India and the Chairman of the Board of Directors of the Concessionaire, for the time being for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event

²¹ Period could be Project specific.

within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 19.2 below.

19.2 Arbitration

a) Arbitrators

Any Dispute which is not resolved amicably as provided in Article 19.1(a) shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. A Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If the other Party fails to appoint its arbitrator, the Party appointing arbitrator shall take steps in accordance with Arbitration and Conciliation Act, 1996.

b) Place of Arbitration

The place of arbitration shall be New Delhi but by agreement of the Parties, the arbitration hearings, if required, can be held elsewhere from time to time.

c) English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

d) Procedure

The procedure to be followed within the arbitration, including appointment of arbitrator / arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

e) Enforcement of Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any court or tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgement upon the arbitral award may be entered in any court having jurisdiction thereof.

f) Fees and Expenses

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by Party.

g) Performance during Arbitration

Pending the submission of and/or decision on a Dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

ARTICLE 20

REPRESENTATIONS AND WARRANTIES, DISCLAIMER

20.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to GOI that:

- (i) it is duly organised, validly existing and in good standing under the laws of India;
- (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iv) it has the financial standing and capacity to undertake the Project;
- (v) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (vi) it is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (vii) 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 any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- (viii) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- (ix) 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 Agency which may result in any material adverse effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (x) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other Civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (xi) the aggregate equity share holding of the members of Consortium/Sponsors in the issued and paid up equity share capital of the Concessionaire shall not be less than (a) 51% (fifty one per cent) until expiry of 3 (three) years following COD, and (b) 26% (twenty six per cent) during the remaining Operations Period;
- (xii) each member of Consortium was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and requested GOI to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (xiii) subject to receipt by the Concessionaire from GOI of the Termination Payment and any other amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Assets shall pass to and vest in GOI on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or GOI;
- (xiv) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to

GOI or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and

- (xv) 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 of this Agreement or for influencing or attempting to influence any officer or employee of GOI in connection therewith.

20.2 Disclaimer

- (a) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the traffic volumes, Specifications and Standards, Project Site and all the information provided by GOI, and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.
- (b) The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in (a) above and hereby confirms that GOI/STG shall not be liable for the same in any manner whatsoever to the Concessionaire.

20.3 Representations and Warranties of GOI

GOI represents and warrants to the Concessionaire that:

- (i) GOI has full power and authority to grant the Concession;
- (ii) GOI has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (iii) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

ARTICLE 21

MISCELLANEOUS

21.1 Assignment and Charges

- (a) Subject to sub-articles (b) and (c) hereinbelow, this Agreement shall not be assigned by the Concessionaire save and except with prior consent in writing of GOI, which consent GOI shall be entitled to decline without assigning any reason whatsoever.
- (b) Subject to sub-article (c) hereinbelow, the Concessionaire shall not create nor permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which Concessionaire is a party except with prior consent in writing of GOI, which consent GOI shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in sub-articles (a) and (b) above shall not apply to:
 - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project ;
 - (ii) mortgages/pledges/hypothecation of goods/assets other than Project Site, as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
 - (iii) assignment of Concessionaire's rights, title and interest under this Agreement to or in favour of the Lenders pursuant to and in accordance with the Substitution Agreement as security for their financial assistance.
- (d) Upon occurrence of the Concessionaire Event of Default the Lenders shall have the right of substitution as provided in the Substitution Agreement.

21.2 Liability And Indemnity

- (a) General Indemnity
 - (i) The Concessionaire shall indemnify, defend and hold GOI harmless against any and all proceedings, actions and, third party claims arising out of a breach by Concessionaire of any of its obligations under this Agreement except to the extent that any such claim has arisen due to GOI Event of Default).
 - (ii) GOI will, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of GOI and/or arising of a breach by GOI, its officers, servants and

agents of any obligations of GOI under this Agreement except to the extent that any such claim has arisen due to Concessionaire Event of Default.

- (b) Without limiting the generality of this Article 21.2 the Concessionaire shall fully indemnify, save harmless and defend GOI including its officers servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits, (b) payments of taxes relating to the Concessionaire's Contractors, suppliers and representatives income or other taxes required to be paid by the Concessionaire without reimbursement hereunder, or (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.
- (c) Without limiting the generality of the provisions of this Article 21.2, the Concessionaire shall fully indemnify, save harmless and defend the GOI from and against any and all damages which the GOI may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for GOI a license, at no cost to GOI, 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 parts or process, or modify the same so that it becomes non-infringing.
- (d) In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 21.2 (the 'Indemnified Party') it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party

subject to the Indemnified Party being secured against any costs involved to its reasonable satisfaction.

(e) Defence of Claims

- (i) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this Article 21.2, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding liabilities, payments and obligations at its expense and through counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure, the loss to be indemnified hereunder to the extent so compromised or settled.
- (ii) If the Indemnifying Party has exercised its rights under Article 21.2(d) above, 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).
- (iii) If the Indemnifying Party exercises its rights under Article 21.2(d) above, then the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:
 - (1) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
 - (2) 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

- (3) 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
- (4) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either
 - (a) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (b) 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-articles (2), (3) or (4) of Article 21.2(e)(ii) shall be applicable, counsel for the Indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

21.3 Advertising on the Project Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Project Site if such advertising, display or hoarding shall affect the safety of users of the Project Facility while driving. Provided, however, that this sub-article shall not apply within the rest areas on the Project Site.

21.4 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 New Delhi, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

21.5 Waiver

- (a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:

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

21.6 Survival

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

21.7 Amendments

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 agreed to by all the Parties hereto and evidenced in writing.

21.8 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below :

If to Government of India

 Fax No. -----

If to the Concessionaire

The Managing Director,
----- Limited,

Fax No. -----

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

21.9 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 upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

21.10 No Partnership

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

21.11 Language

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

21.12 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 any Party not contained in a binding legal agreement executed by the Parties.

21.13 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of President of India by

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:

In the presence of.

1)

2)

SCHEDULE A

PROJECT

1. Need for the Project
2. Project Location including index map
3. Site related information
4. Brief description of the NH
5. Brief Description of existing facilities, if any
6. Drainage
7. Traffic estimates(summary only)

Annexures:

1. Feasibility Study
2. Detailed Project Report / Designs / Drawings (Optional)
3. Environmental and Social Impact Assessment Report

SCHEDULE B

PROJECT SITE

(Description and particulars of the land on which the Project is to be implemented would need to be set out.)

SCHEDULE C

PROJECT FACILITY

(The facilities to be constructed, built, installed, erected or provided by the Concessionaire in the Project Site are to be set out, with brief description/ specifications.)

SCHEDULE D

PROJECT COMPLETION SCHEDULE

(The Project Completion Schedule as agreed to with the Concessionaire would need to be set out).

Sr.No.	Project Milestone	Date for Completion

SCHEDULE E²²

BILL OF QUANTITIES

(The Bill of Quantities (BOQ) for the material would need to be set out).

Sr. No	Item	Rate	Unit	Quantity	Amount

²² Where the Bill of Quantities is provided by the MOST in the bidding documents the same should be attached in the present format as Schedule 'E'. In cases where the detailed design & engineering is the responsibility of the Concessionaire, the same would need to be submitted as part of the bid in the format specified above. This format would therefore need to be a part of the bid document for the project.

					Total

SCHEDULE F

FEE NOTIFICATION

**MINISTRY OF SURFACE TRANSPORT
(Roads Wing)**

NOTIFICATION

New Delhi, the --- th ---- 2000

S.O. ----- . – In exercise of powers conferred by Sections 7 and 8A of the National Highways Act, 1956 (48 of 1956), the Central Government hereby notifies that there shall be levied and paid fees on mechanical vehicles, for the use of the -----²³ (hereinafter referred as-----) at the rates specified in Schedule hereunder and having regard to the Concession Agreement dated ----- entered into with _____ (*Name of the*

²³ Insert Name of the Project Facility

Concessionaire) -----, having its registered office at -----
 ----- to build, operate and transfer the ____ (Name of the Project Facility)
 and for service provided by it, hereby authorise the said _____ (Name of
 the Concessionaire) or its authorised legal representative to collect and
 retain fees at the rates specified in the said Schedule from the
 _____ (Scheduled Project Completion Date) to (Last day of the Concession
 Period)

SCHEDULE

(Rates to be recovered per trip from users of the bridge)²⁴

a. For use of the entire Project Facility

(All amounts in Rupees)

Period		Fee for each type of vehicle			
From	To	Motor Cycle, Scooter or any other two wheelers mechanically propelled vehicle	Motor Car, Taxi, Jeep, Pickup Van, Station Wagon, Tempo, auto rickshaws, three wheeler scooters or other Auto driven light vehicles with or without trailer.	Bus, Truck and other heavy vehicles including Truck Trailer combination laden with goods or passengers, when (i) Loaded (ii) Unloaded	Other mechanically propelled vehicles not mentioned above such as mobile crane dozers, earth movers, road rollers, when (i) Loaded (ii) Unloaded
DD/MM/YY ²⁵	DD/MM/YY ²⁶				

b. For use of part of the Project Facility: (optional- specify details if applicable)

(All amounts in Rupees)

Period		Fee for each type of vehicle			
From	To	Motor Cycle, Scooter or any other two wheelers mechanically propelled vehicle	Motor Car, Taxi, Jeep, Pickup Van, Station Wagon, Tempo, auto rickshaws, three wheeler scooters or other Auto driven light vehicles with or without	Bus, Truck and other heavy vehicles including Truck Trailer combination laden with goods or passengers, when (iii) Loaded (iv) Unloaded	Other mechanically propelled vehicles not mentioned above such as mobile crane dozers, earth movers, road rollers, when (i) Loaded (ii) Unloaded

²⁴ Fee indicated in the Bid Document shall be increased by 10% every second anniversary of the bid document date and shall be rounded off to the nearest rupee and set out in this table.

²⁵ Bid document date.

²⁶ Second anniversary of the Bid Document date.

			trailer.		
DD/MM/YY ²⁷	DD/MM/YY ²⁸				

Notes :

1. The Fee set forth above shall be charged to the users of the _____ (*name of Project Facility*) for a one way trip.
2. When a vehicle has to use the _____ (*Name of the Project Facility*) more than once in a day, the user shall at his option be entitled to do so on payment of one and half times the Fee for one way trip in the first trip itself. A vehicle owner shall also be entitled to a montly pass on payment of Fee equal to thirty times the Fee for one way trip.
3. Following vehicles are exempted from the fee specified above, namely :-
 - (i) Defence vehicles,
 - (ii) Vehicles with VIP symbols,
 - (iii) Police vehicles,
 - (iv) Fire Fighting vehicels,
 - (v) Ambulances,
 - (vi) Funeral vans,
 - (vii) Post and Telegraphs Department vehicles,
 - (viii) Central and State Government vehicles on duty.
4. The vehicles officially relating to the following shall be deemed to be vehicles having VIP Symbols :-
 - (i) President of India,
 - (ii) Vice-President of India,
 - (iii) Central and State Minister,
 - (iv) Leaders of Oppositions of Lok Sabha or Rajya Sabha or State Legislatures having the status of Cabiner Minister,
 - (v) Governors of States,
 - (vi) Lieutenant Governors of Union Territories,
 - (vii) Speakers or Chairman of Central and State Legislatures,
 - (viii) Executive Councillors of local elected bodies,
 - (ix) Foreign dignitaries on State visit to India,
 - (x) Foreign Diplomats Stationed in India using cars with CD symbols,
 - (xi) Members of Parliament and Sta te Legislative Assembly/Council in their respective constituencies.

²⁷ Bid document date.

²⁸ Second anniversary of the Bid Document date.

5. The above mentioned rates shall be conspicuously displayed at the Toll Plazas and also at a distance of about 200 metres ahead of Toll Plazas on either side of _____(Name of Project Facility).
6. The said (Name of Concessionaire) or its authorised legal representative shall give a receipt to the payer for the fee collected from the payer.

[No. -----]
Director General (Road Development) and Addl.Secy.

SCHEDULE G

ENVIRONMENTAL CLEARANCES

Details of the Environmental Clearances obtained/issued by GOI for the Project and the conditions to be fulfilled for the same to be effective are to be listed and the environmental clearance letters may be attached.

SCHEDULE H
CASHFLOW PROJECTIONS²⁹

		Year of Operation					
	Year "0"	1	2	3	4	5	
Initial Investment (1)							
Toll Revenue (2)							
O&M Expenses(3)							

²⁹ The cashflow projections statement enclosed in Schedule 'H' would be the same statement submitted in the above format by the Concessionaire as part of the bid. This format would therefore need to be a part of bid document for the project.

Total Expenses (5=2+3+4)							
Cashflow (2-1-5)							
Internal Rate of Return (%)							

"Initial Investment" means the cost of construction of the facility, including all reasonable overheads, preliminary and pre-operative expenses in relation thereto, estimated by the Concessionaire. For the purpose of Cashflow Projections the entire Initial Investment would be deemed to have been made on COD

"Year "0" means the year of the COD.

"Toll Revenue" means the income received by Concessionaire by levy of Fee, computed by multiplying the applicable Fee provided in the Fee Schedule and the estimate of traffic made by the Concessionaire.

"O&M Expenses" means the expenses to be incurred by the Concessionaire on operating and maintaining the Project Facility, in order to ensure that the Project Facility conforms to Specifications and Standards.

"Internal Rate of Return" means the pre-tax internal rate of return of the cashflow stream in the Cashflow Projections.

SCHEDULE I

STATE SUPPORT AGREEMENT

THIS STATE SUPPORT AGREEMENT is entered into on this the ----- day of -----
(Month) ----- (Year) at -----.

AMONGST,

THE PRESIDENT OF INDIA in his executive capacity for the Government of India, represented by the Ministry of Surface Transport, Government of India, hereinafter referred to as **'GOI'** (which expression shall include its successors and assigns),

THE GOVERNOR OF ----- in his executive capacity for the State of -----,
acting through the Public Works Department/ Roads and Building Department,

Government of ----- hereinafter referred to as “**STG**” (which expression shall include its successors and assigns), And

M/s XXXX Limited, a company incorporated under the Companies Act, 1956, having its registered office at ----- hereinafter referred to as the “**Concessionaire**” (which expression shall include its permitted successors and assigns)

WHEREAS,

- A. GOI is implementing a project envisaging construction, operation and maintenance of ----- (more particularly described in Schedule ‘A’ and hereinafter referred to as “the Project”) with private sector participation on Build, Operate and Transfer (BOT) basis;
- B. By the Concession Agreement dated ----- entered into between GOI and the Concessionaire (hereinafter referred to as “the Concession Agreement”) the Concessionaire has been granted the Concession to implement the Project on BOT basis;
- C. With the view to facilitate Implementation and operation of the Project by the Concessionaire in accordance with the Concession Agreement, STG has agreed to enter into State Support Agreement, being these presents with the Concessionaire to extend continued support and grant certain rights and authorities as hereinafter set forth to the Concessionaire.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH 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 hereafter respectively assigned to them.

“**Agreement**” means this agreement and includes any amendment or modification made to this agreement in accordance with the provisions hereof.

“**STG Support**” means the obligations assumed and the facilities agreed to be provided by STG to the Concessionaire pursuant hereto or the Substitution Agreement as applicable.

1.2 Capitalised terms used in this Agreement but not defined shall have the meaning assigned to them respectively in the Concession Agreement or the Substitution Agreement as the case may be.

2. TERM

2.1 This Agreement shall come into force from the date hereof and shall be in force and effect during the Concession Period.

3. SUPPORT OF STG

3.1 Upon and with effect from the date hereof, STG agrees :

- (i) so long as the Concessionaire is not in breach of the obligations under this Agreement, STG agrees to enable access to the Project Site to the Concessionaire for peaceful use of and operations at the Project Site by the Concessionaire under and in accordance with the provisions of the Concession Agreement without any let or hindrance from STG or persons claiming through or under it;
- (ii) subject to the Concessionaire complying with Applicable Laws, provide to the Concessionaire Applicable Permits to the extent STG or any of its agencies is entitled to issue;
- (iii) upon written request from the Concessionaire, provide and/or assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (iv) ensure that no barriers are erected or placed by STG or any of its agencies that interrupts free flow of traffic on the Project /Project Facility except on account of any law and order situation or upon national security consideration;
- (v) provide the Concessionaire with assistance through a dedicated team against payment of prescribed fee and charges, if any, for regulation of traffic on the Project/Project Facility;
- (vi) provide to the Concessionaire with police assistance in the form of dedicated highway patrol parties against payment of prescribed costs and charges, if any, for patrolling and provision of security on the Project/Project Facility;
- (vii) observe and comply with its obligations set forth in this Agreement;
- (viii) support, cooperate with and facilitate GOI and the Concessionaire in the implementation of the Project;

- (ix) subject to and in accordance with the Applicable Laws, assist the Concessionaire in the procurement of all Applicable Permits required from any municipal and other local authorities and bodies including pachayats, in the State of -----
----- for the implementation of the Project;
 - (x) ensure, subject to and in accordance with the Applicable Laws, that all relevant municipal and other local authorities and bodies including panchayats in the State of ----- do not put any barriers or other obstructions that interrupt free flow of traffic on the Project/Project Facility; and
 - (xi) not do or omit to do any act, deed or thing which may in any manner be violative of or cause the Concessionaire to violate any the provisions of the Concession Agreement.
- 3.2 STG agrees and undertakes that it shall not construct and operate either itself or have the same, interalia, built and operated on BOT basis or otherwise a competing facility, either toll free or otherwise during the Concession Period.
- 3.3 STG agrees and undertakes that it shall not levy any additional toll, fee, charge or tax on the use of whole or any part of the Project Facility. STG acknowledges the rights of Lender(s) and GOI under the Substitution Agreement and hereby covenants that upon substitution of the Concessionaire by the Selectee pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Selectee is a party hereto and the Selectee 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 by the Selectee.

4. CONCESSIONAIRE'S OBLIGATIONS

- 4.1 Concessionaire agrees and undertakes to perform, observe and comply with the following :
- (i) All Applicable Laws and Applicable Permits;
 - (ii) The provisions of the Concession Agreement, the Substitution Agreement, and the Project Agreements; and
 - (iii) Observe, comply and perform its obligations under this Agreement.

5. REPRESENTATIONS AND WARRANTIES

- 5.1 The Concessionaire represents and warrants to STG that:
- (i) it is duly organised, validly existing and in good standing under the laws of India;

- (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iv) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (v) it is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (vi) the execution, delivery and performance of this Agreement will not conflict with nor will the same result in any breach or default under the Memorandum and Articles of Association of the Concessionaire or any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- (viii) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any order of any Government Authority which may result in any Material Adverse Effect;
- (ix) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other Civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (x) No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to STG, or to any Governmental Agency in relation to Applicable Permits contains or will contain any untrue

statement or material fact necessary to make such representation or warranty not misleading;

- (xi) No sums 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 entering into this Agreement or for influencing or attempting to influence any officer or employee of GOI/STG in connection therewith.

5.2 STG represents and warrants to the Concessionaire that:

- (i) It has full power and authority to execute, deliver and perform this Agreement;
- (ii) It has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (iii) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

6. SOVEREIGN IMMUNITY

6.1 STG hereto unconditionally and irrevocably :

- (i) Agrees that the execution, delivery and performance by it of this Agreement do not constitute sovereign acts;
- (ii) Agrees that should any proceedings be brought against it or its assets in relation to this Agreement or any transaction contemplated by this Agreement, no sovereign immunity from such proceedings, execution, attachment or other legal process shall be claimed by or in behalf of itself or with respect to any of its assets, to the extent permitted by law; and
- (iii) To the extent permitted by law, waives right of sovereign immunity, which it or its assets now has or may acquire in future.

6.2 Notwithstanding anything to the contrary herein contained such waiver of right of immunity shall not apply to

- (i) Property and assets of any consular or diplomatic mission or consulate or
- (ii) Property belonging to the Defence Services and such assets of the Union of India.

7. BREACH AND COMPENSATION

7.1 In case STG is in breach of any of its obligations under this Agreement, which breach is not cured within 30 days of receipt of notice in writing

from the Concessionaire and which has not occurred as a result of Concessionaire's breach of its obligation under this Agreement or the Concession Agreement, STG shall pay to the Concessionaire by way of Compensation, all direct additional costs suffered or incurred by the Concessionaire and determined by GOI as arising out of such material default by STG.

7.2 In case of any dispute by STG as to the extent of compensation determined by GOI, the same shall be settled as per provisions of the Dispute Settlement Mechanism provided in Article 9 of this Agreement.

7.3 Any sum payable by STG to the Concessionaire pursuant to the preceding sub-article 7.1 shall be paid to the Concessionaire in one lumpsum within 60 (sixty) days of receiving GOI's determination thereof. Failing such payment, GOI shall within the next 30 days pay the sum due to the Concessionaire and seek reimbursement of the same from STG.

8. INDEMNITY

8.1 The Concessionaire will indemnify, defend and hold STG harmless against any and all proceedings, actions and claims for any loss, damage, cost and expense of whatever kind and nature arising out of design, engineering, construction, operation and maintenance of the Project/Project Facility or arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with and observe Applicable Laws and Applicable Permits;

8.2 STG will, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of STG to fulfill any of its obligations under this Agreement adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by STG, its officers, servants and agents;

8.3 Without limiting the generality of Clause 8.2, GOI shall indemnify the Concessionaire and shall save it harmless from and against any payments required to be made by the Concessionaire with respect to levy of any Local Taxes provided nothing contained herein shall be construed or interpreted as restricting in any way or manner the right to STG or any municipal, panchayat or other local authorities to levy any taxes which they or any of them are lawfully entitled to levy, impose or collect (the "Expected Taxes"). The Concessionaire shall not be entitled to and STG shall be under no obligation to reimburse Expected Taxes to the Concessionaire or any person claiming through or under the Concessionaire;

8.4 In the event that either party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this

Clause 8 or in respect of which it is entitled to reimbursement (the 'Indemnified Party') it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party. 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 co-operation and assistance in contesting any claim and shall sign all such writings, and documents as the Indemnified Party may reasonably require.

9. GOVERNING LAW AND DISPUTE SETTLEMENT

9.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of India. The provisions contained in Clause 8 shall survive the termination of this Agreement.

9.2 Any dispute, difference or claim arising out of or in connection with or in relation to this Agreement which is not resolved amicably shall be decided finally by reference to arbitration to a Board or Arbitrators comprising of one nominee of each party to the dispute. Such arbitration shall be held in accordance with the Rules of Arbitration of the Indian Council of Arbitration and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The Arbitrators shall issue a reasoned award. The venue of such arbitration shall be -----
The Award shall be final and binding on the Parties.

10. MISCELLANEOUS

10.1 Alteration of Terms

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

10.2 Time or Indulgence Allowed

An indulgence by one Party to the other in respect of any obligation or matter hereunder including time for performance to the other party hereunder or to remedy any breach hereof shall not be construed as a waiver of any of its rights hereunder Party may be on such terms and subject to such conditions as the Party giving it may specify and shall be without prejudice to that Party's then accrued rights under this Agreement except to the extent expressly varied in writing when giving such time or other indulgence.

10.3 Severance of Terms

If any provisions of this Agreement are declared to be invalid, unenforceable or illegal by any competent arbitration tribunal or court, such invalidity, unenforceability or illegality shall not prejudice or affect

the remaining provisions of this Agreement, which shall continue in full force and effect.

10.4 Language

All notices, certificates, correspondence or other communications under or in connection with the Agreement shall be in English.

10.5 Notices

Any notice or communication hereunder shall be in writing and shall either be delivered personally or sent by registered post, with copy by facsimile transmission or other means of telecommunication in permanent written form. A copy of all notices and communications will also be forwarded to the Lender's Representative. The service of notice shall unless otherwise notified by a notice hereunder to the parties at their following address:

IF to STG :
Attn :
Fax No:
Tel No:

IF to GOI :
Attn :
Fax No :
Tel No :

IF to the Concessionaire :
Attn :
Fax No :
Tel No :

The notice pursuant hereto will be deemed to have been received on the date when such notice is in fact received by the addressee.

10.6 Authorised Representatives

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

10.7 Original Document

This Agreement is made in three counterparts, each of which shall be deemed to be an original but shall constitute one document.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE PUT THEIR HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

For the Concessinaire

By:-----
Name -----
Title -----

For STG

By:-----
Name -----
Title -----

For GOI

By:-----
Name -----
Title -----

SCHEDULE J

PART A

INDEPENDENT ENGINEER'S SERVICES

TERMS OF REFER ENCE

1. OBJECTIVES

The Independent Engineer shall be required to :

- (i) Act independently on behalf of both GOI and the Concessionaire to review and monitor all activities associated with design, construction, operation and maintenance³⁰ to ensure compliance with provisions of the Concession Agreement.
- (ii) Visit, inspect, and report to GOI/Steering Group on various aspects of the project and carry out all such activities as are provided in the Concession Agreement. Without prejudice to

³⁰ In case where PWD Engineer is designated.

this, the scope of services of the Independent Engineer shall be as specified in para 2 to 4.

The Independent Engineer shall have no authority to relieve the Concessionaire of any of its duties or to impose additional obligations other than those expressly provided in the Concession Agreement.

2. SCOPE OF SERVICES

2.1 Pre-implementation Period

- (i) Review the Project Report prepared by the Concessionaire.
- (ii) Review the Implementation Schedule submitted by the Concessionaire.
- (iii) Proof checking of designs, calculations and working drawings prepared by the Concessionaire for the construction of various components of the Project Facility in accordance with provisions of the Concession Agreement.
- (iv) Review the adequacy of the geo-technical studies, sub-soil investigations, hydrological investigation and the topographical survey, if any, carried out by the Concessionaire.
- (v) Review the environmental management plan for the Project during Implementation Period and Operations Period.
- (vi) Review the proposed quality assurance and quality control procedures during the Implementation Period and Operations Period.
- (vii) Review the safety measures proposed during Implementation Period and Operations Period.

2.2 Implementation Period

- (i) Monitor quality assurance and quality control during Implementation period.
- (ii) Review the material testing results, mix designs and order special tests of materials and/or completed works, and/or order removal and substitution of substandard materials and/or works as required.
- (iii) Ensure that the construction work is carried out in accordance with the Specifications and Standards and Good Industry Practice.
- (iv) Identify delays in completion and recommend to the Steering Group/ Concessionaire the remedial measures to expedite the progress.
- (v) Review "As Built" drawings for each component of the works prepared by the Concessionaire.
- (vi) Review the safety measures provided by the Concessionaire.
- (vii) Supervise and monitor various Completion Tests as provided in the Concession Agreement
- (viii) Issue Provisional Completion Certificate or the Completion Certificate, as the case may be, in accordance with the provisions of the Concession Agreement.

- (ix) Review and approve the Maintenance Manual prepared by the Concessionaire.

2.3 General

- (i) Design a Management Information System (MIS) for monitoring of the Project by GOI.
- (ii) Determine and recommend changes to the Project Completion Schedule, Scheduled Project Completion Date and the Concession Period in accordance with the Concession Agreement.
- (iii) Mediate and assist in resolving disputes between GOI/STG and Concessionaire.

3. INTERACTION WITH STEERING GROUP

The Independent Engineer shall interact with the Steering Group on a regular basis.

4. REPORTING REQUIREMENTS

The Independent Engineer shall prepare and submit to the Steering Group three copies and to the Concessionaire two copies each of the following reports.

- (a) Implementation Period
 - Monthly Progress Report
- (b) Various other reports as provided in the Concession Agreement such as Completion Report.

5. PERIOD OF SERVICES

The period of services shall be the Implementation Period.

SCHEDULE J

PART B

PWD ENGINEER'S SERVICES

TERMS OF REFERENCE

1. OBJECTIVES

The PWD Engineer shall be required to :

- (i) To review and monitor all activities associated with operation and maintenance to ensure compliance with provisions of the Concession Agreement.
- (ii) Visit, inspect, and report to GOI/Steering Group on various aspects of the project and carry out such other activities as provided in the Concession Agreement. Without prejudice to this, the scope of services of the PWD Engineer shall be as specified in para 2 to 4.

The PWD Engineer shall have no authority to relieve the Concessionaire of any of their duties or to impose additional obligations other than those expressly provided in the Concession Agreement.

2. SCOPE OF SERVICES

- (i) Review work plan and schedules of various operation and maintenance activities.
- (ii) Review and ensure compliance with Maintenance Programme, Minimum Maintenance Requirements and the Maintenance Manual.
- (iii) Supervise action to undertaken by GOI's contractor(s) to carry out maintenance obligations of the Concessionaire at the risk and cost of the Concessionaire in the event of his failure to carry out the same.
- (iv) Undertake audit of the traffic using the Project at least once a month.
- (v) Review and inspect the Project at least once a month during the Operations Period and submit an Inspection Report thereafter to GOI.
- (vi) Mediate and assist in resolving disputes between GOI/STG and Concessionaire.

3. REPORTING REQUIREMENTS

The Independent Engineer shall prepare and submit to the Steering Group three copies and to the Concessionaire two copies each of the following reports.

- Monthly and Quarterly Inspection Reports
- Monthly report on audit of the traffic using the Project

4. PERIOD OF SERVICES

The period of services shall be the Operations Period.

SCHEDULE K

DRAWINGS

SCHEDULE L
SPECIFICATIONS AND STANDARDS

SCHEDULE M

TESTS

SCHEDULE N
COMPLETION CERTIFICATE

SCHEDULE O
MINIMUM MAINTENANCE REQUIREMENTS

SCHEDULE P
SAFETY STANDARDS

SCHEDULE Q

PROFORMA OF BANK GUARANTEE – I

(FOR IMPLEMENTATION PERIOD) {TC " 4. FORMAT OF
PERFORMANCE GUARANTEE "}
(To be issued by a Scheduled Bank in India)

THIS DEED OF GUARANTEE executed on this the---- day of ---- at ---- by -----
----- (Name of the Bank) having its Head/Registered office
at ----- hereinafter referred to as
"the Guarantor" which expression shall unless it be repugnant to the subject or
context thereof include successors and assigns;

In favour of

The President of India in his executive capacity for the Government of India,
represented by the Ministry of Surface Transport, Government of India,
hereinafter called "GOI" (which expression shall include its successors and
assigns);

WHEREAS

- A By the Concession Agreement dated ----- entered into
between GOI and M/s. XXXX Limited, a company incorporated under
the Companies Act, 1956 having its registered office at -----
- hereinafter called "the Company", ("the Concession Agreement") the
Company has been granted the Concession to implement the project
envisaging construction, operation and maintenance of -----
on build, operate and transfer basis.
- B. In terms of Article 3.1(a) of the Concession Agreement, the Company
is required to furnish to GOI, an unconditional and irrevocable bank
guarantee for an amount of Rs.----- (Rupees ----- only)
as security for due and punctual performance/discharge of its
obligations under the Concession Agreement during the
Implementation Period, substantially in the format annexed as
Schedule 'Q' to the Concession Agreement.
- C. At the request of the Company, the Guarantor has agreed to provide
guarantee, being these presents guaranteeing the due and punctual
performance/discharge by the Company of its obligations under the
Concession Agreement during the Implementation Period.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS :

1. Capitalised terms used herein but not defined shall have the meaning
assigned to them respectively in the Concession Agreement.

2. The Guarantor hereby guarantees the due and punctual performance by the Company of all its obligations under the Concession Agreement during the Implementation Period.
3. The Guarantor shall, without demur, pay to GOI sums not exceeding in aggregate Rs.----- (Rupees ----- only), within five (5) days of receipt of a written demand therefor from GOI stating that the Company has failed to meet its performance obligations under the Concession Agreement during the Implementation Period. The Guarantor shall have no obligation to go into the veracity of any demand so made by GOI and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Company or any other Person.
4. In order to give effect to this Guarantee GOI shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/ delayed exercise of any of its rights by GOI or any indulgence shown by GOI to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by GOI or any indulgence shown by GOI provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until discharge by the Guarantor of all its obligations hereunder.
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Company/the Guarantor or any absorption, merger or amalgamation of the Company/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS
HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE
WRITTEN.

SIGNED AND DELIVERED by ----- Bank
by the hand of Shri -----
its ----- and authorised official.

SCHEDULE R

PROFORMA OF BANK GUARANTEE – II

(FOR OPERATIONS PERIOD) {TC " **4. FORMAT OF**
PERFORMANCE GUARANTEE "}
(To be issued by a Scheduled Bank in India)

THIS DEED OF GUARANTEE executed on this the ----- day of --- at ----by -----
----- (Name of the Bank) having its Head/Registered office
at ----- hereinafter referred to as
"the Guarantor" which expression shall unless it be repugnant to the subject or
context thereof include its successors and assigns;

In favour of

The President of India in his executive capacity for the Government of India,
represented by the Ministry of Surface Transport, Government of India,
hereinafter called "GOI" (which expression shall include its successors and
assigns);

WHEREAS

- A. By the Concession Agreement dated ----- entered into
between GOI and M/s. XXXX Limited, a company incorporated under
the Companies Act, 1956 having its registered office at -----
- hereinafter called "the Company", ("the Concession Agreement") the
Company has been granted the Concession to implement the project
envisaging construction, operation and maintenance of -----
on build, operate and transfer basis.
- B. In terms of Article 3.1(a) of the Concession Agreement, the Company
is required to furnish to GOI, an unconditional and irrevocable bank
guarantee for an amount of Rs.----- (Rupees ----- only)
as security for due and punctual performance/discharge of its
obligation under the Concession Agreement during the Operations
Period substantially in the format annexed as Schedule '—' to the
Concession Agreement.
- C. At the request of the Company, the Guarantor has agreed to provide
guarantee, being these presents guaranteeing the due and punctual
performance/discharge by the Company of its obligations under the
Concession Agreement during the Operations Period.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS :

1. Capitalised terms used herein but not defined shall have the meaning
assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby guarantees the due and punctual performance
by the Company of all its obligations under the Concession Agreement
during the Operations Period.

3. The Guarantor shall, without demur, pay to GOI sums not exceeding in aggregate Rs.----- (Rupees ----- only), within five (5) days of receipt of a written demand therefor from GOI stating that the Company has failed to meet its performance obligations under the Concession Agreement during the Operations Period³¹. The Guarantor shall have no obligation to go into the veracity of any demand made by GOI and shall pay the amounts specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Company or any other Person.
4. In order to give effect to this Guarantee GOI shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/ delayed exercise of any of its rights by GOI or any indulgence shown by GOI to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by GOI or any indulgence shown by GOI provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until discharged by the Guarantor of all its obligations hereunder.
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Company/the Guarantor or any absorption, merger or amalgamation of the Company/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

³¹ Banks are unlikely to issue guarantee for the entire Operations Period in one stretch. Initially the guarantee may be issued for a period of 2-3 years. The Company shall have to keep the guarantee valid throughout the Operations Period by seeking extension from time to time.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS
HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE
WRITTEN.

SIGNED AND DELIVERED by ----- Bank
by the hand of Shri -----
its ----- and authorised official.

SCHEDULE S

AGREEMENT WITH MINISTRY OF RAILWAYS

**SCHEDULE
SUBSTITUTION AGREEMENT**

THIS SUBSTITUTION AGREEMENT is entered into on this the ----- day of ----
----- (Month) --- (Year) at -----.

AMONGST,

The President of India acting in his executive capacity for the Government of India represented by the Ministry of Surface Transport, hereinafter referred to as "GOI" (which expression shall unless repugnant to the context of meaning thereof include its successors and assigns);

M/s. XXXX Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at ----- hereinafter referred to as "the Concessionaire" (which expression shall unless repugnant to the context or meaning thereof include its successors and assigns), AND

YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at ----
----- hereinafter referred to as "the Lender".

OR

ZZZZ (Financial Institution/Bank) having its Registered Office/Head Office at----
----- acting for and on behalf of the Lenders listed in Schedule I hereto (hereinafter referred as "the Lender's Representative" .

WHEREAS,

- A. GOI is keen to implement a project envisaging construction, operation and maintenance of ----- (more particularly described in Schedule 'A' and hereinafter referred to as "the Project") with private sector participation on Build, Operate and Transfer (BOT) basis;
- B. By the Concession Agreement dated ----- entered into between GOI and the Concessionaire (hereinafter referred to as "the Concession Agreement") the Concessionaire has been granted the Concession to implement the Project on BOT basis;
- C. With a view to facilitate financing of the Project by the Concessionaire, in pursuance of Article ----- of the Concession Agreement, GOI and the Concessionaire have agreed to enter into Substitution Agreement being these presents with the Lender/s/Lenders' Representative.
- D. As a condition to making any disbursement pursuant to the Financing Documents, the Lender(s) has/ have required that the Substitution Agreement being these presents be entered into, and GOI and the Concessaionaire have agreed to the same

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS :

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Agreement” means this agreement and includes any amendment or modification made to this agreement in accordance with the provisions hereof.

“Financial Assistance” means the financial assistance set forth in Schedule I hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the the Project.

“Lender(s)” means the financial institutions/banks whose name(s) and addresses are set out in Schedule I hereto.

“Residual Concession Period” means the period which shall be be aggregate remainder of the Concession Period as the Suspension Period.

“Selectee” means a Person proposed by the Lender/Lender’s Representative pursuant to this Agreement and approved by GOI for substituting the Concessionaire for the residual Concession Period, in accordance with the provisions of this Agreement.

“Suspension Period” means the period commencing from the expiry of the Cure Period specified in the Preliminary Notice and ending on the date on which all formalities connected with substitution of the Concessionaire by the Selectee including handing over of Project Site/Project Facility, in accordance with this Agreement are completed and the substitution has become effective.

1.2 Capitalised terms used in this Agreement but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

ARTICLE 2

SUBSTITUTION OF THE CONCESSIONAIRE BY THE SELECTEE

2.1 Lenders right to Substitute

GOI and the Concessionaire hereby irrevocably agree that upon occurrence of an Concessionaire Event of Default, the Lender(s) shall, without prejudice to any other rights or remedies available to them

under law/Financing Documents and without being required to exercise or exhaust such rights or remedies, have the right to seek substitution of the Concessionaire by Selectee for the residual Concession under the Concession Agreement in accordance with the provisions of this Agreement. Provided upon substitution the Selectee shall be entitled to the extension of the remainder of the Concession Period by the Suspension Period.

2.2 Preliminary Notice of Termination

GOI shall as soon as possible but in any case not later than 15 days of its knowledge of the occurrence of the Concessionaire Event of Default issue Preliminary Notice of Termination to the Concessionaire in terms of Article 16.2(a) of the Concession Agreement, with a copy thereof simultaneously to the Lenders. Provided if the Concessionaire Event of Default is the one set out in Article 16.1(a)(9) of the Concession Agreement, the GOI shall not be obliged to issue Preliminary Termination Notice until receipt by GOI of the recall notice issued by the Lender(s) to the Concessionaire

2.3 Suspension of Concession and Takeover of the Project Facility

The Concessionaire irrevocably agrees that if the Cure Period specified in the Preliminary Notice of Termination lapses without the Concessionaire Event of Default having been cured, the Concession shall effective from the expiry of such Cure Period stand suspended without any further notice or other act of GOI being required, and that GOI shall have the right to enter upon and takeover the Project Site/Project Facility and to take all such steps as are necessary for the continued operation and maintenance of the Project Facility, levy, collection and appropriation of Fee subject to servicing the Debt Due as per the Financing Documents, and the substitution of the Concessionaire by the Selectee in accordance with this Agreement. The Concessionaire hereby irrevocably consents to the takeover of the Project Facility/ Project Site by GOI forthwith upon suspension becoming effective.

2.4 Substitution Notice

GOI and the Concessionaire hereby irrevocably agree that in the event of the Concessionaire's failure to cure the Event of Default specified in the Preliminary Notice of Termination. The Lender/Lender's Representative may, within 30 (thirty) days of the expiry of the Cure Period specified therein notify GOI and the Concessionaire about the intention of the Lender(s) to seek substitution of the Concessionaire by the Selectee for the Residual Concession (the "Substitution Notice").

2.5 Criteria for selection of the Selectee.

The Lender/ Lenders' Representative shall in addition to any other criteria that it may deem fit and necessary, apply the following criteria in the selection of the Selectee:

- (i) the Selectee shall possess the network, experience, technical capability and managerial ability to perform and discharge all the residual duties, obligations and liabilities of the Concessionaire in respect of the Concession, under the Concession Agreement;
- (ii) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Concessionaire to GOI under and in accordance with the Concession Agreements and also payment of Debt Due to the Lender(s) upon terms and conditions as agreed to between the Selectee and the Lenders.

ARTICLE 3

MODALITY FOR SUBSTITUTION

3.1 Modalities for Substitution.

The following modalities shall be followed for substitution of the Concessionaire by the Selectee pursuant to this Agreement:

- (i) The Lender(s)/Lenders' Representative shall be entitled, within a period of 120 (one hundred twenty) days from the date of delivery of the Substitution Notice pursuant to the preceding Article 2.2 to invite or procure offers either through private negotiations or public auction or process of tender or otherwise from the eligible Persons, for the substitution of the Concessionaire by the Selectee and propose to GOI for its approval the Selectee (the "Proposal"). The Proposal of the Lender/Lender's Representative shall contain the particulars and information in respect of the Selectee, the terms of Substitution, particulars of the Debt Due and such data and information as would be necessary and relevant for GOI to decide as to the acceptability of the Selectee. The Lender/ Lender's Representative shall provide to GOI such additional information and clarification in respect of any data, particulars or information contained in the Proposal, as GOI may promptly and reasonably require.
- (ii) The Proposal shall be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by GOI of the Proposal observe, comply with, perform and fulfill the residual terms, conditions and covenants of the Concession Agreement as if the Selectee had been the Concessionaire under the Concession Agreement and to assume, discharge and pay the Debt Due

on the terms and conditions agreed to by the Selectee with the Lenders. The Selectee shall also undertake to enter into such documents and writings with GOI and the Lender(s) as may be necessary or required to give effect to the substitution of the Concessionaire by the Selectee.

- (iii) GOI shall convey to the Lender/ Lenders' Representative its acceptance or otherwise of the Selectee within 30(thirty) days of (a) the date of receipt of the Proposal by GOI, or (b) the date of receipt of the additional information and clarifications in respect of any data, particulars or information comprised in the Proposal, provided by the Lender/Lender's Representative to the GOI, whichever is later.
- (iv) At any time prior to the acceptance of the Selectee by GOI pursuant to this Agreement, GOI may require the Lender/Lenders' Representative to satisfy it as to the eligibility of the Selectee and the decision of GOI as to acceptance or rejection of any Selectee (which shall be reasonable), shall be final, conclusive and binding on the Lender(s), the Selectee and the Concessionaire. In the event that GOI fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Proposal/ the Selectee within a period of 30 days prescribed in preceding sub-article (iii), GOI shall be deemed to have accepted the Proposal/ the Selectee
- (v) The rejection of the Selectee if made by GOI shall be reasoned and be made after hearing the Lender/Lenders' Representative. Following the rejection of the Proposal, the Lender/Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee, within 30 days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of preceding sub-article (iii) and (iv) shall apply mutatis mutandis to such fresh Proposal.
- (vi) If GOI accepts the Proposal/fresh Proposal, GOI shall take all necessary steps to substitute the Concessionaire by the Selectee by amendment of the Concession Agreement or by execution of fresh agreement or such other writing as may be required or necessary to give effect to the substitution of the Concessionaire by the Selectee for the Residual Concession Period.
- (vii) The substitution of the Concessionaire by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of GOI and the Lender(s) so as to give full effect to the terms and conditions of substitution subject to which the Selectee has been accepted by the Lender(s) and GOI and upon the delivery by GOI of the Project Assets to the Selectee. Upon the

substitution becoming effective pursuant to this sub-article all the rights of the Concessionaire under the Concession Agreement shall cease to exist. Provided nothing contained in this sub-article shall prejudice any pending/subsisting claims of the Concessionaire against GOI or any claim of GOI against the Concessionaire and the Selectee shall incur no liability or consequence on account of any previous breach/default and shall subject to the terms and conditions of the substitution, have a period of 90 days to cure any breach/default subsisting on the date of substitution and required to be cured.

- (viii) The decision of the Lenders and GOI in the selection of the Selectee shall be final and binding on the Concessionaire and shall be deemed to have been made with the concurrence of the Concessionaire. The Concessionaire hereby expressly waives all rights to object to or challenge such selection of the Selectee on any ground whatsoever.

3.2 Termination and Termination Payment.

- (i) Where the Lender/Lenders' Representative (on behalf of all the Lenders) communicates in writing that (i) the Lender/Lender's Representative does not intend to seek substitution of the Concessionaire, or (ii) that the Lender/Lenders' Representative has not been able to find suitable Selectee or (iii) that GOI has declined to accept the Selectee proposed by the Lender/Lenders' Representative, GOI shall proceed to terminate the Concession and to make Termination Payment, in accordance with the provisions of the Concession Agreement.
- (ii) Notwithstanding anything contained hereinabove, GOI shall not upon Termination of the Concession Agreement, be required to take over, the Debt Due save and except to the extent of Termination Payment due and payable under the Concession Agreement. In such an event the GOI's obligation shall be limited to assumption of such liabilities and payments of Debt Due as GOI has agreed to bear under the Concession Agreement.
- (iii) Nothing contained in these presents shall mean or be interpreted as provision of any guarantee or surety by GOI and it is expressly agreed that GOI has not provided any surety, guarantee or counter guarantee whether directly or indirectly for the recovery of amounts advanced by the Lenders to the Concessionaire.

ARTICLE 4

MODE OF TERMINATION PAYMENTS

4.1 Mode of Payment

- (i) GOI and Concessionaire hereby irrevocably agree, and confirm that so long as the Debt Due is outstanding the Termination Payment and any other amounts due and payable by GOI to the Concessionaire under any of the provisions of the Concession Agreement shall be paid only by way of credit directly to a bank account designated therefor by the Lender(s)/Lenders' Representative and advised to GOI and the Concessionaire in writing. The Lender(s) shall be entitled to receive and appropriate the same without any further reference to or consent of the Concessionaire towards the satisfaction of the Debt Due, subject to payment by the Lender(s) of the surplus amount if any remaining after satisfaction of the Debt Due, to the Concessionaire. Any payment so made shall to the extent of such payment constitute a valid discharge to GOI of its obligations with regard to the Termination Payment and of any other monies due to the Concessionaire under the Concession Agreement.
- (ii) For the purpose of giving full effect to the provisions contained in the preceding sub-article (i), the Lender(s)/the Lender's Representative shall be entitled to make a demand for payment of the Termination Payment if the Concessionaire has failed to make such demand as required under Article 16.4 of the Concession Agreement within 15 days from the Termination Date under intimation to the Lender(s)/Lender's Representative.
- (iv) The Concessionaire hereby irrevocably appoints and constitutes the Lender(s)/Lenders' Representative as its agent to make such demand for Termination Payment. Any demand made by the Lender(s)/Lenders' Representative pursuant to the power and authority conferred hereby shall for the purpose of the Article 16.4 of the Concession Agreement be deemed to be a demand for Termination Payment made by the Concessionaire.

ARTICLE 5

GENERAL

5.1 General

- (i) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement and the Lenders Representative is duly and fully authorised by each of the Lenders to enter into this Agreement on their behalf.

- (ii) Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by a Registered post acknowledgement due and delivered to the other parties.
- (iii) The expressions "GOI", the "Concessionaire", the "Lender" and the "Lenders' Representative" herein used shall unless there be anything repugnant to the subject or context include the respective successors, legal representatives, administrators and permitted assigns.
- (iv) This Agreement shall not be affected by reorganisation of any Lender, the Concessionaire or GOI and the successor in interest of the Lender or GOI shall have the benefit of this Agreement.
- (v) Any dispute, difference or claim arising out of or in connection with or in relation to this Agreement which is not resolved amicably shall be decided finally by arbitration by a Board of Arbitrators comprising of a nominee of each party to the dispute. Such arbitration shall be held in accordance with the Rules of Arbitration of the Indian Council of Arbitration and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The arbitrators shall issue a reasoned award. The venue of such arbitration shall be New Delhi, India. The Award shall be final and binding on the Parties. The Parties agree and undertake to carry out the award of the arbitrators (the "Award") without delay.
- (vi) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The Courts in New Delhi alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings thereunder.
- (vii) The consultation, recommendation or approval of the Lenders' Representative under this Agreement shall always be taken as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same.
- (viii) This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- (ix) It shall not be necessary for the Lender(s) or the Lenders' Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.

- (x) No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorised representatives of all the Parties hereto.
- (xi) All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid shall be borne by and be to the account of the Concessionaire. In the event of the Lenders making such payment for the time being, it shall be deemed to be a part of the Debt Dues.
- (xii) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any inconsistency with the Concession Agreement.

SCHEDULE I

PARTICULARS OF FINANCIAL ASSISTANCE.

Name and Address of the Lender	Nature and Amount of Financing Assistance

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS HEREUNTO ON THE DAY, MONTH AND YEAR HEREINABOVE MENTIONED.

SIGNED AND DELIVERED ON BEHALF OF
 -----LIMITED

BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF
GOVERNMENT OF INDIA

BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF
----- ON BEHALF OF THE
LENDERS SETFORTH IN SCHEDULE I

BY : _____

Name :

SCHEDULE U

MEMORANDUM OF UNDERSTANDING

Where the Project is being implemented by a Consortium, the Memorandum of Understanding entered into them for the purpose of implementing the Project may be appended.

Filename: sca
Directory: C:\Documents and Settings\pratiush\Desktop
Template: C:\Documents and Settings\pratiush\Application Data\Microsoft\Templates\Normal.dot
Title: DRAFT FOR DISCUSSION
Subject:
Author: IDFC
Keywords:
Comments:
Creation Date: 6/11/2001 4:41 PM
Change Number: 2
Last Saved On: 6/11/2001 4:41 PM
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Total Editing Time: 1 Minute
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