

ODISHA ROAD SECTOR INSTITUTIONAL DEVELOPMENT STUDY

Report on Management of Out-Sourced Road Toll Collection and Maintenance / Operations

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List of Abbreviations

BOT	:	Build Operate Transfer
CCTV	:	Close Circuit Television
CDBOA	:	Coimbatore District Bus Owners Association
CEO	:	Chief Executive Officer
CES	:	Central ETC System
CP	:	Central Plan
CPI	:	Consumer Price Index
CRF	:	Central Road Fund
CSP	:	Centrally Sponsored Plan
DSCR	:	Debt Service Coverage Ratio
DBFOT	:	Design-Build-Finance-Operate-Transfer
ECR	:	East Coast Road
EME	:	Earth Moving Equipment
EPC	:	Engineering, Procurement & Construction
ETC	:	Electronic Toll Collection
GoAP	:	Government of Andhra Pradesh
GoG	:	Government of Gujarat
GOI	:	Government of India
GoO	:	Government of Odisha
HCM	:	Heavy Construction Machinery
IL&FS	:	International Leasing & Financial Services
INR	:	Indian National Rupees
L&T	:	Larsen & Toubro
LCVs	:	Light Commercial Vehicles
LGVs	:	Light Goods Vehicles
LoS	:	Level of Service
LTTIL	:	L&T Transportation Infrastructure Ltd
MAV	:	Multi Axle Vehicle
MDR	:	Major District Roads
MoRT&H	:	Ministry of Road Transport and Highways
NCR	:	National Capital Region
NHAI	:	National Highways Authority of India
NHDP	:	National Highway Development Program
OB&CC	:	Odisha Bridge Construction Corporation Limited
OD	:	Origin Destination

ODRs	:	Other District Roads
OSRDC:	:	Odisha State Road Development Corporation
PCUs	:	Passenger Car Units
PIU	:	Project Implementation Unit
POS	:	Point of Sale
PPP	:	Public Private Partnership
R&B	:	Roads & Buildings
RFP	:	Request for Proposal
RFID	:	Radio Frequency Identification
RIMOT	:	Rehabilitate-Improve-Maintain-Operate-Transfer
ROBs	:	Rail/Road Over Bridges
SH	:	State Highways
SPV	:	Special Purpose Vehicle
TIDCO	:	Tamil Nadu Industrial Development Corporation
TNRDC	:	Tamil Nadu Road Development Company
VHTR	:	Vadodara Halol Toll Road
WPI	:	Wholesale Price Index

EXECUTIVE SUMMARY

Concept of Road Toll - Meaning and Objectives

A toll road is a public or private roadway for which a fee (or toll) is charged for passage. It is a form of road pricing typically implemented to help recuperate the cost of road construction and maintenance.

Tolls on use of roads are levied and collected to:

- Source investment capital needed for new infrastructure development and bridge the gap between demand and supply;
- Recover the capital invested and generate profits for roads which have been built by a private enterprise or is the result of a public-private joint venture;
- Facilitate optimal and proper usage of roads so that the roads do not attract excess users because when a commodity is cheap there is normal tendency of over-consumption, which, in turn, leads to supply side constraints;
- Act as a mechanism for reducing auto dependence among the people as is introduced by many western countries.

While toll road users may find their fuel costs off-set by toll charges, they still benefit greatly from the travel time saved. Non-toll road users also benefit by the fact that fewer vehicles are on the non-toll roads and during peak hours.

In addition to increasing convenience and decreasing the cost of travel, property values that have easy access to toll roads increase more than in other areas. From the business point of view, toll roads improve output and deliveries and decrease missed appointments; reduce the need for inventory holdings to safeguard against potential future delays; and increase efficiency of commercial vehicle fleet resulting from better vehicle use.

Evolutionary Stages of Road Toll

The experience around the world indicates a common four stage evolution of the toll road market. This four stage life cycle for tolling in a country consist of- Stage 1: Natural Barriers; Stage 2: Inter Urban Network; Stage 3: Congestion Busters; and Stage 4: Road Pricing. While every country or region may not transit through every stage this seems to be a model that, in general, fits.

Beginning of Tolling in India

Levy of tolls on public roads and bridges was introduced in the Presidency of Bombay in 1851. The Act of 1851 enabling the levy of tolls in the Presidency of Bombay was repealed in 1864 and a new Act was legislated. According to the provisions of this Act the provincial government was empowered to lease the levy of tolls on any public road or bridge by public auction or private contract from year to year or for a longer period not exceeding seven years on such terms and conditions as the provincial government may deem desirable.

A similar Act in 1851 was enacted for the Presidency of Fort William in Bengal, North-Western provinces of Bengal and the Presidency of Fort Saint George. This Act was later amended in 1870.

Subsequently, the National Highways Act, 1956 was enacted and later amended to empower the Government to levy fees for services or benefits rendered in relation to the use of sections of National Highways, in addition to the existing provisions for the use of ferries, temporary bridges, tunnels and a few public and private roads.

Following the involvement of private sector in the development of roads, since 1992, various State Governments have also enacted legislations empowering levy of toll fees on use of sections of state highway and other roads constructed either by the public sector or under PPP.

Tolling by National Highways Authority of India (NHAI)

In India, levy of user fee on National Highways started in a big way with the NHDP launched by the Government of India in the year 2000. Prior to that, only bridges constructed on National Highways and a few sections of highways were tolled as stand-alone projects. In the year 1997, Government took a decision that all 4-laned highways would be tolled. The first major National Highway stretch brought under toll, with effect from March 30, 1998, was Kotputli - Amer section of NH-8. The levy of user's fee is governed by National Highways Fee (Determination of Rates and Collection) Rules, 2008, the National Highways (Collection of Fees by Any Person for the Use of Section of National Highways/Permanent Bridge/Temporary Bridge on National Highways) Rules, 1997, and the National Highways (Fees for the Use of National Highways Section and Permanent Bridge-Public Funded Project) Rules, 1997, and as amended from time to time.

Tolling in Other States

At the sub-national level, tolling has been introduced in number of states.

Based on the experiences of the tolling at the national and state level, the lessons learnt are outlined below:

Lessons Learnt

- **Effective Communication:** An effective approach to popular resistance to tolling generally requires a tolling strategy and effective communication. The adoption of a tolling strategy can generate public acceptance for tolls and facilitate the implementation of a PPP program based on user fees;
- **Value for Money:** Tolling has to be (and more importantly be perceived to be) constructive (not penalizing road use) and adjusted to the specific road network of each country to ensure utmost transport effectiveness. In such cases, tolling is the ultimate user pay system – the user pays a price that he is willing and able to afford in return for a clearly defined service provided by the road agency. “Value for money” drives this arrangement and makes it publicly acceptable. In developing states like Odisha, the purchasing power of the population at lower socio-economic levels also has to be taken into consideration.
- **Costs to be covered:** Prices (tolls) should attempt to cover all costs, including operation, maintenance and investment. When tolls do not cover all costs, government should consider forms of government support, including an up-front payment, shadow tolls or an availability payment.

Auditing processes: should be integrated in toll operation procedures. Regular offsite audits and third party audits should be conducted. Tolling in India is, by and large, at a nascent stage as compared to developed countries, and poses a big challenge to toll road operators. This fledgling sector has a great future if tolling operations are handled properly. Profitable tolling operations will ensure success of projects and have the potential to revive this sector.

It is recommended that since the NHAI is managing large road network and is constantly framing and updating tolling guidelines, GoO may also follow the same. This would also help integrate the state practices with national level policies which would be beneficial in the long

run as it would avoid duplicating or contradicting established practices. For example, the nationwide ETC program rolled out by the NHAI requires seamless transit experience for the road user and envisages the deployment of a CCH (Central Clearing House). This program requires on vehicle mounted RFID (Radio Frequency Identification) tag to be accepted at all NHAI toll plazas. If the NHAI guidelines are accepted by GoO it would mean not having to set up a separate CCH or look at alternate (an non-compatible) technologies and this would allow easy transit to the road user.

Similarly the new NHAI guidelines to allow penalty of 10 times to the road user in case of overload, to penalize a non tag user entering a tag lane etc. should be embraced as this would ensure consistency and transparency for the road user and the implementing authorities.

Current Toll Scenario in Odisha

Legislation

The Orissa State Roads Toll Act, 2010 (the Act) came into force with effect from 15 February 2011. The Act has created the enabling legal environment for levy and collection of toll for using state roads, including bridges on these roads.

The toll fee rates are laid down in Orissa State Roads Tolls (Determination of Rates & Collection) Rules 2011 framed under the provisions of the Act. The toll rates are specified for different types of roads and bridges for the base year 2010-11 and are uniform for both public funded and private investment project. The toll fee rates may be annually revised by the State Government, if it considers appropriate, by adjusting and reflecting the increase in the Wholesale Price Index between the week ending on 6th January 2010 and the week ending or immediately after 1st January of the year in which such revision is undertaken, but such revision shall be restricted to 40% of the increase in Wholesale Price Index.

The toll collected in case of a public funded project shall be remitted to the state government. In case of private investment project, the toll collected shall be retained by the concessionaire in accordance with the provisions of the Concession Agreement.

Present Procedure for Toll Collection and Management

Currently the state roads and bridges that may be tolled are primarily identified by the Odisha Works Department and placed before State Government for consideration, review and approval. In identifying the tollable roads, different factors are usually considered such as the cost of road development, cost of operation and maintenance, volume of traffic, benefits emanating from the road to the locality and the people, and the potential for toll generation. These factors along with the socio-economic considerations are taken into account by the State Government in according its approval for notification of the state road and bridge to be tolled.

The system for determination of tollable road is not laid down in form of rules and regulations but is more in nature of practice. This leaves scope for flexibility as well as ad-hocism, which is more or less in line with the situation in most of the States of the country.

Odisha Bridge Construction Corporation Limited (OB&CC), a public sector undertaking of Government of Odisha (GoO), is mandated to collect and manage toll on roads and bridges that are notified as tollable and handed over to it by GoO.

OB&CC selects agencies for collection and management of tolls through a open tender and awards the tolling contract to the bidder who provides the highest amount of bid in terms of consideration of fees to OB&CC.

The contract with the toll collection and management agency specifies the section of the state road or bridge, as the case may be, that is to be tolled, the rates at which the different types of vehicles are to be tolled and authorizes the agency to collect the toll on behalf OB&CC. The contract with the agency is usually for a year and is generally retendered every year. The contract also provides for supervision and inspection over the operations of the contracting agency by OB&CC, as it may deem appropriate.

The toll collected by the agency are retained by it and the contracted fees (or consideration) is paid to OB&CC. The latter retains 15% of the fees as agency charges and deposits the balance to the Consolidated Fund of the State.

Considering the increase in cost of operation and maintenance as well as the need for rehabilitation and improvement of roads and bridges as stated in the Odisha State Asset Management System Report, it is necessary to revise the current toll rates in the State of Odisha. It is given to understand that GoO is contemplating to revise these rates. However, the revised rates have not yet been notified.

Recommendations

To improve and strengthen toll collection and management system, the following suggestions are placed.

Enhanced Enabling Legal Environment

The provisions of Odisha State Roads Toll Act, 2010 and the Rules thereunder are in line with the provisions in regard to toll prescribed by the National Highway Authority of India and as followed in other states. However, to enable enhancement of the environment for effective and efficient tolling, the following suggestions may be considered:

The toll collected should be “ring-fenced” for use for the development of the road sector because toll is a direct user charge paid and collected from the road users.

1. Provisions for levy of additional fee for overloaded vehicles may be considered as a deterrent to deterioration that may be caused to the roads and state highways by such overloading. Additional fee (overload penalty) may be imposed as recommended in the report on vehicle axle load management (Refer “*Findings, implications and recommendations for controlling overload on roads in Odisha – Vehicle Axle Load Regulation and Management Report*”- submitted by ICT)

The Central and State Motor vehicle Acts have provision for penalizing overloaded vehicles (Section 194). Section 114 empowers the states to offload overloaded vehicles. Further, as per ruling of Hon’bl Supreme Court of India of November 2005, the overloaded vehicles shall not be allowed to pass even after penalization and the excess load shall be offloaded at the cost of the transporter. The nine states which were mainly affected by this order were Punjab, Haryana, Gujarat, Madhya Pradesh, Rajasthan, Orissa, Maharashtra, Karnataka and Uttar Pradesh, who had under provisions of Section 200 of Motor Vehicles Act, 1988 issued notifications permitting issue of golden pass to trucks carrying excess cargo over prescribed limits for a fixed charge per month.

As per Section 194(1) the penalty for laden/unladen weight more than specified is Rs. 2,000 and additional Rs. 1,000 per tonne of excess weight. Some states have issued notifications making offloading of excess weight mandatory and some states allow such vehicles to continue journey after paying penalty (compounding fee)

The implementation of the blanket ban on overloaded trucks has not had an equal impact in the various Indian states. As the states have been given a partial free hand to deal with overloaded trucks, the results have, until now, been quite far from satisfactory. Some states have allowed overloaded vehicles to carry on driving after they paid a penalty. The following is the status in some of the states:

- a) Rajasthan - The State of Rajasthan has drawn criticism from several agencies as it allowed overloaded trucks to carry on after simply paying the fine. The Jaipur High Court has recently instructed the state to implement offloading and the offloaded material be kept 20 feet away from the road.
- b) Punjab – As per High Court ruling of Nov2011, the State Transport Commissioner, Punjab, stated that directions have already been issued to all the enforcement officers of the State Transport Department for strict compliance of the directions issued by Hon'ble the Supreme Court.
- c) Bihar - The state of Bihar set another example by initiating criminal proceedings against those found guilty of driving overloaded trucks on its highways under the Prevention of Damage to Public Property (PDPP) Act.
- d) Uttar Pradesh-The state of Uttar Pradesh issued a notification (dtd 14 July 2010) adopting the Supreme Court ruling. Overloaded vehicles plying on Haryana roads would soon be off-loaded with the state government issuing directives to all the regional transport authorities to curb the menace that causes danger to road users and other vehicles. Besides officials from state transport department, the deputy commissioner (DC), sub-divisional magistrate (SDM) and city magistrate would also be empowered to take action if they find any overloaded vehicle plying in their respective areas.
- e) Uttarakhand - In Uttarakhand, the compounding fees for overload is based on vehicle class - Rs. 1000 for medium & heavy motor vehicles, Rs. 800 for LMV and Rs.600 for motor cycle and further 2,000 per tonne or part thereof for excess load.
- f) Maharashtra - two wheelers are exempt from paying overload penalty, however other overloaded vehicles have to pay Rs. 2,000 + Rs. 1,000 per tonne (or part thereof) as compounding fee.
- g) Orissa – As per ruling of Cuttak High Court of 2010, an overloaded vehicle has to be offloaded irrespective of the penalty – the compounding fee paid by the truck driver does not mean that the overloaded ruck shall be allowed to continue journey. As per report of Expert Committee on Revenue Enhancement Measures, Finance Department, Govt. of Orissa (2011), *“The administration has faced some difficulties in the past in carrying out required offloading in all cases without adequate infrastructure and manpower for the purpose. We propose above a system of tolls, and the toll booths can also act as checkpoints for overloading and offloading if needed. Further, there should be provision in the relevant Act that will hold the Transporter alone responsible for the offloaded goods. In case offloaded goods create traffic obstructions, there can be proceedings against them under existing legal provisions including those relating to ‘public nuisance’.”*

Generally, the state governments, on their own or due to PILs filed in the courts, are moving towards prevention of overloading. Though each state has provisions in law to deal with overload prevention, the enforcement, especially of offloading,

has been quite limited. The factors cited for inability to enforce the law regarding mandatory off-loading of the excess loads are such as indivisibility of the load, lack of infrastructure to off-load and store excess loads etc.

On state roads, the drivers generally get the vehicles weighed at roadside static weighbridges and inspect by state officers is by means of inspection of the weight slip issued by these weighbridge stations. As the state authorities have limited infrastructure (like portable wheel weighers) to audit the weight themselves, they have to rely on private weighbridges.

Overload prevention at Toll Plazas

As most of the states do not have effective mechanism and infrastructure to enforce overload penalties at state road toll plazas, they are now relying on private parties to become enablers for this (like BoT operators/ Concessionaires, OMT operators and toll operators). The NHAI has already started implementing a combination of WIM and SWB at its toll plazas. As per recent NHAI notification, the overloaded vehicles crossing NH toll plazas will not only have to pay 10 times the normal toll fee, but also have to offload excess load. For this, Weigh-in-Motion (WIM) systems are to be installed at entry to toll lanes. The Operator is also required to install one SWB (Static Weigh Bridge) in each in each direction for resolution of disputes relating to WIM inaccuracies, if any. The NHAI, through its company IHMCL (Indian Highway Management Company Limited), floated tenders for supply, installation and maintenance for 5 years for toll collection equipment along with weight enforcement equipment. The ownership of equipment shall remain with the successful bidder who shall have to supply these as a service and shall be paid quarterly by IHMCL. This is likely to be implemented in projects not under PPP. In PPP projects, the Concessionaire has to implement provisions for overload prevention including offloading.

The WIM is a faster way to calculate weight as it consists of a small platform (scale) embedded in the road, which measures the weight of each axle as it passes over it. The Gross Vehicle Weight (GVW) is calculated by adding up individual vehicle weights. The SWB calculates only GVW as it consists of a much bigger platform on which the entire vehicle rests. The SWB is more accurate than the WIM. For implementing such system, the WIM has to be placed at least one vehicle length before the pay axis so that the entire vehicle passes over the WIM and the individual axle loads can be added up. This increases the island length at the entry side to at least the size of longest expected to pass from that plaza.

Based on the above, it is recommended that:

- a) Collection of road usage fees (toll) shall be at the toll plazas.
- b) Overload fee shall be collected at the toll plaza with a combination of WIM and SWB.
- c) The overload fees can be same as NHAI.
- d) Overloaded vehicle shall not be allowed to ply till it is offloaded.
- e) Fee Appropriation
 - i. For PPP model where the road builder maintains the road, the overload penalty and toll fees shall be appropriated by him.

- ii. For OMT contracts, the toll operator who is also responsible for road maintenance, shall appropriate toll fee.
- iii. For Annuity contracts and user/toll fee collection contracts, where road maintenance and toll fee collection are under separate contracts, the toll operator should deposit the overload fee with the government (OSRDC) which can use this for further prevention of overload, road safety, compensation to the maintenance contractor or incentive to toll fee collection agency, or any other use.

It is also recommended that, wherever possible, the government should also equip its Motor vehicle Officers to deploy portable load weighers to perform audits through random checks.

Identification of Toll Roads

In determination of roads that are to be tolled, it is important to consider the factors stated hereunder:

- i) Realistic Traffic Projection duly supported by appropriate traffic survey report;
- ii) Cost of Construction;
- iii) Cost of Operation and Maintenance;
- iv) Economic Benefits arising out of the road in the region and for the community duly analyzed considering the socio-economic issues.

Apart from the above listed economic factors, the following non-economic issues should also be taken into account in identification of roads to be tolled:

- i) Public Acceptance of Tolling, and, the outcome ascertained, where deemed necessary, through willingness to pay survey;
- ii) Equity of charging tolls for road use.

This procedure will facilitate to identify toll roads on a rational basis and avoid the scope of ad-hocism. Further, to mitigate public protests and political debates on tolling of identified roads, it is suggested that efforts should be made to explain to the public the benefits from the road and need for tolling through public communication and awareness building.

To identify roads that are to be tolled and to enable fast-track decisions in this regard, a cabinet sub-committee may be formed as in Maharashtra. To assist and facilitate the decision-making process of the cabinet sub-committee, empowered committee of secretaries need to be formed consisting of OWD, Transport, Commerce, Planning, Finance, Law, Development Commissioner-cum-Additional Chief Secretary and chaired by Chief Secretary. This committee will review and identify roads that can be tolled, in light of toll policy and socio-economic aspect, as well as, determine toll management strategy from the perspective of monitoring by the state government.

Model Tolling Contract with focus on Performance-Based Contract

The toll collection and management & operation can be carried out under the following three arrangements:

- 1) By a Concessionaire selected through competitive bidding under public private partnership mode of procurement. In this event, the construction/development along with operation and maintenance and collection and management of toll vests with the

concessionaire. This arrangement is commonly used for State Highways. In this regard, the Planning Commission has developed a Model Concession Agreement for State Highways which may be adopted by GoO;

- 2) Outsourcing of toll collection and management through competitive bidding process, including the present practice as followed by OB&CC, should contain specific provision for operation and maintenance of the road or section thereof or the bridge, as the case may be, for its proper operation and maintenance and listing out the standards of maintenance to be complied with. Further, the monitoring and supervision of the operation and maintenance as per the agreed standards may be carried out by a qualified engineering firm selected by GoO through competitive bidding and a transparent process. Its independence would provide added comfort to all stakeholders, besides improving the efficiency of project operations. If required, a public sector consulting firm may discharge the functions of the Independent Engineer. This procedure is suggested also considering the fact that there is a constraint of human resource availability in OWD, OB&CC and other State Road Agencies/Departments to take up the additional task of periodical monitoring and supervision of the compliance with the operations and maintenance standards by the private toll operators.
- 3) Performance Based Contracts is an ideal approach to ensure that the private operator carries out its work in accordance with the performance standards laid down in the contract. However, this type of contract has not been so far implemented in this country in the truest sense vis-à-vis the situation in developed and some developing countries.

As a step towards strengthening and enhancing the outsource of tolling with proper operation and maintenance a Performance Based Contract may be introduced on a 'pilot basis' with payments linked to compliance with the performance standard. This will be an improvement over the traditional contracts which in many cases lead to less than optimal output.

Under the Performance Based Contract, maintaining a road network will include both routine and periodic maintenance. Routine maintenance would consist of many different tasks frequently necessary to maintain the functions of the roads such as pot-hole repairs, cleaning of drainage, sealing of cracks, cutting of vegetation, etc. Periodic maintenance consists of predictable and more costly measures of a less frequent nature designed to avoid road degradation such as grading, drainage work, resurfacing, asphaltic concrete overlays, etc. Minimum road condition and service levels are required to be defined in the contract through output and performance measures. The defined performance measures become the accepted minimum threshold for the quality level of the roads for which the private agency is responsible. The performance criteria should ideally cover all aspects of the contract and take into account of the fact that different sub-areas within the contract might require different service levels. Criteria can be defined at three levels: road user service and comfort measures, road durability measures and management performance measures. In setting the measures, various technical and practical factors need to be carefully considered such as traffic volume and composition, sub-grade quality and type, capacity of available contractors, environmental constraints like protected areas, forest reserves, etc. However, the most important criteria is the question of what service level can be afforded and economically justified for the road in question.

The payments to the contractor will be under three categories:

- i) Maintenance Services in monthly lump-sum amount on fulfilment of the performance standard with penalty for underperforming.

- ii) Rehabilitation work in lump-sum amount on the basis of quantities of measurable outputs executed in order that the road achieves the defined performance standards; and the payments will be made in accordance with the progress in execution of the measured outputs. Improvement works, if required, will be paid on the basis of unit prices for outputs for each type of improvement work.
- iii) Emergency works will follow the unit price method in the form of a traditional bill of quantities and payment will be made for each emergency work on a case by case basis.

Toll Collection Technologies

There are three basic technology options for tolling:

- i) Manual tolling
- ii) Mixed tolling -some manual tolling, some electronic
- iii) Electronic -where there is no manual toll collection

The most common method is still manual. The drawbacks are that it is a slow system and therefore requires more toll booths/lanes than any other to achieve the same traffic flow. Set up costs may also be high if land acquisition is costly. In Germany, for example, the estimated cost of installing toll booths on the motorway network (where the roads are often passing through dense development and therefore land acquisition would be problematic) have been used to argue against tolling.

There are few all-electronic systems in operation, Singapore's new area pricing system being the most comprehensive application of electronic tolling. Electronic systems require all users to carry tags in their vehicles and to pass the toll gates at a slow speed, but without stopping.

In case of both Germany and Singapore, the vehicle validation for road users / violators is done through license plate recognition system. This is possible as the number plate system in these countries is standardized which makes it easier for cameras to recognize and report vehicle numbers accurately. For example, if in Singapore a vehicle without valid tag passes through a zone where congestion fee ("toll") is payable, the camera records the license plate details and a ticket is sent to the registered vehicle owner. Such system is as of now not recommended for Odisha as:

- a) Vehicle number plates do not follow a standard system – various positions, various fonts, sizes etc.
- b) The number plates are non-reflective making it very difficult for cameras to capture details accurately, especially during the night.
- c) Tracing vehicle owners and getting them to pay penalties.
- d) Cost of back end infrastructure and maintenance is high

There has been some opposition to electronic tolling because of the level of information which it allows road operators to collect about individual users movements. There is likely to be more enthusiasm where a manual system is already in operation and vehicles are subject to severe delays at toll plazas, or where a discount for frequent use is available with the electronic system.

Enforcement can be difficult with an electronic system since it requires accurate records of car owners' addresses that are not always available. Another drawback can be compatibility

between different systems where there are several toll road operators each with different electronic toll collection equipment. This is something, which Government can however prevent by careful structuring of agreements or perhaps with legislative control.

Toll Audit

As a part of control and supervision by the employer organization, all collection and management of toll carried out by a private sector agency under any of the modes described hereinabove, it is suggested that toll fee audit should be introduced in phases.

CCTV

Forms of visual monitoring which was once the exclusive domain of well-funded secretive government security agencies are becoming readily available at an affordable cost to the public, and very sophisticated systems are being developed and installed for general surveillance use.

With respect to vehicles, speed monitoring is often carried out by simple cameras triggered by a vehicle exceeding the speed limit. The photograph captures the vehicle registration number. Instead, this may now be automated within a CCTV surveillance system. This requires not only identifying the moving vehicle within the scene, but also locating the position of the registration plate, and then automatically reading the number. To achieve this reliably under all conditions of lighting and weather is a challenging image-processing task, but operationally successful systems have been developed.

It is suggested that in strategic and critical sections of the State Highways and other roads CCTV surveillance system needs to be introduced to monitor speed of vehicles, the congestion or otherwise around the toll plaza or toll booth, as well as, the operations inside the toll booth relating to collection and dealing with road users.

Preparatory Measures

Implementation of the recommendations for enhancement of toll collection and management system requires number of steps that are needed to be taken. The steps in this respect can be classified as:

- i) Enhancing Legal Enabling Environment
- ii) Preparatory Steps
- iii) Capacity Building Measures

Time

It is admitted that the process of change or reform in the toll collection and management system cannot be expected to be completed in a short period. Therefore, the steps listed above would require a five-year time horizon and is to be planned meticulously so as to complete the process within the time period. In this regard, GoO may consider making OWD the nodal agency for the exercise.

It is suggested that implementation of the recommendations for enhancement of toll collection and management system could be initiated at the earliest and in short term horizon of two years, the activities which can be undertaken are

Suggested Implementation Plan for Short-Term

Sl. No.	Activities	Suggested Time Frame
1.	Changes in the Odisha State Roads Toll Act, 2010 and the Rules thereunder may be examined by GoO and suitable amendments made and approved	Within one year
2	Formation of the cabinet sub-committee to identify roads that are tolled	Within three months
3	Formation of empowered committee of secretaries	Within three months
4	Development of guidelines/specifications for procurement of toll collection equipment and its maintenance through the Concessionaire or OMT operator, as the case may be.	Within six months
5	Empanelment of competent firms of Chartered Accountants on pre-defined criteria for undertaking toll fee audit	Within one year

Facilitation

Facilitation measures by the Consultant are dependent on identification of the pilot project. However, in accordance with the discussions in Chapter 5, pages 5-1 to 5-4, guiding framework for implementation of out-sourced road toll collection and management operation will form a part of Draft Final Report.

Chapter 1 : BACKGROUND

1.1 Background

Concept of Road Toll - Meaning and Objectives

A toll road is a public or private roadway for which a fee (or toll) is charged for passage. It is a form of road pricing typically implemented to help recuperate the cost of road construction and maintenance.

Tolls on use of roads are levied and collected to:

- Source investment capital needed for new infrastructure development and bridge the gap between demand and supply;
- Recover the capital invested and generate profits for roads which have been built by a private enterprise or is the result of a public-private joint venture;
- Facilitate optimal and proper usage of roads so that the roads do not attract excess users because when a commodity is cheap there is normal tendency of over-consumption, which, in turn, leads to supply side constraints;
- Act as a mechanism for reducing auto dependence among the people as is introduced by many western countries.

Toll roads offer important advantages in transportation:

- **Reduce Congestion:** Toll roads allows for rational decisions on the part of the consumers, who can choose to avoid unnecessary trips and shift the time of trips to less congested times and, in the process reduce congestion. In other words, with pricing the over-use of the road facility is kept in check.
- **Facilitate Funding:** Debt financing can be arranged to fund road project with the future toll collections used as collateral.
- **Greater Safety:** Where more even flow of traffic is maintained, the accident rate reduces; and different studies show that toll roads facilitate to maintain even flow of traffic and reduce the rate of accidents;
- **Matching Cost and Benefits:** Most roads are primarily funded through fuel levy. These levies do not measure cost imposed by driving as they fail to address differences in fuel economy and the maintenance cost imposed by different vehicle weights. A toll system charges for use directly. Also, it ensures fairness as users pay in proportion to their use.

While toll road users may find their fuel costs off-set by toll charges, they still benefit greatly from the travel time saved. Non-toll road users also benefit by the fact that fewer vehicles are on the non-toll roads and during peak hours.

In addition to increasing convenience and decreasing the cost of travel, property values that have easy access to toll roads increase more than in other areas. From the business point of view, toll roads improve output and deliveries and decrease missed appointments; reduce the need for inventory holdings to safeguard against potential future delays; and increase efficiency of commercial vehicle fleet resulting from better vehicle use.

1.2 Evolutionary Stages of Road Toll

The experience around the world indicates a common four stage evolution of the toll road market. This four stage life cycle for tolling in a country consist of- Stage 1: Natural Barriers; Stage 2: Inter Urban Network; Stage 3: Congestion Busters; and Stage 4: Road Pricing. While every country or region may not transit through every stage this seems to be a model that, in general, fits.

Toll crossing of natural barriers are probably the oldest form of transport in the world. People want to cross the natural barriers to expand the market for their goods and services. The solution to achieve this in anything other than a very rudimentary way (a ferry or narrow mountain pass) is often too expensive for a government to fund through traditional funding mechanisms. Consequently, whether it is a river or a mountain, as trade grows and the countries start to motorize the solution is usually a toll bridge or tunnel. The Delhi-Noida toll bridge is a good example of this kind of toll facility. More than 30% of Delhi's population resides across the river Yamuna. Noida, one of the largest sub-cities of the National Capital Region (NCR), is inhabited by about 1 million people, 50% of whom commute to Delhi daily for work. The old river crossings at the ITO and Nizamuddin Bridge were facing severe traffic congestion, and, consequently, an additional bridge across the Yamuna was required. The bridge, which opened to traffic in February 2001, was among the first few projects to have been developed as a Public Private Partnership (PPP) in India.

Inter urban network is next type of toll road which is far more common. As a country's economy expand and travel becomes increasingly motorized the government realizes it can boost economic growth by improving inter urban road networks. The demand to improve the inter-urban network usually comes at exactly the same time as the demand to expand other forms of infrastructure (power, water, health and education) is also at its greatest. Public sector funding simply cannot accommodate such diverse range of demands, and consequently, governments often turn to road tolling to address this sector. Traditionally there is initially a public sector toll operator, which over time, is usually replaced by the private sector. India has followed this model closely with the launch in 1998 of the world's largest PPP road development program – National Highway Development Program (NHDP).

The first two stages of toll road development in a country tend to relate to provision of basic infrastructure, be it a bridge over a river, or a motor way network between major cities. What drives these projects is economic growth. However, the very economic successes that drive the need for these schemes also, means that traffic levels start to rise such that the barrier to movement increasingly is no longer physical, but is the traffic itself, and the resultant congestion it causes. In particular, such problems arise when car ownership starts to spiral as a consequence of growth of an affluent and aspirational middle class. This is clearly now happening in India.

Consequently, congestion buster toll roads are often in urban or peri-urban location where traffic density is greatest. One of the greatest challenges to introducing such schemes is the need to stop traffic for toll and the need for large swathes of expensive urban lands for large toll plazas. In the context of India such schemes are very different from those which are currently under way as part of NHDP. However, there is an initiative for moving on to the third stage of toll road evolution; and an example of that is the proposed Delhi Eastern Peripheral Expressway with the new route offering a bypass of the congestion in the city. It offers a significantly longer route in terms of distance, but much shorter route in terms of time; and it is time rather than distance that drives use of congestion buster toll roads.

While such roads are normally very popular initially, many realize that one simply cannot build enough road space to meet unconstrained demand for travel by car. Therefore, thoughts inevitably turned into rationing and pricing. This heralded the arrival of final phase of evolution of toll roads mainly road pricing.

Globally, road pricing stage is limited to date. Such schemes are often a product of increased social and environmental awareness, especially in large cities, and such schemes only tend to be publically acceptable when the local economy is over-heating such that any restraint on growth as a consequence of road pricing is seen as a positive rather than a negative.

To date opportunities have emerged to invest on toll roads that are relatively low risk. The evolution of toll roads in India is outlined in the following section.

1.3 Beginning of Tolling in India

Levy of tolls on public roads and bridges was introduced in the Presidency of Bombay in 1851. The Act of 1851 enabling the levy of tolls in the Presidency of Bombay was repealed in 1864 and a new Act was legislated. According to the provisions of this Act the provincial government was empowered to lease the levy of tolls on any public road or bridge by public auction or private contract from year to year or for a longer period not exceeding seven years on such terms and conditions as the provincial government may deem desirable. The rates at which the tolls to be collected were specified in the Schedule to this Act. However, exemption from toll was allowed to police officers on duty and the provincial government was authorized to grant and define other exemptions from payment of tolls. Also, a table of tolls authorized for collection was required to be put up at the toll gate or station legibly written or printed in English words and figures, as well as, in the vernacular language of the district concerned. Any person not paying the toll on demand was subject to penalty.

A similar Act in 1851 was enacted for the Presidency of Fort William in Bengal, North-Western provinces of Bengal and the Presidency of Fort Saint George. This Act was later amended in 1870.

There were provisions of law for charges on use of ferries, temporary bridges and tunnels, as well as, on use of certain public and private roads. However, it was found that certain highways passing through various States were being maintained by the respective States within which the particular highway was situated. Some of the States were maintaining the portions of the highway which crisscrossed within their respective jurisdiction in a proper manner but some of the States, due to one reason or the other, were found deficient in their maintenance, with the result that highways were not being maintained to the desired level. With the increase of movement of traffic on account of industrial advancement, it was found necessary that important highways of the country be developed and maintained by the Central Government. To achieve this objective the National Highways Act, 1956 was enacted and made applicable to the whole of India. Subsequently, the National Highways Act, 1956 was amended to empower the Government to levy fees for services or benefits rendered in relation to the use of sections of National Highways, in addition to the existing provisions for the use of ferries, temporary bridges, tunnels and a few public and private roads.

Following the involvement of private sector in the development of roads, since 1992, various State Governments have also enacted legislations empowering levy of toll fees on use of sections of state highway and other roads constructed either by the public sector or under PPP.

1.3.1 Tolling by National Highways Authority of India (NHAI)

In India, levy of user fee on National Highways started in a big way with the National Highway Development Program (NHDP) launched by the Government of India in the year 2000. Prior to that, only bridges constructed on National Highways and a few sections of highways were tolled as stand-alone projects. In the year 1997, Government took a decision that all 4-laned highways would be tolled. The first major National Highway stretch brought under toll, with effect from March 30, 1998, was Kotputli - Amer section of NH-8. The levy of user's fee is governed by National Highways Fee (Determination of Rates and Collection) Rules, 2008, the National Highways (Collection of Fees by Any Person for the Use of Section of National Highways/Permanent Bridge/Temporary Bridge on National Highways) Rules, 1997, and the National Highways (Fees for the Use of National Highways Section and Permanent Bridge-Public Funded Project) Rules, 1997, and as amended from time to time.

1.3.2 Current status of Tolling in India - NHAI

At present, user fee (toll) on National Highways is being levied and collected in accordance with the provisions of the National Highways Act, 1956 and Rules made thereunder. The salient features of the current policy and practices are as under:

- (i) User fee is being charged on all sections of the National Highways having four or more lanes, bridges and newly constructed bypasses;
- (ii) A ceiling for fee rate per kilometer for different type of vehicles has been prescribed for public funded projects. These rates were decided by the Cabinet taking into account savings in vehicle operating costs, damage caused by different type of vehicles, acceptability and willingness of users to pay;
- (iii) User fee rates for BOT projects are notified based on project viability. By and large, the rates are similar to the rates for public funded projects but the concessions to local traffic vary;
- (iv) The rates notified for public funded projects are revised based on Wholesale Price Index (WPI), every five years. For BOT (toll) projects, this is done every year;
- (v) Concessions have been provided in the form of lower rates for multiple journeys in a day and monthly passes for frequent users and for residents living in the nearby areas;
- (vi) At present, open system of tolling is being followed where the user has to pay user fee at flat rate for the notified length at a predetermined location and not the fee for the actual length travelled;
- (vii) Broadly two methods of collection are being followed – through the government department or through the private contractor engaged on the basis of competitive bidding;
- (viii) Toll revenue accrues to the Central Government in case of public funded projects. The concessionaire retains the fee in case of BOT projects.

1.4 Tolling in Other States

At the sub-national level, tolling has been introduced in number of states. The tolling policy and rules followed in some of the states are briefly described in this section.

1.4.1 Andhra Pradesh¹

The Act: Collection of tolls on roads in Andhra Pradesh is as per the “Andhra Pradesh State Roads (Collection of Fees from any Person for the Use of Section of State Roads/Permanent Bridge/Temporary Bridge on A.P State Roads) Rules, 2007”.

As per these Rules, user fee is levied and paid to the Executing Agency/Concessionaire on behalf of the Government of Andhra Pradesh by any person of the mechanical vehicles for the use of State Roads/Permanent Bridge/Temporary Bridge or both at the rates notified by the Government of Andhra Pradesh (GoAP).

The Agreement: GoAP can enter into an agreement with any person in relation to development and maintenance of the whole or any part of Road section or a permanent bridge on State Roads whereby the person or the concessionaire may be permitted to invest his own funds in part or full for the development and/or maintenance of the concerned road section or bridge. Further such person will be allowed to collect and retain the fees of agreed rates from different categories of mechanical vehicles for an agreed period for the use of the facilities thus created, subject to terms and condition of the agreement and rules relating to toll on roads.

Rates of User Fee: The rate of user fee for services or benefits rendered in relation to use of road section/bridge is presented in **Table 1.1**.

Table 1.1: Rates of User Fee

Sl. No.	Category of Vehicle	Rs./KM (4-lane Highway)*
1	Car/Jeep/Van	0.50
2	LCV/Mini Bus	1.00
3	Bus/Truck	2.00
4	Multi Axle Vehicles and Heavy construction vehicles	5.00

*Effective from June 2007

The rates may be reviewed after every two years based on Whole Sale Price Index and by the Government of Andhra Pradesh over the rates notified.

1.4.2 Gujarat²

Toll Policy, 2008: As per the Toll Policy of Gujarat, any facility created or improved with public private participation and having the following configuration may be considered for tolling depending on their techno-economic-socio feasibilities:

- Road having four and more than four lane with or without service road and of length not less than 10 continuous kilometres;
- Roads having two lanes with paved shoulders and of length not less than 25 continuous kilometres;
- Bypasses having minimum configuration of two lanes with paved shoulders.
- Major bridges/road over bridges.

¹ Transport, Roads and Building Department, GO, 2008

² Roads and Building Department, Government of Gujarat, 2008

Toll Rates: As per the Toll Policy, 2008, the toll rates are fixed on a case to case basis. Toll rates of Government of India may be considered applicable for the comparable facilities. For other facilities, toll rates may be decided on the basis of toll rate viability, uniformity of rate in the region and restricting recovery to the tune of 50% of the perceived user's benefits. Toll rates may be revised periodically for increase in tariff. Government may give some relaxation to local traffic using portion of the project facility.

Distance between two toll plazas: Preferable distance between two toll plazas may be 25 to 30 kms. Distance may be adjusted on the basis of trip length characteristics of road users. The effort should be to keep the distance as much as possible between two plazas.

1.4.3 Madhya Pradesh³

As per the Road Development Plan of Madhya Pradesh, the State Government has accorded high priority to improve the road infrastructure in the State and has been successful in attracting the private sector participation in the development of Highways.

Toll Rates: The State Government allows levying toll on the following basic rates as shown in the **Table 1.2**, issued by Madhya Pradesh Road Development Corporation Ltd.

Table 1.2: Toll Rates – Madhya Pradesh

Sl. No.	Description	Rs. per km and per trip*
1	Light Commercial Vehicle	0.85
2	Truck	2.11
3	Multi Axle Truck	4.21

*Basic Toll Rate effective from 01.09.2007

The above rates increases on every Toll Plaza every year on the basis of Wholesale Price Index and is rounded off to the nearest five rupees. The increase is made effective from 1st September every year, based on the Wholesale Price Index (WPI) for the year ending 31st March.

Local Traffic: Local Traffic remains exempted from payment of toll. Such vehicles are issued monthly pass by the concessionaire. Such passes are issued to eligible vehicle owners, by the concessionaire, on production of necessary documents and after payment of monthly fee of Rs. 50.00 is revised annually applicable from 1st September of every year to reflect the variation in WPI as compared to WPI of year ended March, 31, 2007 and then rounded off to the nearest five rupees.

1.4.4 Maharashtra

State Government's Policy: Government of Maharashtra has formulated its policy in 1996 to finance road development projects through private sector participation. It includes improvements to the existing roads and construction of roads, bridges, rail over bridges (ROBs), tunnels, culverts etc. The Bombay Motor Vehicles Tax Act is amended to make it possible for the entrepreneur to collect toll.

Toll Policy: The State Government has also finalized its Toll Policy. The toll rates for different category of vehicles have been fixed for a block of 3 years with the increase of 6% per annum to be effected after every 3 years. The following types of vehicles are exempted from payment of toll – scooter, motor cycle, three-wheeler Auto and tractors, VVIP Vehicles, Vehicles in which MLAs and MPs are travelling, Government Vehicles (State and Central),

³ Public Works Department, Government of Madhya Pradesh, Notification, 2010

Police Vehicles, Vehicles of Post and Telegraphs Department, Ambulances, fire services vehicles.

A separate Toll Monitoring Unit has been established from April 2002 to monitor the toll collection work.

Toll Rates: The Toll Rates in Maharashtra on some of the stretches of state highways are as per **Table 1.3**.

Table 1.3: Toll Rates – Maharashtra

Name of Toll Station	Rates (in INR)			
	Car / Jeep	Light Motor Vehicles	Bus / Truck	MAV
Lasur (Aurangabad - Vaijapur Road); Nakshatrawadi (Paithan Rd); Sawangi (Pune Jalgaon Rd)	20	30	55	60

1.4.5 Punjab⁴

Toll Policy July 2004: The main highlights of the Toll Policy, 2004 of Punjab are as follows:

- It is an open system of tolling;
- Automatic annual revision of basic toll rates: Till 2011, 10% flat increase plus indexation to Inflation (WPI);
- Peak and Off Peak Toll Charge: up to 25% premium during peak hours;
- Additional Charge for Evasion of Toll Charges: additional sum equal to applicable toll charges and penalty for unauthorized collection is equivalent to 5% penal interest per day;
- Additional Charges for Overloading

Basic Toll Rates for Highways: Basic Toll Rates for Highway subject to the minimum toll charges is presented in **Table 1.4**.

Table 1.4: Toll Rates – Punjab

Sl. No.	Category of Vehicle	Basic Toll Rate Per Vehicle (Rs./km)	Minimum Toll Charge (In Rs.)
1	Car/Three Wheeler	0.35	10
2	Light Commercial Vehicle (LCV)/Tractor with Trailer	0.53	15
3	Bus/Truck/Road Roller	1.05	30
4	Heavy Truck	1.60	40
5	Earth Moving and other Propelled Equipment	2.00	50

⁴ Department of Public Works, Buildings and Roads Branch, Government of Punjab, Gazette Notification, July 2004

Basic Toll Rates for Bypass: Basic Toll Rate for bypass, in respect of all categories of vehicles, is 50 per cent (fifty per cent) higher than the basic toll rates payable for Highways.

Basic Toll Rates for Bridges: Basic Toll Rates for Bridges, in respect of cars, are as per **Table 1.5**.

Table 1.5: Toll Rates – Bridges (Punjab)

Sl. No.	Length of Bridge	Basic Toll Rate (In Rupee per trip per car)
1	50-100 meter	2.50
2	Subsequent 100m or part thereof	2.00

Annual Revision of Basic Toll Rates: The Basic Toll Rates is increased annually by 10 per cent (ten per cent) thereof for a period of seven successive years commencing from April 1, 2011.

1.4.6 Rajasthan

Rajasthan was the first State to announce a State Road Policy in 1994 to facilitate the entry of private sector. The State Government made rules for the collection of fee for use of sections of state highways, permanent bridges, bypasses and tunnels under the Rajasthan Road Development Act, 2002.

Levy of Fee: The rate of fee for use of a section of state highway of two or more lanes shall, for the base year 2010-11, be the product of the length of such section multiplied by the following rates as given in **Table 1.6**.

Table 1.6: Toll Rates – Rajasthan

Sl. No.	Type of Vehicle	Base rate of fee per km (in rupees)
1	Car, Jeep, Van or Light Motor Vehicle or Tractor with trolley carrying non-agricultural produce.	0.80
2	Light Commercial Vehicle, Light Goods Vehicle or Mini Bus	1.20
3	Bus or Truck	2.40
4	Heavy Construction Machinery(HCM) or Earth Moving Equipment (EME) or Multi Axle Vehicle (MAV) (three to six axles)	4.00
5	Oversized Vehicles (seven or more axles)	4.80

Other Toll Provisions:

- Provided that tractors and animal-drawn vehicles are not allowed to use the section of state highway, permanent bridge, bypass or tunnel, as the case may be;
- Provided further that where a service road or alternative road is available and the owner, driver or the person in charge of a two wheeler is making use of the section of state highway, permanent bridge, bypass or tunnel, as the case may be, he or she is to be charged fifty per cent of the fee levied on a car;

- The fee notified by the State Government under these rules shall be rounded off and levied in multiple of the nearest rupees five;
- The rate of fee for use of permanent bridge, bypass or tunnel constructed with the cost exceeding rupees five crore, for the base year 2010-11, was as per **Table 1.7**.

Table 1.7: Toll Rates – Rajasthan (Cost Exceeding Rs. 5 Crores)

Base Rate of Fee (Rupees per Vehicle per Trip)					
Cost of permanent bridge, bypass or tunnel (rupees in crore)	Car, Jeep, Van or Light Motor Vehicle	Light Commercial Vehicle, Light Goods Vehicle or Mini Bus	Truck or Bus	HCM, EME or MAV	Oversized Vehicle
5.0 to 7.50	5.0	7.50	15.0	22.0	30.0
For every additional rupees five crore or part thereof, exceeding rupees seven point five crore and up to rupees one hundred crore.	1.0	1.50	3.0	4.50	6.0
For every additional rupees five crore or part thereof, exceeding rupees one hundred crore.	0.75	1.15	2.25	3.40	4.50

Annual revision of rate of fee: The rates specified are increased without compounding, by three per cent each year, and such increased rate is deemed to be the base rate for the subsequent years.

1.4.7 Challenges faced in Toll Collection

Operating Toll Roads is a very technical and complex activity and many varied factors contribute towards its success. A few challenges faced in the process include lack of required provisions in the concession agreements, ambiguous existing laws and lack of support from authorities and law enforcing agencies on forced toll gating by road users refusing to pay toll. The major challenges being faced in toll operations, certain restraining issues, hazards and impediments in tolling, are enumerated below:

- **Toll Collection on Existing Alignments:** The projects in India are mostly the ones which have put tolls on existing alignments unlike other countries which put tolls on green field projects. There is thus resistance from public to pay toll for such projects as they were not used to pay tolls earlier.
- **Access / Exit Control on Toll Roads:** Due to at-grade intersection, entry/ exit to the project highway is uncontrolled. Hence, some experts have underlined the need for open system of tolling, where the user crossing the toll plaza pays the toll for full project road irrespective of the length travelled on the Project Highway.
- **Detours:** With wide-spread development of roads, taking a toll detour has become a standard practice by most road users. In a large number of concession agreements, there are no safeguards like check plazas. Thus, to avoid loss of toll collections, choosing the correct location for the plaza becomes critical.

- **Influence Length of Toll Plaza:** Although, latest fee rules provide for 60 km spacing, it is difficult to maintain such spacing. In open system of tolling, if the influence length of the toll plaza is more, it leads to higher rates, as also changes of avoidance through detours.
- **Manual / Semi-automatic Toll Collection:** Due to manual/ semi-Automatic toll collection (not Electronic tolling), the dispersal rate of the vehicles is limited (300 vehicles per hour). Setting up of Electronic Tolling is in progress and it may take 1-2 years to equip all toll plazas with Electronic Tolling System and to establish Central Clearing House.
- **Multiplicity of Authorities:** Sometimes highway development has to happen by dealing with two government bodies for National and State Highways. Also in the same region two companies may be executing two different projects being awarded by two different government bodies. National Highway has a policy of spacing toll plazas at a distance of 60 km, and State Highway has a policy of 35km. National Highway will always have a connectivity with State Highway and many times when one shifts from National to State Highways, faces two tolls - many times even at a distance of 10-12 km. Though both authorities are correct in their policies, such different controlling bodies, different projects and different companies executing the same, in the same region have led to increasing tolls and public outcry. This aspect needs due consideration.
- **Plaza Design:** The plaza design should be able to cater to future expansions. The planners / designers must be optimistic in traffic calculations while working out the lane requirements. Long queues might result from unavailability of lane expansion avenues. Lanes should be designed for peak hour traffic. Variation in peak hour traffic is sometimes as high as 300%. Delayed users are a potential risk to the projects as they might create problems leading to adverse observations by the NHAI and local administration. These can sometimes lead to agitations or incidents of mass forced toll-gating, resulting in substantial toll revenue losses.
- **Local People Resistance:** Problems of toll collection in some regions due to political and local people resistance.
- **Fragmentation of habitat:** Leads to inconvenience to the people resulting in resistance to payment of toll.
- **Poor Operation & Maintenance of Road Stretch:** At times, the Project Highways are poorly maintained by concessionaire.

1.4.8 Case Examples

A few case examples of toll in different states of India are described below to further understand the issues and challenges from the experiences of these examples.

1.4.8.1 Vadodara-Halol Toll Road

Vadodara Halol Toll Road (VHTR) involved widening and strengthening of 32 kilometres (km) of the existing two-lane State Highway (SH 87) connecting Vadodara to the industrial town of Halol into a four-lane tolled expressway. Government of Gujarat (GoG) commissioned Infrastructure Leasing and Financial Services Limited (IL&FS) to jointly develop two road projects in the State, i.e. Vadodara-Halol and Ahmedabad-Mahesana. The Roads and Buildings Department (R&B), GoG and IL&FS signed a Memorandum of Agreement (MoA) to this effect on 31st October 1995.

A Special Purpose Vehicle (SPV) was constituted for this purpose named the Vadodara Halol Toll Road Company Limited (VHTRL). GoG entered into a concession agreement with VHTRL to design, finance, build, operate, maintain, and transfer the facility after recovery of a predetermined return. VHTRL in turn appointed a consortium of Punj Lloyd Limited and IRCON International Limited, through international competitive bidding, as contractors to construct, operate and maintain the project. The contractors also have an equity stake in VHTRL.

The construction of VHTR commenced on 1st March 1999 and completed on 15th September 2000. The toll operations commenced from 24th October 2000. The contract made provision for five major items of operation and maintenance during the life of the project. These were:

- Routine Maintenance (continuous)
- Periodic Overlay (every five years)
- Periodic Renewal (every fifteen years)
- Toll Operation and Management

The toll has to be determined, levied, collected, retained and appropriated from all the users of the facility. Toll rates are based on a fixed formula and are allowed to increase on an annual basis in line with an escalation formula linked to the Consumer Price Index (CPI).

For increases beyond that, VHTRL is entitled to submit to GoG, with the certificate of the Independent Auditor, an upward revision of the toll rates. In the event that GoG agrees with the revision of the toll rates, then it shall pass appropriate notifications for effecting the revision of the toll rates. In the event GoG fails to issue the notifications within the stipulated time, it shall compensate VHTRL to the extent of loss of revenue caused due to such delay.

Performance standards for major activities of operation and maintenance are specified in the agreement.

VHTRL manages, operates and maintains the road for 30 years starting from 2000.

1.4.8.2 Delhi-Gurgaon Expressway

The National Highways Authority of India (NHAI), under the Ministry of Road Transport & Highways (MoRT&H), was entrusted the responsibility for implementation of the Golden Quadrilateral Project (Highway Project connecting the four metro cities of New Delhi, Mumbai, Chennai and Kolkata). As a part of this project, it proposed the conversion of a very busy section of NH-8 connecting Delhi to Gurgaon into a 6/8 lane access controlled divided carriageway.

The then existing 4 lane, 27.7 km section of NH-8 between Delhi and Gurgaon with as many as 20 intersections, experienced high vehicular density (145,000 Passenger Car Units (PCUs)/day in 2000) and non-segregation of traffic that led to increase in accidents, acute congestion, wastage of fuel and excessive pollution. It was estimated that the expressway would reduce the travel time between the Delhi and Gurgaon from about 65 minutes to around 20 minutes.

The project was awarded to the consortium of Jaypee Industries and DS Construction Ltd to design, finance, construct, operate & maintain the facility for a concession period of 20 years. As in a typical BOT highway project, the Concessionaire is allowed to collect toll from the users of the project facility during the operation period to recover his investment and the expressway is required to be transferred back to the Government at the end of the concession period. NHAI as the concession authority has set stringent performance standards and obligations to be met.

A Special Purpose Vehicle renamed as Delhi Gurgaon Super Connectivity Ltd. (formerly Jaypee DSC Ventures Ltd.), was created for execution of the project. While at the time of bidding, Jaiprakash Industries had a controlling stake of 51% and DS Constructions held 49%. During the course of project implementation, Jaiprakash Industries reduced its stake in the SPV to about 1.2%. The SPV entered into a fixed time-fixed price Engineering, Procurement & Construction (EPC) contract with DS Constructions Limited for this project.

To allow recovery of investment and to earn a suitable return, the Concessionaire is entitled to collect toll from the users of the expressway during the operation period. The toll is notified by the MoRTH and there is an annual revision linked to the extent of variation in the Wholesale Price Index. The toll has to be shared with NHAI if more than 130,000 PCUs are tolled on the expressway.

The expressway has been operational after it was opened to traffic in January 2008. It carries more than 180,000 PCUs per day, which is much higher than the traffic estimates for the project by 13,000 to 15,000 PCUs per day. The substantially higher number of vehicles using the facility has often led to a queuing up of vehicles at the toll plazas. One of the main toll plazas was made free flow and toll was discontinued due to excessive queuing caused by high volume of traffic. This stresses the importance of estimating the traffic and growth rate correctly so that sufficient infrastructure (number of toll lanes) can be planned.

The expressway consists of 9 flyovers, 4 underpasses and 2 foot-over bridges and 3 toll-plazas. Smart tags have been introduced to enable cashless automatic payment.

1.4.8.3 East Coast Road, Tamil Nadu

Tamil Nadu Road Development Company Ltd. (TNRDC) was structured as a model public-private partnership between the public agency known as Tamil Nadu Industrial Development Corporation (TIDCO) and the private consortium IL&FS. The purpose of TNRDC was to improve the small roads connecting the state capital Chennai with the town of Cuddalore. The objective was to reduce traffic congestion, facilitate local business and trade, and reduce the local air pollution. However, this initial agreement lacked a sufficient financial base, which slowed maintenance work in the project. As a result, the road was characterized by high levels of accidents, poor signage and absence of road markings. Pavement failures were also seen within two years of the initial development.

To correct these deficiencies, TNRDC negotiated a new contract for the rehabilitation and maintenance of the 113.2 km East Coast Road (ECR) between the cities of Chennai and Pondicherry, via the city of Mahabalipuram,

The new contract was renegotiated as a Rehabilitate-Improve-Maintain-Operate-Transfer (RIMOT) agreement, which included a number of improved specifications. Work under this agreement began in February 2001, and a substantial portion was completed by December 2001. The improved road began operating as a toll road on March 24, 2002.

The contract provisions for the construction of new roads and the maintenance of existing roads were based on the projected traffic volume and the expected economic viability of the project. The contract included the maintenance of several state highways in addition to the East Coast Road, in order to increase the attractiveness of the contract and improve the competitive pricing and quality of both the construction and maintenance. The private operator also signed an Integrated Improvement and Maintenance Contract that included performance standards to be met in the operation of the toll road.

The RIMOT framework required the tolls charged to recover improvement and maintenance costs only, allowing for lower tolls rates for users. Project returns for the private sector are capped at 20% and any surplus is reinvested in the state road sector.

The RIMOT framework also included an increased toll structure and discount travel cards for regular users and exemption of toll for economically disadvantaged groups. This method has found acceptance with toll payers, since lower income travelers using two-wheelers, three-wheelers and agricultural vehicles, as well as local residents are now exempt from the toll. Only cars, light commercial vehicles, buses and trucks pay toll for use of the road.

1.4.8.4 Coimbatore Bypass

The National Highway No.47 connects Salem with Kanyakumari via Trissur, Ernakulam, and Thiruvananthapuram in Kerala, passes through the city of Coimbatore. Congestion within the city was causing traffic delays and so there was a need for a bypass. The shippers, mostly export-oriented units relying on the Cochin port for shipments, were other major beneficiaries as transportation time could be saved using the new road.

The project involved construction of a 28-km long two-lane bypass road, the 32.2m new Athupalam bridge across the river Noyal, the railway overbridge at Chettipalayam Tamilnadu and the maintenance of the old bridge at Athupalam. A tripartite concession agreement was signed between Ministry of Surface Transport, the Tamil Nadu State Government and L&T Transportation Infrastructure Ltd (LTTIL) on 13 October 1997. The scope of the project included two distinct segments – (i) construction of the bypass, and (ii) construction of a two lane Athupalam Bridge across Noyyal River on NH 47. As per the agreement, LTTIL was given a concession to levy toll for a period of 20 years on the Athupalam Bridge and 30 years on the Coimbatore Bypass. The Build Own Transfer (BOT) operator was authorized to collect and retain the fee from users of the new and old Athupalam bridges. The agreement clearly specified that while the traffic risk was with LTTIL, the risk due to non-payment of tolls would be with the state government.

The project helped vehicles save fuel and vehicle operating costs due to reduction of distance by 2.5 km and free flow traffic, besides time. Other benefits to the bypass users included less pollution, pleasant drive, good wayside amenities and safety.

Construction was started in January 1998 and completed in 22 months' time. The Athupalam Bridge was opened for traffic in December 1998 and the bypass became operative from January 19, 2000. However, the project ran into problems when users refused to pay the toll for the old Athupalam Bridge. They argued that the old bridge was already in existence. As for the bypass and the new Athupalam Bridge, they felt that the toll rates were on the higher side. They also complained that L&T had not taken them into confidence before coming out with the toll rates.

However, LTTIL faced the following challenges in respect to tolling:

Local traffic: The Athupalam Bridge was located close to the city limits of Coimbatore. The volume of local traffic was very high. There was an unwillingness to pay toll, especially since they had not paid tolls for the bridge crossing prior to the construction of the new two lane bridge.

Multiple trips: The agreement provided for collection of tolls only on the basis of single trips made across the bridge. It ignored the users that made multiple trips per day. Such users found trip wise toll charges an expensive affair.

Toll on existing bridge: The agreement provided for collection on the existing two lane bridge. After the construction of the new two lane bridge, each bridge was being used uni-directionally.

Public objected to the toll being levied on the existing bridge for which LTTIL had not made any additional investment.

Enforcement: Local taxi operators, bus operators, and commercial fleet operators had formed associations to protest against toll collection and were refusing to pay toll. Despite public protest, toll collection continued, but with poor/low compliance. LTTIL had appealed to the government to suitably amend the Motor Vehicles Act to empower a private entrepreneur to enforce toll collection and regulate traffic flow for users refusing to pay the toll charges.

LTTIL also faced problems with the **tolling of the old Athupalam Bridge**, which did not come within the route of the bypass. This bridge was an already existing facility being used by the incoming traffic from Kerala to Tamil Nadu. Transport operators had initially refused to pay the tolls. The bulk users of the bridge including the state transport corporations of Tamil Nadu and Kerala had refused to pay the tolls.

Tamil Nadu State **Government too backtracked** and sought concessional tariff for state transport buses on the plea that the transport department was in the red. Tamil Nadu State Government was willing to pay only Rs.50 per bus for making more than three trips a day instead of the originally planned Rs.15 per bus per trip. LTTIL agreed to the subsidized toll rate on the condition that the state government compensated the revenue losses sustained by the company.

The Coimbatore District Bus Owners Association (CDBOA) and the Lorry Owners Association **refused to pay even the subsidized tariff**. The CDBOA had even taken the issue to Madras High Court against the tariff but the Court directed the private operators to pay the toll charges. However, they refused to comply with the court's orders.

Since December 1998, LTTIL was unable to collect the tolls from road users and this resulted in a loss of revenue. This included amount due from Tamil Nadu State Government towards reimbursement of losses incurred out of the subsidized toll payment for the state transport buses.

The matter was reviewed and discussed at the senior government level.

1.4.9 Lessons Learnt

- **Effective Communication:** An effective approach to popular resistance to tolling generally requires a tolling strategy and effective communication. The adoption of a tolling strategy can generate public acceptance for tolls and facilitate the implementation of a PPP program based on user fees;
- **Value for Money:** Tolling has to be (and more importantly be perceived to be) constructive (not penalizing road use) and adjusted to the specific road network of each country to ensure utmost transport effectiveness. In such cases, tolling is the ultimate user pay system – the user pays a price that he is willing and able to afford in return for a clearly defined service provided by the road agency. “Value for money” drives this arrangement and makes it publicly acceptable. In developing countries like India, the purchasing power of the population at lower socio-economic levels also has to be taken into consideration.
- **Costs to be covered:** Prices (tolls) should attempt to cover all costs, including operation, maintenance and investment. When tolls do not cover all costs, government should consider forms of government support, including an up-front payment, shadow tolls or an availability payment.
- **Auditing processes** should be integrated in toll operation procedures. Regular offsite audits and third party audits should be conducted. Tolling in India is in developing

phase and poses a big challenge to toll road operators. This fledgling sector has a great future if tolling operations are handled properly. Profitable tolling operations will ensure success of projects and have the potential to revive this sector.

Analysis/Assessment

It is recommended that since the NHAI is managing large road network and is constantly framing and updating tolling guidelines, GoO may also follow the same. This would also help integrate the state practices with national level policies which would be beneficial in the long run as it would avoid duplicating or contradicting established practices. For example, the nationwide ETC program rolled out by the NHAI requires seamless transit experience for the road user and envisages the deployment of a CCH (Central Clearing House). This program requires on vehicle mounted RFID (Radio Frequency Identification) tag to be accepted at all NHAI toll plazas. If the NHAI guidelines are accepted by GoO it would mean not having to set up a separate CCH or look at alternate (an non-compatible) technologies and this would allow easy transit to the road user.

Similarly the new NHAI guidelines to allow penalty of 10 times to the road user in case of overload, to penalize a non tag user entering a tag lane etc. should be embraced as this would ensure consistency and transparency for the road user and the implementing authorities.

Chapter 2 : ROAD TOLLING IN ODISHA

2.1 Enabling Legislation for Toll

The Orissa State Roads Toll Act, 2010 (the Act) came into force with effect from 15 February 2011. The Act has created the enabling legal environment for levy and collection of toll for using state roads, including bridges on these roads. As defined in the Act, state roads mean a continuous length of the whole or part of a state highway, major district road, village road and includes bypass but does not include national highway. The Act applies to state roads under the control of the State Government, including section thereof and every bridge constructed on or across such roads, as the State Government may, by notification specify, from time to time. Every mechanical vehicle (i.e. a vehicle driven under its own power, including a motor vehicle) is liable to pay toll for usage of state road for which toll is notified. However, the State Government may exempt such mechanical vehicles as it may prescribe from levy or payment of toll.

Further, State Government is empowered to enter into an agreement with any person in relation to construction, development and maintenance of any state road or bridge, and such person is entitled to collect and retain toll rate at such rate, for services or benefits rendered by him, as the State Government, may, by notification specify having regard to the expenditure involved in construction, development and maintenance & operation of whole or part of such state road or bridge, interest on capital invested, reasonable return, the volume of traffic and the period of agreement.

The toll fee rates are laid down in Orissa State Roads Tolls (Determination of Rates & Collection) Rules 2011 framed under the provisions of the Act. The toll rates are specified for different types of roads and bridges for the base year 2010-11 and are uniform for both public funded and private investment project. The toll fee rates may be annually revised by the State Government, if it considers appropriate, by adjusting and reflecting the increase in the Wholesale Price Index between the week ending on 6th January 2010 and the week ending or immediately after 1st January of the year in which such revision is undertaken, but such revision shall be restricted to 40% of the increase in Wholesale Price Index.

The toll collected in case of a public funded project shall be remitted to the state government. In case of private investment project, the toll collected shall be retained by the concessionaire in accordance with the provisions of the Concession Agreement.

According to these Rules, the location of toll gates on the same section of the state road should normally be not less than 40 km, in the same direction unless for reasons recorded in writing this distance is required to be reduced. However, the minimum improved length of the section of state road shall not be less than 10 km. Further, toll gates may be located within a distance of 40 kms from another toll gate if such toll gate is for collection of toll for a stand-alone bridge or bypass. Also, a toll gate shall not ordinarily be located within a distance of 10 km. from municipal area, and in no case within 5 km. of municipal area.

Further, to ensure compliance of the Rules the State Government may from time to time specify the reporting, inspection and auditing requirements.

2.2 Present Procedure for Toll Collection and Management

Currently the state roads and bridges that may be tolled are primarily identified by the Odisha Works Department and placed before State Government for consideration, review and approval. In identifying the tollable roads, different factors are usually considered such as the cost of road development, cost of operation and maintenance, volume of traffic, benefits

emanating from the road to the locality and the people, and the potential for toll generation. These factors along with the socio-economic considerations are taken into account by the State Government in according its approval for notification of the state road and bridge to be tolled.

The system for determination of tollable road is not laid down in form of rules and regulations but is more in nature of informal practice. This leaves scope for flexibility as well as adhocism, which is more or less in line with the situation in most of the States of the country.

Odisha Bridge Construction Corporation Limited (OB&CC), a public sector undertaking of Government of Odisha (GoO), is mandated to collect and manage toll on roads and bridges that are notified as tollable and handed over to it by GoO.

OB&CC selects agencies for collection and management of tolls through a open tender and awards the tolling contract to the bidder who provides the highest amount of bid in terms of consideration of fees to OB&CC.

The contract with the toll collection and management agency specifies the section of the state road or bridge, as the case may be, that is to be tolled, the rates at which the different types of vehicles are to be tolled and authorizes the agency to collect the toll on behalf OB&CC. The contract with the agency is usually for a year and is generally retendered every year. The contract also provides for supervision and inspection over the operations of the contracting agency by OB&CC, as it may deem appropriate.

The toll collected by the agency is retained by it and the contracted fees (or consideration) are paid to OB&CC. The latter retains 15% of the fees as agency charges and deposits the balance to the Consolidated Fund of the State.

The toll revenue received by OB&CC through this mode of operation for last 5 years from 2007-08 to 2013-14 are given in **Table 2.1**.

Table 2.1: Toll Collection under M/s O.B. & C.C Ltd

(In Rs.)

Financial Year	No. of Toll Gates (R&B)	Toll Collection (R&B)	No. of Toll gates (R.D)	Toll Collection (R.D)	Total Nos. of Toll Gates (R&B and R.D)	Total Toll Collection
1	2	3	4	5	6 (2+4)	7 (3+5)
2007-08	39	218779226.00	14	1025083.50	53	219804309.50
2008-09	44	274134485.50	12	1217783.50	56	275352269.00
2009-10	42	272746599.00	8	1138715.00	50	273885314.00
2010-11	42	321306902.00	8	1399683.00	50	322706585.00
2011-12	37	336017255.00	8	1680333.00	45	337697588.00
2012-13	37	297103932.00	8	1758495.00	45	298862427.00
2013-14	37	320667602.00	8	1766908.00	45	322434510.00
Total		2040756001.50		9987001.00		2050743002.50

Source: Accounts office, Odisha Bridge Construction Corporation Ltd.

Collection of toll has been increasing over the years in absolute and relative terms except in 2009-10 when it dipped down. Toll is largely collected on manual basis.

2.3 Comparative Toll Rates

Given below is a comparison of the toll rates of Andhra Pradesh, Madhya Pradesh, Punjab, Rajasthan and Odisha in **Table 2.2** followed by the toll rates of Odisha in **Table 2.3**.

Table 2.2: Comparative Toll Rates

Sl. No.	Category of Vehicle	Rs. per km and per trip (4-lane Highway)			
		Andhra Pradesh	Madhya Pradesh	Punjab	Rajasthan
1	Car/Jeep/Van	0.50	-	0.35	0.80
2	LCV/Mini Bus	1.00	0.85	0.53	1.20
3	Bus/Truck	2.00	2.11	1.05	2.40
4	Multi Axle / Heavy Vehicles	5.00	4.21	1.60	4.80
5	Construction Vehicles	-	-	2.00	4.00

Table 2.3: Toll Rates in Odisha

Sl. No. (1)	Category of Vehicle	Base rate of Toll per km. (in Rs.) (3)			
		(a) Single Lane	(b) Intermediate Lane	(c) Double Lane	(d) Four Lane or More Lanes
1	Car, Jeep, Van or Light Motor Vehicle	0.21	0.32	0.43	0.71
2	Light Commercial Vehicles (LCV)/Light Goods Vehicle	0.35	0.52	0.69	1.15
3	Tractor Trailer	0.73	1.09	1.45	2.42
4	Trucks (2 Axle)	0.83	1.24	1.65	2.75
5	Trucks (3 Axle) & Multi Axle Vehicles (upto 6 Axles)	1.14	1.71	2.27	3.79
6	Heavy Construction Machinery (HCM), Earth Moving Equipment (EME), Oversized Vehicle (with 7 or more axles)	1.39	2.08	2.77	4.62

It would be evident from the **Table 2.2** and **Table 2.3** above that the per km and per trip toll rates in Odisha for four lane roads are more or less comparable to the toll rates of other states such as Andhra Pradesh, Madhya Pradesh, Punjab and Rajasthan:

- a) The rate for light motor vehicle category such as Car/Jeep/Van are to the tune of Rs. 0.35/km/trip to Rs. 0.80/km/trip in the above mentioned states and Rs. 0.71/km/trip in Odisha;

- b) Similarly for 2-Axle Trucks, the rate of per trip per km is the lowest in Punjab at Rs. 1.05/km and Rs. 2.40/km in Rajasthan. In Odisha, 2-axle trucks have to pay Rs. 2.75/km/trip;
- c) In the category of Light Commercial Vehicles (LCVs), the rates in Rajasthan are Rs. 1.20/km and in Odisha, it is Rs. 1.15/km for LCVs.

Considering the increase in cost of operation and maintenance as well as the need for rehabilitation and improvement of roads and bridges as stated in the Odisha State Asset Management System Report, it is necessary to revise the current toll rates in the State of Odisha. It is given to understand that GoO is contemplating to revise these rates. However, the revised rates have not yet been notified. In line with the provisions of the Odisha State Road Tolls (Determination of Rates & Collection) Rules-2011, the revised toll rates for the year 2013-14 would stand as presented in **Table 2.4**.

Table 2.4: Suggested Revised Toll Rate for 2013-14

Sl. No. (1)	Category of Vehicle (2)	Base rate of Toll per Km. (in Rs.) (3)			
		(a) Single Lane	(b) Intermediate Lane	(c) Double Lane	(d) Four Lane or more Lanes
1	Car, Jeep, Van or Light motor vehicle	0.25	0.39	0.52	0.86
2	Light Commercial Vehicle (LCV) Light Goods Vehicle	0.42	0.63	0.83	1.38
3	Tractor Trailer	0.88	1.31	1.75	2.91
4	Trucks (2 axle)	1.00	1.49	1.99	3.31
5	Trucks (3 axle) & Multi Axle Vehicles (up to 6-axles)	1.37	2.06	2.73	4.56
6	Heavy Construction Machinery (HCM), Earth Moving Equipment (EME), Oversized Vehicle (with seven or more axles).	1.67	2.50	3.34	5.56

Chapter 3 : PARAMETERS FOR ENHANCING ROAD TOLL COLLECTION AND MANAGEMENT

3.1 Enhanced Enabling Legal Environment

The provisions of Odisha State Roads Toll Act, 2010 and the Rules thereunder are in line with the provisions in regard to toll prescribed by the National Highway Authority of India and as followed in other states. However, to enable enhancement of the environment for effective and efficient tolling, the following suggestions may be considered:

1. The toll collected should be “ring-fenced” for use for the development of the road sector because toll is a direct user charge paid and collected from the road users. In this context, it may be mentioned that according to the Karnataka Highways Act, the toll collected on roads within the State is stipulated to be credited into the Karnataka Roads and Bridges Fund.
2. Provisions for levy of additional fee for overloaded vehicles may be considered as a deterrent to deterioration that may be caused to the roads and state highways by such overloading. Additional fee (overload penalty) may be imposed as recommended in the report on vehicle axle load management (Refer “*Findings, implications and recommendations for controlling overload on roads in Odisha – Vehicle Axle Load Regulation and Management Report*”- submitted by ICT)

Overloading in other states

The Central and State Motor vehicle Acts have provision for penalizing overloaded vehicles (Section 194). Section 114 empowers the states to offload overloaded vehicles. Further, as per ruling of Hon’bl Supreme Court of India of November 2005, the overloaded vehicles shall not be allowed to pass even after penalization and the excess load shall be offloaded at the cost of the transporter. The nine states which were mainly affected by this order were Punjab, Haryana, Gujarat, Madhya Pradesh, Rajasthan, Orissa, Maharashtra, Karnataka and Uttar Pradesh, who had under provisions of Section 200 of Motor Vehicles Act, 1988 issued notifications permitting issue of golden pass to trucks carrying excess cargo over prescribed limits for a fixed charge per month.

As per Section 194(1) the penalty for laden/unladen weight more than specified is Rs. 2,000 and additional Rs. 1,000 per tonne of excess weight. Some states have issued notifications making offloading of excess weight mandatory and some states allow such vehicles to continue journey after paying penalty (compounding fee)

The implementation of the blanket ban on overloaded trucks has not had an equal impact in the various Indian states. As the states have been given a partial free hand to deal with overloaded trucks, the results have, until now, been quite far from satisfactory. Some states have allowed overloaded vehicles to carry on driving after they paid a penalty. The following is the status in some of the states:

- a) Rajasthan - The State of Rajasthan has drawn criticism from several agencies as it allowed overloaded trucks to carry on after simply paying the fine. The Jaipur High Court has recently instructed the state to implement offloading and the offloaded material be kept 20 feet away from the road.

- b) Punjab – As per High Court ruling of Nov2011, the State Transport Commissioner, Punjab, stated that directions have already been issued to all the enforcement officers of the State Transport Department for strict compliance of the directions issued by Hon'ble the Supreme Court .
- c) Bihar - The state of Bihar set another example by initiating criminal proceedings against those found guilty of driving overloaded trucks on its highways under the Prevention of Damage to Public Property (PDPP) Act.
- d) Uttar Pradesh -The state of Uttar Pradesh issued a notification (dtd 14 July 2010) adopting the Supreme Court ruling. Overloaded vehicles plying on Haryana roads would soon be off-loaded with the state government issuing directives to all the regional transport authorities to curb the menace that causes danger to road users and other vehicles. Besides officials from state transport department, the deputy commissioner (DC), sub-divisional magistrate (SDM) and city magistrate would also be empowered to take action if they find any overloaded vehicle plying in their respective areas.
- e) Uttarakhand - In Uttarakhand, the compounding fees for overload is based on vehicle class - Rs. 1000 for medium & heavy motor vehicles, Rs. 800 for LMV and Rs.600 for motor cycle and further 2,000 per tonne or part thereof for excess load.
- f) Maharashtra - two wheelers are exempt from paying overload penalty, however other overloaded vehicles have to pay Rs. 2,000 + Rs. 1,000 per tonne (or part thereof) as compounding fee.
- g) Orissa – As per ruling of Cuttack High Court of 2010, an overloaded vehicle has to be offloaded irrespective of the penalty – the compounding fee paid by the truck driver does not mean that the overloaded ruck shall be allowed to continue journey. As per report of Expert Committee on Revenue Enhancement Measures, Finance Department, Govt. of Orissa (2011), *“The administration has faced some difficulties in the past in carrying out required offloading in all cases without adequate infrastructure and manpower for the purpose. We propose above a system of tolls, and the toll booths can also act as checkpoints for overloading and offloading if needed. Further, there should be provision in the relevant Act that will hold the Transporter alone responsible for the offloaded goods. In case offloaded goods create traffic obstructions, there can be proceedings against them under existing legal provisions including those relating to ‘public nuisance’.”*

Generally, the state governments, on their own or due to PILs filed in the courts, are moving towards prevention of overloading. Though each state has provisions in law to deal with overload prevention, the enforcement, especially of offloading, has been quite limited. The factors cited for inability to enforce the law regarding mandatory off-loading of the excess loads are such as indivisibility of the load, lack of infrastructure to off-load and store excess loads etc.

On state roads, the drivers generally get the vehicles weighed at roadside static weighbridges and inspect by state officers is by means of inspection of the weight slip issued by these weighbridge stations. As the state authorities have limited infrastructure (like portable wheel weighers) to audit the weight themselves, they have to rely on private weighbridges.

Overload prevention at Toll Plazas

As most of the states do not have effective mechanism and infrastructure to enforce overload penalties at state road toll plazas, they are now relying on private parties to become enablers for this (like BoT operators/ Concessionaires, OMT operators and toll operators). The NHAI has already started implementing a combination of WIM and SWB at its toll plazas. As per recent NHAI notification, the overloaded vehicles crossing NH toll plazas will not only have to pay 10 times the normal toll fee, but also have to offload excess load. For this, Weigh-in-Motion (WIM) systems are to be installed at entry to toll lanes. The Operator is also required to install one SWB (Static Weigh Bridge) in each in each direction for resolution of disputes relating to WIM inaccuracies, if any. The NHAI, through its company IHMCL (Indian Highway Management Company Limited), floated tenders for supply, installation and maintenance for 5 years for toll collection equipment along with weight enforcement equipment. The ownership of equipment shall remain with the successful bidder who shall have to supply these as a service and shall be paid quarterly by IHMCL. This is likely to be implemented in projects not under PPP. In PPP projects, the Concessionaire has to implement provisions for overload prevention including offloading.

The WIM is a faster way to calculate weight as it consists of a small platform (scale) embedded in the road, which measures the weight of each axle as it passes over it. The Gross Vehicle Weight (GVW) is calculated by adding up individual vehicle weights. The SWB calculates only GVW as it consists of a much bigger platform on which the entire vehicle rests. The SWB is more accurate than the WIM. For implementing such system, the WIM has to be placed at least one vehicle length before the pay axis so that the entire vehicle passes over the WIM and the individual axle loads can be added up. This increases the island length at the entry side to at least the size of longest expected to pass from that plaza.

Based on the above, it is recommended that:

- a) Collection of road usage fees (toll) shall be at the toll plazas.
- b) Overload fee shall be collected at the toll plaza with a combination of WIM and SWB.
- c) The overload fees can be same as NHAI.
- d) Overloaded vehicle shall not be allowed to ply till it is offloaded.
- e) Fee Appropriation
 - a. For PPP model where the road builder maintains the road, the overload penalty and toll fees shall be appropriated by him.
 - b. For OMT contracts, the toll operator who is also responsible for road maintenance, shall appropriate toll fee.
 - c. For Annuity contracts and user/toll fee collection contracts, where road maintenance and toll fee collection are under separate contracts, the toll operator should deposit the overload fee with the government (OSRDC) which can use this for further prevention of overload, road safety, compensation to the maintenance contractor or incentive to toll fee collection agency, or any other use.

It is also recommended that, wherever possible, the government should also equip its Motor vehicle Officers to deploy portable load weighers to perform audits through random checks.

An alternate method of controlling overloading is to do the weight enforcement away from the toll plaza. It generally consists of a “ramp sorter system” which includes High Speed WIM (HSWIM) followed by a Slow Speed WIM (SSWIM) followed by an SWB for dispute resolution, if any. This needs infrastructure investment away from the toll plaza, reduces investment at the toll plaza and de-links tolling operations from weight enforcements leading to faster operations at toll plaza.

- i) Differential toll charges for use of State Highway, by-pass, bridge, rail over bridge, or rail under bridge as the case may be during peak and off-peak hours may be introduced. For this purpose, not more than six hours in a day may be designated as peak hours and a period equal to twice the peak hours as off-peak hours. For the usage of road during the peak hours, a premium of, say up to 20%, may be charged on and over the usual toll fee; and a discount at a rate equal to twice the premium for peak hours may be offered for off-peak hours. A similar provision is contained in the notification of the Government of Punjab in regard to toll. It may be further mentioned that such differential toll rates could be more appropriate for inter-urban network to reduce congestion.
- ii) To identify roads that are to be tolled and to enable fast-track decisions in this regard, a cabinet sub-committee may be formed as in Maharashtra.

The discussions on overloading charges made hereinbefore are summarized and presented in **Annexure 3.1** describing the comparative implementation arrangements in various states/countries, legal documentation and suggestion for consideration for GoO. Also, the pros and cons of different scenarios is presented in **Annexure 3.2**.

3.2 Considerations for Toll Setting

3.2.1 Background

There is no doubt about the fact that the benefits from effective and adequate road network service provision on the wider economy are great and of strategic importance. There are two ways of providing public infrastructure – direct provision by the public sector and also through facilitation of private-sector provision, either by regulation, general tax subsidy or by contract. The public and private sectors both have essential and specific roles within a partnership in ensuring the most suitable combination of skills and resources to achieve the best possible service provision for the public in the highway sector. This combination is more commonly known as “Public Private Partnership (PPP) model”.

Private firms involved in PPP are obviously very concerned about how they will receive the payments that cover the costs of their investment, including annual operating and maintenance costs. Contracts are often long-term and private firms are reluctant to embark on the project if they are not convinced that the funds will be provided and will be sourced from stable sources.

Revenue for developing road infrastructures comes mainly from two economic agents: road users, tax payers or a combination of the two groups. Road users should be understood in a broad sense to include private or business owners of vehicles driving along a road from which a charge is collected on a distance, time or usage basis. Various systems are available to collect the revenue whether pre-paid, stickers (vignettes) or mechanical/human.

3.2.2 Revenues from Road Users – Tolls

Tolls are payments required of users to access a section of road network that is directly or indirectly related to the distance driven on the road. Because of the direct link between the provision of the service and the corresponding payment from the user, tolling can be considered as a fair way of mobilizing resources and an efficient manner of inducing psychological ownership of the roads by the public, who thus become aware of the cost of building and managing these facilities.

Direct collection by the private operator as a basis of its remuneration is the most popular way of structuring privately-financed toll road projects. The feasibility of such a scheme needs to be studied by the public sector at an early stage to ensure that revenue to be generated from the project will be in proportion with the level of investment required from the private developers.

When expected revenue is not in line with the investment and the scope of work expected from the private sector, government support can enhance the project's bankability by reducing the private share in either the investment or the operation costs and placing the remaining activities and cost under the responsibility of public institutions.

3.2.3 Toll Setting - Issues

Rules regulating how toll rates, which are crucial for the project's stability, are set must clearly be determined. Toll rates are often subject to specific contractual provision fixing, with a maximum level usually linked to inflation (Price Index: WPI) or a more flexible formula which can incorporate inflation, traffic levels and performance indicators.

Traffic on toll road projects often does not match the forecasts prepared in the preliminary studies for project preparation. Variations both in traffic volume and traffic structure (types) directly influence the private operator's revenue.

It should be noted that in addition to the economic considerations, GoO should consider numerous non-economic issues when evaluating toll road programs. These include:

- public acceptance of tolling;
- the equity of charging tolls for road use; and
- the impact on the government's flexibility in future road development

3.2.4 Who collects tolls?

Tolls may be collected as follows:

- by a Government entity and transferred either to the general budget or to a road fund,
- by a public organization also in charge of road operation, as at present being done by OB&CC,
- by a private firm on behalf of the Government. In such a case the private firm only provides the toll collection service and is paid separately,
- by a private firm in charge of road operation. Remuneration of the private firm is then linked with the funds collected through the tolls.

3.2.5 Road Users Involvement in Decision making Process

The acceptability of tolling is however often a challenge for public authorities and for private operators in charge of toll collection. The principle itself of toll roads is not easily accepted

by the public and often leads to strong protest, political debate and sometimes legal challenges from anti-toll lobbies.

Road users should be associated with the decision-making process at an early stage and efforts should not be spared to justify and explain the advantages of the toll system to the public. People are more likely to pay for a new service rather than for a service which was free before, even if it has been improved.

Even when accepted as a principle, toll rates should be set and evolve at an adequate level. They have an influence on transport demand which is likely to affect both the economic and the financial viability of a project.

3.2.6 Considerations for Policy Makers

GoO should decide if alternative “free” roads should be made available to users along the toll road corridor. Such a competing infrastructure facility would automatically capture traffic from the toll road but can be justified:

- **socially**, by keeping a transport alternative for the poor,
- **psychologically**, by greatly facilitating the acceptance of users who feel they have a choice,
- **economically**, by allowing each player to choose between two alternatives with different service levels (travel time, overall trip cost) depending on the importance of the trip,
- **by bringing competition into a market** that would otherwise be a monopoly and could lead to abuse of the dominant position of the operator.

The decision to allow a free alternative route shall only be made after a sound economic analysis along the corridor to assess whether the transport demand justifies duplicating the link. The rules of the game regarding availability of alternative roads should be clearly specified in the contractual obligations for both private and public parties and should not change over time.

3.2.7 Sensitivity of Demand – Traffic Forecasting

Traffic forecasting is a critical part of the road development planning process. Traffic demand is a direct determinant, with toll rates, of project revenue. Over optimistic demand forecasts will therefore almost certainly lead to financial problems. Sometimes, in practice, over demand estimates can impact in the first years of project opening. Therefore, with experience, demand forecasts are often ramped down i.e. only a percentage of estimated demand is used in the first few years say 50%, 70%, 90 % of the original estimates for the first three years respectively, especially for inter-urban routes.

Traffic under-performance is a key risk for any operational toll road. A majority of toll road projects in India have seen actual first-year traffic underperform projections, and in some cases by up to 45%.⁵ Traffic performance is rarely in line with, or above, management expectations.

The accuracy of traffic estimates is a key to a project's ability to meet debt service obligations. However, many traffic studies are based on point-in-time traffic counts and standardized growth estimations, often failing to adequately measure local economic drivers, and their dynamic and interactive impact. Traffic growth projections based on these studies also do not account for the impact of economic cycles on traffic growth rates.

⁵ Indian Toll Roads: A Bumpy Ride, Special Report, Fitch Ratings , 2012

The widespread overestimation of traffic could also in part result from sponsor optimism, motivated by lucrative construction contracts in competitive bidding. In some rare cases, overestimation could result from unanticipated exogenous events such as a change in regulation or the unexpected delay or cancellation of a planned development such as special economic zone.

In recent years, high inflation in India has allowed toll roads to partially mitigate the negative impact of traffic underperformance on overall revenue through inflation-linked toll rate increases, specified in most concession agreements (and the Toll policy and Rules of Odisha are in similar lines). However, in the medium to long term, the elasticity of traffic demand in India to increased toll rates has not been adequately tested.

Most **toll road projects in India are highly leveraged**, with low projected debt service coverage ratios (DSCR) and **weak structural features** such as low debt service reserves and compressed debt repayment. Combined, these factors leave DSCRs highly susceptible to any deterioration in traffic, particularly in conjunction with stresses in other variables, such as interest rates. However, even under severely stressed situations, most projects typically retain the long-term economic capacity to fully repay debt, though the short-medium term stress to cash flows could result in debt restructuring.

Economic Benefits and Toll Roads

It is very important to understand the link between financial and economic viability in toll roads because a distinctive feature of toll roads is that the realization of the economic benefits expected from the investment depends heavily on the financing option chosen. In other words, there are trade-offs between the economic and financial viability of a toll road, which often tend to be overlooked.

The socio-economic profitability is decreasing on the level of toll (in absence of congestion), since higher tolls mean less traffic on the road (due to the price elasticity of demand) and a smaller economic surplus for the remaining users.

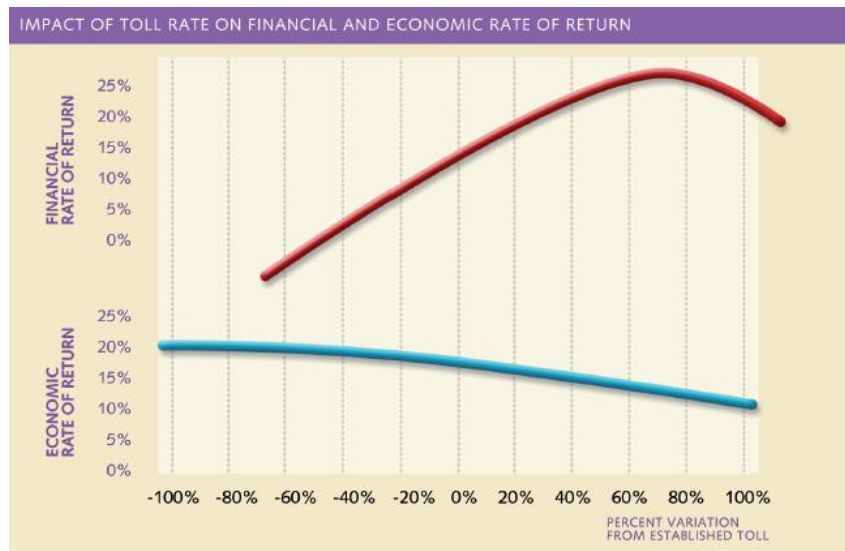
Financial Returns and Toll Roads

From a financial point of view, two effects counteract. Higher tolls mean higher revenue per user but fewer users on the road. The result is that the revenue increases until a certain level (the optimal private toll or monopoly pricing)⁶ and decreases after that.

Based on project costs, expected traffic and financing structure (interest payments, debt/equity ratio), the level of toll rates that meet debt service and financial returns may cause traffic diversion to an alternative route. This may be a highly inefficient outcome in terms of traffic allocation in the corridor. In such a case, the free-access public road, which is likely to be of less capacity, lower level of service and less well maintained, carries more traffic than is economically efficient while the newly built toll road is under-used and represents wasteful investment.

The figure below illustrates the impact of toll rate on economic and financial rates of return.

⁶ Report, "The Study on Public-Private Partnership Scheme for Trans Java Toll Road in the Republic of Indonesia, January 2007, PriceWaterhouse Coopers and PwC Advisory Co. Ltd.



Colombia - Toll Road Construction Project, 1998 - New highway - Variation of ERR and Financial Revenue depending on the toll rate
Source: A. Menendez

3.2.8 Willingness-to-Pay Studies

In the case of a toll road project, an accurate estimate of the toll fee the potential users are ready to pay - the willingness to pay - is in theory a prerequisite of toll level setting. In practice, this parameter is very difficult to assess, particularly in Odisha where the experience of toll roads is limited. In Odisha, the rapid changes occurring in income distribution and overall wealth make willingness to pay even more difficult to assess over the relatively long periods considered for economic appraisal. Users' willingness to pay tolls is largely a function of their wealth, the value they assign to time savings and other toll road benefits as well as the cost and quality of competitive alternatives. Assessing willingness to pay is in fact trying to figure out the elasticity of transport demand. The format of Willingness to Pay Toll survey for passenger and goods vehicles is given in **Annexure 3.3**.

Nonetheless, data on the value of time and the willingness to pay for various types of transport service users exist for numerous countries. These indicators may be used when pricing new services to be provided by private operators. It makes sense to compare the calculated tolls or tariffs with these rough estimates of the willingness to pay for some services or with the value of time revealed by the post-mortem analysis of comparable projects. Surveys themselves are frequently difficult to undertake accurately with many road users questioned likely to deliberately underestimate their willingness to pay.

The use of 'shadow' tolls or annuities is possible ways to mitigate traffic risk to be borne by the private sector when the motorists' willingness to pay is unknown. These mechanisms entail paying the investor based on an agreed formula which may or may not include receiving toll revenue, but are an additional load on the state exchequer. Other Ways to Assess Users' Reaction to Tolls

3.2.9 Stated Preference Surveys

The main objective of a stated preference survey is to estimate the utility function for each mode or route, which will determine the probability of drivers switching to a toll road from a free route under different rates of toll. The utility function allows estimating the perceived value of time, and then the average toll which drivers would be prepared to pay.

Drivers are interviewed using questionnaires specifically designed to avoid the usual difficulties met when trying to obtain sound estimates of time values and willingness to pay.

The first part of the survey often consists of general questions about the journey being made. These questions are intended to collect some information on which to base the stated preference situations and to provide a basis for data segmentation. The questions include the following:

- The type of vehicle being driven,
- The reason for being at the journey destination,
- The number of passengers,
- The frequency of making the same trip,
- The country of vehicle registration,
- The driver's approximation of the total distance of the journey,
- The journey origin,
- The distance to be travelled on the toll road,
- The reason for being at the journey origin,
- The driver's anticipated journey time on the toll road,
- The journey destination,
- The driver's age, sex, economic status (employment category) and level of education.

The stated preference survey itself consists of a predetermined set of pair questions whereby drivers are asked to state whether they would use "definitely" or "probably" the toll road or the toll-free road. The usual variables are toll level, total journey time and freeway standard. It should be noted that in order to predict modal split and route choice (which is particularly important for toll roads) the distribution in values of time is essential, not just average values that can be calculated by most discrete choice software.

3.2.10 Toll Rates and Traffic Assignment

Three methods are commonly used:

- **Time saving principle:** the proposed toll rate (monetary value) is divided by the time value of vehicles (monetary value per time period). The resulting "time value" (e.g. hours) represents the equivalent toll rate in time units. Therefore, for traffic assignment purposes, road links are assumed to "cost" more time when tolled compared with the travel time on the same links in a toll-free situation.
- **Generalized Cost Modeling:** In highway network modeling, each link has various characteristics which impact time, cost and other factors. For each vehicle type, the model will reduce these characteristics to a total generalized cost for each link and the toll road will have the toll fee added to the cost of that link (or links). Application of the Origin Destination (OD) matrix to the network results in assignment of traffic to routes according to various criteria according to toll fee scenarios, type of traffic, time of day and other.
- **Diversion ratio curves:** these are derived from relation between the ratio of the toll rate and the time saving (resulting from using a toll road instead of an existing toll-free road) and the percentage of vehicles that will divert from the toll-free road to the toll road. These diversion ratio curves are calculated for by type of vehicle. The time value for each type of vehicle can be obtained by calculation but should eventually be based

on experience. Time values and diversion ratio curves will have to be revised repeatedly in accordance with the actual traffic volumes measured along toll roads as the years pass.

3.3 Duration of Toll

Potential objectives in raising tolling period are manifold. They include:

- **covering construction or rehabilitation costs** - which requires a long period of tolling if possible at all (depending on financial structure, the construction costs, and the amount of traffic),
- **covering maintenance and operations costs** - which requires continued tolling,
- **creating a stream of revenues** which can be used to develop the road network and which are not under control of the annual government funding process. This requires tolling to continue until the required network is complete and requires the earlier roads to generate surplus revenues for investment in new ones, and
- **ensuring that road users bear the full cost** of their travel directly, by pricing the externalities - which also requires continued tolling.

The objective for each road will affect both the level of toll and the period of tolling. Where tolls are simply required to cover construction costs, and the traffic levels are high, then tolls will only be required for a relatively short period.

Where governments seek to cover maintenance and operations costs, tolls required are low and need to be levied continuously. Where tolls are levied to allow extensions to the road network, the tolls would be required only as long as further developments of the network are required. The Chinese Government used this approach most extensively, though the Malaysian Government used the funds from tolling of the North-South Expressway to support other ailing infrastructure investments.

3.4 Toll Variations

Typically tolls vary with distance traveled along the road and according to the number of axles on the vehicle. This approach was first adopted because it can act as a proxy for the road space used by the vehicle and the damage that the vehicle inflicts on the road pavement. However other options (which can be combined) include:

- **Time of Day or Day of Week Variation:** by time of day is typically used where congestion causes considerable delays to travelers. This has been tested in France, and seems to have encouraged 10 percent of travelers to retime their journey when tolls were increased 50 percent in the peak periods. These figures will vary depending on the value of time and the decision making criteria of travelers and therefore is very country specific.
- **Cost of Road Construction:** Tolls vary across a country or region, because of the different costs of road construction through different areas, for example roads cut through mountains are likely to cost more to construct than those across flat open landscapes. Political incentives for unified toll structures across a country may however prevent differentials in toll across the country.
- **Social considerations:** Some countries make political decisions to encourage use of new facilities by higher occupancy vehicles. Malaysia for example has set bus tolls considerably lower than for other vehicles.

- **Tolling by area:** Singapore has long had an area pricing scheme (the Singapore scheme is now also congestion charging - the next point), tolling those entering the central area of Singapore. This has now been fully automated and the tolls are variable with the time of day and day of week, to reflect congestion. There is similar toll ring system in operation in Trondheim in Norway. Other toll rings operate for example, in Oslo, but do not vary tolls with the time of day. The problems associated with cordon pricing are concentrated on the edge of the area and related to irregular users. The appropriateness of the system depends on the nature of the area in question. This is likely to change as technology develops.
- **Congestion Related Tolling:** In California, congested related tolling has been introduced a few years back on major roads. The tolls are levied on new facilities (whether full new roads or specific additional lanes), and may be waived for high occupancy vehicles.
- **Loyalty programs and other discounts:** With the introduction of electronic tolling systems this sort of commercial action has been more feasible. Where the private sector is involved however the concession arrangements must allow for toll variations. On the M5 in Hungary a whole program of discounts has been introduced with:
 - 40 percent reductions for regular users,
 - 20 percent reductions for fleet owners,
 - 20 percent reductions for local residents,
 - vouchers for users of the Southern Food Market in Budapest paid for by the Food Market at 30 to 40 percent discounts,
 - 20 percent reductions for agricultural producers in the four counties around the road, and
 - 20 percent discounts on monthly tickets for car-pools (4-passenger).
- **Other systems of area tolling rely less directly on road use:** For example, the Vignette system in use in some European countries. Under this system the vignette holder has access to all roads within a particular geographic area, as necessary during a specified period. This is typically only applied in the case of expressways and passes can vary from one week to one year in duration. They give the pass holder the right to travel on the expressways at any time during that period. These tolls are less directly related to use of the road therefore, since frequent users are paying less per trip than infrequent users.
- **Increasing tolls over time:** When the private sector is involved in the operation of the road, almost all agreements include a provision for toll increases. Most concession agreements include a toll escalation formula that is related to the consumer price index (often foreign exchange devaluation too) and allows for toll increases either every year or every few years. Usually there is also a clause providing for governmental approval of any increases and compensation arrangements if that approval is withheld. However Government approval is not always given and operators do not always receive the specified compensation immediately. This is an area of considerable political interest, and increases can meet violent opposition from the public, particularly if the economy is weak, as was witnessed recently in Malaysia and has also been seen elsewhere for example, India. In Texas, the toll rates on the Dallas North Toll way have not been increased since 1982. This is not a typical where toll roads are managed in the public sector.

3.5 Build-Operate-Transfer (Toll) versus Annuity-Based Toll, Shadow Toll

The Toll rates are usually fixed for new or improved facility based on Level of Service (LoS) provided be it a BOT (Toll) or annuity project. The primary difference is financial structuring of the project and tolling rights.

3.5.1 Concept

BOT Tolls

Road user Charges, i.e. BoT Project Tolls can have two variants:

- **Tolls Revenue solely from user charges/tariffs** which would be the case if the project is financially viable;
- **Revenue from user charges with government support** if the project is marginally viable and financial support is justified.

Shadow tolls and/or annuities (also known as availability based payments) are funded either partly or fully by the taxpayer not the road users. Under both schemes the private sector builds the infrastructure and is repaid after the project opens.

3.5.2 In terms of Traffic Risk

Under the toll-based Build-Operate-Transfer (BOT) projects it is borne by the private operators (and investors financing them). An important variant of this approach is shadow tolling, wherein private partners do not collect tolls from the road users but nevertheless bear traffic risks, as they are paid on the basis of the volume of actual traffic.

In contrast, in the second approach, the government or its agency absorbs the traffic risk and the private partner is paid for making the specified level of road service available regardless of the extent of traffic, e.g. BOT-Annuity projects, also known as availability-based projects.

3.5.3 In terms of Financial Structuring

The balance between equity and debt depends on the project structure, the quality of the revenue stream and risk profile. This is the reason why equity level can be somewhat lower in shadow toll and annuity schemes, since the economic risks are much lower than in toll roads.

For example, inter-urban toll roads typically require a relatively high level of equity (20% - 30% of the total funding requirements) but projects funded on the basis of a shadow toll payment or annuity may be only 15%-20% equity. The normal range across all commercial projects whether PPP or private is 20%-40% equity with a usual figure being 25%-30% equity as commercial bankers and public authorities take comfort from the borrower investing considerable amounts of their own money before borrowing.

Additionally, if the project gets into financial difficulties and its (resale) value decreases, the equity portion can provide a buffer of comfort for the debt providers. Depending on the project characteristics and the requirements of the Sponsors and investors (voting rights against return, tax optimization, etc.), the equity could be provided in the form of share capital, preferential capital, various forms of shareholder loans and a combination thereof.

3.6 Model Tolling Contract with focus on Performance-Based Contract

The toll collection and management & operation can be carried out under the following three arrangements:

- 1) By a Concessionaire selected through competitive bidding under public private partnership mode of procurement. In this event, the construction/development along with operation and maintenance and collection and management of toll vests with the

concessionaire. This arrangement is commonly used for State Highways. In this regard, the Planning Commission has developed a Model Concession Agreement for State Highways which may be adopted by GoO;

- 2) Outsourcing of toll collection and management through competitive bidding process, including the present practice as followed by OB&CC, should contain specific provision for operation and maintenance of the road or section thereof or the bridge, as the case may be, for its proper operation and maintenance and listing out the standards of maintenance to be complied with. Further, the monitoring and supervision of the operation and maintenance as per the agreed standards may be carried out by a qualified engineering firm selected by GoO through competitive bidding and a transparent process. Its independence would provide added comfort to all stakeholders, besides improving the efficiency of project operations. If required, a public sector consulting firm may discharge the functions of the Independent Engineer. This procedure is suggested also considering the fact that there is a constraint of human resource availability in OWD, OB&CC and other State Road Agencies/Departments to take up the additional task of periodical monitoring and supervision of the compliance with the operations and maintenance standards by the private toll operators.
- 3) Performance Based Contracts is an ideal approach to ensure that the private operator carries out its work in accordance with the performance standards laid down in the contract. However, this type of contract has not been so far implemented in the truest sense in this country.

As a step towards strengthening and enhancing the outsourcing of tolling with proper operation and maintenance a Performance Based Contract may be introduced on a 'pilot basis' with payments linked to compliance with the performance standard. This will be an improvement over the traditional contracts which in many cases lead to less than optimal output.

Under the Performance Based Contract, maintaining a road network will include both routine and periodic maintenance. Routine maintenance would consist of many different tasks frequently necessary to maintain the functions of the roads such as pot-hole repairs, cleaning of drainage, sealing of cracks, cutting of vegetation, etc. Periodic maintenance consists of predictable and more costly measures of a less frequent nature designed to avoid road degradation such as grading, drainage work, resurfacing, asphaltic concrete overlays, etc. Minimum road condition and service levels are required to be defined in the contract through output and performance measures. The defined performance measures become the accepted minimum threshold for the quality level of the roads for which the private agency is responsible. The performance criteria should ideally cover all aspects of the contract and take into account of the fact that different sub-areas within the contract might require different service levels. Criteria can be defined at three levels: road user service and comfort measures, road durability measures and management performance measures. In setting the measures, various technical and practical factors need to be carefully considered such as traffic volume and composition, sub-grade quality and type, capacity of available contractors, environmental constraints like protected areas, forest reserves, etc. However, the most important criteria is the question of what service level can be afforded and economically justified for the road in question.

The payments to the contractor will be under three categories:

- i) Maintenance Services in monthly lump-sum amount on fulfilment of the performance standard with penalty for underperforming.

- ii) Rehabilitation work in lump-sum amount on the basis of quantities of measurable outputs executed in order that the road achieves the defined performance standards; and the payments will be made in accordance with the progress in execution of the measured outputs. Improvement works, if required, will be paid on the basis of unit prices for outputs for each type of improvement work.
- iii) Emergency works will follow the unit price method in the form of a traditional bill of quantities and payment will be made for each emergency work on a case by case basis.

3.7 Toll Collection Mechanism

Apart from levying charge on road users for usage of roads and collecting payments from them, there are other methods of tolling that have been developed and followed in many countries.

3.7.1 Shadow Tolling

Shadow tolling refers to the policy of paying the private investor (either a concessionaire or a road maintenance and operation service provider) a revenue stream of variable over a period of time depending upon the usage of the road. The revenue stream depends upon the types of vehicle (heavy or light) plying on the road and the distance traveled. The types of vehicle may be detected through electronic sensors that are positioned at predetermined places. Shadow tolling does not affect the behavior of the users because they do not have to pay any tolls. Therefore, it eliminates the problem of traffic diversion due to tolling and, thus, in turn, reducing congestion and environmental pollution. It also eliminates the problem of discrimination against region or communities.

Funds for shadow tolls can come from diverse (and multiple) government and/or private sector sources, special assessments on nearby properties and regional dedicated tax streams. The main objective of this purpose is to transfer the responsibility and the associated risks of construction, operations, maintenance and traffic density to the private investor.

Thus, the prime objectives of shadow tolling may be summarized as -

- Traffic risk can be transferred to the private participant
- Traffic levels are not impaired by real tolls or toll increases and hence the problems of traffic diversion and road congestion are eliminated
- Multiple sources of revenues can be drawn upon to contribute to a shadow toll fund
- Project cost obligations to the public sector sponsor (capital, maintenance and operations) can be reasonably known in advance and guaranteed for a particular traffic level.

Private investors are not ready to take up all the risks, which are mainly associated with the uncertainty involved in traffic density that cannot be explicitly projected. The constant revenue stream, which is promised to the private participant, has to come from sources like road funds or special tax assessments on users. Hence shadow tolling is just another form of cross subsidization, which may be hard to implement unless the problems associated with managing road funds are eliminated. There are also problems associated with collection, administration and disbursement of funds from the government to the private investor. It also involves setting up of expensive mechanical vehicle estimation points which may lead to harassment of road users and likely corruption on part of the regulating body. The unpredictable income stream may also be unpopular with long-term financiers. There may

also be manipulation of road traffic on higher side by the private investor to maximize income.

In view of the issues described above, shadow tolling is not considered a feasible option for Odisha.

3.7.2 Annuity Based Scheme

This at present is considered to be one of the most viable schemes for attracting private investors. Due to the lukewarm response to its BOT scheme the National Highway Authority of India has been pursuing this alternative. Since a large number of the private investors are risk averse the annuity scheme provides an attractive proposition to them to invest in the road sector. This scheme guarantees a fixed income to the private investor every year during the concession period. This fixed revenue is meant to cover the debt servicing cost borne by the private investor, operational and maintenance cost and a reasonable return of equity to the private investor. The investor also finds it easier to raise resources, as there is a guaranteed return on equity. Thus the private investor is delinked from the risk associated with uncertainty in traffic density and problems in collecting toll.

There are two methods to finance this scheme so as to provide a constant income to the private investor. In the first method, the government takes up the responsibility of collecting the tolls and provides a constant income to the private participant from the revenue generated through tolls. This scheme is not viable as these have the same problems that are associated with direct tolling of the users by the private participants and the uncertainty in predicting traffic density.

Usually, a dedicated Road Fund is created and the private investors are paid through revenues generated through this fund. But there are bottlenecks in the administration and management of this fund. There are also the usual problems related with disbursement of funds. Even then this system of financing is very effective because it attracts private investors through guaranteed financial return and the problems associated with tolling and shadow tolling is not associated with this problem.

Annuity based tolling has its own sets of challenges. The foremost question is provision of adequate funds to finance all the annuity-based projects. There is also the issue if uniform development of roads throughout Odisha can be carried out totally through annuity-based scheme. As for example, private investors may not be willing to venture into the northeast regions even if they are sure of a premium and secure return on investment due to the current sensitive situation prevailing out there.

3.7.3 Toll Collection Technologies

There are three basic technology options for tolling:

- i) Manual tolling
- ii) Mixed tolling -some manual tolling, some electronic
- iii) Electronic -where there is no manual toll collection

The most common method is still manual. The drawbacks are that it is a slow system and therefore requires more toll booths/lanes than any other to achieve the same traffic flow. Set up costs may also be high if land acquisition is costly. For example, the estimated cost of installing toll booths on the roads which are passing through dense development land acquisition would be problematic and therefore have been used to argue against tolling.

There are few all-electronic systems in operation, Singapore's new area pricing system being the most comprehensive application of electronic tolling. More such schemes are being

developed however, for example, in Melbourne. Electronic systems require all users to carry tags in their vehicles and to pass the toll gates at a slow speed, but without stopping.

In case of both Germany and Singapore, the vehicle validation for road users / violators is done through license plate recognition system. This is possible as the number plate system in these countries is standardized which makes it easier for cameras to recognize and report vehicle numbers accurately. For example, if in Singapore a vehicle without valid tag passes through a zone where congestion fee (“toll”) is payable, the camera records the license plate details and a ticket is sent to the registered vehicle owner. Such system is as of now not recommended for Odisha as:

- a) Vehicle number plates do not follow a standard system – various positions, various fonts, sizes etc.
- b) The number plates are non-reflective making it very difficult for cameras to capture details accurately, especially during the night.
- c) Tracing vehicle owners and getting them to pay penalties.
- d) Cost of back end infrastructure and maintenance is high

There has been some opposition to electronic tolling because of the level of information which it allows road operators to collect about individual users movements. There is likely to be more enthusiasm where a manual system is already in operation and vehicles are subject to severe delays at toll plazas, or where a discount for frequent use is available with the electronic system.

Enforcement can be difficult with an electronic system since it requires accurate records of car owners' addresses that are not always available. Another drawback can be compatibility between different systems where there are several toll road operators each with different electronic toll collection equipment. This is something, which Government can however prevent by careful structuring of agreements or perhaps with legislative control.

Suggested transition plan from manual to mixed tolling system is given in **Annexure 3.4**

The electronic tolling options are summarized in **Annexure 3.5**.

However, from the experiences of tolling in other states in India such as Gujarat, Tamilnadu, Delhi as described in chapter 1, and considering the nascent stage of tolling in Odisha, it is suggested that to institute tolling in effective manner, the following aspects should be considered by GoO –

1. Development and implementation of effective communication strategy to generate public acceptance for tolls by building up an awareness that tolling is constructive and not penalty for road use. Further, it should be emphasized that tolling is a user-pay system for road use that facilitates transport effectiveness. This communication should target general public, road users, opinion leaders and elected representatives to mitigate popular resistance to tolling.
2. Toll fees need to cover all costs, including operation, maintenance and investment. If toll fees do not cover all costs, government has to consider financial support to make up the shortfall in form of up-front payment, shadow tolls and availability payment. This approach can help to attract private sector investors to invest in road sector.
3. Auditing process should be integrated in toll operations procedures through off-site and third party toll audit to ensure proper tolling and prevent leakage of revenue.
4. A cabinet sub-committee may be formed as in Maharashtra to identify roads that are to be tolled and which can fast-track decisions in this regard,

3.7.4 Electronic Tolling System in India

Government of India constituted in March 2011 an Apex Committee for Electronic Toll Collection (ETC) Implementation. The report details four key areas, viz. implementation strategy, standards finalization, institutional framework and overseeing implementation. A key component for implementation of Nationwide RFID based ETC is interoperability, which requires integration and standardization. The tag on the vehicle needs to be read by all the transceivers and at the same time, all the tags should be read by a particular transceiver. Therefore, the requirement is to operate with transceivers and tags with certain common specifications. While these specifications on the transceiver and tag need to be adhered to mandatorily to be a part of the ETC system, the Committee also defined functional requirements of the Automatic Vehicle Identification system and data exchange formats.

To understand its architecture, the functions/ services to be performed in the ETC system need to be identified first. The three broad components of the ETC system are tag distribution, toll road user account registration & recharge and toll transaction. For managing all the functions detailed by the Committee in the report, a virtual hub, called the Central ETC System (CES), primarily a web application (portal) with access to all stakeholders, is proposed to be created. Be it Point of Sale (POS) operator issuing a tag or tag user putting money in the account, be it managing toll plaza concessionaire account or serving the Government through a MIS, each stakeholder interacts with CES through web. The core functions of the CES include management of accounts of concessionaires, users, POS, distributors, manufacturers, tag issuance, recharge management, interaction with toll plaza application, toll transaction processing & settlement and public interface functions.

In addition, certain basic applications at the Toll Plaza & POS and user services support desk are operated to serve other functionalities. The toll plaza application has two components, viz. server side, which interacts with CES, and lane controllers, which capture tag information, perform preliminary validation & push data to the server.

Due to reasons like multiplicity of stakeholders in the ETC system, potential to expand the services to state highways, parking lots, etc. and requirement to pool knowledge from various sectors, a Special Purpose Vehicle (SPV) would be the ideal organization structure to implement and manage this project. Primarily, this SPV shall be exclusively responsible for all the services of Central ETC System and Tag distribution. The supervision, control and enforcement aspects also would need to be taken care by the SPV. Further, the SPV shall hold strategic control, including lifecycle management over ETC technology, data, information, software and all other components. At least for the initial phase of the ETC project, since it will take considerable time to develop in-house expertise, it has been assumed that certain expert services will be procured by the SPV from the market. These services could include clearing house operations, helpdesk operations, web application development & maintenance and tag distribution. Two separate (Request for Proposal) RFP documents, indicative terms of reference, functional requirements, service level agreements & selection criteria for which form part of this report, will need to be finalized for each type of vendor.

The first inter-operable, electronic toll collection system is based on Radio Frequency Identification (RFID) technology at the toll plazas of Mumbai-Vadodara section. The RFID tag is a prepaid tag which is affixed in the upper portion of the vehicle's windscreen. It works as a prepaid toll account and facilitates automatic toll deduction when the vehicle crosses a toll plaza. The unique number of the tag is scanned by the 'readers' that are fitted in the dedicated ETC lanes of the toll plazas.

This reading is sent to the central clearing house and the motorist receives an instant text message alert and an email update. The clearing house pools the money and later distributes among toll plaza management as per vehicle usage. This new facility is available at the toll plazas of Charoti, Bhagwada, Boriach, Choriyasi, Narmada Bridge, Karjan and Vadodara. It is to be extended to the Vadodara-Ahmedabad section of the national highway and Mumbai-Pune as well. RFID tags can be purchased at designated kiosks located near toll plazas. They can also be bought online and recharged similarly.

ETC is a relatively new concept in the highways domain and has not been tested extensively yet in Indian conditions. Therefore, at least for the initial phase of the project, the promoting Central Government body should control the entire project. This would mean 100% stake in this SPV should be held by Ministry of Road Transport & Highways (MoRT&H). With passage of time, depending upon various factors like project expansion planning, expertise requirement, this shareholding could be appropriately diluted in favor of other stakeholders. Further, this SPV should be established in the form of a Company incorporated under section 25 of the Companies Act, 1956, as ETC system being a public service, for-profit motive will be unjustifiable. In the interim, a Project Implementation Unit (PIU) could be setup by MoRT&H to undertake activities like RFP finalization, bid process management and company incorporation. PIU will merge into the SPV, as and when it is formed.

As the ETC system will come into existence, there is a need to identify the possible violations and enforcement elements against the same. It has been noticed that most of the violations will get covered under various provisions of Indian Penal Code 1860 and Information Technology (IT) Act 2000. However, for the violation of toll road user entering ETC lane without a valid tag, an official notification will be required to be issued

3.7.5 *Open/Closed*

A system is typically described as "open" when there are no toll booths on entry or exit ramps to the road. The tolls are collected at points along the road, and are therefore unrelated to distance travelled. Open tolling is generally used in urban or semi-urban areas where the traffic flows are high and the cost of toll plazas at all access and egress points would be too great. The revenue collected will be less than in a closed system, but careful design can minimize this. In a "Closed" system, all exit and entry points are monitored and tolls collected on exit, so that all travellers make payments and the payments are directly related to distance travelled. The closed system tends to be more expensive requiring more infrastructure and more operating staff but, if most trips on the road are short, can be necessary to achieve anything nearing full revenue collection.

Annexure 3.1

Overloading in other states and implementation arrangements

State/ Country	Authorised Agency	Implementation Arrangement	Legal Document	Remarks for consideration for Odisha (pros/cons)
Tanzania	Road Authority (Ministry of Works and TANROADS)	<ul style="list-style-type: none"> Action : Hefty penalty (USD 779), offloading excess weigh, very strict enforcement Charging basis : Axle load Arrangement: Computerized weigh stations 	<ul style="list-style-type: none"> Road Traffic Act No.30 of 1973, Regulation 2001 Axle load control recommendations of the Southern African Development Community (SADC) Also refer ICT report 	<p>It is recommended that:</p> <ul style="list-style-type: none"> Collection of road usage fees (toll) shall be at the toll plazas by WIM and SWB. Offloading of excess load. Audit by Motor Vehicle Officers using portable load weighers.
India – National Highways	Concessionaire / Operator of authorised by NHAI/State Government	<ul style="list-style-type: none"> Action: Overload penalty of 9 times normal user fee; offloading of excess load. Charging basis : GVW Arrangement: WIM and SWB at toll plazas 	<ul style="list-style-type: none"> NHAI : Fee Rules Amendment dated 16.12.2013 [G.S.R 778E]; Policy Circular No. 11041/218/2007-Admn dtd 02.05.2104 Supreme Court ruling of Nov, 2005 Central Motor Vehicles Act 	<ul style="list-style-type: none"> The overload fees can be same as NHAI. Fee Appropriation shall be by BOT operator/ OMT operator for BOT and OMT contracts. For Annuity contracts and user/toll fee collection contracts, where road maintenance and toll fee collection are under separate contracts, the toll operator should deposit the overload fee with the government (OSRDC) which can use this as road fund.
Rajasthan	Transport Department	<ul style="list-style-type: none"> Action : Penalty for laden/unladen weight more than specified is Rs. 2,000 and additional Rs. 1,000 per tonne of excess weight. Offload excess weight and keep offloaded material 20ft away from road. 	<ul style="list-style-type: none"> The Motor Vehicles Act and Rules 	<p>It is recommended that:</p> <ul style="list-style-type: none"> Collection of road usage fees (toll) shall be at the toll plazas by WIM and SWB. Offloading of excess load. Audit by Motor Vehicle Officers using portable load weighers.

State/ Country	Authorised Agency	Implementation Arrangement	Legal Document	Remarks for consideration for Odisha (pros/cons)
		<ul style="list-style-type: none"> • Charging basis : GVW • Arrangement: privately operated local SWB 		
Punjab	Transport Department	<ul style="list-style-type: none"> • Action - Rs.2000/- and additional amount of Rs. 500/- upto three tones for excess weight;Rs.1000/- exceeding three tonnes of excess weight but not exceeding six tonnes; Rs. 2000/- exceeding six tonnes of excess weight. • Charging basis : GVW • Arrangement: privately operated local SWB 	<ul style="list-style-type: none"> • The Motor Vehicles Act and Rules 	
Bihar	Transport Department	<ul style="list-style-type: none"> • Action : Penalty as per MV Act, offloading and criminal proceedings. • Charging basis : GVW • Arrangement: privately operated local SWB 	<ul style="list-style-type: none"> • Motor Vehicles Act & Rules • Prevention of Damage to Public Property (PDPP) Act • Patna High Court CWJC No. 17979 of 2010 	
Uttar Pradesh	Transport Department	<ul style="list-style-type: none"> • Action : Penalty as per MV Act, offloading. • Charging basis : GVW • Arrangement: privately operated local SWB 	<ul style="list-style-type: none"> • Motor Vehicles Act • Notification issued by Government of Uttar Pradesh dated 14 July 2010 	

State/ Country	Authorised Agency	Implementation Arrangement	Legal Document	Remarks for consideration for Odisha (pros/cons)
Uttarakha nd	Transport Department	<ul style="list-style-type: none"> • Action : Penalty based on class, is Rs. 1000 for medium & heavy motor vehicles, Rs. 800 for LMV and Rs.600 for motor cycle and further 2,000 per tonne or part thereof for excess load. • Charging basis : GVW • Arrangement: privately operated local SWB 	<ul style="list-style-type: none"> • Motor Vehicles Act & Rules 	
Maharshtr a	Transport Department	<ul style="list-style-type: none"> • Action- two wheelers are exempt from paying overload penalty, however other overloaded vehicles have to pay Rs. 2,000 + Rs. 1,000 per tonne (or part thereof) as compounding fee. • Charging basis : GVW • Arrangement: privately operated local SWB 	<ul style="list-style-type: none"> • Motor Vehicles Act & Rules 	

Annexure 3.2

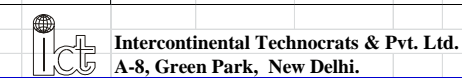
Pros & Cons

Aspect	Pros	Cons
Overloading to be enforced at toll plaza	<ul style="list-style-type: none"> • Easy to administer as all vehicles stop at toll plaza • Qualified staff available • Weigh bridges can be integrated with toll equipment to generate better data • Better control as toll plazas have existing infrastructure like surveillance cameras, security guards etc • Cost can be built in during tendering • BoT operator can claim damage to his road as he is responsible for maintenance • Less interference and burden of state transport department. 	<ul style="list-style-type: none"> • Increased infrastructure of weighbridges as each lane requires a WIM • Slowdown of other traffic reducing toll plaza throughput • Additional administrative burden on toll staff (resolve disputes etc) • No direct revenue to state • Usage of other roads where toll plaza not present. May lead to drop in traffic on roads where enforcement is strict.
Offloading excess load	<ul style="list-style-type: none"> • Compliance to Supreme Court ruling • Increase compliance 	<ul style="list-style-type: none"> • Space and possible warehousing requirements for offloaded goods. • Resistance from truck owners • Increase in transport cost
Overload penalty rates as per NHAI (10 times)	<ul style="list-style-type: none"> • Increased compliance • Increased revenue 	<ul style="list-style-type: none"> • Resistance from truck owners
Overload penalty : criminal proceedings	<ul style="list-style-type: none"> • Increased compliance 	<ul style="list-style-type: none"> • Difficult to administer due to resistance from truck owners. • Increased litigation costs.
Fee Appropriation by BoT operator	<ul style="list-style-type: none"> • Operator gets claim for additional maintenance done by him due to overload damage. • Entire control and responsibility at single point 	<ul style="list-style-type: none"> • The fee appropriated may be much more than the maintenance cost actually incurred.
Charging overload penalty based on GVW	<ul style="list-style-type: none"> • Compliance to existing law and practice • Existing capacity and infrastructure of SWB available widely 	<ul style="list-style-type: none"> • Not a very good method as actual damage to road is due to axle overload rather than GVW • Internationally, axle overload based penalties are preferred.

Willingness to Pay Toll Survey Format

Odisha Works Department																						
Willingness to Pay Toll Survey for Passenger Carrying Vehicle																						
Road No.(NH/SH)										Day:												
Survey Location No.....										Date :												
Direction From..... to										Name of the Interviewer:.....												
Vehicle Type	Vehicle Ownership	No. of Occupants	Trip Purpose	Origin			Via Route (Road Name)	Destination			Trip Length (In Km)	Trip Time (in Hrs)	Frequency Of Trip	No. of Times	Monthly Income (Rs)	Willingness to Pay Toll						
				Town / Village	District	State		Town / Village	District	State						For this trip how much will you pay for time saving of	Your Opinion about Toll for 100 Km					
																	Toll Amount	Very Acceptabel	Acceptable	OK	Not Acceptable	Can't Pay
1) Car/Van	1) Own		1) Work/Business									1) Daily		1) < 10000	1) 30 min..Rs.....	Rs. 60						
2) SUV/ Jeep	2) Company		2)Recreation/ Social/ Shopping									2) Weekly		2) 10000-20000	2) 45 min. .Rs.....	Rs. 50						
3) Bus	3) Hired		3) Education									3) Monthly		3) 20000-30000	3) 60 min. .Rs.....	Rs. 40						
4) Mini Bus	4) Other		4) Others									4) Occasionally		4) 30000-40000								
														5) 40000-50000								
														6) >above 50000								
1) Car/Van	1) Own		1) Work/Business									1) Daily		1) < 10000	1) 30 min..Rs.....	Rs. 60						
2) SUV/ Jeep	2) Company		2)Recreation/ Social/ Shopping									2) Weekly		2) 10000-15000	2) 45 min. .Rs.....	Rs. 50						
3) Bus	3) Hired		3) Education									3) Monthly		3) 10000-20000	3) 60 min. .Rs.....	Rs. 40						
4) Mini Bus	4) Other		4) Others									4) Occasionally		4) 20000-30000								
														5) 30000-50000								
														6) >above 50000								
1) Car/Van	1) Own		1) Work/Business									1) Daily		1) < 10000	1) 30 min..Rs.....	Rs. 60						
2) SUV/ Jeep	2) Company		2)Recreation/ Social/ Shopping									2) Weekly		2) 10000-15000	2) 45 min. .Rs.....	Rs. 50						
3) Bus	3) Hired		3) Education									3) Monthly		3) 10000-20000	3) 60 min. .Rs.....	Rs. 40						
4) Mini Bus	4) Other		4) Others									4) Occasionally		4) 20000-30000								
														5) 30000-50000								
														6) >above 50000								
1) Car/Van	1) Own		1) Work/Business									1) Daily		1) < 10000	1) 30 min..Rs.....	Rs. 60						
2) SUV/ Jeep	2) Company		2)Recreation/ Social/ Shopping									2) Weekly		2) 10000-15000	2) 45 min. .Rs.....	Rs. 50						
3) Bus	3) Hired		3) Education									3) Monthly		3) 10000-20000	3) 60 min. .Rs.....	Rs. 40						
4) Mini Bus	4) Other		4) Others									4) Occasionally		4) 20000-30000								
														5) 30000-50000								
														6) >above 50000								

Modes: SUV - Spots Utility Vehicle



Odisha Works Department

Willingness to Pay Toll Survey for Goods Carrying Vehicles

Road No.(NH/SH)										Day :														
Survey Location No.....										Date :														
Direction										Name of the Interviewer:.....														
From										To														
Vehicle Type	Origin			Via Route (Major Road)	Destination			Trip Length (In Km)	Trip Time (in Hrs)	Frequency Of Trip	No. of Times	Cargo Weight	Cargo Type	Willingness to Pay Toll										
	Town /Village	District	State		Town/ Village	District	State							For this trip how much will you pay for time saving of	Your Opinio				Very Acceptable	Acceptable	OK	Not Acceptable	Can't Pay	
															Toll Amount									
														LGV	2 Axle	3 Axle	MAV							
1 LGV: 4Wheeler										1) Daily			1) 30 min. Rs.....	95	175	190	270							
2) 2 Axle Truck										2) Weekly			2) 45 min. Rs.....	80	160	175	255							
3) 3 Axle Truck										3) Monthly			3) 60 min..Rs.....	65	145	160	240							
4) MAV: 4 to 6 Axle										4) Occasionally														
5) MAV: > 6 Axle																								
1 LGV: 4Wheeler										1) Daily			1) 30 min. Rs.....	95	175	190	270							
2) 2 Axle Truck										2) Weekly			2) 45 min. Rs.....	80	160	175	255							
3) 3 Axle Truck										3) Monthly			3) 60 min..Rs.....	65	145	160	240							
4) MAV: 4 to 6 Axle										4) Occasionally														
5) MAV: > 6 Axle																								
1 LGV: 4Wheeler										1) Daily			1) 30 min. Rs.....	95	175	190	270							
2) 2 Axle Truck										2) Weekly			2) 45 min. Rs.....	80	160	175	255							
3) 3 Axle Truck										3) Monthly			3) 60 min..Rs.....	65	145	160	240							
4) MAV: 4 to 6 Axle										4) Occasionally														
5) MAV: > 6 Axle																								
1 LGV: 4Wheeler										1) Daily			1) 30 min. Rs.....	95	175	190	270							
2) 2 Axle Truck										2) Weekly			2) 45 min. Rs.....	80	160	175	255							
3) 3 Axle Truck										3) Monthly			3) 60 min..Rs.....	65	145	160	240							
4) MAV: 4 to 6 Axle										4) Occasionally														
5) MAV: > 6 Axle																								
1 LGV: 4Wheeler										1) Daily			1) 30 min. Rs.....	95	175	190	270							
2) 2 Axle Truck										2) Weekly			2) 45 min. Rs.....	80	160	175	255							
3) 3 Axle Truck										3) Monthly			3) 60 min..Rs.....	65	145	160	240							
4) MAV: 4 to 6 Axle										4) Occasionally														
5) MAV: > 6 Axle																								

Modes: LGV - Light Goods Vehicle MAV - Multi Axle Vehicle

Annexure 3.4

Transition Plan

The following transition plan is suggested to move from manual to mixed tolling:

1. Stage 1 – Manual Tolling – This is the current stage where manual road users are given pre-printed manual receipts.
2. Stage 2 – Partial Semi-Automatic – This shall include the following
 - a. The receipt shall be generated by a computer and printer in the toll booth.
 - b. The transaction data shall be stored in the plaza computer. This shall be open to audit.
 - c. Surveillance camera system shall be installed at the toll plaza. The video feed of each camera shall be recorded in the toll plaza. This shall also be displayed at the auditor and manager's display screen.
 - d. The system shall broadly comprise of booth computers with keyboards and display monitors, thermal receipt printers, traffic lights, overhead lane signal automatic barrier gates, bar code readers (if discounted passes cabling and networking equipment, tolling software for booth and plaza control room, CCTV surveillance system and power supply system.
3. Stage 3 – Fully Semi-Automatic System This shall consist of (in addition to stage 2): increased hardware and software capabilities including
 - a. Automatic vehicle classification system for audit purpose
 - b. Incident detection system for recording of discrepant transactions
 - c. Smart card with manual assist
 - d. Enhanced toll software with audit capabilities
4. Stage 4 – Mixed Toll including Automatic Tolling – This toll plaza shall allow all types of transactions – cash, bar-coded tickets, smart cards and tags. This shall consist of enhanced software and hardware functionalities (in addition to Stage 3) including:
 - a. Non-manual assist smart card transactions
 - b. Tag functionality

Annexure 3.5

Electronic Tolling Systems

The technology is now proven and has been implemented worldwide. However it is not yet without problems, particularly in enforcement and in ensuring uninterrupted operation. More than one system is available however. The European Union/International standard for vehicle to road side communications has been adopted by competing manufacturers and is in use in Austria and Australia for example, while the United States has a different technology. This problem can be significant -- for example in Malaysia two different technologies are in use by different toll road providers (one operating with a microwave system and another, infrared). The international standard is based on microwave technology.

Complete electronic operation is only viable where the number of occasional users is small. Where there are a large number of occasional users, or they are entering the system at a large number of locations, the complications can be large. Hence making sure that the systems in place to collect revenue are able to deal with both occasional users and to enforce penalties against those who intentionally fail to pay is important.

The different pieces of equipment required for an electronic toll system include:

1. The "in-vehicle" tag -- a unit placed in the center of the vehicle windscreen, behind the rear view mirror. This can be either a basic identification tag, or it can be a more complex smartcard which gives more enforcement options.
2. A tag to overhead beacon communication system.
3. Equipment overhead to detect the vehicle, captures the registration number, and classifies the vehicle by length, height and width. This equipment includes an electronic camera to capture the registration number.
4. Roadside computers linked into a central database, so that both successful and unsuccessful tag reading can be notified to the central database. The information will also be able to distinguish between those which are unsuccessful because there was no tag and those where the tag is not functioning or perhaps where the tag has been tampered with in some way. The central database can then arrange billing and draw attention to follow up on non-payment. To prevent a situation in which users with faulty tags are billed for payment evasion (and thereby perhaps alienated from using the system), the computer requires that cases of non-payment from non-responding tag are checked before penalties are levied.

Chapter 4 : RECOMMENDATIONS

4.1 Recommendations

Based on the present nascent stage of tolling in Odisha and the parameters discussed in the previous chapter for enhancing road toll collection and management, the recommendations in regard to improvement of toll collection and management are set out below.

4.1.1 *Enabling Legal Environment*

To enable enhancement of the environment for effective and efficient tolling, the following may be considered:

- i) The toll collected should be “ring-fenced” for use for the development of the road sector because toll is a direct user charge paid and collected from the road users.
- ii) Provisions for levy of additional fee for overloaded vehicles may be considered as a deterrent to deterioration that may be caused to the roads and state highways by such overloading. Further, the additional fees would be in addition to the penal action as may be permissible under applicable laws. The additional fee shall be levied on the basis of actual Gross Vehicle Weight as measured by a standardized static weighing machine to be installed at each of the toll plazas.
- iii) Differential toll charges for use of State Highway, by-pass, bridge, rail over bridge, or rail under bridge as the case may be during peak and off-peak hours may be introduced. For this purpose, not more than six hours in a day may be designated as peak hours and a period equal to twice the peak hours as off-peak hours. For the usage of road during the peak hours, a premium of, say up to 20%, may be charged on and over the usual toll fee; and a discount at a rate equal to twice the premium for peak hours may be offered for off-peak hours.
- iv) The provisions of the Odisha State Roads Toll Act 2010 and the rules thereunder are in line with the provisions in regard to toll prescribed by the National Highway Authority of India and as followed in other states. However, to enable enhancement of the environment for effective and efficient tolling, and in line with the recommendations made for strengthening the legal environment, a suggested notification for amendment of the Odisha State Roads Toll (Determination of Rates and Collection) Rules is provided in **Annexure 4.1**.

4.1.2 *Identification of Toll Roads*

In determination of roads that are to be tolled, it is important to consider the factors stated hereunder:

- (i) Realistic Traffic Projection duly supported by appropriate traffic survey report;
- (ii) Cost of Construction;
- (iii) Cost of Operation and Maintenance;
- (iv) Economic Benefits arising out of the road in the region and for the community duly analysed considering the socio-economic issues.

Apart from the above listed economic factors, the following non-economic issues should also be taken into account in identification of roads to be tolled:

- (i) Public Acceptance of Tolling, and, the outcome ascertained, where deemed necessary, through willingness to pay survey;
- (ii) Equity of charging tolls for road use.

This procedure will facilitate to identify toll roads on a rational basis and avoid the scope of ad-hocism. Further, to mitigate public protests and political debates on tolling of identified roads, it is suggested that efforts should be made to explain to the public the benefits from the road and need for tolling through public communication and awareness building.

To identify roads that are to be tolled and to enable fast-track decisions in this regard, a cabinet sub-committee may be formed as in Maharashtra.

4.1.3 Toll Collection and Management

As stated earlier, toll collection and management may be carried out through following modes, depending on case to case basis and hierarchy of roads and traffic volume.

- i) Concession Agreement with a private sector agency for roads developed through PPP route. This option is mainly appropriate for State Highways which for its better revenue potential and efficient technology needed could be offered to the private sector on Design-Build-Finance-Operate-Transfer (DBFOT) or Build-Operate-Transfer (BOT) basis. In this respect, the model concession agreement prepared and issued by the Planning Commission for State Highways can be adopted. A public-private partnership based concession agreement is given in **Annexure 4.2** and a specimen form of performance-based contract is given in **Annexure 4.3**.
- ii) Toll collection and management contract with a private sector agency along with responsibility for operation and maintenance of roads developed by GoO. This mode may be considered for Other District Roads (ODRs); and for bridges and related approach roads, which are of short length and do not carry heavy traffic. Sample agreement for user fee collection is provided in **Annexure 4.4** and has modifications over the existing agreement format used by OB&CC. An alternative form of operation, maintenance and tolling) OMT) contract is provided in **Annexure 4.6**.

A comparative matrix of changes between the model concession agreements as usually followed viz-a-viz the agreement recommended for the state is presented in **Annexure 4.5**.

Further, a comparative chart between OMT and Performance Based Contract is also given in **Annexure 4.6**.

4.1.4 Tolling System

Manual Tolling

At present, mainly manual tolling with some automation to a limited extent is being followed in Odisha. The drawback of this system is that it is usually a slow procedure and therefore requires more toll booths or lanes than any other to achieve the same traffic flow. Setting up costs may also be high if land acquisition is costly. Further, manual tolling entails chances of error and manipulation.

Mixed Tolling

A better option could be a mixed tolling system which consists of a mix of manual and electronic tolling. This is an option that needs to be considered for enhancement of effective and efficient tolling system through a gradual phased program because this will involve investment in electronic tolling equipment as well as in training of the tolling personnel.

The mixed toll collection system would require hardware, software, suitable devices and configurations to process inputs and disseminate output data in terms of toll fees to be charged and collected from each road user in accordance with the prescribed toll rules.

Specifically automatic money machines need to be installed that accept, accurately count and accept coin and note payments, deliver correct change, bill, bill validators, has coin vaults, receipt issuing and printing devices, magnetic card readers. Also, the system should be able to compute total toll collected every day and at every change of shift of the toll collection operator.

The manual intervention will be limited to computer operations and reconciliation of physical cash collected and handed over by the toll collection operator to the supervisor for deposit to bank. However, the computer system should have features to incorporate the reconciliation record and have audit trail.

To enhance the system, violation enforcement mechanism may be added which will include cameras, lens, housings, triggers, ancillary lighting, storage, image compression, image compression conversion and inter-related processes.

In this context, it may be mentioned that in many states of India, the mixed toll collection system is being followed which has many of the features of the fully automatic system, but also relies on human operators to collect the tolls. Software collects and records data, generates traffic reports, and lists the collection of money and class of vehicles. The toll barrier opens and closes automatically in synchronization with the receipt of payment and exit of vehicles. The system enables a check of the vehicle class identified by the operator and by the system, and makes a recording of the violating incidents.

Electronic Tolling

The third option is electronic tolling system where there is no manual toll collection. India's first national highway electronic toll collection (ETC) system was launched in Thane. The new system will curb overcharging by unscrupulous toll plaza attendants apart from helping motorists avoid long queues or fumble for change.

Considering the present level of toll collection and management in Odisha, it is suggested to draw up a plan, as stated earlier to graduate to an automated toll collection system over a period of time. To begin with, the mixed tolling collection system may be adopted on "pilot basis" and based on the experience thereof, it may be extended to other locations.

4.1.5 Toll Audit

As a part of control and supervision by the employer organization, all collection and management of toll carried out by a private sector agency under any of the modes described hereinabove, it is suggested that toll fee audit should be introduced in phases.

All records of the toll plaza or toll station including vouchers/books/register/other documents/reports/fixed deposit receipts/pay in slips/bank statement/used/ unused tickets/passes etc. concerning collection of fee, expenditure on such collection or any other related aspect maintained by the collecting agency should be subject to audit on monthly basis. The scope of the audit is set out in **Annexure 4.7**.

The toll audit could be carried out through eligible firms of chartered accountants. The audit should ideally be conducted on monthly basis starting latest by 5th of the following month and completed by the 15th of the following month including discussion with the collecting agency on the audit report. Within the next five days the collecting agency must submit their replies to the employer organization giving reasons for disagreement with the observations and suggestions contained in the audit report and in case of agreement action will have to be initiated by the collecting agency for remedial measures.

4.1.6 CCTV

Forms of visual monitoring which was once the exclusive domain of well-funded secretive government security agencies are becoming readily available at an affordable cost to the public, and very sophisticated systems are being developed and installed for general surveillance use.

With respect to vehicles, speed monitoring is often carried out by simple cameras triggered by a vehicle exceeding the speed limit. The photograph captures the vehicle registration number. Instead, this may now be automated within a CCTV surveillance system. This requires not only identifying the moving vehicle within the scene, but also locating the position of the registration plate, and then automatically reading the number. To achieve this reliably under all conditions of lighting and weather is a challenging image-processing task, but operationally successful systems have been developed.

Reliable methods of automatically reading vehicle registration numbers provide alternative possibilities for excess-speed detection. For example, detecting a vehicle at position x_1 at time t_1 and then detecting the same vehicle at position x_2 at time t_2 immediately provides a lower bound for the velocity of travel between these two points of $distance(x_1, x_2)/(t_2 - t_1)$. If that is greater than the speed limit, then it can be concluded that the vehicle has exceeded the limit. Thus with a complex network of cameras capable of identifying particular vehicles (e.g. by registration numbers) it is possible to detect extreme speed violations without measuring speed, even when the vehicles are moving within the junctions of a complex highway network. Installing such systems has implications for civil liberties, since the same data provides information on the movements of particular vehicles, and therefore has the potential to be used (misused) to track individuals.

In most countries, cameras in public areas are not now considered an invasion of privacy. They are a common sight at highway junctions, pedestrian crossings and traffic-signal locations (for traffic monitoring) and in city centers, shopping malls, airports and rail stations (for person monitoring). The trends are towards smaller cameras, which may not be readily visible (sometimes augmented by highly-visible dummy cameras to mislead criminals).

In India, CCTV surveillance on roads has been introduced in number of places. For example, Ankit – Bhanu Expressway, a 28 km long access-controlled toll expressway connecting Delhi and Gurgaon has CCTV surveillance till the point of Indira Gandhi International Airport. Similarly, Zirakpur-Parwanoo highway has CCTV surveillance system. Also, Nagpur Bypass project in Maharashtra has installed CCTV surveillance system.

It is suggested that in strategic and critical sections of the State Highways and other roads CCTV surveillance system needs to be introduced to monitor speed of vehicles, the congestion or otherwise around the toll plaza or toll booth, as well as, the operations inside the toll booth relating to collection and dealing with road users.

Annexure 4.1

ODISHA WORKS DEPARTMENT

NOTIFICATION

The ___ (day) ___(month) 20__

No. _____.— In exercise of the powers conferred by Section 13 of the Orissa State Roads Tolls Act, 2010 (Orissa Act 6 of 2010), the State Government do hereby makes the following rules further to amend the Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011, namely :—

1. (1) These rules may be called the Orissa State Roads Tolls (Determination of Rates and Collection) Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011 (hereinafter referred to as the said rules), in sub-rule (1) of rule 12, for the words appearing “*shall be liable to pay toll at such rate which is applicable for the next higher category of mechanical vehicles*” shall be replaced with the words namely : “*shall be liable to pay overloading fee at the rates specified in Schedule ‘A’.*”
3. In the said rules, in rule 12, after sub-rule (2), the following sub-rule shall be inserted, namely :-

(3) The toll and the overloading fee collected in terms of sub-rule (2) above, shall be appropriated as follows :
 - a. For BOT contracts, where the road builder maintains the road, the overload penalty and toll fees shall be appropriated by him.
 - b. For OMT contracts, the toll operator who is responsible for road maintenance, shall appropriate toll fee.
 - c. For Annuity contracts and user/toll fee collection contracts, where road maintenance and toll fee collection are under separate contracts, the toll operator should deposit the overload fee with the executing agency of the State Government.
4. Insertion of a new rule.- After rule 9 in the said rules, the following new rule shall be inserted, namely –
9A Differential Toll Charges —(1) The executing authority or the Concessionaire, as the case may be, after obtaining prior approval of the State Government, may levy and collect a higher and discounted toll charge for the use of the highway, bypass, bridge, road over bridge or road under bridge, as the case may be, during peak and off-peak in accordance with the provisions set forth in Schedule ‘B’.

ORDER—The notification be published in the extraordinary issue of *Orissa Gazette* and copies thereof be forwarded to all Departments/all Heads of Department/Principal Accountant-General, Orissa, Bhubaneswar/Secretary to the Governor, Orissa.

**By Order of the
Governor**

SCHEDULE – A

OVERLOADING FEE FOR VARIOUS CATEGORIES OF VEHICLES

SCHEDULE – B

DIFFERENTIAL TOLL CHARGES FOR PEAK & OFF-PEAK HOURS

**Public Private Partnership in
Operation & Maintenance of
Highways**

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Part I

Preliminary

CONCESSION AGREEMENT

THIS AGREEMENT⁷ is entered into on this the day of, 20....

BETWEEN

1 [The Governor of the State of Odisha through the Secretary, Odisha Works Department, Government of Odisha having its principal office at _____]⁸(hereinafter referred to as the “Authority” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) of One Part;

AND

2 {..... LIMITED}⁹, 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 permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) The Government had [entrusted to the Authority the development, maintenance and management of State Highway No. **⁹ including the section from km ** to km ** (approx. *** km)].
- (B) The Authority had augmented the existing road from [km ** to km ** (approximately *** km) on the *** section of State Highway No.** (hereinafter called the “SH -**”) in ***** by Four-Laning] thereof.
- (C) The Authority had invited proposals by its [Tender Notice/ Request for Qualification No. *** dated ***] (the “Request for Qualification” or “RFQ”) for short listing of bidders for operate, maintain and transfer (“OMT”) of the above referred section of SH -** and had shortlisted certain bidders including, *inter alia*, the {Concessionaire}.
- (D) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “Request for Proposals” or “RFP”) from the bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (E) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} and issued its letter of acceptance No. dated (hereinafter called the “LOA”) to the {selected bidder/

⁷ Serially numbered footnotes in this Model Concession Agreement are for guidance of the Authority and should be omitted from the draft Concession Agreement forming part of Bid Documents. Footnotes marked “\$” or in other non-numerical characters shall be retained in the draft Concession Agreement.

⁸ All project-specific provisions in this Model Concession Agreement have been enclosed in square parenthesis and may be modified, as necessary, before issuing the draft Concession Agreement forming part of Bid Documents.

⁹ The provisions in curly parenthesis and the blank spaces shall be retained in the draft Concession Agreement and shall be suitably modified/ filled after completion of the bid process to reflect the particulars relating to the selected bidder.

⁹ All asterisks in this Model Concession Agreement should be substituted by project-specific particulars in the draft Concession Agreement forming part of Bid Documents.

Consortium} requiring, *inter alia*, the execution of this Concession Agreement within [15 (fifteen)] days of the date of issue thereof.

- (F) {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- (G) {By its letter dated, the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.}
- (H) The Authority has agreed to the said request of the {selected bidder/Consortium and the} Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on OMT basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

1 The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 40) shall, unless the context otherwise requires, have the meaning ascribed thereto herein and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules;

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed, without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;

- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a **“business day”** shall be construed as a reference to a day (other than a Sunday) on which banks in Bhubaneswar are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing **“from”** a specified day or date and **“till”** or **“until”** a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) **“lakh”** means a hundred thousand (100,000) and **“crore”** means ten million (10,000,000);
- (q) **“indebtedness”** shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the **“winding-up”**, **“dissolution”**, **“insolvency”**, or **“reorganisation”** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by

any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;

- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (w) the damages payable by either Party to the other of them as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- (x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and

other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein;
i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

Part II

The Concession

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period:

- (a) construction on the Site set forth in Schedule-A of Project Facilities as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-C;
- (b) operation and maintenance of the Project Highway in accordance with the provisions of this Agreement; and
- (c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority to construct, operate and maintain the Project (the “**Concession**”) for a period of [9 (nine)]¹⁰ years commencing from COD and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

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

- (a) Right of Way, access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) manage, operate and maintain the Project Highway and regulate the use thereof by third parties;
- (c) demand, collect and appropriate Fee from vehicles and Users liable for payment of Fee for using the Project Highway or any part thereof and refuse entry of any vehicle if the Fee due is not paid;
- (d) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
- (e) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (f) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Highway nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.

¹⁰ To be fixed by subtracting from 5 or 10, as the case may be, the number of years that have passed since construction of the Project Highway was completed. Thus, for a road that was completed one year prior to this Agreement, the Concession Period should be fixed at 4 or 9 years. For the avoidance of doubt, if a Project Highway was completed in two or more phases, the average thereof may be adopted for purposes of aforesaid subtraction.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 26, 36 and 39, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).
- 4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, and having delivered to the Authority, the legal opinion referred to in Clause 4.1.3 (c) below, by notice require the Authority to procure the right of way as a Condition Precedent to be satisfied within a period of 30 (thirty) days of the notice, and the obligations of the Authority hereunder shall be deemed to have been fulfilled when the Authority shall have procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1. For the avoidance of doubt, the Authority shall, *suo moto*, procure notification of the Fee Notification as a Condition Precedent to be fulfilled within a period of 45 (forty five) days from the date of this Agreement.
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 45 (forty five) days from the date of this Agreement and prior to COD shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) provided Performance Security to the Authority;
 - (b) executed and procured execution of the Escrow Agreement; and
 - (c) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.
- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which it is responsible.

4.2 Damages for delay

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

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the operation and maintenance of the Project Highway and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Highway;
 - (c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by the Concessionaire or its Contractors in connection with the performance of the Concessionaire's obligations under this Agreement;
 - (d) make reasonable efforts to facilitate the acquisition of land required for the purposes of the Agreement;
 - (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (g) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (h) transfer the Project Highway to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall at all times be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.
- 5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public

interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that the obligation under this Clause 5.3.1 and the representation in Clause 7.1(k) shall apply to the Concessionaire's company in the event any person, together with its Associates, holds more than 33% (thirty three per cent) of the paid up share capital as on the date of submitting the Application in response to the Request for Qualification. Provided, however, that where the selected bidder/ Consortium has incorporated the Concessionaire as a company for the sole purpose of undertaking this project, the aggregate holding of the {selected bidder/Consortium Members} together with {its/their} Associates, in the issued and paid-up Equity of the concessionaire shall not decline below 51% (fifty one percent) thereof during the Concession Period.

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

- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire, or
- (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression "acquirer", "control" and "person acting in concert" shall have the

meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control directly or indirectly of the Board of Directors of the Concessionaire.

5.4 Employment of foreign nationals

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

5.5 Employment of trained personnel

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

5.6 Branding of Project Highway

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

be known, promoted, displayed and advertised by the name of *****.

5.7 Facilities for physically challenged and elderly persons

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

ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

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

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

- (a) upon written request from the Concessionaire and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
- (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (c) procure that no barriers are erected or placed on or about the Project Highway by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order or collection of inter-state taxes;
- (d) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Project Highway;
- (e) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Project Highway;
- (f) assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Project Highway;
- (g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (i) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits in such manner as may be necessary to facilitate the compliance of this Agreement and the Project Agreements.

6.2 Maintenance obligations prior to COD

Prior to COD, the Authority shall maintain the Project Highway, at its own cost and expense, so that its traffic worthiness and safety are at no time materially inferior as compared to its condition 7 (seven) days prior to the last date for submission of the Bid, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof, or pay to the Concessionaire the cost and expense, as determined by the Independent Engineer, for undertaking such repair after COD. For the avoidance of doubt, the Authority shall undertake only routine maintenance prior to COD, and it shall undertake special repairs only for ensuring safe operation of the Project Highway, or in the event of excessive deterioration or damage caused due to unforeseen events such as floods or torrential rain.

6.3 Obligations relating to Competing Roads

The Authority shall procure that during the subsistence of this Agreement, neither the Authority nor any Government Instrumentality shall construct or cause to be constructed any Competing Road; provided that the restriction herein shall not apply if the average traffic on the Project Highway in any year exceeds 90% (ninety per cent) of its designed capacity as stipulated in the Specifications and Standards. Upon breach of its obligations hereunder, the Authority shall be liable to payment of compensation to the Concessionaire under and in accordance with Article 27, and such compensation shall be the sole remedy of the Concessionaire.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof and the obligations of the Concessionaire under this Agreement will be legally valid, binding and enforceable obligations against the Concessionaire in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ,

injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Concessionaire's ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {existing promoters}, together with {its/their} Associates, hold not less than 33% (thirty three per cent) of its issued and paid-up Equity as on the date of this Agreement; and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall hold less than 26% (twenty six per cent) of such Equity during the Concession Period. Provided, however, that where the selected bidder/ Consortium has incorporated the Concessionaire as a company for the sole purpose of undertaking this project, the aggregate holding of the {selected bidder/Consortium Members} together with {its/their} Associates, in the issued and paid-up Equity of the concessionaire shall not decline below 51% (fifty one percent) thereof during the Concession Period.
- (l) {the selected bidder/ Consortium Members and its/their Associates} have the financial standing and resources to fund the required Equity and to raise the debt necessary to undertake and implement the Project in accordance with this Agreement;
- (m) {the selected bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all rights and interests of the Concessionaire in the Project Highway shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on the part of the Concessionaire or the Authority, and that none of the Project Assets shall be acquired by the Concessionaire subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person save and except as expressly provided in this Agreement;
- (o) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority or to any Government

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

- (p) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
- (q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) it has the right, power and authority to manage and operate the Project Highway up to COD; and
- (h) it has good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Concessionaire.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has

been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained, procured or gathered otherwise and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire or any person claiming through or under it.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III

Development and Operations

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Concession Period, provide to the Authority no later than 15 (fifteen) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)¹¹ in the form set forth in Schedule-E (the “**Performance Security**”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 60 (sixty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 29. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 29.

¹¹ Specify the product of likely average daily fee on COD multiplied by 180.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for the Concession Period and shall cease to be in force and effect only when the Authority shall have issued the Vesting Certificate to the Concessionaire.

ARTICLE 10

RIGHT OF WAY

10.1 The Site

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

10.2 Licence, Access and Right of Way

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

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

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

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

- 10.2.5 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.3 Procurement of the Site

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid license and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire. It is further agreed that on or prior to COD, the Appendix shall not include more than 2% (two per cent) of the total area of the Site.
- 10.3.2 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.3 The Authority shall make best efforts to procure and grant, no later than 45 (forty five) days from the COD, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 50 (Rupees fifty) per day for every 1,000 (one thousand) square meters or part thereof, commencing from the 271st (two hundred and seventy first) day of COD and until such Right of Way is

procured.

10.3.4 The Concessionaire may procure at its cost and expense and on its own the land that may be required by it for Additional Facilities and the Authority shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Concessionaire shall seek prior consent of the Authority to connect any Additional Facility to the Project Highway and such consent shall not be unreasonably withheld.

10.4 Site to be free from Encumbrances

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

10.5 Protection of Site from encroachments

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

10.6 Special/temporary right of way

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

10.7 Access to the Authority and Independent Engineer

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

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the

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

ARTICLE 11

UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

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

11.3 New utilities and roads

11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or such other utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Project Highway in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.3.2 The Authority may, by notice require the Concessionaire to connect any adjoining road to the Project Highway. Upon receipt of a notice hereunder, the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at the Authority's cost in accordance with Article 14, and the maintenance thereof shall be undertaken by the Concessionaire in accordance with the provisions of Clause 15.1.3.

11.3.3 The Authority may by notice require the Concessionaire to connect, through a paved road, any adjoining service station, hotel, motel or any other public facility or amenity

to the Project Highway, whereupon the connecting portion thereof that falls within the Site shall be constructed and maintained by the Concessionaire upon advance payment of the cost to be made by the beneficiary entity in accordance with the amount and period as determined by the Independent Engineer. For the avoidance of doubt, any connecting road constructed prior to COD and falling within the Site shall be maintained by the Concessionaire upon advance payment to be made by the beneficiary entity in accordance with the provisions of this Clause.

11.4 Felling of trees

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

ARTICLE 12

CONSTRUCTION OF PROJECT FACILITIES

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer, its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project Facilities;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials needed for the Project Highway under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Project Facilities, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Facilities Completion Schedule, three copies each of all Drawings to the Independent Engineer for review;
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering including field construction criteria related thereto are in conformity with the Scope of the Project and the Specifications and Standards;
- (c) Within 10 (ten) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 10 (ten) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the

Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;

- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner; and
- (f) Within 60 (sixty) days of completion of any Project Facility, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project Facility as actually designed, engineered and constructed, including the buildings and structures forming part of the Project Facility.

12.3 Completion of Project Facilities

12.3.1 On or after COD, the Concessionaire shall undertake construction of Project Facilities as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-C. The Project Facility Completion Schedule of each of the Project Facilities shall be specified by the Independent Engineer in accordance with Good Industry Practice and the Concessionaire agrees and undertakes that Project Facilities shall be completed in accordance with the Project Facility Completion Schedule in each case. For the avoidance of doubt, it is expressly agreed that if a time schedule for any or all Project Facilities is specified in Schedule-B, the same shall be binding on the Parties hereto and the Independent Engineer shall conform thereto.

12.3.2 The Concessionaire shall construct the Project Facilities in accordance with the Project Facility Completion Schedule. In the event that the Concessionaire fails to achieve completion within a period of 90 (ninety) days from the date set forth for each of the Project Facilities, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Facility is completed. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.4 Termination due to failure to complete Project Facilities

In the event that any Project Facility is not completed on or before the expiry of 150 (one hundred and fifty) days from the date specified in the Project Facility Completion Schedule, the Authority may in its discretion terminate this Agreement.

12.5 Monthly progress reports

During the construction of Project Facilities, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer.

12.6 Inspection

During the period of construction of Project Facilities, the Independent Engineer shall inspect the Project Highway at least once a month and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

12.7 Tests

12.7.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may, be specified by the Independent Engineer from time to time in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests prescribed by IRC and/or MoSRTTH for the construction works undertaken by the Authority through their contractors. The Concessionaire shall with due diligence carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

12.7.2 In the event that results of any tests conducted under this Clause 12.7 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 12.7 shall be repeated until such Construction

Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 12.7 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

12.8 Delays during construction

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the project milestones set forth in the Project Facility Completion Schedule or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that they are not likely to be completed within the time specified by the Independent Engineer, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve completion.

12.9 Suspension of unsafe Construction Works

- 12.9.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if in the reasonable opinion of the Authority such work threatens the safety of the Users and pedestrians.
- 12.9.2 The Concessionaire shall, pursuant to the notice under Clause 12.9.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 12.9 shall be repeated until the suspension hereunder is revoked.
- 12.9.3 Subject to the provisions of Clause 26.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

12.10 Completion Certificate

Upon the Independent Engineer determining that a Project Facility conforms to the Specifications and Standards and has been completed in accordance with the

provisions of this Agreement, it shall forthwith issue to the Concessionaire and the Authority a completion certificate therefor (the “**Completion Certificate**”). It is expressly agreed that the Independent Engineer shall, for the purposes of determining that such Project Facility conforms to the Specifications and Standards, be entitled to require the Concessionaire to carry out or cause to be carried out such tests as the Independent Engineer may deem appropriate in accordance with Good Industry Practice and the nature of such Project Facility including its intended use. The date and time of each such test shall be determined by the Independent Engineer in consultation with the Concessionaire. If it is reasonably anticipated or determined by the Independent Engineer during the course of any such tests that such Project Facility or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each such test, the Independent Engineer shall provide copies of all such test data and results thereof to the Concessionaire with copy to the Authority. Costs of all such tests shall be borne by the Concessionaire.

ARTICLE 13

ENTRY INTO COMMERCIAL SERVICE

13.1 Commercial Operation Date (COD)

13.1.1 The commercial operation date of the Project shall be the date on which all Conditions Precedent have been satisfied in accordance with Article 4 (the “COD”). The Project Highway shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article 22.

13.1.2 The Concessionaire hereby agrees and undertakes that it shall achieve COD within 45 (forty five) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [30 (thirty)] days subject to payment of Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 45 (forty-five) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in COD has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder shall be in addition to the Damages payable under the provisions of Clause 4.2.

13.1.3 The Concessionaire shall, upon occurrence of COD, notify the Authority forthwith.

13.2 Termination due to delay

13.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 26.6.1, in the event that COD does not occur, for any reason whatsoever, within the period set forth in Clause 13.1, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

13.2.2 Upon Termination under Clause 13.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if COD has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with Damages equal to 25% (twenty-five per cent) thereof. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to the Bid Security.

ARTICLE 14

CHANGE OF SCOPE

14.1 Change of Scope

- 14.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 14 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 14.3.
- 14.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall within 15 (fifteen) days of receipt of such notice either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 14 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 14.1.3 Any works or services which are provided under and in accordance with this Article 14 shall form part of the Project Highway and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

14.2 Procedure for Change of Scope

- 14.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 14.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.
- 14.2.3 Upon receipt of information set forth in Clause 14.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with

the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 14.5.

- 14.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 14.

14.3 Payment for Change of Scope

Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

14.4 Restrictions on certain works

Notwithstanding anything to the contrary contained in this Article 14, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed an amount equal to 90 (ninety) days of Average Daily Fee in any continuous period of 2 (two) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 270 (two hundred and seventy) days of Average Daily Fee at any time during the Concession Period.

14.5 Power of the Authority to undertake works

- 14.5.1 Notwithstanding anything to the contrary contained in Clauses 14.1.1, 14.2 and 14.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, either undertake and carry out by itself any works or services specified in a Change of Scope Order, or award any works or services, contemplated under Clause 14.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority[§], and thereupon securing the award of such works or services. For the

[§] The Authority shall transfer 75% (seventy five per cent) of the amount so received to the first ranked bidder whose bid has been matched by the Concessionaire.

avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

14.5.2 The works undertaken in accordance with this Clause 14.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Project Highway. The provisions of this Agreement, insofar as they relate to Construction Works and tests, shall apply *mutatis mutandis* to the works carried out under this Clause 14.5.

14.6 Reduction in Scope of the Project

14.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may in its discretion require the Concessionaire to pay 80% (eighty per cent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project. It is further agreed that the liability of the Authority under this Clause 14.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.

14.6.2 For determining the obligations of the Concessionaire under this Clause 14.6, the provisions of Clauses 14.1, 14.2 and 14.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

14.7 Rectification of latent defects

14.7.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that a material defect or deficiency appears in the Project Highway after the date of this Agreement and the defect or deficiency is not on account of any failure on the part of the Concessionaire to comply with Maintenance Requirements and is such that it could not have been detected or anticipated by the Concessionaire prior to such date with the exercise of due diligence in accordance with Good Industry Practice, the repair and rectification thereof shall be undertaken as if it were a Change of Scope; provided that the provisions of this Clause 14.7.1 shall not apply if the cost of such repair and rectification is less than [Rs. 1 (one) crore]¹². For the avoidance of doubt, it

¹² This amount should be equal to 25% of the Performance Security.

is expressly agreed that damage to the carriageway on account of overloading of vehicles shall not be construed as a latent defect.

- 14.7.2 The works and services forming part of Change of Scope under Clause 14.7.1 shall be undertaken in accordance with the procedure specified in this Article 14; provided that if such works and services are of an urgent nature and need to be undertaken forthwith, the Concessionaire may, with the consent of the Independent Engineer, commence such works and services pending determination of the costs thereof, and the provisions of Clauses 14.2 and 14.3 shall apply *mutatis mutandis* to the determination of such costs.

ARTICLE 15

OPERATION AND MAINTENANCE

15.1 O&M obligations of the Concessionaire

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

- (a) permitting safe, smooth and uninterrupted flow of traffic on the Project Highway during normal operating conditions;
- (b) collecting and appropriating the Fee;
- (c) minimising disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Highway by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (d) carrying out periodic preventive maintenance of the Project Highway;
- (e) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement markings, lighting, road signs and other traffic control devices;
- (f) undertaking major maintenance such as resurfacing of pavements, repairs to structures, and repairs and refurbishment of tolling system and other equipment;
- (g) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Project Highway;
- (h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Highway;
- (i) protection of the environment and provision of equipment and materials therefore;
- (j) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project Highway;
- (k) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and
- (l) complying with Safety Requirements in accordance with Article 18.

15.1.2 The Concessionaire shall remove promptly from the Project Highway all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident

debris) and keep the Project Highway in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

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

15.2 Maintenance Requirements

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

15.3 Maintenance Manual

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

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

15.4 Maintenance Programme

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

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Project Highway;

- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures; and
- (g) intervals for Major Maintenance Works and the scope thereof.

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

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

15.5 Safety, vehicle breakdowns and accidents

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

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

15.6 De-commissioning due to Emergency

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

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

15.6.3 Any decommissioning or closure of any part of the Project Highway and the re-

commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

15.7 Lane closure

- 15.7.1 The Concessionaire shall not close any lane of the Project Highway for undertaking maintenance or repair works except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure of such lane and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem necessary and a copy of such permission shall be sent to the Authority.
- 15.7.2 The provisions of Clause 15.7.1 shall not apply to de-commissioning under Clause 15.6.1 or to closure of any lane for a period not exceeding 2 (two) hours in a day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak hours when the flow of traffic is comparatively lower.
- 15.7.3 Upon receiving the permission pursuant to Clause 15.7.1, the Concessionaire shall be entitled to close the designated lane for the period specified therein, and in the event of any delay in re-opening such lane, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of the Average Daily Fee for every stretch of 500 (five hundred) metres or part thereof for each day of delay until the lane has been re-opened for traffic.

15.8 Damages for breach of maintenance obligations

- 15.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Fee, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 15.8.2 The Damages set forth in Clause 15.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

15.9 Authority's right to take remedial measures

- 15.9.1 In the event the Concessionaire does not maintain and/or repair the Project Highway or

any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 15.9.1 shall be without prejudice to its rights and remedies provided under Clause 15.8.

15.9.2 The Authority shall have the right and the Concessionaire hereby expressly grants to the Authority the right to recover the costs and Damages specified in Clause 15.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 15.9.2 and debit the same to O&M Expenses.

15.10 Overriding powers of the Authority

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

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

15.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 26.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project Highway or give such directions to the Concessionaire as may be

deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding powers by the Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of Article 26. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 15.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

15.11 Restoration of loss or damage to Project Highway

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

15.12 Modifications to the Project Highway

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

15.13 Excuse from performance of obligations

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

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Project Highway except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality the effect of which is to close all or any part of the Project Highway.

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

15.13.2 The Concessionaire shall not be liable or responsible for any defect or deficiency in the Project Highway if such defect or deficiency is to be rectified or repaired by the contractor who had constructed the Project Highway or any part thereof. The sections of the Project Highway and the period for which the Concessionaire shall not be liable for defects and deficiencies therein have been specified in Schedule-B.

15.14 Barriers and diversions

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

15.15 Advertising on the Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall be visible to the Users while driving on such Highway; provided that this restriction shall not apply to the Toll Plaza[s], rest areas, bus shelters and telephone booths located on the Project Highway if the advertising thereon does not, in the opinion of the Authority, distract the Users or violates extant guidelines of Odisha Works Department/ MoRTH. All advertising on the Project Highway shall also conform to Good Industry Practice. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time and no compensation shall be claimed on account thereof.

ARTICLE 16

MONITORING OF OPERATION AND MAINTENANCE

16.1 Monthly status reports

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

16.2 Inspection

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

16.3 Tests

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

16.4 Remedial measures

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

16.4.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have

brought the Project Highway into compliance with the Maintenance Requirements and the procedure set forth in this Clause 16.4 shall be repeated until the Project Highway conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 15.8.

16.5 Monthly Fee Statement

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

16.6 Reports of unusual occurrence

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

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

ARTICLE 17

TRAFFIC REGULATION

17.1 Traffic regulation by the Concessionaire

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

17.2 Police assistance

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

17.3 Buildings for Traffic Aid Posts

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

17.4 Recurring expenditure on Police assistance

[On or before COD, the Concessionaire shall provide to the State Police Department or a substitute thereof one Jeep or similar vehicle in good working condition along with chauffeurs for round-the-clock patrolling as set forth in Clause 17.2 and shall meet the operating costs of such vehicle including the salaries and allowances of the chauffeurs. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State Police Department or a substitute thereof.]

ARTICLE 18

SAFETY REQUIREMENTS AND MEDICAL AID

18.1 Safety Requirements

- 18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Highway, and shall comply with the safety requirements set forth in Schedule-H (the “**Safety Requirements**”).
- 18.1.2 The Authority shall appoint an experienced and qualified firm or organisation (the “**Safety Consultant**”) for carrying out safety audit of the Project Highway in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.
- 18.1.3 All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire. Costs and expenses on works not covered in the scope of the Project or otherwise under the Agreement and arising out of Safety Requirements shall, subject to the provisions of Clause 14.3, be borne from out of a dedicated safety fund (the “**Safety Fund**”) to be funded, owned and operated by the Authority or a substitute thereof and in the event that such costs cannot be borne out of the Safety Fund, the same shall be borne in accordance with Article 14.

18.2 Medical Aid Posts

- 18.2.1 For providing emergency medical aid during the Concession Period, as set forth in this Agreement, the Concessionaire shall assist the State Government [or a substitute thereof to be designated by the Authority] in setting up and operating a medical aid post (the “**Medical Aid Post**”) [at each of the Toll Plazas with round-the-clock ambulance services for victims of accidents on the Project Highway]. The Concessionaire shall, at its cost, maintain the Medical Aid Post buildings in accordance with Good Industry Practice.
- 18.2.2 [On or before COD, the Concessionaire shall provide to the State Medical Department or a substitute thereof to be designated by the Authority one ambulance in good working condition along with chauffeurs for round-the-clock ambulance services as set forth in Clause 18.1 and meet the operating costs of such ambulance including the salaries and allowances of the chauffeurs. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State Medical Department or a substitute thereof to be designated by the Authority.]

ARTICLE 19

TRAFFIC CENSUS AND SAMPLING

19.1 Traffic census

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

19.2 Traffic survey

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

19.3 Traffic sampling

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

19.3.2 If the traffic sampling pursuant to this Clause 19.3 demonstrates that the actual traffic is more than the traffic reported by the Concessionaire, the traffic determined by the traffic sampling shall be deemed to be the traffic for purposes of this Agreement and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, Realisable Fee for any comparable period shall be calculated with reference to the traffic determined hereunder.

19.4 Computer systems and network

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

by the Authority from time to time for conforming to the requirements and output of EDI.

ARTICLE 20

INDEPENDENT ENGINEER

20.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm from a panel of 10 (ten) firms or bodies corporate, constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule-K, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-K to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

20.2 Duties and functions

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

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

20.3 Remuneration

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

20.4 Termination of appointment

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

20.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 20.1.

20.5 Authorised signatories

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

20.6 Dispute resolution

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

Part IV

Financial Covenants

ARTICLE 21

CONCESSION FEE

21.1 Concession Fee

21.1.1 In consideration of the grant of Concession, the Concessionaire shall pay to the Authority the following sums by way of concession fee (the “**Concession Fee**”):

- (a) the Concession Fee for the 1st (first) year of the Concession Period shall be a sum of Rs. (Rs.)[§]; and
- (b) for each subsequent year of the Concession Period, the Concession Fee shall be determined by increasing the amount for the respective year by [10% (ten per cent)] as compared to the immediately preceding year. For the avoidance of doubt, and by way of illustration, if the Concession Fee for the first year is Rs. 100 cr. (Rupees one hundred crore), the Concession Fee for the 2nd (second) and 3rd (third) years shall be equal to Rs. 110 cr. (Rupees one hundred and ten crore) and Rs. 121 cr. (Rupees one hundred and twenty one crore) respectively.

21.1.2 The Concession Fee payable for each year under the provisions of this Article 21 shall be due and payable in 12 (twelve) equal monthly instalments. Within 3 (three) days of the close of each month, the Concessionaire shall pay to the Authority the Concession Fee for the month.

{21.2 Concession Fee}@

{In consideration of the grant of Concession, the Concessionaire shall pay to the Government by way of concession fee (the “Concession Fee”) a sum of Re.1 (Rupee one) per annum.}

{21.3 O&M support}

{The Authority shall, within 7 (seven days) of the close of the first quarter following COD, pay to the Concessionaire a sum of Rs. (Rs.....)[£] (the “O&M Support”) by way of financial support for discharging the obligations under this Agreement, and for every subsequent quarter until Termination, it shall, within 7 (seven) days of the close of such quarter, pay to the Concessionaire O&M Support in a sum which is 5% (five per cent) less than the sum paid during the immediately preceding quarter.}

[§] The amount of Concession Fee payable for the Project Highway shall be determined by open competitive bidding.

[@] In the event of the Concessionaire offering a Concession Fee, Clauses 21.2 and 21.3 shall be omitted; and in case the Concessionaire seeks O&M support, Clause 21.1 shall be omitted and Clauses 21.2 and 21.3 shall be renumbered.

[£] The amount of O&M support payable by the Authority shall be determined by open competitive bidding.

ARTICLE 22

USER FEE

22.1 Collection and appropriation of Fee

- 22.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the Users subject to and in accordance with this Agreement and the Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011 (the "Fee Rules"); provided that for ease of payment and collection, such Fee shall in accordance with the Fee Rules be rounded off to a multiple of rupee one in accordance with the Indian Standard IS: 2—1960 "Rules for rounding off numerical values" issued by Bureau of Indian Standards as amended from time to time; provided further that the Concessionaire may determine and collect Fee at such lower rates as it may, by public notice to the Users, specify in respect of all or any category of Users or vehicles.
- 22.1.2 The Parties acknowledge that a notification for levy and collection of Fee shall be issued by the Government under Section 3 of the Orissa State Roads Tolls Act, 2010 read with Rule 3 of the Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011 (the "Fee Notification") within 30 (thirty) days hereof, substantially in the form set forth in Schedule-M.
- 22.1.3 The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the Project Highway and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.
- 22.1.4 The Concessionaire acknowledges and agrees that any User who is not liable for payment of the Fee shall be entitled to use the Project Highway without any restrictions, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement. For the avoidance of doubt, the Concessionaire hereby acknowledges that Exempted Vehicles are not liable to payment of Fee.

22.2 Revision of Fee

- 22.2.1 The Parties hereto acknowledge and agree that the Fee shall be revised annually on April 1 subject to and in accordance with the provisions of the Fee Rules; provided, however, that no revision shall be effected within a period of 6 (six) months from the date of the preceding revision of Fee.
- 22.2.2 The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Fee or other relief from the Authority or any Government Instrumentality except in accordance with the express provisions of this Agreement and the Fee Rules.

22.3 Payment of Fee by Local Users

The payment of Fee by Local Users for mechanical vehicles which are registered for non-commercial purposes, using the Project Highway and crossing the Toll Plaza,

shall be governed by the detailed provision contained in this regard in Sub-Rule (2) of Rule 9 of the Fee Rules, as amended from time to time.

22.4 Free use of service road

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

22.5 Discounted Fee for frequent Users

22.5.1 The Concessionaire shall, upon request from any person, issue pass for multiple journeys within the specified period at the rates specified in the Fee Rules .

22.6 Tolling Contractor

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

22.7 Fee collection points

Fee shall ordinarily be collected at the Toll Plaza[s] from vehicles crossing the Toll Plaza[s] and using the whole or part of the Project Highway; provided that for preventing evasion of Fee by any vehicle circumventing [one or both of] the Toll Plaza[s] and using the whole or part of the Project Highway [located between such Toll Plazas], the Concessionaire shall with the prior permission of the Authority be entitled to may set up at its own risk and cost, and in consultation with the Independent Engineer, additional barriers in accordance with the provisions of the Fee Rules, as may reasonably be necessary for preventing such evasion. For the avoidance of doubt, the Concessionaire hereby acknowledges and agrees that it shall not determine or collect Fee from Users who [do not use any part of the Project Highway which is situated between the two Toll Plazas OR only use part of the Project Highway situated on any one side of the Toll Plaza]. It is further acknowledged and agreed that the restrictions hereunder shall not extend beyond a distance of 10 (ten) kilometres from the Toll Plaza[s] and the provisions of this Clause 22.7 shall be so enforced as to minimise inconvenience to Users who are not liable to payment of Fee.

22.8 Additional charge for evasion of Fee

In the event that any vehicle uses the Project Highway without payment of Fee due,

the Concessionaire shall be entitled to determine and collect from such vehicle the Fee due and an equivalent amount towards predetermined liquidated damages for unauthorised use of the Project Highway; provided that the determination and collection of such liquidated damages shall be at the risk and cost of the Concessionaire and the Authority shall not in any manner be liable on account thereof; provided that upon failure of the driver of such vehicle to pay Fee, the Concessionaire may prevent such vehicle from using the Project Highway and may have such vehicle removed therefrom.

22.9 Additional fee for overloaded vehicles

Without prejudice to the liability incurred under the Applicable Laws by any person driving a vehicle that is loaded in excess of the permissible limit set forth in such laws including Fee Rules, the Concessionaire may recover Fee for such overloaded vehicle at the rate applicable to the next higher category of vehicles.

Provided that such Fee shall be levied on the basis of actual Gross Vehicle Weight as measured by a standardised static weighing machine to be installed by the Concessionaire at [each of] the Toll Plaza[s] and where no such weighing machine has been installed, the Concessionaire shall not be entitled to collect Fee for the next higher category of vehicles.

Provided further that upon detection of overloading, the Concessionaire shall prevent the vehicle from using the Project Highway until the excess load has been removed from such vehicle and the Authority shall not be liable for any act of omission of the Concessionaire in relation to such vehicle or person driving such vehicle.

Provided further that where no weighbridge has been installed at the toll plaza, no toll for overloading shall be levied and collected under this rule and the driver, owner or person in charge or the mechanical vehicle shall be liable to pay toll as applicable for such vehicle only.

22.10 Display of Fee rates

22.10.1 The Concessionaire shall, one kilometre before the Toll Plaza, 500 (five hundred) metres before the Toll Plaza and 50 (fifty) metres before entry to the Toll Plaza[s], prominently display the amount of toll for each class of vehicle, period of validity for the amount paid, the categories of vehicles exempted from payment of toll, the name, address and telephone number of the Concessionaire or the authorized representative to whom suggestions and complaints, if any, should be addressed, shall be clearly and prominently displayed in Hindi, English and Oriya as prescribed under the Fee Rules. The height of the display boards, their quality and size of lettering should be such that it is clearly visible and legible to the Users.

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

22.10.3 The Concessionaire shall not revise, display or collect any amounts in excess of the

rates of Fee payable under the Fee Rules. In the event any excess amounts are collected by or on behalf of the Concessionaire, it shall, upon receiving a notice to this effect from the Authority, refund such excess amounts to the Authority along with Damages equal to 25% (twenty five per cent) thereof.

ARTICLE 23

ESCROW ACCOUNT

23.1 Escrow Account

23.1.1 The Concessionaire shall, prior to COD, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.

23.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority and the Escrow Bank, which shall be substantially in the form set forth in Schedule-N.

23.2 Deposits into Escrow Account

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

- (a) all monies received in relation to the Project from Banks, insurance and shareholders;
- (b) all Fee and any other revenues from or in respect of the Project Highway, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payments by the Authority, made after deduction of any outstanding Concession Fee; and
- (d) Termination Payments.

23.3 Withdrawals during Concession Period

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project Highway;
- (b) Concession Fee due and payable to the Authority;
- (c) all payments relating to construction of Project Facilities;
- (d) O&M Expenses, subject to the ceiling set by the Independent Engineer in accordance with Good Industry Practice;
- (e) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the

Authority as due and payable to it;

- (f) monthly proportionate provision of debt service payment due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire; and
- (h) balance, if any, in accordance with the instructions of the Concessionaire.

23.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 23.3.1 except with the prior written approval of the Authority.

23.4 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project Highway;
- (b) outstanding Concession Fee;
- (c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (d) cost of repair and restoration of damages to the Project Highway on account of a Non Political Event;
- (e) all outstanding debt and interest thereon;
- (f) retention and payments relating to the liability for defects and deficiencies set forth in Article 31;
- (g) incurred or accrued O&M Expenses;
- (h) any other payments required to be made under this Agreement; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 23.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 30.

23.4.2 The provisions of this Article 23 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 23.4.1 have been discharged.

ARTICLE 24

INSURANCE

24.1 Insurance during Concession Period

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

24.2 Notice to the Authority

No later than 45 (forty-five) days prior to commencement of the Concession Period, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 24. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

24.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 24 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

24.4 Remedy for failure to insure

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

24.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire

pursuant to this Article 24 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

24.6 Concessionaire's waiver

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

24.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 23.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Highway and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

ARTICLE 25

ACCOUNTS AND AUDIT

25.1 Audited accounts

- 25.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Realisable Fees and other revenues derived/collected by it from or on account of the Project Highway and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts duly certified by the Statutory Auditors to be provided to the Authority for verification of basis of payments and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 25.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 25.1.3 On or before the first day of August each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the traffic count for each category of vehicles using the Project Highway and liable for payment of Fee therefor, (b) Fee charged and received, Realisable Fee and other revenues derived from the Project Highway, and (c) such other information as the Authority may reasonably require.

25.2 Certification of claims by Statutory Auditors

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

25.3 Set-off

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

Part V

Force Majeure and Termination

ARTICLE 26

FORCE MAJEURE

26.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 26.2, 26.3 and 26.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

26.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project Highway for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 26.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

26.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

26.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 33;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

26.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 26 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

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

26.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 26.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

26.6 Effect of Force Majeure Event on the Concession

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

26.6.2 If any Force Majeure Event occurs after COD, whereupon the Concessionaire is unable to collect Fee despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fee on account thereof; provided that in the event of partial collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

26.7 Allocation of costs arising out of Force Majeure

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

26.7.2 Upon occurrence of a Force Majeure Event after COD, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; or
- (b) upon occurrence of an Indirect Political Event or a Political Event, all Force Majeure Costs attributable to such Indirect Political Event or Political Event, as the case may be, shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Fee revenues or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent it is relevant.

26.7.3 Save and except as expressly provided in this Article 26, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

26.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 120 (one hundred and twenty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever save as provided in this Article 26, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

26.9 Termination Payment for Force Majeure Event

26.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 50% (fifty per cent) of the Debt Due less Insurance Cover.

26.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to Debt Due.

26.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 29.3.2 as if it were an Authority Default.

26.10 Dispute resolution

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

26.11 Excuse from performance of obligations

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

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

ARTICLE 27

COMPENSATION FOR BREACH OF AGREEMENT

27.1 Compensation for default

27.1.1 Subject to the provisions of Clause 27.4, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 27.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

27.1.2 Subject to the provisions of Clause 27.4, in the event of the Authority being in material default or breach of this Agreement at any time after COD, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses and all other costs directly attributable to such material breach or default but shall not include loss of Fee revenues or debt repayment or other consequential losses.

27.2 Extension of Concession Period

Subject to the provisions of Clause 27.4, in the event that a material default or breach of this Agreement set forth in Clause 27.1.2 leads to suspension of or reduction in collection of Fee, as the case may be, the Authority shall, in addition to payment of compensation under Clause 27.1.2, extend the Concession Period, such extension being equal in duration to the period for which the collection of Fee remained suspended on account thereof; and in the event of reduction in collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

27.3 Compensation to be in addition

Compensation payable under this Article 27 shall be in addition to, and not in substitution for, or derogation of Termination Payment, if any.

27.4 Mitigation of costs and damage

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

ARTICLE 28

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

28.1 Suspension upon Concessionaire Default

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

28.2 Authority to act on behalf of Concessionaire

28.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 23.3.

28.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 28.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project Highway and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

28.3 Revocation of Suspension

28.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall

revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

28.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

28.4 Termination

Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 120 (one hundred and twenty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 28.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 29

TERMINATION

29.1 Termination for Concessionaire Default

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

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 60 (sixty) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire abandons or manifests intention to abandon the operation of the Project Highway without the prior written consent of the Authority;
- (d) the Concessionaire fails to undertake or complete the construction or the Project Facilities in accordance with the Project Facility Completion Schedule within the period set forth in Clause 12.4;
- (e) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (f) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (g) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (h) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (i) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (j) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (k) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (l) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a

Material Adverse Effect;

- (m) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (n) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (o) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (p) a resolution for winding up of the Concessionaire is passed or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at COD; and
 - (iii) each of the Project Agreements remains in full force and effect;
- (q) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading;
- (r) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (s) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (t) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the

Authority.

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

29.2 Termination for Authority Default

29.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the “**Authority Default**”) unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

29.3 Termination Payment

29.3.1 Upon Termination on account of a Concessionaire Default during the Concession Period, the Authority shall pay to the Concessionaire by way of Termination Payment an amount equal to 50% (fifty per cent) of the Debt Due.

29.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire by way of Termination Payment an amount equal to:

- (a) Debt Due; and

(b) the product of Average Daily Fee multiplied by 60 (sixty).

29.3.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

29.3.4 The Concessionaire expressly agrees that Termination Payment under this Article 29 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

29.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Project Highway forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 30.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this

purpose shall be deducted from the Termination Payment.

29.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 29.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 30

DIVESTMENT OF RIGHTS AND INTEREST

30.1 Divestment Requirements

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

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project Highway free and clear of all Encumbrances;
- (c) cure all Project Assets, including the road, bridges, structures and equipment, of all defects and deficiencies so that the Project Highway is compliant with the Maintenance Requirements; provided that the Project Facilities under construction shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project Highway and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project Highway and shall be assigned to the Government free of any encumbrance;
- (e) transfer and/ or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Highway, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project Highway, free from all Encumbrances, absolutely unto the Authority or to its nominee.

30.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any

Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

30.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 31 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 30.

30.3 Cooperation and assistance on transfer of Project

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

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

30.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 30.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

30.4 Vesting Certificate

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

interpreted as restricting the exercise of any rights by the Authority or its nominee on or in respect of the Project Highway on the footing that all Divestment Requirements have been complied with by the Concessionaire.

30.5 Additional Facilities

Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities shall continue to vest in the Concessionaire upon and after Termination.

30.6 Divestment costs etc.

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

30.6.2 In the event of any dispute relating to matters covered by and under this Article 30, the Dispute Resolution Procedure shall apply.

ARTICLE 31

DEFECTS LIABILITY AFTER TERMINATION

31.1 Liability for defects after Termination

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

31.2 Retention in Escrow Account

31.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 31.2, a sum equal to the Performance Security shall be retained in the Escrow Account for a period of 90 (ninety) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 31.1.

31.2.2 Without prejudice to the provisions of Clause 31.2.1, the Independent Engineer shall carry out an inspection of the Project Highway at any time between 150 (one hundred and fifty) days and 120 (one hundred and twenty) days prior to the Termination and if it recommends that the status of the Project Highway is such that a sum larger than the amount stipulated in Clause 31.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 90 (ninety) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

Part VI

Other Provisions

ARTICLE 32

ASSIGNMENT AND CHARGES

32.1 Restrictions on assignment and charges

32.1.1 Subject to Clauses 32.2 and 32.3, this Agreement shall not be assigned by the Concessionaire to any person save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

32.1.2 Subject to the provisions of Clause 32.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

32.2 Permitted assignment and charges

The restraints set forth in Clause 32.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project Highway;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title arising or created in the ordinary course of business of the Project Highway and as security only for indebtedness to the lenders for financing the construction of Project Facilities and/or for working capital arrangements for the Project Highway; and
- (c) liens or encumbrances required by any Applicable Law.

32.3 Assignment by the Authority

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

ARTICLE 33

CHANGE IN LAW

33.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 50 lakh (Rupees fifty lakh) and 0.5% (zero point five per cent) of the Realisable Fee in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 33.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

33.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 50 lakh (Rupees fifty lakh) and 0.5% (zero point five per cent) of the Realisable Fee in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt

of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 33.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

33.3 Protection of NPV

Pursuant to the provisions of Clauses 33.1 and 33.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

33.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 33 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

33.5 No claim in the event of recovery from Users

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

ARTICLE 34

LIABILITY AND INDEMNITY

34.1 General indemnity

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

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

34.2 Indemnity by the Concessionaire

34.2.1 Without limiting the generality of Clause 34.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or

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

34.2.2 Without limiting the generality of the provisions of this Article 34, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project Highway, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

34.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 34 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

34.4 Defence of claims

34.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying

Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 34, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

34.4.2 If the Indemnifying Party has exercised its rights under Clause 34.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

34.4.3 If the Indemnifying Party exercises its rights under Clause 34.3, the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 34.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

34.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 34, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect or consequential nature except as expressly provided in this Agreement.

34.6 Survival on Termination

The provisions of this Article 34 shall survive Termination.

ARTICLE 35

RIGHTS OVER THE SITE

35.1 Licensee rights

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

35.2 Access rights of the Authority and others

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

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

35.3 Property taxes

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

35.4 Restriction on sub-letting

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

ARTICLE 36

DISPUTE RESOLUTION

36.1 Dispute resolution

36.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 36.2.

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

36.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Secretary of the Odisha Works Department and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 36.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 36.3.

36.3 Arbitration

36.3.1 Any Dispute which is not resolved amicably by conciliation as provided in Clause 36.2 shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 36.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Bhubaneswar, and the language of arbitration proceedings shall be English.

36.3.2 There shall be a Board of three arbitrators of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in

accordance with the Rules.

- 36.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 36 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 36.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
- 36.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

36.4 Adjudication by Regulatory Commission or Authority

In the event of constitution of a statutory Regulatory Commission or Authority with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 36.3, be adjudicated upon by such Regulatory Commission or Authority in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 37

DISCLOSURE

37.1 Disclosure of Specified Documents

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

37.2 Disclosure of Documents relating to safety

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

37.3 Notwithstanding the provisions of Clauses 37.1 and 37.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined hereinbelow) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 37.1 and 37.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 38

REDRESSAL OF PUBLIC GRIEVANCES

38.1 Complaints Register

- 38.1.1 The Concessionaire shall maintain a public relations office at each of the Toll Plazas where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at each Toll Plazas so as to bring it to the attention of all Users.
- 38.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 38.1.3 Without prejudice to the provisions of Clauses 38.1.1 and 38.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

38.2 Redressal of complaints

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

ARTICLE 39

MISCELLANEOUS

39.1 Governing law and jurisdiction

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

39.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

39.3 Depreciation and interest

39.3.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Facilities shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

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

39.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the

defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

39.5 Waiver

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

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

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

39.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project Highway nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

39.7 Exclusion of implied warranties etc.

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

39.8 Survival

39.8.1 Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any

obligations hereunder which expressly or by implication survive Termination hereof; and

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

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

39.9 Entire Agreement

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

39.10 Severability

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

39.11 No partnership

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

39.12 Third parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns and nothing in this Agreement shall be construed to

create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

39.13 Successors and assigns

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

39.14 Notices

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

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside { Bhubaneswar} may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Secretary, Odisha Works Department with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Bhubaneswar it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party given in accordance herewith shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery..

39.15 Language

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

39.16 Counterparts

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

ARTICLE 40

DEFINITIONS

40.1 Definitions

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

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

“Additional Facilities” means the facilities such as service stations, motels, restaurants, shopping areas and amusement parks which the Concessionaire may, in its discretion and subject to Applicable Laws, provide or procure for the benefit of the Users and which are in addition to the Project Facilities, and not situated on the Site;

“Affected Party” shall have the meaning set forth in Clause 26.1;

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

“Appendix” shall have the meaning set forth in Clause 10.3.1;

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

“Applicable Permits” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project Highway during the subsistence of 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;

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

“Authority Default” shall have the meaning set forth in Clause 29.2.1;

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

“Average Daily Fee” means the amount arrived at after dividing the total Realisable Fee of the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the result thereof by 5% (five per cent);

provided that the Average Daily Fee for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Fee collected every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Fee payable by any segment of traffic has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Fee for such period;

“Bank” means a bank incorporated in India and having a minimum net worth of Rs. 1000 crore (Rupees one thousand crore);

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

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

“Bid Security” means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. ***** crore (Rupees ***** crore)¹³ in accordance with the Request for Proposals and which is to remain in force until substituted by the Performance Security;

“Bus” shall have the meaning set forth in Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011.

“COD” or **“Commercial Operation Date”** shall have the meaning set forth in Clause 13.1, and shall be deemed to be the date of commencement of the Concession Period;

“Car” shall have the meaning set forth in Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011.

“Change in Law” means the occurrence of any of the following after the date of Bid:

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

¹³ Specify the product of likely average daily fee on COD multiplied by 30.

- (c) the commencement of any Indian law which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {existing promoters/ selected bidder/ Consortium Members}, together with {its/their} Associates, in the total Equity to decline below (i) 33% (thirty three per cent) thereof during the Concession Period and (ii) that of each member of the Consortium whose technical and financial capacity was evaluated for the purpose of pre-qualification and short listing in response to the Request for Qualification declines below, 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the Concession Period; Provided, however, that where the selected bidder/Consortium has incorporated the Concessionaire as a company for the sole purpose of undertaking this project, if the aggregate holding of the {selected bidder/Consortium Members} together with {its/their} Associates, in the issued and paid-up Equity declines below 51% (fifty one percent) thereof during the Concession Period, it will constitute Change in Ownership provided further that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the existing promoters/ selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to the first anniversary of COD, shall constitute Change in Ownership;

“Change of Scope” shall have the meaning set forth in Clause 14.1;

“Company” means the company acting as the Concessionaire under this Agreement;

“Competing Road” means a road connecting the two end points of the Project Highway and serving as an alternative route thereof, such road being an existing paved road, which has been widened by more than 2 (two) metres of paved road for at least 75% (seventy five per cent) of the total length thereof at any time after the date of this Agreement, or a new road, which is constructed after such date, as the case may be, but does not include any road connecting the aforesaid two points if the length of such road exceeds the length of the Project Highway by 20% (twenty per cent) thereof;

“Completion Certificate” shall have the meaning set forth in Clause 12.10;

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

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

“Concession Fee” shall have the meaning set forth in Clause 21.1;

“Concession Period” means the period starting on and from COD and ending on the Transfer Date;

“Concessionaire Default” shall have the meaning set forth in Clause 29.1.1;

“Conditions Precedent” shall have the meaning set forth in Clause 4.1.1;

{“Consortium” means the group of companies that submitted the Bid for this Project;}

{“Consortium Member” means a company which is a member of the Consortium;}

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

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

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

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

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

“Debt Due” means the Total Project Cost reduced by 2% (two per cent) thereof for every month or part thereof falling between the completion of construction and the Transfer Date. For the avoidance of doubt, each Project Facility or Major Maintenance Work, as the case may be, shall be computed separately and the aggregate thereof shall be the Debt Due and by way of illustration it is agreed that a

Project Facility costing Rs. 1 (one) crore and constructed 24 (twenty four) months and 7 (seven) days prior to the Transfer Date shall qualify for a Debt Due equal to Rs. 50 (fifty) lakh.

“Dispute” shall have the meaning set forth in Clause 36.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 36;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 30.1;

“Document” or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Drawings” means all of the drawings, calculations and documents pertaining to the Project Highway and shall include ‘as built’ drawings of the Project Highway;

“EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project Facilities or Major Maintenance Works, as the case may be, in accordance with the provisions of this Agreement;

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

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

“Encumbrances” means, in relation to the Project Highway, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Highway, where applicable herein but excluding utilities referred to in Clause 11.1;

“Escrow Account” means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“Escrow Agreement” shall have the meaning set forth in Clause 23.1.2;

“Escrow Bank” shall have the meaning set forth in Clause 23.1.1;

“Escrow Default” shall have the meaning set forth in Schedule-N;

“Exempted Vehicle” means a vehicle exempted from payment of Fee under and in

accordance with the Fee Rules;

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

“Fee Notification” means the Notification issued by the Government, prior to COD, in exercise of the powers conferred by Section 8A of the State Highways Act, 1956 read with Rule 3 of the Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011, in respect of the levy and collection of Fee during the Concession Period, substantially in the form at Schedule-M;

“Fee Rules” mean the Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 26.1;

“GOI” or **“Government”** means the Government of India;

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

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

“Gross Vehicle Weight” or **“GVW”** in respect of any vehicle means the total weight of the vehicle and load certified and registered by the Registering Authority as permissible for that vehicle under the Motor Vehicles Act, 1988 (59 of 1988) as amended from time to time;;

“IRC” means the Indian Roads Congress;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 34;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 34;

“Independent Engineer” shall have the meaning set forth in Clause 20.1;

“Indirect Political Event” shall have the meaning set forth in Clause 26.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 24, and includes all insurances required to be taken out by the Concessionaire under Clause 24.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

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

“Light Commercial Vehicle” shall have the meaning set forth in Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011.

“Local User” means a person using a vehicle registered for non-commercial purposes and who resides within a distance of twenty kilometers from the toll gate and uses it as such for commuting a section of the State Road, bridge or bypass, as the case may be;

[**“MORTH”** means the Ministry of Road Transport and Highways or any substitute thereof dealing with State Highways;]

“Maintenance Manual” shall have the meaning ascribed to it in Clause 15.3;

“Maintenance Programme” shall have the meaning ascribed to it in Clause 15.4.1;

“Maintenance Requirements” shall have the meaning set forth in Clause 15.2;

“Major Maintenance Works” means the [works to be undertaken as part of the Project Facilities and includes] major maintenance works required to be undertaken at intervals of 3 (three) years or more in accordance with Good Industry Practice to procure that the Project Highway conforms to Maintenance Requirements;

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

[**“Medical Aid Post”** shall have the meaning set forth in Clause 18.2;]

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

“Multi-axle truck” or “Heavy Construction Machinery” shall have the meaning

set forth in Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011.

“Non-Political Event” shall have the meaning set forth in Clause 26.2;

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

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

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

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

“O&M Inspection Report” shall have the meaning set forth in Clause 16.2;

{“O&M Support” shall have the meaning set forth in Clause 21.3;}

“Oversized Vehicle” shall have the meaning set forth in Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011.

“PCU” shall have the meaning ascribed to a passenger car unit in the Indian Roads Congress Publication No. IRC-64, 1990 or any substitute or modification thereof, and when used in this Agreement, shall include only motorised vehicles liable to payment of user charges at the Toll Plaza[s] in accordance with the Fee Notification and the Exempted Vehicles specified therein, but does not include Tractors, Tractors with Trailer carrying agriculture produce or equipment, Motor Cycles, two-wheelers & three-wheelers (as defined in the Fee Rules) and non-motorised vehicles;

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

“Performance Security” shall have the meaning set forth in Clause 9.1;

“Political Event” shall have the meaning set forth in Clause 26.4;

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

“Project Agreements” means this Agreement, EPC Contract, O&M Contract, Tolling Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, or any agreement for procurement of goods and services involving a consideration of upto Rs.[5(five)] crore;

“Project Assets” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of licence, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road overbridges, drainage works, traffic signals, sign boards, kilometre-stones, toll plaza[s], electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project Highway, but does not include Additional Facilities;

“Project Facilities Completion Schedule” means the progressive project milestones set forth by the Independent Engineer for completion of each of the Project Facilities and includes their date of completion;

“Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule-B [and includes Major Maintenance Works specified therein];

“Project Highway” means the Site comprising the existing road comprising SH-** from km ** to km ** and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement;

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

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

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

“Request for Qualification” or “RFQ” shall have the meaning set forth in Recital (C);

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

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

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

“Scope of the Project” shall have the meaning set forth in Clause 2.1;

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

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

“State” means the State of ***** and **“State Government”** means the government of that State;

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 25.1.1;

“Suspension” shall have the meaning set forth in Clause 28.1;

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

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

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

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

“Toll Plaza” or “Toll Gate” means the structures and barriers erected [near each of the two ends of] the Project Highway for the purpose of regulating the entry and exit of vehicles in accordance with the provisions of this Agreement and shall include all

land, buildings, equipment, and other facilities required in accordance with or incidental to the provisions of this Agreement; [provided that such Toll Plaza(s) shall not ordinarily be located within a distance of 10 (ten) kilometres¹⁴ from the limits of the municipal or local area of the nearest city or town respectively, as applicable on the date of this Agreement,] and shall be situated at location(s) specified in the Bid or within a distance of 1 (one) kilometre thereof. The distance between two toll gates on the same section of the State Road and in the same direction shall be as per the Fee Rules;

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

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

“Total Project Cost” means the lower of:

- (a) the aggregate of actual cost incurred on construction of Project Facilities and Major Maintenance Works, as authenticated by the Independent Engineer; and
- (b) the aggregate of the cost of construction of Project Facilities and Major Maintenance Works, as approved by the Independent Engineer prior to commencement of construction thereof;

“Tractor” means a motor vehicle which is not itself constructed to carry any load other than the equipment used for the purpose of propulsion, but does not include a road roller; and **“Tractor with Trailer”** means a tractor with attached vehicle laden with goods other than agricultural produce or agricultural equipments;

“Traffic Aid Post” shall have the meaning set forth in Clause 17.2;

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

“Truck” shall have the meaning set forth in Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011.

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

“Vesting Certificate” shall have the meaning set forth in Clause 30.4; and

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

¹⁴ The distance should be determined so as to ensure that nearby suburban and rural areas from where people commute regularly are excluded.

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

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of

THE AUTHORITY by:

(Signature)
(Name)
(Designation)

THE COMMON SEAL OF
CONCESSIONAIRE has been affixed
pursuant to the resolution passed by the Board
of Directors of the Concessionaire at its
meeting held on the day of 20.....
hereunto affixed in the presence of
....., Director, who has signed
these presents in token thereof and
....., company Secretary /
Authorised Officer who has countersigned the
same in token thereof[§]:

In the presence of:

- 1.
- 2.

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

Schedules

SCHEDULE - A

(See Clause 10.1)

SITE OF THE PROJECT

1 The Site

- 1.1 Site of the Project Highway shall include the land, buildings, structures and road works as described in Annex-I of this Schedule-A.
- 1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3 Additional land required for [Toll Plazas, Traffic Aid Posts, Medical Aid Posts and vehicle rescue posts or for] construction of works specified in the Change of Scope Order issued under Clause 14.2.3 of this Agreement shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.

Annex - I
(Schedule-A)

THE SITE

[**Note:** Through suitable drawings and description in words, the land, buildings, structures and road works comprising the Site shall be specified briefly but precisely in this Annex-I.]

1. Site

The Site of the [Four-Lane divided] Project Highway comprises the section of State Highway ** commencing from Km *** to Km *** i.e. the *** - *** section in the State of ***. The land, carriageway and structures comprising the Site are described below.

2. Land

The Site of the Project Highway comprises the land described below.

S. No.	Chainage (In Km)		Total ROW (In m)	Remarks
	From	To		

3. Carriageway

The present carriageway of the Project Highway is a [4-lane divided carriageway with paved shoulders in its entire length].

4. Major Bridges

The Site includes the following Major Bridges:

S. No	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

5. Railway Over Bridges

The Site includes the following Railway Over Bridges:

S. No.	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

6. Grade Separators

The Site includes the following Grade Separators:

S. No.	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

7. Minor Bridges

The Site includes the following Minor Bridges:

S. No.	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

8. Total number of structures

The total number of structures on the Site is noted below:

[(a)	No. of Major Bridges	-	**
(b)	No. of Railway Over Bridges	-	**
(c)	No. of Grade Separators	-	**
(d)	No. of Minor Bridges	-	**
(e)	No. of Vehicular and Non Vehicular Underpasses	-	**
(f)	No. of Box Culverts	-	**
(g)	No. of Pipe Culverts	-	**
(h)	No. of Slab Culverts	-	**]

9. Bus bays and Truck Lay byes

The total number of bus bays and truck lay byes on the Project Highway is noted below:

[(a)	No. of Bus bays on LHS	-	**
(b)	No. of Bus bays on RHS	-	**
(c)	No. of Truck lay-byes on LHS	-	**
(d)	No. of Truck lay-byes on RHS	-	**]

10. Permanent Bridge, Bye Pass or Tunnel costing Rs. 50 crore or more

The Site includes the following permanent bridge/ bypass/ tunnel which was constructed at the cost noted below:

- [(a) Bridge at km *** to km *** of SH-** costing Rs.** crore
- (b) Bypass at km *** to km *** of SH-** costing Rs.** crore
- (c) Tunnel at km *** to km *** of SH-** costing Rs.** crore]

SCHEDULE – B

(See Clause 2.1)

PROJECT FACILITIES

1 Project Facilities

The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement. Such Project Facilities shall include:

- (a) toll plaza[s];
- (b) roadside furniture;
- (c) street lighting;
- (d) pedestrian facilities;
- (e) landscaping and tree plantation;
- (f) truck lay-bys;
- (g) bus-bays and bus shelters;
- (h) cattle crossings;
- [(i) rest areas;]
- [(j) traffic aid posts;]
- [(k) medical aid posts;]
- [(l) vehicle rescue posts;]
- [(m) telecom system; and]
- [(n) traffic management system.]

1.1.2 Other minor works such as provision of traffic control devices or road furniture may be specified as required.

1.1.3 Project Facilities forming part of the Project Highway and to be completed by the Concessionaire in accordance with the Project Facilities Completion Schedule, including the respective project milestones, have been described in Annex-I of this Schedule-B.

1.2 [Major Maintenance Works

In case any Major Maintenance Works are required to be undertaken by the Concessionaire following COD, the same may be included in this Schedule-B to form part of Project Facilities.]

[The following Major Maintenance Works shall be undertaken by the Concessionaire:]

Table 4.1

S. No.	Description of work	Chainage (In Km)	Date of completion

1.3 Exclusion of Defects and Deficiencies

The sections of the Project Highway in respect of which the liability for removal of defects and deficiencies in construction lies with the contractors who constructed such sections, and the period for which such liabilities shall rest with the respective contractors, are set forth in the table below:

S.No.	Chainage of section (In Km)	Date of completion of construction	Date upto which defect liability is effective

Annex - I

(Schedule-B)

PROJECT FACILITIES FOR PROJECT HIGHWAY

1 Project Facilities

The Concessionaire shall construct the Project Facilities described in this Annex-I to form part of the Project Highway. The Project Facilities shall include:

- (a) toll plaza[s];
- (b) roadside furniture;
- (c) street lighting;
- (d) pedestrian facilities;
- (e) landscaping and tree plantation;
- (f) truck lay-bys;
- (g) bus-bays and bus shelters;
- (h) cattle crossings;
- [(i) rest areas;]
- [(j) traffic aid posts;]
- [(k) medical aid posts;]
- [(l) vehicle rescue posts;]
- [(m) telecom system;]
- [(n) traffic management system; and]
- [(o) Major Maintenance Works as may be specified.]

2 Description of Project Facilities

2.1 Each of the Project Facilities is briefly described below:

[To be described briefly.]

2.2 The Project Facilities Completion Schedule shall be as follows:

[Describe the time schedule here and indicate project milestones, where applicable, for monitoring the progress of construction of each Project Facility or Major Maintenance Work, as the case may be.]

S. No.	Description	No. / Chainage (In Km)	Date of Completion

3. [Major Maintenance Works

Periodic Maintenance with overlaying on Carriageways and Service Roads including thermoplastic pavement markings, repainting of kerb stones etc., shall be undertaken in accordance with the Manual of Specifications & Standards and Good industry practice.]

SCHEDULE - C

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1 Operation and Maintenance of Project Highway

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-C for construction of the Project Facilities.

[**Note 1:** The Authority shall prepare a “**Manual of Specifications and Standards for State Highways**”. Only the basic/ fundamental requirements of design and construction shall be laid down in the Manual, and greater emphasis shall be placed on prescribing the output specifications that have a direct bearing on the level and quality of service for Users. The Manual shall be published and applied to all BOT/ OMT road projects of the Authority. This would remove the element of uncertainty in project design and help in laying down cost-effective specifications and standards across the country.]

Annex – I

(Schedule-C)

SPECIFICATIONS AND STANDARDS FOR PROJECT HIGHWAY

1 Manual of Specifications and Standards to apply

Subject to the provisions of Paragraph 2 of this Annex-I, construction of the Project Facilities shall conform to the Manual of Specifications and Standards for BOT Road Projects published by [the Authority on ****]. An authenticated copy of the Manual has been provided to the Concessionaire as part of the bid documents.

2 [Deviations from the Manual

Notwithstanding anything to the contrary contained in the aforesaid Manual, the following Specifications and Standards shall apply to the Project Facilities, and for purposes of this Agreement, the aforesaid Manual shall be deemed to be amended to the extent set forth below:]

[**Note 1:** Deviations from the aforesaid Manual shall be listed out here. Such deviations shall be specified only if they are considered essential in view of project-specific requirements. Approval of the Executive Committee of the Authority shall be obtained if such deviations increase the Project costs by more than Rs. 5 lakh per km.]

[**Note 2:** See Note 1 below Schedule-C.]

SCHEDULE – D

(See Clause 4.1.3)

APPLICABLE PERMITS

1 Applicable Permits

- 1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits:
- (a) Permission of the State Government for extraction of boulder from quarry;
 - (b) Permission of Village Panchayat and Pollution Control Board for installation of crusher;
 - (c) Licence for use of explosives;
 - (d) Permission of the State Government for drawing water from river/reservoir;
 - (e) Licence from Inspector of factories for setting up Batching Plant;
 - (f) Clearance of Pollution Control Board for setting up Batching Plant;
 - (g) Clearance of Village Panchayats and Pollution Control Board for Asphalt Plant;
 - (h) Permission of Village Panchayat and State Government for borrow earth;
 - (i) Permission of State Government for cutting of trees;
 - (j) Any other permits or clearances required under Applicable Laws.
- 1.2 Applicable Permits, as required, relating to environmental protection and conservation shall be procured by the Authority.

SCHEDULE – E

(See Clause 9.1)

PERFORMANCE SECURITY

[The Secretary,
Odisha Works Department,
Government of Odisha,
Odisha.]

WHEREAS:

- (A) (the “**Concessionaire**”) and the [Secretary, Odisha Works Department, Government of Odisha] (the “**Authority**”) have entered into a Concession Agreement dated..... (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking [the Operation and Maintenance of the ***** section of State Highway No. **] on operate, maintain and transfer (“**OMT**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs***** cr. (Rupees ***** crore) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Concession Period (as defined in the Agreement).
- (C) We, through our Branch at (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Concession Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority under the hand of an Officer not below the rank of [Chief Engineer (Highways), Odisha Works Department] that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Concession Period under the Agreement and its decision that

the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank whether by their absorption with any other body or corporation or otherwise shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time and from time to time any of the rights and powers exercisable by the Authority against the Concessionaire and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Authority shall have granted the Vesting Certificate to the Concessionaire under and in accordance with this Agreement.

9. The Bank undertakes not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

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

SCHEDULE – F

(See Clause 15.2)

MAINTENANCE REQUIREMENTS

1 Maintenance Requirements

1.1 The Concessionaire shall, at all times, operate and maintain the Project Highway in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Concession Period, conform to the maintenance requirements set forth in this Schedule-F (the “**Maintenance Requirements**”).

1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-F within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 15.8 of the Agreement without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2 Repair/rectification of defects and deficiencies

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex-I of this Schedule-F within the time limit set forth therein.

3 Other defects and deficiencies

3.1 In respect of any defect or deficiency not specified in Annex-I of this Schedule-F, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.

3.2 In respect of any defect or deficiency not specified in Annex-I of this Schedule-F, the Independent Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Independent Engineer.

4 Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-F, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

5 Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-F, if any defect, deficiency or deterioration in the Project Highway poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

6 Daily Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a daily visual inspection of the Project Highway and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Engineer at any time during office hours.

7 Divestment Requirements

All defects and deficiencies specified in this Schedule-F shall be repaired and rectified by the Concessionaire so that the Project Highway conforms to the Maintenance Requirements on the Transfer Date.

8 Display of Schedule-F

The Concessionaire shall display a copy of this Schedule-F at the Toll Plaza[s] along with the Complaint Register stipulated in Article 38.

Annex – I
(Schedule-F)

REPAIR/RECTIFICATION OF DEFECTS AND DEFICIENCIES

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-I of Schedule-F within the time limit set forth herein.¹⁵

Nature of defect or deficiency

Time limit for repair/rectification

ROADS

(a) Carriageway and paved shoulders

(i) Breach or block	- Temporary restoration of traffic within 24 hours; permanent restoration within 15 days
(ii) Roughness value exceeding 3,000 mm in a stretch of 1 km (as measured by a standardised roughometer/bump integrator)	- 180 days
(iii) Pot holes	- 48 hours
(iv) Cracking in more than 5% of road surface in a stretch of 1 km	- 30 days
(v) Rutting exceeding 10 mm in more than 2% of road surface in a stretch of 1 km (measured with 3 m straight edge)	- 30 days
(vi) Bleeding/skidding	- 7 days
(vii) Ravelling/Stripping of bitumen surface exceeding 10 sq m	- 15 days
(viii) Damage to pavement edges exceeding 10 cm	- 15 days
(ix) Removal of debris	- 6 hours
(b) Hard/earth shoulders, side slopes, drains and culverts	
(i) Variation by more than 2% in the prescribed slope of camber/cross fall	- 30 days

¹⁵ MoSRTTH may, in consultation with IRC, by order modify the values and periods specified herein, but such modification shall take effect only if it is included in the respective bidding documents.

- (ii) Edge drop at shoulders exceeding 40 mm - 7 days
- (iii) Variation by more than 15% - 30 days
in the prescribed side (embankment) slopes
- (iv) Rain cuts/gullies in slope - 7 days
- (v) Damage to or silting of culverts and side - 7 days
drains during and immediately preceding
the rainy season
- (vi) Desilting of drains in urban/semi-urban areas - 48 hour
- (c) Road side furniture including road signs and pavement marking**
- (i) Damage to shape or position; poor visibility or loss - 48 hours
of retro-reflectivity
- (d) Street lighting and telecom (ATMS)**
- (i) Any major failure of the system - 24 hours
- (ii) Faults and minor failures - 8 hours
- (e) Trees and plantation**
- (i) Obstruction in a minimum head-room of 5 m above - 24 hours
carriageway or obstruction in visibility of road signs
- (ii) Deterioration in health of trees and bushes - Timely watering and
treatment
- (iii) Replacement of trees and bushes - 90 days
- (iv) Removal of vegetation affecting sight line and road - 15 days
structures
- (f) Rest areas**
- (i) Cleaning of toilets - Every 4 hours
- (ii) Defects in electrical, water and sanitary installations - 24 hours
- (g) Toll plaza[s]**
- (i) Failure of toll collection equipment or lighting - 8 hours
- (ii) Damage to toll plaza - 7 days
- (h) Other Project Facilities and Approach roads**
- (i) Damage or deterioration in Approach Roads, - 15 days
[pedestrian facilities, truck lay-bys, bus-bays, bus-
shelters, cattle crossings, Traffic Aid Posts, Medical
Aid Posts and other works]

BRIDGES

(a) Superstructure of bridges

(i) Cracks

Temporary measures - within 48 hours

Permanent measures - within 45 days

(ii) Spalling/scaling - 15 days

(b) Foundations of bridges

(i) Scouring and/or cavitation - 15 days

(c) Piers, abutments, return walls and wing walls of bridges

(i) Cracks and damages including settlement and tilting - 30 days

(d) Bearings (metallic) of bridges

(i) Deformation - 15 days

(e) Joints in bridges

(i) Loosening and malfunctioning of joints - 15 days

(f) Other items relating to bridges

(i) Deforming of pads in elastomeric bearings - 7 days

(ii) Gathering of dirt in bearings and joints; or clogging of spouts, weep holes and vent-holes - 3 days

(iii) Damage or deterioration in parapets and handrails - 3 days

(iv) Rain-cuts or erosion of banks of the side slopes of approaches - 15 days

(v) Damage to wearing coat - 15 days

(vi) Damage or deterioration in approach slabs, pitching, apron, toes, floor or guide bunds - 30 days

(vii) Growth of vegetation affecting the structure or obstructing the waterway - 15days

SCHEDULE - G

(See Clause 16.5)

MONTHLY FEE STATEMENT

Project Highway:

Month:

Type of Vehicle	For corresponding month of previous year		For preceding month		For the month reported upon		
	No. of Vehicles	Fee collected (in lakh Rs.)	No. of Vehicles	Fee collected (in lakh Rs.)	Fee per Vehicle (in Rs.)	No. of Vehicles	Fee collected (in lakh Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
A Car							
B LCV							
C Bus							
D Truck							
E Multi-axle Truck							
F Oversized vehicle							
G Total							

Note 1: The above statement does not include Local Users and vehicles travelling on Passes.

Note 2: Monthly Fee Statements for Passes have been prepared separately in the above format and are enclosed.

Remarks, if any:

SCHEDULE – H

(See Clause 18.1.1)

SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Project Highway, irrespective of the person(s) at fault.
- 1.2 Users of the Project Highway include motorised and non-motorised vehicles as well as pedestrians and animals involved in, or associated with accidents. Vulnerable Road Users (VRU) include pedestrians as well as riders of motorised two-wheelers, bicycles and other vehicles which do not provide adequate occupant protection.
- 1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include measures associated with traffic management and regulation such as road signs, pavement marking, traffic control devices, roadside furniture, highway design elements, enforcement and emergency response.

2 Obligations of the Concessionaire

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Manual for Safety in Road Design, issued by MoSRTTH;
- (c) relevant Standards/Guidelines of IRC relating to road geometrics, bridges, culverts, road signs, pavement marking and roadside furniture;
- (d) provisions of this Agreement; and
- (e) Good Industry Practice.

3 Appointment and functions of Safety Consultant

- 3.1 For carrying out safety audit of the Project Highway under and in accordance with this Schedule-H, the Authority shall appoint from time to time, one or more qualified firms or organisations as its consultants (the “**Safety Consultant**”). The Safety Consultant shall employ a team comprising, without limitation, one road safety expert and one traffic planner to undertake safety audit of the Project Highway.
- 3.2 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant. It shall review and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Project Highway. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and

submit a Safety Report recommending specific improvements, if any, required to be made to the road, bridges, culverts, markings, signs, road furniture and Project Facilities, including cattle crossings and pedestrian crossings.

- 3.3 The accident data and the design details shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Project Highway. The safety audit shall be completed in a period of three months and a report thereof (the “**Safety Report**”) shall be submitted to the Authority, in five copies. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer forthwith.

4 Safety measures during Concession Period

- 4.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 4.2 [The Concessionaire shall establish a Highway Safety Management Unit (the “**HSMU**”) to be functional on and after [COD] and designate one of its officers to be in-charge of the HSMU. Such officer shall have specialist knowledge and training in road safety and traffic engineering by having attended a course conducted by a reputed organisation on the subject.]
- 4.3 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Project Highway. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police but where a vehicle rolled over or had to be towed away. The information so collected shall be summarised in the form prescribed by IRC/MoSRTTH for this purpose. The Concessionaire shall also record the exact location of each accident on a road map. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter and to the Safety Consultant as and when appointed.
- 4.4 The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 4.1 of this Schedule-H for averting or minimising such accidents in future.

5 Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the cost of works and services, safety audit, and costs incidental thereto, shall be met by the Authority in accordance with Article 14, provided such costs and expenses are not required to be borne by the Concessionaire under the provisions of Clauses 2.1, 15.2 and 18.1.3 of this Agreement.

SCHEDULE - I

(See Clause 19.1)

WEEKLY TRAFFIC CENSUS

Project Highway:

Week ending:

Type of Vehicle	No. of vehicles using the Project Highway during		
	Corresponding week/last year	Preceding week	Week of report
(1)	(2)	(3)	(4)
A Fee paying Traffic			
A1 Car			
A2 LCV			
A3 Bus			
A4 Truck			
A5 Multi-axle Truck			
A6 Oversized vehicle			
Total (A)			
B Local Users			
B1 Car			
Total (B)			
C Exempted Vehicles			
C1 Motor Cycle			
C2 Car			
C3 LCV			
C4 Bus			
C5 Truck			
C6 Tractor			
Total (C)			
D Total Traffic (A+B-C) D1			
Motor Cycle			
D2 Car			
D3 LCV			
D4 Bus			

Type of Vehicle	No. of vehicles using the Project Highway during		
	Corresponding week/last year	Preceding week	Week of report
(1)	(2)	(3)	(4)
D5 Truck			
D6 Multi-axle Truck			
D7 Oversized vehicle			
D8 Tractor			
Grand Total (E)			

Remarks, if any:

WEEKLY REPORT FOR WEIGH STATIONS

Project Highway:

Week Ending:

Type of Vehicle	Permitted Gross Vehicle Weight (Tonnes)	No. of Vehicles weighed (Sample size)	No. of Vehicles carrying load:			
			Within permissible limits	Up to 10% in excess	Over 10% and up to 20% in excess	Over 20% in excess
(1)	(2)	(3)	(4)	(5)	(6)	(7)
A LCV						
B Truck						
C Multi-axle Truck						
D Total						

[**Note:** Sample size shall not be less than 200 Trucks per week and 20 Trucks per day, and should include a proportionate number of Multi-axle Trucks.]

Remarks, if any:

SCHEDULE – J

(See Clause 19.3.1)

TRAFFIC SAMPLING

1 Traffic sampling

The Authority may, in its discretion and at its own cost, undertake traffic sampling pursuant to Clause 19.3 in order to determine the actual traffic on the Project Highway. Such traffic sampling shall be undertaken through the Independent Engineer in the manner set forth below.

2 Manual traffic count

The Independent Engineer shall employ the required number of enumerators who shall count, classify and record all the vehicles as they pass by, and divide the survey into fixed time periods. The count stations shall be located near the Toll Plaza[s] on a straight section of the road with good visibility. The survey shall be conducted continuously for a minimum of 24 (twenty four) hours and maximum of 7 (seven) days at a time. The count period shall be 15 (fifteen) minutes with results summarised hourly.

3 Automatic traffic count

For automatic traffic count to be conducted on intermittent (non-continuous) basis, the Independent Engineer shall use suitable and standardised equipment to classify and record the range of vehicles passing through the Toll Plaza[s]. For this purpose, the counter shall be checked with at least 100 (one hundred) vehicles, including all major vehicle types, over a range of speeds to ensure that all vehicles are being counted and classified correctly.

4 Variation between manual and automatic count

Average Daily Traffic (ADT) for each type of vehicle shall be determined separately by the aforesaid two methods and in the event that the number of vehicles in any category, as counted by the manual method, varies by more than 1% (one per cent) of the number of such vehicles as counted by the automatic method, the manual and automatic count of such category of vehicles shall be repeated and in the event of any discrepancy between the two counts in the second enumeration, the average thereof shall be deemed to be the actual traffic. For the avoidance of doubt, it is expressly agreed that the Authority may, in consultation with the Concessionaire, adopt modified or alternative processes of traffic sampling for improving the reliability of such sampling.

SCHEDULE – K

(See Clause 20.1)

SELECTION OF INDEPENDENT ENGINEER

1 Selection of Independent Engineer

- 1.1 The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 or any substitute thereof shall apply, *mutatis mutandis*, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 1.2 The Authority shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in Schedule-L and thereupon shortlist 10 (ten) qualified firms in accordance with pre-determined criteria. The Authority shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Authority shall, after considering all relevant factors, finalise and constitute a panel of 10 (ten) firms (the “**Panel of Firms**”) and convey its decision to the Concessionaire.
- 1.3 The Authority shall invite the aforesaid firms in the Panel of Firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall shortlist 3 (three) eligible firms on the basis of their technical scores. The financial bids in respect of such 3 (three) firms shall be opened and the order of priority as among these firms shall be determined on the basis of financial bids and the lowest financial bid shall rank first for award of contract.
- 1.4 In the event that the Authority shall follow the selection process specified in the Model RFP for selection of Technical Consultants, as published by the Ministry of Finance/ Planning Commission, the selection process specified in this Schedule-K shall be deemed to be substituted by the provisions of the said Model RFP and the Concessionaire shall be entitled to scrutinise the relevant records forming part of such selection process.

2 Fee and expenses

In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Concession Period, the Authority shall endeavour that the annual payments to the Independent Engineer on account of fee and expenses do not exceed an amount equal to the product of Average Daily Fee multiplied by 10 (ten). Payments not exceeding such amount shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.

3 Constitution of fresh panel

No later than 3 (three) years from the date of this Agreement, and every 3 (three) years thereafter, the Authority shall prepare a fresh panel of firms in accordance with the criteria set forth in this Schedule-K; provided that the Authority may, at any time, prepare a fresh panel with prior written consent of the Concessionaire.

4 Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the Authority shall not be eligible for appointment as Independent Engineer.

SCHEDULE - L

(See Clause 20.2.1

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (the “TOR”) are being specified pursuant to the Concession Agreement dated (the “Agreement”) which has been entered into between the Authority and (the “Concessionaire”) for Operation and Maintenance of the [****section (km ** to km **) of State Highway No. **] in the State on operate, maintain and transfer (OMT) basis and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
- (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) determine the Project Facilities Completion Schedule;
 - (iii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (iv) conducting tests on completion of construction and issuing Completion Certificate as set forth in Paragraph 5;
 - (v) review, inspection and monitoring of O&M as set forth in Paragraph 6;
 - (vi) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
 - (vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (viii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

- (ix) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and
- (x) undertaking all other duties and functions in accordance with the Agreement.

3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Review of Drawings and Documents

4.1 The Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

4.3 The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-H and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.

4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

4.5 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for operation and maintenance of the Project Highway, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

5 Construction Works

5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments relating to the Construction Works, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

5.3 The Independent Engineer shall inspect the Construction Works and the Project Highway once every month, preferably after receipt of the monthly progress report

from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project Facilities. The Inspection Report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

- 5.4 The Independent Engineer may inspect the Project Highway more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the IRC Special Publication-11 (Handbook of Quality Control for Construction of Roads and Runways) and the Specifications for Road and Bridge Works issued by MoRTH (the “**Quality Control Manuals**”) or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6 The sample size of the tests to be specified by the Independent Engineer under Paragraph 5.5 shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the

Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.

- 5.9 In the event that the Concessionaire fails to achieve any of the project milestones specified in the Project Facilities Completion Schedule, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of any Project Facility is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which completion shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.10 If at any time during the Concession Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith recommending whether or not such suspension may be revoked by the Authority.
- 5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Facilities Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.13 The Independent Engineer shall issue a Completion Certificate upon completion of each Project Facility and Major Maintenance Work, if any, specified under and in accordance with this Agreement.
- 5.14 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 14 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6 Operation & Maintenance

- 6.1 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.

- 6.2 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.3 The Independent Engineer shall inspect the Project Highway once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project Highway. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 6.4 The Independent Engineer may inspect the Project Highway more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.5 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out or cause to be carried out for the purpose of determining that the Project Highway is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 6.6 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-F, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.7 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.8 The Independent Engineer shall examine the request of the Concessionaire for closure of any lane(s) of the carriageway for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in traffic and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such lane(s), and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 15.7.
- 6.9 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 16.4.
- 6.10 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project Highway, the Independent

Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

- 6.11 The Independent Engineer shall undertake traffic sampling, as and when required by the Authority, under and in accordance with Article 19 and Schedule-J.

7 Termination

- 7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project Highway for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 30.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project Highway is such that its repair and rectification would require a larger amount than the sum set forth in Clause 31.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.

- 7.2 The Independent Engineer shall inspect the Project Highway once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 31 in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

8 Determination of costs and time

- 8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9 Assistance in Dispute resolution

- 9.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10 Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11 Miscellaneous

- 11.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

- 11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted under this Agreement by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.
- 11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

SCHEDULE – M

(See Clause 22.1.1)

FEE NOTIFICATION

16

GOVERNMENT OF ODISHA

ODISHA PUBLIC WORKS DEPARTMENT

NOTIFICATION

Bhubaneswar, the 20...

S.O.

Whereas, pursuant to the provisions of 4 of the Orissa State Roads Tolls Act, 2010, the Odisha Works Department through its Secretary (hereinafter referred to as the “Authority”) has entered into an agreement with, having its Registered Office at (hereinafter referred to as “Concessionaire”) for the operation and maintenance of the ***** - ***** section from Km *** to Km *** (hereinafter referred to as the said section) of the State Highway No. *** on Operate, Maintain and Transfer (OMT) basis;

Now, therefore, in exercise of the powers conferred by section 3 of the Orissa State Roads Tolls Act, 2010, read with Rule 3 of the Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011, the Central Government, having regard to the expenditure involved in building, maintenance, management and operation of the said section of the said national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of said agreement between the Authority and the Concessionaire, hereby notifies that there shall be levied and collected fees on mechanical vehicles for the use of the section from Km *** to Km *** (***** - *****) of State Highway No. ***, [including the permanent bridge/ bypass/ tunnel having an estimated cost of Rs. *** (Rupees *****)][§], in the State of ***** at the rates specified in the aforesaid Rules and authorises the said Concessionaire to collect and retain the said fees on and from the date of commercial operation of the said section of national highway, subject to and in accordance with the said Rules and the provisions of the aforesaid agreement.

The fee levied and collected hereunder shall be due and payable at the following Toll Plazas for the distance specified for each such Toll Plaza:

S. No.	Location of Toll Plaza (chainage)	Length (in km) for which Fee is payable
**	***	***

¹⁶ In the case of State Highways, this notification may be drafted in accordance with Applicable Laws.

[§] Only a bridge, bypass or tunnel having an estimated capital cost exceeding Rs. 10 crore may be specified here.

[In addition to the above, the rate of toll for use of standalone bypass or bridge including road over bridge or road under bridge with cost of investments exceeding Rs.10 crores (rupees ten crores) shall be levied as specified below and shall be due and payable at the following Toll Plaza(s):

S. No.	Location of Toll Plaza (chainage)	Nature of Structure	Cost (in Rs. crore)]¹⁷
**	***	***	***

F.No. RW/SH-.....

(Name)

Deputy Secretary
Government of India

¹⁷ Rates as per Fee Rules be specified here.

SCHEDULE - N

(See Clause 23.1.2)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the day of 20.....

AMONGST

- 1 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, assigns and permitted substitutes);
- 2name and particulars of the Escrow Bank and having its registered office at(hereinafter referred to as the “**Escrow Bank**” which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes); and
- 3 [The Secretary, Odisha Works Department, Government of Odisha, having its office at _____ Odisha, _____] (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for Operation and Maintenance of the **** section (km ** to km **) of State Highway No. ** in the State of **** on operate, maintain and transfer (OMT) basis and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:**1**

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and

Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

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

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

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority

and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the COD, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Authority and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from banks, insurance claims and shareholders;
- (b) all Fee and any other revenues from or in respect of the Project Highway, including the proceeds of insurance claims; and
- (c) any other receipts or revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project Highway

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (b) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project Highway;
- (b) Concession Fee due and payable to the Authority;
- (c) all payments relating to construction of Project Facilities;
- (d) O&M Expenses, subject to the ceiling set by the Independent Engineer in accordance with Good Industry Practice;
- (e) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (f) monthly proportionate provision of debt service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire; and
- (h) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting

Year, the Concessionaire shall provide to the Escrow Bank, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Authority, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project Highway;
- (b) outstanding Concession Fee;
- (c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (d) cost of repair and restoration of damages to the Project Highway on account of a Non Political Event;
- (e) all outstanding debt and interest thereon;
- (f) retention and payments relating to the liability for defects and deficiencies set forth in Article 31;
- (g) incurred or accrued O&M Expenses;
- (h) any other payments required to be made under this Agreement; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (i) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Highway, and the balance remaining, if any, shall be applied in accordance with the provisions of this Agreement.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 36 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire as to the relevant Payment Dates), the Escrow Bank shall notify the Authority of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

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

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge

of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;

- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Authority of any notice or document received by the Escrow Bank in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by the Escrow Bank from the Authority in connection herewith.

5.4 No set off

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

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank and the Authority, terminate this Agreement and appoint a new Escrow Bank, provided that arrangements are made satisfactory to the Authority for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

Any lender providing financial assistance for the Project and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation matters not covered under this Agreement such as the rights and obligations of lenders, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

- 9.1.1 The Concessionaire will indemnify, defend and hold the Authority and Escrow Bank harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and 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 the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

- 10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi

(the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be {Bhubaneswar} and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at {[Bhubaneswar]} shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

11.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 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 the Parties.

11.5 Waiver

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

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

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

11.6 No third party beneficiaries

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

11.7 Survival

11.7.1 Termination of this Agreement:

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

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

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post

with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof save that where it is received after 5.30 (five thirty) p.m. on a business day or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

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

11.12 Authorised representatives

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

11.13 Original Document

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

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of
SENIOR LENDERS by the
Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of
ESCROW BANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND
DELIVERED

For and on behalf of
[ODISHA
WORKS DEPARTMENT] by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

2.

SCHEDULE – O

(See Clause 30.4)

VESTING CERTIFICATE

- 1 [The Secretary, Odisha Works Department, Government of Odisha] (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for operation and maintenance of the ***** Section of State Highway No.*** (the “**Project Highway**”) on operate, maintain and transfer (“**OMT**”) basis.
- 2 The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 30.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project Highway shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20.... at Bhubaneswar.

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

CONCESSIONAIRE by:

[ODISHA WORKS DEPARTMENT] by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

Appendices

APPENDIX I

LIST OF BID SPECIFIC CLAUSES¹⁸

A. Clauses with serially numbered footnotes

1. Appendix-I (Footnote No. 12)

B. Clauses with non numerical footnotes

1. Para 2: Recital
2. Clause 14.5.1: Power of the Authority to undertake works
3. Clause 21.1.1(a): Concession Fee
4. Clause 21.2: Concession Fee
5. Clause 21.3: O&M Support
6. Signature /Execution Page of the Concession Agreement
7. Schedule M: Fee Notification
8. Schedule N: Signature /Execution Page of the Escrow Agreement:

C. Clauses with curly brackets

1. Para 2: Recital
2. Recital C, E, F, G and H
3. Clause 7.1 (g), (k), (l), (m) and (q): Representations and Warranties of the Concessionaire
3. Clause 21.2: Concession Fee
4. Clause 21.3: O&M Support
5. Article 40: Definitions:
 - “Associate” or “Affiliate”
 - “Bid”
 - “Change in Ownership”
 - “Consortium”
 - “Consortium Member”
 - “O&M Support”

D. Clauses with blank spaces

1. First Line of the Concession Agreement
2. Para 2: Recital
3. Recital E and Recital G
4. Clause 21.1.1(a): Concession Fee
5. Clause 21.3: O&M support

¹⁸ This Appendix-I contains a list of clauses that would need to be suitably modified for reflecting bid-specific provisions after the Concessionaire has been selected. This Appendix-I may be included in the draft concession agreement forming part of the bid documents. It may however, be deleted when the Concession Agreement is to be executed.

6. Execution page of the Concession Agreement
7. Schedule E: Performance Security
8. Schedule L: Terms of Reference for Independent Engineer
9. Schedule M: Fee Notification
10. Schedule N: Escrow Agreement
11. Schedule O: Vesting Certificate

APPENDIX II

LIST OF PROJECT-SPECIFIC CLAUSES¹⁹

A. Clauses with serially numbered footnotes

1. First Line of the Concession Agreement (Footnote No. 1)
2. Para 1: Recital (Footnote No. 2)
3. Para A: Recital (Footnote No. 3)
4. Clause 3.1.1: The Concession (Footnote No. 4)
5. Clause 9.1.1: Performance Security (Footnote No. 5)
6. Clause 14.7.1: Rectification of latent defects (Footnote No. 6)
7. Clause 29.2.1 (d): Termination for Authority Default (Footnote No. 7)
8. Article 40: Definitions:
 - “Bid Security” (Footnote No. 8)
 - “Toll Plaza” (Footnote No. 9)
9. Annex-I, Schedule F (Footnote No. 10)
10. Schedule M: Fee Notification (Footnote No. 11)
11. Appendix-II (Footnote No. 13)

B. Clauses with square parenthesis

1. Para 1: Recital
2. Recitals A, B, C, and E
3. Clause 3.1.1: The Concession
4. Clause 13.1.2: Commercial Operation Date (COD)
5. Clause 14.7.1: Rectification of latent defects
6. Clause 15.5.2: Safety, vehicle breakdowns and accidents
7. Clause 15.15: Advertising on the Site
8. Clause 17.1: Traffic regulation by the Concessionaire
9. Clause 17.2: Police assistance
10. Clause 17.3: Buildings for Traffic Aid Posts
11. Clause 17.4: Recurring expenditure on Police assistance
12. Clause 18.2.1 and 18.2.2: Medical Aid Posts
13. Clause 19.1: Traffic census
14. Clause 21.1.1(b): Concession Fee
15. Clause 22.7: Fee Collection Points
16. Clause 22.9: Additional fee for overloaded vehicles

¹⁹ This Appendix-II contains a list of clauses that would need to be suitably modified prior to issue of bid documents for reflecting project-specific provisions. This Appendix-II should be omitted before issuing the draft concession agreement, forming part of the bid documents.

17. Clause 22.10.1: Display of Fee rates
18. Clause 29.2.1(d): Termination for Authority Default
19. Clause 37.1: Disclosure of Specified Documents
20. Article 40: Definitions:
 - “MOSRTH”
 - “Major Maintenance Works”
 - “Medical Aid Post”
 - “PCU”
 - “Project Agreement”
 - “Project Assets”
 - “Project Facilities”
 - “Toll Plaza”
21. Schedule A: Clause 1.3
22. Annex-I, Schedule A: Note, Para 1, 3, 8(a), 9(a) and 10
23. Schedule B: Para 1(a), (i) through (n) and Para 1.2
24. Annex-I, Schedule B: Para 1(a), (i) through (o), Clause 2.1, 2.2 and 3
25. Schedule C: Specifications and Standards
26. Annex-I, Schedule C: Specifications and Standards for Project Highway
27. Schedule E: Performance Security: Recitals and Clause 2,
28. Schedule F: Maintenance Requirements
29. Annex-I, Schedule F: Repair/rectification of defects and deficiencies
30. Schedule H: Safety Requirements: Para 4.2
31. Schedule I: Weekly Traffic Census
32. Schedule J: Traffic Sampling: Para 2 and 3
33. Schedule L: Terms of Reference for Independent Engineer: Para 1.1
34. Schedule M: Fee Notification
35. Schedule N: Escrow Agreement: Para 3 Recital and signature/execution page
36. Schedule O: Vesting Certificate: Para 1 and signature

C. Clauses with asterisk

1. Recitals A, B and C
2. Clause 5.6: Branding of Project Highway
3. Clause 9.1.1: Performance Security
4. Article 48: Definitions
 - “Bid Security”
 - “Project Highway”
 - “State”

5. Annex I, Schedule A: Para 1, 8, 9 and 10
6. Annex I, Schedule C
7. Schedule E: Para A and B
8. Schedule L: Para 1
9. Schedule M: Fee Notification
10. Schedule N: Escrow Agreement
11. Schedule O: Vesting Certificate

Annexure 4.3

PERFORMANCE BASED CONTRACT

This Agreement is made on the _____ [day] day of _____ [month], _____ [year] at _____

Between

_____ [name and address of Employer] (hereinafter called “the Employer”) of the one part;

And

_____ [name and address of Contractor] (hereinafter called “the Contractor”) of the other part.

.....collectively referred to as Parties and singularly as Party.

WHEREAS the Employer is desirous that the Contractor execute [name and identification number of Contract] (hereinafter called “the Works”) and the Employer has accepted the Bid submitted by the Contractor for the execution and completion of the Works and Services and the remedying of any defects therein.

Now this Agreement witnessed as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Services and Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
3. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Services and Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

This Agreement in full contains the General Conditions of Contract, Special Conditions of Contract, and Schedules hereto.

In Witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

The Common Seal of _____ Signed, Sealed, and Delivered by the said
was hereunto affixed in the presence of: in the presence of:

Binding Signature of Contractor Binding Signature of Employer

GENERAL CONDITIONS OF CONTRACT (GCC)

Contract and Interpretation

1. Definitions

1.1 The terms used in this contract are defined below.

Bill of Quantities means the priced and completed Bill of Quantities forming part of the Contractor's Bid.

The Completion Date is the date of completion of the Services and Works as certified by the Project Manager, in accordance with Sub-Clause 10.2.

The Contract is the Contract between the Employer and the Contractor to perform the services to be provided by the Contractor, and to execute, complete and maintain the Works. It consists of the documents listed in Clause 3 below.

The Contractor is a person or corporate body whose Bid to carry out the Works and Services has been accepted by the Employer.

The Contractor's Bid is the completed bidding document submitted by the Contractor to the Employer.

The Contract Price is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

Days are calendar days; months are calendar months.

A Defect is a fault/ flaw/ shortcoming in any part of the Works and Services not completed in accordance with the Contract.

The Defects Correction Certificate is the certificate issued by Project Manager upon correction of defects by the Contractor.

The Defects Liability Period is the period named in the Special Conditions of Contract (SCC) and calculated from the Completion Date.

Drawings include calculations and other information provided by the Contractor for the execution of the Contract.

Effective Date means the date of execution of this Agreement.

Emergency Works is a set of necessary and sufficient activities to reinstate the Road and reconstruct its structure or right of way strip damaged as a result of natural phenomena with imponderable consequences, such as strong storms, flooding and earthquakes. The need for execution of Emergency Works is jointly identified by the Employer and the Contractor and for starting of execution of Emergency Works the Employer shall issue a Work Order.

The Employer is the party who employs the Contractor to carry out the Works and Services and as specified in the SCC.

Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works and to carry out the Services.

Improvement Works consists of a set of interventions that add new characteristics to the Road in response to existing or new traffic, safety or other conditions, as defined in the Technical Specifications.

Initial Rehabilitation Works are specific and clearly defined civil works the Contractor is required to carry out early during the initial period of the contract under the conditions of the Contract, as defined in the Technical Specifications. Rehabilitation Works quantities were estimated by the Contractor to achieve the performance standards defined by the Service Quality Levels and offered as a Lump-Sum price

The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works and Services. The Intended Completion Date is specified in the specific Conditions of Contract (SCC). The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time.

Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works and for provision of Services.

Plant is any integral part of the Works and Services that shall have a mechanical, electrical, chemical, or biological function.

The Project Manager is the person named in the SCC who is responsible for the overall administration of the Contract on behalf of the Employer, the supervision of services to be performed thereunder, and the execution of Works included in the Contract. The Project Manager may delegate through a written instrument some of his functions to any other competent person, retaining however the overall responsibility for the actions of that person. The Project Manager may not delegate the overall administrative control of the Contract.

Road means the road or network of roads for which the Works and Services are contracted under the Contract.

The Road Management Office is the location indicated by the Contractor from which the Road Manager operates, and where the Contractor shall receive notifications.

The Road Manager is a person appointed by the Contractor who is in charge of managing all activities of the Contractor under the Contract. He is also the Contractor's Representative for the purposes of this contract.

Services means all interventions on the Road under the Contract and all activities related to the management and evaluation of the Road which shall be carried out by the Contractor in order to achieve and keep the Road Performance Standards as defined by

the Service Quality Levels and to receive full payment of the monthly fee under the contract

Service Quality Levels are the minimum performance standards for the level of quality of conditions of the Road defined in the Technical Specifications which the Contractor shall comply with.

The Site is the area defined as such in the SCC.

Site Investigation Reports are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

The Start Date is given in the SCC. It is the latest date when the Contractor shall commence execution of the Works and Services. It does not necessarily coincide with any of the Site Possession Dates.

A Subcontractor is a person or corporate body who has a contractual agreement with the Contractor to carry out certain activities related to the services to be provided under the contract, which may include work on the Site.

Technical Specification means the Specification of the Works and Services included in the Contract and any modification or addition made or approved by the Project Manager.

A Variation is an instruction given by the Project Manager which varies the Works.

The Works are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as covered under Rehabilitation Works, Improvement Works and Emergency Works.

Work Order is an order issued by the Project Manager to the Contractor authorizing the execution of Improvement Works, Emergency Works, as provided for in Clause 27 hereunder.

- 2. Interpretation**
- 2.1 In interpreting these General Conditions of Contract (GCC), singular also means plural, male also means female or neuter, and vice versa. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these General Conditions of Contract (GCC).
- 2.2 If partial completion for Initial Rehabilitation Works or for Improvement Works is specified in the Special Conditions of Contract (SCC) to be carried out by Sections, references in the General Conditions of Contract to the Works and Services, the Completion Date, and the Intended Completion Date apply to any Section of the Works and Services (other than references to the Completion Date and Intended Completion Date for the whole of the Works and Services).
- 3. Documents Forming the Contract**
- 3.1 The documents forming the Contract shall be interpreted in the following order of priority:

- (1) Agreement,
- (2) Letter of Acceptance,
- (3) Contractor's Bid,
- (4) Special Conditions of Contract (SCC),
- (5) General Conditions of Contract (GCC),
- (6) Technical Specifications,
- (7) Drawings,
- (8) Bill of Quantities, and
- (9) Any other document listed in the SCC as forming part of the Contract.

4. Language and Law

- 4.1 The language of the Contract and the law governing the Contract are stated in the SCC.

5. Notices

- 5.1 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile or Electronic Data Interchange (EDI) to the address of the relevant party set out in the SCC, with the following provisions:

5.1.1 Any notice sent by cable, telegraph, telex, facsimile or EDI shall be confirmed within two (2) days after dispatch by notice sent by airmail post or special courier, except as otherwise specified in the Contract.

5.1.2 Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service or special courier.

5.1.3 Any notice delivered personally or sent by cable, telegraph, telex, facsimile or EDI shall be deemed to have been delivered on date of its dispatch.

5.1.4 Either party may change its postal, cable, telex, facsimile or EDI address or addressee for receipt of such notices by ten (10) days' notice to the other party in writing.

- 5.2 Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.

- 5.3 The Contractor shall provide at its own cost, and maintain in operation permanently during the duration of the Contract, such communications equipment which ensures that both written (fax or e-mail) and oral (voice) communications can be established at all times:

- (a) between the Road Manager and his senior field staff;
- (b) between the Project Manager and the Road Manager;
- (c) between the public telephone system and the Road Manager;
- (d) The equipment to be provided and maintained includes the equipment located at the Project Manager's office.

5.4 Within 28 days of the Start Date of the Contract, the Contractor must communicate to the Employer the address of his office, including the postal, cable, telex, facsimile and EDI address, which for the purposes of this contract is called the Road Management Office, where Notices will be addressed to. The Employer may require that the physical location of the Road Management Office is within the close geographical area of the Road. If the Contractor fails to communicate the address of his Road Management Office, and the Employer is otherwise unable to locate the Road Manager, all notifications to the Contractor shall be valid if they are deposited at a designated location within the office of the Project Manager, and if a copy is sent to the Contractor's legal address.

6. Settlement of Disputes

6.1 Dispute Resolution

6.1.1 If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Works and Services—whether during the progress of the execution or after completion and whether before or after the termination, abandonment or breach of the Contract—the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the matter in dispute shall be referred in writing by either party to arbitration under the Arbitration and Conciliation Act, 1996, with a copy to the other party.

6.2 Arbitration

6.2.1 Arbitration proceedings shall be conducted in accordance with the rules of procedure provided in the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted by an arbitral tribunal comprising of three arbitrators, of which one shall be appointed by the Contractor and one by the Employer and the two such arbitrators shall appoint the third arbitrator who shall be the chairman of the arbitral tribunal. A notice in this regard is to be sent by the one party to other party for the appointment of their respective Arbitrator.

6.2.2 The arbitrators shall make a reasoned award, and any award made pursuant to this Article 6.2 shall be final and binding on the Parties as from the date on which it is made, and the Employer and the Contractor agree to implement and execute such award without delay.

- 6.2.3 The arbitration proceedings shall be conducted in the English language and the venue of arbitration shall be _____ or at such other place as may be agreed between the Employer and the Contractor.
- 6.2.4 The fees and expense of the arbitrators and all other expense of the arbitration shall be shared and paid by the Employer and the Contractor in equal proportions. The professional fee payable to each of the three arbitrators shall be equal. 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 such Party.
- 6.2.5 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 judgment upon the arbitral award may be entered in any court having jurisdiction thereof.
- 6.3 Notwithstanding any reference to Arbitration herein,
- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree
 - (b) the Employer shall pay the Contractor any monies due the Contractor.

B. Assignment of Responsibilities

7. Scope of Works and Services

- 7.1 Unless otherwise expressly limited in the Technical Specifications, the Contractor's obligations cover the Design, the carrying out of all Works and the performance of all Services required for keeping the Road in accordance with the Service Quality Levels defined in the Technical Specifications, while at the same time respecting the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical Specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Employer, as set forth in the corresponding Technical Specifications.
- 7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work, services and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for

attaining the Performance Standards (as specified in Clause 24 of GCC) as if such work, services and/or items and materials were expressly mentioned in the Contract.

8. Design Responsibility

8.1 The Contractor shall be responsible for the Design and programming of the Works and Services, and for the accuracy and completeness of the information used for that design and programming in accordance with the requirements established in the Technical Specifications.

8.2 Specifications and Drawings

8.2.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract and the Technical Specifications, or where not so specified, in accordance with good engineering practice.

The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.

8.2.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof, provided or designated by, or on behalf of, the Employer, by giving a notice of such disclaimer to the Project Manager.

8.3 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied after approval by the Employer and shall be treated in accordance with GCC Clause 63.

8.4 Approval/Review of Technical Documents by Project Manager

8.4.1 For those Works specified in the SCC, the Contractor shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents listed in the Technical Specifications (List of Documents for Approval or Review) for its approval or review.

Unless otherwise specified in the SCC, the Contractor shall not be required to submit for the Employer's approval the Design or other technical documents concerning the

Maintenance Services remunerated through monthly lump-sum payments.

Any part of the Works covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GCC Sub-Clauses 8.4.2 through 8.4.7 shall apply only to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for his information or review only.

- 8.4.2 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Sub-Clause 8.4.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons thereof and the modifications that the Project Manager proposes.

If the Project Manager fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Project Manager.

- 8.4.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good engineering practice.

- 8.4.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Sub-Clause 8.4.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

- 8.4.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled amicably between the parties within a reasonable period, then such dispute or difference may be referred to arbitration for determination in accordance with GCC Sub-Clause 6.2 hereof. If such dispute or difference is referred to arbitration, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if arbitration upholds the Contractor's view on the dispute then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such disapproval/ instructions and

shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the arbitration shall decide, and the Time for Completion shall be extended accordingly.

8.4.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

8.4.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Sub-Clause 8.4.2.

If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 63.2 shall apply to such request.

9. Copyright

9.1 The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

10. Time for Commencement and Completion

10.1 The Contractor shall commence the Works and Services within the period specified in the SCC and shall thereafter proceed in accordance with the Time Schedule Specified in the corresponding Time Schedule stated in the SCC for the achievement of Specific Service Quality Levels detailed in the Technical Specifications.

10.2 The Contractor shall attain completion of the Works and Services at the required Service Quality Levels, to be certified by the Project Manager, (or of a part where a separate time for completion of such part is specified in the Contract) within the Time Schedule included in the SCC or within such Extended Time to which the Contractor shall be entitled under GCC Clause 64 hereof.

11. Contractor's Responsibilities

11.1 The Contractor shall design and carry out the Works and Services (including associated purchases and/or subcontracting) necessary to comply with the requirements established in the Technical Specifications with due care and diligence in accordance with the Contract.

11.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Works and Services required, including any data and tests

provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site and of other data readily available to it relating to the Road as of the date twenty-eight (28) days prior to bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Works and Services.

- 11.3 The Contractor shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings that are necessary for the performance of the Contract, including, without limitation, necessary documents and permits for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GCC Sub-Clause 14.3 hereof and that are necessary for the performance of the Contract.
- 11.4 The Contractor shall comply with all laws in force in State of Odisha. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Sub-contractors and their personnel, but without prejudice to GCC Sub-Clause 14.1 hereof.

12. Subcontracting

- 12.1 The Contractor may subcontract activities listed in the SCC. Any other activity under the Contract may be subcontracted only when approved by the Project Manager. The Contractor shall not assign the entire Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations nor relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.
- 12.2 Notwithstanding GCC Sub-Clause 12.1, the Contractor may subcontract under his own responsibility and without prior approval of the Employer the small Works and Services also listed in the SCC.

13. Assignment of Contract

- 13.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other party (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any

monies due and payable to it or that may become due and payable to it under the Contract.

**14. Employer's
Responsibilities**

- 14.1 The Employer shall apply due diligence to ensure the accuracy of all information and/or data to be supplied to the Contractor as described in the Technical Specifications, except when otherwise expressly stated in the Contract.
- 14.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the corresponding Technical Specifications. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in the SCC.
- 14.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the State of Odisha, when such authorities or undertakings require the Employer to obtain them in the Employer's name, are necessary for the execution of the Contract, and are specified in the corresponding Technical Specifications.
- 14.4 If requested by the Contractor, the Employer shall use its best endeavours to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
- 14.5 The Employer shall be responsible for the continued operation of the Road after Completion, in accordance with GCC Sub-Clause 28, and shall be responsible for facilitating all such Test(s) for the Road, in accordance with GCC Sub-Clause 20.
- 14.6 All costs and expenses involved in the performance of the obligations under this GCC Clause 14 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of guarantee Tests, in accordance with GCC Sub-Clause 20.

**15. Confidential
Information**

- 15.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish

to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 15.

15.2 The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Road. Similarly, the Contractor shall not use such documents, data and other information received from the Employer for any purpose other than the design, procurement of Plant and Equipment, construction or such Works and Services as are required for the performance of the Contract.

15.3 The obligation of a party under GCC Sub-Clauses 15.1 and 15.2 above, however, shall not apply to that information which:

- (a) now or hereafter enters the public domain through no fault of that party;
- (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto;
- (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

15.4 The above provisions of this GCC Clause 15 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Works and Services or any part thereof.

15.5 The provisions of this GCC Clause 15 shall survive termination, for whatever reason, of the Contract.

C. Execution of Works and Services

16. Project Manager & Representatives

16.1 Project Manager

If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of the Works and Services. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the

Employer at all times during the currency of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager, except as herein otherwise provided.

The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

16.2 Road Manager

16.2.1 If the Road Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Road Manager and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within fourteen (14) days, the Road Manager shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefor, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 16.2.1 shall apply thereto.

16.2.2 The Road Manager shall represent and act for the Contractor at all times during the currency of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Contract. The Road Manager shall be in charge of the day-to-day management of the services to be provided under the contract on behalf of the Contractor, and shall have legal and all other faculties to take all necessary decisions related to the execution of the contract.

All notices, instructions, information and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Road Manager or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Road Manager without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Road Manager, pursuant to the procedure set out in GCC Sub-Clause 16.2.1.

16.2.3 The Road Manager may, subject to the approval of the Employer (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Road Manager, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 16.2.3 shall be deemed to be an act or exercise by the Road Manager.

16.2.4 From the commencement of the Works and Services at the Site until Completion, the Road Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Road Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.

16.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under the Technical Specifications. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.

16.2.6 If any representative or person employed by the Contractor is removed in accordance with GCC Sub-Clause 16.2.5, the Contractor shall, where required, promptly appoint a replacement.

17. Work Program

17.1 Contractor's Organization

The Contractor shall supply to the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out the Works and Services. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed as included in the Contractor's Bid. The Contractor shall promptly inform the Project Manager in writing of any revision or alteration of such an organization chart.

17.2 Program of Performance

Within twenty-eight (28) days after the date of signing the Contract Agreement, the Contractor shall prepare and supply to the Project Manager a program of performance of the Contract, made in the form specified in the Technical Specifications and showing the sequence in which it proposes to design and carry out the Works and Services, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion in accordance with the Contract. The Contractor shall update and revise the program as and when appropriate, but without modification in the Times for Completion given in the SCC and any extension granted in accordance with GCC Clause 64, and shall supply all such revisions to the Project Manager.

17.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 17.2 above, and supply a progress report to the Project Manager every month together with his Monthly Statement. The progress report shall be in a form acceptable to the Project Manager in accordance with the Technical Specifications.

17.4 Progress of Execution

If at any time the Contractor's actual progress falls behind the program referred to in GCC Sub-Clause 17.2, or it becomes apparent that it will so fall behind, the Contractor shall prepare and supply to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Works and Execution of Services activities within the Time for Completion under GCC Sub-Clause 10.2 or any extension thereof entitled under GCC Sub-Clause 64, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

17.5 Work Procedures

The Contract shall be executed in accordance with the Contract Documents and the procedures given in the Technical Specifications.

18. Execution of Works

18.1 Setting Out/Supervision

18.1.1 Bench Mark

The Contractor shall be responsible for the true and proper setting-out of the Works in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer.

If, at any time during the progress of execution of the Works, any error shall appear in the position, level or alignment of the Works, the Contractor shall forthwith notify the Project Manager of such error and, at his own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.

18.1.2 Contractor's Supervision

The Contractor shall give or provide all necessary superintendence during the execution of the Works, and the Road Manager or his deputy shall be constantly on the Site to provide full-time superintendence of the execution. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

18.2 Contractor's Equipment

18.2.1 All Contractors' Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.

18.2.2 Unless otherwise specified in the Contract, upon completion of the Works, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

18.2.3 The Employer will, if requested, use its best endeavours to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

18.3 Site Regulations and Safety

The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety, gate control, sanitation, medical care, and fire prevention.

18.4 Opportunities for Other Contractors

18.4.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site.

18.4.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance of which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.

18.4.3 The Contractor shall also so arrange to perform its work and services as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work and services.

18.4.4 The Contractor shall notify the Project Manager promptly of any defects in the other contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor.

18.5 Site Clearance

18.5.1 Site Clearance in Course of Execution:

In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

18.5.2 Clearance of Site after Completion:

After Completion of all parts of the Works, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and the Road clean and safe.

18.6 Watching and Lighting

The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the

proper execution and the protection of the Works and Services, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

18.7 Access to the Site

The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

18.8 Management Meetings

18.8.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised by either the Contractor or the Employer.

18.8.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either during or after the management meeting and stated in writing to all who attended the meeting.

19. Staff and Labour

19.1 The Contractor shall employ the key personnel named in the Contractor's Bid, to carry out the functions stated in the Technical Specifications or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Contractor's Bid.

19.2 Labour

- (a) The Contractor shall provide and employ on the Site for the execution of the Works and Services such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labour that has the necessary skills.
- (b) Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.
- (c) The Contractor shall be responsible for obtaining all necessary permit(s) and/permissions from the appropriate authorities for the entry of all labour and personnel to be employed on the Site.
- (d) The Contractor shall at all times ensure compliance with all laws, rules and regulations pertaining to employment of

labour and their social welfare, especially relating to ESI, EPF, Workmen Compensation, Contract labour, etc.

- (e) The Contractor shall at all times during the progress of the Contract use its best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees and the labour of its Subcontractors.
- (f) The Contractor shall provide lodging, medical assistance, alimentation and sanitary installations for the employees living in the field working places to comply with the Social, Sanitary and Health Conditions of Labour requirements established in the Technical Specifications. The Contractor shall also take all necessary actions to control the spread of communicable diseases.
- (g) The Contractor shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labour.

19.3 Removal of staff

If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

19.4 Work at Night and on Holidays

19.4.1 Unless otherwise provided in the Contract, if and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Employer's consent thereto (if such consent is needed), the Employer shall not unreasonably withhold such consent.

20. Test and Inspection

- 20.1 The Contractor shall at his own expense carry out on the Site all such tests and/or inspections as are specified in the Technical Specifications and in accordance with the procedures described in the Technical Specifications.
- 20.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection.
- 20.3 For tests to be carried out on the initiative of the Contractor whenever the Contractor is ready to carry out any such test and/or inspection, he shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party any necessary permission or consent to enable the Employer and the Project Manager (or their designated representatives) to attend

the test and/or inspection. The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

- 20.4 If the Employer or Project Manager (or their designated representatives) fails to attend a scheduled test and/or inspection, or if it is agreed between the parties that such persons shall not attend, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.
- 20.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of the works and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.
- 20.6 If Initial Rehabilitation Works, Improvement Works or Emergency Works fail to pass any test and/or inspection, the Contractor shall either rectify or replace such works and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 20.3.
- 20.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Works and Services, or part of them, that cannot be settled between the parties within a reasonable period of time, it may be referred for determination in accordance with GCC Sub-Clause 6.1.
- 20.8 The Contractor agrees that neither the execution of a test and/or inspection of the Works and Services or any part of them, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 20.4, shall release the Contractor from any other responsibilities under the Contract.
- 20.9 No part or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such part or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.
- 20.10 The Contractor shall uncover any part of the Works or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any parts of the Works or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause

20.9 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

- 21. Initial Rehabilitation Works** 21.1 If so indicated in the SCC, specific Initial Rehabilitation Works shall be carried out explicitly in accordance with the Technical Specifications and as specified in the bidding documents and in the Contractor's Bid.
- 22. Improvement Works** 22.1 If so indicated in the SCC, Improvement Works will consist of a set of interventions that add new characteristics to the roads in response to new traffic and safety or other conditions. Improvement Works quantities were offered at unit prices included in the Bill of Quantities.
- 22.2 The execution of Improvement Works shall be requested by the Project Manager, who will issue a Work Order defining the requested works to be carried out by the Contractor, based on the activities priced in the Bill of Quantities. The Work order shall specify the activities to be carried out and the corresponding price. The Road Manager shall confirm his acceptance by signing the Work Order.
- 23. Maintenance Services** 23.1 Maintenance Services are those activities necessary for keeping the Road in compliance with the Performance Standards pursuant to GCC Clause 24. Maintenance Services shall include all activities required to achieve and keep the Road Performance Standards and Service Quality Levels. These Services will be remunerated by Lump-Sum amount for the period of the contract paid in fixed monthly payments during the entire Contract period.
- 24. Performance Standards** 24.1 The Contractor shall carry out the Works in accordance with the performance standards indicated in the Technical Specifications and the Maintenance Services to achieve and keep the Road complying with the Service Quality Levels defined in the Technical Specifications.
- 25. Contractor's Self-Control of Quality and Safety** 25.1 The Contractor shall, throughout the execution and completion of the Works and Services, maintain a System which shall ensure that the work methods and procedures are adequate and safe at all times and do not pose any avoidable risks and dangers to the health, safety and property of the workers and agents employed by him or any of his subcontractors, of road users, of persons living in the vicinity of the roads under contract, and any other person who happens to be on or along the roads under contract.
- 25.2 Unless specified otherwise in the SCC, the Contractor shall establish, within his own organizational structure, a specific Unit staffed with qualified personnel, whose task is to verify

continuously the degree of compliance by the Contractor with the required Service Quality Levels. That Unit will also be responsible for the generation and presentation of the information needed by the contractor for the documentation required as defined in the Technical Specifications. The Unit will be responsible for maintaining a detailed and complete knowledge of the condition of the Road and to provide to the Road Manager all the information needed in order to efficiently manage and maintain the Road. The Unit shall also carry out, in close collaboration with the Project Manager, the verifications on the Service Quality Levels.

25.3 The Contractor's self-control Unit mentioned in GCC Sub-Clause 25.2 shall report the level of compliance with the required Service Quality Levels in the standard format presented in the Technical Specifications.

26. Environmental and Safety Requirements

26.1 The Contractor shall, throughout the design execution and completion of the Works and Services, and the remedying of any defects therein:

(a) have full regard for the safety of all persons entitled to be on the Site and keep the Site (so far as the same is under his control) and the Works and Services (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons;

(b) provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by Sub-Clause 18.3 of the Contract or by any duly constituted authority, for the protection of the Works and Services or for the safety and convenience of the public or others; and

(c) carry out the required Environmental Impact Assessment studies to comply with environmental standards defined in the Technical Specifications and carry out the Works and Services in accordance with the recommendations of these studies. In addition, the Contractor shall take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation.

27. Work Orders for Improvement Works and Emergency Works

27.1 Improvement Works and Emergency Works shall be executed by the Contractor on the basis of Work Orders issued by the Project Manager.

27.2 Work Orders shall be issued in writing and shall include the date on which the Work Order was issued and the signature of the Project Manager. Two copies of the Work Order shall be transmitted by the Project Manager to the Contractor, who shall immediately countersign one copy, including the date of acceptance, and return it to the Project Manager.

27.3 If the Contractor has any objection to a Work Order, the Road Manager shall notify the Project Manager of his reasons for such objection within ten (10) days) of the date of issuing the Work Order. Within five (5) days of the Road Manager's objection, the Project Manager shall cancel, modify or confirm the Work Order in writing.

28. Taking Over Procedures

28.1 When the whole of the Works and Services have been substantially completed and have satisfactorily passed any Tests on Completion prescribed by the Contract, the Contractor may give a notice to that effect to the Project Manager, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Project Manager to issue a Taking-Over Certificate in respect of the Works and Services. The Project Manager shall, within twenty-one (21) days of the date of delivery of such notice, either issue to the Contractor a Taking-Over Certificate, stating the date on which the Works and Services were substantially completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the conditions to be complied with and all the work which is required to be done by the Contractor before the issue of such Certificate. The Project Manager shall also notify the Contractor of any defects in the Works and Services affecting substantial completion that may appear after such instructions and before completion of Taking-Over Certificate within twenty-one (21) days of completion, to the satisfaction of the Project Manager, of the Works and Services so specified and remedying any defects so notified.

28.2 Similarly, in accordance with the procedure set out in Sub-Clause 28.1, the Contractor may request and the Project Manager shall issue a Taking-Over Certificate in respect of:

- (a) any Section in respect of which a separate Time for Completion is provided in the SCC,
- (b) any substantial part of the Works and Services which has been both completed to the satisfaction of the Project Manager and, otherwise than as provided for in the Contract, occupied or used by the Employer, or
- (c) any part of the Works and Services which the Employer has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure).

29. Emergency Works

29.1 The need for execution of Emergency Works is jointly identified by the Employer and the Contractor and the starting of the execution of Emergency Works shall always require a Work Order issued by the Project Manager.

29.2 The execution of Emergency Works shall be requested by the Contractor based on losses or damages occurred as a result of

natural phenomena (such as strong storms, flooding or earthquakes) with imponderable consequences, or on the possibility of damages losses occurring, or the safety of individuals, works, services or equipment being at risk as result of the natural phenomena. In order to characterize the Emergency Works, the Contractor shall forward a Technical Report to the Project Manager requesting the execution of Emergency Works and characterizing the situation. On the basis of the said report, and of his own judgment of the situation, the Project Manager may issue a Work Order to the Contractor.

29.3 The Employer may declare an Emergency Situation on the basis of local legislation or Order/Notification of the State Government. In those cases, the Project Manager may issue a Work Order for Emergency Works to the Contractor even without a request by the Contractor.

29.4 If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine necessary in order to prevent damage to the Road. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at his own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

30. Quality of materials used by Contractor

30.1 The quality of materials used by the Contractor for the execution of the Contract shall be in compliance with the requirements of the Technical Specifications. If the Contractor is of the opinion that materials of higher quality than those stated in the Technical Specifications need to be used in order to ensure compliance with the Contract, he shall use such better materials, without being entitled to higher prices or remunerations.

30.2 Under no circumstances shall the Contractor make any claim based on the insufficient quality of materials used by him, even if the material used was authorized by the Project Manager.

30.3 The Contractor shall carry out at his own cost the laboratory and other tests that he needs to verify if materials to be used comply with the Technical Specifications, and shall keep records of such tests. If requested by the Project Manager, the Contractor shall hand over the results of the tests.

31. Signalling and demarcation of work zones and bypasses

31.1 To ensure the safety of road users, including non-motorized road users and pedestrians, the Contractor is responsible to install and maintain at his cost the adequate signalling and demarcation of work sites, which in addition must comply with the applicable legislation.

- 31.2 If the execution of services and works under the contract is likely to interfere with traffic, the Contractor shall take at his cost the measures necessary to limit such interference to the strict minimum, or any danger to the workers or others. For that purpose, he is entitled to install, within the right-of-way of the road, temporary bypasses, structures or other modifications to be used by traffic during the execution of works and services. The Contractor shall notify the Project Manager.
- 31.3 If the execution of works and services by the Contractor makes it necessary to temporarily close a road section, and a traffic detour has to be implemented over other public roads or streets, the Contractor shall be responsible for the adequate signalling of the detour, under the same conditions as stated in GCC Sub-Clause 31.1.
- 31.4 The Contractor shall inform the local authorities and the local police about such activities to be carried out by him which may cause any significant interruptions or changes to the normal traffic patterns. Such information shall be made in writing and at least seven (7) days before the beginning of such activities. Upon request from the Contractor, the Employer shall assist the Contractor in the coordination with the local authorities and the local police.

D. Allocation of Risks

32. Employer's Risks

- 32.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Employer's risks insofar as they directly affect the execution of the Works and Services included in this Contract:
- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
 - (b) rebellion, revolution, insurrection, military or usurped power, or civil war;
 - (c) ionizing radiations, contamination by radioactivity from any nuclear fuel, or any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 - (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
 - (e) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors and arising from the conduct of the Works and Services;
 - (f) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract;

(g) any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions.

33. Contractor's Risks

33.1 The Employer carries the risks which this Contract states and are Employer's risks, and the remaining risks are the Contractor's risks.

34. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification

34.1 Subject to GCC Sub-Clause 34.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with the execution and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.

34.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor liability under GCC Sub-Clause 34.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at his own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on his own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

34.3 The Employer shall indemnify and hold harmless the Contractor and his employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 35, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.

34.4 The party entitled to the benefit of an indemnity under this GCC Clause 34 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such

measures, the other party's liabilities shall be correspondingly reduced.

35. Insurance

35.1 To the extent specified in the SCC, the Contractor shall at his expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said SCC. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

(a) Loss of or damage to the Plant and Materials

Covering loss or damage occurring prior to Completion.

(b) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property occurring in connection with the supply and installation of the Facilities.

(c) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or his Subcontractors (whether or not owned by them) in connection with the execution of the Contract.

(d) Workers' Compensation

In accordance with the statutory requirements applicable in Odisha where the Contract or any part thereof is executed.

(e) Employer's Liability

In accordance with the statutory requirements applicable in Odisha where the Contract or any part thereof is executed.

(g) Other Insurances

Such other insurances as may be specifically agreed upon by the parties.

35.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 35.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 35.1 except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

35.3 The Contractor shall deliver to the Employer certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall

provide that no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.

- 35.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.
- 35.5 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 35.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor.
- 35.6 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 35, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

**36. Unforeseen
Conditions**

- 36.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Road (including any data and tests) provided by the Employer, and on the basis of information that he could have obtained from a visual inspection of the Site or other data readily available to him relating to the Road, and if the Contractor determines that he will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform his obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant and Equipment or Contractor's Equipment, notify the Project Manager in writing of
- (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;
 - (b) the additional work and/or Plant and Equipment and/or Contractor's Equipment required, including the steps which the

Contractor will or proposes to take to overcome such conditions or obstructions;

- (c) the extent of the anticipated delay;
- (d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GCC Sub-Clause 36.1, the Project Manager decides upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

- 36.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 36.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.
- 36.3 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 36.1, the Time for Completion shall be extended in accordance with GCC Clause 64.

37. Change in Laws and Regulations

- 37.1 If, after the date twenty-eight (28) days prior to the date of Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the SCC.

38. Force Majeure

- 38.1 **“Force Majeure”** shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, insofar as they directly affect the execution of the Services and Works included in this Contract and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:
 - (a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war;
 - (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts;

- (c) confiscation, nationalization, mobilization, commandeering, requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;
 - (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague;
 - (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster;
 - (f) shortage of labour, materials or utilities where caused by circumstances that are themselves Force Majeure.
- 38.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.
- 38.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 64.
- 38.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon his or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Sub-Clause 38.6.
- 38.5 No delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall
- (a) constitute a default or breach of the Contract;
 - (b) give rise to any claim for damages or additional cost or expense occasioned thereby;
- if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.
- 38.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under GCC Clause 59.

- 38.7 In the event of termination pursuant to GCC Sub-Clause 38.6, the rights and obligations of the Employer and the Contractor shall be as specified in GCC Sub-Clauses 59.1.2 and 59.1.3.
- 38.8 Notwithstanding GCC Sub-Clause 38.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

E. Guarantees and Liabilities

39. Completion Time Guarantee and Liability

- 39.1 The Contractor guarantees that it shall attain Completion of the Works and Services (or a part for which a separate time for completion is specified in the SCC) within the Time for Completion specified in the SCC pursuant to GCC Sub-Clause 10.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 64 hereof.
- 39.2 If the Contractor fails to attain Completion of the Works and Services or any part thereof within the Time for Completion or any extension thereof under GCC Clause 64, the Contractor shall pay to the Employer liquidated damages, or shall receive reduced payments, for such default and not as a penalty (which sum shall be the only monies due from the Contractor for such default) for every day or part of the day which shall elapse between the relevant Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Works and Services or the relevant Section, in accordance with the SCC. The aggregate amount of such liquidated damages and payment reductions shall in no event exceed the “aggregate liability” in accordance with GCC Clause 42. Once the “aggregate liability” is reached, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 59.2. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works and Services, or from any other of his obligations and liabilities under the Contract.

40. Performance Guarantee and Liability

- 40.1 The Contractor guarantees that during the Performance Test and Inspections, the Road and all parts thereof shall attain the Performance Standards specified in the corresponding Technical Specifications, subject to and upon the conditions therein specified.
- 40.2 If, for reasons attributable to the Contractor, the minimum level of the Performance Standards specified in the corresponding Technical Specifications are not met either in whole or in part, the Contractor shall at his cost and expense make such changes, modifications and/or additions to the Road or any part thereof as may be necessary to meet at least the minimum level of such Standards. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Test until the minimum level of the Standards has been met. If the Contractor

eventually fails to meet the minimum level of Performance Standard, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 59.2.2.

- 40.3 If, for reasons attributable to the Contractor, the Performance Standards relating to Rehabilitation and Improvement Works specified in the corresponding Technical Specifications are not attained either in whole or in part, the Contractor shall, at the Contractor's choice, either:
- (a) make such changes, modifications and/or additions to the Works and Services or any part thereof that are necessary to attain the Performance Standards at his cost and expense, and shall request the Employer to repeat the Test, or
 - (b) pay liquidated damages to the Employer in respect of the Works and Services which fail to meet the Performance Standards in accordance with the provisions in the corresponding Technical Specifications.
- 40.4 The payment of liquidated damages under GCC Sub-Clause 40.3, up to the limitation of liability specified in the SCC, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 40.1, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

**41. Defect
Liability
Period**

- 41.1 The Contractor warrants that the Works and Services or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Works and Services executed.
- 41.2 The Defect Liability Period shall be eighteen (18) months from the date of Completion of the Contract (or any part thereof), unless specified otherwise in the SCC.
- If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Works and Services executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at his cost, repair, replace or otherwise make good (as the Contractor shall, at its discretion, determine) such defect as well as any damage to the Road caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Road arising out of or resulting from improper operation or maintenance of the Road by the Employer after taking over.
- 41.3 The Contractor's obligations under this GCC Clause 41 shall not apply to

- (a) any materials that are supplied by the Employer, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;
- (b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein;
- (c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Sub-Clause 41.6.

41.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.

41.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 41.

The Contractor may remove from the Site any Plant and Equipment or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

41.6 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Road caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.

41.7 If the Road or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Road or such part, as the case may be, shall be extended by a period equal to the period during which the Road or such part cannot be used because of any of the aforesaid reasons.

41.8 Except as provided in GCC Clauses 40 and 41, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Road or any part thereof, the Plant and Equipment, design or engineering or work executed that appear after Completion of the Works and Services, except where such defects are the result of the gross negligence, fraud, criminal or willful action of the Contractor.

42. Limitation of Liability

- 42.1 Except in cases of criminal negligence or willful misconduct,
- (a) the Contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits

or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and

- (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total amount specified in the SCC, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

43. Liability for Damages through Traffic Accidents and Traffic Interruptions

43.1 The Contractor cannot be held liable for damages of any kind arising out of traffic accidents on the roads included in the Contract, unless those traffic accidents have been caused directly by potholes or other defects of the Road covered by the Contract which the Contractor failed to repair in a timely manner, criminal acts, willful misconduct or gross negligence of the Contractor.

43.2 Under no circumstances can the Contractor be held liable for damages of any kind and to anyone arising out of interruptions of traffic or traffic delays on the road included in the Contract, including any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs.

F. Payment

44. Contract Price

44.1 The Contract Price shall be as specified in the Form of Contract Agreement to be paid in Indian Rupees.

44.2 Unless indicated otherwise in the SCC, and except in the event of a change as provided for in the Contract, the Contract Price shall be:

- (a) For Initial Rehabilitation Works, a firm lump sum not subject to any alteration;
- (b) For Maintenance Services, a firm lump sum to be paid in monthly instalments;
- (c) For Improvement Works, unit prices, using the prices included in the Bill of Quantities;
- (d) For Emergency Works, unit prices, using the prices included in the Bill of Quantities.

44.3 The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

45. Advance Payment

45.1 The Employer shall make advance payment to the Contractor of the amounts and by the date stated in the SCC, against provision by the Contractor of a Bank Guarantee in a form issued by a nationalized bank in amount equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the

amounts repaid by the Contractor. Interest will not be charged on the advance payment.

- 45.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for the execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
- 45.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works and Services on a payment basis as indicated in the SCC.

**46. Bill of
Quantities**

- 46.1 The Bill of Quantities shall contain items for Groups of Activities which include the provision of Services (measured by performance standards) and Works (measured by unit of outputs or of products). The Bill of Quantities for Works shall include, where applicable, the lump-sum and unit price for Initial Rehabilitation Works, and unit rates for Improvement Works and for Emergency Works.
- 46.2 Maintenance Services shall be measured and billed separately and will be remunerated by lump-sum amount for the period of the contract paid in fixed monthly payments during the entire Contract period. The values for remuneration of the Maintenance Services are those stated in the Bill of Quantities.
- 46.3 Initial Rehabilitation Works will be remunerated by Lump-Sum amount for the period of the contract, however, indicating the quantities of measurable outputs to be executed in order that the Road achieves the performance standards specified in the bidding documents. Payments will be made in accordance with the execution of those measured outputs paid by executed works output. The prices shall be those stated in the Bill of Quantities.
- 46.4 Improvement Works will be remunerated after acceptance by the Employer and shall be paid according to the product unit price using the prices included in the Bill of Quantities.
- 46.5 Each Emergency Work Order issued by the Project Manager will include a lump-sum price for the works to be performed. The Lump-Sum price for the Emergency Works will be submitted by the Contractor to the Project Manager in each emergency pursuant to GCC Clauses 29 and 61 and will be prepared based on the Technical Specifications and on the unit prices included in the Bill of Quantities for Emergency Works, and will remunerate all Emergency Activities. The prices include compliance with all Performance Indices described in the Technical Specifications. Once approved, Emergency Works will be paid as lump sum in accordance with the schedule of payment proposed by the Contractor for the specific Emergency and approved by the Employer.

46.6 The Bill of Quantities is used to calculate the Contract Price. The amounts for Maintenance Services and Initial Rehabilitation Works are the Lump-Sum prices offered in the Contractor's Bid. The Improvement Works amount included in the Contract is an estimate on the basis of the unit prices included in the Contractor's Bid. The Provisional Sum included in the Contract Price is an estimate for use when authorized by the Employer for Emergency Works and Contingencies.

47. Measurement

47.1 Maintenance Services will not be measured in volume; however its payment will be affected by compliance with the Performance Standards pursuant to GCC Clause 24. Maintenance Services shall be billed in fixed monthly amounts as per the Bill of Quantities Lump-Sum amount for Maintenance Services. Payments will be made with Reduction if the Performance Standards are not achieved, as defined in the Technical Specifications. The Reductions for non-compliance with the Performance Standards will be applied on a daily basis for the period under which the Road does not achieve the Performance Standards, in accordance with the methodology specified in the Technical Specifications.

47.2 Initial Rehabilitation Works will be measured on the basis indicated in the SCC, either per kilometer or per product actually concluded by the Contractor and approved by the Project Manager. The prices shall be those stated in the Bill of Quantities.

47.3 Improvement Works will be measured on the basis indicated in the SCC and in accordance with the unit of measurement used for product unit price included in the Bill of Quantities. The prices shall be those stated in the Bill of Quantities.

47.4 Emergency Works will not be measured and shall be billed in accordance with the Schedule of Payments agreed for each specific Emergency Work as approved by the Employer.

**48. Price
Adjustments**

48.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the SCC. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted

**49. Monthly
Statements
and
Payments**

49.1 The Contractor shall submit to the Project Manager monthly statements in the format indicated in the Technical Specifications of the estimated value of Maintenance Services, Initial Rehabilitation Works, Improvement Works, and Emergency Works in separated items covering the Works and Services for the corresponding month.

49.2 The Project Manager shall check the Contractor's monthly statement and certify within fourteen (14) days the amount to be paid to the Contractor.

49.3 The value of Services executed shall be certified by the Project Manager taking into account the monthly amount included in the Bill of Quantities for Maintenance Services and the achievement of

the Performance Standards for the Maintenance Services adjusted for any penalty in accordance with GCC Sub-Clause 47.1.

49.4 The value of Works executed shall be certified by the Project Manager taking into account the value of the quantities of products executed and the prices in the Bill of Quantities.

49.5 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

50. Payments

50.1 Payments shall be adjusted for deductions for advance payments, retention, and reduction for not achieving Performance Standards for Maintenance Services. The Employer shall pay the Contractor the amounts certified by the Project Manager in accordance with GCC Clause 49, within twenty-eight (28) days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing.

50.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute. The interest rate shall be determined as per Sub-Clause 50.1.

50.3 Items of the Works for which no rate or price has been entered in the Bill of Quantities will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

51. Retention and Reductions

51.1 The Employer shall retain the percentage indicated in the SCC from each payment due to the Contractor for Initial Rehabilitation Works and the Improvement Works. The regular monthly lump-sum payments for performance-based Maintenance Services will not be subject to retentions, unless indicated in the SCC.

51.2 On completion of the Works, half the total amount retained shall be repaid to the Contractor and the other half after twelve (12) months have passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor have been corrected before the end of this period.

51.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” Bank guarantee.

51.4 Reduction of monthly payments for Maintenance Services due to non-compliance with the Service Quality Levels will be made as indicated in GCC Sub-Clause 47.1. The amount of Reduction for the days in which the Road was not complying with the Performance Standards will not be paid, even after the Contractor re-establishes the quality levels to the standards.

52. Taxes and Duties

52.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Works and Services in and outside of the country where the Site is located.

52.2 For the purpose of the Contract, it is agreed that the Contract Price specified in the Form of Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of bid submission in the country where the Site is located (hereinafter called "Tax" in this GCC Sub-Clause 52.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 37 hereof.

53. Securities

53.1 Issuance of Securities

The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner and form specified below.

53.2 Advance Payment Security

53.2.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the corresponding SCC to the Contract Agreement.

53.2.2 The security shall be in the form provided in the bidding documents or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.

53.3 Performance Security

53.3.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security for the due performance of the Contract in the amount specified in the SCC which shall be valid until a date 28 days pursuant to the date of expiry of Defects Liability Period.

53.3.2 The security shall be denominated in the currency of the Contract, and shall be in one of the forms of guarantees provided in the bidding documents, as stipulated by the Employer in the SCC, or in another form acceptable to the Employer.

53.3.3 The security shall automatically be reduced by half on the date of the Completion of the Works and shall become null and void, 28 days after the satisfactory completion of Defects Liability Period provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Sub-Clause 41.7 hereof, the Contractor shall extend the Performance Security in line with the extended Defects Liability Period. The Performance Security shall be returned to the Contractor on satisfactory completion of Defects Liability Period or extended Defects Liability Period as the case may be.

54. Certificate of Completion 54.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Initial Rehabilitation Works, Improvement Works and Emergency Works, or parts thereof, as applicable, and the Project Manager will do so upon deciding that the work is completed.

55. Final Statement 55.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period i.e. Final Statement. The Project Manager shall issue a Defects Correction Certificate and certify any final payment that is due to the Contractor i.e. Final Payment Certificate within fifty-six (56) days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within fifty-six (56) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

56. Discharge 56.1 Upon submission of the final statement, the Contractor shall give to the Project Manager, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the final payment certificate issued pursuant to Sub-Clause 55 has been made and the performance security referred to in Sub-Clause 53.3, if any, has been returned to the Contractor.

57. As Built Drawings and Manuals 57.1 If "as built" Drawings and/or manuals are required, the Contractor shall supply them by the dates stated in the SCC.

57.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the SCC, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the SCC from payments due to the Contractor.

G. Remedies

58. Suspension

58.1 The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Facilities) until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Sub-Clause 63.1, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension as termination of the Contract under GCC Sub-Clause 59.1.

58.2 If

(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Contract, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 50.1, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of

the Contractor's notice; or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site, or failure to obtain any governmental permit under the Employer's responsibility and necessary for the execution and/or completion of the Works and Services,

then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

58.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 58, then the Time for Completion shall be extended in accordance with GCC Sub-Clause 64, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

58.4 During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment or any Contractor's Equipment, without the prior written consent of the Employer.

59. Termination

59.1 Termination for Employer's Convenience

59.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GCC Sub-Clause 59.1.

59.1.2 Upon receipt of the notice of termination under GCC Sub-Clause 59.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Works and Services already executed, or any work required to leave the Site in a clean and safe condition,
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below,
- (c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition.
- (d) In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 59.1.3, shall
 - (i) deliver to the Employer the parts of the Works

executed by the Contractor up to the date of termination,

- (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Works and Services and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors
- (iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

59.1.3 In the event of termination of the Contract under GCC Sub-Clause 59.1.1, the Employer shall pay to the Contractor the following amounts:

- (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination,
- (b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel,
- (c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges,
- (d) the costs incurred by the Contractor in protecting and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 59.1.2,
- (e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

59.2 Termination for Contractor's Default

59.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GCC Sub-Clause 59.2:

- (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of

amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt;

- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 13;
- (c) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this Sub-Clause:

“corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

59.2.2 If the Contractor

- (a) has abandoned or repudiated the Contract
- (b) has without valid reason failed to commence work on the Road promptly or has suspended (other than pursuant to GCC Sub-Clause 58.2) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed,
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause,
- (d) refuses or is unable to provide sufficient materials, services or labour to execute and complete the Works and Services in the manner specified in the program furnished under GCC Clause 17 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Time for Completion as extended,
- (e) fails to meet the minimum level of Performance Standard, then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to

remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC Sub-Clause 59.2.

59.2.3 Upon receipt of the notice of termination under GCC Sub-Clauses 59.2.1 or 59.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below,
- (c) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination,
- (d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Works and Services and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors,
- (e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Works and Services.

59.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Works and Services itself or by employing any third party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Works and Services for such reasonable period as the Employer considers expedient for the completion of the Works and Services.

Upon completion or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay

and at its cost remove or arrange removal of the same from the Site.

59.2.5 Subject to GCC Sub-Clause 59.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Works and Services executed as of the date of termination, the value of any unused or partially used Plant and Equipment on the Site, and the costs, if any, incurred in protecting and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 59.2.3. Any sums due the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

59.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GCC Sub-Clause 59.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under GCC Sub-Clause 59.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GCC Sub-Clause 59.2.5, the Employer shall pay the balance to the Contractor.

The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

59.3 Termination by Contractor

59.3.1 If

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to GCC Clause 50, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 50.2, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within

fourteen (14) days after receipt of the Contractor's notice, or

- (b) the Contractor is unable to carry out any of his obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit under the Employer's responsibility and necessary for the execution and/or completion of the Facilities,

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Sub-Clause 59.3.1, forthwith terminate the Contract.

59.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC Sub-Clause 59.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a company, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

59.3.3 If the Contract is terminated under GCC Sub-Clauses 59.3.1 or 59.3.2, then the Contractor shall immediately

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Road already executed, or any work required to leave the Site in a clean and safe condition,
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii),
- (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site.
- (d) In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 59.3.4, shall
 - (i) deliver to the Employer the parts of the Road executed by the Contractor up to the date of termination,

- (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Road and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and his Subcontractors,
- (iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or his Subcontractors as of the date of termination in connection with the Facilities.

59.3.4 If the Contract is terminated under GCC Sub-Clauses 59.3.1 or 59.3.2, the Employer shall pay to the Contractor all payments specified in GCC Sub-Clause 59.1.3 and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

59.3.5 Termination by the Contractor pursuant to this GCC Sub-Clause 59.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 59.3.

59.4 In this GCC Clause 59, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Contract.

H. Provisional Sum

- | | |
|---|---|
| 60. Provisional Sum | 60.1 “Provisional Sum” means a sum included in the Contract and so designated in the Bill of Quantities for use when authorized by the Employer for Emergency Works and for contingencies, which sum may be used, in whole or in part, or not at all, on the instructions of the Employer. The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Project Manager shall determine in accordance with this Clause. |
| 61. Use of Provisional Sum for Emergency Works | 61.1 After detecting a situation which in the opinion of the Contractor justifies the execution of Emergency Works or otherwise as defined in GCC Clause 29, the Contractor shall submit a Technical Report to the Project Manager characterizing the situation, estimated quantities and expected costs to correct the emergency and a Lump Sum Price Quotation to correct the emergency. The Price Quotation should be based on the specifications stated using the unit prices included in the Bill of Quantities. |

61.2 If the execution of the Emergency Works require any activity not priced in the Bill of Quantities, the Contractor will use the price breakdowns included in the Contractor's Bid in order to form the unit prices of the un-priced items to be included in the Price Quotation of the Emergency Works, all in accordance with agreed methodology for approving new prices.

61.3 Upon receiving the request for Emergency Works including a Price Quotation, the Project Manager may issue a Work Order in accordance with GCC Sub-Clause 29.2 for execution of the Emergency Works for a Lump-Sum amount with a payment Schedule agreed with the Contractor. The cost of these Works will be covered by the amounts included in the Provisional Sum.

**62. Use of
Provisional
Sum for
Contingencies**

62.1 The use of the Provisional Sum to cover for Contingencies will be done under the control and initiative of the Project Manager in accordance with the conditions of the Contract.

I. Change in Contract Elements

**63. Change in
Assignments
to Contractor**

63.1 Introducing a Change

63.1.1 If so indicated in the SCC, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Assignments to the Contractor (hereinafter called "Change"), provided that such Change falls within the general scope of the Assignment and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Works and Services and the technical compatibility of the Change envisaged with the nature of the Works and Services as specified in the Contract.

63.1.2 If so indicated in the SCC, the Contractor may from time to time during its performance of the Contract propose to the Employer (with a copy to the Project Manager) any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Works and Services. The Employer may at its discretion approve or reject any Change proposed by the Contractor. The Employer shall however approve any Change proposed by the Contractor in order to ensure the safety of the Works and Services.

63.1.3 Notwithstanding GCC Sub-Clauses 63.1.1 and 63.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the

Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

63.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 63.2 and 63.3.

63.2 Changes Originating from Employer

63.2.1 If the Employer proposes a Change pursuant to GCC Sub-Clause 63.1.1, it shall send to the Contractor a “Request for Change Proposal,” requiring the Contractor to prepare and furnish to the Project Manager, as soon as reasonably practicable, a “Change Proposal,” which shall include the following:

- (a) brief description of the Change
- (b) effect on the Time for Completion
- (c) estimated cost of the Change
- (d) effect on Functional Guarantees (if any)
- (e) effect on any other provisions of the Contract

63.2.2 Prior to preparing and submitting the “Change Proposal,” the Contractor shall submit to the Project Manager an “Estimate for Change Proposal,” which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor’s Estimate for Change Proposal, the Employer shall do one of the following:

- (a) accept the Contractor’s estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal,
- (b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate,
- (c) advise the Contractor that the Employer does not intend to proceed with the Change.

63.2.3 Upon receipt of the Employer’s instruction to proceed under GCC Sub-Clause 63.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Sub-Clause 63.2.1.

63.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

63.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith, and with all other Change Orders that have

already become binding upon the Contractor under this GCC Clause 63, would be to increase or decrease the Contract Price as originally set forth in the Contract Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

63.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Employer is unable to reach a decision within fourteen (14) days, he shall notify the Contractor with details of when the Contractor can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC Sub-Clause 63.2.2.

63.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a "Pending Agreement Change Order", the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Arbitration in accordance with the provisions of GCC Sub-Clause 6.1.

63.3 Changes Originating from Contractor

63.3.1 If the Contractor proposes a Change pursuant to GCC Sub-Clause 63.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Sub-Clause 63.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Sub-Clauses 63.2.6 and 63.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

64. Extension of Time for Completion

64.1 The Time(s) for Completion specified in the SCC shall be extended if the Contractor delayed or impeded in the performance of any of his obligations under the Contract by reason of any of the following:

- (a) any Change in the Works and Services as provided in GCC Clause 63,
- (b) any occurrence of Force Majeure as provided in GCC Clause 38 and unforeseen conditions as provided in GCC Clause 36,
- (c) any suspension order given by the Employer under GCC Clause 58,
- (d) any changes in laws and regulations as provided in GCC Clause 37, or
- (e) any default or breach of the Contract by the Employer, or any activity, act or omission of any other contractors employed by the Employer, or
- (f) any other matter specifically mentioned in the Contract

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

64.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to Arbitration, pursuant to GCC Sub-Clause 6.1.

64.3 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

65. Release from Performance

65.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

SPECIAL CONDITIONS OF CONTRACT (SCC)

Reference to GCC clauses

[1.]	The site is the area (insert description of site location)
[3.]	The following documents are also part of the Contract: (list the documents, if any, which are not already mentioned in GCC Clause 3.)
[4.]	The language of the Contract and the law governing the Contract is (insert language).
[5.]	The address of the Employer is: (insert exact street address, including telephone and fax numbers, and E-Mail address). The address of the Contractor is: (insert exact street address, including telephone and fax numbers, and E-Mail address).
[6.1.2]	The Appointing Authority is: (insert)
[6.2.3]	Arbitration Proceedings shall be conducted in accordance with the following rules of procedure: (insert which set of rules is to be used)
[8.4.1]	The Contractor is obliged to prepare and to furnish to the Project Manager for Approval the following documents: (list documents) Note: The documents to be furnished and needing approval by the Project Manager will normally be related to Improvement Works and in some cases to Initial Rehabilitation Works.
[10.1]	The Contractor shall commence the Services and Works within the following period: (insert specific date or event)
[10.2]	The Time Schedule for the achievement of specific Service Quality Levels is: (insert date or indicate in which section or annex of the Contract the Time Schedule is presented)
[12.1]	The Contractor is specifically allowed to sub-contract the following activities: [list specific major activities or works required under the contract]

[12.2]	<p>The Contractor may subcontract under his own responsibility and without prior approval of the Employer the following Works and Services provided they do not represent more than (insert number) percentage of the contract value: [list the generic description of Works and Services allowed to be subcontracted]</p> <p>Note: Under normal circumstances, the Contractor should be allowed to sub-contract without prior approval of the Employer all the small works related to normal and recurrent maintenance services. However, the Contractor should normally not be allowed to subcontract the management and self-control activities.</p>
[14.2]	<p>The Employer shall give full possession of and access to the Site on (insert date here)</p>
[21.]	<p>The Contractor shall carry out the following Initial Rehabilitation Works, which are detailed in the Technical Specifications: (insert listing of Rehabilitation Works)</p>
[22.]	<p>The Contractor shall carry out the following Improvement Works, which are detailed in the Technical Specifications and Bill of Quantities: (insert listing of Improvement Works)</p>
[25.2]	<p>The Contractor shall establish a Self-Control Quality Unit (insert “not” after “shall” if this Unit is not required)</p>
[35.1]	<p>The Contractor shall take out and maintain in effect the following insurances in the sums and deductibles shown below: (insert list of insurances, including sums and deductibles of each insurance)</p>
[39.1]	<p>The Time for Completion are the following: (insert dates or periods for completion of specific activities required by the contract)</p> <p>Note: Besides the date for completion of the entire contract, there may be specific times for the completion of Improvement or Rehabilitation Works.</p>
[39.2]	<p>For Maintenance Services, the payment reductions are specified in the Technical Specifications.</p> <p>For Initial Rehabilitation Works, the liquidated damages are (insert percentage) per calendar day of delay, of the remuneration normally due for the specific Works for which completion is delayed.</p> <p>For Improvement Works, the liquidated damages are (insert percentage) per calendar day of delay, of the remuneration normally due for the specific Works for which completion is delayed.</p> <p>For Emergency Works, the liquidated damages are (insert percentage) per calendar day of delay, of the remuneration normally due for the specific Works for which completion is delayed.</p>

[42.1]	The aggregate liability of the Contractor to the Employer, excluding payment reductions defined in GCC 47.1, shall not exceed the amount of (insert fixed amount, or percentage of contract amount).
[44.1]	The payment of the Contract Price will be made in Indian Rupees
[45.1]	The amount of the Advance Payment is (insert amount or percentage of Contract Price as specified in the Form of Contract) The Advance payment will be made by (insert date or event)
[45.3]	The Advance payment will be repaid during the (insert number of payments) initial monthly payments at the rate of (insert percentage) percentage of the amount advanced in each monthly payment until the repayment of the total amount.
[47.2]	Initial Rehabilitation Works will be measured on the following basis: (indicate) Note: Rehabilitation Works should normally be measured on the basis of work outputs.
[47.3]	Improvement Works will be measured on the following basis: (indicate) Note: Depending on their nature, Improvement Works may be measured on the basis of work outputs or work inputs.
[51.]	The retention for Rehabilitation and Improvement Works is fixed at (indicate) percent.
[53.2.1]	The amount of the Advance payment security is the same of the advance payment amount.
[53.3.1]	The amount of the Performance Security is (indicate amount or percentage of Contract amount).
[53.3.2]	The form of guarantee is (indicate which of the options applies).
[57.1]	The following Drawings and/or Manuals are required at the following dates: (If applicable, specify type of document and date by which they are to be supplied. If not applicable, state “none”).
[57.2]	If the required documents are not supplied in accordance with SCC 57.1, the amount to be withheld is (state amount).
[63.1.1]	Employer has the right to propose a change in the contract: Yes or No (Indicate if applicable or not by deleting Yes or No as applicable).
[63.1.2]	Contractor’s right to propose a change in the contract: Yes or No (Indicate if applicable or not by deleting Yes or No as applicable).

SCHEDULES

I. TECHNICAL SPECIFICATIONS

Part A: Performance Specifications

Part B: General Specifications for Roadwork

Part C: Specifications for Emergency Works

Part D: Environmental and Social Specifications

Note: The Specifications must cover different areas (performance criteria, general technical aspects, organization, environmental regulations, etc.) and must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards to be complied with. Specifications must be written specially by the Employer to suit the specific conditions of each country and of the roads included in the contract.

II. BILL OF QUANTITIES

III. FORM OF BANK GUARANTEE

Annexure 4.4

OB&CC LIMITED

**NAME OF PROJECT: COLLECTION OF USER FEE THROUGH FEE
COLLECTING AGENCY ON THE BASIS OF COMPETITIVE BIDDING
THROUGH ON E-TENDER BASIS**

Disclaimer

The information contained in this Request for Proposal document (the “**RFP**”) or subsequently provided to Bidder(s), whether verbally or in documentary or in any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested bidders with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Stage.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Contractor, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required

by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

1. INTRODUCTION

1.1 Background

- 1.1.1 The OB&CC LIMITED (the “**Authority**”) is engaged in development, maintenance and management of State Highways and as part of this endeavor, the Authority has decided to collect the User Fee through an agency (the “**Contractor**”) in respect of the section of SH No xx from Km xxx.xxx to km xxx.xxx (x - x) and has decided to invite the Financial Bids from **the bidders** on e-tender basis for selection of the agency to whom the work of User Fee Collection (the “**Project**”) may be awarded. Brief particulars of the Project are as follows:

S. No	Description of the Project	Annual Potential Collection	Period of Collection
(1)	(2)	(3)	(5)
	XX TOLL PLAZA AT KM xxx.xxx, FOR THE SECTION FROM KM xxx.xxx TO KM xxx.xxx OF STATE HIGHWAYS NO. xx (x – x SECTION)	Rs. xx.xx Crore (Rupees xx Crore only)	Contract shall be for a period of X (x) year or until the toll plaza is handed over to other user fee collection agency (OMT Concessionaire/ BOT Concessionaire, etc.) as per directions issued by OB&CC LIMITED, whichever is earlier.

- 1.1.2 Collection of User Fee shall be at the location mentioned above only. The Bidders are advised to note this condition before bidding.
- 1.1.3 Annual Potential Collection (the “**APC**”) has been indicated in Clause 1.1.1 above. The assessment of actual quantum of user fee collection, however, will have to be made by the Bidders.

Category of vehicle	Proportion in %
Car/Jeep/Van/Light Motor vehicle	
Light commercial vehicle /Light Good vehicle or Mini Bus	
Bus /Truck (Two Axles)	
Three Axle Commercial vehicles	
HCM, EME or MAV (Four to six Axles)	
Oversized vehicles (seven or More Axles)	
Total	100

1.2 Conditions for submitting the Financial Bid:

- (a) The bidders who are in the list of the prequalified bidders hosted on the website of OB&CC LIMITED, as per RFQ dated xx.xx.20xx of OB&CC LIMITED, 7 days prior to the bid due date only are eligible for submitting this financial bid in

electronic form, subject to fulfillment of other conditions. **The bids received from the bidders not appearing in the list of the prequalified bidders hosted on website of OB&CC LIMITED, 7 days prior to the bid due date, shall be summarily rejected.** As the pre-qualification process is open throughout (no last date), the bidder(s) may get themselves pre-qualified and added in the list by submitting their applications. The Authority will endeavor to examine the applications, announce the result and update the list within 14 days from the date of receipt of the application.

- (b) The person/ authorized signatory signing the Financial Bid in electronic form on behalf of the bidder shall be same as the one appearing in the list mentioned at Clause (a) above. In case a different person submits the bid, the bid shall be considered as non-responsive.
 - (c) The financial bid shall be submitted only on e-portal (e-bid) and no document is required to be submitted in physical form. To participate in the e-bid submission, it is mandatory for the bidders to have user identification number & password (collectively referred to as the “**ID and Password**”) which has to be obtained in the bidder’s own name by submitting an annual registration charges (non-refundable) of Rs. xxxx/- payable to OB&CC LIMITED. The registration obtained, as mentioned above, shall be valid for one year from the date of its issuance and shall subsequently be got renewed. The bidders, who have already obtained such valid user ID and Password for any other project, need not obtain fresh user ID and Password for the purpose of participation in the bidding under this RFP. The Registration shall be valid at least upto Bid Due Date. Further, the bidder shall pay the tender processing fee for each financial bid of Rs. xxxx/- (non-refundable) payable OB&CC LIMITED. The Bidders are required to pay registration charges and tender processing fee through e-payment gateway of xxxx Bank using Credit Card/ Debit Card/Master Card/Visa Card and Net Banking. The same has been enabled on e-tender portal <https://xxxx.xxxx.in>. Cash/ Demand Draft will not be accepted for payment of annual registration charges and/ or tender processing fee.
- 1.1.5 The financial bid and the draft contract are available for view and downloading from the e- tender portal of OB&CC LIMITED (<https://xxxx.xxxx.in>.) by the Bidders without any cost. However, the cost of Financial Bid/ RFP @ Rs. xxxx/- per Financial Bid submitted by the bidder, during the validity period of the prequalification (xx.xx.20xx), shall be debited by the Authority to the non-refundable fee deposited by the bidders with the Authority at the time of submission of their application for prequalification, in accordance with the procedure defined in the RFQ.
- 1.1.6 The financial bid can be downloaded from e-tender portal of OB&CC LIMITED <https://xxxx.xxxx.in> from xx.xx.20xx to xx.xx.20xx (11:00 Hrs), i.e., **bid due date**. The amendments/ clarifications to the financial bid/ RFP, if any, will be hosted on the OB&CC LIMITED website/e-portal only.
- 1.1.7 The bidders are advised to upload their bids well in time, to avoid last minute rush on the server or complications in uploading. In case of any problem in submission of the bid, the Bidder may have the assistance of help desk (**E-Mail: <https://xxxx.xxxx.in> ; Fax No: +91-xxx- xxxxxxxx; Ph No: +91-xxx-xxxxxxx**) or use the help manual available on the above website/ e- portal. However, OB&CC LIMITED shall not be responsible for any type of problem(s) encountered by any

bidder including non-submission of the bid or failure to submit/ upload the bid and the bidding process shall not be altered, in any case, on this account. OB&CC LIMITED shall not entertain any complaint in this regard.

- 1.1.8 Online submission of the financial bid after the Bid Due Date and time shall not be permitted. The time being displayed on e-portal of OB&CC LIMITED ("Standard Time") shall be final and binding on the bidder. Financial Bids are required to be submitted by the bidders, only as per the Standard Time and not the time as per their location/country.

1.2 Brief Description of Bidding Process:

- 1.2.1 The bidding process is as given at Clause 1.2 of RFQ dated xx.xx.20xx of OB&CC LIMITED.

- 1.2.2 The financial bid is invited for fee collection on the basis of highest quote offered by the bidder for Annual Remittance. The Annual Remittance quoted shall constitute the sole criteria for evaluation of bids. Subject to Clause 2.4, the work will be awarded to the Bidder quoting the highest Annual Remittance. In this RFP, the term "Highest Bidder" shall mean the Bidder who is offering the highest Annual Remittance.

- 1.2.3 Generally the Highest Bidder shall be the Selected Bidder. The remaining bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder, in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the highest Bidder, the Authority may, in its discretion, either invite fresh bids from the remaining bidders or annul the Bidding Process.

1.3 Schedule of Bidding Process: The following is the schedule:

	Event Description	Date
1.	Bid due date	xx.xx.20xx at 11.00 Hrs.
2.	Opening of bids	xx.xx.20xx at 11.30 Hrs.
3.	Letter of Award (LOA)	Within 30 days of bid due date
4.	Submission of Performance Security by the successful bidder	Within 7 days from date of LOA
5.	Signing of Contract Agreement	Within 3 days from date of submission of Performance Security.
6.	Taking over of toll plaza and start of user fee collection by the Contractor	Within 2 days of signing of Contract Agreement

1.3 Address for Communication:

Designation

OB&CC LIMITED

Address

Tel No. xxxxxxxx Extn xxxx

Fax No. xxxxxxxx Extn xxxx

E mail:

Website:

2. INSTRUCTIONS TO BIDDERS

2.1 General Terms of Bidding

2.1.1 No Bidder shall submit more than one Bid for the project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any other Consortium, as the case may be. In case of violation of this clause, the bid shall be declared non-responsive.

2.1.2 All provisions in RFQ dated xx.xx.20xx of OB&CC LIMITED shall apply *mutatis mutandis* to this RFP. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Contract Agreement shall have overriding effect, provided however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Contract Agreement.

2.1.3 The Bids shall be submitted online in the format prescribed at **Appendix-1**, clearly indicating the bid amount, in both figures and words, in Indian Rupees duly signed in electronic form by the bidder 's authorized signatory [Ref. Clause 1.1.4(b)]. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

2.1.4 The Bid shall consist of Annual Remittance to be quoted by the Bidder payable to the Authority on weekly basis as per terms and conditions of this RFP and provisions of the Contract Agreement.

2.1.5 Any condition or qualification or any other stipulation contained in the bid shall render the bid non-responsive.

2.1.6 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.

2.1.7 The documents including RFQ dated xx.xx.20xx of OB&CC LIMITED and this RFP and all attached documents, provided by the Authority are and shall remain or becomes the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and submission of the Bid in accordance with this RFP. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

2.1.8 This RFP is not transferable.

2.1.9 Any award of work/ contract pursuant to this RFP shall be subject to terms of Bidding Documents (RFQ, RFP & Draft Contract Agreement).

2.2 Eligibility of Bidders: The net worth of the bidder determined as per Clause-2.1.2 of RFQ dated xx.xx.20xx of OB&CC LIMITED shall be more than the net worth of 20% of APC given at Clause-1.1.1 above at the close of the preceding Financial Year and the bidder shall have positive net cash accruals during any two Financial Years out of the last three Financial Years. The financial bids submitted by ineligible bidders shall be declared non-responsive.

2.3 Site Visit and Verification of Information:

- 2.3.1 Bidders are encouraged to submit their respective bids after visiting the section/ toll plaza/ booth and ascertaining for themselves the site conditions, traffic, locations, surroundings, climate, condition/ facilities/ infrastructure available at the toll plaza/ booth including availability of power, applicable laws and regulations and any other matter considered relevant by them.
- 2.3.2 It shall be deemed that by submitting a Bid, the Bidder has:
- (a) Made a complete and careful examination of the Bidding Documents;
 - (b) received all relevant information requested from the Authority;
 - (c) Accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.3.1 above;
 - (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.3.1 above necessary and required for submitting an informed Bid, carrying out of the user fee collection and performance of all its obligations in accordance with the Bidding Documents;
 - (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.3.1 hereinabove shall not be a basis for any claim for compensation, damages, for performance of its obligation, loss of profits etc. from the Authority, or a ground for termination of the Contract Agreement by the Contractor; and
 - (f) agreed to be bound by the undertakings provided by it under and in terms hereof.
- 2.3.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or things arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding process, including an error or mistake therein or in any information or data given by the Authority.

2.4 Rejection of Bids:

- 2.3.4 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any or all Bids and to annul the Bidding Process at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reason therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.3.5 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability or assigning any reason and to reject any or all bids.

2.5 Clarifications and Amendments:

- 2.5.1 At least 14 days before the bid due date, the Bidders may seek clarifications and make suggestions for consideration of the Authority (late clarifications/ suggestions shall not be entertained by the Authority). Any queries or suggestions concerning the RFP shall be submitted in writing by fax or e-mail to the officer designated in Clause 1.4 above. The communication shall clearly bear the following identification/title:
- 2.5.2 “RFP for XXXX Toll Plaza (Bid Due Date xx.xx.20xx) - Queries/Suggestions”
- The Authority shall endeavour to host on the website/ e-portal of OB&CC LIMITED,

the clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

- 2.5.3 At any time prior to the Bid Due Date, the Authority may for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of an Addendum (Addenda) and the same shall be hosted on e-portal.
- 2.5.4 Any Addendum issued hereunder shall be binding on the bidders.
- 2.5.5 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

2.6 Bid Due Date:

- 2.6.1 Bids shall be submitted before 1100 hours (Standard Time) on the Bid Due Date at the address provided in Clause 1.4, in the manner and in the form as detailed in this RFP.
- 2.6.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.5.

2.7 Bid Validity: Bid shall remain valid for a period of 120 (One hundred and twenty) days from and including the last date of submission of the Bid or for such extended period as is mutually agreed upon.

2.8 Late Bids: Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.9 Bid Security: The Bid Security shall be an amount equivalent to 1% of APC given in Clause 1.1.1 above or Rs. xxxxx/- whichever is higher and the provisions of Clause 2.4 of RFQ dated 21.10.2013 of the Authority shall be applicable *mutatis mutandis* to this RFP/ Bid.

2.10 Performance Security

2.10.1 Within 7 (Seven) days from the date of issue of the LOA, the successful Bidder shall furnish to the Authority the Performance Security consisting of

(a) crossed account payee demand draft/pay order, amounting to Rs. _____/- (an amount equal to one (1) month "s agreed remittance) issued by a Scheduled Bank in India, drawn in favour of the Authority and payable at New Delhi. *Besides crossed A/c. Payee DD/ Pay Order, RTGS transfer of amount into OB&CC LIMITED Account [Xx Bank Current A/c. No.; IFSC Code:] will also be accepted towards 50% Performance Security, prescribed in this Clause, subject to confirmation by the remitting banker about transfer of RTGS amount;* and

(b) a Bank Guarantee as per the format prescribed by the Authority from any Nationalized Indian Bank/State Bank of India or its subsidiaries/IDBI/ICICI/Export Import Bank/Foreign Bank with counter guarantee from any Nationalized Indian Bank or State Bank of India or its subsidiaries/any RBI approved Scheduled Commercial Bank having net worth of more than Rs. 500 Crore (Rupees Five Hundred Crores) from its Indian Operations for Rs. ____/- (an amount equal to one (1) *month's agreed remittance*), *valid for a period of 14 (Fourteen) months from the Date of LOA* for due observance of the terms and

conditions contained herein and the performance of its obligations as per the Contract to be entered into for 1 (one) year. The Bidder is at liberty to submit a crossed account payee demand draft/pay order issued by a Scheduled Bank in India in lieu of the Bank Guarantee.

2.10.2 The Performance Security shall be forfeited and appropriated by the Authority as mutually agreed genuine pre-estimated compensation and as damages payable to the Authority for inter-alia, time, cost and effort of the Authority, without prejudice to any other right or remedy that may be available to the Authority hereunder, or otherwise, under the following circumstances :

- (a) if the successful Bidder fails to sign the Contract;
- (b) in case the Selected Bidder having signed the Contract Agreement commits any breach thereof.

2.11 Assessment of User Fee Revenue and Restriction on Place of Collection of User Fee:

- (i) The Bidder is advised to visit the User Fee Collection section, plaza(s) and/or booth(s), make an assessment of the User Fee Revenue based on its own estimation at its own responsibility and expense and may obtain any other information from its own sources that may be required by the Bidder for preparing the Bid and entering into the Contract for collection of User Fee. The Authority does not guarantee extent of User Fee Revenue during the contract period.
- (ii) The Bidder recognizes the fact that there are number of lateral entries to the section of the National Highway for which User Fee is to be collected. The Successful Bidder shall not be entitled to (a) close and/or (b) demand closure by any authority whatsoever, of any such entry. Thus, the Bidder recognizes that all tollable traffic may not pass through the User Fee Collection booth or plaza.
- (iii) During the contract period, the successful Bidder shall not ask for collection from any other place, for whatever reason. Under all circumstances, User Fee Collection shall be only from the place specifically provided in the RFP.

2.12 Handing over of Toll Plaza/ Booth: The Authority will hand over the Toll Plaza/ Booth to the Contractor in the condition as existing on 7 days prior to Bid Due Date on „as is where basis“ is. The Contractor shall carry out upgradation/provide necessary facilities as required, to discharge his duties.

2.13 User Fee Rates: User Fee Rates applicable and chargeable on different categories of vehicles are given in Schedule-I to the Contract.

2.14 Remittance of Agreed Amount: The User Fee shall be collected by the Successful Bidder and the agreed amount [refer Para H of preamble & clause 5 of the contract] shall be remitted to the Authority on weekly basis, latest by Tuesday of every week by way of demand draft/pay order/RTGS, drawn in favour of the National Highway Authority of India, payable at **XXXX PIU**.

2.15 Cost of Bidding: The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority shall not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

3. EVALUATION OF BIDS

3.1 Opening and Evaluation of Bids:

3.1.1 Opening and evaluation of Bids will be done through online process. The Authority shall open online received bids at 11:30 hrs. on the Bid Due Date, in the presence of Bidders who chose to attend. The Authority will examine and evaluate the Bids in accordance with the provisions set out in this Section-3.

3.1.2 To facilitate evaluation of bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.1.3 Correction of Errors:

Bids determined to be substantially responsive will be checked and corrected by the Authority for any discrepancy as follows:

“Where there is any discrepancy between the amounts in figures and in words, the amount in words shall prevail.”

The amount stated in the Bid shall be adjusted by the Authority in accordance with the above procedure for the correction of errors and shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected and the Bid Security will be forfeited.

3.2 Tests of Responsiveness: Prior to opening of financial quotes in various bids, the Authority shall determine whether each Bid is responsive to the requirements of this RFP [Ref. Clause 1.1.4(a)&(b); 2.1.1; 2.1.5; and 2.2]. The financial quotes of the responsive bids shall only be opened by the Authority.

3.3 Selection of Bidder:

3.3.1 Subject to the provisions of Clause 2.4, the Bidder who offers the highest Annual Remittance offered to the Authority shall be declared as the Selected Bidder (the “**Selected Bidder**”). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

3.3.2 In the event that two or more Bidders quote the same amount of Annual Remittance, (the “**Tie Bidders**”), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

3.3.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “**first round of bidding**”), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.

3.3.4 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.3.3, the Authority may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid

Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.

- 3.3.5 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA.
- 3.3.6 After acknowledgement of the LOA as aforesaid and submission of Performance Security by the Selected Bidder, it shall cause the Contractor to execute the Contract Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Contract Agreement.

3.4 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on the matters related to the Bids under consideration.

3.5 Period of Contract for User Fee Collection Rights:

- 3.5.1 The Contract for User Fee Collection rights will normally be for 1 (one) year. However, in case of certain stretches going for BOT/OMT Projects, the Authority reserves the right to reduce the period of Contract without any compensation and in such cases of early termination of contract, the total amount payable by the Contractor to the Authority will be proportionately modified depending upon the period.
- 3.5.2 The Authority reserves the right to increase the contract period **upto six more months**.
- 3.5.3 In case of BOT (Annuity) stretches the initial period of tolling contract shall also be xx year with same remittance (except the increase/ decrease in remittance due to revision in user fee rates by the Authority).

3.6 Signing of Contract; Taking over of Toll Plaza & Starting of user fee collection:

After submission of the Performance Security, the successful bidder shall be required to sign the contract in the form of contract prescribed herein (**Appendix-2**) within 3 (Three) days from the date of submission of the Performance Security and after signing the contract, the successful bidder shall be required to take over the toll plaza and start the user fee collection within 2(Two) days of date of signing the Contract or within the date as may be prescribed by the Authority in LOA. Within 28 days of the date of signing of contract or within such period as provided in the applicable law, whichever is shorter, the successful Bidder shall, if required, have the same engrossed, have the correct Stamp Duty adjudicated by the Inspector General of

Registrations, New Delhi and return the same duly signed and executed to the Authority, as per the terms of Contract, unless exempted by any law for the time in force. Successful Bidder "s failure to sign the Contract, take over the toll plaza and start user fee collection within the period stipulated above shall result in forfeiture of the Performance Security.

4. FRAUD AND CORRUPT PRACTICES

The provisions as per Clause 3 of RFQ dated xx.xx.20xx of the Authority shall be applicable *mutatis mutandis* for this RFP/ Bid.

5. MISCELLANEOUS

The provisions as per Clause 4 of RFQ dated xx.xx.20xx of the Authority shall be applicable *mutatis mutandis* for this RFP/ Bid.

6. INTEGRITY PACT

The provisions as per Clause 5 of RFQ dated xx.xx.20xx of the Authority shall be applicable *mutatis mutandis* for this RFP/ Bid.

Appendix-1

Format of Financial Bid (Ref.Clause 2.1.3)

OB&CC LIMITED

RFP No.:

Name of Project	COLLECTION OF USER FEE THROUGH FEE COLLECTING AGENCY ON THE BASIS OF COMPETITIVE BIDDING THROUGH ON E-TENDER BASIS ONLY AT XX TOLL PLAZA AT KM xxx.xxx, FOR THE SECTION FROM KM xxx.xxx TO KM xxx.xxx OF STATE HIGHWAYS NO. (x – x SECTION)		
FINANCIAL BID			
Having examined the bidding documents and understood its contents, I/We offer to pay the Authority, the following sums as and by way of our offer as your Contractor for collection of User Fee on the said Section of State Highway or the said bridge, as the case may be, during the said period. This offer/ bid is unconditional and unqualified.			
Name of the Firm			
S.No	Period	Total Amount payable by the Bidder to the Authority for the period mentioned in Column-B	
A	B	C	D
1	xx Year	Rs...../*	(Rs. in words)*
<p>*The amount will change with the change in rates as per Clause-5 of the Contract.</p> <p>For calculating the weekly amount, the amount quoted for one year shall be divided by the number of days in a year (365 or 366 as the case may be) and multiplied by 7.</p> <p>The week shall be counted from Monday to Sunday. In case the number of days in first and last week happens to be less than 7, then the bidder will deposit the amount proportionately.</p> <p>For calculating the monthly amount, the amount quoted for one year shall be divided by 12.</p> <p>The amount quoted above shall be exclusive of the TCS. Any tax and service charges, as applicable, shall be borne by the bidder over and above the quoted amount.</p>			

Note: The person/ authorized signatory signing the above Financial Bid in electronic form on behalf of the bidder shall be same as the one appearing in the list of prequalified bidders hosted on website of OB&CC LIMITED. In case a different person signs the bid, the bid shall be declared non-responsive.

FORM OF CONTRACT

Preamble:-

- (A) This Contract is made at....., on this the _____ day of _____ 2014 by and between the OB&CC LIMITED, a Statutory body, established under the, having its Office at hereinafter referred to as “**the Authority**” (which expression shall, unless excluded by or repugnant to the context thereof, be deemed to mean and include its successors in office and administrators) of the **ONE PART**, represented by it (to be authorized) General Manager (CO) / Project Implementation Unit/Corridor Management Unit having its office at.....

AND

- (a)* M/s _____, a Company incorporated under the Indian Companies Act,

1956 having its Registered Office at _____ Incorporation Certificate No. _____ dt. (mention full address) and

Or

- (b)* M/s __, a Partnership firm, **registered** under the Indian Partnership Act, 1932 carrying on its business under the name and style as hereinbefore mentioned and having its principal office at ___Registration No. ___dt. __. (**mention full address**) **and** having

Or

- (c)* M/s __, a Partnership **firm**, registered under the Limited Liability Partnership Act, 2008 carrying on its business under the name and style as

Herein before mentioned and having its principal office at .

(mention full address) and having Registration No. ___dt. __.

Or

- (d)* M/s _____, a Co-operative Society registered under Co-operative Society Registration Act (of any State in India)/Multi State Cooperative Societies Act, 2002 (39 of 2002) / Ex-servicemen Society/ Mutually Aided Cooperative Society registered under Cooperative Societies Act (of any state in India) under, _____ (**mention the name of the State**) Cooperative Society Act having its Registered Office at _____
_____**(mention full address)** and having registration No. _____dt. ____.

Or

- (e) M/s -----, a proprietary firm carrying on its business under the name and style as hereinbefore mentioned and having its principal office at

_____**(mention full address)** and having Registration No. _dt. ____.

Or

- (f) -----(individual) having its **permanent** address ----- (mention full address) and place of business ----- (mention full address)

Hereinafter referred to as “**the Contractor**” (which expression shall, unless excluded by or repugnant to the context hereof, be deemed to mean and include its successors, administrators and permitted assigns) of the **SECOND PART**.

()* **Strike out, whichever is not applicable**

- (B) **WHEREAS** the Contractor is Authorised by its ****Memorandum of Association/ **Partnership Deed/ **Bye-laws** to carry on the business of providing various services on contract basis through its employees employed regularly or otherwise.

**** Strike out, whichever is not applicable.**

- (C) # **AND WHEREAS** the Contractor has its own separate and independent establishment which:

- (a) has been registered under the provisions of the Shops & Establishments Act, 1954 of the ___(mention the name of concerned State);
- (b) is licensed under the provisions of the Contract Labour (Regulations & Abolition) Act, 1970 and has obtained license No. __dated. _;

Or

AND WHEREAS the Contractor undertakes to get itself licensed and/or registered with the appropriate Authority under the relevant laws mentioned above, and shall furnish necessary proof in this regard within 7 days of signing of this contract.

()# *Strike out, Whichever is not applicable.*

- (D) **AND WHEREAS** the Contractor undertakes to:

- (a) Comply with all the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952;
- (b) Pay to all its personnel deployed as per the Minimum Wages Act, 1948; and
- (c) Comply with all the provisions, duties and obligations imposed upon it by any law for the time being in force as may be applicable.

- (E) **AND WHEREAS** the Authority is authorised under the Act, 19xx (hereinafter referred to as “**the 19xx Act**”) to collect User Fees on behalf of State Government for services or benefits rendered under Section x of the Act, 19xx (hereinafter referred to as “**the 19xx Act**”).

- (F) **AND WHEREAS** the Authority is an Executing Agency under the provisions of the State Highways Fee Rules, 200x, (hereinafter referred to as “**the User Fee Rules, 200x**”).

- (G) **AND WHEREAS** the Authority is empowered under the provisions of the 198x Act to enter into contracts with any person for the purpose of collection of USER Fee under the said User Fee Rules, 200x. The Authority is desirous of engaging the Contractor to collect User Fees only at ----- toll plaza (near -----) located at km. ---- on km. ----- to km. ----- (-----) section of State Highway - -- in the -----.

- (H) **AND WHEREAS** the Authority invited bids from interested entrepreneurs for

collection of USER Fee for the use of the said Section of National Highway/ the said bridge for a period of -- year User Fee. The Contractor is one of those bidders who submitted bid and quoted in its offer that, in lieu of transferring State Government's User Fee collection rights for the said Section of the State Highway for aforementioned period, the Contractor shall remit the following amount to the Authority so as to be received by the Authority latest by ----- **XX DAY** of every week and if xx day happens to be a BANK Holiday, then by NEXT bank working day as indicated below by way of a demand draft/pay order/ RTGS transfer for the said section of State Highway. The remittance shall be as follows:

S. No.	Period	Total Amount Payable by the Bidder to the Authority (----- --PIU/ CMU) for the period mentioned in column B	Amount to be paid per week
A.	B.	C.	D.
a)	(From DD/MM/YYYY 8.00 hrs to DD/MM/YYYY 8.00 hrs) (xx year)	Rs. _____/- (_____ in words)*	Rs. _____/- (_____ in words)*

- For calculating the weekly amount, the amount quoted for One year shall be divided by the number of days in a year (365 or 366 as the case may be) and multiplied by 7.
 - **The week shall be counted from Monday to Sunday. In case the number of days in first and last week happens to be less than 7 days, then the bidder will deposit the amount proportionately.**
 - *The amount quoted above shall be exclusive of the TCS. Any tax and service charges, as applicable shall be borne by the bidder over and above the quoted amount.*
- i) **AND WHEREAS the Authority HAS AUTHORISED General Manager (Commercial Operation)/ Project Director to enter into this Contract with the Contractor,**
- ii) **AND WHEREAS, the Authority has authorized the Project Director, Project Implementation Unit/Corridor Management Unit_____ (hereinafter referred to as “the said (to be authorized)”) to supervise and discharge of various functions to be performed by the Contractor under this Contract.**
- (I) **AND WHEREAS** the Contractor has authorised Sh. / Smt. , S/o or D/o___, who is _____/(Partner/Director/Member) of the Contractor to enter into this Contract with the Authority. *(Enclose the proof of authorization clearly stating relation of the person authorized, with the Contractor)*
- (J) **AND WHEREAS** the parties are desirous of recording the terms and conditions on which the Contractor shall carry out the job of User Fees collection on behalf of the Authority.

Now therefore this contract witnesses in clauses as follows:

1. ENGAGEMENT OF CONTRACTOR:

In consideration of the premises, the Authority hereby engages the party of the

Second Part as the Contractor and the Contractor do hereby agrees to act as the Contractor of the Authority for collection of USER Fee for the use of the said Section of State Highway.

2. PERIOD OF CONTRACT:

- (i) “The Contract shall be for a period of xx year beginning on [insert date] from _ (8.00 hrs.) to _____ (8.00 hrs.), (hereinafter referred to as “xx year”)

OR

till the plaza is handed over to the other collection agency (OMT Concessionaire/BOT Concessionaire etc.) as per directions issued by OB&CC LIMITED, whichever is earlier.” However, in case of certain stretches going for BOT/OMT, the Authority reserves the right to reduce the period of contract without any compensation and in such cases of early termination of contract, the total amount payable by the bidder to the Authority will be proportionately modified depending upon the period.

Note: The start date of contract shall be within 2 days from the date of signing of the contract agreement or the date indicated by the authority in LOA.

- (ii) The period of contract shall be **xx year**. However, In case the Authority is not getting a bid higher than the remittance under this contact or in case of urgency, the Authority reserves the right to increase the contract period at same remittance and terms & conditions under this contract **upto 6 months (3 months in case of e-quotations)**.

3. RATE OF USER FEE:

- (a) The Contractor shall collect User Fees at such rates only and from such vehicles only as have been notified by the State Government vide Notification No. ____ Dated. ____ for the use of the said Section of the State Highway and in strict compliance with the provisions of the notification. A copy of the said Notification (including a draft notification to be replaced by a notification published in the Official gazette in due course) is appended as **Schedule I** In case, there is a material difference (i.e. impacting the collection of the Contractor by more than 10 (ten) % in a year) in the draft notification and the officially published notification, prior to commencement of collection of User Fee, the revised remittance shall be derived from the quoted remittance and in the event of dissatisfaction of either party on the revised remittance, so fixed, either party to this Contract will be at liberty to terminate this Contract by giving 30 days prior notice in writing.
- (b) The Contractor specifically undertakes not to claim during continuity of the Contract any change including addition, deletion and change in the classification mentioned or the rate of User Fee specified in the Notification referred above and appended to this Contract as Schedule I for any reason whatsoever, under any circumstance.
- (c) The Contractor shall not be allowed to make its own interpretation about a particular type of vehicle attracting a particular rate so as to charge a higher rate from a particular type of vehicles. Decision of the Authority on such matter shall be final and binding.

4. COLLECTION ONLY AT PRESCRIBED RATE:

The Contractor shall ensure that under no circumstances, USER Fee in excess of the prescribed rate or without issuance of receipt in the format including condition of such receipts being bilingual or trilingual, prescribed by the Authority is charged by the Contractor from the road users. Printing of receipts shall be arranged by the Contractor at its own cost.

5. CHANGE IN THE RATE OF USER FEE:

(a) The right of the State Government to modify, change or vary the rate of USER Fee to be levied or conditions for collection of USER Fee, or both is hereby reserved.

(b) The revised remittance on annual increase of user fee rates due to change in WPI, will be determined using the weighted percentage increase in the rates of all categories of vehicles, using proportions of different categories of vehicles* and considering single journey rates. A sample calculation is given in Schedule-VIII.

***The Authority will inform the proportion (%) of contribution in APC of different categories of vehicles specified in concession agreement/RFP**

(c) In case, any variation in the prescribed USER Fee rate for all or a particular category of the vehicles is effected, sought or permitted by the State Government, the amount payable by the Contractor to the Authority for the period from which such variation comes into force, shall be adjusted proportionately on the basis of USER Fee rates specified in Schedule I and vis-a-vis the new USER Fee rates as detailed hereunder.

The amount to be increased /reduced shall be worked out based on:

- i) Total collection worked out considering the traffic during 6 calendar months immediately preceding the month from which the variation is effected or the actual period of collection, whichever is less, on the basis of existing rates.
- ii) Total collection worked out considering the same volume of traffic on the basis of the revised fee rates.
- iii) Percentage change between (i) and (ii) would be applied to remittance immediately prior to such revision in fee rates to working out revised amount payable to the Authority.

Provided in case of introducing a new category of vehicles not subjected to levy of USER Fee earlier, an estimate of the traffic will be made on the basis of actual collection of current month for immediate purposes. At later stage the effect would be re-calculated on the basis of actual collection for six month or of the remaining tenure of the Contractor whichever is earlier. For this purpose the Contractor would submit a monthly collection statement to Authority for the effected period in the format suggested by Authority. For this purpose Authority would have full liberty to check by any means or method whether the collection given is actual one.

Provided that, any modification, change or variation in the conditions for collection of USER Fee (including towards concession/rebate to the frequent short distance travellers by any scheme or for any specific purpose) shall, as far as possible, be effected by mutual discussions between the Contractor and the Authority with regard

to the consequential adjustment in the amount payable by the Contractor to the Authority giving due regard to the procedure set out in clause 5 (c) above and in the event of failure to arrive at an agreement on this issue, either party to this Contract will be at liberty to terminate this Contract by giving notice in writing as required under clause 35 of this Contract.

- d) The proposal on revised remittance alongwith the supporting calculations shall be submitted by the Contractor to the Authority at least 7 days prior to the actual applicable date. The Authority will give approval within 7 days. In case of delay in approval by the Authority, the Contractor shall deposit the revised remittance from applicable date as per their own proposal on the revised remittance and the difference, if any, found later as per approved remittance by the Authority, shall be deposited by the Contractor alongwith an interest @ 12% p.a., within 7 days from date of approval of revised remittance by the Authority
- e) Provided that, any modification, change or variation in the conditions for collection of User Fee (including towards concession/ rebate to the frequent short distance travellers by any scheme or for any specific purpose) shall, as far as possible, be effected by mutual discussions between the Contractor and the Authority with regard to the consequential adjustment in the amount payable by the Contractor to the Authority giving due regard to the procedure set out in concession agreement/RFP **and in the event of failure to arrive at an agreement on this issue, the decision of the Authority shall be implemented and the Contractor shall be at liberty to refer the dispute to Arbitration as per clause 27.**

6. COMMENCEMENT AND TERMINATION OF USER FEE COLLECTION:

- (a) Subject to Clause 2 of the Contract, the USER Fee collection shall commence from the date as communicated by the Authority in writing which may be even at variance from the dates mentioned elsewhere and terminate on expiry of xx year.

Provided that the Contractor shall not commence collection if (i) a published copy of the USER Fee notification in the Official gazette is not made available by the Authority; and (ii) The Authority does not inform about the completion of the said section of the Highway or the said bridge for which the USER Fee is to be collected. The Authority can also change any date communicated earlier for commencement of collection of USER Fee for other reason/s, as considered necessary.

Provided that if the Contractor is not able to commence the collection of USER Fee from a particular date, not attributable to the reasons beyond his control, the period of the USER Fee collection for xx year shall be deemed to have begun from such date and the Contractor shall be liable to remit the agreed amount even for such period for which the collection has not been made.

- (b) The right to collect USER Fee shall come to an end on the expiry of a period of xx year (refer to clause 2) reckoned from date as communicated by the Authority for collection of USER FEE.
- (c) In no case, the Contractor shall have a right to demand continuance or extension of the contract period beyond the period of xx year.

7. EXEMPTION OF VEHICLES AND CONCESSION:

- (a) Type(s) of vehicles exempted as stated in the Schedule I appended to this Contract could be varied at any time either by the Authority or by the State Government. Such variance, unless impact on his collection is considered more than half a percent in a year requiring renegotiation of terms of the Contract, shall not alter the liability of the Contractor to remit the specified monthly amount and shall also not affect any other terms and conditions of this Contract.
- (b) All exemptions available to users under the Indian Toll (Army and Air Force) Act, 1901 and rules there under, further extended to officials of Indian Navy, shall be honored by the Contractor.
- (c) The Contractor shall ensure to provide monthly and daily pass for multiple journey in accordance with the provision in the Notification appended in Schedule--I. In case of any dispute about eligibility of any user about a particular concession or about the operating procedure, the decision of the Authority concerned or his authorized representative shall be final and binding.
- (d) If the Authority is satisfied that exemption or concession available to an otherwise eligible user for whatsoever reason, has been denied, the Contractor shall be liable to pay 100 (Hundred) times of the value of USER Fee charged from such eligible user as penalty within 7 days of the issue of a notice by the PD in this regard.

8. PLACE OF COLLECTION:

- (a) The Contractor shall collect User Fees only at ----toll plaza (near -----) located at km. ----- for the section from km. ----- to km. ----- (---- - -----) of State Highway - -- where, permanent USER Fee Collection Booth(s) are put up by the Authority. Such booth(s)/plaza/plaza area cannot be used or allowed by the Contractor to be used by others for any other purpose; including for sale of any commodity or advertisement.

Any advertisement in plaza area is strictly prohibited. Any deviation will be treated as non-compliance and action shall be taken either under Clause 17 (c) or under Clause 35(4).

- (b) The Contractor undertakes not to demand any additional place for collection of USER Fee or for installation of check barriers under any circumstances and for any reason whatsoever. The Contractor also undertakes not to collect USER Fee from any other place. The decision of the Authority in this regard shall be final and binding.
- (c) The Authority reserves the right to change the location of collection point including the right of addition, removal and merger of the number of USER Fee collection points as notified through fee notification from time to time. In case of a plaza being closed by any of such notification, the contract shall be come to an end and the performance guarantee of the contractor shall be refunded in compliance to other provision of the contract in this regard.

9. DIVERSIONS:

- (a) The Contractor has surveyed the said Section of the State Highway and surrounding area including any access or diversion(s) and the Contractor has

submitted its bid taking into consideration all such access or diversion(s) or any diversion of traffic due to deterioration in road conditions or closure of road for maintenance work, whether existing or likely to come in the future which any road user may opt , inter-alia, to avoid payment of the USER Fee by bypassing the USER Fee collection booths.

- (b) The Contractor undertakes that, he shall not make any claim for any decrease in traffic on the ground of diversion of the traffic as per clause 9(a) above, even if such diversion did not exist at the time of submission of the bid by the Contractor.
- (c) The Contractor will not be entitled to (a) close; and (b) demand closure by any authority whatsoever, of any lateral entry to the said section of the Highway for which USER Fee is to be collected. The Contractor recognizes that all tollable traffic on the said section may not pass through the USER Fee collection booth or USER Fee plaza.

10. HANDING OVER THE USER FEE PLAZA(S):

- (a) The Authority shall endeavour to hand over the USER Fee Plaza collection booths at ----- toll plaza (near -----) located at km. ----- on km. ----- to km. ----
--- (----- -) section of State Highway at 8.00 hrs on signing the contract to the Contractor for the purpose of USER Fee collection on the said Section of the State Highway.
- (b) The Authority has the right to entrust the USER Fee plaza(s) earlier than the date mentioned in Clause (a) above, subject to fulfillment of other conditions of the Contract. In such an event, the Contractor's obligation to remit the agreed amount will begin from the date of such handing over itself, without any extension in the period of the Contract.
- (c) In case, the Authority fails to handover the User Fee Plazas on the date and time mentioned in Clause (a) above and hands over the same any-time after the date and time mentioned in clause (a), the Contractor is entitled for same period of the Contract as provided under clause 2, without any reduction in the period of the Contract.
- (d) In such case as mentioned in (b) and (c) above, the contract period along with the obligation of total amount payable by the Contractor to the Authority as mentioned under column B (i.e. Period) & C (i.e. total amount payable by the contractor to the Authority) of the table mentioned earlier shall remain same and commence from the date and time of actual handing over the User Fee plaza.
- (e) The Contractor shall handover the User Fee Plaza(s) on hrs of the following day on the completion of the period of Contract as per Clause 6 above.
- (f) In case, the Contractor fails to handover the User Fee Plaza on hrs of the following day of the completion period of the Contract or in case of termination of the Contract on the last day and the time given in notice for termination to the Authority together with all the equipment, facilities and articles in good condition, the Contractor shall be liable to pay, to the authority a penalty equal to twice the average amount, arrived on the basis of quoted amount in the bid, for each day in addition to payment of proportionate User Fee at the Contract rate for the period of over stay. The Contractor shall also be liable to pay to the Authority such cost of infrastructural facilities, equipment and all other articles

as are not in good condition or may be fixed by the Authority, PIU/CMU ----- of the Authority whose decision in the matter shall be final.

- g) Upon expiry of the contract period/ termination, within 7 days, the Contractor shall submit a statement giving details of payments of weekly remittances and TCS during the entire contract period along with delay in days (if any) and calculation of interest/ penalty for delay in depositing the remittances, etc for settlement of all accounts of the Contractor and issuance of “no due certificate” by the Authority

11. DISPLAY OF RATE OF USER FEE AND USER FEE NOTIFICATION:

- (a) The rates of User Fee, the categories of vehicles exempted from payment of User Fee and the name, address and telephone number of the Authority, to whom complaints, if any, should be addressed, shall be conspicuously and prominently displayed 500m ahead of the User Fee collection booths, 100m ahead of the User Fee collection booths and at the User Fee collection booths also. The height of the display boards and size of letters being such that it is easy for drivers to read. The display boards shall be provided by the Authority.
- (b) The Contractor shall also (i) display, a copy of Notification in **Schedule I**, appended to this Contract at a conspicuous place of the User Fee Plaza(s) for the information of the road users and the general public and (ii) provide a copy of same to road user on demand upon payment of copying charges on a „no profit no loss“ basis.

12. REQUIREMENT OF PERSONNEL FOR USER FEE COLLECTION:

For the purpose of discharging its obligations under this Contract, the Contractor shall deploy adequate number of personnel of prescribed qualification & experience and having undergone such training as may be relevant and considered necessary from time to time by the Authority to ensure efficient management of entire operations, including free flow of traffic, in or around the plaza including in the User Fee collection booths.

The number, qualification & experience of personnel to be deployed should be in accordance with the details given in schedule- II of this contract. However, the Authority reserves the right to serve directions for any interchange in the category of personnel (total deployment will remain according to Schedule- II) to be deployed by the Contractor, for the purpose of User Fee Collection for ensuring free flow of traffic.

13. DEPLOYMENT OF PERSONNEL:

- (a) The Contractor shall ensure that the personnel deployed by it for discharging its duties under this Contract are of good health, of highest integrity, punctual, well dressed, well-behaved. and of qualification & experience prescribed in schedule-II
- (b) The Contractor shall furnish to the Authority a list, in addition to the list of key personnel, of persons deployed for the purpose of discharging its obligations under the Contract, containing all the details like their educational qualifications, experience, training undergone, good health, good character, personal residential

addresses and recent photographs. The required details for key personals shall be submitted to the concerned Regional Office and that of other staff to Project Director after signing of the contract in the format given in schedule- III of this contract.

- (c) The uniform of the personnel deployed shall necessarily bear the name of the individual and the name of the Contractor. Navy blue Trouser and sky blue check shirt will be the uniform for collection staff for summer. In winter navy blue pullover, warm navy blue trouser and sky blue check shirt will be the uniform of collection staff. Shoes and socks should be Black. The shirt should bear the name of the agency and the employee displayed in embroidery in readable size.
- (d) The Authority reserves its right to object to the deployment of any personnel for any reason in which case, such person or persons being objected to by the Authority shall be removed by the Contractor forthwith and replaced within a day from such removal.
- (e) The personnel deployed by the Contractor shall not misconduct/misbehave with the members of public and shall observe strict discipline and decency in their behavior.
- (f) The Authority shall not be liable for any misconduct or misdeeds or any act or incident involving the Contractor or any of its personnel in any criminal or civil case the Contractor shall be responsible for consequences and if any such incident takes place, the Contractor shall forthwith intimate the said incident to the Authority.
- (g) The Contractor specifically agrees that the personnel deployed by it, will not in any way claim employment with the Authority. The Contractor shall be solely responsible for any dispute raised by the personnel deployed by him either during the term of the Contract or thereafter.
- (h) The frequent replacement of key personnel is not desirable unless they are found involved in malpractices or non-compliances. However, if need be, the permission of replacement of key personnel/ other staff will be obtained from the PD concerned in advance. The PD, if satisfied with the reasons submitted to him, may allow such replacement after verifying the CVs strictly in accordance with the requirements prescribed in schedule- III.
- (i) The Authority is in process of introducing new electronic technologies for USER Fee collection system by installing electronic equipment already developed or being developed by various companies/agencies. The contractor shall extend full co- operation in installation, operation and maintenance of such system and will be bound by the advice of the authority in this regard.
- (j) The engagement of at least 30% ex-servicemen (ESM) is mandatory.
However, in case of non-availability of ex-servicemen, CGM/RO has power to relax the requirement considering overall capabilities and arrangements made by the agency for transparent and efficient toll collection at toll plaza.

14. INTER SE RELATIONS:

- (a) In all circumstances it is clearly understood by the parties that the personnel deployed by the Contractor shall have no connection whatsoever with the Authority and the relationship of master and servant or employer and employee

shall be only between the Contractor and the personnel deployed by it.

- (b) However, if considered necessary, the Authority shall have every right to enquire and seek documentary evidence from the Contractor, whether all the statutory dues like ESI, EPF, Minimum Wages, Weekly offs, Bonus, Medical Leave, Workmen Compensation and any other entitlements for which the Contractor is liable to provide, are being paid or not or have been paid or not for a particular period.
- (c) In case of any breach by the Contractor in the payment of such statutory dues not necessarily pertaining to its personnel/employees, the Authority shall be entitled to adjust the same from the Performance Security and pay such statutory dues to the appropriate authority. The Contractor shall replenish the Performance Security within 7 (seven) days of the notice by the Authority. The decision of the Authority in this regard shall be final and binding on the Contractor.

15. PROVISION OF INFRASTRUCTURE:

- (a) The minimum infrastructure to be provided (in case not provided by OB&CC LIMITED or the BOT (Annuity) Concessionaire) and maintained by the Contractors are as under;
 - (i) Computers and its peripherals,
 - (ii) Software for running the system if the contractor is not using OB&CC LIMITED"s software,*
 - (iii) Generator/ Standby Generator for power if there is no electricity connection/ for stand by requirement.
 - * The software used by the Contractor shall be able to provide vehicle crossing details with number of vehicle, type of vehicle, date and time of crossing the plaza etc.
- (b) The Authority shall handover the Toll Plaza to the Agency in the condition as existing on 7 days prior to bid due date on „as is where is basis“. The agency shall carry out upgradation/provide facilities as required, to discharge its duties.
- (c) The repair and maintenance of such facilities once provided by the Authority shall be the responsibility of the Contractor including but not limited to payment of electricity bill, fuel, consumables like electricity bulbs, water charges etc. The Authority may provide consumables at the time of handing over of the User Fee collection plazas/booths only, thereafter all consumables shall be arranged by the Contractor at its own cost and at the time of taking over the facility by the Authority, if any liability/obligation(s) regarding repair and maintenance and consumables remains unfulfilled by the Contractor, same shall be adjusted by the Authority from Performance Security.
- (d) All expenses for printing receipts or passes to be issued to users shall be borne by the Contractor. The Contractor shall abide by the instruction of the Authority in the matter of its format or size or language.
- (e) An inventory (along with the condition and present book value) of infrastructural facility /equipment, and all other articles (properties of OB&CC LIMITED only) shall be prepared and duly signed by both the parties at the time of handing over or taking over of the User Fee Plaza(s). All rental article /equipment shall be

returned immediately after handling over the plaza to the Contractor and no rent shall be paid thereafter.

- (f) The Contractor shall abide by all the instructions issued by the Authority from time to time. The Contractor also undertakes to abide by such instructions in order to make the process of User Fee collection simple, faster and hassle free by extending necessary cooperation in adopting the technological advancements in the process/work of User Fee collection.
- (g) The user fee collecting agency shall make necessary arrangements for power/lighting to ensure proper working of the User Fee plaza(s) including various office equipment installed, maintaining and running all electric arrangements and stand-by generator along with electric lighting and bearing all expenses thereon during the entire period of this Contract and paying punctually electricity and water charges in respect of the User Fee plaza(s)/collection booths as they become due and payable during period of this Contract.
- (h) The repair of the road section at the Toll Plaza site will be the responsibility of the OB&CC LIMITED.
- (i) In case of BOT (Annuity) stretches, whatever facilities and maintenance obligations fall within the mandate of the Concessionaire, same shall be provided by the Concessionaire, during the Concession period.

16. INSURANCE:

- (a) If required under the law for the time being in force, the Contractor shall arrange adequate insurance to cover each of its personnel deployed against any type of accidents, for all the assets owned by the Contractor and cash in booth, cash in chest, and cash in transit. The expenditure incurred for procuring such insurance shall be borne by the Contractor alone.
- (b) As per the instruction of the Authority the Contractor shall also arrange adequate Insurance cover at its own cost favouring the Authority, for all the properties handed over by the Authority for comprehensive risk.

17. PERFORMANCE SECURITY:

- (a) The successful Bidder shall furnish to the authority Performance Security consisting of **(a)** a crossed account payee demand draft/pay order, amounting to Rs. [•] (an amount equal to one (1) month "s agreed remittance) issued by a Scheduled Bank in India, drawn in favour of the Authority and payable at New Delhi and **(b)** a bank guarantee as per the format prescribed by OB&CC LIMITED from any Nationalized Indian Bank/State Bank of India or its subsidiaries/IDBI/ ICICI/Export Import Bank/Foreign Bank with counter guarantee from any Nationalized Indian Bank or State Bank of India or its subsidiaries/any RBI approved Scheduled Commercial Bank having net worth of more than Rs. 500 Crore (Rupees Five Hundred Crores) from its Indian Operations for Rs. [•] (*an amount equal to one (1) month agreed remittance*), *valid for a period of 14 (Fourteen) months from the Date of LOA* for due observance of the terms and conditions contained herein and the performance of its obligation as per the Contract to be entered into for 1 (one) year. The Bidder is at liberty to submit a crossed account payee demand draft/pay order issued by a Scheduled Bank in India in lieu of the bank guarantee.

- (b) The said Performance Security including the Bid Security, shall not bear any interest except when the collection is not started within 120 days of signing of the Contract for the reasons not attributable to the Contractor. In such a case, interest @8% p.a. shall be paid for the period beyond 120 days. Performance Security shall be refunded within 90 days after settlement of all the accounts by the Contractor and upon issuance of no due certificate by the Authority. No Dues Certificate shall be issued not later and within 7 days after settlement of accounts.
- (c) (i) The Authority shall also be competent to utilize the said Performance Security against any loss or damage caused to the property of the Authority by any act of omission and/or commission by the Contractor or its agents and servants or adjusts it towards any claim of the Authority.
 - (ii) The Contractor undertakes that, in case of any default on its part to perform and observe any of the covenants, conditions or provisions contained in this Contract, it shall be lawful for the Authority in its absolute discretion to forfeit the whole or any part of the said Performance Security, without prejudice to any other remedy that the Authority may have against the Contractor under this Contract or under general law for such breach.
- (d) The amounts lying with the Authority towards the Performance Security shall not be adjusted towards instalments due to the Authority from the Contractor including the instalment for the last month of the contract period of xx year.

18. PENALTY FOR CHARGING EXCESS USER FEE:

- (a) In case, it is observed and/or established to the satisfaction of the Authority that the fee collecting agency has charged User Fee in excess of the prescribed rate, the Authority may impose a penalty of an amount equal to fifty times of the actual amount so charged per day for 30 days i.e. (actual amount charged x 30 days x 50). After three such incidents of levy of penalty for excess charging, the part performance security of an amount equal to 1 (One) months agreed remittance i.e. Rs. _____ lakhs as per amount stated in Letter of Award shall be forfeited in addition to such recoveries. The contractor shall have to replenish the forfeited performance guarantee, in the same mode as it was deposited earlier, within 10 days of such forfeiture to continue with the collection work failing which the contract shall be terminated and the balance performance guarantee shall also be forfeited. If the incident of excess charging is again observed and/or established to the satisfaction of the Authority after forfeiture of part performance guarantee, the contract shall be terminated and the entire performance guarantee shall be forfeited.
- (b) The termination under this clause shall make the Contractor liable for unconditional forfeiture of the Performance Security.
- (c) The termination under this clause, in addition to unconditional forfeiture of the Performance Security, shall make the Contractor liable for debarring from assigning any future work with Authority.

19. PENALTY FOR FAILURE TO PAY INSTALMENTS:

In case of delay in remittance of the agreed amount of the weekly instalment due under this Contract to the Authority beyond the fixed day, the Authority shall levy penalty @ 0.2% per day for initial one month delay and @ 0.5% per day for further

delay beyond one month. Such right would, inter-alia, include unconditional right of the Authority to terminate the Contract forthwith, without assigning any reasons whatsoever and take over possession of the User Fee Plaza(s) for User Fee collection in any manner the Authority may deem fit. The penalty so levied shall be recovered from the performance guarantee which shall be replenished by the contractor within 10 days from the date of such recovery failing which the contract is liable to be terminated.

20 PENALTY FOR FAILURE TO COMPLY ANY OF THE OBLIGATIONS SPECIFIED IN CLAUSE 23 OF THE CONTRACT:

In case of non-compliance of any of the obligations specified in clause-23 (a) to (g), the Authority shall levy **penalty @ Rs.1.0 lakh per default per month except for Clause-23(e) for which the penalty shall be @ Rs.10,000/-per default per month**, without prejudice to any other rights of the Authority under this Contract. However, in case of non-compliance of obligations specified in Clause 23 (h), the Authority shall levy a penalty @ Rs. 10,00,000/- per instance or termination of Contract Agreement or both, without prejudice to any other rights of the Authority under this Contract. The date of default will be the date of reporting to the contractor by the Authority concerned or his authorized representative. In addition to levy of penalty as above, more than three defaults in a month under this clause may attract termination under clause 35 (2) of this contract. Before levy of penalty under this clause the contractor shall be given a reasonable opportunity to rectify the default. The decision of the Authority concerned or his authorized representative to levy the penalty under this clause shall be final and binding. The penalty so levied shall be recovered from the performance guarantee which shall be replenished by the contractor within 10 days from the date of such recovery failing which the contract is liable to be terminated

21. OPERATIONAL TRANSPARENCY:

The Contractor shall be solely responsible for efficient and transparent working and management of User Fee collection at all points of time.

22. AUTHORISED REPRESENTATIVE OF THE AUTHORITY:

- (a) The Authority has designated (to be authorised), OB&CC LIMITED PIU / CMU as “**the Authority**” to carry out all functions on its behalf under this Contract and may change the authorised representative from time to time.
- (b) The said Representative of the Authority shall have the overall authority to control and supervise the work of collection of User Fee carried on by the Contractor with a view to ensure that collection of User Fee is carried out smoothly, efficiently and without any hindrance or harassment to the users of State Highway.
- (c) The Authority or any other officer of the Authority or any agency as authorized by the Authority or by the Authority, shall have right and authority to inspect and check the receipt books (used/unused/ counterfoils), registers and books of accounts maintained by the Contractor at any time without giving any notice.
- (d) The instructions given from time to time by the Authority or his authorised representative in this regard shall be complied with promptly by the Contractor.

- (e) The Contractor shall keep records of all the complaints received and replied directly or otherwise by it and forward a copy on fortnightly basis to the Authority.

23. OBLIGATIONS OF THE CONTRACTOR:

- (a) The Contractor undertakes the responsibility of the complete job of User Fee collection, maintenance of all records, maintenance of User Fee collection account, maintenance of vehicle type wise Traffic Data on shift to shift basis, maintaining the cleanliness of User Fee plazas/User Fee collection booths and surrounding area etc. and any other duty as may be assigned by the Authority from time to time.
- (b) The Contractor shall make appropriate arrangement for management of the traffic at its own cost and shall ensure that the processing time for a vehicle at the User Fee counter should not be more than 30 seconds for the purpose of issuing USER Fee. All the lanes shall be kept open at all times irrespective of peak or off peak hours.
- (c) The Contractor specifically undertakes to abide by all the instructions issued by the Authority from time to time on operational matters and further agrees not to raise any dispute against the same including any additional cost that the Contractor may be required to bear to comply with such instructions.
- (d) During the contract Period, the contractor shall furnish to the Authority, within 7 (seven) days of completion of each month, a statement of User Fee substantially in the form set forth in Schedule- IV (the "Monthly User Fee Statement"). Proper record is to be maintained at the plaza for the purpose of providing such information. **The Contractor shall also submit such information sought by the Authority in such format, as may be prescribed by the Authority from time to time.**
- (e) The Contractor shall, prior to the close of each day, send to the Authority, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Road Section within 500 meters on either side of the plaza relating to the safety and security of the Users and Road Section. A weekly and monthly summary of such reports shall also be sent within three days of the enclosing of each week and month, as the case may be. For the purposes of this Clause 23 (e) accidents and unusual occurrences on the Road Section shall include:
- (i) death or injury to any person;
 - (ii) damaged or dislodged fixed equipment;
 - (iii) any obstruction on the Road Section, which results in slow down of the services being provided by the Contractor;
 - (iv) disablement of any equipment during operation;
 - (v) communication failure affecting the operation of Road Section smoke or fire;
 - (vi) flooding of Road Section; and
 - (vii) such other relevant information as may be required by the Authority.
- (f) The contractor also agree to abide by the requirement of clause 12 & clause 13 specifically on deployment of the personnel for the purpose of this Contract.

- (g) The Contractor agrees that maintaining adequate change/ coins and giving correct change to the road users, while paying / receiving user fee is his sole responsibility and undertakes not to indulge in wrong practices like giving namkeen/ coffee/ wafer packets, etc. instead of giving change for the balance amount to the road users. A placard shall be placed at all Toll Booths in the format enclosed at Schedule-IX for information of the road users. In case it is found during the surprise checks that the Contractor is giving namkeen/ coffee/ wafer packets, etc. in lieu of change, the Contractor at his cost shall issue an advertisement in the local newspapers asking the road users to approach the Toll Plaza Office for getting back the change by returning namkeen/ coffee/ wafer packets by showing the user fee payment receipt.

24. RIGHT OF INSPECTION:

- (a) The Authority reserves the right to conduct checks including surprise checks at any time, to check/observe/witness the activities of the Contractor including the User Fee collection Plaza(s) and to monitor or to ensure that any or all the activities including User Fee collection enunciated by this Contract are being carried out properly by the personnel deployed by the Contractor.
- (b) The Authority may exercise any check/control to ensure discharge of various obligations by the Contractor under the Contract including but not limited to following:
- i) Correctness of the User Fee charges recovered from users, as prescribed
 - ii) Issue of proper Receipts to all Vehicles;
 - iii) Maintenance of proper registers including those relating to collection of User Fee from different type of vehicles;
 - iv) **Weekly** remittance of amount due from the Contractor by the prescribed **day**;
 - v) Checking of data in electronic/soft form;
 - vi) Maintain User Fee Plaza(s) and its appurtenances by the Contractor at his cost and ensure that they are in good running condition;
 - vii) Arrangement for lighting and water are in order;
 - viii) There is no delay to the traffic due to procedure of collection of User Fee and also there is no traffic jam at the User Fee Plaza(s); and
 - ix) Any other check or control as considered appropriate by the Authority including through its authorised representative.

25. FORCE MAJEURE:

(a) NON-FORCE MAJEURE EVENT:

An event (i) which involves diversion of traffic of any kind, including but not limited to any diversion ordered/implemented by local authority or any State/Central Government for a period not exceeding 15 days in continuation; or (ii) where the road users opt to access/ travel through the existing alternate free User Fee (toll) roads due to deteriorated road conditions/ maintenance of road section. This may result into bypassing of User Fee Plaza/ User Fee Collection Booths and use of any part of the said Section of the National Highway/said bridge by the users.

(b) FORCE MAJEURE EVENT:

Except as stated in Clause (a) above, Force Majeure event means an event or circumstances or a combination of events and circumstances referred to in this clause which are beyond the reasonable control of the Party or Parties to this Contract and which party could not have prevented or reasonably overcome with the exercise of its reasonable skill and care in relation to performance of its obligations pursuant to this Contract and which are of the nature, without limitation of those described below:

- (iii) Publicly declared strike by registered and recognised association of Transporters exceeding 7 days. The date of going on strike and withdrawal or start of movement of traffic will be inclusive for the purpose of calculation of 7 days under this clause.
- (iv) Floods/Earthquake having materially adverse impact i.e. complete blockade of road.
- (v) Act of war, invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, blockade, embargo, revolution, riot, sabotage, terrorism or act of such threat, or any other political or social event having material adverse impact on the performance of obligations of the parties thereof.
- (vi) Expropriation, acquisition, confiscation or nationalisation of the User Fee collection
- (vii) Any change in law which has a material adverse effect on the obligation of the parties hereto.
- (viii) Any decision or order of a court or tribunal, which has a material adverse effect on the performance of obligations of the parties to this Contract.
- (ix) Suspension of traffic on the said section of State Highway or any part thereof, exceeding 15 (fifteen) days at a stretch.
- (x) Any event or circumstances of a nature analogous to the foregoing.

Either party to this Contract shall be entitled to suspend or excuse performance of his obligations, including remittance of instalments by the Contractor to the Authority for the period of continuance of the Force Majeure event, under this Contract to the extent that such performance is impeded by an event of Force Majeure prevailing continuously for more than 7 (seven) days at a time (or continuously for more than 3 (three) days at a time in case of no user fee collection at all at the toll plaza) for reasons not attributable to the Contractor.

(c) PROCEDURE FOR FORCE MAJEURE:

(i) NOTICE:

- (1) If a party claims relief on account of a Force Majeure event, then the Party claiming to be affected by the Force Majeure event shall, as soon as reasonably practicable and in any event within 7 days of becoming aware of the Force Majeure event, give notice giving details of the effects of such Force Majeure on the Party's obligations under this Contract to the other Party in writing, including the dates of commencement and actual/likely date of cessation of such Force Majeure and its effects, with necessary supporting documents and data.

- (2) The Party receiving the claim for relief under Force Majeure shall, if wishes to dispute the claim, give a written notice of the dispute to the Party making the claim within 30 days of receiving the notice of claim.

(ii) CONSULTATION AND DUTY TO MITIGATE:

- (1) The Party claiming relief under Force Majeure shall, at its own cost, take reasonable steps to remedy and mitigate the effects of the Force Majeure event and restore its ability to perform its obligations under this Contract as soon as reasonably possible. The Parties shall consult with each other to determine the measures to be implemented to minimise the losses of either Party as a result of the Force Majeure event.
- (2) The Party affected by Force Majeure shall keep the other Party informed of such efforts to remedy and make reasonable efforts to mitigate on a continuous basis and shall provide written notice of the resumption of performance hereunder.
- (3) Notwithstanding anything contrary to the specifically stated in this Contract no party shall be relieved of its obligations under this Contract by reason of impossibility of performance or any other circumstance whatsoever not beyond its control.
- (4) Any Party claiming cessation of the event of Force Majeure may, if the other party has not served a notice of resumption of performance, give notice to the other party, of cessation of such event, notifying the date of alleged cessation and unless the party to whom such notice is given does not dispute the same within 30 days of the receipt of such notice the Force Majeure event shall be deemed to have ceased to consequences thereof and shall be deemed to have come to an end on the date so notified.
- (5) The relief under force Majeure will be calculated on the basis of average collection per day, arrived based on the agreed weekly remittance. The difference in collection per day during force majeure and average amount of collection per day, arrived based on the agreed weekly remittance multiplied by number of days of force majeure will be payable to the contractor .

(iii) TERMINATION DUE TO FORCE MAJEURE:

If any event of Force Majeure shall continuously impede or prevent a Party's performance for longer than 60 days from the date of commencement of such Force Majeure event, the parties shall decide through mutual consultation, either the terms upon which to continue the performance of this Contract or to terminate this Contract by mutual consent. If the parties are unable to agree on such terms or to terminate the Contract by mutual consent within 90 days from the date of commencement of such Force Majeure event, either Party may issue a Notice to terminate this Contract.

- (iv) The Authority on behalf of the Authority is authorised specifically to settle claims for force majeure events.

26. MATTERS NON-ARBITRABLE:

Any disputes or differences between the parties in regard to the matters covered under Clauses 3, 7, 8, 10, 14, 18 and 19 shall be referred to the Authority, Project

Implementation Unit / Corridor Management Unit whose decision shall be final.

27. ARBITRATION:

- (a) All disputes and/or difference except those which are mentioned in the matters non- arbitral under Clause 26 above arising between the parties out of this Contract shall be settled by Arbitration under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The Chairman of the Authority or his nominee shall be the sole Arbitrator. The award made and published in pursuance of such Arbitration proceedings shall be final and binding on both the parties.
- (b) The proceedings of the Arbitration shall be held in English language and shall be held at such place as may be decided by the Chairman of the Authority or his nominee. The award of the Arbitration shall be final and binding on both the parties to the Contract.
- (c) Pending resolution of any dispute pursuant to Arbitration, under all circumstances the Contractor shall continue to remit the agreed instalments of money to the Authority as prescribed in this Contract including when the dispute is about the amount to be remitted.
- (d) The contract agreement shall be governed by and construed in accordance with the laws of India and the Courts at ----- shall have the exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the contract agreement

28. SEVERABILITY:

If any provision of this Contract is prohibited by law or held to be invalid, illegal, or unenforceable, the remaining provisions hereof shall not be affected, unless the same materially affects the performance of the obligation of the parties under this Contract and this Contract shall continue in full force and effect to the fullest extent possible as if such prohibited, illegal or invalid provision had never constituted a part thereof.

29. BREACH:

Any breach of the terms and conditions herein contained in this Contract, which may or may not, cause any financial loss to the Authority shall attract immediate unilateral termination of this Contract by the Authority, notwithstanding anything contrary contained in any of the Clauses in this Contract.

30. WAIVER:s

Failure or neglect by either of the Parties to enforce at any time any of the provisions hereof shall not be deemed to be a waiver of the right. In such an event, the same shall neither affect the validity of the whole or any part of this Contract nor prejudice the rights of Parties from taking subsequent action.

31. ASSIGNMENT:

The Contractor undertakes not to assign any right and/or obligation of this Contract to any other person without prior consent of the Authority in writing.

32. DEATH/WINDING UP:

If the Contractor being an individual/ Proprietary firm declared as insolvent or commit any act of insolvency or a partnership firm is dissolved or insolvent or commits any act of insolvency or being a Cooperative Society/a Limited Company is ordered to wind up by any Court of Law or makes arrangements with its creditors to wind up, the Contract shall forthwith stand terminated without prejudice to any other rights or remedies of the Authority under this Contract.

33. ABANDONMENT:

In the event of abandonment of the User Fee collection by the Contractor, due to his fault or due to bankruptcy or default or for any other reason, the Authority shall be entitled to take over the User Fee Plaza(s), and terminate this Contract and to continue the User Fee collection in the manner it deems fit. Further, the Authority, in such a situation, shall forfeit the performance security furnished by the Contractor to adjust any dues or claims or damages without prejudice to its other rights.

34. INDEMNITY:

The Contractor shall indemnify the Authority and its officers, agents and authorized representatives against all liabilities, damages and expenses arising from any claims for damages, suits, proceedings, recoveries, judgments or executions (including, but not limited to litigation costs and expenses and reasonable User Fees of the Attorney) which may be made or recovered from the Authority by reason of any acts, omissions (whether negligent or otherwise) or due to willful misconduct of the Contractor including its agents, survivors and personnel.

35. TERMINATION:

- (1) The Authority shall be entitled to terminate this Contract once the decision is taken to transfer the road section to BOT/OMT concessionaire (reference clause 2 of the contract) at any time after giving notice to the Contractor as under in writing and in that event, the Contractor shall not be entitled to any claim, or any compensation whatsoever on account of such termination.
- (2) The Authority shall be entitled to terminate this Contract at any time without assigning any reason(s) after giving notice to the Contractor as under in writing and in that event, the Contractor shall not be entitled to any claim, or any compensation whatsoever on account of such termination.

By giving seven (7) days prior notice in writing

- (3) Notwithstanding anything contained in clause (1) above, the Authority may terminate the Contract forthwith for breach or non-observance of any of the terms and conditions of this Contract or for any misconduct on the part of Contractor or his employee/staff/personnel or for overcharging of User Fee from a user, or for harassment of any user.
- (4) The Authority shall be entitled to terminate this Contract for any type of non-compliances under provisions of this contract if not rectified within a given time frame.
- (5) **Pre-mature termination of the contract at the request of the Contractor:**

Within 30 days of taking over the toll plaza, if the Contactor feels that he has committed an error in assessing the realizable user fee at the toll plaza, he may in writing request the Authority for pre-mature termination of the contract. Such request of the Contractor is irreversible by the Contractor under any circumstances.

The Contractor, even after making such request, shall continue to collect user fee at the toll plaza, remit the agreed remittances timely to the Authority and comply with all other terms and conditions in accordance with this contract, till handing over of the toll plaza to the new agency.

The Authority shall appropriate 25% of the performance security as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for interalia time, cost and effort of the Authority. The balance performance security shall be released by the Authority within 30 days of handing over of the toll plaza to the new agency.

Within 60 days of receipt of such request, the Authority may complete the bidding process for selection of new agency; select the new agency and handover the toll plaza to the new agency. For avoidance of doubt, OB&CC LIMITED would finalize the new agency as early as possible, irrespective of the quotes of the Contractor and the new agency. This Agreement stands terminated automatically on the date of handing over of the toll plaza to the new agency.

The existing Contractor is also eligible to bid at the time of selection of new agency by OB&CC LIMITED, but if he does not takeover or leaves in between or abandons the user fee collection work second time, he will be debarred from participating in further bidding for user fee collection at the same Toll Plaza, either directly in his own name or as a consortium or as an associate or in the name of any firm owned by him, for a period of two years.

This clause is non-arbitrable as per Clause 26 of Agreement

36. DECISION OF AUTHORITY: FINAL AND BINDING

Except where otherwise provided or specified in this Contract and subject also to such powers as may be delegated by the Central Government to any of the specific official of the Authority from time to time, any decision of the Authority for the time being on all questions and matters whatsoever arising out of or in relation to or in connection with this Contract or as to the interpretation of any of its conditions whether during the subsistence of this Contract or at any time thereafter, shall be final and binding on the parties to this Contract.

37. INTEGRATED CONTRACT:

This Contract represents and constitutes the entire Contract between the Parties and shall not be explained, modified or contradicted by any prior or contemporaneous negotiations, representations or Contract(s), either written or oral or minutes of any meeting (including pre-bid meeting/s) or conference(s) and correspondence between the Parties or bid documents.

38. STAMPING AND ENGROSSING:

Within 28 (twenty eight) days from the date of signing this Contract or within such

period as provided by the law applicable whichever is shorter, the Contractor, if required, shall have the Contract engrossed, have the correct Stamp Duty adjudicated by the Inspector General of Registrations, New Delhi and return the same duly signed and executed to the Authority. It would be the sole responsibility of the Contractor to comply with the applicable laws in this regard. It shall be noted that the contract shall be signed at OB&CC LIMITED HQ at Delhi.

If an occasion arises for the Authority to pay for the cost of stamping and engrossing of the Contract Agreement, the same shall be recovered from any security deposited by the Contractor with the Authority in respect of any Toll Plaza.

39. AMENDMENT:

Terms of this Contract can be amended with the mutual consent of both the parties. No amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties.

IN WITNESS WHEREOF the parties hereto through their duly authorised representatives have set their hands and seal on the day, month and year first above mentioned.

For and on behalf of

(Signature)

Name:-

Designation:

Place: -

In the presence of

1. Signature:

Name:

Address:

1. Signature:

Name:

Address:

For and on behalf of

(Signature)

Name:-

Designation:-

Place:-

In the presence of

1. Signature:

Name:

Address:

2. Signature:

Name:

Address:

*** Contractor must affix its seal.**

SCHEDULE – I

**FORMAT FOR DETAILS OF PERSONNEL TO BE DEPLOYED AT xx TOLL PLAZA
AT KM xxx.xxx, FOR THE SECTION FROM KM xxx.xxx TO KM xxx.xxx OF
STATE HIGHWAYS NO. -- (x – x SECTION)**

NOTIFICATION NO DATED xx.xx.20xx

PUBLISHED IN OFFICIAL GAZETTE

Fee Rates applicable for the FY 20xx-xx are as under:

SI No	Type of vehicles	Fee for single journey (in rupees)	Fee for return journey within a day (in rupees)	Fee for monthly pass for 50 single journeys in a month. (in rupees)	Fee for single journey for the commercial vehicles registered within the district of fee plaza (in rupees)
1	2	3	4	5	6
1	Car, Jeep, Van or Light Motor Vehicle				
2	Light Commercial Vehicle, Light Goods Vehicle or Mini Bus				
3	Bus or Truck (Two Axles)				
4	Three-Axle commercial vehicles				
5	HCM or EME or Multi Axle Vehicle (MAV) (four to six axles)				
6	Oversized Vehicles (seven or more axles)				

1. The rate of monthly pass for local non – commercial vehicles residing within a distance of 20 Km from the toll plaza for the FY 20xx-xx shall be Rs. xxx.00.
2. The fee rate mentioned at column 6 is for single trip and is applicable for commercial vehicles (excluding vehicle plying under National Permit), registered within the District where the fee plaza is located.

Schedule- II

[Reference clause 12 &13]

Key Personnel

SI No	Designation at Plaza	No. per lane	No per shift (for all lanes)	Nos. deployed per Plaza (for all shifts)	Essential Qualification
1.	Plaza Manager			1	<p>(a) Degree in IT/ Computer Science/ Electronics & Communication or MCA from any government recognized university; (or) Graduate in any discipline from government recognized university, with DOEACC „A“ level Course; 3 years BCA; 2 years MBA in IT or equivalent (1 year Diploma/ PG Diploma Courses are not eligible); and</p> <p>(b) 2 years' experience in using semi-automatic/ electronic toll collection systems</p>
2	Security Officer			1	<p>(a) Graduate in any discipline from any government recognized university with minimum 10 years post- qualification experience in relevant field in any government or private organization of repute; (or) Any Retired Defence/ Police Officers who led a team, with Graduation in any discipline from any government recognized university; and</p> <p>(b) experience of 3 years as Security Officer on similar assignments</p>
3	Accounts Officer			1	<p>Post-graduate in Commerce or Graduate with CA/ICWA/SSA with 5 years' experience in Audit & Accounts.</p> <p>Note: At least the Contractor shall have one team of Key Personnel, meeting above requirements, for all Toll Plazas within the jurisdiction of one Regional Office, subject to provision of suitable persons for Key Personnel positions at that specific</p>

SI No	Designation at Plaza	No. per lane	No per shift (for all lanes)	Nos. deployed per Plaza (for all shifts)	Essential Qualification
					Toll Plaza for which qualification requirements may be relaxed by RO concerned. There shall be no change in the requirements regarding "other staff" specified in Schedule-III for each Toll Plaza
OTHER STAFF					
1.	Shift In charge		1	3	Graduate in any discipline and a diploma in computing from a recognised institute of repute with minimum 2 years post qualification experience in relevant field or retired defence personnel of rank equivalent to ASO or above. The officer can be from paramilitary forces also and the at least a diploma in computer application or equivalent from any govt. recognized institute in India
2.	Accountant		1	3	Graduate in any discipline with minimum 5 years post qualification experience in any in any Govt. or private organization of repute
3.	Toll Collector	1	8 (in case of 8 lane plaza)	24*+6(2 reliever per shift)=30	12th pass from any recognised board in India or retired defence personnel with operational knowledge of computer.
4.	Toll Attendant	1	8 (in case of 8 lane plaza)	24*+6(2 reliever per shift)=30	12th pass from any recognised board in India or retired defence personnel.
5.	Barrier man		2+2 (up & down)	12	12th pass from any recognised board in India or retired defence personnel
6.	Channelizer		2 (up & down)	6	12th pass from any recognised board in India or retired defence personnel
7.	Gun man		4	12	Retired defence personnel only.
8.	Electrician		1	3	10th Standard pass from any recognised board of India with knowledge of the relevant field.

SI No	Designation at Plaza	No. per lane	No per shift (for all lanes)	Nos. deployed per Plaza (for all shifts)	Essential Qualification
9.	Safaiwala		1	3	Experience in relevant field.
10.	Mali			1	
11.	Peon		1	3	8th standard pass.
12.	Total			109	

* The above requirement of staff is typical for 4 + 4 lane plaza. The bidder shall confirm the actual number of lanes and requirement of other staff from the concerned Regional Office or Project Director.

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Schedule- III

[Reference Clause 13 (b)]

FORMAT FOR DETAILS OF PERSONNEL TO BE DEPLOYED AT TOLL PLAZA AT KM xxx.xxx, FOR THE SECTION FROM KM xxx.xxx TO KM xxx.xxx OF STATE HIGHWAYS NO. (x –x SECTION)

(To be submitted after signing of the contract to the RO in case of Key personnel and to the Project Director for other staffs.)

Sr. No.	Name & Designation	Permanent Address & Contact No.	Correspondence Address & Contact No.	Qualification & experience (self attested copy of certificate are to be enclosed)	Recent Passport size photo graph.	Specimen sig.
1.	Plaza Manager					
2	Security Officer					
3	Accounts Officer					
4	Administrative Officer					
5	Shift Incharge					
6	User Fee Inspectors					
7	Accountant					
8	Astt. Accountant					
9	Toll Collector					
10	Toll Attendant					
11	Barrier man					
12	Channelizer					
13	Gun man					
14	Electrician					
15	Safaiwala					
16	Mali					
17	Peon					

Schedule-IV [Reference clause 23 (d)]

MONTHLY USER FEE COLLECTION STATEMENT- PART-A

Sl. No.	Type of Vehicles as per notification provisions	Amount of User Fee collected through Tickets		User Fee collected through Passes		User Fee collected through Vehicles registered in the District of fee plaza		Total amount Collected		Total amount Deposited		Remarks
		For the month	Cumulative	For the month	Cumulative	For the month	Cumulative	For the month	Cumulative	For the month	Cumulative	
1	CAR, JEEP, VAN OR LIGHT MOTOR VEHICLE											
2	LIGHT COMMERCIAL VEHICLE, LIGHT GOODS VEHICLE OR MINI BUS											
3	TRUCK / BUS (TWO AXLES)											
4	THREE AXLE COMMERCIAL VEHICLES											
5	HEAVY CONSTRUCTION MACHINERY (HCM) OR EARTH MOVING EQUIPMENT (EME) OR MULTI AXLE VEHICLE (MAV) (FOUR TO SIX AXLES)											
6	OVERSIZED VEHICLES (SEVEN OR MORE AXLES)											
Total												

Schedule-IV

[Reference clause 23 (d)]

MONTHLY USER FEE COLLECTION STATEMENT- PART-B

MONTHLY VEHICLE PASSING REPORT

FOR THE MONTH OF

No of monthly passes	CAR, JEEP, VAN OR LIGHT MOTOR VEHICLE	LIGHT COMMERCIAL VEHICLE, LIGHT GOODS VEHICLE OR MINI BUS	TRUCK /BUS (TWO AXLES)	THREE AXLE COMMERCIAL VEHICLES	HEAVYCONSTRUCTION MACHINERY (HCM) OR EARTH MOVING EQUIPMENT (EME) OR MULTI AXLE VEHICLE (MAV) (FOUR TO SIX AXLES)	OVERSIZED VEHICLES (SEVEN OR MORE AXLES)	Total
Type of Vehicles as per notification							
	Nos	Nos	Nos	Nos	Nos	Nos	Nos
All types of single Entry (excluding Commercial vehicle registered in the district where the fee plaza falls)							
Multiple Entry							
Reusage of Multiple Entry ticket							
Reusage of Monthly passes							
Single Entry of Commercial vehicle (excluding							

No of monthly passes	CAR, JEEP, VAN OR LIGHT MOTO R VEHIC LE	LIGHT COMMER C IAL VEHICLE, LIGHT GOODS VEHICLE OR MINI BUS	TRUCK /BUS (TWO AXLES)	THREE AXLE COMM E RCIAL VEHICL ES	HEAVYCONST RUCTION MACHINERY (HCM) OR EARTH MOVING EQUIPMENT (EME) ORMULTI AXLE VEHICLE (MAV) (FOUR TO SIX AXLES)	OVERSIZ ED VEHICLE S (SEVEN OR MORE AXLES)	Total
Type of Vehicles as per notification							
	Nos	Nos	Nos	Nos	Nos	Nos	Nos
vehicles plying under national permit) registered in the district where the fee plaza falls							
Exempted etc.							
Grand Total							

Schedule- V

(Format of Bank Guarantee)

Format for Bank Guarantee for Performance Security

BANK GUARANTEE FOR PERFORMANCE SECURITY

To

OB&CC LIMITED

In consideration of "OB&CC LIMITED" (hereinafter referred as the "Client", which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s Having its office at (Hereinafter referred to as the "Contractor" which expression shall repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a contract by issue of Client's Letter of Acceptance No..... dated and the same having been unequivocally accepted by the Contractor, resulting in a Contract valued at Rs...../- (Rupees) excluding Service Tax for "....." (Hereinafter called the "Contract"), and the Contractor having agreed to furnish a Bank Guarantee to the Client as "Performance Security as stipulated by the Client in the said contract for performance of the above Contract amounting to Rs...../- (Rupees).

We,having registered office at and branch at a body registered/constituted under the (hereinafter referred to as the Bank), which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay the Client immediately on demand, without any deductions, set-off or counterclaim whatsoever, any or, all money payable by the Contractor to the extent of Rs..... (Rupees.....) as aforesaid at any time up towithout any demur, reservation, contest, recourse, cavil, arguments or protest and/or without any reference to or enquiry from the Contractor and without your needing to prove or show grounds or reasons for your demand for the sum specified therein. Any such demand made by the client on the bank shall be conclusive and binding notwithstanding any difference between the Client and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the Guarantee herein contained shall be irrevocable and shall continue to be enforceable till the Client discharges this guarantee.

The Client shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee, from time to time to vary or to extend the time for performance of the contract by the Contractor. The Client shall have the fullest liberty without

affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract between the Client and the Contractor any other course or remedy or security available to the Client. The Bank shall not be relieved of its obligations under these presents by any exercise by the Client of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Client or any other indulgence shown by the Client or by any other matter or thing whatsoever which under law would but for this

provision have the effect of relieving the Bank.

The Bank also agrees that the Client at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Client may have in relation to the Contractor's liabilities.

Any demand shall be deemed to be served, if delivered by hand, when left at the property address for service; and if given or made by pre-paid registered post or facsimile transmission, on receipt.

Any waivers, extensions of time or other forbearance given or variations required under the Contract or any invalidity, unenforceability or illegality of the whole or any part of the contract or rights or any Party thereto or amendment or other modifications of the Contract, or any other fact, circumstances, provision of statute of law which might entitle the Bank to be released in whole or in part from its undertaking, whether in the knowledge of the Bank or not or whether notified to the Bank or not, shall not in any way release the Bank from its obligations under this Bank Guarantee.

Notwithstanding anything contained herein,

- (a) Our liability under this Bank Guarantee is limited to Rs..... (Rupees) and it shall remain in force up to and including..... and shall be extended from time to time for such period as may be desired by the client in whose favor this guarantee has been issued.
- (b) This Bank Guarantee shall be valid up to
- (c) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee Only and only if your serve upon as a written claim or demand on or before (date of expiry of Guarantee).

(Signature of the Authorised official)

(Name & Designation with Bank Stamp)

NOTE:

- (i) *The bank guarantee(s) contains the name, designation and code number of the officer(s) signing the guarantee(s)*
- (ii) *The address, telephone no. and other details of the Head Office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing Branch.*
- (iii) *The bank guarantee for Rs. 10,000 and above is signed by at least two officials (or as per the norms prescribed by the RBI in this regard).*

Schedule VI
FORM OF LETTER OF ACCEPTANCE (LOA)

No: Date:

To,

Sub: Collection of User Fee by the fee collecting agency selected on the basis of competitive bidding at [•] toll plaza (near [•])located at km. [•] on km. [•] to km. [•] ([•])section of State Highway [•] (hereinafter referred to as the said section of the State Highway).

Ref: Your offer dated [•] submitted pursuant to the referred notice

Dear Sir,

Your Bid quoting an Annual Remittance of Rs. _____ (Rupees _____) for engagement as the user fee collecting agency for collection of User Fee on the basis of competitive bidding at Km. [•] [•] toll plaza (near [•]) for the section from km. [•] to km. [•] ([•]) of State Highway No. [•] (hereinafter referred to as the said section of the National Highway) has been accepted by the competent authority of the OB&CC LIMITED on the terms and conditions of Contract forming part of the Bidding Documents.

You are required to submit a Performance Security within 7 (Seven) days as per Clause 2.18.1.

The Bid Security shall be forfeited by the Authority, in case you fail within the specified period to furnish the required Performance Security. *You shall also be required to sign the contract within 3 (Three) days from the date of receipt of the Performance Security and after signing the contract, successful bidder shall take over the toll plaza and start the fee collection within 2(Two) days of signing the contract agreement*, on failure to do so, the entire Performance Security including Bid Security and bank guarantee shall be liable to be forfeited and invoked. In the event of your failure to submit the Performance Security, the Letter of Acceptance for award of contract in your favour shall automatically be terminated without further notice. In such a case, your engagement shall forthwith automatically stand terminated and thereupon, without prejudice to any other rights and remedies of the Authority, the Authority shall be entitled to appoint another Contractor at your risk as to costs and consequences.

Please convey your unconditional acceptance by signing on the original of this letter as per Clause (3.3.1) and submit the required Performance Security within the specified period so that the Contract could be signed within the specified period.

Thanking you,

Yours faithfully

For OB&CC LIMITED

(Signature)Name:-

Designation:

Place: - & Dated

Accepted unconditionally including the draft of the contract. (Signature)**

Name:-

Name of the regd. partnership firm/company/limited company/co-operative society/proprietary firm/individual (whichever is applicable).

Designation:

Place: - Dated:-

*** Please affix common seal.**

Schedule-VIII

Sample calculation of Revised Remittance as per Clause- 5(b)					
S.No.	Category of Vehicle	Proportion (%) of contribution in APC of different categories of vehicles (refer Clause 1.1.3 of RFP)	User fee rates given in the bid (for single journey) (Rs.)	Revised Rates (for single journey) (Rs.)	% increase in revised rates over the rates in the bid[6=(5-4)*100/4]
1	2	3	4	5	6
1	Car / Jeep / Van				
2	LCV /LGV or Mini Bus				
3	Truck Bus (2 Axle)				
4	3-Axle Commercial Vehicle				
5	HCM / EME/ MAV(4-6 Axle)				
6	OSV (7 or more axle)				
	Total	100			

1 Percentage increase in Remittance $\sum \text{Col. 6} \times \text{col. 3}/100 = \% \text{ (rounding upto 2 decimals)}$

2 Original weekly remittance = Rs. xx,xx,xxx /-

S.

3 Revised weekly remittance = S. No. 2 x No.1 + 1 = Rs. xx,xx,xxx/-

100

Schedule-VII

Format for Placard at each Toll Booth

(English, Hindi & Vernacular Languages)

Welcome to Toll Plaza (Name & Address)

At this toll plaza, we behave courteously; we charge as per rates approved (no overcharging); we return exact change and do not give packets of namkeen, wafers, etc.

In case you notice any irregularities by the toll collection contractor at this toll plaza, please contact:

Name, Project Director, OB&CC LIMITED, Mobile No.

In case PD does not lift the phone, please contact:

Name, CGM/ RO, OB&CC LIMITED, Mobile No.

Thank You. We wish you a safe and comfortable journey.

Annexure 4.5

Comparative Matrix of Changes between the Model Concession Agreement as usually followed viz-a-viz the Agreement Recommended

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
1.	Definitions & Interpretation		
2.	Scope of the Project	<p>The scope of the Project (the “Scope of the Project”) shall mean and include, during the Concession Period:</p> <p>(a) construction on the Site set forth in Schedule-A of Project Facilities as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-C;</p> <p>(b) operation and maintenance of the Project Highway in accordance with the provisions of this Agreement; and</p> <p>(c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.</p> <p>(Article2)</p>	<p>Detailed scope of works is set out in Appendix 14 of the Agreement and includes design, installation and construction, completion, testing, commissioning, operation and maintenance of and remedying of defects in the Tolling Facility, periodic renewal, the operation and maintenance of the Project Road and other permanent, temporary or urgent works or services required under this Agreement.</p> <p>(Appendix-14)</p>
3.	Grant of Concession	<p>The Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:</p> <ul style="list-style-type: none"> - Right of Way, access and licence to the Site for the purpose of the Agreement; - manage, operate and maintain the Project Highway; - demand, collect and appropriate Fee from vehicles and Users liable for payment of Fee for using the Project Highway; 	<p>The Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:</p> <ul style="list-style-type: none"> - finance, design, install or construct the Tolling Facility with the Grantor bearing the costs and expenses of the Toll Gate Structures conforming to Toll Gate Specifications and to operate and

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<ul style="list-style-type: none"> - perform and fulfil all of the Concessionaire's obligations; - bear and pay all costs, expenses and charges in connection with or incidental to the performance of its obligations; - neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Highway nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement. (Article 3) 	<ul style="list-style-type: none"> undertake Maintenance of the Facility; - Operate the Facility in accordance with the terms of this Agreement; - Undertake Works, including Maintenance of the Facility as set out in Appendix 14; - enjoy possession and control over the Project Site for a period co-terminus with the Concession Period along with the rights of way/ way leaves; - levy, demand and collect Toll from the Users of the Facility at the rates approved by the Grantor and apply the same towards payment of Net Toll to the OB&CC on behalf of the Grantor at rates set forth in Appendix 17 and retain and appropriate the balance towards O&M Expenses as detailed in Article 11 hereof; - appoint Sub-contractors or agents on its behalf to assist it in fulfilling its obligations under this Agreement, <i>provided</i> in the reasonable opinion of the Engineer In-charge of OWD they are capable of discharging the Concessionaire's obligations under this Agreement and further provided that the Concessionaire shall always remain liable for all their acts to the Grantor;

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
			<ul style="list-style-type: none"> - exercise such other rights as the Grantor may determine as being necessary or desirable for the purposes incidental and necessary for developing, designing, financing, implementing, constructing, operating and maintaining the Project. <p>(Article 2)</p>
4.	Conditions Precedent (CPs)	<p><u>CPs required to be satisfied by Concessionaire are-</u></p> <ul style="list-style-type: none"> (a) provided Performance Security to the Authority; (b) executed and procured execution of the Escrow Agreement; and (c) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof. <p><u>CPs required to be satisfied by the Authority are :</u></p> <p>Upon payment of Performance Security, the Concessionaire may require the Authority –</p> <ul style="list-style-type: none"> (a) to procure right of way to the Site in accordance with the provisions of Clause 10.3.1 within 30 days; and (b) procure issuance of the Fee Notification within 45 days. <p>Time for fulfillment of Conditions Precedent by Concessionaire : 45 days</p> <p>Non-fulfillment of Conditions Precedent :</p> <p>Contains provisions for damages for delay under Article 4.2-</p>	<p><u>Conditions Precedent for Concessionaire are-</u></p> <ul style="list-style-type: none"> - Made all the applications at its cost for the requisite Clearances, - provided the Grantor certified true copies of its constitutional documents, - entered into O&M Agreement(s) in the event the Concessionaire carries out the Operation and Maintenance, - made all the representations and warranties of the Concessionaire set forth in the Proposal and this Agreement are true and correct. <p><u>CPs required to be satisfied by the Grantor are:</u></p> <ul style="list-style-type: none"> - granted or assist in being granted all such Clearances as are required for the commencement of construction of the Facility and as are and which are within its authority to grant or assist; <i>provided</i> the Concessionaire fulfils all the eligibility criteria and pays the applicable fees,

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<p>damages payable 0.1% of Performance Security for each days default until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.</p> <p>(Article 4)</p>	<ul style="list-style-type: none"> - issued government orders or gazette notifications as necessary for implementing the Project; - handed over to the Concessionaire by Compliance Date, the Vacant Possession of the Project Site free from Encumbrances along with all Easementary Rights and right of way/ way leaves required in connection with the Project and the permission and license to enter upon and utilize the Project Site for implementing the Project in accordance with the terms and conditions of this Agreement; <i>provided</i> that the Concessionaire shall have given a bank guarantee to the Grantor as Performance Security as set forth in Article 5; - appointed the Engineer-In charge of OWD. - (Clause 3.2) <p>Time for fulfillment of Conditions Precedent: 30 days</p> <p>(Article 3)</p> <p>(a)Non-fulfillment of Conditions Precedent- In the event this Agreement fails to come into effect on account of non fulfillment of the Concessionaire’s Conditions Precedent, the Grantor shall forfeit and encash the Performance Security as damages. In the event this Agreement fails to come into effect</p>

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
			<p>on account of the non-fulfillment of Grantor's Conditions Precedent and the Concessionaire is not in any Material Breach of this Agreement, the Grantor shall return the Performance Security to the Concessionaire; provided there are no outstanding claims of the Grantor on the Concessionaire.</p> <p>(b) In the alternative, Instead of terminating this Agreement as provided above, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent.</p> <p>(Clause 3.4)</p>
5.	Obligations of the Concessionaire	<p>The Concessionaire :</p> <ul style="list-style-type: none"> - shall, at its own cost and expense, procure finance for and undertake the operation and maintenance of the Project Highway and observe, fulfil, comply with and perform all its obligations set out in this Agreement; - shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations; - discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person. - procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Highway; 	<p>The Concessionaire shall :</p> <ul style="list-style-type: none"> - finance, design, establish, install, erect and construct, as the context may require, and commission the Tolling Facility at the Toll Gate Location in accordance with the Technical Specifications, terms and conditions of this Agreement and Prudent Utility Practices, with the Grantor bearing the expenses of the Toll Gate Structures, conforming to the Toll Gate Specifications; - commence Commercial Operations of the Facility from the Compliance Date by setting up Temporary Toll Gates as necessary, which, however, shall be dismantled and removed by the Concessionaire upon Substantial

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<ul style="list-style-type: none"> - make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by the Concessionaire or its Contractors in connection with the performance of the Concessionaire’s obligations under this Agreement; - (d) make reasonable efforts to facilitate the acquisition of land required for the purposes of the Agreement; - (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire’s obligations under this Agreement; - (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; - (g) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and - (h) transfer the Project Highway to the Authority upon Termination of this Agreement, in accordance with the provisions thereof. <p>Obligations relating to Project Agreements –</p> <ul style="list-style-type: none"> - Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. 	<ul style="list-style-type: none"> Completion being accomplished; - achieve Substantial Completion (installation, erection, construction and commissioning of the Tolling Facility) within four months of the Compliance Date; - during the Operations Period undertake the Works set out in Appendix 14 hereof in accordance with the Technical Requirements, Performance Standards, the terms and conditions of this Agreement and Prudent Utility Practices; - provision of periodic overlay as specified in Appendix 14 as per the renewal cycle; - afford to the Grantor all reasonable assistance and co-operation in relation to the discharge by the Grantor of the Retained Functions; the Concessionaire shall not be obligated to undertake any of the Retained Functions; - plan, organize and execute the Works so that there is least disruption to the flow of traffic and minimal inconvenience to Users; - conduct its activities in such a manner so as to comply with the Environmental and Social Management Plan; - bear all costs and charges for special or temporary rights-of-way required by it for access to the Project Site. The Concessionaire

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<p>- The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension.</p> <p>Obligations relating to Change in Ownership-</p> <p>- Concessionaire not permitted to undertake or permit Change of ownership, except prior approval etc.</p> <p>- The obligation under this Clause 5.3.1 and the representation in Clause 7.1(k) shall apply to the Concessionaire's company in the event any person, together with its Associates, holds more than 33% (thirty three per cent) of the paid up share capital as on the date of submitting the Application in response to the Request for Qualification. Provided, however, that where the selected bidder/ Consortium has incorporated the Concessionaire as a company for the sole purpose of undertaking this project, the aggregate holding of the {selected bidder/Consortium Members} together with {its/their} Associates, in the issued and paid-up Equity of the concessionaire shall not decline below 51% (fifty one percent) thereof during the Concession Period.</p> <p>Employment of Foreign nationals-</p> <p>- The Concessionaire shall be responsible for arranging of requisite regulatory permits and approvals including employment/residential visas and work permits as required.</p> <p>Employment of trained personnel-</p> <p>- Concessionaire shall ensure that the personnel engaged by it</p>	<p>shall also provide, at its own cost, any additional areas outside the Project Site required by it under the Agreement;</p> <p>- use best efforts for keeping unauthorized Persons off the Project Site and maintaining security in relation to the Project Site;</p> <p>- promptly notify the Competent Authorities and hand over to them any archaeological finds, treasures and precious and semi-precious minerals discovered at the Project Site;</p> <p>- at reasonable times and on reasonable notice afford access to the Facility to Persons duly authorised by the Grantor to monitor and supervise the implementation of the Project;</p> <p>- assist the traffic police in implementing the Traffic Management Plan;</p> <p>- collect Toll from all the Users of the Facility except the Exempted Vehicles;</p> <p>- arrange security for cash collection and handling and implement measures for Toll Collection safety;</p> <p>- maintain the requisite insurance;</p> <p>- report to the Grantor during the Construction period of material matters relating to the construction, operation and Maintenance of the Facility;</p> <p>- not create any encumbrance on the Project</p>

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<p>in the performance of its obligations under this Agreement are at all times properly trained for their respective functions</p> <p>Highway Facilities for physically challenged and elderly persons-</p> <ul style="list-style-type: none"> - Concessionaire shall procure a barrier free environment for such persons using the Highway. <p>(Article 5)</p>	<p>Site other than that expressly permitted under this Agreement;</p> <ul style="list-style-type: none"> - hand over the Facility and the Project Assets less the Toll Equipment to the Grantor or its nominated agency at the end of the Concession Period; - make timely payments of Net Toll to the Grantor in accordance with the provisions of the Agreement; - pay liquidated damages to the Grantor for occurrences and at rates set forth in Appendix 20 other than where such occurrences are caused by (i) the occurrence of an event of Force Majeure or (ii) a Grantor Event of Default or any other act or omission by the Grantor in contravention of its obligations under this Agreement; and - procure assistance from the traffic police in the case of any traffic diversion or dislocation due to lane shut down for repairs or during emergencies and for purposes of implementing the Traffic Management Plan. - shall, at least 15 days prior to the commencement of collection of tolls or revised tolls, as the case may be, publish a notice specifying the actual amount of toll to be charged on mechanical vehicles in at least one newspaper each in English and local

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
			language of the area having a wide circulation in such area. (Article 6)
6.	Obligations of the Authority	<p>The Authority : agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:</p> <ul style="list-style-type: none"> - upon written request from Concessionaire and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality the Project; - upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services; - procure that no barriers are erected or placed on or about the Project Highway by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order or collection of inter-state taxes; - make best endeavours to procure that no local Tax, toll or 	<p>The Guarantor shall –</p> <ul style="list-style-type: none"> - discharge the Retained Functions as necessary at its cost and expense and compensate the Concessionaire for any financial loss that the Concessionaire may suffer due to failure to levy, demand and collect Toll, as certified by the Engineer In-charge of OWD, on account of the Grantor’s failure to undertake the Retained Functions within a reasonable time by extending the Concession Period for a period of time in which such loss may be recovered as determined by the Engineer In-charge of OWD. - notify in the Official Gazette as necessary the levy, demand and collection of Toll by the Concessionaire from Users of the Facility - upon request from the Concessionaire, use its best efforts to provide the Concessionaire with access for the Project to all infrastructure facilities and utilities, including water, electricity and telecommunication at fair rates; - upon request from the Concessionaire, the

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<p>charge is levied or imposed on the use of whole or any part of the Project Highway;</p> <ul style="list-style-type: none"> - subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Project Highway; - assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Project Highway; - not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; - support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and - upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits in such manner as may be necessary to facilitate the compliance of this Agreement and the Project Agreements. <p>Maintenance obligations prior to COD-</p> <p>Prior to COD, the Authority shall maintain the Project Highway, at its own cost and expense, so that its traffic worthiness and safety are at no time materially inferior as compared to its condition 7 (seven) days prior to the last date for submission of the Bid, and in the event of any material</p>	<p>Grantor shall grant, procure or assist in being granted all Clearances which are necessary for the implementation of the Project at the appropriate stages of the Project and which are in its authority to grant or assist subject to the Concessionaire complying with the eligibility criteria for the grant of such Clearances;</p> <ul style="list-style-type: none"> - in the event of a Change in Law, and such change has a Material Adverse Effect, the Concessionaire may by notice in writing to the Grantor request the Grantor to make such modifications to the terms of this Agreement as the Concessionaire reasonably believes are necessary to place the Concessionaire in substantially the same legal, commercial and economic position as it was prior to such Change in Law as certified by the Engineer In-charge of OWD . The Parties will thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, the dispute resolution procedure shall apply. - procure or assist in being granted all Clearances which are necessary for the implementation of the Project - not divert or change the routes of vehicles entering and leaving the Facility in a manner

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<p>deterioration or damage other than normal wear and tear, undertake repair thereof, or pay to the Concessionaire the cost and expense, as determined by the Independent Engineer, for undertaking such repair after COD.</p> <p>Obligation pertaining to Competing Road - Authority not allowed to construct competing road during subsistence of Agreement but restriction does not apply if the average traffic in any year exceeds 90% of its designed capacity. (Article 6)</p>	<p>that affects their access to and from the Facility</p> <ul style="list-style-type: none"> - not to levy any other or additional toll on the Users of the Facility or to close down or erect barriers or otherwise cause any diversion of traffic, etc. (Article 6.2)
7.	Representations and Warranties	<p>Concessionaire represents and warrants to the Authority that:</p> <ul style="list-style-type: none"> - it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement; - it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement; - it has the financial standing and capacity to undertake the Project; - this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof; - it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder; - the information furnished in the Bid and as updated on or 	<p>Each Party represents and warrants to the other Party that:</p> <ul style="list-style-type: none"> - in respect to the Concessionaire only, it is duly organized, validity existing and in good standing under the laws of the jurisdiction of its incorporation; - it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby; - it has taken all necessary action to authorize the execution, delivery and performance of this Agreement; - this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof; and

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<p>before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;</p> <ul style="list-style-type: none"> - 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 MoA {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected; - there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement; - it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Concessionaire's ability to perform its obligations under this Agreement; - it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its 	<ul style="list-style-type: none"> - it is subject to civil and commercial law with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction. <p>The Grantor hereby warrants that:</p> <ul style="list-style-type: none"> - the Project Site together with the necessary right of way/ way leaves belongs to and is vested in the Grantor, and that the Grantor has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any compensation payment on account of land acquisition or rehabilitation/ resettlement of any Persons affected thereby. (Article 7)

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<p>ability to perform its obligations under this Agreement;</p> <ul style="list-style-type: none"> - it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {existing promoters}, together with {its/their} Associates, hold not less than 33% (thirty three per cent) of its issued and paid-up Equity as on the date of this Agreement; and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall hold less than 26% (twenty six per cent) of such Equity during the <u>Concession Period</u>. <u>Provided, however, that where the selected bidder/ Consortium has incorporated the Concessionaire as a company for the sole purpose of undertaking this project, the aggregate holding of the {selected bidder/Consortium Members} together with {its/their} Associates, in the issued and paid-up Equity of the concessionaire shall not decline below 51% (fifty one percent) thereof during the Concession Period.</u> - {the selected bidder/ Consortium Members and its/their Associates} have the financial standing and resources to fund the required Equity and to raise the debt necessary to undertake and implement the Project in accordance with this Agreement; - {the selected bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has 	

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		<p>agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;</p> <ul style="list-style-type: none"> - all rights and interests of the Concessionaire in the Project Highway shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances in accordance with this Agreement; - no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; - no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and - all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects. - <p>The Authority represents and warrants to the Concessionaire that:</p> <ul style="list-style-type: none"> - it has full power and authority to execute, deliver and 	

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		<p>perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;</p> <ul style="list-style-type: none"> - it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement; - it has the financial standing and capacity to perform its obligations under this Agreement; - this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof; - it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement; - it has complied with Applicable Laws in all material respects; - - it has the right, power and authority to manage and operate the Project Highway up to COD; and - it has good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Concessionaire. <p>(Article 7)</p>	

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8.	Disclaimer	<p>The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained, procured or gathered otherwise and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder.</p> <p>The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard. (Article 8)</p>	Similar to the MCA covered under Article 12
9.	Performance Security	<ul style="list-style-type: none"> - Performance Security to be provided within 15 days from the date of Agreement by way of an irrevocable and unconditional guarantee from a Bank; - If the Concessionaire fails to provide Performance security within 60 days of the date of Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, 	<ul style="list-style-type: none"> - Performance security to be provided within 3 weeks from the date of issuance of NOA. - Performance Security to remain valid throughout the Concession Period and shall be returned to the Concessionaire at the end of twelve months after expiry of the Concession Period or of extension thereof. - Appropriation of Performance Security upon Concessionaire Default or failure to meet any Condition Precedent.

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		<p>and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.</p> <ul style="list-style-type: none"> - Appropriation of Performance Security upon Concessionaire Default or failure to meet any Condition Precedent. - Performance Security to be valid during Concession Period till the issuance of Vesting Certificate. <p>(Article 9)</p>	<ul style="list-style-type: none"> - Concessionaire’s failure to renew/ provide a substitute Performance Security shall constitute a Concessionaire Event of Default, which shall entitle the Grantor to terminate this Agreement. <p>(Article 5)</p>
10.	Right of Way	<p>Provisions include:</p> <ul style="list-style-type: none"> - The Site – definition - License, Access and Right of Way- Authority grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary prior to COD. - Procurement of the site- Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site - Site to be free from Encumbrances- the Site shall be made available by the Authority to the Concessionaire free from all Encumbrances and occupations. - Protection of Site from encroachments - Special/temporary right of way- Concessionaire shall bear all costs and charges for any special or temporary right of way required - Access to the Authority and Independent Engineer - Geological and archaeological finds- Concessionaire shall 	<p>Provisions include:</p> <ul style="list-style-type: none"> - Possession of Project Site- The Grantor shall hand over to the Concessionaire by the Compliance Date, the Vacant Possession of all the land and rights comprising the Project Site free from Encumbrances - Grantor’s property at the Project site- All debris, construction and building materials (sand, gravel, stone, rock, loose earth etc.) lying at the Project Site or generated during the construction, erection and installation of the Tolling Facility/ carrying out periodic overlay shall be the property of the Grantor - Access to project site- the Concessionaire shall afford access to the Project Site, representatives of or Persons duly authorised by the relevant Competent Authority and the construction contractors. <p>(Article 4 “Project Site”).</p>

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		<p>not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants, etc.</p> <p>(Article 10)</p>	
11.	Utilities, Associated Roads and Trees	<p>Article 11 stipulates as under :</p> <ul style="list-style-type: none"> - Existing utilities and roads- the concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility; - Shifting of obstructing utilities- The Concessionaire shall undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment at the cost of the Authority or the entity owning the utility; - New utilities and roads- The Concessionaire shall allow access to, and use of the Site for laying telephone lines, water pipes, electric cables or such other utilities - Felling of trees- The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority and the cost of such felling shall be borne by the Authority. 	<p>Not spelt out separately but Article 4 clearly stipulates that the Grantor shall hand over vacant possession of all lands comprising the Project Site free from all encumbrances.</p>
12.	Construction of Project Facilities	<p>Provisions include:</p> <ul style="list-style-type: none"> - Obligations prior to commencement of construction- submit 	<p>Construction of Tolling Facility- The Concessionaire shall undertake at its expense the</p>

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		<p>to the Authority and the Independent Engineer, its detailed design, construction methodology, quality assurance procedures etc.</p> <ul style="list-style-type: none"> - Drawings :Concessionaire shall submit for approval of Independent Engineer drawings of the Project; comply with any observations raised by the Independent Engineer. - Completion of Project Facilities- On or after COD, the Concessionaire shall undertake construction of Project Facilities as specified in Schedule-B - Termination due to failure to complete Project Facilities- In the event that any Project Facility is not completed on or before the expiry of 150 days the Authority may in its discretion terminate this Agreement. - Monthly Progress Reports - Regular Inspection of the Works by Independent Engineer. - Tests : To that the Construction Works conform to the Specifications and Standards the Independent Engineer shall require the Concessionaire to carry out Tests. - Delays during construction : if the Concessionaire does not achieve any of the project milestones set forth in the Project Facility Completion Schedule or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that they are not likely to be completed within the time specified by the Independent Engineer, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent 	<p>design, erection, installation and construction, execution of the basic and detailed design and engineering work, completion, testing and commissioning of the Tolling Facility at the expense of the Grantor;</p> <ul style="list-style-type: none"> - the Tolling Facility on its own or through Construction Contractor(s) and commence the Works within 30 days of the Compliance Date; - Concessionaire shall be responsible for the design and programming of the Works, Concessionaire shall organize the Project Site during the period of construction with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials etc. - Concessionaire shall achieve Substantial Completion within 4 months of the Compliance Date in accordance with the terms and conditions of this Agreement. Till such time as Substantial Completion is achieved, the Concessionaire shall commence Commercial Operations of the Facility with effect from the Operations Date by setting up Temporary Toll Gates, which however, shall be dismantled and removed by the Concessionaire upon achieving Substantial Completion. - Following the issue of the Substantial Completion Certificate, the Concessionaire

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		<p>Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve completion.</p> <ul style="list-style-type: none"> - Suspension of unsafe Construction Works - Completion Certificate - the Independent Engineer determining that a Project Facility conforms to the Specifications and Standards and has been completed in accordance with the provisions of this Agreement, it shall forthwith issue to the Concessionaire and the Authority a Completion Certificate <p>(Article 12)</p>	<p>shall promptly complete all minor works not otherwise completed at Substantial Completion, as the completion thereof was not a requisite for the issuance of the Substantial Completion Certificate.</p> <ul style="list-style-type: none"> - If the Substantial Completion is delayed due to an act or omission of the Concessionaire or its Subcontractor(s), agents or employees in contravention of its obligations under this Agreement it shall be a Concessionaire Event of Default. <p>(Article 9)</p>
13.	Entry into Commercial Service	<ul style="list-style-type: none"> - The commercial operation date of the Project shall be the date on which all Conditions Precedent have been satisfied in accordance with Article 4. - In the event, COD is not achieved due to an act or omission of the Concessionaire within the aforesaid period, the Agreement shall deemed to have been terminated with the mutual consent of the Parties and the Authority shall forfeit the Bid Security/ Performance Security of the Concessionaire. If COD has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with Damages equal to 25%. <p>(Article 13)</p>	<ul style="list-style-type: none"> - Concessionaire to commence Commercial Operations of the Facility from the Compliance Date by setting up temporary structures and facilities (“Temporary Toll Gates”) as necessary, which, however, shall be dismantled and removed by the Concessionaire upon Substantial Completion being accomplished. - If the Substantial Completion is delayed due to an act or omission of the Concessionaire or its Subcontractor/ agent/ employees in contravention of its obligations under this Agreement it shall be a Concessionaire Event of Default. If the completion of erection, installation and construction of the Tolling

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			Facility is delayed due to an act or omission of the Grantor in contravention of its obligations under this Agreement, the Construction Period and the Concession Period shall be extended for a period of time equal to the period of such delay.(Article 6.1 (b))
14.	Change of Scope	<p>The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “Change of Scope”). Any such Change of Scope shall be made in accordance with the provisions of this Article 14 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 14.3.</p> <p>(Article 14)</p>	No such provision
15.	Operation and Maintenance	<p>The Concessionaire shall :</p> <ul style="list-style-type: none"> - operate and maintain the Project Highway in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project Highway to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. - collecting and appropriating the Fee; - carrying out periodic preventive maintenance of the Project Highway; 	<p>The Concessionaire shall :</p> <ul style="list-style-type: none"> - undertake at its expense the operation and Maintenance of the Facility either by itself or through an O&M Contractor, shall exercise appropriate control over O&M Contractors, collect the correct Toll from each Users and ensure as far as possible that the collection of Toll is maximized, etc. - shall carry out periodic maintenance/ renewal cost as per specifications laid in Appendix 14; Commencing from the Operations Date until

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		<ul style="list-style-type: none"> - undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement markings, lighting, road signs and other traffic control devices; - undertaking major maintenance such as resurfacing of pavements, repairs to structures, and repairs and refurbishment of tolling system and other equipment; - protection of the environment and provision of equipment and materials therefore; - operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project Highway; - complying with Safety Requirements in accordance with Article 18. <p>Maintenance Requirements</p> <ul style="list-style-type: none"> - The Concessionaire shall procure that at all times during the Concession Period, the Project Highway conforms to the maintenance requirements set forth in Schedule-F. <p>Maintenance Manual</p> <p>The Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual for the regular and preventive maintenance of the Project Highway in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice.</p> <p>Maintenance Program</p> <p>The Concessionaire shall provide to the Authority and the</p>	<p>the Handing Over Date, the Concessionaire:</p> <ul style="list-style-type: none"> - shall undertake at its expense the operation and Maintenance of the Facility either by itself or through an O&M Contractor (s), possessing adequate technical and financial capability, in compliance with the Technical Requirements, Performance Standards, the terms and conditions of this Agreement and the Prudent Utility Practices. The appointment of the O&M Contractor(s) shall not, in any manner, relieve the Concessionaire of any obligation under this Agreement. - shall exercise appropriate control over the O&M Contractor(s) and shall manage, direct, administer and supervise the work of the O&M Contractor(s). <p>shall operate and maintain the Facility safely, reliably, economically and efficiently so as to:</p> <ul style="list-style-type: none"> - optimize as far as possible the safety, availability, expectancy and efficiency of the Facility; - collect the correct Toll from each Users and ensure as far as possible that the collection of Toll is maximized; - minimize the incidence and duration of any

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		<p>Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “Maintenance Programme”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements</p> <p>Safety, vehicle breakdowns and accidents</p> <p>The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, lane closures, diversions, vehicle breakdowns and accidents, it shall follow the relevant operating procedures including the setting up of temporary traffic cones and lights, and removal of obstruction and debris without delay.</p> <p>Damages for breach of maintenance obligations</p> <p>If the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Fee, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer.</p> <p>Authority’s right to take remedial measures</p> <p>If the Concessionaire does not maintain or repair the Project Highway or any part thereof, the authority shall be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a</p>	<p>period during which the Facility or any part thereof is inaccessible to Users; and</p> <ul style="list-style-type: none"> - enable the Facility to continue in operation throughout the Operations Period in good working order and condition. - shall carry out periodic maintenance/ renewal cost as per specifications laid in Section __ of Appendix 14; - shall provide all equipment and materials necessary for undertaking the Works. All equipment shall, when brought to the Project Site, be deemed to be exclusively intended for the Operation and Maintenance of the Facility. The Concessionaire shall not remove from the Project Site any such equipment and materials without the consent of the Grantor’s Representative, unless such equipment is to be moved directly to another site on the Facility; - shall maintain complete and accurate records of all equipment, materials, consumables and spare parts brought on to the Project Site and shall provide copies of such records to the Grantor and Engineer In-Charge of OWD request; and - shall ensure that its staff and its Subcontractor’s staff are fully and comprehensively trained and, where

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		<p>sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages.</p> <p>Some other provisions are :</p> <p>Overriding powers of the Authority</p> <ul style="list-style-type: none"> - Restoration of loss or damage to Project Highway - Modifications to the Project Highway - Excuse from performance of obligations - Barriers and diversions - Advertising on the site <p>(Article 15)</p>	<p>appropriate, retrained to enable them to undertake the Works. The Concessionaire shall not use the Facility for the purpose of training staff in connection with the operation of any other facility.</p> <p>Emergencies- Concessionaire shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss</p> <p>Organization: Parties Representatives</p> <ul style="list-style-type: none"> - Concessionaire shall appoint by the Compliance Date a properly qualified, competent and experienced person, acceptable to the Grantor to act as the Concessionaire's Representative who will have full responsibility for the operation, maintenance and administration of the Facility. - The Grantor shall by the Compliance Date appoint a representative and notify the Concessionaire of the appointment. <p>Key Personnel</p> <ul style="list-style-type: none"> - The Concessionaire shall appoint and retain during the Concession Period the Key Personnel listed by name and title in the Proposal, set out in Appendix 4.

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			<p>Labour & Staff</p> <ul style="list-style-type: none"> - The Concessionaire shall provide and employ on the Project Site for the execution of the Works such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of this Agreement. (Article 9)
16.	Monitoring of Operation and Maintenance	<p>By an Independent Engineer :</p> <p>Monthly status reports : stating in reasonable detail the condition of the Project Highway including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements.</p> <p>Inspection : Carry out inspection once a month stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire.</p> <p>Tests : For determining that the Project Highway conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests.</p> <p>Remedial measures : Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results.</p> <p>Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have</p>	<p>By the Engineer in charge of OWD :</p> <ul style="list-style-type: none"> - Specific requirements set forth in Appendix-14. <p>The Concessionaire shall in a form and manner acceptable to the Engineer In-charge of OWD :</p> <ul style="list-style-type: none"> - establish and maintain a daily and monthly reporting system to provide storage and ready retrieval of Facility operating data including all such information which is necessary to verify costs and expenses incurred and to confirm that Toll have been properly collected from Users and otherwise to confirm that the Concessionaire is in compliance with its obligations under this Agreement; - provide regular reports on accidents and traffic violations, if any; - provide a report, on a fortnightly basis, of the volume of traffic (including details of Exempted Vehicles and the basis for their exemption), road condition and records of the

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		<p>brought the Project Highway into compliance with the Maintenance Requirements.</p> <p>Monthly Fee statement : Concessionaire shall furnish to the Authority within 7 (seven) days of completion of each month, a statement of Fee substantially in the form set forth in Schedule-G.</p> <p>Reports of unusual occurrence The Concessionaire shall send a report on daily basis stating accidents and unusual occurrences on the Project Highway relating to the safety and security of the Users and Project Highway.</p> <p>(Article 16)</p>	<p>Concessionaire's manpower;</p> <ul style="list-style-type: none"> - provide a copy to the Grantor of its annual audited accounts within 90 days of the end of the relevant financial year; - report to the Grantor, on an annual basis, on the condition of the Facility; - report, at such intervals as may be specified by the Grantor, specifying the MSA volume that has been achieved and the time period within which relevant MSA test could be reasonably expected to be achieved; - promptly upon becoming aware of the same give written notice to the Grantor of: <ul style="list-style-type: none"> o any litigation or material claims, disputes or actions, threatened or filed, concerning the Facility or the Works to be undertaken hereunder; o any refusal or threatened refusal that might affect the granting, renewal or extension of any Clearance; o all penalties or notices of violation issued by any Competent Authority; and o any other material information concerning execution of Works or the Operations or Maintenance of the Facility. (Article 10)

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17.	Traffic Regulation	<p>Provisions include</p> <ul style="list-style-type: none"> - Traffic regulation by the Concessionaire in accordance with the Applicable Laws, and subject to the supervision and control of the State authorities. - Police Assistance : the Authority shall assist the Concessionaire in procuring police assistance from the State Police Department including construction of Traffic Aid Posts. - Buildings for Traffic Aid Posts : The Concessionaire shall construct and hand them over to the Authority no later than 120 days from COD. The Traffic Aid Post(s) shall be deemed to be part of the Site. - Recurring expenditure on Police assistance: The Concessionaire shall provide to the State Police Department one Jeep or similar vehicle in good working condition along with chauffeurs for round-the-clock and shall meet the operating costs of such vehicle including the salaries and allowances of the chauffeurs. <p>(Article 17)</p>	<p>The Concessionaire shall :</p> <ul style="list-style-type: none"> - Assist the traffic police in implementing and as necessary implement the Traffic Management Plan - procure assistance from the traffic police in the case of any traffic diversion or dislocation due to lane shut down for repairs or during emergencies and for purposes of implementing the Traffic Management Plan. <p>Detailed provisions in this regard are to be incorporated by the Road Sector Expert/ Technical Expert under Appendix 13 titled as “Traffic Management Plan”.</p>
18.	Safety Requirements	<ul style="list-style-type: none"> - Safety requirements : The Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Highway, and shall comply with the safety requirements set forth in Schedule-H. - The Authority shall appoint an experienced and qualified 	<ul style="list-style-type: none"> - Presently provisions similar to the ones contained in MCA OMT Agreement are not present in the Draft of O&M Contract prepared for OWD. However, the same could be incorporated under Appendix pertaining to “Scope of Works”.

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		<p>firm or organisation (the “Safety Consultant”) for carrying out safety audit of the Project Highway in accordance with the Safety Requirements. All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.</p> <p>- Medical Aid Post/s : For providing emergency medical aid during the Concession Period, the Concessionaire shall assist the State Government in setting up and operating a medical aid post (the “Medical Aid Post”) [at each of the Toll Plazas] with round-the-clock ambulance services for victims of accidents on the Project Highway. The Concessionaire shall, at its cost, maintain the Medical Aid Post buildings in accordance with Good Industry Practice.</p> <p>(Article 18)</p>	<p>- The Agreement generally provides that the Concessionaire shall organize the Project Site during the period of construction with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of competent personnel.</p> <p>- Detailed provision regarding safety of Road Users, Facility and Project Highway is given under Clause pertaining to Emergencies (Clause 9.3)</p>
19.	Traffic Census and Sampling	<p>- Traffic Census : The Concessionaire shall install, maintain and operate electronic/ computerised traffic counters at [each of] the Toll Plaza[s] and collect data relating to the number and types of vehicles using the Project Highway. [The Concessionaire shall also install, maintain and operate weighing platforms (weigh-in-motion type) for recording, on a sample basis, the weight of commercial goods vehicles using the Highway.</p> <p>- Traffic survey : The Concessionaire shall, at its own cost, carry out or cause to be carried out the survey in the form and manner reasonably specified by the Authority and furnish a detailed report thereof within 15days of the completion of each survey.</p>	<p>- The Concessionaire to install weighbridge at the Toll Plazas for recording, the weight of commercial goods vehicles using the Highway.</p> <p>- The Concessionaire shall prepare a Monthly Traffic Report for the Toll Plaza/s containing the traffic data, vehicle data, vehicle category wise paying the toll and submit the same to Engineer in Charge Of OWD</p>

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		<ul style="list-style-type: none"> - Traffic Sampling : For determining the actual traffic on the Project Highway, the Authority entitled to inspect the relevant records of the Concessionaire, and may at its own cost undertake traffic sampling substantially in the manner set forth in Schedule-J at such frequency as it may deem appropriate. Realisable Fee for any comparable period shall be calculated with reference to the traffic determined hereunder. - Computer Systems and network : The Concessionaire shall install, operate and maintain a computer system with round-the-clock connections to the networks of the Authority and other related entities for exchange of data and information useful or necessary for efficient and transparent regulation and management of traffic (Article 19) 	
20.	Engineer supervision for	<p><u>Independent Engineer</u></p> <ul style="list-style-type: none"> - Appointment of Independent Engineer : The Authority shall appoint a consulting engineering firm from a panel of 10 firms or bodies corporate, constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule-K, to be the “Independent Engineer”. - Duties and Functions of Independent Engineer : The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-L. - Remuneration : The remuneration, cost and expenses of the Independent Engineer to be shared equally between the 	<ul style="list-style-type: none"> ➤ Engineer In-charge of OWD means the Engineer of the rank of Executive Engineer in the OWD, Government of Odisha, or his replacement appointed by the Grantor and notified to the Concessionaire for the purposes of monitoring the performance of both Parties under the Concession Agreement and to carry out such functions and duties as mentioned in the Agreement. ➤ Steering Group comprising of the Chief Engineer (Roads), OWD, GOO along with one other engineer from OWD and one representative of the concessionaire. The

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		<p>Authority and the Concessionaire.</p> <ul style="list-style-type: none"> - Termination of appointment : The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time. If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer - Dispute Resolution : If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure provided under the Agreement. <p>(Article 20)</p>	<p>Chief Engineer, OWD shall be the chairman of the Steering Group. The Steering Group to hold meetings at least once every 3 months to review the progress during the Concession Period. The Steering Group also to act as the second tier of Dispute Resolution mechanism under the Agreement.</p>
21.	Concession Fee/ Net Toll payable by Concessionaire	<ul style="list-style-type: none"> - In consideration of the grant of Concession, the Concessionaire shall pay to the Authority the Concession Fee. - The Concession Fee shall increase for the respective year by [10% (ten per cent)] as compared to the immediately preceding year. - The Concession Fee payable for each year shall be due and payable in 12 equal monthly instalments. Within 3 days of the close of each month, the Concessionaire shall pay to the Authority the Concession Fee for the month. <p>(Article 21)</p>	<ul style="list-style-type: none"> - “Net Toll” is the annuity, quoted in the financial Proposal that shall be paid with effect from Operations Date per annum in 12 equal monthly installments by the Concessionaire to the OB&CC on behalf of the Grantor during the Concession Period at rates set out in Appendix 17. - The Net Toll shall be payable by the Concessionaire in advance on 7th day of each month of Commercial Operations in the bank account as advised by the Grantor to the Concessionaire in writing.

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			- The Net Toll shall be payable by the Concessionaire in advance on 7 th day of each Month of Commercial Operations in the bank account as advised by the Grantor to the Concessionaire in writing. (Article 11.3)
22.	User Fee/ Toll	<ul style="list-style-type: none"> - Collection and appropriation of Fee : On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the Users at the rate specified in the Fee notification to be issued by the Authority, in accordance with the provisions of the Agreement and the Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011. - The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the Project Highway and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement. - Revision of Fee : Fee shall be revised annually on April 1 subject to and in accordance with the provisions of the Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011 (the “Fee Rules”). - Payment of by local users : The payment of Fee by Local Users for mechanical vehicles which are registered for non-commercial purposes, using the Project Highway and crossing the Toll Plaza, shall be governed by the detailed 	<ul style="list-style-type: none"> - Levy and Appropriation of Toll : On and from the Operations Date (or Compliance Date) and until the Operations Period, the Concessionaire or its agents or servants shall levy, demand and collect the Toll from the Users of the Facility except Exempted Vehicles as defined under the Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011, at rates set out in Appendix 16. - The amount of total Toll levied, demanded and collected by the Concessionaire for a month is less than the Net Toll payable by the Concessionaire to the Grantor for that month, the Concessionaire shall be liable to make good such shortfall. - The surplus of total Toll levied, demanded and collected by the Concessionaire for a month over the Net Toll for that month shall be retained and appropriated by the Concessionaire towards O&M Expenses. - The Concessionaire shall have the right to appoint any Person as its agent for the purpose

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		<p>provision contained in this regard in Sub-Rule (2) of Rule 9 of the Fee Rules, as amended from time to time.</p> <ul style="list-style-type: none"> - Discounted Fee for frequent Users : The Concessionaire shall, upon request from any person, issue pass for multiple journeys within the specified period at the rates specified in the Fee Rules. - Tolling Contractor : The Concessionaire may appoint a Tolling Contractor to collect the Fee for and on behalf of the Concessionaire, however the Concessionaire shall remain solely liable and responsible for the collection of Fee in accordance with this Agreement and its deposit into the Escrow Account. - Fee collection points : Fee shall ordinarily be collected at the Toll Plaza[s] from vehicles crossing the Toll Plaza[s] and using the whole or part of the Project Highway; provided that for preventing evasion of Fee by any vehicle circumventing [one or both of] the Toll Plaza[s] and using the whole or part of the Project Highway [located between such Toll Plazas], the Concessionaire shall with the prior permission of the Authority be entitled to may set up at its own risk and cost, and in consultation with the Independent Engineer, additional barriers in accordance with the provisions of the Fee Rules, as may reasonably be necessary for preventing such evasion. - Additional charge for evasion of Fee : if any vehicle uses the Project Highway without payment of Fee due, the Concessionaire shall be entitled to determine and collect from such vehicle the Fee due and an equivalent amount 	<p>of collection of Toll from Users of the Facility; who in the opinion of the Engineer In-charge of OWD has the capability of discharging such function.</p> <ul style="list-style-type: none"> - In the event that the Toll cannot be levied, demanded or collected for any reason related to a Change in Law or as a result of any restriction or injunction based on any process of Law or any decision or order of a court, tribunal or Competent Authority, such event shall be deemed a Grantor Event of Default. <p>Collection & Handling : The Concessionaire shall be solely responsible for the collection of Toll and the monitoring of the collection of Toll for and on behalf of the Grantor and for the safe keeping, security and transport thereof. While collecting Toll, the Concessionaire shall ensure compliance with all the requirements pertaining to collection of Toll, set forth in Tolls the Orissa State Roads Tolls Act, 2010 and the Rules made thereunder as amended from time to time.</p> <ul style="list-style-type: none"> -The Concessionaire shall be liable for the loss of any Toll collected by it or its agents or servants whether by fraud, misappropriation, theft, accident, event of Force Majeure or any other event or circumstance whatsoever. -The Concessionaire shall put in place, prior to the receipt of any of the Toll, security measures

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		<p>towards predetermined liquidated damages for unauthorised use of the Project Highway.</p> <ul style="list-style-type: none"> - Additional fee for overloaded vehicle : Fee for such overloaded vehicle shall be at the rate applicable to the next higher category of vehicles. - Display of Fee rates : The Concessionaire shall, before entry to the Toll Plaza[s], prominently display the amount of toll for each class of vehicle, period of validity for the amount paid, the categories of vehicles exempted from payment of toll, the name, address and telephone number of the Concessionaire or the authorized representative to whom suggestions and complaints, if any, should be addressed, shall be clearly and prominently displayed in Hindi, English and Oriya as per Fee Rules. <p>(Article 22)</p>	<p>necessary for handling, deposit and protection of Toll from loss, theft or destruction. Notwithstanding such security measures (i) all money being held by the Concessionaire shall at all times be insured against loss due to but not limited to theft, loss, fire and natural disasters and (ii) the Concessionaire shall remain liable for timely payment of Net Toll to the Grantor in accordance with the terms of this Agreement.</p> <p>-The Toll can be paid by the Users either in cash or through Smart Card or on board unit (transponder) or any other like device at no additional charges.</p> <p>(Article 11)</p>
23.	Escrow Account	<ul style="list-style-type: none"> - Concessionaire shall, prior to COD, open and establish an Escrow Account with a Bank - Concessionaire shall deposit all monies received in relation to Project from banks, insurance etc.; all Fee and any other revenues from or in respect of the Project Highway, including the proceeds of any rentals, deposits, capital receipts or insurance claims; all payments by the Authority, made after deduction of any outstanding Concession Fee and shall also deposit the termination Payments. - All the monetary transactions in respect of the Project shall take place through this Account. 	- No similar provision

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		(Article 23)	
24.	Insurance	<p>Insurance during Concession Period : The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice to cover third party claims and Non Political Event (the “Insurance Cover”). The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account.</p> <p>Evidence of Insurance Cover : Within 15 days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance.</p> <p>Remedy for failure to insure : If the Concessionaire shall fail to effect and keep in force all insurances, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.</p> <p>Application of insurance proceeds : The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and apply such proceeds for any necessary repair, reconstruction,</p>	<p>Coverage : The Concessionaire shall on and from the Compliance Date at its cost and expense take out and maintain the insurance policies set forth below:</p> <ol style="list-style-type: none"> a) Third Party liability insurance to be of minimum Rupees Ten Million and above b) Toll Equipment all risk policy c) Fire and theft policy d) Cash in transit policy of value equal to 30 (thirty) days Toll collection e) policy for loss or damage to Project Assets <p>Evidence of Insurance Coverage- Concessionaire shall furnish copies of certificates of insurance in respect of the insurance policies to the Grantor as soon as reasonably practicable after they are received by the Concessionaire and from time to time shall furnish evidence to the Grantor that all premiums have been paid, and that the relevant policies remain in existence. (Article 21)</p>

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		<p>reinstatement, replacement, improvement, delivery or installation of the Project Highway and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.</p> <p>(Article 24)</p>	
25.	Accounts and Audit	<p>Audited accounts:</p> <ul style="list-style-type: none"> - Concessionaire shall maintain books of accounts recording all its receipts (including all Realisable Fees and other revenues derived/collected by it from or on account of the Project Highway and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. - The Concessionaire shall, within 30 days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter. - On or before the first day of August each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the traffic count for each category of vehicles using the Project Highway and liable for payment of Fee therefor, (b) Fee charged and received, Realisable Fee and other revenues derived from the Project Highway, and (c) such other information as the Authority may reasonably require. 	<p>The Concessionaire shall :</p> <ul style="list-style-type: none"> - maintain in accordance with standard accounting practices and statutory requirements under Indian Law complete, accurate and up-to-date records and accounts relating to Project, including the Operation and Maintenance of the Facility, assets, liabilities, revenues and expenses, costs of repair, horticultural aspects, including records of the time of the Concessionaire's employees involved in performing the Concessionaire's obligations under the Agreement. - provide copies of such accounts, duly audited and certified by its statutory auditors, to the Grantor and OB&CC within 90 days of the close of each Financial Year to which they pertain. The Concessionaire shall promptly furnish to the Grantor and OB&CC copies of relevant extracts of its books of accounts, duly certified by its statutory auditors, as may be reasonably required by them for verification of such accounts. The Concessionaire shall also

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		<p>Certification of claims by Statutory Auditors Set-off: Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. (Article 25)</p>	<p>furnish to the Grantor and OB&CC, within one week of its publication, a certified copy of the audited accounts and the annual report published by the Concessionaire under the Applicable Laws.</p>
26.	Force Majeure	<p>The expression “Force Majeure Event” includes occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in the Agreement.</p> <p>Non-Political Event: A Non-Political Event shall mean:</p> <ul style="list-style-type: none"> - acts of God, epidemic, lightning, earthquake, landslide, cyclone, flood etc. - strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project Highway for a continuous period of 24 hours - any failure or delay of a Contractor - any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of 	<p>Force Majeure Event means any event or circumstance or a combination of events and circumstances referred to in Appendix 18 which are beyond the affected Party’s reasonable control, could not have been prevented or reasonably overcome with the exercise of reasonable skill and care, do not result from the negligence or the failure to perform obligations of such Party and which are of such an incapacitating nature and of a severe magnitude that it has a Material Adverse Effect on the affected Party’s obligations. The Affected Party shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent such performance is impeded by an event of Force Majeure. Appendix 18, therefore, stipulates: The Force Majeure Events shall comprise: Non- Political Events :</p> <ul style="list-style-type: none"> - Lightning, earthquake, landslides, tempest,

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		<p>breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority</p> <ul style="list-style-type: none"> - the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection <p>Indirect Political Event</p> <ul style="list-style-type: none"> - An act of war, invasion, armed conflict, blockade, embargo, riot, civil commotion etc. - industry-wide or State-wide strikes or industrial action for a continuous period of 24 hours and exceeding an aggregate period of 7 days in an Accounting Year; - any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 days in an Accounting Year; - any Indirect Political Event that causes a Non-Political Event; <p>Political Event</p> <ul style="list-style-type: none"> - Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 33; - compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors; 	<p>cyclone hurricane, whirlwind, storm, flood, and other unusual or extreme adverse weather or environmental conditions or other events of natural disaster of rare severity</p> <ul style="list-style-type: none"> - meteorites or objects falling from aircraft or other aerial devices, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at high speeds - epidemic or plague - strikes, lock-outs or other industrial action or labour disputes - act of war - any event or circumstances of a nature analogous to the foregoing <p>Political Events:</p> <ul style="list-style-type: none"> - industry wide or state wide or India wide strikes or industrial action or public agitation which prevents collection of Toll by the Concessionaire for a period exceeding a continuous period of 7 days or events or circumstances of a nature analogous to any of the foregoing - expropriation, confiscation, acquisition or nationalization of the Facility or any Project Asset or rights of the Concessionaire or of the Subcontractor(s) or requisition of the Facility in case of a national or state emergency by GOI or GOO or any Competent Grantor.

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		<p>- unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;</p> <p>Duty to report Force Majeure Event : Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith.</p> <p>Effect of Force Majeure Event on the Concession : Upon the occurrence of any Force Majeure Event prior to COD, the period for achieving COD shall be extended by a period equal in length to the duration of the Force Majeure Event. If any Force Majeure Event occurs after COD, whereupon the Concessionaire is unable to collect Fee despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fee on account thereof.\</p>	<ul style="list-style-type: none"> - the imposition of the blockade, embargo, import restrictions, rationing or allocation by any GOO or Competent Grantor - political bandhs, transporter's agitation, merchant agitation, riots, civil disturbances of any kind including civil commotion and disturbances by local bodies or people at or around the Project Site or at any other location which impedes the implementation of the Project - any decision or order of a court or tribunal which has the effect of restraining all or any part of the activities concerning the construction, operation or maintenance of the Project - any other act by any Competent Grantor which has a Material Adverse Effect or materially adversely affects the Project or the rights of the Concessionaire or the Subcontractors <p>Procedure for Force majeure:</p> <ul style="list-style-type: none"> - Affected Party to give Notice within 7 days of the Force Majeure event - Parties shall consult with each other for a period of 30 days to determine the reasonable measures to be implemented to minimize the losses of each Party - Concessionaire shall continue to pay Net Toll

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		<p>Allocation of costs arising out of Force Majeure : Upon occurrence of any Force Majeure Event prior to COD, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof. Upon occurrence of a Force Majeure Event after COD, in case of Non-Political Event, the Parties shall bear their respective Force Majeure Costs and in case of Indirect Political Event or a Political Event, all Force Majeure Costs attributable to such Indirect Political Event or Political Event, as the case may be, shall be reimbursed by the Authority to the Concessionaire.</p> <p>Termination Notice for Force Majeure Event : If a Force Majeure Event subsists for a period of 120 days or more within a continuous period of 365 days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party.</p> <p>Termination Payment for Force Majeure Event : If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 50% of the Debt Due less Insurance Cover. If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to Debt Due.</p> <p>If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable as if it were an Authority Default.</p> <p>Dispute Resolution : In the event that the Parties are unable</p>	<p>during the period the Force Majeure event subsists. It shall not be liable to pay any Net Toll during extension of the Concession Period on account of a Force Majeure event.</p> <p>(Article 15)</p> <p>Termination following Force Majeure</p> <ul style="list-style-type: none"> - In the event Force Majeure continuously impedes or prevents a Party's performance for longer than 60 days from the date of commencement of such Force Majeure event, the Parties shall decide by mutual consent through consultation either the terms upon which to continue the performance of this Agreement or to terminate this Agreement. If the parties decide to terminate the Agreement by mutual consent within 90 days from the date of the commencement of such Force Majeure event, either Party may issue a Notice of Intention to Terminate. - If, following Force Majeure, a Party elects to terminate this Agreement under Sub-clause (a) above, the Concessionaire shall hand over the Facility and the Project Assets less the Toll Equipment to the Grantor or its nominated agency, as the case may be, in accordance with Article 14 and the Grantor or its nominated agency, as the case may be, shall accept such handing over.

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		<p>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.</p> <p>(Article 26)</p>	<ul style="list-style-type: none"> - In the event this Agreement is terminated by a Party under paragraph (a) following Force Majeure arising out of the circumstances described in Appendix 18 Section 1(b), then as a precondition to such handing over, the Grantor shall be obligated to compensate the Concessionaire the amounts as it were Grantor's Event of Default.
27.	Termination	<p>Termination for Concessionaire's Default : In the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement :</p> <ul style="list-style-type: none"> - the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 days. - the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 days - the Concessionaire fails to cure, within a Cure Period of 60 days, the Concessionaire Default for which whole or part of the Performance Security was appropriated - the Concessionaire abandons or manifests intention to abandon the operation of the Project Highway without the prior written consent - Concessionaire fails to undertake or complete the construction or the Project Facilities 	<p>Termination by the Concessionaire for the Grantor Event of Default includes :</p> <ul style="list-style-type: none"> - material Breach by Grantor of its obligations or of express representation or warranty under this Agreement which is not remedied within 90 days of receipt of the Concessionaire's written notice specifying such breach and requiring the Grantor to remedy the same; - such events as have been specified as Grantor Events of Default under the provisions of this Agreement; - any defect in the title, ownership and possession of Grantor with respect to the Project Site; - any change in the policies of the Grantor or a Change in Law which has a Material Adverse Effect on the Concessionaire's ability to implement the Project; or - repudiation of this Agreement by the Grantor.

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		<ul style="list-style-type: none"> - Concessionaire is in breach of the Maintenance Requirements - Concessionaire has failed to make any payment to the Authority within the period specified - Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 days - Concessionaire creates any Encumbrance in breach of this Agreement - Concessionaire has failed to fulfil any obligation, etc. <p>Upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.</p> <p>Termination for Authority Default:</p> <ul style="list-style-type: none"> - Authority commits a material default in complying with any of the provisions of this Agreement - Authority has failed to make any payment to the Concessionaire - Authority repudiates this Agreement. <p>Upon occurrence of an Authority Default, the Concessionaire shall, be entitled to terminate this Agreement by issuing a</p>	<p>Termination by the Grantor for the Concessionaire Event of Default :</p> <ul style="list-style-type: none"> - Each of the following events or circumstances, to the extent not caused by a default of Grantor or Force Majeure, shall be considered as Concessionaire Event of Default which, if not cured within the time period permitted, if any, shall provide the Grantor with the right to terminate this Agreement : - material Breach by Concessionaire of its obligations or express representation or warranty under this Agreement which is not remedied within 90 days of receipt of the Grantor's written notice specifying such breach and requiring the Grantor to remedy the same; - any actions or omissions attributable to Concessionaire, including delay on the part of the Concessionaire to discharge any of its obligations that has a Material Adverse Effect on the implementation of the Project, - liquidation, dissolution, winding-up, amalgamation, reorganization or reconstruction of the Concessionaire so as to bring about a material change in its ownership except such change that is due to the Lenders enforcing their securities, which have a Material Adverse Effect on the implementation of the Project, - the repudiation of this Agreement or

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		<p>Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.</p> <p>Termination Payment-</p> <p>a) Termination on account of a Concessionaire Default during the Concession Period, the Authority shall pay to the Concessionaire by way of Termination Payment an amount equal to 50% (fifty per cent) of the Debt Due</p> <p>b) Termination on account of an Authority Default, the Authority shall pay to the Concessionaire Debt Due & the product of Average Daily Fee multiplied by 60.</p> <p>Other rights and obligations of the Authority: Upon Termination for any reason whatsoever, the Authority shall:</p> <ul style="list-style-type: none"> - be deemed to have taken possession and control of the Project Highway forthwith; - take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site; - be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project; - require the Concessionaire to comply with the Divestment Requirements set forth in Clause 30.1; and 	<p>Abandonment of the Project by the Concessionaire;</p> <ul style="list-style-type: none"> - the Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project; or - such events as have been specified as Concessionaire Events of Default under the provisions of this Agreement; <p>In the event a Concessionaire Event of Default is triggered due to a default of the Subcontractor(s), the liquidated damages payable and the proceeds of the performance bonds receivable under the Construction Agreement or the O&M Agreement, as the case may be, shall be credited first to clearing any outstanding dues whatsoever of the Concessionaire to the Grantor, then to the payment towards indebtedness (actual or contingent) owing to Lenders and lastly to the Concessionaire.</p> <p>Termination by the Concessionaire for the Grantor Event of Default : In the event the Concessionaire terminate this Agreement for a Grantor Event of Default, the Concessionaire shall hand over the Facility and the Project Assets less the Toll Equipment to the Grantor or its nominated agency, as the case may be, in accordance with Article 14 (Handing Over of</p>

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		<p>- succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire.</p> <p>Survival of Rights</p> <p>All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.</p> <p>(Article 29)</p>	<p>Facility) and the Grantor or its nominated agency, as the case may be, shall accept such handing over; <i>provided</i>, however, as a precondition to such handing over, the Grantor shall be obligated to compensate the Concessionaire : (i) the cost of the Toll Equipment, as valued by the Concessionaire and as written down in the books of the Concessionaire using the straight line method of depreciation up to the date of termination and certified by the Engineer In-charge of OWD ; (ii) actual costs that are contractually payable by the Concessionaire to Third Parties for performance of the Works up to the date of termination; (iii) actual cost of demobilization of Concessionaire’s manpower and Toll Equipment that is lying at the Project Site; (iv) return the Performance Security to the Concessionaire; and (v) the Concessionaire shall pay to the Grantor all the outstanding amounts due to the Grantor in terms of Net Toll.</p> <p>Termination by the Grantor for the Concessionaire Event of Default : On a Concessionaire Event of Default, the Grantor may terminate this Agreement and all of the Concessionaire’s rights, entitlements and interest in and to the Facility and the Project Assets less the Toll Equipment, shall be handed over to the Grantor or its nominated agency, as the case may</p>

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			<p>be, in accordance with Article 14 (Handing Over of Facility) and the Grantor or its nominated agency, as the case may be, shall accept such handing over. The Grantor shall forfeit the Performance Security</p> <p>Termination Procedure :</p> <p>(a) Upon the occurrence of Force Majeure or Event of Default and the expiration of the Cure Periods set forth in Article 16 and the consultation period set forth in Article 15 and Clause 17.3(a) above, the Grantor or the Concessionaire, as the case may be, may issue a Notice of Intention to Terminate. Such notice shall specify in reasonable detail the relevant Event of Default or event of Force majeure giving rise to such notice.</p> <p>(b) Following the issuance of a Notice of Intention to Terminate, the Parties shall consult for a period of 30 days or such longer period as the Parties may agree in writing, as to what steps shall be taken in order to prevent the termination of this Agreement or to cure the relevant Event of Default.</p> <p>(c) Upon the expiration of 30 days under the preceding Sub-clause (b) above and unless the Parties shall have agreed otherwise, or</p>

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			<p>unless the Event of Default giving rise to the Notice of Intention to Terminate has been remedied, the Party that gave the Notice of Intention to Terminate may terminate this Agreement by delivering a notice of termination to the other Party whereupon this Agreement shall immediately be terminated. (Article 17)</p>
28.	Divestment of Rights and interest	<p>Divestment Requirements- the Concessionaire shall comply with and conform to the following Divestment Requirements:</p> <ol style="list-style-type: none"> a) notify to the Authority the location and particulars of all Project Assets b) deliver the actual or constructive possession of the Project Highway free and clear of all Encumbrances c) Transfer and/ or deliver all Applicable Permits to the extent permissible under Applicable Laws etc. <p>Inspection and cure- Not earlier than 90 days prior to Termination but not later than 15 days prior to such Termination, the Independent Engineer shall verify date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose</p> <p>Cooperation and assistance on transfer of Project- The Parties shall provide to each other, 9 months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice</p>	<p>Transfer & Assignment:</p> <ul style="list-style-type: none"> - On the Handing Over Date, the Concessionaire shall, transfer, hand over and assign to the Grantor or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Concessionaire after the Compliance Date all of the Concessionaire's right, title and interest in and to the Facility and the Project Assets less the Toll Equipment - Concessionaire shall to the extent possible assign to the Grantor or its nominated agency at the time of handing over, all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies <p>Retention of Performance Security:</p> <p>During the period commencing on the Handing Over Date and ending on the date falling twelve months thereafter, the Concessionaire shall be liable to the Grantor or its nominated agency for</p>

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		<p>Vesting Certificate- The divestment of all rights, title and interest in the Project Highway shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled and the Authority shall issue a certificate substantially in the form set forth in Schedule-O (the “Vesting Certificate”)</p> <p>Additional Facilities- Additional Facilities shall continue to vest in the Concessionaire upon and after Termination</p> <p>Divestment costs etc.- Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Highway in favour of the Authority upon Termination save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.</p> <p>(Article 30)</p>	<p>all costs, expenses and damages suffered or incurred by the Grantor or its nominated agency (but excluding indirect or special losses and loss of profit) that are directly caused by a failure of the Concessionaire to maintain the Facility and the Project Assets less the Toll Equipment as provided for under this Agreement.</p> <p>Site Clearance : Concessionaire shall at its own cost and with the prior written consent of the Grantor, which consent shall not be unreasonable withheld, remove all personal objects owned by the Concessionaire, including without limitation the Toll Equipment, from the Project Site within sixty days after the Handing Over Date unless otherwise mutually agreed by the Parties.</p> <p>Effect of Handing Over:</p> <p>From the Handing Over Date, the obligations and the rights of the Concessionaire under this Agreement except in respect of those outlined in Clause 14.2 (Retention of Performance Security) shall terminate vis-à-vis the Grantor and the Grantor or its nominated agency shall take over the Facility and the Project Assets and their operation and maintenance; provided however, that the Concessionaire shall no longer act in its capacity as Concessionaire in relation or pursuant to this Agreement. (Article 14)</p>

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29.	Defects Liability after Termination	<p>Liability for defects after Termination- The Concessionaire shall be responsible for all defects and deficiencies in the Project Highway for a period of 60 (sixty) days after Termination</p> <p>Retention in Escrow Account –</p> <p>A sum equal to the Performance Security shall be retained in the Escrow Account for a period of 90 (ninety) days after Termination for meeting the liabilities, if any.</p> <p>(Article 31)</p>	<ul style="list-style-type: none"> - The Performance Security of the last Financial Year shall be returned to the Concessionaire at the end of 12 months after expiry of the Concession Period or of extension thereof, as provided in Clause 14.2 hereof. - During the period commencing on the Handing Over Date and ending on the date falling 12 months thereafter, the Concessionaire shall be liable to the Grantor or its nominated agency for all costs, expenses and damages suffered or incurred by the Grantor or its nominated agency (but excluding indirect or special losses and loss of profit) that are directly caused by a failure of the Concessionaire to maintain the Facility and the Project Assets less the Toll Equipment as provided for under this Agreement. Any claim for payment by the Grantor or its nominated agency pursuant to this Sub-clause shall be submitted to the Concessionaire no later than 30 days following expiry of such 12 months period and shall be accompanied by a certificate from the Engineer In-charge of OWD confirming that in its opinion such amount is properly payable by the Concessionaire in accordance with the terms of this Agreement. The Concessionaire shall make payment of any such claim properly made within 10 days of receipt of such claim.

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			<p>- The Performance Security shall constitute security for the Concessionaire's obligations under this Clause 14.2 which amount may only be redeemed to pay any liability to the Grantor or its nominated agency under Clause 14.2 or otherwise only if the Concessionaire has no further liability. (Article 14.2)</p>
30.	Assignment and charges	<p>Restrictions on assignment and charges- this Agreement shall not be assigned by the Concessionaire to any person except with the prior consent in writing of the Authority. The Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.</p> <p>Permitted assignment and charges are of the Concessionaire -</p> <ol style="list-style-type: none"> a) liens arising by operation of law b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title c) liens or encumbrances required by any Applicable Law <p>Assignment by the Authority : the Authority may, after giving 60 days notice to the Concessionaire, assign or transfer any of its rights and benefits or obligations under this Agreement to an assignee who is capable of fulfilling all of the Authority's then outstanding obligations under this</p>	<p>Assignment & Creation of Security</p> <p>- The Parties agree that for the purposes of enabling financing of the Project and for securing the repayment of the monies which may become payable by the Concessionaire to the Lenders, the Concessionaire may mortgage, transfer, assign, charge or otherwise encumber in favour of Lenders all its rights, title, benefit and interest under or pursuant to this Agreement, including, without limitation, its rights in and to (i) the Project Agreements, (ii) the Project Assets excepting the rights over the Project Site in the form of license, right-of-way or otherwise and (iii) the O&M Expenses and to create a security in such rights and interests in favour of the Lenders.</p> <p>- For the avoidance of doubt, such assignment shall not in any way reduce the obligations of the Concessionaire under the Concession Agreement.</p> <p>-</p>

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		<p>Agreement. (Article 32)</p>	<p>- In implementing the Project, the Concessionaire shall adhere to and comply with the Financing Plan. (Article 13.1)</p> <p>By and Party:</p> <p>- A Party shall not assign or transfer in full or part its obligations and rights under this Agreement or relating to the assets used in the operation of the Facility without the prior written consent of the other Party, such consent not to be unreasonably withheld; <i>provided</i>, however, that the Concessionaire shall have the absolute right to assign its obligations and rights hereunder to the Lenders in accordance with the terms and conditions of this Agreement, which shall in no way affect the obligations of the Concessionaire under this Agreement. (Article 22)</p>
31.	Change in Law	<p>Increase in costs- In case Concessionaire suffers where the aggregate financial effect exceeds the higher of Rs. 50 lakh Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as before.</p> <p>Reduction in costs- same provision as above to be followed in case of reduction in costs. The concessionaire shall be put in the same financial position as agreed under the provisions of the agreement.</p>	<p>In the event of a Change in Law, and such change has a Material Adverse Effect, the Concessionaire may by notice in writing to the Grantor request the Grantor to make such modifications to the terms of this Agreement as the Concessionaire reasonably believes are necessary to place the Concessionaire in substantially the same legal, commercial and economic position as it was prior to such Change in Law as certified by the Engineer In-charge of</p>

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		<p>Protection of NPV- Had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters.</p> <p>Restriction on cash compensation – Shall be made no later than one year from the close of such Accounting Year</p> <p>No claim in the event of recovery from Users - Authority not liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users (Article 33)</p>	<p>OWD. The Parties will thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, the Parties shall follow the procedures set forth in Article 18 i.e. Dispute Resolution.</p> <p>Article 6.2 (f)</p>
32.	Liability and Indemnity	<p>General indemnity :</p> <p>By the Concessionaire - The Concessionaire will indemnify the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind.</p> <p>By the Authority : The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which</p>	<p>Indemnity by the Concessionaire</p> <p>The Concessionaire shall indemnify and hold the Grantor harmless, from any and all claims, liabilities, costs, damages and expenses of every kind and nature in respect of the sickness, injury or death of any person employed directly or indirectly by the Concessionaire or any Subcontractor and their respective employees and damage to or destruction of any property or equipment of the Concessionaire or its Subcontractors and their respective employees arising during or as a result of the performances or non-performance of this Agreement from any cause whatsoever; provided that this Article shall not apply to injury, death, damage or destruction</p>

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		<p>materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement.</p> <p>Indemnity by the Concessionaire- The concessionaire shall indemnify the Authority and its officers in respect of :</p> <ul style="list-style-type: none"> a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire <p>Notice and contest of claims- In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 34 (the “Indemnified Party”) it shall notify the other Party (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.</p> <p>Defence of claims - The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any</p>	<p>to the extent caused by the negligence, default or omission of the Grantor or its employees.</p> <p>Indemnity – Third Party</p> <p>The Concessionaire shall indemnify and hold the Grantor harmless from any and all claims, liabilities, costs, damages, and expenses of every kind and nature in respect of the sickness, injury or death of any Third Party and the damage to or destruction of any property of any Third Party arising directly or indirectly as a result of any negligence, default or omission of the Concessionaire, Subcontractors or their respective employees.</p> <p>General Indemnity</p> <p>Subject to the exclusions and limitations of liability in this Article, the Concessionaire shall indemnify and hold the Grantor harmless for and against any and all claims, liabilities, costs, damages and expenses of whatsoever nature howsoever incurred by the Grantor arising whether directly or indirectly as a result of the breach of the Concessionaire of any of the Concessionaire’s obligations under this Agreement save to the extent such claims, liabilities, costs, damages, and expenses were caused by the negligence, default or omission of the Grantor or its employees.</p>

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		<p>claim, action, suit or proceeding by any third party alleged or asserted against such Party</p> <p>No consequential claims</p> <p>Survival on Termination- The provisions of this Article 34 shall survive Termination</p> <p>(Article 34)</p>	<p>Liability</p> <p>A Party shall promptly inform the other Party of any claims or proceedings or anticipated claims or proceedings against the other Party and in respect of which the other Party is entitled to be indemnified under this Article 19 as soon as a Party becomes aware of the same. Each Party shall give reasonable assistance to the other in defending such claims and the Party giving such assistance shall be entitled to be indemnified to the extent of the costs incurred by it in this regard.</p> <p>Except as expressly provided in the Concession Agreement, the Concessionaire shall carry out and perform its rights and obligations under the Concession Agreement at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to the Concession Agreement and Project Agreements.</p> <p>(Article 19)</p>
33.	Dispute Resolution	<p>Dispute resolution - In the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 36.2</p> <p>Conciliation- either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement. Failing mediation by the Independent</p>	<p>Amicable Settlement</p> <p>(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</p>

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		<p>Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 36.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration.</p> <p>Arbitration –</p> <ul style="list-style-type: none"> - Any Dispute which is not resolved amicably by conciliation shall be finally decided by reference to arbitration by a Board of Arbitrators. - Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. -The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English. - There shall be a Board of three arbitrators of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event 	<p>Agreement between the Concessionaire and the GOO and so notified in writing by either Party to the other, with a copy endorsed to the Steering Group, (the “Dispute”), shall, in the first instance, be attempted to be resolved amicably by a senior representative of GOO and the Concessionaire available at _____ and familiar with the Project within 30 (thirty) days of receiving such notice. In the event the Dispute is not so resolved, as evidenced by the signing of the written terms of settlement, within 30 (thirty) days of such notice, or such longer period as may be mutually agreed by the Concessionaire and the GOO in writing, then the provisions of Sub-clause (b) herein below shall apply.</p> <p>(b) The GOO and the Concessionaire shall refer the Dispute to the Steering Group for amicable resolution, whereupon the Steering Group shall meet to discuss and resolve the Dispute no later than 7 (seven) working days of the date of such reference. In the event, the Steering Group does not meet within 7 (seven) days of such reference or the Dispute is not resolved within 21 (twenty-one) working days of such meeting or such longer period as may be mutually agreed by the Parties, as evidenced by signing of written terms of settlement, either Party may refer the Dispute</p>

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		<p>of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.</p> <ul style="list-style-type: none"> - The arbitrators shall make a reasoned award which shall be final and binding on the Parties. - This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. <p>Adjudication by Regulatory commission or Authority- In the event of constitution of a statutory Regulatory Commission or Authority with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 36.3, be adjudicated upon by such Regulatory Commission or Authority in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law. (Article 36)</p>	<p>to arbitration in accordance with the provisions of Article 18.2 hereof.</p> <p>Arbitration</p> <p>(a)The GOO and the Concessionaire shall submit the Dispute for arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted by an arbitral tribunal comprising three arbitrators, of which one shall be appointed by the Concessionaire and one jointly by GOO and OB&CC, and the two such arbitrators shall appoint the third arbitrator who shall be the presiding arbitrator of the arbitral tribunal.</p> <p>(b) The arbitrators shall make a reasoned award, and any award made pursuant to this Article 18.2 shall be final and binding on the Parties as from the date on which it is made, and the Concessionaire, OB&CC and GOO agree to implement and execute such award without delay.</p> <p>(c)The arbitration proceedings shall be conducted in the English language and in _____ or at such other place as may be agreed between the GOO and the Concessionaire.</p> <p>(d) The fees and expenses of the arbitrators and all other expenses of the arbitration shall</p>

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			<p>be initially shared and paid by the Concessionaire and GOO (through OB&CC) in equal proportions. The professional fee payable to each of the three arbitrators shall be equal. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing Party of its cost and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by such Party.</p> <p>(e)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 judgment upon the arbitral award may be entered in any court having jurisdiction thereof.</p> <p>Performance during Dispute Resolution</p> <p>Pending the submission of the Dispute to resolution under the dispute resolution procedure herein, the Parties shall continue to perform all of their obligations under this Agreement, without prejudice to a final adjustment in accordance with a decision pursuant to the dispute resolution procedure.</p>

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			<p>Further, this Agreement shall remain subsisting and operative during the pendency of the Dispute and no payment due and payable to either Party shall be withheld except the payment in dispute, if any.</p> <p style="text-align: center;">(Article 18)</p>
34.	Redressal of public grievances	<p>Complaints Register - Concessionaire shall maintain a public relations office at each of the Toll Plazas where it shall keep a register open to public access at all times for recording of complaints by any person</p> <p>Redressal of complaints - Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. (Article 38)</p>	None
35.	Miscellaneous	<p>Governing law and jurisdiction Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at _____ shall have exclusive jurisdiction over matters arising out of or relating to this Agreement</p> <p>Waiver of immunity Each Party unconditionally and irrevocably:</p> <ul style="list-style-type: none"> - agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose - agrees that any proceedings brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this 	<p>Amendments: No modification, amendment or waiver of any provision of this Agreement shall be effective unless such modification, amendment or waiver is approved in writing by each of the Parties</p> <p>Severance of Terms: Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any Applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other</p>

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		<p>Agreement, no immunity from such proceedings shall be claimed by or on behalf of the Party with respect to its assets</p> <ul style="list-style-type: none"> - waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction. - consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings <p>Depreciation and interest</p> <p>For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Facilities shall be deemed to be acquired and owned by the Concessionaire</p> <p>Delayed payments</p> <p>The Parties agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars</p> <p>Waiver</p> <p>Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:</p> <ul style="list-style-type: none"> - shall not operate or be construed as a waiver of any other or 	<p>provision or any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.</p> <p>Language:</p> <p>All notices, certificates, correspondence or other communications under or in connection with this Agreement, any Project Agreement or the Project shall be in English</p> <p>Notices :</p> <p>Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by registered post, facsimile transmission, or other means of telecommunication in permanent written form. The addresses and numbers for service of notice shall be given to the Parties at their respective addresses set forth below:</p> <p>The Concessionaire:</p> <p style="text-align: right;">Attn: Mr. _____</p> <p>The Grantor (GOO):</p> <p style="text-align: right;">Kind Attn: Mr. _____</p>

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<p>subsequent default hereof or of other provisions of or obligations under this Agreement</p> <ul style="list-style-type: none"> - shall not be effective unless it is in writing and executed by a duly authorised representative of the Party - shall not affect the validity or enforceability of this Agreement in any manner <p>Liability for review of Documents and Drawings:</p> <ul style="list-style-type: none"> - no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project Highway nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement - Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection <p>Exclusion of implied warranties etc.:</p> <p>This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties</p> <p>Survival:</p> <p>Termination shall:</p> <ul style="list-style-type: none"> - not relieve the Concessionaire or the Authority, as the case 	<p>The Confirming Party (OB&CC) : Chairman-cum-Managing Director Odisha Bridge & Construction Corporation</p> <p style="text-align: center;">Attn: _____</p> <p>or such other address, or facsimile number as may be notified by that Party to any other Party 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 recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by facsimile, when transmitted properly addressed to such facsimile number. In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Parties in writing prior to the adoption thereof.</p> <p>Governing Law:</p> <p>This Agreement shall be governed by and construed in accordance with the Laws of India and the courts of Odisha shall have exclusive jurisdiction.</p> <p>Original Document:</p> <p>This Agreement is made in two original copies, each having the same contents and the Parties</p>

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<p>may be, of any obligations hereunder which expressly or by implication survive Termination</p> <p>- 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</p> <p>Entire Agreement: This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties.</p> <p>Severability: If for any reason, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision</p> <p>No partnership: This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the</p>	<p>have read and thoroughly understood the contents hereof and have hereby affixed their respective signatures and seals before witnesses</p> <p>Remedies: No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at Law, in equity, by statute or otherwise, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at Law, in equity, by statute or otherwise. The election of any one or more of such remedies by a Party hereto shall not constitute a waiver by such Party of the right to pursue any other available remedies.</p> <p>Relationship: Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties or confer on any Party any authority to bind the other or to contract in the name of the other or to incur any liability or obligation on behalf of the other or make or deem to be the agent of the other in any way.</p> <p>Survival: The provision relating to liability and indemnification, intellectual property and dispute</p>

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<p>Parties, or to impose any partnership obligation or liability upon either Party and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party</p> <p>Third Parties:</p> <p>This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement</p> <p>Successors and assigns:</p> <p>This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns</p> <p>Notices:</p> <p>Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:</p> <ul style="list-style-type: none"> - in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out. - in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative. - any notice or communication by a Party to the other Party 	<p>resolution contained in this Agreement shall survive the termination or expiry of this Agreement.</p> <p>Liability for Review:</p> <p>Except to the extent expressly provided in this Agreement.</p> <ul style="list-style-type: none"> (a) no review, comment or approval by the GOO/ Engineer In-charge of OWD / Steering Group of any Project Agreement, drawing, or document submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project/ Facility nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and the Clearances; and (b) the Grantor shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred above.

Sr. No.	Title	GoI level MCA based O&M Contract	Model O&M Contract prepared for OWD
		<p>- shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery</p> <p>Language : All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.</p> <p>Counterparts: This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement.</p>	

OMT Contract Form

CONCESSION AGREEMENT FOR ROAD
PROJECT

THIS CONCESSION AGREEMENT is made on this _____ day of _____ 20__

By and among

THE GOVERNOR OF THE STATE OF ODISHA in his executive capacity for the Government of the State of Odisha, acting through the Secretary, Public Works Department, Government of Odisha, hereinafter referred to as “**GOO**” or “**Grantor**” (which expression shall, unless the context otherwise requires, include its successors and assigns);

AND

Odisha Bridge & Construction Corporation Limited, a Government owned Company incorporated under the Companies Act, 1956, having its registered office at Setu Bhawan, P.O. Nayapalli, P.S. Nayapalli, District Khurda, Bhubaneswar acting through its Chairman-Cum-Managing Director, hereinafter referred to as “**OB&CC**” or “**Confirming Party**” (which expression shall, unless the context otherwise requires, include its successors and assigns)

AND

M/s _____ **LIMITED**, a company incorporated under the Companies Act, 1956, having its registered office at _____ hereinafter referred to as the “**Concessionaire**” (which expression shall, unless the context otherwise requires, include its successors and permitted assigns).

WHEREAS:

- A. The Grantor having undertaken the construction, strengthening and augmentation of the _____ road (“**Project Road**”), is keen to establish a Tolling Facility thereat for the professional management, operation and maintenance thereof on a commercial Public Private Partnership (**PPP**) format by the levy of user charges (the “**Project**”).
- B. With this in mind the OB&CC, acting for and on behalf of the Grantor, has undertaken a transparent competitive bidding process to select a private sector participant for implementing the Project.
- C. Pursuant to the above, the OB&CC had invited proposals/ bids from interested parties for implementing the Project through its Tender Notice/ Request for Proposal (the “**RFP**”) No. **** dated *** prescribing technical and commercial terms and conditions for short listing of bidders for Toll based Operation and Maintenance (O&M) Concession for “_____ Road Project”.
- D. Upon evaluation of the proposals/ bids so received, the OB&CC had accepted the bid of {selected bidder/ Consortium} and issued its Letter of Award bearing No. **** dated *** (hereinafter called the “**LOA**”) to the {selected bidder/

Consortium} requiring, inter alia, the execution of this concession Agreement within [15 (fifteen)] days of the date of issue thereof.

- E. {The selected bidder/ Consortium}in accordance with the requirements of the RFP has since promoted and incorporated the Concessionaire as a limited liability company/ special purpose company (the “**SPC**”) under the Companies Act, 2013, and has requested the OB&CC and the Grantor to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- F. {By its letter dated ****, the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purpose hereof.
- G. The Authority has agreed to the said request of the {selected bidder/ Consortium and the} Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for undertaking the design, finance, construct and commission of the Tolling Facility and to operate and maintain the Project Road at its cost and expense, subject to and on the terms and conditions set forth hereinafter.
- H. The Concessionaire towards due and faithful performance of its obligations hereunder, has furnished Performance Security in favor of the Grantor by way of an irrevocable and non-refundable Bank Guarantee for an amount of Rs. ***** (Rupees in words) dated _____ from _____ Bank as per the format provided at Appendix 15, as a pre-condition for signing this Agreement.

NOW THEREFORE, in consideration of the mutual agreements herein contained, and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1: DEFINITION & INTERPRETATION

1.1 DEFINITIONS

In this Agreement unless the context otherwise requires :

“Abandon” or “Abandonment” means the total cessation of activity in the Project for a continuous period longer than 90 days other than as a result of an event of Force Majeure or a Material Breach by the Grantor of its obligations under the Concession Agreement or as certified by the Engineer In-Charge of OWD to that effect;

“Act” means the Orissa State Roads Tolls Act, 2010 as amended from time to time;

“Agreement” means this agreement as of the date hereof, including recitals, Appendices and attachments hereto as may be amended, supplemented or modified in accordance with the provisions hereof;

“Applicable Law” means all laws, brought into force and effect by GOI or the State Government of Odisha including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement; **“Construction Agreement”** means collectively or singularly as the context may require the contract entered into between the Concessionaire and the Construction Contractors for the design, engineering, procurement, installation, erection or construction, as the context may require, and completion, testing and commissioning of the Tolling Facility in accordance with the provisions of this Agreement;

“Construction Contractor” means the contractor(s) under the relevant Construction Agreement;

“Construction Period” means the period commencing on the Compliance Date and terminating on the date of issue of the Substantial Completion Certificate;

“Certificate of Compliance” means the Certificate of Compliance with Conditions Precedent issued in accordance with Clause 3.3;

“Change in Law” means occurrence of any of the following events after the execution of this Agreement having an impact on the Project:

- (a) enactment of any new Indian law;
- (b) the repeal in whole or in part (unless re-enactment with the same effect) or modification of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the date of the Agreement;
- (d) the change in interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of the Agreement;

- (e) the imposition of a requirement for a Clearance not required on the date of this Agreement;
- (f) after the date of grant of any Clearance, a change in the terms and conditions attaching to such Clearance or the attachment of any new terms and conditions to a Clearance; or
- (g) any Clearance previously granted ceasing to remain in full force and effect, or if granted for a limited period not being renewed on a timely basis on an application therefore having been duly made, or being renewed on terms adverse to the Concessionaire;

“Clearance” means any consent, license, approval, permit, ruling, exemption or other authorization of whatsoever nature which is required to be granted by, or any registration or filing with, any Competent Authority as may be necessary in connection with the Project, as indicated in greater detail in Appendix 1 hereof;

“Commercial Operations” means the use of the Facility for commercial purposes by the levy, demand and collection of Toll;

“Competent Authority” means any agency, legislative, judicial or executive authority, department, ministry, public or statutory Person, whether autonomous or not, of Government of India, GOO or any other subdivision or instrumentality thereof;

“Competing Facility” means an existing road other than the Project Road, lying within the Project Influence Area, connecting any two or more stations on the Project Road;

“Compliance Date” means the later of the date of issuance of the Certificate of Compliance to the Grantor or Concessionaire as per Clause 3.3;

“Concession” means the rights granted by GOO to the Concessionaire in accordance with Article 2;

“Concession Period” means the period as determined under Clause 2.3 of this Agreement;

“Concessionaire” means M/s _____ **LIMITED**, a special company incorporated by the Preferred Bidder for the purposes of this Agreement and to implement the project under the Companies Act, 2013, having its registered office at _____ and includes its successors and permitted assigns;

“Concessionaire Default” shall have the meaning set forth in Article _____;

“Concessionaire’s Representative” means the Concessionaire’s representative appointed under Clause 9.4(a);

“Condition Precedent” means the conditions set out in Article 3 hereof;

{“Consortium” means the group of companies that submitted the Bid for this Project; }

{“Consortium Member” means a company which is a member of the Consortium; }

“Construction Contract” means the construction contracts or contracts entered into by the Concessionaire with one or more Contractors, *inter alia*, engineering and construction of the Project Facilities or major maintenance works, as the case may be, in accordance with the provisions of this Agreement;

“Cost” means reasonable costs and expenses reasonably incurred in relation to the relevant matter or thing, including reasonable overheads reasonably allocated thereto as certified by the Engineer In-charge of OWD;

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of suspension under this Agreement;

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

“Damages” shall have the meaning set forth in Clause (h) of Clause 1.2;

“Delinquent Users” means those users who violate Directives regarding traffic management as may be prevalent from time to time, load their vehicles beyond their rated capacity or permitted capacity, allow their vehicles to lie abandoned on the Project Site, refuse to pay Toll at prescribed rates and at prescribed locations, refuse to co-operate with the Concessionaire or indulge in any such act which impedes or obstructs or disables the Concessionaire to perform its obligations under this Agreement;

“Directive” means any present or future requirement, instruction, direction, order, regulation or rule of any Competent Authority which is legally binding or which should customarily be observed by a reasonable and prudent owner, designer, operator or construction contractor of facilities similar to the Facility and any modification, extension or replacement thereof from time to time

“Dispute” shall have the meaning set forth in Clause 18.1;

“Easementary Rights” means all easements, reservations, rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real property, which are necessary or appropriate for the conduct of activities of the Concessionaire related to the Project;

“Encumbrances” means, in relation to the Project Road, any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or other such obligations, or restrictions and shall also include physical encumbrances and encroachments on the Project Site where applicable herein;

“Engineer In-charge of OWD” means the Engineer of the rank of Executive Engineer in the OWD, Government of Odisha, or his replacement appointed by the Grantor and notified to the Concessionaire for the purposes of monitoring the performance of both Parties under the Concession Agreement;

“Environmental and Social Management Plan” means the plan attached as Appendix 2;

“Event of Default” means a Concessionaire Event of Default or a Grantor Event of Default, as the context may require;

“Exempted Vehicle” means the categories of mechanical vehicles exempted from the payment of toll under the Odisha State Roads Tolls (Determination of Rates and Collection) Rules 2011, as amended from time to time;

“Facility” means the Project Road and the Tolling Facility;

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

“Financial year” means the year commencing from 1st April of any calendar year to the 31st March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31st March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1st April to the Handing Over Date;

“Financing Plan” means the plan for financing the Project set out in Appendix 3;

“Force Majeure” has the meaning specified in Article 15;

“GOI” means the Government of India, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of India;

“GOO” means the Government of the State of Odisha, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Odisha and its administrators, successors and assigns;

“Grantor” means GOO;

“Grantor’s Representative” means the Grantor’s representative of the rank of Sub-Divisional Engineer in OWD, Government of Odisha, appointed under Clause 9.4(b);

“Handing Over Date” means the day immediately following the last day of the Concession Period, including any extensions thereto or earlier termination thereof, in accordance with the terms of this Agreement;

“Improvement” means any change in, addition to, or modification of the Facility (other than routine and periodic maintenance) which is required under Law or which has the effect of extending the useful life of the Facility or its components, lowering the operating costs of the Facility or increasing the efficiency or reliability of the Facility or otherwise improving the Facility and

which is a Retained Function and not a work or service provided under this Agreement;

“Intellectual Property” includes: (a) patents, trademarks, service marks, rights in designs, trade names, copyrights and topography rights, in each case whether registered or not; (b) applications for registration of any of them; (c) rights under licenses and consents in relation to any of them; and (d) all forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world;

“Key Personnel” means the staff appointed or to be appointed to the positions specified in Appendix 4;

“Law” includes Constitution of India, provisions, statutes, laws, decrees, ordinances, subordinate legislation, order, rules or regulations having the force of law and rules of civil and common law and equity;

“Lenders” means the lenders of the Concessionaire;

“Maintenance” means the routine maintenance and emergency maintenance as set out in Appendix 14;

“Material Adverse Effect” means circumstances which may or does (a) render any right vested in a Party by the terms of this Agreement ineffective or (b) adversely affects or restricts or frustrates (i) the ability of any Party to observe and perform in a timely manner its obligations under this Agreement or (ii) the legality, validity, binding nature or enforceability of this Agreement or any of the Project Agreements;

“Material Breach” means a breach of the obligations or terms and conditions of this Agreement by a Party, which has a Material Adverse Effect;

“Mechanical Vehicle” means any vehicle driven under its own power including a motor vehicle as defined under the Motor Vehicle Act, 1988;

“Month” means an English calendar month;

“MSA” means the million standard axles, the parameter for the design of pavement under latest applicable IRC 37;

“Net Toll” is the annuity, quoted in the financial Proposal that shall be paid per annum in twelve equal monthly installments by the Concessionaire to the Grantor during the Concession Period;

“Notice of Award” means such notice of award issued under and pursuant to the Act;

“Notice of Intention to Terminate” has the meaning specified in Clause 17.4;

“O&M Contractor” means the contractor appointed under the O&M Agreement for the operation and Maintenance of the Facility;

“O&M Expense” means, for any period commencing after the Operations Date, all costs and expenses incurred or committed to be made by or on behalf of the Concessionaire duly certified by its auditors for all regularly scheduled and reasonably anticipated and routine operations and Maintenance of the Facility and performance of the Concessionaire’s obligations hereunder including,

without limitation, (a) all payments, costs, rents, fees, charges and levies incurred by the Concessionaire and/ or payable by the Concessionaire; (b) all cost of salaries and other employee compensation payable; (c) cost of materials, supplies, utilities and other services; (d) all premium for insurance; (e) all taxes and duties imposed upon or measured by income or receipts and all penalties, interest, addition to tax, expenses and other similar costs associated herewith; (f) all franchise, excise, property and other similar taxes and all costs and fees incurred in order to obtain and maintain all applicable Clearances necessary for the operations and Maintenance of the Project; (g) all fees and expenses of consultants and experts retained by the Concessionaire (including without limitation, attorney and accountants fees) in the ordinary course of business; (h) costs incurred by the Concessionaire for handing over of the Facility and the Project Assets; (i) other miscellaneous expenses arising out of conformity to the provisions of this Agreement; (j) all cost of procurement by way of purchase, hire and purchase, lease, sub-lease or otherwise of Toll Equipment and of its installation, erection, management, operation, replacement, upgradation, maintenance, repair and servicing and (k) all other expenditures required to be incurred under Law or Clearances necessary for the operations and Maintenance of the Facility according to the specification and standards;

“Operation and Maintenance Agreement” or **“O&M Agreement”** means collectively or singularly as the context may require the operation and maintenance agreement entered into between the Concessionaire and the O&M Contractors for the operation and Maintenance of the Facility, including but not limited to the functions of levy, demand and collection of Toll and other services incidental thereto and the relevant O&M Agreement shall be construed accordingly;

“Operations Date” means the date on which the Concessionaire commences Commercial Operations of the Facility by the levy of Toll on the Users;

“Operations Period” means the period from the Operations Date until the last date of the Concession Period, including extension thereof, or earlier termination thereof in accordance with the terms of this Agreement;

“Operating Year” means each consecutive 12 months period commencing at 00.01 hours on the Operations Date, provided that the last Operating Year shall end on the last day of the Concession Period;

“Overlay” means a strengthening layer which is to be provided as per scope and specifications laid out in the Concession Agreement over the entire extent of the pavement due to damage and wear and tear caused by the passage of Users and which is necessary to ensure that the Project Road is maintained in accordance with the Technical Requirements and Performance Standards throughout the Concession Period;

“Parties” mean the signatories to this Agreement, their successors and permitted assigns;

“Performance Security” means the bank guarantee to be provided by the Preferred Bidder on behalf of the Concessionaire under Article 5 of this Agreement and in accordance with Clause 3.3 of the RFP Volume II Article 3;

“Performance Standards” means the standards for the operation and Maintenance of the Facility detailed in Appendix 5;

“Person” means any individual, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity;

“OB&CC” means the Odisha Bridge and Construction Corporation Limited and includes its successors and assigns;

“Project” means the development, financing, design, installation, erection, construction and completion of the Tolling Facility, and all activities incidental thereto, such as engineering, commissioning, testing and insurance with the Grantor bearing the cost of the Toll Gates structures conforming to the Toll Gate Specifications; the financing and performance of Works, including Maintenance and the operation of the Facility during the Concession Period and the levy as per rates approved by the Grantor; demand and collection of Toll by the Concessionaire from the Users of the Facility, and application of same to pay Net Toll to the Grantor at rates set out in Appendix 17 and retention and appropriation of the balance by the Concessionaire as O&M Expenses and at the end of the Concession Period, including extension thereof, the handing over of the Facility and Project Assets less the Toll Equipment to the Grantor by the Concessionaire;

“Project Agreements” means, collectively, (a) this Agreement, (b) the Construction Agreement, (c) the O&M Agreement, and (d) any other material contracts or agreements entered into by the Concessionaire after the date of this Agreement relating to the erection, installation and construction of the Tolling Facility and the operation and Maintenance of the Facility and designated in writing as Project Agreements by the Parties hereto;

“Project Assets” means all tangible and intangible 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) Toll Equipment; (iii) the rights of the Concessionaire under any Project Agreements; (iv) financial assets of the Project; (v) insurance proceeds; and (vi) Clearances and authorizations relating to or in respect of the Project;

“Project Influence Area” means the area more particularly described in Appendix 6;

“Project Site” means, the lands and the rights in relation thereto, which are required for the Facility and includes the approach land on either end of the Facility and other areas on, into or through which the Facility or any other construction relating to the Facility is situated, located, passes through, sits upon or overlies, as more fully described in Appendix 8;

“Proposal” or “Bid” means the documents in their entirety comprised in the proposal (technical and price) submitted by the Successful Bidder (M/s _____) in the bidding process for the Project (initiated on behalf of each of the Parties), in response to the request for proposals issued by the OB&CC in accordance with the provisions thereof, ;

“Proposal Security” means the bank guarantee in the sum of Rupees _____ provided by the Successful Bidder to the Grantor along with the Proposal;

“Prudent Utility Practices” means (in the absence of any express provision in the Technical Requirements) the methods and standards, on any particular issue of erection or construction of the Tolling Facility, as the context may require, Operation and Maintenance of the Facility, established by, in order of priority (i) any Competent Authority, and (ii) as would be followed by a prudent and experienced construction contractor or operator, in a project of similar nature and magnitude;

“Renewal” means the rectification of structural defects in the Project Road due to damage and wear and tear caused by the passage of Users and which results in the completion of the design life of the pavement requiring the additional overlay layer with a further design life of a minimum of 6 years based on the projected usage;

“Retained Functions” means the functions specified in Appendix 9 like structural Improvements and repairs and replacement of bearings, repairs to structural cracks etc.;

“RFP” or “Request for Proposal” means the Request for Proposal dated_____, issued by GOO/ OB&CC inviting proposals for the Project, and includes any addendum/ clarifications issued in respect thereof; ;

“Rules” means Orissa State Roads Tolls (Determination of Rates and Collection) Rules, 2011 as amended from time to time; **“State Road”** means a continuous length of the whole or part of a State Highway, Major District Road, other District Road or Village Road and includes a bypass but shall not include National Highways as specified in the Schedule to the National Highways Act, 1956;

“State Highway” means any arterial route of the State linking any district headquarters or important cities within the State and connecting it with a National Highway or Highway of any neighboring State;

“Subcontractor” means any person to whom any part of the Works or services has been subcontracted by the Concessionaire in accordance with this Agreement and includes the Construction Contractors(s) and the O&M contractors, as the context may require;

“Substantial Completion Certificate” means the certificate issued by the Engineer In-Charge of OWD upon Substantial Completion in accordance with Article 9 hereof;

“Substantial Completion” means the completion of the works for the erection, installation and construction of the Tolling Facility, in all respects except for the completion of minor works that do not, in any manner whatsoever affect the safety

of the Facility or, in any material respect, the Commercial Operations thereof;

“Taxes” means any tax, income tax, corporate tax, including sales tax, stamp duty, customs and import duties, levy, impost, octroi, cess, duty imposed and/ or

levied of any nature whatsoever, whether by GOI, GOO or local authorities, and wherever and whenever charged, levied or imposed, together with any interest and penalties in relation thereto, within the Republic of India;

“Technical Requirements” means the technical specifications of the Tolling Facility and for the Maintenance of the Facility specified in Appendix 10, as may be applicable in the specific context thereof;

“Third Party” means any Person, real or judicial, or entity other than the Parties to this Agreement;

“Toll Equipment” means the movable equipments, spares, parts and consumables required for operation of the Toll Gates, including computers, communication systems and vehicles;

“Toll Gate Location” is shown in the layout plans given in Appendix 12;

“Toll Gate Specifications” means the Grantor’s specifications in relation to the Toll Gate and Toll Gate Structures given in Appendix 19;

“Toll Gate Structures” means the immovable property constructed, installed or erected at the Toll Gate for the purpose of Toll collection;

“Toll Gate” means the point at which Toll is collected from the Users of the Facility;

“Toll Ticket” means the ticket to be issued to Users of the Facility in a form and manner required by this Agreement;

“Toll” means the amount of money levied, demanded, charged and collected by the Concessionaire or its agents or employees from the Users of the Facility as the fee for the use of the Facility in accordance with the provisions of this Agreement;

“Tolling Facility” means the Toll Gates, Toll Gate Structures and Toll Equipment;

“Traffic Management Plan” means the plan set out in Appendix 13;

“Users” mean the Persons who traverse or travel over or on the Facility or any portion thereof in any vehicle transporting goods and Persons/ vehicle using the Project Road/ Facility;

“Village Road” means a road connecting any village or group of villages with any other village or group of villages and to the nearest road of a higher category;

“Wholesale Price Index” means Wholesale Price Index as released by the Office of the Economic Advisor, Ministry of Commerce and Industry, Government of India or any index published in substitution thereof, as may be notified in the Official Gazette by the Central Government;

“Works” means the scope of works as set out in Appendix 14 including the design, installation and construction, completion, testing, commissioning, operation and maintenance of and remedying of defects in the Tolling Facility, periodic renewal, the operation and maintenance of the Project Road and other permanent, temporary or urgent works or services required under this Agreement.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words denoting the singular shall include the plural and vice versa;
- (b) heading and bold type letters are only for convenience and shall be ignored for the purposes of interpretation;
- (c) reference to any legislation or law or rules or to any provision thereof shall include references to any such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted including but not limited to, the implementation of this Project during the Concession Period;
- (d) references to the word “include” or “including” shall be construed without limitation;
- (e) references to this Agreement or to any other agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as the same may from time to time be amended, varied, supplemented or novated;
- (f) a reference to an Article, clause, sub-clause, paragraph or Appendix is, unless indicated to the contrary, a reference to an Article, clause, sub-clause, paragraph or Appendix to this Agreement;
- (g) The Appendices to this Agreement form 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; and
- (h) The damages payable by Concessionaire under 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 Grantor and are not by way of penalty.

ARTICLE 2: CONCESSION

2.1 Grant of Concession

- (a) The Grantor hereby irrevocably grants to the Concessionaire the exclusive right and authority during the Concession Period to finance, design, install or construct, as the context may require, the Tolling Facility with the Grantor bearing the costs and expenses of the Toll Gate Structures conforming to Toll Gate Specifications and to operate and undertake Maintenance of the Facility and the Concessionaire hereby accepts the Concession granted to it by the Grantor and further agrees to implement the Project, in accordance with the terms and conditions of this Agreement.
- (b) The Grantor further grants to the Concessionaire the exclusive right and authority during the Concession Period in accordance with the terms and conditions of this Agreement to:
- (i) develop, establish, finance, design, install, erect or construct, as the context may require, and commission the Tolling Facility at/ on the Project Road with the Grantor bearing the cost of the Toll Gate Structures conforming to the Toll Gate Specifications (for the avoidance of doubt the Grantor shall bear the expenses of the Toll Gate Structures and the Concessionaire of the Toll Equipment and of all expenses on designing, installing and erecting the Tolling Facility);
 - (ii) Operate the Facility in accordance with the terms of this Agreement and regulate the use thereof by Third Parties;
 - (iii) Undertake Works, including Maintenance of the Facility as set out in Appendix 14;
 - (iv) enjoy possession and control over the Project Site for a period co-terminus with the Concession Period along with the rights of way/way leaves;
 - (v) levy, demand and collect Toll from the Users of the Facility at the rates approved by the Grantor and apply the same towards payment of Net Toll to the OB&CC on behalf of the Grantor at rates set forth in Appendix 17 and retain and appropriate the balance towards O&M Expenses as detailed in Article 11 hereof;
 - (vi) own all or any part of the Project Assets and manage, operate and execute all rights over them without any limitation or restriction other than as expressly set out in this Agreement; prevent Delinquent Users from entering or plying on the Project Road;
 - (vii) appoint Sub-contractors or agents on its behalf to assist it in fulfilling its obligations under this Agreement, *provided* in the reasonable

opinion of the Engineer In-charge of OWD they are capable of discharging the Concessionaire's obligations under this Agreement and further provided that the Concessionaire shall always remain liable for all their acts to the Grantor; and

- (viii) exercise such other rights as the Grantor may determine as being necessary or desirable for the purposes incidental and necessary for developing, designing, financing, implementing, constructing, operating and maintaining the Project.

2.2 Actions In Support

- (a) The Grantor hereby acknowledges the right of the Concessionaire to divert and regulate traffic and temporarily shutdown lanes comprising the Facility from time to time as may be reasonably necessary for undertaking the obligations under the Concession Agreement and in cases of emergency. Any such diversion of the traffic or lane shutdown shall not be a breach by the Concessionaire of its obligations under this Agreement or be construed as a repudiation by the Concessionaire of its rights to the Concession granted under this Agreement. The Concessionaire shall keep all such closures to a minimum so as to ensure smooth flow of traffic and in case of shutdowns exceeding 12 hours, the same shall be notified to the relevant Competent Authority and a workable action plan finalized by mutual consultation between the Concessionaire and the relevant Competent Authority to ensure revival of smooth flow of traffic as early as possible and within 24 hours from the commencement of the shutdown. In case of such closures or lane shutdowns exceeding 24 hours, the Engineer In-charge of OWD may, if in his opinion the Facility is fit for operation, direct the Concessionaire to open the Facility to traffic.
- (b) The Grantor hereby agrees and undertakes that as and when it or any of its Competent Authority, grants permission to any Person to access the Project Site for the purpose of carrying out any construction, building or laying of pipes or wires or utilities or planting of trees, or such other public purposes as the Grantor may specify or any other purpose whatsoever, the Concessionaire shall be notified immediately. Such Persons shall carry on the allowed works only after they pay the Concessionaire the restoration charges for reinstatement of the Facility and the Project Site. Prior to giving effect to the permission granted herein, the Engineer In-charge of OWD shall determine and certify the impact on the Facility on account of such works and road cuts including financial costs involved and the methodology, program schedule, quality requirements and restoration charges for restoring the Facility to the original condition. The Concessionaire shall promptly undertake the restoration works.
- (c) The Grantor further agrees and undertakes to notify the Concessionaire as and when any Person enters the Project Site under, in connection with or pursuant

to the Construction Contracts and to ensure that such Person carries out works or services with the minimum disturbance to the Project Site or Facility and at its own cost and expense.

The Parties agree that to the extent the access and use by all such Persons affects the performance of any of the Concessionaire's obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur/ suffer any liability on account thereof. The Grantor shall be responsible for managing the interface between all such Persons and the Concessionaire or its Subcontractors during the period the former have access to the Project Site.

The Grantor shall compensate the Concessionaire for any financial loss that the Concessionaire may suffer due to failure to levy, demand and collect Toll, as certified by the Engineer-In charge of OWD, on account of the actions or works of all such Persons by extending the Concession Period for a period of time in which such loss may be recovered as determined by the Engineer In-charge of OWD.

2.3 Concession Period

The Concession Period shall commence from the Compliance Date and shall extend for a period of [REDACTED] years from that date ("the Concession Period"), during which the Concessionaire is authorized to implement the project and to operate the Project Facility in accordance with the provisions hereof. For the avoidance of doubt, the Concession Period shall include the Construction Period

Provide that:

- (a) In the event of the Concession being extended by GOO beyond the said period 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 event of Termination, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination.

2.4 Appointment of Subcontractors

Without prejudice to the generality of Clause 2.1(b) (viii) above, in order to fulfill the objectives of this Agreement, the Concessionaire shall have the right to sub-contract to any Person, at its cost and risk, any or all Works without in any way relieving the Concessionaire of its obligations as set out in this Agreement, *provided* in the reasonable opinion of the Engineer In charge of OWD such Person is capable of discharging the obligations under this Agreement for and on behalf of the Concessionaire and *provided further* that this does not result in the carrying out of the whole or substantially the whole, as determined by the Grantor, of the Works by the Subcontractors. The Concessionaire shall ensure

that any of its obligations, which are relevant to the scope of work of a Subcontractor, pursuant to this Agreement are incorporated in the terms and conditions under which any Subcontractor is retained.

ARTICLE 3: CONDITIONS PRECEDENT

3.1 Conditions Precedent for Concessionaire

The obligations of the Grantor hereunder are subject to the satisfaction in full of the following Conditions Precedent: The Concessionaire shall have

- (a) made all the applications at its cost for the requisite Clearances required for the commencement of the Project;
- (b) provided the Grantor certified true copies of its constitutional documents and board resolutions authorizing the execution, delivery and performance of this Agreement by the Concessionaire;
- (c) entered into O&M Agreement(s) in the event the Concessionaire carries out the Operation and Maintenance of the Facility through an O&M Contractor(s) and supplied copies thereof to the Grantor; and
- (d) all the representations and warranties of the Concessionaire set forth in the Proposal and this Agreement are true and correct on the date of execution of this Agreement and as on the Compliance Date and throughout the Concession Period.

3.2 Conditions Precedent for Grantor

The obligations of the Concessionaire hereunder are subject to the satisfaction in full of the following Conditions Precedent: The Grantor shall have :

- (a) granted or assist in being granted all such Clearances as are required for the commencement of construction of the Facility and as are and which are within its authority to grant or assist; *provided* the Concessionaire fulfils all the eligibility criteria and pays the applicable fees,
- (b) issued government orders or gazette notifications as necessary for implementing the Project;
- (c) handed over to the Concessionaire by Compliance Date, the Vacant Possession of the Project Site free from Encumbrances along with all Easementary Rights and right of way/ way leaves required in connection with the Project including the rights of way for the alignment of the Project Road, the rights of way from the public roads to the Project Site and the permission and license to enter upon and utilize the Project Site for implementing the Project in accordance with the terms and conditions of this Agreement; *provided* that the Concessionaire shall have given a bank guarantee to the Grantor as Performance Security as set forth in Article 5 below
- (d) appointed the Engineer-In charge of OWD.

3.3 Obligations to satisfy the Conditions Precedent

- (a) Each Party hereto shall use all reasonable endeavours to procure the satisfaction in full of its respective Conditions Precedent set out above within sixty (60) days of the execution of this Agreement at its respective cost and expense.
- (b) Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a certificate of compliance with Conditions Precedent (the “**Certificate of Compliance**”).
- (c) The later of the date within such sixty days on which the Grantor or the Concessionaire issues the Certificate of Compliance to its counter party shall be the Compliance Date. The obligations of the Parties shall commence from the Compliance Date.

3.4 Non-fulfillment of Conditions Precedent

- (c) In the event the Conditions Precedent for a Party have not been satisfied within the stipulated time and the Grantor has not waived, fully or partially, such conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and the Grantor shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it.
- (d) In the event this Agreement fails to come into effect on account of non fulfillment of the Concessionaire’s Conditions Precedent, the Grantor shall forfeit and encash the Performance Security as damages. In the event this Agreement fails to come into effect on account of the non-fulfillment of Grantor’s Conditions Precedent and the Concessionaire is not in any Material Breach of this Agreement, the Grantor shall return the Performance Security to the Concessionaire; provided there are no outstanding claims of the Grantor on the Concessionaire.
- (e) Instead of terminating this Agreement as provided in this Clause 3.4, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent.

ARTICLE 4: PROJECT SITE

4.1 Possession of Project Site

- (a) The Grantor shall hand over to the Concessionaire by the Compliance Date, the Vacant Possession of all the land and rights comprising the Project Site free from Encumbrances along with all Easementary Rights and the rights of way/ way leaves, with the right and license to enter upon, hold, occupy and use all the real estate comprised in the Project Site for the purpose of implementing the Project.
- (b) The Concessionaire shall have the right to the use of the Project Site in accordance with the terms and conditions of this Agreement and for this purpose it may regulate the entry and use of the same by Third Parties. The Concessionaire shall not without the prior written consent or approval of the Grantor use the Project Site for any purpose other than for the purpose of the Facility and Purposes incidental or necessary thereto.
- (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 expressly permitted under this Agreement.
- (d) The Concessionaire shall, subject to the terms hereof, remain in peaceful possession of the Project Site during the Concession Period. In the event any Person claiming any right, title or interest in or over the Project Site or any part thereof obstructs the Concessionaire in the performance of Works, or in the event any Person claiming to have any interest in or charge on the Project Site or any part thereof, initiates any enforcement action with respect to the Project Site, including any attachment, distraint, appointment of receiver or liquidator, the Grantor shall defend such claims and proceedings and also keep the Concessionaire indemnified against any loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.
- (e) The Concessionaire shall during the Concession Period, including extension thereof, have the license, right and authority to use the Toll Gate Structures constructed, installed and erected by it at the Grantor's expense on or at the Project Site.

4.2 Grantor's Property at the Project Site

- (a) All debris, construction and building materials (sand, gravel, stone, rock, loose earth etc.) lying at the Project Site or generated during the construction, erection and installation of the Tolling Facility/ carrying out periodic overlay shall be the property of the Grantor. The Concessionaire shall dispose of at its cost such debris and construction and building materials in accordance with the written instructions issued by the Grantor from time to time. The

Grantor's Representative may permit (and subject to such conditions as it may determine) the use of such materials for the purpose of this Agreement either free of cost or at such reasonable rates as may be determined by him.

- (b) All gold, silver, oil, minerals, precious stones, fossils, coins, articles of value or antiquity, and structures and other relics or remains, or things of geological or archaeological interest discovered on the Project Site shall be the property of the Grantor. The Concessionaire shall take reasonable precautions to prevent its staff, labour or other persons from removing or damaging any such article or thing. The Concessionaire shall immediately upon discovery of such article or thing, advise the Grantor's Representative, who may issue instructions for dealing with it.

4.3 Access to Project Site

- (a) Following the handing of Vacant Possession of the Project Site, the Concessionaire shall, at all reasonable times and on reasonable notice, afford access to the Project Site to (i) the representatives of or Persons duly authorised by the relevant Competent Authority concerned with safety, security or environmental protection to inspect the Project Site and the Facility and to investigate any other matter within its authority and (ii) the construction contractors or their employees and representatives under, pursuant to or in connection with the Construction Contracts.
- (b) All such Persons obtaining access to the Project Site shall conduct their operations at their own risk, cost and expense and in such manner so as to cause minimum disruption to the construction, operation and Maintenance of the Facility and implementation of the Project consistent with the purpose of the Person gaining such access. The Grantor shall be responsible for any increase in costs or delays caused by the actions of any of such Persons as certified by the Engineer In-charge of OWD and shall extend the Concession Period for a period of time in which such costs may be recovered, as certified by the Engineer In-charge of OWD; provided, however, that such costs are not attributable to any negligence or breach by the Concessionaire of any of the terms of this Agreement.

ARTICLE 5: PERFORMANCE SECURITY

5.1 Performance Security

The Concessionaire shall provide the Grantor within 3 (three) weeks of the date of issue of the Notice of Award an unconditional and irrevocable bank guarantee in favour of the Grantor from any nationalized bank approved by the Grantor in the format set forth in Appendix 15 for an amount of Rupees _____ (“**Performance Security**”) guaranteeing the obligations of the Concessionaire to enter into this Agreement and to perform the obligations under the RFP, the Notice of Award and this Agreement, including the fulfillment of the Conditions Precedents of the Concessionaire, for the period from the date of the Performance Security until the end of the first Financial year. Upon provision of the Performance Security, the Grantor shall return the Bid Security to the Concessionaire; provided there are no outstanding claims of the Grantor on the Concessionaire.

Thereafter in each succeeding Financial Year until the end of the Concession Period, including extension thereof, the Concessionaire shall renew the bank guarantee for an equivalent amount as security for the due and faithful performance of its obligations hereunder. Provided that the Concessionaire shall, not less than 30 (thirty) days before the expiry of the Performance Security (and any renewed/ substitute Performance Security provided under this Clause), renew the existing Performance Security provided by the Concessionaire to the Grantor and the Performance Security in the last year of the Concession Period/ Financial Year shall be further valid for a period of 12 (twelve) months beyond the Concession Period. The Concessionaire’s failure to renew/ provide a substitute Performance Security shall constitute a Concessionaire Event of Default, which shall entitle the Grantor to terminate this Agreement in accordance with the provisions of Article 17 hereof.

The Concessionaire shall ensure that its Performance Security remains valid at all times throughout the Concession Period and for a period of 12 months thereafter.

In the event the Concessionaire fails to provide or renew/ provide substitute Performance Security, as the case may be, the Grantor shall forfeit and encash the Bid Security or the Performance Security, as the case may be.

5.2 Return of Performance Security

Subject to Clause 5.1, excepting the Performance Security of the last Financial Year, the Grantor upon receiving the fresh/ renewed Performance Security return to the Concessionaire the earlier Performance Security, provided that there are no outstanding claims of the Grantor on the Concessionaire. The Performance Security of the last Financial Year shall be returned to the Concessionaire at the end of twelve months after expiry of the Concession Period or of extension thereof, as provided in Clause 14.2 hereof.

5.3 Forfeiture of Performance Security

In the event the Concessionaire is in default of the due and faithful performance of its obligations under Clause 5.1 above or under this Agreement or if any moneys, fines, penalties, damages are due and payable by the Concessionaire to the Grantor under or in respect of this Agreement, the Grantor shall, without prejudice to its other rights and remedies hereunder or at Law, be entitled to call in, retain and appropriate the Performance Security, in full or part, as the case may be.

In the event of encashment of the Performance Security by the Grantor, in full or part, the Concessionaire shall within 30 (thirty) days of receipt of the encashment notice from the Grantor provide a fresh Performance Security or top up the existing Performance Security, as the case may be. The provisions of this Article shall apply *mutatis mutandis* to such fresh Performance Security. The Concessionaire's failure to comply with this provision shall constitute a Concessionaire Event of Default, which shall entitle the Grantor to terminate this Agreement in accordance with the provisions of Article 17 hereof.

ARTICLE 6: OBLIGATIONS OF PARTIES

6.1 Obligations of the Concessionaire

The Concessionaire, in addition and without prejudice to its obligations specified in the other provisions of this Agreement, shall, during the Concession Period, including extension thereof, without qualification, observe and comply with the following obligations:

- (a) finance, design, establish, install, erect and construct, as the context may require, and commission the Tolling Facility at the Toll Gate Location in accordance with the Technical Specifications, terms and conditions of this Agreement and Prudent Utility Practices, with the Grantor bearing the expenses of the Toll Gate Structures, conforming to the Toll Gate Specifications;
- (b) commence Commercial Operations of the Facility from the Compliance Date by setting up temporary structures and facilities (“Temporary Toll Gates”) as necessary, which, however, shall be dismantled and removed by the Concessionaire upon Substantial Completion being accomplished;
- (c) achieve Substantial Completion (installation, erection, construction and commissioning of the Tolling Facility) within four months of the Compliance Date; *provided* that the Concessionaire shall not be in breach of this Clause 6.1(c), if any non-fulfillment or delay in fulfillment of its obligations herein are caused by (i) the occurrence of an event of Force Majeure in accordance with Article 15 hereof or (ii) a Grantor Event of Default or any other act or omission by the Grantor in contravention of its obligations under this Agreement;
- (d) during the Operations Period undertake the Works set out in Appendix 14 hereof in accordance with the Technical Requirements, Performance Standards, the terms and conditions of this Agreement and Prudent Utility Practices;
- (e) provision of periodic overlay as specified in Appendix 14 as per the renewal cycle;
- (f) afford to the Grantor all reasonable assistance and co-operation in relation to the discharge by the Grantor of the Retained Functions. For the avoidance of doubt, the Concessionaire shall only be obligated to undertake Works set out in the Scope of Works in Appendix 14 and shall not be obligated to undertake any of the Retained Functions;
- (g) plan, organize and execute the Works so that there is least disruption to the flow of traffic and minimal inconvenience to Users. The Concessionaire shall also liaison with all law enforcement and other Competent Authorities before effecting the aforementioned steps (other than where immediate action is required in accordance with Clause 9.3);
- (h) conduct its activities in connection with this Agreement in such a manner so as to comply with the Environmental and Social Management Plan;

- (i) bear all costs and charges for special or temporary rights-of-way required by it for access to the Project Site. The Concessionaire shall also provide, at its own cost, any additional areas outside the Project Site required by it for the purposes of performing its obligations under this Agreement;
- (j) use best efforts for keeping unauthorized Persons off the Project Site and maintaining security in relation to the Project Site. Authorised persons shall be limited to Users who have paid the correct Toll, the employees of the Concessionaire and its representatives, Subcontractors and its employees, Persons authorised by the Concessionaire or the Concessionaire's Representative, the Grantor and its representatives, the Engineer In-charge of OWD, the Lenders and their representatives and Persons authorised by the Grantor or the Grantor's Representative;
- (k) confine its operations to the Project Site and to any additional areas arranged by the Concessionaire and agreed by the Grantor's Representative as working areas. The Concessionaire shall take all necessary precautions to keep its employees, agents and Subcontractors and equipment within the Project Site and such additional areas, and to keep and prohibit them from encroaching, damaging or degrading adjacent land and shall be liable for all consequences of failure to do so;
- (l) promptly notify the Competent Authorities and hand over to them any archaeological finds, treasures and precious and semi-precious minerals discovered at the Project Site by the Concessionaire or its employees, agents and Subcontractors;
- (m) at reasonable times and on reasonable notice afford access to the Facility to Persons duly authorised by the Grantor to monitor and supervise the implementation of the Project;
- (n) assist the traffic police in implementing and as necessary implement the Traffic Management Plan;
- (o) collect Toll from all the Users of the Facility except the Exempted Vehicles, with a view to maximizing the efficiency of Toll collection and ensuring that the Performance Standards are met;
- (p) arrange security for cash collection and handling and implement measures for Toll Collection safety;
- (q) maintain the requisite insurance in accordance with the terms hereof;
- (r) report to the Grantor during the Construction period and the Operations Period as detailed in Article 10. Such reports will contain in such information as is reasonably required to keep the Grantor properly informed of material matters relating to the construction, operation and Maintenance of the Facility;
- (s) subject to the provisions of Article 17, not Abandon the Project;
- (t) not be liable for any construction defects in the Project Road under, pursuant to or in connection with the Construction Contracts;
- (u) not create any encumbrance on the Project Site other than that expressly permitted under this Agreement;

- (v) hand over the Facility and the Project Assets less the Toll Equipment to the Grantor or its nominated agency at the end of the Concession Period;
- (w) dispose at its expense the building and excavation material generated during implementation of the Project at sites approved by the Grantor;
- (x) prevent Delinquent Users from entering or plying on the Project Road;
- (y) acknowledge and accept the right of the Grantor or its nominees to upgrade, strengthen or widen black top road existing on the date of execution of this Agreement, without the Grantor being liable in any manner to pay or reimburse to the Concessionaire any compensation for the financial loss, if any, to the Concessionaire as a result of such upgradation, strengthening or widening;
- (z) make timely payments of Net Toll to the Grantor in accordance with the provisions of this Agreement;
- (aa) pay liquidated damages to the Grantor for occurrences and at rates set forth in Appendix 20 other than where such occurrences are caused by (i) the occurrence of an event of Force Majeure in accordance with Article 15 hereof or (ii) a Grantor Event of Default or any other act or omission by the Grantor in contravention of its obligations under this Agreement; and
- (ab) procure assistance from the traffic police in the case of any traffic diversion or dislocation due to lane shut down for repairs or during emergencies and for purposes of implementing the Traffic Management Plan.
- (ac) shall, at least fifteen days prior to the commencement of collection of tolls or revised tolls, as the case may be, publish a notice specifying the actual amount of toll to be charged on mechanical vehicles in at least one newspaper each in English and local language of the area having a wide circulation in such area.

6.2 Obligations of Grantor

The Grantor, in addition to and without prejudice to its obligations specified elsewhere in this Agreement, shall, without qualification, during the Concession Period, including extension thereof, observe and comply with the following obligations:

- (a) subject to the obligations of the Concessionaire set out in this Agreement, the Grantor shall discharge the Retained Functions as necessary at its cost and expense and compensate the Concessionaire for any financial loss that the Concessionaire may suffer due to failure to levy, demand and collect Toll, as certified by the Engineer In-charge of OWD , on account of the Grantor's failure to undertake the Retained Functions within a reasonable time by extending the Concession Period for a period of time in which such loss may be recovered as determined by the Engineer In-charge of OWD .
- (b) notify in the Official Gazette as necessary the levy, demand and collection of Toll by the Concessionaire from Users of the Facility;
- (c) upon written request from the Concessionaire, use its best efforts to provide the Concessionaire with access for the Project to all infrastructure facilities and utilities, including water, electricity and telecommunication at fair rates and on terms no less favourable to the Concessionaire than those generally

available to customers receiving substantially equivalent services; *provided* the Concessionaire has made the requisite applications and is in compliance with the necessary conditions for getting such connections;

- (d) upon request from the Concessionaire, the Grantor shall grant, procure or assist in being granted all Clearances which are necessary for the implementation of the Project at the appropriate stages of the Project and which are in its authority to grant or assist subject to the Concessionaire complying with the eligibility criteria for the grant of such Clearances;
- (e) all litigation involving the dislocation or resettlement of Persons and businesses from the Project Site prior to the Compliance Date and wherein the actions have been filed against the Grantor shall be conducted solely for the Grantor. The Concessionaire shall in no way be held responsible or liable as a reason thereof. The Grantor shall indemnify the Concessionaire and shall hold it free from any claim or consequential cost that may arise as a result of any such litigation.
- (f) in the event of a Change in Law, and such change has a Material Adverse Effect, the Concessionaire may by notice in writing to the Grantor request the Grantor to make such modifications to the terms of this Agreement as the Concessionaire reasonably believes are necessary to place the Concessionaire in substantially the same legal, commercial and economic position as it was prior to such Change in Law as certified by the Engineer In-charge of OWD . The Parties will thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, the Parties shall follow the procedures set forth in Article 18;
- (g) not divert or change the routes of vehicles entering and leaving the Facility in a manner that affects their access to and from the Facility;
- (h) co-operate with the Concessionaire and render necessary support to the Concessionaire, including such assistance in the form of taking any action authorised by Law against Users of the Facility failing to pay the Toll;
- (i) the Grantor agrees and undertakes not to construct or operate on a commercial basis or otherwise in the Project Influence Area during the Concession Period either by itself or by any other Competent Authority a Competing Facility, the construction and operation of which has an adverse impact on the collection of Toll by the Concessionaire. If the Grantor decided to develop and implement a Competing Facility due to pressure of additional demand, then it shall give the Concessionaire the right of first refusal for developing and implementing such facility; *provided* the Concessionaire agrees to match the tariff rates/ commercial terms offered by the preferred bidder for such Competing Facility, unless the Concessionaire has submitted to the Grantor, in writing, within 30 days from receipt of the Grantor's offer, its refusal to implement the same. Upon refusal by the Concessionaire, the Grantor shall not establish or cause to be establish such a facility at tariff rates/ commercial terms that are better than those that were offered to the Concessionaire without again giving the Concessionaire a right of first refusal at such better tariff rates/ commercial terms.
- (j) the Grantor hereby undertakes and agrees not to levy any other or additional toll on the Users of the Facility or to close down or erect barriers or otherwise

cause any diversion of traffic to or from the Facility except when necessary for the purposes of public safety or on account of any serious law and order situation or upon national security considerations. The Grantor shall reimburse to the Concessionaire the financial loss suffered by the Concessionaire as a consequence of such closure or erection of barriers or diversion beyond 216 hours in an Operating Year (pro-rata in the Operating Year), as certified by the Engineer In-charge of OWD .

- (k) The Grantor shall not make addition to the category of Exempted Vehicles other than those authorised by Law or notified by any Competent Authority; and
- (l) accept the right of the Concessionaire to divert and regulate traffic and temporarily shutdown lanes comprising the Facility from time to time as may be reasonably necessary for undertaking the obligations under this Concession Agreement and in cases of emergency in accordance with the terms hereof.

6.3 Obligations of the Parties

Each Party shall

- (a) comply with and perform its respective obligations under this Agreement and shall work and cooperate in good faith with the other Party with respect to all the obligations and rights hereunder of the other Party;
- (b) enter into additional writings as required;
- (c) the Parties agree that the title to and ownership of the Project Site shall at all times vest in the Grantor and shall not under any circumstance whatsoever pass over or be deemed to pass over to the Concessionaire or Persons claiming by, under or through the Concessionaire. The Toll Equipment shall be owned by the Concessionaire and shall not be transferred or handed over to the Grantor upon the expiry or prior termination of the Concession Agreement. The Toll Gate Structures shall be owned by the Grantor with the Concessionaire having a license and authority to use them during the Concession Period for the purpose of implementing the Project;
- (d) nothing in this Concession Agreement shall relieve the Concessionaire from its responsibility to pay any tax that may be levied in India on profits made by it in respect of this Concession Agreement. The Concessionaire's personnel and labour shall be liable to pay applicable income taxes in India in respect of their salaries and wages at the rates prevalent from time to time and the Concessionaire shall make the requisite tax deductions at source in respect of such salaries and wages. The Grantor shall deduct tax at source as necessary at the applicable rates from time to time in the case of payments, if any, made by it to the Concessionaire under this Agreement. Such payments shall be inclusive of all applicable taxes, including service tax etc.;
- (e) the Concessionaire shall inform the Grantor about any construction defects under, pursuant to or in connection with the Construction Contracts or any defects, works or repairs relating to the Retained Functions within two working days of detection thereof, whereupon the Grantor shall be obligated

to rectify or cause the rectification of such defects or undertake such repairs and works within a reasonable period of time.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Party that:

- (a) in respect to the Concessionaire only, it is duly organized, validity existing and in good standing under the laws of the jurisdiction of its incorporation;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- (d) this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof; and
- (e) it is subject to civil and commercial law with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction.

7.2 Further Representations and Warranties of the Grantor

The Grantor hereby warrants that:

- (a) the Project Site together with the necessary right of way/ way leaves belongs to and is vested in the Grantor, and that the Grantor has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any compensation payment on account of land acquisition or rehabilitation/ resettlement of any Persons affected thereby.

7.3 Disclosure

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

ARTICLE 8: STEERING GROUP

8.1 Constitution

The GOO shall by the Compliance Date procure constitution of the Steering Group, which shall comprise the following three members: the Chief Engineer (Roads), OWD, GOO along with one other engineer from OWD and one representative of the concessionaire. The Chief Engineer, OWD shall be the chairman of the Steering Group. The GOO and the Concessionaire shall notify to each other the name of the GOO's Engineer member and the Concessionaire's representative in the Steering Group, who may only be changed after notification to the Concessionaire or GOO, as the case may be, of such change and appointment of a replacement in such person's place.

8.2 Functions

The Steering Group shall hold meetings at least once every three months to review the progress during the Concession Period. The Steering Group shall carry out such functions and exercise such powers as prescribed/ conferred under this Agreement.

ARTICLE 9: CONSTRUCTION, OPERATION & MAINTENANCE

9.1 Construction of Tolling Facility

- (a) The Concessionaire shall undertake at its expense the design, erection, installation and construction, as the context may require, execution of the basic and detailed design and engineering work, completion, testing and commissioning of the Tolling Facility, in accordance the Technical Requirements and the terms and conditions of this Agreement, or where not so specified, in accordance with Prudent Utility Practices, with the Grantor bearing the expenses of the Toll Gate Structures conforming to the Toll Gate Specifications and the Concessionaire bearing the expenses of the Toll Equipment.
- (b) The Concessionaire may install, erect and construct the Tolling Facility on its own or through Construction Contractor(s) and commence the Works within 30 days of the Compliance Date. The appointment of Construction Contractor(s) shall not, in any manner, relieve the Concessionaire of its obligations under this Agreement.
- (c) The Concessionaire shall be responsible for the design and programming of the Works, and for the accuracy and completeness of the information used for that design and programming in accordance with the requirements established in the Technical Specifications. The Concessionaire shall be, responsible for any discrepancies, errors or omissions in the data, specifications, drawings and other technical documents that it has prepared, whether such data, specifications, drawings and other documents have been approved by the Grantor or not.
- (d) The Concessionaire shall ensure that all contract(s) and arrangement(s) entered into in relation to the design, erection and installation, construction commissioning, completion and maintenance of the Tolling Facility shall (to the extent such provisions can be reasonably obtained in the market concerned) include provisions whereby the relevant Subcontractor warrants that each part of the Works carried out thereunder shall be fit for its purpose and free from all defects in design, workmanship and materials.
- (e) The Concessionaire shall organize the Project Site during the period of construction with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of competent personnel.
- (f) The Concessionaire shall carry out or cause to be carried out the erection, installation, construction and commissioning works with the skill, care and diligence to be expected of appropriately qualified and experienced professional designers, engineers and contractors with experience of work similar in scope and nature to that required under this Agreement.

- (g) The Concessionaire shall at its own cost and responsibility arrange for materials such as bricks, cement, steel, aggregates, soil, bituminous and asphalt materials, and any other materials used in undertaking the Works, as well as ancillary materials such as shuttering and scaffolding, bearings, joint fillers and similar materials. The Concessionaire shall also bear the cost of transport, loading and unloading stacking and proper storage (including making sheds) for all materials. The Grantor's Representative shall also have the right to inspect and check the quality and quantity of the materials and their storage.
- (h) The Concessionaire shall achieve Substantial Completion within 4 months of the Compliance Date in accordance with the terms and conditions of this Agreement. Till such time as Substantial Completion is achieved, the Concessionaire shall commence Commercial Operations of the Facility with effect from the Operations Date by setting up Temporary Toll Gates, which however, shall be dismantled and removed by the Concessionaire upon achieving Substantial Completion.
- (i) When the Concessionaire reasonably believes that Substantial Completion has been achieved, the Concessionaire shall so notify the Engineer In-charge of OWD in writing, with a copy to the Grantor. Such notice will set out the place, date and time when the Substantial Completion Tests shall be held (which shall not be on a date that is earlier than 7 (seven) days following the date of such notice). The attendance of the Engineer In-charge of OWD shall be compulsory when the tests are carried out.
- (j) Within 15 days from the date of the tests in accordance with Sub-clause (i) above, the Engineer In-charge of OWD shall in respect of the Facility either (i) issue the Substantial Completion Certificate if, in the reasonable opinion of the Engineer In-charge of OWD, Substantial Completion has been achieved or (ii) notify the Concessionaire of any other item or work which is required to be completed in the reasonable opinion of the Engineer In-charge before the substantial Completion Certificate may be issued. The Substantial Completion Certificate shall specify the date on which, in the Engineer In-charge of OWD's reasoned opinion, Substantial Completion was achieved.
- (k) Following the issue of the Substantial Completion Certificate, the Concessionaire shall promptly complete all minor works not otherwise completed at Substantial Completion, as the completion thereof was not a requisite for the issuance of the Substantial Completion Certificate.
- (l) If the Substantial Completion is delayed due to an act or omission of the Concessionaire or its Subcontractor(s), agents or employees in contravention of its obligations under this Agreement it shall be a Concessionaire Event of Default. If the completion of erection, installation and construction of the Tolling Facility is delayed due to an act or omission of the Grantor in contravention of its obligations under this Agreement, the Construction

Period and the Concession Period shall be extended for a period of time equal to the period of such delay.

9.2 Operations and Maintenance of Facility

Commencing from the Operations Date until the Handing Over Date, the Concessionaire:

- (a) shall undertake at its expense the operation and Maintenance of the Facility either by itself or through an O&M Contractor (s), possessing adequate technical and financial capability, in compliance with the Technical Requirements, Performance Standards, the terms and conditions of this Agreement and the Prudent Utility Practices. The appointment of the O&M Contractor(s) shall not, in any manner, relieve the Concessionaire of any obligation under this Agreement.
- (b) shall exercise appropriate control over the O&M Contractor(s) and shall manage, direct, administer and supervise the work of the O&M Contractor(s).
- (c) shall operate and maintain the Facility safely, reliably, economically and efficiently so as to:
 - (i) optimize as far as possible the safety, availability, expectancy and efficiency of the Facility;
 - (ii) collect the correct Toll from each Users and ensure as far as possible that the collection of Toll is maximized;
 - (iii) minimize the incidence and duration of any period during which the Facility or any part thereof is inaccessible to Users; and
 - (iv) enable the Facility to continue in operation throughout the Operations Period in good working order and condition.
- (d) shall carry out periodic maintenance/ renewal cost as per specifications laid in Section ___ of Appendix 14;
- (e) shall provide all equipment and materials necessary for undertaking the Works. All equipment shall, when brought to the Project Site, be deemed to be exclusively intended for the Operation and Maintenance of the Facility. The Concessionaire shall not remove from the Project Site any such equipment and materials without the consent of the Grantor's Representative, unless such equipment is to be moved directly to another site on the Facility;
- (f) shall maintain complete and accurate records of all equipment, materials, consumables and spare parts brought on to the Project Site and shall provide copies of such records to the Grantor and Engineer In-Charge of OWD request; and
- (g) shall ensure that its staff and its Subcontractor's staff are fully and comprehensively trained and, where appropriate, retrained to enable them to

undertake the Works. The Concessionaire shall not use the Facility for the purpose of training staff in connection with the operation of any other facility.

9.3 Emergencies

- (a) In the event of an emergency endangering life or property, including accidents, the Concessionaire shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and to minimize the disruption to the flow of traffic. The Concessionaire shall utilize its personnel to take such action as may be reasonable and necessary in the event of an emergency to the extent such work is within their capability.
- (b) Notwithstanding anything to the contrary herein, the Concessionaire may incur any expenditure or take any other action as it deems to be necessary (in accordance with Prudent Utility Practices) in the case of emergencies affecting the Facility where the Concessionaire considers immediate action is required to safeguard lives or property (and *provided* that any communication with the news media made by the Concessionaire shall provide only enough information to satisfy immediate public concern).
- (c) In the event of an emergency, the Concessionaire shall forthwith notify the Grantor's Representative of the emergency, the expenditure incurred and the actions taken. The Concessionaire shall take all reasonable steps to minimize the Cost to the Grantor of its actions, having regard to the circumstances and the need to act promptly. Following such notification, at the request of the Grantor's Representative, the Parties shall discuss without delay the further action which should be taken as a result of that emergency. The Grantor shall reimburse the Concessionaire any expenditure properly and reasonably incurred in relation to an emergency as certified by the Engineer In-charge of OWD.
- (d) If the Grantor considers that an emergency has arisen in relation to the Facility, the Grantor may give written notice to the Concessionaire specifying the nature of the emergency which it has identified and the manner in which it requests such emergency to be rectified. The Concessionaire shall rectify such defect with all due diligence and all costs and expenses thereby properly and reasonably incurred shall be reimbursed by the Grantor to the Concessionaire

9.4 Organization: Parties' Representatives

- (a) The Concessionaire shall appoint by the Compliance Date a properly qualified, competent and experienced person, acceptable to the Grantor to act as the Concessionaire's Representative. The Concessionaire's Representative shall be authorised and empowered to act for and on behalf of the Concessionaire on all matters concerning this Agreement. In all such matters, the Concessionaire shall be bound by the written communications, directions, requests and decisions given or made by the Concessionaire's Representative.

The Concessionaire's Representative will direct and manage the Concessionaire's resources, and have full responsibility for the operation, maintenance and administration of the Facility. If an incumbent Concessionaire's Representative dies, retires, is dismissed or is otherwise unable to carry out his duties, or the term of his appointment ends, the Concessionaire shall ensure that a suitably qualified and experienced replacement is appointed promptly, subject to the prior written approval of the Grantor.

- (b) The Grantor shall by the Compliance Date appoint a representative and notify the Concessionaire of the appointment. The Grantor's Representative shall have authority to act on behalf of the Grantor in relation to all matters concerning the Works save to the extent of any limitation on such authority of which the Grantor has given notice to the Concessionaire.
- (c) Each Party hereto undertake and agree that in case of replacement of its authorised representative, it shall notify the other Party in accordance with Clause 23.4 of its name and title at least five days prior to his taking office. In the event of default of this undertaking, all the notices, instructions, correspondences, received from or addressed to the last recorded authorised representative shall be deemed valid for all purposes.
- (d) The Parties shall hold a monthly management meeting to review the plans for the implementation of the Project, future plans and to deal with matters raised by either of them.

9.5 Key Personnel

The Concessionaire shall appoint and retain during the Concession Period the Key Personnel listed by name and title in the Proposal, set out in Appendix 4. In the event the Concessionaire is required for reasons beyond its control to remove or change any Key Personnel, it shall forthwith provide as replacement a Person of equivalent or higher qualifications acceptable to the Grantor.

9.6 Labour & Staff

- (a) The Concessionaire shall provide and employ on the Project Site for the execution of the Works such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of this Agreement. The Concessionaire shall use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its personnel and labour and the labour of its Subcontractors.
- (b) The Concessionaire shall employ and provide at its expense such qualified and experienced personnel and staff as is required to undertake the Works and to implement the Project.
- (c) The Concessionaire shall be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the

salaries, wages and other payment and costs incidental thereto and all taxes, charges, levies, duties payable under Law arising from the respective terms and conditions of employment of its personnel and labour and the labour of its Subcontractors that is employed on or connected with the Agreement under or through whatever legal relationship. The Concessionaire shall be further responsible for obtaining all necessary Clearances from the Competent Authorities and compliance with Applicable Laws and regulations, including labour laws, pertaining to the employment of labor.

- (d) The Concessionaire shall within one week of the Grantor's written request, stating reasons, remove a Person who is part of its personnel or labour or its Subcontractor's labour and forthwith provide a replacement having equivalent or higher qualifications.
- (e) The Concessionaire shall be deemed to be the principal employer in respect of the labour employed by it, its Sub contractors and the Persons claiming through or under it for implementing the Project.

ARTICLE 10: REPORTING & INSPECTION

10.1 Reporting

In addition to the specific reporting requirements set out in relation to the Works in Section ___ of Appendix 14, the Concessionaire shall in a form and manner acceptable to the Engineer In-charge of OWD :

- (a) establish and maintain a daily and monthly reporting system to provide storage and ready retrieval of Facility operating data including all such information which is necessary to verify costs and expenses incurred and to confirm that Toll have been properly collected from Users and otherwise to confirm that the Concessionaire is in compliance with its obligations under this Agreement. The Concessionaire shall provide copies of such reports to the Grantor and the Engineer In-charge of OWD within 5 (five) days of the end of each month;
- (b) provide regular reports on accidents and traffic violations, if any;
- (c) provide a report, on a fortnightly basis, of the volume of traffic (including details of Exempted Vehicles and the basis for their exemption), road condition and records of the Concessionaire's manpower;
- (d) provide a copy to the Grantor of its annual audited accounts within 90 days of the end of the relevant financial year;
- (e) report to the Grantor, on an annual basis, on the condition of the Facility;
- (f) report, at such intervals as may be specified by the Grantor, specifying the MSA volume that has been achieved and the time period within which relevant MSA test could be reasonably expected to be achieved;
- (g) promptly upon becoming aware of the same give written notice to the Grantor of:
 - (i) any litigation or material claims, disputes or actions, threatened or filed, concerning the Facility or the Works to be undertaken hereunder;
 - (ii) any refusal or threatened refusal that might affect the granting, renewal or extension of any Clearance;
 - (iii) all penalties or notices of violation issued by any Competent Authority; and
 - (iv) any material information concerning new or significant aspects of the execution of Works or the Operations or Maintenance of the Facility, any material complaint about the Facility from any person or any other information received by the Concessionaire which is material to the Operation or Maintenance of the Facility or the performance of the Works.

10.2 Inspection

Notwithstanding any provisions of this Agreement and without prejudice to any of the other rights vested under the provisions of this Agreement, the Grantor, the Grantor's Representative, the Engineer In-charge of OWD and any person authorised by the Grantor shall have the right to inspect the Facility at all reasonable times and upon reasonable notice, and the Concessionaire shall cooperate in every possible manner with such Persons and allow them access to every part of the Facility. The Grantor shall also have the right, without prejudice as aforesaid, to carry out surprise checks on the records of the Concessionaire and to observe the manner of issuance of Toll Tickets by the Concessionaire and the collection of Toll from Users.

ARTICLE 11: TOLL

11.1 Levy and Appropriation of Toll

- (a) On and from the Operations Date (or Compliance Date) and until the Operations Period, the Concessionaire or its agents or servants shall levy, demand and collect the Toll from the Users of the Facility except Exempted Vehicles as defined under the Rules, at rates set out in Appendix 16 and apply the same for (i) paying Net Toll to the Grantor at rates set out in Appendix 17 and (ii) retain and appropriate the balance to recover the O&M Expenses. In the event, the amount of total Toll levied, demanded and collected by the Concessionaire for a month is less than the Net Toll payable by the Concessionaire to the Grantor for that month, the Concessionaire shall be liable to make good such shortfall. For the avoidance of doubt, the surplus of total Toll levied, demanded and collected by the Concessionaire for a month over the Net Toll for that month shall be retained and appropriated by the Concessionaire towards O&M Expenses and the shortfall of such total Toll over Net Toll, if any, shall be made good by the Concessionaire.
- (b) The Concessionaire shall have the right to appoint any Person as its agent for the purpose of collection of Toll from Users of the Facility; *provided* in the reasonable opinion of the Engineer In-charge of OWD, such Person has the capability of discharging such function. In such event, the O&M Contractor or the Person so selected by the Concessionaire shall be deemed to be the agent or servant of the Concessionaire and such Person shall collect the Toll for and on behalf of the Concessionaire strictly in accordance with the directions of the Concessionaire.
- (c) The Grantor expressly recognizes (i) the right of the Concessionaire or its agents or servants to levy, demand and collect Toll in accordance with the terms of this Agreement and (ii) to exercise all rights and remedies available under Law and this Agreement for the recovery of Toll.
- (d) In the event that the Toll cannot be levied, demanded or collected for any reason related to a Change in Law or as a result of any restriction or injunction based on any process of Law or any decision or order of a court, tribunal or Competent Authority, such event shall be deemed a Grantor Event of Default.

11.2 Collection & Handling

- (a) The Concessionaire shall be solely responsible for the collection of Toll and the monitoring of the collection of Toll for and on behalf of the Grantor and for the safe keeping, security and transport thereof. Provided however, that while collecting Toll the Concessionaire shall ensure compliance with all the requirements pertaining to collection of Toll, set forth in Tolls the Orissa

State Roads Tolls Act, 2010 and the Rules made thereunder as amended from time to time.

- (b) The Concessionaire shall be liable for the loss of any Toll collected by it or its agents or servants whether by fraud, misappropriation, theft, accident, event of Force Majeure or any other event or circumstance whatsoever.
- (c) The Concessionaire shall put in place, prior to the receipt of any of the Toll, security measures necessary for handling, deposit and protection of Toll from loss, theft or destruction. Notwithstanding such security measures (i) all money being held by the Concessionaire shall at all times be insured against loss due to but not limited to theft, loss, fire and natural disasters and (ii) the Concessionaire shall remain liable for timely payment of Net Toll to the Grantor in accordance with the terms of this Agreement.
- (d) The Toll can be paid by the Users either in cash or through Smart Card or on board unit (transponder) or any other like device *provided* no additional charges shall be realized by the Concessionaire for making payment of toll by use of Smart Card or on board unit (transponder) or any other device.

11.3 Net Toll

In consideration for the grant of the Concession under this Agreement, the Concessionaire shall, with effect from the Operations Date and during the Operations Period, pay to OB&CC on behalf of the Grantor a Net Toll at rates set out in Appendix 17 in accordance with provisions hereof :

- (a) The Net Toll shall be payable by the Concessionaire in advance on 7th day of each Month of Commercial Operations in the bank account as advised by the Grantor to the Concessionaire in writing. In the event the Compliance Date falls after the 7th day of the relevant Month, the Net Toll for the period from the Compliance Date to the end of such Month shall be paid by the Concessionaire on the 7th day of the following Month.
- (b) In the event of delay upto four weeks in payment of Net Toll by the Concessionaire, the Concessionaire shall be required to pay interest at the rate of 18% (eighteen percent) per annum. In the case of delay beyond four weeks, it shall be a Concessionaire Event of Default.

ARTICLE 12: DISCLAIMER

12.1 Disclaimer

- (a) The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification-cum-Request for Proposals, scope of the Project, specifications and standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Grantor or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Grantor or OB&CC makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Grantor or OB&CC in this regard.
- (b) The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Sub-clause (a) above and hereby acknowledges and agrees that the Grantor shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.
- (c) The Parties agree that any mistake or error in or relating to any of the matters set forth in Sub-clause (a) above shall not vitiate this Agreement, or render it voidable.
- (d) In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Sub-clause (a) above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Grantor to give any notice pursuant to this Sub-clause (d) shall not prejudice the disclaimer of the Authority contained in Sub-clause (a) and shall not in any manner shift to the Grantor any risks assumed by the Concessionaire pursuant to this Agreement.
- (e) Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Grantor and/ or OB&CC shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 13: FINANCING & ACCOUNTS

13.1 Assignment & Creation of Security

- (a) The Parties agree that for the purposes of enabling financing of the Project and for securing the repayment of the monies which may become payable by the Concessionaire to the Lenders, the Concessionaire may mortgage, transfer, assign, charge or otherwise encumber in favour of Lenders all its rights, title, benefit and interest under or pursuant to this Agreement, including, without limitation, its rights in and to (i) the Project Agreements, (ii) the Project Assets excepting the rights over the Project Site in the form of license, right-of-way or otherwise and (iii) the O&M Expenses and to create a security in such rights and interests in favour of the Lenders.
- (b) For the avoidance of doubt, such assignment shall not in any way reduce the obligations of the Concessionaire under the Concession Agreement.
- (c) In implementing the Project, the Concessionaire shall adhere to and comply with the Financing Plan.

13.2 Accounts

- (a) The Concessionaire shall maintain in accordance with standard accounting practices and statutory requirements under Indian Law complete, accurate and up-to-date records and accounts relating to Project, including the Operation and Maintenance of the Facility, assets, liabilities, revenues and expenses, costs of repair, horticultural aspects, including records of the time of the Concessionaire's employees involved in performing the Concessionaire's obligations under the Agreement. All Facility records shall be the property of the Grantor and may not be removed from the Project Site (except as necessary because of an emergency) without the prior written consent of the Grantor;
- (b) The Concessionaire shall provide copies of such accounts, duly audited and certified by its statutory auditors, to the Grantor and OB&CC within 90 (ninety) days of the close of each Financial Year to which they pertain. The Concessionaire shall promptly furnish to the Grantor and OB&CC copies of relevant extracts of its books of accounts, duly certified by its statutory auditors, as may be reasonably required by them for verification of such accounts. The Concessionaire shall also furnish to the Grantor and OB&CC, within one week of its publication, a certified copy of the audited accounts and the annual report published by the Concessionaire under the Applicable Laws.

ARTICLE 14: HANDING OVER OF FACILITY

14.1 Transfer & Assignment

- (a) On the Handing Over Date, the Concessionaire shall, transfer, hand over and assign to the Grantor or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Concessionaire after the Compliance Date all of the Concessionaire's right, title and interest in and to the Facility and the Project Assets less the Toll Equipment. The Concessionaire shall also deliver to the Grantor or its nominated agency on such date such operating manuals, plans, design drawings, reports, accounts and other information as may reasonably be required by the Grantor or its nominated agency to enable it to continue the operation of the Facility either directly or by its nominated agency.
- (b) The personnel of the Concessionaire or its Subcontractors shall continue to be the employees of the Concessionaire or its Subcontractors and the handing over of the Facility and the Project Assets less the Toll Equipment shall not in any manner affect their status as employees of the Concessionaire or its Subcontractors and they shall have no claim to any type of employment or compensation from the Grantor or its nominated agency. The Concessionaire or its Sub-contractors shall provide fair and just compensation to their respective employees as required under law and shall indemnify the Grantor against any and all claims such employees may make for loss of office, redundancy, loss of employment or otherwise. The Grantor shall accept absolutely no liability on account of any matter pertaining to the employees, staff and labour of the Concessionaire or its Subcontractors.
- (c) The Concessionaire shall to the extent possible assign to the Grantor or its nominated agency at the time of handing over, all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies. The Concessionaire shall ensure that any rights which are to be so assigned are capable of assignment and such assignment has been approved under the terms of the relevant contract by the counterpart to the Concessionaire.
- (d) The Concessionaire shall assign to GOO or its nominee, as the case may be, at the time of transfer all unexpired guarantees and warranties by Sub-contractors and suppliers, all insurance policies and all contracts, equipment contracts, supply contracts and all other contracts relating to the Project entered into by the Concessionaire and subsisting at the time of transfer except contracts with employees. The Concessionaire will ensure that any rights, which are to be so assigned, are capable of assignment and such assignment has been approved by the Sub-contractors under the terms of the relevant contract; provided that the GOO is willing to accept such assignment.

- (e) The handing over of Facility shall be treated as a handing over on a going concern basis. The handing over of immovable property comprising the Project shall be deemed to be a termination of all licenses in relation to the Project Site and the Facility. The Concessionaire shall hand over Vacant Possession of the Project Site to the Grantor or its nominated agency and the Concessionaire, its Subcontractors, agents, employees shall vacate the Project Site.
- (f) The Toll Equipment installed or provided by the Concessionaire at the Toll Gate on the Project Road shall be the property of the Concessionaire and shall not be transferred or handed over by the Concessionaire to the Grantor. The Concessionaire shall be entitled to remove at its cost the Toll Equipment from the Project Site at the end of the Concession Period, including extension thereof.
- (g) At the time of handing over of the Facility, the Facility shall be in such condition that the riding quality/ roughness of the road measured by bump integrator shall not exceed 3500 mm/ km.
- (h) Until the Handing Over Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Facility, unless the loss or damage is due to an act or omission of the Grantor in contravention of its obligations under this Agreement.
- (i) The Concessionaire shall execute such deeds, writings and documents as may be required by the Grantor for fully and effectively handing over of the Facility and the Project Assets less the Toll Equipment by the Concessionaire to the Grantor.

14.2 Retention of Performance Security

- (a) During the period commencing on the Handing Over Date and ending on the date falling twelve months thereafter, the Concessionaire shall be liable to the Grantor or its nominated agency for all costs, expenses and damages suffered or incurred by the Grantor or its nominated agency (but excluding indirect or special losses and loss of profit) that are directly caused by a failure of the Concessionaire to maintain the Facility and the Project Assets less the Toll Equipment as provided for under this Agreement. Any claim for payment by the Grantor or its nominated agency pursuant to this Sub-clause shall be submitted to the Concessionaire no later than 30 (thirty) days following expiry of such 12 (twelve) months period and shall be accompanied by a certificate from the Engineer In-charge of OWD confirming that in its opinion such amount is properly payable by the Concessionaire in accordance with the terms of this Agreement. The Concessionaire shall make payment of any such claim properly made within ten days of receipt of such claim.
- (b) The Performance Security shall constitute security for the Concessionaire's obligations under this Clause 14.2 which amount may only be redeemed to

pay any liability to the Grantor or its nominated agency under Clause 14.2 or otherwise only if the Concessionaire has no further liability under Clause 14.2.

14.3 Site Clearance

The Concessionaire shall at its own cost and with the prior written consent of the Grantor, which consent shall not be unreasonable withheld, remove all personal objects owned by the Concessionaire, including without limitation the Toll Equipment, from the Project Site within sixty days after the Handing Over Date unless otherwise mutually agreed by the Parties. If the Concessionaire fails to remove such objects within the said time, the Grantor may remove and transport the same, after giving the Concessionaire notice of its intention to do so, to a suitable location for safe storage. The Concessionaire shall bear the reasonable cost and the risk of such removal, transportation and storage.

14.4 Effect of Handing Over

From the Handing Over Date, the obligations and the rights of the Concessionaire under this Agreement except in respect of those outlined in Clause 14.2 hereinabove shall terminate vis-à-vis the Grantor and the Grantor or its nominated agency shall take over the Facility and the Project Assets and their operation and maintenance; *provided* however, that the Concessionaire shall no longer act in its capacity as Concessionaire in relation or pursuant to this Agreement.

ARTICLE 15: FORCE MAJEURE

15.1 Force Majeure

- (a) A Force Majeure Event means any event or circumstance or a combination of events and circumstances referred to in Appendix 18, which are beyond the affected Party's reasonable control, could not have been prevented or reasonably overcome with the exercise of reasonable skill and care, do not result from the negligence or the failure to perform obligations of such Party and which are of such an incapacitating nature and of a severe magnitude that it has a Material Adverse Effect on the affected Party's obligations.
- (b) Subject to Clause 15.2 (c) hereof, a Party shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent such performance is impeded by an event of Force Majeure.

15.2 Procedure for Force Majeure

- (a) An affected Party shall within seven days of becoming aware of the Force Majeure event or of its cessation, give written notice of and describe in reasonable detail the effect of such event of Force Majeure to the other Party, following which (i) any time period specified in this Agreement for the performance of an obligation, shall be appropriately extended for a period equal to that during which the effect of the Force Majeure event applies to the obligation and (ii) the Concession Period shall be extended for a period of time in which the Concessionaire can recover the financial loss resulting from a Force Majeure event as certified by the Engineer in-charge of OWD.
- (b) The Parties shall consult with each other for a period of thirty days or such longer period, as they may agree in writing, to determine the reasonable measures to be implemented to minimize the losses of each Party resulting from the Force Majeure event.
- (c) The Concessionaire shall continue to pay Net Toll during the period the Force Majeure event subsists; *provided* that it shall not be liable to pay any Net Toll during extension of the Concession Period on account of a Force Majeure event.

ARTICLE 16: EVENTS OF DEFAULT

16.1 Grantor Event of Default

- (a) Each of the following events or circumstances, to the extent not caused by a default of the Concessionaire or Force Majeure, shall be considered as events of default of Grantor (“Grantor Event of Default”) which, if not cured within the time period permitted, if any, shall provide the Concessionaire with the right to terminate this Agreement in accordance with Article 17 hereof :
- (i) material Breach by Grantor of its obligations or of express representation or warranty under this Agreement which is not remedied within 90 days of receipt of the Concessionaire’s written notice specifying such breach and requiring the Grantor to remedy the same;
 - (ii) such events as have been specified as Grantor Events of Default under the provisions of this Agreement;(iii) any defect in the title, ownership and possession of Grantor with respect to the Project Site;
 - (iii) any change in the policies of the Grantor or a Change in Law which has a Material Adverse Effect on the Concessionaire’s ability to implement the Project; or
 - (iv) repudiation of this Agreement by the Grantor.
- (b) The Concessionaire’s obligations under this Agreement shall be suspended and the Concessionaire shall have no liability hereunder during any of the foregoing Cure Periods while the relevant event remains uncured.

16.2 Concessionaire Event of Default

- (a) Each of the following events or circumstances, to the extent not caused by a default of Grantor or Force Majeure, shall be considered as events of default of Concessionaire (“Concessionaire Event of Default”) which, if not cured within the time period permitted, if any, shall provide the Grantor with the right to terminate this Agreement in accordance with Article 17 hereof:
- (i) material Breach by Concessionaire of its obligations or express representation or warranty under this Agreement which is not remedied within 90 days of receipt of the Grantor’s written notice specifying such breach and requiring the Grantor to remedy the same;
 - (ii) any actions or omissions attributable to Concessionaire, including delay on the part of the Concessionaire to discharge any of its obligations that has a Material Adverse Effect on the implementation of the Project,

- (iii) liquidation, dissolution, winding-up, amalgamation, reorganization or reconstruction of the Concessionaire so as to bring about a material change in its ownership except such change that is due to the Lenders enforcing their securities, which have a Material Adverse Effect on the implementation of the Project,
 - (iv) the repudiation of this Agreement or Abandonment of the Project by the Concessionaire;
 - (v) the Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project; or
 - (vi) such events as have been specified as Concessionaire Events of Default under the provisions of this Agreement;
- (b) The Grantor's obligations under this Agreement shall be suspended and the Grantor shall have no liability hereunder during any of the foregoing cure periods while the relevant event remains uncured.
- (c) In the event a Concessionaire Event of Default is triggered due to a default of the Subcontractor(s), the liquidated damages payable and the proceeds of the performance bonds receivable under the Construction Agreement or the O&M Agreement, as the case may be, shall be credited first to clearing any outstanding dues whatsoever of the Concessionaire to the Grantor, then to the payment towards indebtedness (actual or contingent) owing to Lenders and lastly to the Concessionaire.

ARTICLE 17: TERMINATION

17.1 Termination by the Concessionaire for the Grantor Event of Default

- (a) In the event the Concessionaire terminate this Agreement for a Grantor Event of Default, the Concessionaire shall hand over the Facility and the Project Assets less the Toll Equipment to the Grantor or its nominated agency, as the case may be, in accordance with Article 14 and the Grantor or its nominated agency, as the case may be, shall accept such handing over; *provided*, however, as a precondition to such handing over, the Grantor shall be obligated to compensate the Concessionaire : (i) the cost of the Toll Equipment, as valued by the Concessionaire and as written down in the books of the Concessionaire using the straight line method of depreciation up to the date of termination and certified by the Engineer In-charge of OWD ; (ii) actual costs that are contractually payable by the Concessionaire to Third Parties for performance of the Works up to the date of termination; (iii) actual cost of demobilization of Concessionaire's manpower and Toll Equipment that is lying at the Project Site; (iv) return the Performance Security to the Concessionaire; and (v) the Concessionaire shall pay to the Grantor all the outstanding amounts due to the Grantor in terms of Net Toll.

17.2 Termination by the Grantor for the Concessionaire Event of Default

- (a) On a Concessionaire Event of Default, the Grantor may terminate this Agreement and all of the Concessionaire's rights, entitlements and interest in and to the Facility and the Project Assets less the Toll Equipment, shall be handed over to the Grantor or its nominated agency, as the case may be, in accordance with Article 14 and the Grantor or its nominated agency, as the case may be, shall accept such handing over. The Grantor shall forfeit the Performance Security.

17.3 Termination following Force Majeure

- (a) In the event Force Majeure continuously impedes or prevents a Party's performance for longer than 60 days from the date of commencement of such Force Majeure event, notwithstanding the suspension of the obligations of the Parties, they shall decide by mutual consent through consultation either the terms upon which to continue the performance of this Agreement or to terminate this Agreement. If the parties are unable to agree on such terms or to terminate the Agreement by mutual consent within 90 days from the date of the commencement of such Force Majeure event, either Party may issue a Notice of Intention to Terminate.
- (b) If, following Force Majeure, a Party elects to terminate this Agreement under Sub-clause (a) above, the Concessionaire shall hand over the Facility and the Project Assets less the Toll Equipment to the Grantor or its nominated

agency, as the case may be, in accordance with Article 14 and the Grantor or its nominated agency, as the case may be, shall accept such handing over.

- (c) In the event this Agreement is terminated by a Party under paragraph (a) following Force Majeure arising out of the circumstances described in Appendix 18 Section 1(b), then as a precondition to such handing over, the Grantor shall be obligated to compensate the Concessionaire the amounts set forth in Clause 17(1)(a) hereinabove.

17.4 Termination Procedure

- (d) Upon the occurrence of Force Majeure or Event of Default and the expiration of the Cure Periods set forth in Article 16 and the consultation period set forth in Article 15 and Clause 17.3(a) above, the Grantor or the Concessionaire, as the case may be, may issue a Notice of Intention to Terminate. Such notice shall specify in reasonable detail the relevant Event of Default or event of Force majeure giving rise to such notice.
- (e) Following the issuance of a Notice of Intention to Terminate, the Parties shall consult for a period of 30 days or such longer period as the Parties may agree in writing, as to what steps shall be taken in order to prevent the termination of this Agreement or to cure the relevant Event of Default.
- (f) Upon the expiration of 30 days under the preceding Sub-clause (b) above and unless the Parties shall have agreed otherwise, or unless the Event of Default giving rise to the Notice of Intention to Terminate has been remedied, the Party that gave the Notice of Intention to Terminate may terminate this Agreement by delivering a notice of termination to the other Party whereupon this Agreement shall immediately be terminated.

17.5 Distribution Of Insurance Proceeds Upon Termination

Whenever this Agreement is terminated following a Force Majeure event and insurance proceeds are available in connection with the insurance policies to which the Concessionaire is entitled or should be entitled pursuant to this Agreement with respect to the Project, such proceeds shall, if not used to effect a restoration or make repairs to the Project, be distributed first to clearing any outstanding dues whatsoever of the Concessionaire to the Grantor, then to the payment towards indebtedness (actual or contingent) owing to the Lenders and lastly to the Concessionaire.

ARTICLE 18: DISPUTE RESOLUTION

18.1 Amicable Settlement

- (c) 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 between the Concessionaire and the GOO and so notified in writing by either Party to the other, with a copy endorsed to the Steering Group, (the “**Dispute**”), shall, in the first instance, be attempted to be resolved amicably by a senior representative of GOO and the Concessionaire available at [REDACTED] and familiar with the Project within 30 (thirty) days of receiving such notice. In the event the Dispute is not so resolved, as evidenced by the signing of the written terms of settlement, within 30 (thirty) days of such notice, or such longer period as may be mutually agreed by the Concessionaire and the GOO in writing, then the provisions of Sub-clause (b) herein below shall apply.
- (d) The GOO and the Concessionaire shall refer the Dispute to the Steering Group for amicable resolution, whereupon the Steering Group shall meet to discuss and resolve the Dispute no later than 7 (seven) working days of the date of such reference. In the event, the Steering Group does not meet within 7 (seven) days of such reference or the Dispute is not resolved within 21 (twenty-one) working days of such meeting or such longer period as may be mutually agreed by the Parties, as evidenced by signing of written terms of settlement, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 18.2 hereof.

18.2 Arbitration

- (f) The GOO and the Concessionaire shall submit the Dispute for arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted by an arbitral tribunal comprising three arbitrators, of which one shall be appointed by the Concessionaire and one jointly by GOO and OB&CC, and the two such arbitrators shall appoint the third arbitrator who shall be the presiding arbitrator of the arbitral tribunal.
- (g) The arbitrators shall make a reasoned award, and any award made pursuant to this Article 18.2 shall be final and binding on the Parties as from the date on which it is made, and the Concessionaire, OB&CC and GOO agree to implement and execute such award without delay.
- (h) The arbitration proceedings shall be conducted in the English language and in [REDACTED] or at such other place as may be agreed between the GOO and the Concessionaire.

- (i) The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially shared and paid by the Concessionaire and GOO (through OB&CC) in equal proportions. The professional fee payable to each of the three arbitrators shall be equal. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing Party of its cost and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by such Party.
- (j) 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 judgment upon the arbitral award may be entered in any court having jurisdiction thereof.

18.3 Performance during Dispute Resolution

Pending the submission of the Dispute to resolution under the dispute resolution procedure herein, the Parties shall continue to perform all of their obligations under this Agreement, without prejudice to a final adjustment in accordance with a decision pursuant to the dispute resolution procedure. Further, this Agreement shall remain subsisting and operative during the pendency of the Dispute and no payment due and payable to either Party shall be withheld except the payment in dispute, if any.

ARTICLE 19: LIABILITY & INDEMNIFICATION

19.1 Indemnity by the Concessionaire

The Concessionaire shall indemnify and hold the Grantor harmless, from any and all claims, liabilities, costs, damages and expenses of every kind and nature in respect of the sickness, injury or death of any person employed directly or indirectly by the Concessionaire or any Subcontractor and their respective employees and damage to or destruction of any property or equipment of the Concessionaire or its Subcontractors and their respective employees arising during or as a result of the performances or non-performance of this Agreement from any cause whatsoever; *provided* that this Article shall not apply to injury, death, damage or destruction to the extent caused by the negligence, default or omission of the Grantor or its employees.

19.2 Indemnity – Third Party

The Concessionaire shall indemnify and hold the Grantor harmless from any and all claims, liabilities, costs, damages, and expenses of every kind and nature in respect of the sickness, injury or death of any Third Party and the damage to or destruction of any property of any Third Party arising directly or indirectly as a result of any negligence, default or omission of the Concessionaire, Subcontractors or their respective employees.

19.3 General Indemnity

Subject to the exclusions and limitations of liability in this Article, the Concessionaire shall indemnify and hold the Grantor harmless for and against any and all claims, liabilities, costs, damages and expenses of whatsoever nature howsoever incurred by the Grantor arising whether directly or indirectly as a result of the breach of the Concessionaire of any of the Concessionaire's obligations under this Agreement save to the extent such claims, liabilities, costs, damages, and expenses were caused by the negligence, default or omission of the Grantor or its employees.

19.4 Liability

- (a) A Party shall promptly inform the other Party of any claims or proceedings or anticipated claims or proceedings against the other Party and in respect of which the other Party is entitled to be indemnified under this Article 19 as soon as a Party becomes aware of the same. Each Party shall give reasonable assistance to the other in defending such claims and the Party giving such assistance shall be entitled to be indemnified to the extent of the costs incurred by it in this regard.
- (b) The Grantor shall not be liable in any manner whatsoever for the obligations and liabilities incurred by the Concessionaire during the Concession Period,

including extension thereof and for the Concessionaire's contracts with third Parties.

- (c) Except as expressly provided in the Concession Agreement, the Concessionaire shall carry out and perform its rights and obligations under the Concession Agreement at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to the Concession Agreement and Project Agreements.

ARTICLE 20: INTELLECTUAL PROPERTY

20.1 Vesting of Intellectual Property

- (a) All Intellectual Property conceived, originated, devised, developed or created by the Concessionaire, its Subcontractors or their staff, agents or consultants specifically for the Facility or the carrying out of the Works shall vest in the Grantor as sole beneficial grantor (but the Concessionaire shall be entitled to use such Intellectual Property, in undertaking the Works) and shall be disclosed to the Grantor upon its coming into existence.
- (b) All Intellectual Property used by the Concessionaire for or in relation to the Works to which Sub- (a) does not apply shall either be vested in the Concessionaire as sole beneficial grantor or the Concessionaire shall have an irrevocable licence without limit in time to use such Intellectual Property on terms which permit the Concessionaire to grant the licence to be granted to the Grantor under this Sub-clause. The Concessionaire grants the Grantor an irrevocable, royalty-free, non-exclusive licence without limit in time to use all such Intellectual Property for any purpose relating to the Facility on terms that the Grantor shall be entitled to assign the benefit of such licence to any person for use in relation to the Facility.

ARTICLE 21: INSURANCE

21.1 Coverage

- (a) The Concessionaire shall, on and from the Compliance Date, take out and maintain and shall cause the Subcontractors to take out and maintain, at their respective cost the insurance policies or their equivalent set forth below on usual terms and at competitive rates:
- (i) Third Party liability insurance to be of minimum Rupees Ten Million and above;
 - (ii) Toll Equipment all risk policy;
 - (iii) Cash in transit policy of value equal to 30 (thirty) days Toll collection;
 - (iv) Fire and theft policy;
 - (v) The policy for loss or damage to Project Assets such as road furniture, due to theft, Force majeure events like earthquakes at replacement value; and
 - (vi) Policies of insurance in respect of claims for personal injury to or death of any Person employed by the Concessionaire or its Subcontractors and arising out of such employment.
- (b) The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be borne by the Concessionaire.

21.2 Evidence of Insurance Coverage

The Concessionaire shall furnish to the Grantor copies of certificates of insurance in respect of the insurance policies referred to in Article 21.1 as soon as reasonably practicable after they are received by the Concessionaire and from time to time shall furnish evidence to the Grantor that all premiums have been paid, and that the relevant policies remain in existence. In the event that the Concessionaire fails to maintain the insurance policies as required under this Agreement as certified by the Engineer In-charge of OWD , the Grantor may affect such policies and recover the costs and expenses incurred in this regard from the Concessionaire.

ARTICLE 22: ASSIGNMENT

22.1 By and Party

A Party shall not assign or transfer in full or part its obligations and rights under this Agreement or relating to the assets used in the operation of the Facility without the prior written consent of the other Party, such consent not to be unreasonably withheld; *provided*, however, that the Concessionaire shall have the absolute right to assign its obligations and rights hereunder to the Lenders in accordance with the terms and conditions of this Agreement, which shall in no way affect the obligations of the Concessionaire under this Agreement.

ARTICLE 23: MISCELLANEOUS

23.1 Amendments

Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Agreement shall be effective unless such modification, amendment or waiver is approved in writing by each of the Parties.

23.2 Severance of Terms

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any Applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

23.3 Language

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

23.4 Notices

Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by registered post, facsimile transmission, or other means of telecommunication in permanent written form. The addresses and numbers for service of notice shall be given to the Parties at their respective addresses set forth below:

The Concessionaire:

Attn: Mr. _____

The Grantor (GOO):

Kind Attn: Mr. _____

The Confirming Party (OB&CC): Chairman-cum-Managing Director

Odisha Bridge & Construction Corporation

Attn: _____

or such other address, or facsimile number as may be notified by that Party to any other Party 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 recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by facsimile, when transmitted properly addressed to such facsimile number. In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Parties in writing prior to the adoption thereof.

23.5 Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of India and the courts of Odisha shall have exclusive jurisdiction.

23.6 Original Document

This Agreement is made in two original copies, each having the same contents and the Parties have read and thoroughly understood the contents hereof and have hereby affixed their respective signatures and seals before witnesses

23.7 Remedies

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at Law, in equity, by statute or otherwise, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at Law, in equity, by statute or otherwise. The election of any one or more of such remedies by a Party hereto shall not constitute a waiver by such Party of the right to pursue any other available remedies.

23.8 Relationship

Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties or confer on any Party any authority to bind the other or to contract in the name of the other or to incur any liability or obligation on behalf of the other or make or deem to be the agent of the other in any way.

23.9 Survival

The provision relating to liability and indemnification, intellectual property and dispute resolution contained in this Agreement shall survive the termination or expiry of this Agreement.

23.10 Liability for Review

Except to the extent expressly provided in this Agreement.

(c) no review, comment or approval by the GOO/ Engineer In-charge of OWD / Steering Group of any Project Agreement, drawing, or document submitted by the Concessionaire nor any observation or inspection of the construction,

operation or maintenance of the Project/ Facility nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and the Clearances; and

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

23.11 Others

- (a) Prior to executing this Agreement, the Concessionaire has conducted a due diligence audit to its satisfaction in respect of the Grantor, contractual structure for implementing the Project, technical and financial feasibility of the Project, traffic flow estimates, condition and location of the Project Road, condition of soil and sub-soil, access to the Project Site, availability of labour and infrastructural facilities, the Laws and Clearances and all matters concerning or related to the Project.

The Concessionaire shall have by the fact of submitting the Proposal, be deemed to have carried out all necessary inspections of the Project Site, and the Concessionaire assumes responsibility for the data in the Concessionaire's Proposal and confirms that its designs reflect the representative nature of the data, applied with sound engineering judgment and consistently with Prudent Utility Practices. The Concessionaire shall be deemed to have obtained all necessary information and made all enquiries and investigations and carried out all due diligence as to all risks and contingencies of whatever nature or kind and all other circumstances whatsoever which may in any way influence or affect its ability to and the costs associated with carrying out its obligations hereunder.

The Grantor shall not be responsible for the accuracy and completeness of the information, specifications, drawings, and technical and other documents provided by it to the Concessionaire. The Concessionaire has accepted such materials at its own risk and consequence.

The Concessionaire is entering into this Agreement on the basis of its own satisfaction based on its due diligence audit.

- (b) A Party shall, from time to time on being required to do so by the other Party, now or at any time in the future, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to such other Party as that Party may reasonably consider necessary for giving full effect to this Agreement and securing to such other Party the full benefit of the rights, powers and remedies conferred upon that Party in 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 GRANTOR through Secretary, OWD GOO by

_____ (Signature)

_____ (Name)

_____ (Designation)

For and on behalf of OB&CC (the Confirming Party) by

_____ (Signature)

_____ (Name)

_____ (Designation)

For and on behalf of Concessionaire by

_____ (Signature)

_____ (Name)

_____ (Designation)

In the Presence of

1. _____ (Signature)

_____ (Name)

_____ (Designation)

2. _____ (Signature)
_____ (Name)
_____ (Designation)

Place:

Date:

Appendix - 1

List of Clearances

An indicative list of clearances generally required from the authorities who monitor various aspects of construction projects is given in the following Table. OWD would provide all the necessary support to the Concessionaire to obtain clearances required for the project.

Environnemental Management Plan

Financing Plan

Key Personnel

Performance Standards

I. PERFORMANCE STANDARDS FOR OPERATIONS:

II. PERFORMANCE STANDARDS FOR MAINTENANCE:

Appendix - 6

Project Influence Area

Project Road

Project Site

Retained Functions

All major items of works/ activities which are excluded from the scope of work of the Concessionaire are described below :

1. Reinstatement of road sections as a result of any operations with respect to utilities.
2. Widening and reconstruction of pavement
3. The major repairs and improvements of bridges and its approaches
4. Repairs and replacement of bearings, repairs to structural cracks and other structural failures for Bridges.
5. Toll Collection Augmentation, by way of expansion or Upgradation of the toll plaza.

Technical Specifications

Substantial Completion Tests

The nature of the construction works is such that they shall be inspected and tested on a continuous basis as the work progresses, and such tests and inspections shall be completely at the discretion of the Engineer In Charge in accordance with technical requirements and Prudent Utility Practices. The Concessionaire shall carry out tests in accordance with section 900 of “Specifications for Road and Bridge Works (Fourth Revision)”, published by IRC. The provisions of this schedule shall apply to the tests on completion.

Notwithstanding any such tests carried out during the progress of the work, the Concessionaire shall carryout and complete the tests on completion of work, in the presence of Engineer In Charge and OWD representatives for the works to be taken over. These tests shall include, but not restricted to the following

- i. Checking of construction documents and drawings
- ii. Checks of profiles and levels
- iii. Cores for various crust layers
- iv. Checks on toll plaza equipment
- v. Check for drainage system
- vi. Check of signs, markers and road furniture
- vii. Any other test that may be requested by the Engineer In Charge and is reasonably necessary to confirm that the works meet the construction specifications.

Such tests would enable the Engineer In Charge to certify that the facility meets the drawings, Performance standards and technical specifications for the project.

Toll Plaza Location

Appendix - 13

Traffic Management Plan

Scope of Works

Operation of the Facility

Maintenance of the Facility

Performance Security

The _____,
Odisha Works Department,
Government of Odisha.

WHEREAS:

(A) _____ (the “Concessionaire”) and the Governor of the State of Odisha for and on behalf of the Government of the State of Odisha, acting through the _____ Odisha Works Department, Government of Odisha (the “Grantor”) have entered into a Concession Agreement dated _____ (the “Agreement”) whereby the Grantor has agreed to the Concessionaire undertaking _____ subject to and in accordance with the provisions of the Agreement.

(B) The Agreement requires the Concessionaire to furnish a Performance Security to the Grantor in a sum of Rs. _____ crores (Rupees _____ Only) (the “Guarantee Amount”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Concession Period (as defined in the Agreement).

(C) We, _____ through our Branch at _____ (the “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Concession Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Grantor, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Grantor shall claim, without the Grantor being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Grantor, under the hand of an Officer not below the rank of the _____ in the Odisha Works Department that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Grantor shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in

default shall be final, and binding on the Bank, notwithstanding any differences between the Grantor and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other Grantor or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Grantor shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Grantor to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.

5. The Grantor shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Grantor against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Grantor, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Grantor of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Grantor or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Grantor in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until _____ (and as renewed from time to time) and unless a demand or claim in writing is made by the Grantor on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Grantor under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Grantor in writing, and declares and warrants

that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Grantor that the envelope was so posted shall be conclusive.

10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of _____ or until it is released earlier by the Grantor pursuant to the provisions of the Agreement.

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

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

(Signature)

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

NOTES:

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

Appendix - 16

Toll Rates

1. General

The Concessionaire would be required to invest in operation and maintenance of the road and allowed to recover its investments through levy and collection of toll charges from the road users. The toll rates proposed by Government of Odisha for the project road are detailed in following sections.

The toll shall be levied and paid on mechanical vehicles using such Highways, Bypasses, Bridges and ROBs/ RUBs and authorizes the Concessionaires of each such Highway, Bypass, Bridge and ROB/ RUB to collect and retain the toll from different categories of mechanical vehicle at the rates specified below, subject to the terms and conditions of the Concession Agreement, the Orissa State Roads Tolls Act, 2010 and the Rules made thereunder and as set forth hereinafter.

2. Definitions

“Bridge” means a permanent structure on State Road of any category providing passage for a road traffic or other moving loads over depression or obstruction such as channel, river, road or railway, as the case may be, and includes road over bridge, flyover and road under bridge;

“Bypass” means a section of State Road that avoids a city, town or village.

“Car” or “Jeep” or “Van” or “light motor vehicle” means any mechanical vehicle the gross vehicle weight of which does not exceed seven thousand five hundred kilograms or the registered passenger carrying capability as stated in the certificate of registration issued under the Motor Vehicles Act, 1988 does not exceed twelve excluding the driver;

“Light Commercial Vehicle” or “Light Goods Vehicle” means any mechanical vehicle with a gross vehicle weight exceeding seven thousand five hundred kilograms but less than twelve thousand kilograms;

“Truck” means any mechanical vehicle with a gross vehicle weight exceeding twelve thousand kilograms but less than twenty thousand kilograms;

“Heavy Construction Machinery” (H.C.M.) or “Earth Moving Equipment” (E.M.E.) or “Multi Axle Vehicle” (M.A.V.) means heavy construction machinery or earth moving equipment or mechanical vehicle including a multi axle vehicle with three to six axles or vehicle with a gross vehicle weight exceeding twenty thousand kilograms but less than sixty thousand kilograms;

“Oversized Vehicle” means any mechanical vehicle having seven or more axles or vehicle with a gross vehicle weight exceeding sixty thousand kilograms; and

“Tractor Trailer” means a tractor with attached vehicle laden with goods other than agricultural produce or agricultural equipments.

3. Base Rate of Toll

(As per Rule 4 of Rules, 2011)

4. Applicable Toll Rate and Annual Revision

(As per Rule 5 of Rules, 2011)

5. Peak & off peak toll charge

6. Toll collection points (Toll Gate)

(1) For collection of Toll Charges under this Appendix 16, the Concessionaire shall establish and operate toll collection points (the "Toll Gates") in accordance with the provisions of the Concession Agreement:

Provided, however, that the distance between two Toll Gates on a Highway, not being a Bypass, Bridge, ROB or RUB, shall not be less than 20 (twenty) Km:

Provided further that a Toll Gate set up for collection of Toll Charges on a Highway shall, as far as possible, be located beyond 5 (five) Km, from the municipal boundaries of a city or town situated on such Highway.

7. Discounted Rates for frequent users :

(As per Rule 9 of Rules, 2011)

8. Additional charge for Evasion of Toll

The Concessionaire shall be entitled to levy and collect an additional sum equal to the applicable Toll Charges from a person found to be evading payment thereof. Such additional sum shall be deemed to be predetermined liquidated damages for attempt to make unauthorized use of a Highway, Bypass, Bridge or ROB/RUB, as the case may be, without payment of Toll Charges due and payable under this Appendix 16.

9. Rate of toll for overloading

(As per Rule 12 of Rules, 2011)

10. Rounded of Toll charges

The Toll and amounts payable/ charged from each vehicle under this Appendix 16 shall be rounded off to a multiple of rupee one in accordance with the Indian Standard IS : 2—1960 "Rules for rounding off numerical values" issued by Bureau of Indian Standards as amended from time to time.

11. Display of Toll charges/ information

(As per Rule 11 of Rules, 2011)

12. Unauthorized Collection

(As per Rule 14 of Rules, 2011)

Net Toll

Subject to and in accordance with the provisions of the Concession Agreement and the Request for Proposal dated _____ for the Project;

1. The Concessionaire shall pay to OB&CC on behalf of the Grantor, an annual Net Toll in equated monthly installments amounting to Rs. _____ during the Concession Period i.e. with effect from Operations Date (Compliance Date) and until the end of the Operations Period.
2. The Grantor shall pay to the Concessionaire, the cost of the Toll Gate Structures amounting to Rs. _____ by adjusting/ deducting the same from the Net Toll payable by the Concessionaire to Grantor in that particular month and in accordance with the provisions of the Concession Agreement and the Request for Proposal (RFP) document.

Force Majeure Events

Section 1. Force Majeure Events : The Force Majeure Events shall comprise

(a) Non-Political Events

- (i) Lightning, earthquake, landslides, tempest, cyclone hurricane, whirlwind, storm, flood, and other unusual or extreme adverse weather or environmental conditions (including, without limitation, any such conditions at sea affecting the delivery of equipment to the Project) or other events of natural disaster of rare severity;
- (ii) meteorites or objects falling from aircraft or other aerial devices, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at high speeds;
- (iii) fire or explosion, chemical or radioactive contamination or ionising radiation;
- (iv) epidemic or plague;
- (v) strikes, lock-outs or other industrial action or labour disputes (excluding those by the Concessionaire or its employees or agents, or the Subcontractors or their employees or agents, in any such case employed on the implementation of the Project or the supply of goods or services) in so far as they materially and adversely affect the implementation of the Project;
- (vi) act of war (whether declared or undeclared), threat of war, invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, revolution, religious strife, bombs, sabotage, terrorism or threat of such acts or other similar events of a political or social nature; and
- (vii) any event or circumstances of a nature analogous to the foregoing.

(b) Political Events

- (i) industry wide or state wide or India wide strikes or industrial action or public agitation which prevents collection of Toll by the Concessionaire for a period exceeding a continuous period of seven days or events or circumstances of a nature analogous to any of the foregoing.
- (ii) expropriation, confiscation, acquisition or nationalization of the Facility or any Project Asset or rights of the Concessionaire or of the Subcontractor(s) or requisition of the Facility in case of a national or state emergency by GOI or GOO or any Competent Grantor, as the case may be.
- (iii) the imposition of the blockade, embargo, import restrictions, rationing or allocation by any GOO or Competent Grantor;
- (iv) political bandhs, transporter's agitation, merchant agitation, riots, civil disturbances of any kind including civil commotion and disturbances by local bodies or people at or around the Project Site or at any other location which impedes the implementation of the Project;

- (v) any decision or order of a court or tribunal which has the effect of restraining all or any part of the activities concerning the construction, operation or maintenance of the Project; provided such order of a court or tribunal is not attributable to negligence or omission of the Parties; and
- (vi) any other act by any Competent Grantor which has a Material Adverse Effect or materially adversely affects the Project or the rights of the Concessionaire or the Subcontractors (regardless of whether such act is within the reasonable control of the Grantor).

Section 2. Exceptions Applicable to the Concessionaire

The Concessionaire shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement other than to the extent that such circumstances result from an event of Force Majeure :

- (a) delay in performance by the Concessionaire or Subcontractors, any sub-contractor, agents and employees of the Concessionaire; or
- (b) breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Facility;

Section 3. Exceptions Applicable to the Grantor

The Grantor shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement :

- (a) the expropriation, confiscation, acquisition or nationalization of the Facility and Project Assets or rights of the Concessionaire or the Subcontractors or requisition of the Facility in case of a national or state emergency by GOI or GOO or any Competent Grantor, as the case may be;
- (b) the imposition of any blockade, embargo, import restrictions, rationing or allocation by GOO or any Competent Grantor, or any delay or difficulty in handing over Vacant Possession of the Project Site as a result of any intervention or Directive of GOI, GOO or any Competent Grantor.

Toll Gate Specifications

Liquidated Damages

Construction Related Liquidated Damages

Operation and Maintenance Related Liquidated Damages

The Liquidation Damages for non-performance as per the Performance Standards mentioned in Appendix 5 to Concession Agreement shall be Rupees _____ per event of default per day, as identified by the Engineer in Charge, subject to a maximum of Rupees _____ per year. The rate of liquidated damages in the subsequent years would be Rupees _____ in the second year, Rupees _____ in the third year, Rupees _____ in the fourth year and Rupees _____ in the fifth year and Rupees _____ in the Sixth year and Rupees _____ in the seventh year and so on (if Concession period consists of more years).

Comparative chart between OMT and PBC

Sr. No.	Parameter for comparison	OMT Contract	PERFORMANCE BASED Contract
1	Financing of the Project	Concessionaire	Employer
2	Obligations of the Government/ Authority/ Employer	<ol style="list-style-type: none"> 1. To provide support and assistance to the Concessionaire in obtaining all the permits, approvals, necessary clearances and to operate and maintain the project 2. Not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of the Agreement 	<ol style="list-style-type: none"> 1. To ensure the accuracy of all the information and data supplied to the contractor 2. To acquire and provide legal and physical possession of the site and assess thereto 3. To acquire and pay for all permits, approvals, licenses etc. from all local, state or national authorities in their name if required 4. To provide support and assistance to the Contractor in obtaining all the permits, approvals, necessary clearances and to operate and maintain the project
3	Obligations of the Contractor/ Concessionaire	<ol style="list-style-type: none"> 1. To procure finance for and undertake the operation and maintenance of the Project Highway at its own cost and expense 2. To comply with all applicable law and to obtain applicable permits and Good Industry Practices 	<ol style="list-style-type: none"> 1. To design and carry out of all the works and performance of all services required for keeping the road in accordance with the service quality level as defined in the agreement 2. To comply with all applicable law and to obtain applicable permits and Good Industry Practices
4	Levy of Toll	By the concessionaire who is operating and maintaining the road	Through another private entity or by Employer itself
5	Payments for work done	To be borne by the Concessionaire and recovered through levy of user fee or toll	By the Employer against work done.
6	Force Majeure	1. Force Majeure events broadly divided into Non	1. Force Majeure simply defined as an event beyond

Sr. No.	Parameter for comparison	OMT Contract	PERFORMANCE BASED Contract
		<p>Political, Indirectly Political and Political Events</p> <p>2. The affected party shall notify the other party within 7 days of the occurrence of the Event.</p> <p>3. The notifying party shall provide the extent of the event and evidence of it.</p>	<p>the reasonable control of the Employer or the Contractor</p> <p>2. The affected party shall notify the other party of the Force Majeure event within 14 days of the Event.</p>
7	Termination	<p>1. Termination on occurrence of Force Majeure Event</p> <p>2. Termination on account of Contractor's default</p>	<p>1. Termination on Employer's convenience</p> <p>2. By the Employer on account of contractor's fault.</p> <p>3. By the Contractor on account of Employer's fault</p>
8	Damages	<p>1. Damages for delay</p> <p>2. Damages for breach of maintenance obligations</p>	<p>1. Liquidated Damages on account of failure to attain completion of works and services within the time</p> <p>2. Liquidated damages on account of failure to meet the performance standards by the Contractor</p>
9	<p>Risk Allocation</p> <p>a) Traffic Risk</p> <p>b) Financial Risk</p> <p>c) Operation and Maintenance Risk</p>	<p>a) Concessionaire</p> <p>b) Concessionaire</p> <p>c) Concessionaire</p>	<p>a) Employer</p> <p>b) Employer</p> <p>c) Contractor</p>
10	Dispute Resolution	<p>Two tier dispute resolution procedure;</p> <p>a) Conciliation</p> <p>b) Arbitration/ Adjudication by Regulatory Commission or Authority</p>	<p>Two tier dispute resolution procedure;</p> <p>a) Conciliation</p> <p>b) Arbitration</p>

SCOPE OF TOLL AUDIT

1. Complete checking of all financial transactions including cross posting from one report / register/book to other and financial statements prepared, including vouchers/books/register /other documents/reports/fixd deposit receipts/ pay in slips/bank statements/ used / unused tickets/ passes etc. concerning collection of fee or expenditure on collection or any other related aspect maintained by the collecting agency.
2. Complete checking and review of existing systems to ascertain point of weakness, if any, in internal control.
3. Checking, casting, posting of all books maintained at the Toll Fee Plaza, i.e. ledger for receiving fee tickets, Challans, showing daily issue of tickets to Fee collectors, Fee tickets issued, unused and amount collected, Challans showing shift-wise collection from all booths, Daily collection summary, cash book, Monthly pass register, cash deposit/ pay in slip, Bank Statement etc.
4. To observe, on the spot, collection of user fee for a particular type of vehicle for at least one day (three shifts) and compare the average with the average collection of past period (same day) of not less than 6 months of the respective plaza to bring out broad range of material variations, if any, after adjustment for known trends. During 12 monthly audit exercises in a year, each type of vehicles should be covered equally.
5. Frequency of Surprise verification: During each month, there shall be four surprise verifications, mainly targeted toward cash verification and detecting use of forged tickets. During each verification, at least 50% of booths under each Fee Plaza and cash in main chest of the Plaza will be covered.
6. To note down discreetly registration no. of at least 50 vehicles of a particular type crossing the toll plaza from a distance; comparing it with vehicle wise report to be taken from the toll plaza and preparing the report of missing number of vehicles with reasons thereof.
- 7.1 Review of compliance with various instructions issued from the employer organization on fee related matter (whether by way of numbered circulars or otherwise) and also with the provisions contained in applicable law including regarding display of informatory sign with respect to size, content and distance of display board regarding rate of fee and content of the receipt.
- 7.2 Checking of reports being submitted to the employer organization on fee related matters including from view point of accuracy of information provided and timely submission.
8. Review of existence of proper office orders defining “Key Job Responsibilities” for fee related matters among various employees, and day to day functions of the collecting agency to fix accountability for various aspects including toward short recovery/ deposit/ delay in deposit in accordance with contractual arrangements.
9. Preparation of an audited cash flow statement on monthly basis and a reconciliation statement between collections, deposit in the bank with the monthly audit report.

10. Discharge of contractual obligations by the collecting agency and in case of their failure, whether remedial action has been prompt.
11. Conduct checks with details of findings especially for system improvement if their adverse findings are continuing and repetitive.
12. Evolving such audit procedure to check if forged tickets are being issued and review of the entire system of procurement, issue and inventory of tickets (manual/computerized) including numbering system, its secrecy and surprise test check of inventory of tickets at all places.
13. Physical verification of tickets (receipts) in stocks (both unused and counter foil of used, if any) during the course of the audit and reconciliation of used/unused tickets with the collection up to the last day of the preceding month.
14. % of manual collection out of total collection, reason and remedial action taken to reduce such percentage. Manual collection here is meant to be a situation where receipts are being issued without use of computers. A register must be maintained to record reasons for such manual collection and its timing.
15. Whether proper arrangement of power supply has been made to ensure that occasions of manual collections are minimal and whether proper AMC of hardware and software exists.
16. Whether all lanes are kept open throughout 24 hours and proper record about reasons for closure of lane are maintained.
17. Analysis of fluctuations in total fee collection of current month as compared to previous month or same month of preceding year.
18. If final settlement of collecting agency has been arrived at during the audit period, whether same has been done correctly before release of Bank Guarantee or Security Deposit etc.
19. Adequacy of insurance for comprehensive risks for all the assets at the plaza including but not limited to insurance of cash in transit, cash in safe. (The level of insurance for cash should be at least 25% above the highest levels seen in the 12 months prior to the date of insurance and expected for the year, whichever is higher, for cash in hand/ safe and cash in transit.)
20. Review of response system to ascertain whether the fee related complaints, whether received by collecting agency, are responded promptly and in a proper manner. Whether a system of complaint register or complaint box exists for easy use of complainant.
21. Whether the complaints referred by employer organization are responded to employer organization / complainant as required/ promptly and in a proper manner, understanding the view point of complainant and giving required input.
22. Specific observation on estimated quantum of revenue leakage through use of local loops for diversion and suggestion to plug the same.
23. Whether there is any suggestion regarding use / content/ control of software including its source code or reports being generated by Software.

24. Checking compliance against earlier observations given in earlier reports and follow-up actions committed by the collecting agency.
25. General assessment about atmosphere in the booth and in the Toll Plaza office.
26. Specific suggestions in detail giving operational methodology for improvement.

Chapter 5 : THE WAY FORWARD

5.1 Preparatory Measures

Implementation of the recommendations for enhancement of toll collection and management system requires number of steps that are needed to be taken. This chapter outlines the steps which can be classified as:

- i) Enhancing Legal Enabling Environment
- ii) Preparatory Steps
- iii) Capacity Building Measures

5.2 Enhancing Legal Enabling Environment

The recommendations outlined in paragraph 4.1.1 of Chapter 4 of this Report suggesting changes in the Odisha State Roads Toll Act, 2010 and the Rules thereunder may be examined by GoO and suitable amendments made and approved. This would expand and smoothen the toll collection space from both the point of view of the Government and the road users.

The formation of the cabinet sub-committee to identify roads that are tolled may be set up with the Chief Minister as the Chairperson and Ministers- in-Charge of Transport, Works Department, Rural Development Department, Panchayati Raj Department, Housing and Urban Development Department and Finance Department as members; an option to co-opt such other members representing other departments that may be considered by GoO for inclusion in the sub-committee. This would facilitate formalization of procedure for declaring toll roads.

To assist and facilitate the decision-making process of the cabinet sub-committee, empowered committee of secretaries need to be formed consisting of OWD, Transport, Commerce, Planning, Finance, Law, Development Commissioner-cum-Additional Chief Secretary and chaired by Chief Secretary. This committee will review and identify roads that can be tolled, in light of toll policy and socio-economic aspect, as well as, determine toll management strategy from the perspective of monitoring by the state government.

5.3 Preparatory Steps

As preparatory steps, guidelines need to be developed for identification of toll roads and applicability of appropriate contract for toll collection and management system.

The procurement of toll collection equipment and its maintenance shall be through the Concessionaire or OMT operator, as the case may be. The minimum guidelines / specifications shall be as per central tolling cell and the implementation / supervision of compliance shall be through the local cell.

Further, the toll collection and management could be carried out through any of the modes – concession agreement, toll collection, management and operation & maintenance contract, performance based contract, and the present system of auctioning (refer 3.8.2, Chapter 3 of this report), as appropriate. The performance based contract may be taken on a pilot project basis as it is not only a new concept for

the State but is yet to be truly introduced in the country. Based on lessons learnt therefrom, the performance based contract system can be initiated in phases through suitable modifications.

In addition to the above measures, GoO with the assistance of the Comptroller and Auditor General of India can empanel competent firms of Chartered Accountants on pre-defined criteria for undertaking toll fee audit. This measure can be taken up at the earliest.

It is envisaged that OB&CC shall be merged into a new body, OSRDC (Orissa State Road Development Corporation). OSRDC shall be responsible for project selection and award. OSRDC or GoO can constitute a high level “officials” group under Secretary (Works) to assess / screen projects likely to be eligible for Tolling initiatives.

The following criteria may be adopted for project selection:

- a) Projects where the cost of project can be met through purely tolling may be put under PPP model.
- b) Projects where the cost of project cannot be fully met by tolling alone, some grant can be given to make the PPP model viable. This grant can be given under Viability Gap Funding.
- c) Where it is expected that tolls are not feasible, the project can be awarded under the Annuity mode with government funding.

For the above, a detailed project report (DPR) survey has to be done by specialised consultants which would result in assessment of project cost and expected tolling revenue over the life cycle of the project.

5.4 Capacity Building Measures

To move from the current scenario to performance based contract and mixed tolling system, it is obviously necessary to develop the capacity of the staff of the road sector departments and agencies of GoO, as well as, of the contracting industry.

The following models are proposed for toll collection:

1. For PPP toll roads, the road builder/concessionaire shall be responsible for collection of toll to recover his investments. He shall also be responsible for maintenance of assets and corridor management.
2. For roads build by OWD, it is recommended that the toll collection, corridor control/incident management and maintenance be outsourced to a professional agency called the OMT (Operate Maintain and Transfer) Contractor who shall maintain the road as per performance parameters specified in the OMT contract. The OMT contract shall be awarded to the qualified bidder who submits the highest bid. The ownership and procurement of assets (like toll equipment, vehicles etc) for meeting performance obligations is done by the Contractor.

Another model of outsourcing is where the contractor gets a fixed fee for operating and maintain the road and the toll revenue is collected by the contractor on behalf of

the government. However, this may lead to toll revenue leakage and a loss to the government and hence not recommended.

In both the above cases, the responsibility of supervision should be with the OSRDC. For this, a strong institutional mechanism is also required. It is recommended, that a separate empowered committee be there at the state level as well as local level under OSRDC. The local level tolling cell in OSRDC should be a multi-disciplinary team of experienced persons having expertise in road engineering, finance, law and toll technology.

The state level empowered committee referred hereinabove shall be responsible for providing the enabling framework involving policy decisions which may include which roads to be tolled, toll rate guidelines, whether to be tolled on OMT or BOT, design specifications, preparing model contracts and guidelines, periodic review of policies etc.

The local cell shall be responsible for implementation of the project based on policy guidelines set by central cell which may include notification of toll rates, tendering and award to Concessionaires or OMT Contractors, supervision during design and implementation stages and monitoring of adherence to Service level Agreements (SLAs). Operational procedures and policies during O&M phase. Such contracts shall be based on framework provided by central cell but shall include project specific details (e.g. length of corridor - to calculate toll rate based on formula provided by central cell).

As it is envisaged that in future, OSRDC shall be responsible for Tolling Management functions, the detailed measures for Capacity Building shall be addressed after construction of OSRDC. The capacity building measures would include training on modern toll technology, and exposure visits/study tour to other states. Training should also aim to enhance cross-functional understanding of personnel. Besides, creation of databases as policy and decision support system, and development of streamlined processes & systems leveraging information technology have to be undertaken. It is suggested that capacity building measures should be initiated within three months after constitution of OSRDC.

For both the above phases either external independent consultants may be hired or this may be done departmentally by extensive capacity building. It is recommended that professional consultants (Independent Engineer) be hired through competitive bidding process for design and supervision jobs and the OWD should build capacity for administration of contracts including audits, quick resolution of disputes, reviewing policy framework to reduce anomalies for future projects, gathering data for planning, responding to and addressing public grievances etc.

Training – this is the most important aspect of capacity building. Training should be effected through local and national level training agencies. In order to ensure that the training is undertaken GoO may consider making such training a mandatory requirement.

Following the training, it is important to observe the application of the training in real field and get feedback. The feedback received and the results observed in the real field should be used to modify and streamline the training curricula and the training program.

5.5 Time

It is admitted that the process of change or reform in the toll collection and management system cannot be expected to be completed in a short period. Therefore, the steps listed above would require a five-year time horizon and is to be planned meticulously so as to complete the process within the time period. In this regard, GoO may consider making OWD the nodal agency for the exercise.

It is suggested that implementation of the recommendations for enhancement of toll collection and management system could be initiated at the earliest and in short term horizon of two years, the activities which can be undertaken are –

Suggested Implementation Plan for Short-Term

Sl. No.	Activities	Suggested Time Frame
1.	Changes in the Odisha State Roads Toll Act, 2010 and the Rules thereunder may be examined by GoO and suitable amendments made and approved	Within one year
2	Formation of the cabinet sub-committee to identify roads that are tolled	Within three months
3	Formation of empowered committee of secretaries	Within three months
4	Development of guidelines/specifications for procurement of toll collection equipment and its maintenance through the Concessionaire or OMT operator, as the case may be.	Within six months
5	Empanelment of competent firms of Chartered Accountants on pre-defined criteria for undertaking toll fee audit	Within one year

5.6 Facilitation

Facilitation measures by the Consultant are dependent on identification of the pilot project. However, in accordance with the discussions in Chapter 5, pages 5-1 to 5-4, guiding framework for implementation of out-sourced road toll collection and management operation will form a part of Draft Final Report.