

Private Sector Infrastructure Facility at State Level Project



VOLUME 4: CONCESSION AGREEMENTS

Provided to the

State Governments of
Andhra Pradesh
Gujarat
Karnataka
Madhya Pradesh
and
Asian Development Bank

By

CPCS Transcom Limited
In association with
Oxford Policy Management
Nathan Incorporated
The Economic Research Institute
Luthra and Luthra

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15 February 2005

Mr. Cheolsu Kim
Head, Financial and Private Sector
Asian Development Bank
Indian Resident Mission
4, San Martin Marg, Chanakyapuri
New Delhi 110 021

Dear Mr. Kim,

Reference: TA 3791-IND: Enhancing Private Sector Participation (PSP) in Infrastructure Development at State Level

It is with pleasure that I am forwarding to you the final report for the above technical assistance project. I believe that the five volumes attached can form the basis for improved private sector participation in the infrastructure sector in India.

In addition to the main volumes, we have also prepared an Executive Summary which summarises the main report recommendations. We have also structured the recommendations into seven key steps which are needed to enhance state level PSP activity. These seven steps comprise an action plan which can be applied by any State in India.

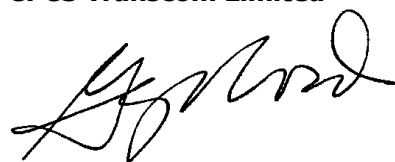
As you pointed out in the tripartite meetings, while the knowledge of how to support PSP activity seems to be fairly widely accepted, following through on that knowledge and implementing the projects is not being done. In the report we have provided a body of material which we hope can assist in that implementation.

While this report is bulky, it was written with the idea of eventually turning it into a reference book for wider dissemination to other state organisations around India. That option still remains. We believe that the concepts and the issues highlighted here, have broader application in other states as well.

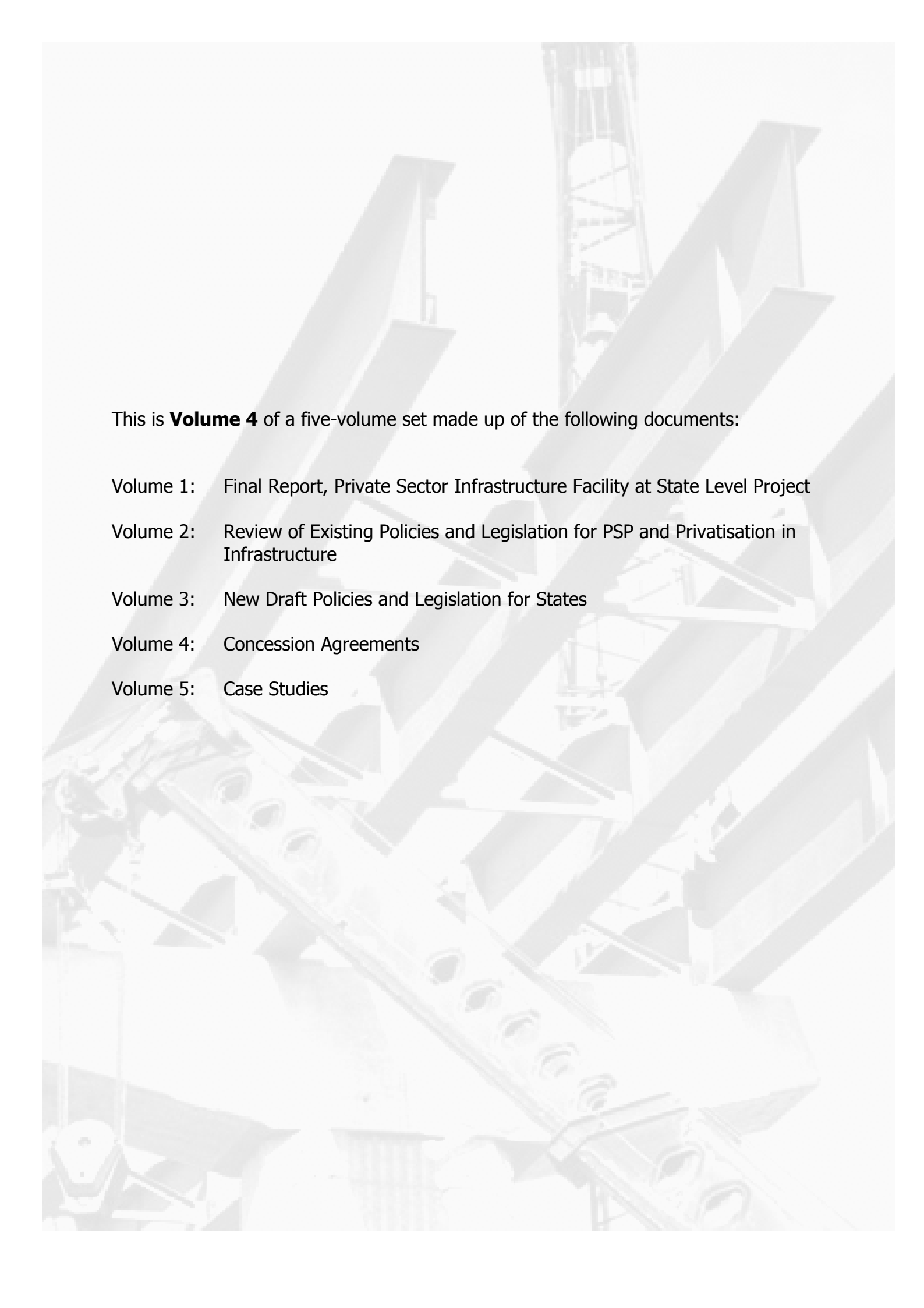
In closing I would also like to thank you and your colleagues for your support and help on the project.

Yours sincerely,

CPCS Transcom Limited



W. Greg Wood
Chairman



This is **Volume 4** of a five-volume set made up of the following documents:

Volume 1: Final Report, Private Sector Infrastructure Facility at State Level Project

Volume 2: Review of Existing Policies and Legislation for PSP and Privatisation in Infrastructure

Volume 3: New Draft Policies and Legislation for States

Volume 4: Concession Agreements

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MODEL WATER SUPPLY CONCESSION AGREEMENT (BULK WATER)

**STANDARD HIGHWAY LEASE CONCESSION BOT
AGREEMENT**

DRAFT CONCESSION AGREEMENT EXAMPLE

PURPOSE:

This Example Agreement is meant to provide standard clauses which would limit areas of discussion with potential investors, and to give confidence to those investors that a system of law was in place for lease/concession agreements.

The Agreement is generic in that it is meant to act as a basis for a lease or a concession or a BOT. The specifics of use will depend on the particular project being developed.

DRAFT CONCESSION AGREEMENT

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THIS CONCESSION AGREEMENT is made on the ____ day of _____, 2000,
in _____, "State", between:

- (1) _____ Expressway Company, acting as the "**Concession Authority**";
and
- (2) _____ Company (the "**Project Company**").

Each of the Concession Authority and the Project Company shall hereinafter individually be referred to as a "**Party**" and collectively as the "**Parties**".

IT IS AGREED AS FOLLOWS:

ARTICLE 1. DEFINITIONS AND INTERPRETATION

1.01. Definitions

Unless the terms or context of this Agreement otherwise provide, the following terms shall have the meanings set out below when used herein:

"**Allocated Land Use Rights**" means the land use rights to the Site which are to be allocated to the Project Company pursuant to an Allocated Land Use Rights Contract.

"**Allocated Land Use Rights Certificate**" means the certificate issued or to be issued in the name of the Project Company by the _____ "State" Land Bureau evidencing the Project Company's title to the Allocated Land Use Rights.

"**Allocated Land Use Rights Contract**" means the Allocated Land Use Rights Contract executed by the _____ "State" Land Bureau and the Project Company whereby that Land Bureau allocates to the Project Company the Allocated Land Use Rights.

"**Change of Law**" means (a) the adoption, promulgation, modification or reinterpretation after the date of execution of this Agreement by any Government authority of any Laws or Regulations of the "State" or (b) the imposition by a Government authority of any material condition in connection with the issuance, renewal or modification of any Project Approval.

"**Concession Period**" means the period for which the Concession Rights are to be granted to the Project Company under this Agreement, as specified in Article 3.03, as such period may be modified in accordance with the provisions of this Agreement.

"**Concession Rights**" means all the rights, interests and benefits conferred on the Project Company pursuant and subject to this Agreement, including exclusive rights during the Concession Period.

"**Completion Date**" means the date specified as such in the Certificate of Completion (or, where a Certificate of Completion is deemed to be issued pursuant to Article 10.04, the date of deemed issuance of the Certificate of Completion).

"Concession Authority's Works" means the access roads, utility facilities and utility conduits, and any other infrastructure to be procured by the Concession Authority, as described in the Concession Authority's Work Specification.

"Construction Contract" means the contract entered or to be entered into between the Project Company and the Contractor for the construction of the Project Expressway.

"Contractor" means the contractor under the Construction Contract.

"Government Authority" means the government of the "State", any subdivision thereof, any local government and any part thereof, and any department, authority, instrumentality, agency, judicial body or tribunal of the "State" or local government authority having jurisdiction over the Project Company, the Project or any portion thereof.

"O&M Manual" means the operation, maintenance and repair manual prepared or to be prepared by the Project Company pursuant to Article 12.01.

"Project" means the development, design, financing, construction, operation and maintenance and management of the Project Expressway.

"Project Contract" means any contract entered into by the Project Company with another party to carry out this Agreement.

"Project Expressway" means the _____ Expressway which will be constructed, operated and maintained pursuant to this Agreement, as described in more detail in Schedule 1.

"Project Milestones" means the Project Milestones set out in Schedule 3, as the same may be amended in accordance with this Agreement.

"Project Milestone Dates" means the dates specified in Schedule 3 for achievement of the Project Milestones, as the same may be amended in accordance with this Agreement.

"Project Schedule" means the schedule for construction of the Project Expressway approved by the Concession Authority, as may be amended from time to time in accordance with this Agreement.

"Quality Assurance System" means the system to be developed and implemented in accordance with the Specifications developed by the Project Company, as set forth in Schedule 5, in order to ensure the quality of the design, construction, operation and maintenance of the Project Expressway.

"Relevant Assets" means the Project Expressway and all buildings, machinery, equipment, inventory and plant ancillary to the construction, operation and maintenance thereof, together with all intangible property, land and land use rights in respect thereof.

"Rights of Way" means wayleaves, easements and rights of passage and use over or under, and of access and egress to and from, the Site and any part thereof. Where applicable, it applies to land additional to the Site (including laydown areas), without undue interference by any third party for the purpose of constructing, operating and maintaining the Project Expressway.

"Site" means the land, spaces, waterways, roads and any surfaces procured, or to be

procured, for the Project Company in its name, and delivered to the Project Company in accordance with Article 7 and on, through, above or below which (or any part of which) the Project Expressway is or is to be built by or on behalf of the Project Company pursuant to this Agreement.

"Specifications" means the specifications approved by the Concession Authority pertaining to the Project Expressway, including Design Specifications, Construction (Works) Specifications and other relevant specifications.

"Specified Design Drawings" means those detailed design drawings required to be submitted for approval pursuant to Article 8.01.

"Specified Works Drawings" means those detailed drawings of works required to be delivered to the Concession Authority pursuant to Article **8.05**.

"Tolls" means the tolls collected in respect of vehicles using the Project Expressway.

"Utilities" means facilities such as water, gas, electricity, drainage, sewerage, and communications, including telecommunications, and whether in public, private or other ownership.

"Utilities Conduit" means any electric power cable, telephone cable or any cable used in communications, any telecommunications apparatus, any pipe used in the supply of water, gas or oil, or for drainage or sewerage, together with any duct of such cable or pipe or any apparatus or works ancillary to such cable, apparatus, pipe or duct.

"Vacant Enjoyment" means, in relation to any land, the right to use such land for the purposes of this Agreement free from encumbrances and without undue interference by any third party.

1.02. Rules of Interpretation

In this Agreement, unless the context requires otherwise, any reference to:

"Approval" includes any approval, authorization, consent, license, permit, franchise, authorization, acknowledgment, permission, registration, resolution, direction, declaration and exemption and other like or similar documents.

"Law and/or Regulation" includes any constitutional provision, treaty, convention, law, decree, ordinance, statute, act, subsidiary and subordinate legislation, order, measure, rule or regulation having the force of law (and, if applicable, rules of civil and common law and equity).

"Person" includes any individual, company, body corporate or unincorporated or other juridical person, partnership, business organization, firm, joint venture or trust or other entity or any federation, state or subdivision thereof or any government or agency of any of the foregoing.

"Tax" includes any tax, levy, duty, charge, impost, fee, deduction or withholding of any nature now or hereafter imposed, levied, collected, withheld or assessed by any taxing or other authority and includes any interest, penalty or other charge payable or claimed in respect thereof. **"Taxation"** shall be construed accordingly.

1.03. Successors and Assigns

The expressions "**Concession Authority**" and "**Project Company**", and references to any other Person in this Agreement shall, where the context permits, include their respective and permitted successors and permitted assigns and any persons who derive title and rights under them.

1.04. Miscellaneous

In this Agreement, unless the context requires otherwise, words importing the singular include the plural and vice versa, and words importing a gender include every gender. In addition, references to this Agreement or any part of it (including the Appendices or Schedules) or any other document shall be construed as references to this Agreement or its relevant part or such other document as the same has been amended or supplemented or replaced from time to time. Where applicable, this reference shall be in accordance with the provisions of this Agreement and with all relevant Approvals required to be obtained.

ARTICLE 2. PARTIES TO THE CONTRACT

2.01. The Parties

The Parties to this Agreement are:

CONCESSION AUTHORITY: **State Government Department or Agency or _____**
Expressway Company

which is a limited liability company which has 100% holding of _____ Expressway, and has the right to transfer all or part of the operating right to that highway to overseas investors or to domestic investors or joint investors after the approval of the relevant Government departments.

With its location of registration at: _____ and

With its legal address (**domicile**) at: _____

_____, "STATE"

Legal Representative of Concession Authority:

Name: _____

Position: _____

Nationality: Chinese

PROJECT COMPANY: _____

a wholly foreign-owned (limited liability) company established under the Law of the "STATE" on Wholly Foreign-Owned Enterprises or a joint stock limited liability company established under the Company Law,

With its location of registration at: _____ and

With its legal address at: _____
_____, "STATE"

Legal Representative of Project Company:

Name: _____

Position: _____

Nationality: _____

2.02. Change of Legal or Authorized Representative

Each Party shall have the right to change its legal or authorized representative. In such case, it shall promptly notify the other Party of such change and the name, position and nationality of the new representative. Such notification shall be accompanied by legal evidence of the validity of the appointment.

ARTICLE 3. THE CONCESSION

3-01. Grant of Concession Rights

The Concession Authority, subject to the obligations imposed on the Project Company under this Agreement hereby grants to the Project Company the exclusive lease/concession rights to the Project Expressway for the entire concession period.

3.02. Exclusivity

The Concession Rights granted to the Project Company pursuant to this Agreement are exclusive to the Project Company during the Concession Period. The Concession Authority shall ensure that no part of the Concession Rights shall be granted to any other person.

3.03. Concession Period

(a) The Concession Period shall commence on the date that this Agreement is signed by the Parties. Unless the Agreement is terminated earlier in accordance with its terms, it shall continue for a period of thirty (30) years from that date.

(b) The Concession Period may be extended by the written consent of the Parties and subject to existing Laws and Regulations.

3.04 Concession Payments

The payments to be made under this Concession are set forth in Schedule **6**.

ARTICLE 4. PROJECT COMPANY

The Project Company must meet all of the legal requirements under the Company Law and other relevant laws and regulations of the "State". These requirements include, but are not limited to:

(a) incorporation under the Company Law or other relevant legislation, such as the Law of the "State" on Wholly Foreign-Owned Enterprise, including the meeting of minimum registered capital requirements set by such legislation or by the total investment required for this Project;

(b) registration as a business entity and the obtaining of a business license from the State or the relevant local administration for industry and commerce, as well as registration with the local tax office concerned and the opening of an account at the Bank of "State" or other approved bank;

(c) the power and authority to enter into, and perform its obligations under, this Agreement;

(d) requirements specific to this particular Expressway Project.

ARTICLE 5. CONDITIONS PRECEDENT/ PRE-CONCESSION PERIOD AND EFFECTIVENESS

5.01. Effectiveness Conditional; Effective Date

The provisions of this Agreement shall be effective and legally binding from the date that the Parties have met the required conditions for which each is responsible under Sections 5.02 and 5.03 below. That date shall be known as the Effective Date.

Each Party shall promptly notify the other Party when it considers that the conditions precedent referred to in Sections 5.02 and 5.03 have been satisfied or waived.

Upon satisfaction or waiver by the relevant Party of the conditions precedent referred to in Sections 5.02 and 5.03, the Effective Date shall occur. The Leasing Authority shall confirm this occurrence and the date of the Effective Date.

5.02. Conditions For Which Project Company Is Responsible

The grant of the Concession Rights to the Project Company shall only become effective and legally binding upon the satisfaction of the following conditions by the Project Company, or their waiver in writing of the Concession Authority. Thus the Project Company shall provide to the Authority:

(a) legal evidence that the Company has:

(i) been duly incorporated under the laws of the "State";

(ii) the power to enter into, and perform its obligations under, this Agreement;

(iii) sufficient funding commitments (from equity investors and Lenders) to perform its obligations under this Agreement; and

(iv) obtained the Project Approvals which the Company is required to be obtained before the Effective Date.

(b) a bond duly issued in favor of the Concession Authority in the amount of (___% of Construction Costs) to secure the performance of the Project Company's obligations under this Agreement;

(c) evidence reasonably satisfactory to the Concession Authority that the Project Company has the personnel and machinery necessary to carry out its obligations under the Agreement.

5.03. Conditions For Which Concession Authority Is Responsible

The Project Company's obligation to implement the Project in accordance with this Agreement shall only become effective and legally binding upon the satisfaction of the following conditions by the Concession Authority (or their written waiver by the Project Company). The Concession Authority shall:

(a) provide legal evidence to the Project Company that it:

(i) has the power and authority to enter into, and perform its obligations under, this Agreement;

(ii) has obtained all requisite approvals from the State Development Planning Commission and other Government agencies to enter into, and perform its obligations under, this Agreement; and

(iii) is entitled and duly authorized to grant the Project Company full and exclusive Concession Rights for the entire Concession Period in accordance with this Agreement (including access to, and all other rights to use, the Site, as contemplated by this Agreement and the Allocated Land Use Rights Contract).

(b) procure the issuance of the Allocated Land Use Rights Certificate in respect of the Site in the name of the Project Company;

(c) procure all necessary Project Approvals which are its responsibility to procure before the Effective Date, at the cost and for the benefit of the Project Company. **A list of these necessary Project Approvals is set forth in Schedule 2 (to be provided for any jurisdiction).**

5.04. Non-Satisfaction of Conditions Precedent

(a) If any of the conditions precedent referred to in Article 5.02 are not satisfied by the Project Company within ___ (X) months after the date of this Agreement or within ___ (x) months after satisfaction by the Concession Authority of all of the conditions precedent set out in Article 5.03 (and not waived by the Project Authority, then the Concession Authority, at its discretion, may:

(i) extend the date by which the Project Company must satisfy the relevant

conditions precedent;

(ii) waive the relevant conditions precedent;

(iii) terminate this Agreement by giving to the Project Company written notice to that effect.

(b) If any of the conditions precedent referred to in Article 5.03 are not satisfied by the Concession Authority within __ (X) months after the date of this Agreement, then the Project Company, at its discretion, may:

(i) extend the date by which the Project Company must satisfy the relevant conditions precedent;

(ii) waive the relevant conditions precedent; or

(iii) terminate this Agreement by giving the Project Company written notice to that effect.

(c) If due to the failure of the relevant Party responsible for performance of the relevant conditions precedent, the other Party terminates this Agreement under sections (a) and (b) of this Section 5.04, as the case may be, then no damages shall be payable by either Party to the other in respect of that termination. However, that provision shall not affect the right of the Concession Authority to make any claim under the Tender Bond or the Construction Performance Bond. Nor shall such termination affect any claims or rights of any Party accrued prior to the date of termination.

ARTICLE 6. INDEPENDENT ENGINEER

6.01. Appointment of Independent Engineer

The Parties to this Agreement shall jointly appoint a qualified independent engineer for the period of construction of the Project Expressway.

6.02 Reporting

The independent engineer shall report directly to the Concession Authority, the Project Company and to the Lender or Lender's Representative.

6.03. Costs of Independent Engineer

The costs for the independent engineer shall be borne by the Project Company.

ARTICLE 7. LAND ACQUISITION AND USE

7.01. Procurement of Allocated Land Use Rights

The Concession Authority shall be responsible for obtaining the Allocated Land Use Rights for the Project Company, and for the issuance to the Company of the Allocated Land Use Rights

Certificate for the Site in the name of the Project Company. The Authority shall deliver Vacant Enjoyment of the Site to the Project Company at the cost and expense of the Project Company.

7.02. Other Real Property Rights

The Concession Authority shall be responsible for obtaining the grant to the Project Company, in the Project Company's name, of the Rights of Way to the Project Expressway (such as the permanent and temporary rights of entrance/exit, rights to use access roads to lay Utilities, access to and rights to extract construction materials, etc.).

7.03. Concession Authority Works

(a) At its own cost, the Concession Authority shall design, construct and deliver the Concession Authority Works. These works include the provision of Utilities and of access roads to the Site, and other such works required for the successful completion of this Project.

(b) The Concession Authority shall:

(i) ensure that all Utilities required for the Project are made available to the Project Company at fair rates or on terms no less favorable to the Project Company than the terms available to commercial customers for similar utilities;

(ii) obtain for the Project Company the connection of the utilities; and

(iii) use reasonable endeavors to assist the Project Company to facilitate the relocation or adjustment of utilities.

(c) Subject to Sections (a) and (b) above, the Project Company shall:

(i) obtain at its own cost any utilities that it needs to perform its obligations under this Agreement;

(ii) pay for all utilities in respect of the Project; and

(iii) relocate or adjust utilities at its cost, as required by the Project.

ARTICLE 8. DESIGN

8.01. Design Requirements

The Project Company shall prepare the design for the Project Expressway in accordance with the **Design** Specifications set forth in Schedule 7 of this Agreement.

8.02. Project Company's Review and Report on Design Specifications

The Project Company acknowledges that prior to the date of this Agreement, it has reviewed, and satisfied itself as to, the **Design** Specifications. The Project Company hereby adopts the Specifications as its own design and work and accepts full and sole responsibility under this Agreement for such Specifications.

8.03. Project Company's Right to Amend Design Specifications

(a) At any time prior to the Completion Date, the Project Company may propose to the Concession Authority amendments or clarifications to the **Design** Specifications. The Authority shall, within **30** days of receiving such proposal, advise the Project Company in writing whether or not the proposed amendment or clarification is approved.

(b) The Project Company is entitled to propose such changes as it may think fit to the design of the Project Expressway as set out in the approved Specified Design Drawings as set out in Schedule **7**. Such proposal may be made at any time whether prior to or during construction. However, the Project Company shall not make any such design changes without first submitting to the Concession Authority the details of the proposed changes at least 14 days prior so that the Authority may verify consistency with the **Design** Specifications. If the Authority does not object to any proposed changes within fourteen (14) days after receipt, then it shall be deemed not to object to the relevant design changes.

8.04. Review and Approval of Design

(a) The Project Company shall prepare and deliver to the Concession Authority the detailed Specified Design Drawings in respect of the Project Expressway as it prepares them. In any event, this shall be done prior to the construction of such part of the Expressway identified in the relevant Specified Design Drawing.

(b) The Concession Authority shall promptly review the Specified Design Drawings so submitted to it for compliance with the Design Specifications. If the Authority requires clarification or considers that the Specified Design Drawings submitted to it do not comply with the Design Specifications, it shall notify the Project Company requiring clarification or specifying the non-compliance within 14 days after their receipt. If the Authority fails to give such notification to the Project Company within the relevant time, then the Authority shall be deemed not to have any objection to the relevant Specified Design Drawings.

(c) If the Project Company received a notice under Section (b) above, then it shall, at its own cost, promptly and in any event within 14 days after receipt of such notice, provide the relevant clarification and/or amend the relevant Specified Design Drawings and deliver such amended drawings to the Concession Authority. The Project Company shall not be entitled to any compensation for delay caused by the need to provide such clarification or amended Specified Design Drawings.

(d) If the Project Company wishes to change any Specified Design Drawings already reviewed and not objected to by the Concession Authority, then it must first submit the amended Specified Design Drawings to the Authority and abide by the approval procedures set out above in this Article 8.01.

8.05. Specified Works Drawings

The Project Company shall prepare and deliver to the Concession Authority the Specified Works Drawings. The Company shall not carry out the works identified in any of the Specified Works Drawings until delivery of the relevant Drawing to the Concession Authority has been made.

8.06. Responsibility of the Project Company

The Project Company agrees and acknowledges that:

- (a) it is solely responsible for the design of the Project Expressway, including the technical feasibility, operational capability and reliability;
- (b) the failure of the Concession Authority to object to any Specified Design Drawings or Specified Works Drawings or any Specifications or changes to them shall not be construed as a waiver by the Authority of any of its rights under this Agreement and shall not relieve the Company of its obligations under this Agreement with respect to the design, construction, operation or maintenance of the Project Expressway;
- (c) it shall not in any way represent or hold out to any third party that the Concession Authority is in any way responsible for the design, engineering or construction quality of the Project Expressway; and
- (d) any engineering or other review conducted by the Concession Authority in respect of the Project is solely for the Authority's own information, and that the Authority does not thereby incur or assume any responsibility in relation to the design, quality of engineering or construction of the Project Expressway.

ARTICLE 9. CONSTRUCTION (WORKS)

9.01. Responsibility For Construction

- (a) The Project Company shall commence and complete construction or rehabilitation of the Project Expressway at its own cost and risk. This work shall be done in accordance with the Design Specifications, and all other applicable Specifications, the Specified Design Drawings, **the Specified Works Drawings** and the **Project** Schedule for the Project Expressway.
- (b) The Project Company is entitled to execute a Construction Contract with a qualified Contractor in order to carry out the construction work.

9.02. Commencement of Construction

The Project Company shall commence construction of the Project Expressway not later than 30 days following the date on which each of the following conditions has been fulfilled:

- (a) fulfillment of the conditions precedent set forth in Article 5.02 and Article 5.03 (or their waiver by the other Party);
- (b) delivery by the Concession Authority of the Site, together with Vacant Enjoyment of it and all rights of way in accordance with Article 7; and
- (c) delivery by the Concession Authority under Article 7 of the services (comprising utilities and access), in conformance with the specifications. Such delivery shall be to points adjacent to, in or at the Site.

9.03. Construction Program

- (a) The Project Company shall, within ____ days after the date of this Agreement, submit a construction program and schedule for the Project Expressway to the Concession Authority for its approval. This program shall show in reasonable detail the activities, their

sequences and the duration planned to achieve each Project Milestone by the relevant Project Milestone Date specified in the Project Schedule **set out in Schedules 3 and 4, and shall comply with the provisions of that Schedule (to be agreed).**

(b) The Project Schedule may not be amended without the prior written consent of the Concession Authority, which consent shall not be unreasonably withheld or delayed. The Project Company may at any time propose to the Authority an amendment to the Project Schedule for its approval.

9.04. Anticipated Construction Delay

(a) If at any time the Project Company reasonably anticipates that the Construction Works will fail to achieve any Project Milestone by the relevant Project Milestone Date, or if the Construction Works fail to meet any Project Milestone by the relevant Project Milestone Date, then the Company shall promptly inform the Concession Authority by written notice, which describes the following in reasonable detail:

- (i) the Project Milestone not achieved or expected to be achieved;
- (ii) the causes of the delay or expected delay, including a description of any alleged Force Majeure;
- (iii) the estimated delay (in days) in achieving the Project Milestone and any other reasonably foreseeable adverse impact on the Construction Works; and
- (iv) the measures which the Project Company has undertaken, or proposes to undertake, to overcome or minimize the delay and its effects.

(b) Delivery of the above notice shall not relieve the Project Company of any of its obligations under this Agreement. If the Concession Authority considers that the measures proposed or undertaken by the Project Company, as mentioned above, are insufficient to overcome or minimize the delay or the expected delay, then the Authority may require that the Project Company take reasonable additional measures to overcome or minimize that delay. The Project Company shall comply with such direction.

(c) The costs of such compliance by the Project Company with the Concession Authority's direction shall be borne by the Company, unless an event of Force Majeure under Article 19 is the sole cause of the relevant delay.

9.05. Reporting Obligations

(a) Until the Completion Date, the Project Company shall submit to the Concession Authority a monthly report of the progress of the design and construction of the Project Expressway. Such report shall describe in detail the Construction Works completed and in progress compared against the progress projected in the Project Schedule, along with such other matters as the Concession Authority may reasonably request.

(b) Immediately after the Completion Date, the Project Company shall supply to the Concession Authority copies of all "as-built" drawings and such other technical and design information and completion records relating to the finished Construction Works as the Authority may reasonably request.

9.06. Rejection of Work

At any time prior to the Completion Date, the Concession Authority shall be entitled to reject, by written notice to the Project Company, any work, materials or equipment which is not in accordance with this Agreement. The notice also may require the Project Company to rectify the work or substitute proper materials and equipment in compliance with certain requirements within the time specified. That time period must be reasonable, taking into account the relevant circumstances in such notice.

9.07. No Release

No monitoring or testing by the Concession Authority of all or any part of the Construction Works, nor the failure of the Authority to monitor, test or reject all or any part of the Construction Works shall be construed as a waiver of any of the rights of the Authority under this Agreement. They shall not release the Project Company from any of its obligations under this Agreement.

9.08. Quality of Construction Works; Other General Obligations of the Project Company

The Project Company shall:

- (a) construct the Project Expressway on the Site:
 - (i) in accordance with the Design **Specifications** and all **other** applicable Specifications, the Specified Design Drawings reviewed and approved or not objected to by the Concession Authority, and the Specified Works Drawings delivered to the Authority;
 - (ii) in accordance with prudent engineering and operating practices, in a proper and workmanlike manner, using well-maintained and good quality materials and equipment;
 - (iii) in a safe working environment, and taking all necessary steps to ensure that appropriate pollution control and other environmental protection measures are taken in accordance with any applicable Laws and Regulations;
 - (iv) in a way which minimizes disruption and other inconvenience to the public and residents and businesses (if any) in the vicinity of the Project Expressway.
- (b) Obtain in a timely manner all Approvals required in respect of the construction of the Project Expressway before it commences the activities to which those Approvals relate, and thereafter maintain them for as long as required by Law and Regulations.
- (c) obtain in a timely manner all visas and employment permits and certificates for foreign personnel for the relevant period; and
- (d) use its reasonable endeavors to comply with the Project Schedule and to achieve each Project Milestone by the applicable Project Milestone Date.

9.09. Preparation of Site

Except as specifically provided in this Agreement, the Project Company shall be responsible, at its own cost and risk, for preparing the Site for construction of the Project Expressway.

9.10 Main Obligations of the Concession Authority During Construction Phase

The Concession Authority shall:

- (a) assist the Project Company and facilitate all dealings between the Project Company and any Government authorities with respect to the construction of the Project Expressway;
- (b) procure the Approvals required in respect of the construction of the Project Expressway, without prejudice to the standards for its responsibility set forth in Article 5.03;
- (c) assist the Project Company in obtaining all other Approvals referred to in Article 9.08 above;
- (d) provide other support necessary to the Project Company during the period of construction.

9.11 Underground Utilities and Structures

- (a) The Project Company acknowledges and agrees that:
 - (i) it is solely responsible for the protection of all Utility Conduits and structures located underground at the Site;
 - (ii) it is solely responsible for the demolition, diversion and relocation of the Utilities Conduits specified in the Design **Specifications**; and
 - (iii) except as provided in the Concession Authority's Works Specification, the Authority has no obligation to remove any Utility Conduit and structures located underground.
- (b) The Project Company shall indemnify the Concession Authority against any damage, expense, loss or liability which the Authority suffers or incurs in respect of personal injury or damage to, or loss of, any property caused by the Project Company's failure to perform its obligations under Section (a) above.

ARTICLE 10. TESTING, INSPECTION AND COMPLETION

10.01. Monitoring and Testing

- (a) The Concession Authority or its designee shall be entitled from time to time, upon reasonable notice to the Project Company, to monitor the construction of the Project Expressway and to carry out tests for checking the construction of that Expressway. Such monitoring and testing shall be undertaken so as to minimize avoidable interference with the progress of construction.
- (b) Both the Independent Engineer, as provided for in Article 6, and the Project Company are entitled to have representatives present at any testing and inspection.
- (c) All of the costs of such monitoring and testing shall be borne by the Concession Authority, unless the results of any tests reveal any work, materials or equipment which is not in

accordance with the Agreement. In that case, all costs of the relevant tests shall be promptly reimbursed to the Concession Authority by the Project Company.

(d) The Project Company shall provide such access to the Site, assistance and equipment (including temporary office facilities) to representatives of the Concession Authority and to the Independent Engineer as may be reasonably required to enable the carrying out the relevant monitoring and testing of the construction of the Project Expressway.

10.02. Inspection After Completion

The Independent Engineer shall as soon as practicable thereafter, and in any event within ___ days after the Completion Notice is notified by the Project Company to the Authority, conduct an inspection of the Project Expressway to confirm whether or not the Construction Works for that Expressway has been substantially completed in accordance with the Design **Specifications** and all **other** applicable Specifications, the Specified Design Drawings, **Specified Works Drawings** and the **Project** Schedule for the Project Expressway.

10.03. Certification of Completion

If the inspection after completion mentioned in Article 10.02 above has confirmed that the Construction Works for the Project Expressway have been substantially completed as required, then the Concession Authority shall, within 10 days after the date of such joint inspection, issue a certificate to that effect, based upon the opinion of the Independent Engineer.

10.04. Deemed Issuance

If the Concession Authority fails to issue the Certificate of Completion with no fault on the part of the Project Company, then the Certificate of Completion shall be deemed to have been issued as at the day immediately following the last day on which the Authority should have taken the relevant action in accordance with the provisions of Article 10.02 and Article 10.03. The Construction Works for the Project Expressway shall be deemed to have been completed and the Completion Date to have occurred upon the issuance or the deemed issuance of the Certificate of Completion.

ARTICLE 11. DELAY IN CONSTRUCTION AND EXTENSION OF TIME; ABANDONMENT

11.01. Extension of Time

(a) The Project Company shall be entitled to an extension of time for the scheduled Completion Date as a result of delay in construction caused by any of the following events:

- (i) a breach of this Agreement by the Concession Authority; or
- (ii) a change to the scope of the Project; or
- (iii) the occurrence of a Force Majeure event as stated in Article 19 of this Agreement which is not an exception under Article 19.02 of this Agreement.

(b) However, such extension of time shall be granted only if:

- (i) the Project Company gives the Concession Authority a written notice

claiming an extension of time within 30 days of the occurrence of the delay, and that notice shall set out the likely effect on the scheduled Completion Date;

(ii) the Project Company reasonably satisfies the Concession Authority that (1) achievement of the scheduled Completion Date has actually been delayed, and (2) the Project Company has taken all reasonable steps to minimize the delay.

(c) In no case shall the Project Company be entitled to any extension of time to the extent that any delay is attributable to any breach of any of its obligations under this Agreement.

11.02. Determination of Extension of Time Claims

(a) The Concession Authority must, within 30 days after receiving the Project Company's notice under Article 11.01 determine such extension of time for the scheduled Completion Date as may be justified in the circumstances and give to the Project Company notice of its determination. Such notice shall state the extension of time which is granted or, if no extension is granted, state that decision.

(b) In making any determination under the foregoing paragraph (a) of this Article 11.02, the Concession Authority shall act fairly and reasonably. Its decision shall be open to review and dispute resolution in accordance with the provisions of Article 25 of this Agreement.

11.03. Effect of Extension of Time

Except only as is expressly provided elsewhere in this Agreement, an extension of time granted in accordance with this Article shall be deemed to be in full compensation and satisfaction of any loss or damage sustained or as may be sustained by the Project Company in respect of any matter in connection with which such extension is granted.

11.04. Prolonged Delay

In the event that, due to the default of the Project Company and through no fault of the Concession Authority, the Completion Date has not occurred three hundred and sixty-five (365) calendar days after the scheduled Completion Date, and in the reasonable opinion of the Concession Authority the Completion Date is not reasonably imminent, then the Authority shall be entitled to terminate this Agreement in accordance with Article 20 without prejudice to any other of its rights under this Agreement.

ARTICLE 12. OPERATION, MAINTENANCE AND REPAIR

12.01. Project Company's Obligations

(a) Before the Completion Date, the Project Company shall prepare and deliver to the Concession Authority an operation, maintenance and repair manual (the O&M Manual) in a form **which meets technical standards set by the Ministry of _____ or other relevant agency.**

(b) From the Completion Date until the end of the Concession Period, the Project Company shall operate, maintain and repair the Project Expressway in accordance with the O&M Manual and all applicable Laws and Regulations.

(c) The Project Company is entitled to execute a contract with a qualified leasing

company and any other qualified company in order to carry out the operation, maintenance and repair work of the Project Expressway.

12.02. Project Expressway By-Laws

(a) The Project Company may propose to the Concession Authority and the Provincial Government by-laws as required for the operation, maintenance and repair of the Project Expressway.

(b) The Concession Authority shall ensure that the above by-laws are enforced in accordance with applicable Laws and Regulations.

12.03. Reporting Procedures

The Project Company shall keep the following records and provide them to the Concession Authority on at least a monthly basis:

(a) traffic records on the daily volume of the vehicles using the Project Expressway and emergency services provided to motorists on that Expressway;

(b) a report on any maintenance or repairs it carries out in respect of the Project Expressway;

(c) any other information reasonably required by the Concession Authority from time to time in respect of the operation, maintenance and repair of the Project Expressway.

12.04. Safety and Emergency

The Project Company shall:

(a) provide all measures necessary for the safety and security of the Project Expressway;

(b) develop, in consultation with the Concession Authority, an emergency response plan for the Project Expressway.

12.05. Project Expressway Closure

(a) Without prejudice to its other rights and obligations under this Agreement, the Project Company shall be entitled to close all or any part of the Project Expressway for the purpose of safety, scheduled or emergency maintenance and cleaning.

(b) The Concession Authority may at any time demand that all or any part of the Project Expressway be closed or remain closed for the purpose of public safety or in the event of a state of emergency or in the national interest or in the interest of the security of the "State".

ARTICLE 13. TOLLS

13.01. Toll Calculation, Collection and Adjustment

The Project Company shall be entitled to levy, adjust, collect and retain tolls in

accordance with the toll structure and procedures set out in Schedule 8 on and from users of the Project Expressway during the period that it operates, maintains and manages the Project Expressway.

13.02. Price Control Approval

The Concession Authority shall obtain from the " Relevant State Authority " an approval of the initial toll, and of the formulae and procedure for adjustment of the tolls.

ARTICLE 14. FINANCIAL MANAGEMENT; FINANCIAL STATEMENTS AND REPORTING

14.01. Obligations of Project Company

The Project Company shall obtain all finance (equity and debt) necessary to design, construct, operate, maintain and repair the Project Expressway in accordance with this Agreement.

14.02. Financial Statements

(a) The Project Company shall account for its business by preparing and delivering to the Concession Authority financial statements and any other information in respect of the financial position of the Company which the Authority may from time to time reasonably request.

(b) In particular, the Project Company shall prepare and deliver to the Concession Authority the following:

- (i) annual audited financial statements consisting of:
 - (A) a balance sheet;
 - (B) a profit and loss account; and
 - (C) a statement of cash flows.

These statements shall be prepared in accordance with Laws and Regulations and certified by a qualified independent auditor.

(ii) a quarterly summary of the Project Company's cash receipts and expenditures.

14.03. Accounts For Inspection

(a) The Project Company shall keep:

(i) its books of account; and

(ii) all other records relating to the operation, maintenance and repair of the Project Expressway at the Project Company's principal place of residence located at _____, "State".

(b) The Project Company shall notify the Concession Authority immediately of any change in its principal place of business.

ARTICLE 15. INSURANCE

15.01 General Requirement of Insurance

The Project Company shall, at its sole cost and expense, obtain and maintain the policies of insurance required by the Concession Authority for the construction, operation, maintenance and management of the Project Expressway, as set forth in Schedule 9 of this Agreement.

15.02 Use of Insurance Proceeds on Termination

As stated in Section 20.09, proceeds from insurance obtained to cover termination due to the occurrence of a Force Majeure event may be used to make payments to the Parties according to the rules set forth in that Section.

ARTICLE 16. CONCESSION AUTHORITY GENERAL OBLIGATIONS

16.01. Compliance With Law

The Concession Authority shall comply with all relevant Laws and Regulations in respect of the performance of its obligations under this Agreement.

16.02. Grant of Approvals and Assistance With Approvals

The Concession Authority shall, in accordance with relevant Laws and Regulations, and by using its reasonable efforts:

- (a) grant to the Project Company, within its power and jurisdiction, the approvals necessary for the construction, operation, maintenance and management of the Project, **as mentioned in Schedule 2;**
- (b) assist the Project Company to coordinate the approval process for obtaining any other approvals which the Company is required to obtain under this Agreement.

16.03. Non-Interference

(a) Subject to this Agreement, the Concession Authority shall not interfere with the construction, operation, maintenance and management of the Project, unless such interference is necessary to protect public health and safety or is required by Laws or Regulations.

(b) If the Project Company so requests, the Concession Authority shall use its reasonable efforts to alleviate any interference with the Project by third parties, including such interference by other Government bodies.

16.04. Connecting Roads

The Concession Authority shall operate and maintain the roads and other infrastructure connecting to the Project Expressway to ensure the efficient and safe flow of traffic to and from the Project Expressway.

ARTICLE 17. PROJECT COMPANY GENERAL OBLIGATIONS

17.01. Compliance With Laws and Regulations

The Project Company shall comply with all applicable Laws and Regulations with respect to the Project.

17.02. Construction, Operation and Maintenance of the Project Expressway

The Project Company shall, in accordance with the provisions of this Agreement, implement the Project at its own cost and risk. The Company shall invest in, develop, design, finance, construct, complete, test, operate, manage and maintain the Project Expressway during the Concession Period in accordance with this Agreement.

17.03. Health and Safety Standards

The Project Company must comply with the relevant health and safety standards and practices **as required by Laws and Regulations** and applicable to the Project. The Company shall comply with all health and safety standards in the Quality Assurance System and in this Agreement.

17.04. Environmental and Social Assessment

The Parties will each comply with their respective obligations specified in the Environment and Social Assessment Report set out in Schedule _.

Generally the allocation of responsibility in these areas will be divided between the Concession Authority and the Concessionaire. There will be three phases, namely the preconstruction phase, the construction phase and the post construction phase. In the preconstruction phase all statutory clearances should remain the responsibility of the Government or in the case of an investor proposed concession, the Government/Concession Authority should provide all necessary assistance possible to obtain those clearances. For those preconstruction clearances which are commercial in nature, those will remain the responsibility of the Concessionaire. During construction, responsibility is again shared. The provision of agreed compensation or environmental mitigation measures which have been accepted by the Concessionaire, will be the responsibility of the Concessionaire. Ensuring that the commitments made are carried through and that the quality of environmental mediation or ameliorisation provided for in the agreement is achieved remains the responsibility of the Concessioning Authority. In the post construction period, it is the responsibility of the Concession Authority to monitor environmental and social commitments made as part of the concession agreement, such as replanting of trees or rehabilitation of wetlands, and to ensure that the Concessionaire adheres to the agreements made as part of the concession.

17.05. Approvals

Subject to what is otherwise expressly provided in this Agreement, the Project Company shall obtain and maintain all approvals required in respect of itself and the Project at its own cost.

17.06. Protection of Archaeological, Geological and Historical Objects

The Project Company shall take measures to protect archaeological, geological and

historical objects that it may discover during the construction, operation or maintenance of the Project Expressway.

17.07. Project Company Responsibility For Contractors

The Project Company shall be responsible for the acts or omissions of its contractors and their employees as if those acts and omissions were the acts and omissions of the Project Company and its employees.

17.08. Requisition of Service Under Extraordinary Circumstances

(a) The Project Company agrees that the Government of "State" may requisition the service of the Project Expressway under an Order issued under extraordinary circumstances.

(b) In such instance, the Authority agrees to pay compensation to the Company for all expenses, including any lost revenue. The amount and timing of payment of such compensation shall be determined by agreement between the Parties. Where such agreement cannot be reached, the Parties will submit the matter to dispute resolution under Article 25.

ARTICLE 18. OBLIGATIONS AND RIGHTS COMMON TO THE CONCESSION AUTHORITY AND THE PROJECT COMPANY

18.01. Rights To Information

(a) The Project Company acknowledges that the information, including documents, computer programs and other materials recorded or stored in whatever medium, which are provided to the Company by the Concession Authority or developed mainly based on information provided to the Company by the Concession Authority, are the property of the Concession Authority.

(b) The Project Company shall:

(i) not use the information referred to in paragraph (a) above other than for the purposes of the Project; and

(ii) return that information to the Concession Authority at the end of the Concession Period.

(c) The Concession Authority acknowledges that the information provided to the Authority by the Project Company, or developed mainly on the basis of information so provided, is the property of the Project Company.

(d) The Concession Authority is entitled to:

(i) copies of the information referred to in paragraph (c) above; and

(ii) a royalty free, non-exclusive, irrevocable license to use the information referred to in paragraph (c) above for the purposes of the Project.

18.02. Confidentiality

(a) Subject to Article 18.01 above, the Concession Authority and the Project Company shall keep all information and documents in respect of the Project confidential.

(b) The Concession Authority and the Project Company may disclose information or documents in respect of the Project if and to the extent that:

(i) the other Party consents to that disclosure;

(ii) the disclosure is required by Laws or Regulations or by the rules of a relevant stock exchange;

(iii) the disclosure is reasonably required in order to enable a Party to perform its obligations under this Agreement.

18.03. Obligation To Cooperate

The Parties shall cooperate with each other in respect of the Project.

18.04. Declaration Against Improper Payments

Both the Concession Authority and the Project Company declare that they are against any improper payment or unlawful influence in connection with the Project. They state that they have not and will not offer or receive any unlawful consideration in relation to the Project Expressway.

ARTICLE 19. FORCE MAJEURE

19.01. Suspension Of Performance Due To Force Majeure

(a) Subject as provided below, either Party shall be entitled to suspend performance of its obligations under this Agreement to the extent that such performance is impeded by circumstance beyond its control, **thus a force majeure**. Such circumstances shall include, but not be limited to, natural disasters, revolution, riot, insurrection, war (whether declared or not), hostilities, embargo, import or export restrictions and Change in Law.

(b) A circumstance referred to in (a) of Section 19.01 shall give right to suspension only if the Party claiming to be affected by Force Majeure could not reasonably have foreseen such circumstance at the time of the formation of this Agreement, or could not reasonably have avoided or overcome it or its consequences despite the exercise of diligent efforts.

(c) The Party claiming Force Majeure shall resume performance of its obligations under this Agreement as soon as possible after the Force Majeure ceases to exist.

19.02. Exceptions Applicable To The Project Company

The Project Company shall not have the right to consider any of the following events or circumstances to be a Force Majeure, unless and to the extent any such delay is itself caused by Force Majeure:

(a) delay in performance by a Contractor, the Operator or any subcontractor to

either of them;

(b) any delay in the delivery of, or any latent or patent defects in, any materials, equipment machinery or parts incorporated into any part of the Project;

(c) breakdown or ordinary wear and tear of materials, equipment, machinery or parts of the Project; or

(d) strikes by or affecting employees of the Project Company, the Contractor or the Operator or any other entity undertaking any part of the construction, operation or maintenance of the Project Expressway, in cases where the strike is not part of or directly related to any more widespread or general strike or other industrial action.

19.03. Exceptions Applicable To The Concession Authority

The Concession Authority shall not have the right to consider any of the following events or circumstances to be a Force Majeure:

(a) the expropriation, requisition, confiscation or nationalization of the Project Expressway by any Government Authority;

(b) the imposition of any blockade, embargo, import restrictions, rationing or allocation by any Government Authority;

(c) the cancellation of any Approval not caused by a breach by the Project Company of this Agreement or by a breach of any Project Contract by any Party thereto other than the Concession Authority or any Government Authority; and

(d) Change in Law.

19.04. Procedure

The Party claiming to be affected by a Force Majeure shall as soon as possible and within 24 hours after its occurrence or when the Party became aware of it, give the other Party written notice. Such written notice shall describe the effect of the Force Majeure in detail, including the date of its commencement and its effect on the affected Party's obligations under this Agreement. Notice shall also be given as soon as possible of awareness of the end of the event of Force Majeure.

19.05. Cost: Revised Timetable

(a) In case of a Force Majeure, each Party shall cover its own costs resulting from the Force Majeure situation, except as otherwise provided in this Agreement.

(b) Provided that the Party claiming to be affected by the applicable Force Majeure has complied with the notice procedure of Article 19.04, and subject to the provisions of Article 11, any time period specified in this Agreement for the performance of an obligation shall be appropriately extended by a period equal to that during which the effect of the applicable Force Majeure applies to that obligation.

19.06. Termination Due To Force Majeure

(a) If any Force Majeure shall impede or prevent a Party's performance for longer

than a period of ninety (90) days from the date of its commencement, then the Parties shall decide through consultation either the terms upon which to continue the performance of this Agreement or to terminate this Agreement by mutual agreement.

(b) If the Parties are unable to agree on such terms or to terminate this Agreement within twelve (12) months after the date of the commencement of such Force Majeure, then either Party may, at any time thereafter during the continuance of such Force Majeure, terminate this Agreement by written notice to the other Party.

19.07. Consultation And Duty To Mitigate

The Party affected by the event of Force Majeure shall use reasonable efforts to mitigate the effects of that event, including the payment of reasonable sums based on the likely efficacy of such measures. The Parties shall consult with each other to determine reasonable measures to be implemented to minimize the losses of each Party resulting from Force Majeure.

19.08. Termination After Force Majeure

(a) If following the occurrence of a Force Majeure, the Parties are unable to reach an agreement on the completion and repair of the Project Expressway within ninety (90) days following commencement of the consultations under Article 19.07, then either Party may terminate the Concession Period and this Agreement on thirty (30) days' written notice to the other Party.

(b) Upon such termination, neither Party shall have any further obligation under this Agreement, except to the extent that any obligation or undertaking under this Agreement expressly survives termination. **If there is insurance covering such force majeure, then payments shall be made to the parties from the insurance proceeds based upon the rules set forth in Section 20.09**

ARTICLE 20. TERMINATION

20.01. Normal Termination

The concession rights granted under this Agreement shall end upon the expiration of the Concession Period, subject to the extension or earlier termination of that Period pursuant to the terms of this Agreement.

20.02. Termination By Concession Authority Based on Project Company Event of Default

If any one or more of the following events or circumstances (each of which shall comprise a "**Project Company Event Of Default**") occurs, then the Concession Authority may, so long as a Project Company Event of Default consists to exist, and subject to the provisions of this Agreement, terminate the Agreement immediately by giving written notice to that effect to the Project Company. Such Project Company Events of Default include:

(a) the Project Company goes into liquidation, becomes insolvent or bankrupt or stops making payment to its creditors generally;

(b) the Project Company is in breach of any of its material obligations under this Agreement and fails to remedy such breach within thirty (30) days after receipt of written notice

from the Concession Authority specifying such breach and requiring the Project Company to remedy the same.

20.03. Termination By The Project Company Based Upon Leasing Authority Event of Default

If the Concession Authority is in breach of any of its material obligations under this Agreement ("Concession Authority Event of Default") and fails to remedy such breach within thirty (30) days after receipt of written notice from the Project Company specifying such breach and requiring the Authority to remedy the same, then the Project Company may, so long as such a Concession Authority Event of Default continues to exist, and subject to the provisions of this Agreement, terminate the Agreement immediately at any time thereafter, by giving written notice to that effect to the Concession Authority.

20.04. Termination in Connection With Force Majeure

Either Party may terminate the Concession Period and this Agreement, as provided in Article 19 on Force Majeure.

20.05. No Termination

(a) The Concession Authority's right to terminate this Agreement based upon an event of Force Majeure under Article 19 shall not be exercised if and for so long as the occurrence or continuation of the relevant event or circumstance is primarily and directly a result of one of the exceptions under Article 19.03 or due to any act or omission of the Authority in contravention of its obligations under this Agreement.

(b) The Project Company's right to terminate this Agreement based upon an event of Force Majeure under Article 19 shall not be exercised if and for so long as the occurrence or continuation of the relevant event or circumstance is primarily and directly a result of one of the exceptions under Article 19.02 or due to any act or omission of the Project Company in contravention of its obligations under this Agreement.

20.06. Notice To Lenders

If either Party issues a notice to the other Party pursuant to the provisions of this Article, then, at the same time, that Party shall also send a copy of such notice to each Lender's Representative.

20.07. Remedies Cumulative

(a) The exercise of the right of any Party to terminate this Agreement does not preclude that Party from exercising any other remedies that are provided in this Agreement or are available at Law.

(b) Remedies are cumulative. The exercise of, or failure to exercise, one or more remedies by a Party shall not limit or preclude the exercise of, or constitute a waiver of, other remedies available to that Party.

20.08. Deemed Abandonment of Construction

The construction of the Project Expressway shall be deemed to have been abandoned if the Project Company:

- (a) notifies the Concession Authority in writing that it has terminated the design or construction of the Project Expressway and does not intend to recommence such design or construction;
- (b) fails to commence construction work on the Site within sixty (60) days after the Project Milestone Date applicable to the commencement of Construction Works, unless this delay was caused by an event of Force Majeure or by an act or omission of the Concession Authority in contravention of its obligations under this Agreement;
- (c) fails to resume work within sixty (60) days after the end of an event of Force Majeure, other than by reason of the occurrence of an intervening event of Force Majeure or an act or omission of the Concession Authority in contravention of its obligations under this Agreement; or
- (d) for any other reason, the Project Company ceases to design or perform Construction Works or withdraws either directly or through action by the Contractor (other than temporarily due to emergency), all or substantially all of its personnel and equipment from the Site prior to the Completion Date other than by reason of the occurrence of an event of Force Majeure or an act or omission of the Concession Authority in contravention of its obligations under this Agreement.

20.09. Use of Certain Insurance Proceeds

If the Agreement is terminated following the occurrence of Force Majeure, and the Concession Authority is required to pay compensation to the Project Company under Article 19.08, and insurance policies are available for such payment as provided for under Article 15 with respect to the Project Expressway, then such proceeds shall, to the extent not used to carry out restoration or repairs on the Expressway itself, be applied towards payment to discharge the following items in order of priority:

- (a) all indebtedness of the Project Company owing to the Concession Authority secured by those insurance proceeds;
- (b) in proportionate reduction of the amount, if any, payable by the Concession Authority to the Project Company, as set out in the Schedule regarding Termination Payment Schedule;
- (c) to the Project Company or at its order.

20.10. Survival

The provisions of this Article shall survive the termination of this Agreement.

ARTICLE 21. REPRESENTATIONS AND WARRANTIES

21.01. Concession Authority

- (a) The Concession Authority represents and warrants to the Project Company that:
 - (i) it has the power and authority to enter into, and perform its obligations

under, this Agreement;

(ii) it has obtained all requisite approvals from the " Relevant Authority" and any other Government Authority necessary in order for it to enter into, and perform its obligations under this Agreement;

(iii) it is entitled and duly authorized to grant, convey and effectively vest in the Project Company the full and exclusive Concession Rights for the entire Concession Period in accordance with this Agreement, including access to and all other rights to use, the Site as contemplated by this Agreement and the Allocated Land Use Rights Contract), and

(iv) it has funds and other assets which are available to secure performance by the Concession Authority of its obligations under this Agreement, and to satisfy court judgments or arbitration awards arising out of or in connection with this Agreement or its performance.

(b) The Concession Authority expressly waives the defense of sovereign immunity and any other defense based on the fact or allegation that it is an agency or instrumentality of a sovereign state in relation to any arbitration proceeding, any legal proceeding to enforce any arbitration award and in any legal action between the Parties pursuant to or relating to this Agreement.

21.02. Project Company

The Project Company warrants and represents to the Concession Authority that:

(a) it has the power and authority to enter into, and perform its obligations under, this Agreement;

(b) it has obtained all Approvals necessary in order for it to enter into, and perform its obligations under, this Agreement;

(c) it has funds and assets which are available to secure performance by the Project Company of its obligations under this Agreement, and to satisfy court judgments or arbitration awards arising out of or in connection with this Agreement or its performance.

ARTICLE 22. LIABILITY AND INDEMNIFICATION

22.01. Cross Indemnity

Each Party shall indemnify, defend and hold harmless the other Party from and against all liabilities, damages, losses, expenses and claims of any nature whatsoever for personal injury and for damage to, or loss of, any property arising out of or in any way connected with the indemnifying Party's performance of this Agreement.

However, an exception to the above shall be made to the extent that such injury, damage or loss is attributable to a negligent or intentional act of omission of the Party seeking to be indemnified.

22.02. Environmental Damage

The Project Company shall be liable for, and shall defend, indemnify and hold the Concession Authority harmless from and against, any liability, damage, loss, expense or claim which may be suffered or incurred by the Concession Authority in respect of Environmental Contamination resulting from the Project, **as defined by existing Laws and Regulations**.

However, an exception to this rule is made if and to the extent that such loss, expense or claim is primarily attributable to the negligent or intentional act or omission of the Concession Authority.

22.03. Survival of Indemnities

The indemnities contained in this Agreement shall survive the expiration of the Agreement itself.

22.04. Joint Responsibility

If any damage, expense, loss or liability is partly caused by the act or omission of the Concession Authority and partly caused by the act or omission of the Project Company, then each Party shall be liable to the other only in proportion to its relative degree of fault.

ARTICLE 23. TRANSFER/RETURN OF PROJECT EXPRESSWAY TO CONCESSION AUTHORITY AFTER THE END OF THE CONCESSION PERIOD

23.01. Scope of Transfer/Return

- (a) At the end of the Concession Period, the Project Company shall:
 - (i) **transfer/return** the Project Expressway (free of all encumbrances) to the Concession Authority;
 - (ii) **transfer/return** the Project Expressway in a good operational and well-maintained condition which will permit the continuation of toll road operations at present level for a five (5) year period, at costs consistent with toll road operations and toll road services provided by the Company during the last five (5) years of the Concession Period, and in accordance with the Transfer Specifications set out in Schedule **10**;
 - (iii) deliver to the Concession Authority all documents, manuals and records which are necessary to carry out the transfer of the Project Expressway to the Concession Authority and to enable the Authority to operate, maintain and repair the Expressway;
 - (iv) assign the benefit of all unexpired guarantees, warranties and insurance policies to the Concession Authority;
 - (v) transfer, assign or license, or procure the transfer, assignment or lease, to the Concession Authority of all technology and intellectual property relevant to the operation and maintenance of the Project Expressway, on terms reasonably acceptable to the Concession Authority;
 - (vi) transfer all other rights, interest and title of the Project Company in and to the Relevant Assets to the Concession Authority; and

(vii) take all measures and actions and enter into any documents as may be required by the Concession Authority to implement, perfect and/or facilitate any transfer of the Project Expressway and the other Relevant Assets contemplated in this Article 23.01.

(b) Where the Concession Authority determines that the condition of the toll road infrastructure is unsatisfactory in relation to the requirements established under Article 12 in the O&M Manual, then the Project Company will be required at its own expense to carry out the necessary repairs and upgrading. Such works must be prescribed at least one year and not more than five years before the end of the Concession Period. In case of disagreement by the Project Company, then the requirement of such works shall be decided based on the dispute resolution procedures set forth in Article 25.

23.02. Transfer/Return Procedure

(a) During the last five (5) years of the Concession Period, major decisions regarding Project Expressway operations shall be made jointly by the Parties.

(b) Not less than twelve (12) months before the end of the Concession Period, the Concession Authority and the Project Company, together with the Independent Engineer, shall conduct a joint inspection of all elements of the Project Expressway in accordance with the **Transfer/Return** Specifications set forth in Schedule **11**.

(c) Not less than six (6) months before the end of the Concession Period, the Concession Authority and the Project Company shall meet to agree on:

(i) detailed arrangements (including security arrangements) for the transfer of the Project Expressway and the other Relevant Assets to the Concession Authority; and

(ii) the spare parts and inventory to be transferred to the Concession Authority at the end of the Concession Period. They must be sufficient to meet the usual operating requirements of the Project Expressway for at least **6** months.

(c) At the meeting referred to in Section (b) above:

(i) the Project Company shall provide to the Concession Authority:

(A) a detailed list of the structures, equipment, facilities and items to be transferred to the Concession Authority; and

(B) the names of its representatives in charge of the transfer.

(ii) the Concession Authority shall provide to the Project Company the names of its representatives in charge of the transfer.

23.03. Training of Concession Authority Personnel

(a) Not less than twenty-four (24) months before the end of the Concession Period, the Project Company shall submit to the Concession Authority for its approval a detailed program for the training of nominated personnel of the Authority prior to the end of the Concession Period in the operation, maintenance and repair of the Project Expressway. Prior to the end of the Concession Period, the Project Company shall implement the training proposal approved by the

Concession Authority.

(b) The Concession Authority and the Project Company shall conduct a joint test program to confirm that the Concession Authority's nominated personnel referred to above in section (a) have been adequately trained to operate, maintain and repair the Project Expressway.

23.04. Warranties

The Project Company shall ensure that, at the end of the Concession Period, the Project Expressway:

- (i) is in good operational condition;
- (ii) is well-maintained in accordance with this Agreement; and
- (iii) meets all safety and environmental standards required by this Agreement.

23.05. Transfer/Return Costs

(a) The Concession Authority shall not be required to make any payment to the Project Company in respect of the transfers, assignments and licenses referred to in Article 23.01.

(b) The Project Company and the Concession Authority shall each pay its own expenses, including legal fees, incurred in connection with the transfers, assignments and licenses referred to in Article 23.01.

(c) The Concession Authority shall, at its own cost, obtain or effect all Approvals which are necessary to carry out those transfers, assignments and licenses.

23.06. Passing of Risk

Except as otherwise provided in this Agreement, the Project Company shall be solely responsible for loss of, or damage to, the Project Expressway until the end of the Concession Period. However, it shall not be responsible if such loss or damage is due to an act or omission of the Concession Authority or a breach of this Agreement by the Concession Authority.

23.07. Removal of Objects

(a) The Project Company shall remove all of its objects and possessions which are on the Site within sixty (60) days after the end of the Concession Period.

(b) If the Project Company fails to remove its objects and possessions, then the Concession Authority may take any action it considers appropriate to remove those objects and possessions to a suitable place for storage after giving the Project Company written notice of its intention to remove them.

(c) The Project Company shall indemnify the Concession Authority immediately upon demand against any damage, expense, loss or liability which the Concession Authority may reasonably suffer or incur in respect of the exercise of its rights under this Article.

ARTICLE 24. ASSIGNMENT AND SUBSTITUTED ENTITY

24.01. Assignment By The Project Company

Without the prior written consent of the Concession Authority, the Project Company may not assign or transfer this Agreement or any of its rights and obligations under the Agreement. It may not transfer any of its assets except as permitted under any agreement creating a security interest in such assets.

24.02. Assignment By The Concession Authority

(a) Without the prior written consent of the Project Company, the Concession Authority may not assign or transfer this Agreement or any of its rights or obligations under the Agreement.

(b) However, the above clause shall not prevent the Concession Authority from merging or consolidating with, or transferring its rights and obligations to, any other Government Authority, government ministry, department, authority or agency of the "STATE" or any administrative subdivision of the "STATE" or any corporation or entity which is wholly or substantially owned by the "STATE" or any corporation or entity which is wholly or substantially owned by the "STATE" or any administrative subdivision of the "STATE". In that case, such transferee or the surviving entity shall assume and become fully liable to perform the obligations of the Concession Authority under this Agreement.

24.03. Creation of Security

(a) For the purpose of financing the design, construction, completion, operation and maintenance of the Project, the Project Company may assign or create security over its rights and interests under or pursuant to this Agreement as may be required. Such security interest shall be in accordance with the terms of this Agreement, including without limitation its rights with respect to the Project, the Site, any of its moveable property or intangible property or its revenues or any other rights or assets,

(b) Such security interest shall require the prior written consent of the Concession Authority, which consent shall not be unreasonably withheld.

24.04. Substitution For Project Company

(a) The Parties acknowledge that a Substituted Entity may be substituted for the Project Company following the declaration of the occurrence of an event of default under this Agreement, **particularly with regard to Project Company General Obligations under Article 17**. The Concession Authority shall have the right to nominate such a Substituted Entity which shall be approved by the "State" Government and the Ministry of _____, as required under other relevant agreements.

(b) These companies, either jointly or severally holding financing debt secured by this Concession Agreement will be considered to have the first right in providing a Substituted Entity to the Concession Authority. The Concession Authority and the relevant Government Departments will retain right of final approval of this Substituted Entity.

(c) Once the approval of such substitution is obtained, the Concession Authority shall be entitled within a reasonable period of time to effect the substitution. Such substitution shall take effect when the Authority notifies its intention to the Project Company and, at the same time, gives all necessary information to the Project Company.

As an alternative to the Substitution Agreement referenced in (c) above, the following clause may be considered.

For the sole purpose of financing the implementation of the project and the fulfillment of his obligations under the Concession Agreement, the Operator may assign, by way of security, the benefit of, or his interest in, this Agreement, according to the requirements of any of the financing documents, and create other forms of security over any property or rights forming part of his interests in the project in favor of any lender, provided that the payment of rents and royalties to the Authority shall have priority over any such security and that before any such security takes effect, the holder of the security must have entered into a 'Lender's Direct Agreement' with the Authority.

Article 25. DISPUTE RESOLUTION

25.1 Conciliation

(a) If a dispute arises out of or in relation to this Agreement, or the breach, termination or invalidity thereof, the parties agree to seek an amicable settlement of that dispute by conciliation under the Rules of Conciliation of the Indian Council of Arbitration in force at the date of the signing of this contract. The parties agree moreover to waive their rights, as the case may be, under rule 3 and under clauses (c) and (d) of sub-rule 15(1) of said Rules.

(b) A single conciliator shall be appointed by the Indian Council of Arbitration within 30 days from the date a party has requested the Indian Council of Arbitration to effect such an appointment. The Indian Council of Arbitration will provide administrative services in accordance with its Rules of Conciliation. In addition to what is already provided under clauses (a) and (b) of sub-rule 15(1), the conciliation proceeding shall be terminated at the expiry of a 2 months period from the date of its commencement, unless the parties both agree that it shall be continued upon such terms and for such period of time as may then be determined by them.

25.2 Arbitration

(a) If the dispute was not settled by conciliation under section 25.1, the dispute shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The arbitral tribunal shall consist of three members appointed as follows: each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator. If a party fails to appoint an arbitrator within 30 days from the receipt of a request to do so from the other party, or the two appointed arbitrators fail to agree on the third arbitrator within 30 days from the date of their appointment, the appointment shall be made, upon request by a party, by the Indian Council of Arbitration. The place of arbitration shall be (a city in India). The language to be used in the arbitral proceedings shall be English.

(b) Pending the submission of and/or decision on a dispute and until the arbitral award is made, the parties shall continue to perform their respective obligations under this agreement, without prejudice to a final adjustment in accordance with such award.

(c) The party challenging howsoever an award made under subsection (a), including making an application to set aside the award pursuant to section 34 of the Arbitration and Conciliation Act, 1996 (Central Act No. 26 of 1996), shall in addition to all of his own costs and fees

reimburse on a monthly basis all the direct costs and fees incurred by the party defending the award, including all direct costs and fees associated with any appeal thereof, whether or not such an appeal has been initiated by him.

ARTICLE 26. APPLICABLE/ GOVERNING LAW

26.01. Applicable Law

The validity, interpretation and implementation of this Agreement shall be governed by the laws of the "State".

26.02. Preferential Treatment

The Parties shall be entitled according to the law to any tax, investment or other benefits or preferences that become available or publicly known after the signing of this Agreement and which are more favorable than those set forth in this Agreement.

ARTICLE 27. LANGUAGE

This Agreement is drawn up in English.

ARTICLE 28. MISCELLANEOUS PROVISIONS

28.01. Waiver

To the extent permitted by the laws of the "State" and subject to this Agreement, failure or delay on the part of any of the Parties to exercise a right under this Agreement shall not operate as a waiver of such right. In addition, no single or partial exercise of such a right shall preclude any other future exercise of that right.

28.02 Binding Effect

This Agreement is made for the benefit of the Parties and their respective lawful successors and assignees and is legally binding upon them. This Agreement may not be changed orally, but only by a written instrument signed by the Parties and approved by them.

28.03. Severability

The invalidity or unenforceability of any provision of this Agreement, or of any part of the Agreement, shall not in any way affect any other provision or part of the Agreement.

28.04. Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter concerned. This Agreement supersedes all prior discussions, negotiations and agreements between the Parties.

28.05. Primacy Of This Agreement

This Agreement shall govern all aspects of, and all contractual relationships relating to, the Project as between the Parties. The Project Company shall ensure that the execution and performance of other Project Contracts by the Project Company will not cause the Company to be in breach of, or inconsistent with, its obligations under this Agreement. In the event of conflict between this Agreement and any Project Contract, including all questions of interpretation of this Agreement, this Agreement shall prevail as between the Parties.

28.06. Notices

Any notice or written communication provided for in this Agreement by any Party to any other Party, including, but not limited to, any and all offers, writings or notices to be given shall be made by made by facsimile, electronic mail, telegram or telex, and confirmed by courier service delivered letter, promptly transmitted or addressed to the appropriate Party. The date of receipt of such a notice or communication shall be deemed to be twelve (12) days after the letter is given to the courier service in the case of a courier service delivered letter and three (3) working days after dispatch in the case of a facsimile, electronic mail, telegram or telex. All notices and communications shall be sent to the address set forth below, until that address is changed by notice given in writing to the other Parties.

CONCESSION AUTHORITY

"State"

Facsimile No.: _____
or E-Mail Address: _____
Attention: _____

PROJECT COMPANY

"State"

Facsimile No.: _____
or E-Mail Address: _____
Attention: _____

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in _____, "State", by their duly authorized representatives on the date set forth above.

CONCESSION AUTHORITY

By: _____ (Name)

STANDARD HIGHWAY LEASE CONCESSION BOT AGREEMENT

Title: _____

PROJECT COMPANY

By: _____ (Name)

Title: _____

MODEL STATE ROADS CONCESSION AGREEMENT (ANNUITY VERSION)

This example agreement is drawn from the Annuity Agreements developed for Bangalore, for Durgapur, for Gangavaram Port, for Visakh Bulk Water and the Standard NHAI Annuity Agreement.

Where a clause from one or more of the agreements is believed to be of value, it is incorporated here. This agreement should not be taken as a template but rather as an example. Each agreement is individual and this agreement is meant to offer guidance on the development of a new agreement, not to be a template for that new agreement.

**MODEL STATE ROADS CONCESSION AGREEMENT
(ANNUITY VERSION)**

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**MODEL STATE ROADS CONCESSION AGREEMENT
(ANNUITY VERSION)**

THIS CONCESSION AGREEMENT entered into on this the ____ day of _____, 200__, at _____(City)

BETWEEN

GOVERNOR OF _____(State), represented by the Secretary, Public Works Department having its head office at _____(Building), _____(City), hereinafter referred to as _____ (which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its administrators, successors and assigns) ON THE ONE PART.

AND

M/s _____ **Limited**, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____(hereinafter referred to as the "**Concessionaire**") (which expression shall unless repugnant to the subject or the context include its successors and permitted assigns) ON THE OTHER PART,

WHEREAS,

A. The Government of _____(State) is desirous of upgrading and expanding the transport network in the State of _____ for the benefit of the users thereof and the larger economic development of the State, and in pursuance of that objective has decided to upgrade the existing _____ (hereinafter referred to as "**the Project**") of the _____ to a 4-lane divided carriageway,

B. As part of its various initiatives to encourage private sector participation in the development of infrastructure facilities in _____(State), and vide its G.O. No. _____, the Government of _____(State) has authorized the _____ Department (xxx) to take up widening and strengthening of the Project Road through such private sector participation,

C. The Government of _____(State) has carried out extensive project development work in connection with the Project, including engineering studies, assessment of feasibility and preparation of a detailed project report,

D. The Government of _____(State) has invited proposals through a competitive bidding process from eligible persons for implementing the Project and in response thereto has received proposals from several persons, including the Consortium/Successful Bidder (as hereinafter defined) for implementing the Project,

E. After evaluation of the aforesaid proposals, the Government of _____(State) has accepted the proposal submitted by the Consortium and issued Letter of Acceptance dated _____(LOA) to the Consortium, a copy of which is hereto attached as Schedule "A".

F. In terms of G.O. No. _____ dated _____, the Government of _____(State) is authorized to enter into these presents with the Concessionaire being the Successful Bidder/Special Purpose Company set up by the Successful Bidder to undertake the Project,

G. The proposal of the Government of _____(State) relating to the Project/Project Facilities (as hereinafter defined), along with the Concession Agreement as presented here was considered and approved by _____ on _____(date).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

Article 1. DEFINITIONS AND INTERPRETATION

Definitions

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

"Accounting Year" means the financial year commencing from _____ of any calendar year and ending on _____ of the next calendar year.

"Additional Cost" means the additional capital expenditure and/or the additional operating costs or additional taxes or both, as the case may be, which the Concessionaire has or would be required to incur and which has arisen as a result of Change of Scope or Change of Law.

"Agreement" means this Agreement, including Schedules hereto, as of the date hereof and includes any amendment hereto made in accordance with the provisions of this Agreement.

"Annuity" shall have the meaning ascribed to it in Article 18.1

"Annuity Payment Date" means each date specified as such in Schedule J, for payment of Annuity.

"Annuity Payment Period" means each period for which the Annuity is payable in accordance with the provisions of this Agreement, as set out in Schedule J.

"Applicable Laws" means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including regulations and rules made thereunder, including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the effective period of this Agreement, which must be complied with by the Parties.

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

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

"Assured Availability" means the availability of the entire Carriageway assured by the Concessionaire for each Annuity Payment Period, computed as under:

$$AA= L \times 24 \times D$$

Where AA= Assured Availability

L= Total lane-kilometers comprised in the roads in the Project measured and detailed in Schedule D (Project Facilities)

D= Actual number of days in the relevant Annuity Payment Period.

"Book Value" means the value of the capital expenditure incurred on the Project as per the books of the Concessionaire, net of depreciation charged on the basis of straight line method and amortized

equally over a period of fifteen (15) years commencing from the Scheduled Project Completion Date, duly verified and certified by the Independent Auditor in accordance with Indian generally accepted accounting principles (IGAAP). Provided that prior to the Commercial Operations Date, Book Value on any day means the capital expenditure incurred on the Project as of that date as per the books of the Concessionaire and duly certified by the Independent Auditor in accordance with IGAAP. Provided further, that in the event of Termination, the Additional Cost, if any, compensated by the Government of _____ State in accordance with Article 16 (Change of Scope) shall be excluded in computing the Book Value.

"Carriageway" means the proposed carriageway, the dimensions of which are specified in Table D (Project Facilities).

"Change in Law" shall have the meaning ascribed to it in Article 23.

"Change of Scope" shall have the meaning ascribed to it in Article 16.

"Change of Scope Order" shall have the meaning ascribed for it in sub-Article 16.1.

"Commencement Date" means the later of:

- (i) the date for achievement of Financial Close as prescribed under this Agreement or
- (ii) the date on which the Project Site is completely delivered to the Concessionaire, in accordance with the applicable provisions of this Agreement.

"Commercial Operations Date (COD)" means the date on which the Concessionaire is entitled to commence operation of the Project, that is the date on which the Independent Engineer has issued the Provisional Certificate or the Completion Certificate in accordance with the provisions of Article 6 of this Agreement.

"Completion Certificate" means the certificate issued by the Independent/Project Engineer certifying completion of construction of the Project by the Concessionaire in accordance with the Construction Requirements.

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

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

"Concessionaire" means M/s _____, and shall include its successors and permitted assigns expressly approved by the Government of _____ (State).

"Consortium" means the consortium consisting of (i) _____, (ii) _____, (iii) _____ formed/acting pursuant to the Memorandum of Understanding dated _____, entered into by them, for the purpose of submitting the proposal for implementing the Project through a Special Purpose Company/Vehicle to be formed and incorporated by them under the Companies Act, 1956.

"Construction Requirements" means the requirements as to construction of the Project/Project Facilities set forth in Schedule H.

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

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

"Cure Period" means the period specified in the Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default, and upon the failure of which the Agreement may be terminated by the other Party.

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

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

"Design Requirements" means the design requirements of the Project/Project Facilities, as set forth in Schedule G. (to be provided by the Concession Authority)

"Detailed Project Report (DPR)" means the report prepared by the Concessionaire, which is in substantial conformity with the Detailed Proposal, for implementation of the Project as approved by the Government of _____(State) and submitted by the Concessionaire to its Lenders for the purpose of Financial Closure.

"Detailed Proposal" means the proposal submitted at the Request For Proposal (RFP) stage by the Consortium forming part of this Agreement.

"Dispute" shall have the meaning ascribed thereto in Article 25.

"Dispute Resolution Procedure" means the procedure for resolution of Dispute set forth in Article 25.

"Drawings" means all of the drawings, designs, calculations and documents pertaining to the Project in accordance with the Design Requirements of Schedule G. (to be provided by _____)

"Emergency" means a condition or situation existing or prevailing on or about the Project Site/Project Facilities, which is likely to endanger the safety of persons or vehicles involved in operating, maintaining or using the Site or Facilities or which poses an immediate threat of material damage to any of the Project Site/Project Facilities.

"Encumbrance" means any encumbrance, such as a mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind or other obligation or restriction and shall also include, without limitation, physical or legal obstructions and encroachments on the Site.

"Environmental Requirements" means the requirements set out in the Environmental and Social Assessment Report and all requirements of Law relating to the protection and maintenance of the environment and all requirements as would be complied with in accordance with Good Operating Practices in order to protect and maintain the environment and any such standards prescribed by any Competent Government Authority from time to time.

"Environmental and Social Assessment Report" means the plan for environmental and safety and resettlement and rehabilitation requirements of the Project Facilities and in accordance with

which standards the Services will be provided as set out in Schedule K (Environmental and Social Assessment Report).

"EPC Contract" means the contract(s), if any, entered into by the Concessionaire inter alia for the purpose of design, engineering, procurement of equipment and materials and construction of Project Facilities in accordance with the provisions of this Agreement.

"Equity Documents" means collectively the documents evidencing subscription to Concessionaire's equity capital to the extent of equity component of cost of the Project, and includes documents relating to the funds in any form committed by the Consortium/ Sponsors.

"Event of Default" shall have the meaning ascribed thereto in Article 21.

"Financial Close" means the date on which the Financing Documents providing for Financing/funding by the Lenders have become effective and the Concessionaire has access to the funds committed thereunder subject only to the issue of a notice to draw-down.

"Financing Documents/Agreements" means all documentation or arrangements of whatever kind evidencing any obligation of the Concessionaire in respect of the Financing or any refinancing for the Project or any portion thereof, as amended, supplemented or otherwise modified from time to time.

"Force Majeure Event" shall have the meaning ascribed thereto in Article 20.

"Force Majeure Period" means, as determined by the Independent Engineer, the period commencing from the date of occurrence of a Force Majeure Event and ending on:

- (i) the date on which the Affected Party, acting in accordance with Good Industry Practice, resumes or should have resumed such of its obligations the performance of which was excused in terms of Article 20;
- (ii) the Termination Date, as applicable.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a Project of the type similar to that of the Project.

"Government Agency/Authority" means the Government of India, Government of _____(State), or any State government or governmental, department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body (central, State or local), having jurisdiction over the Concessionaire, the Project Site/Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

"Handback Requirements" means the requirements as to handback of the Project Site/Project Facilities set out in Schedule R.

"IGAAP" means the Indian generally accepted accounting principles consistently applied.

"Implementation Period" means the period beginning from the Commencement Date and ending on the Commercial Operations Date (COD).

"Independent Auditor" means a reputed firm of Chartered Accountants practicing in India that may be appointed by the Parties pursuant to and in accordance with Article 9.

"Independent Engineer" means a reputed Person being a firm, company or a body corporate appointed in accordance with Article 8 for supervision and monitoring of compliance by the Concessionaire with the Project requirements, more particularly to undertake, perform, and carry out the duties, responsibilities, services and activities set forth in Schedule L.

"Initial Investment" shall have the meaning ascribed thereto in Schedule J.

"Insurance Proceeds" means the proceeds of the insurance policies taken by the Concessionaire in terms of Article 15, or otherwise.

"Internal Rate of Return" shall have the meaning ascribed thereto in Schedule J.

"Lenders" means any person or persons providing financial assistance to the Concessionaire under any of the Financing Agreements/Documents, including financial institutions, banks, funds, trusts or trustees of the holders of debentures or other securities, their successors and assigns.

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

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

"Means of Finance" means the means of financing the cost of the Project envisaged as at Financial Close.

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

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

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

"O&M Expense" means expenses incurred by or on behalf of the Concessionaire, duly certified by this Statutory Auditors, for all regularly scheduled and reasonably anticipated O&M during the Operations Period, including, without limitation:

- (i) all cost of salaries and other employee compensation and contract fee payable to the O&M Contractor, if any;
- (ii) cost of materials, supplies, utilities and other services;
- (iii) premiums for insurance;
- (iv) all franchise, excise, property and other similar taxes and all costs and fees incurred in order to obtain and maintain all Applicable Permits necessary for the O&M of the Project/Project Facility at its full design capacity;
- (v) all repair, replacement and maintenance costs of the Project/Project Facility; and

- (vi) all other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the operation and maintenance of the Project according to the Specifications and Standards, at its full design capacity.

"O&M Requirements" means the requirements as to operation and maintenance of the Project Facilities set forth in Schedule I. (to be provided to the Concessionaire)

"Operations Period" means the period commencing from the Commercial Operations Date (COD) and ending at the expiry of the Concession Period and this Agreement.

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

"Performance Security" means the guarantee for performance of its obligations during the Implementation Period to be procured by the Concessionaire from a Scheduled Bank or a Public Financial Institution, in accordance with Article 5.

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

"Preliminary Notice" means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

"Project" means the design, financing, construction, operations and maintenance of the Project Facilities in accordance with the provisions of this Agreement.

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

"Project Assets" means all physical and other assets relating to and forming part of the Project, including but not limited to:

- (i) Rights over the Project Site in the form of license, right or way or otherwise;
- (ii) Tangible assets such as civil works, including foundations, embankments, pavements, road surface, interchanges, bridges, approaches to bridges and flyovers, road overbridges, drainage works, lighting facilities, traffic signals, sign boards, milestones, Toll Plaza, equipment for the collection of tolls or relating to regulation of traffic, electrical works for lighting on the Project, telephone and other communication systems and equipment for the Project, rest areas, wayside amenities, administration and maintenance depots, relief centers, service facilities, etc.;
- (iii) Project Facility situate on the Project Site;
- (iv) The rights of the Concessionaire under any Project Agreements;
- (v) Financial assets, such as security deposits for electricity supply, telephone and other utilities, etc.;
- (vi) Insurance proceeds subject to Lenders' Rights thereto; and
- (vii) Applicable Permits and authorizations relating to or in respect of the Project.

"Project Completion" shall have the meaning ascribed thereto in Article 11.

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

"Project Facility" means collectively the facilities on the Project Site to be designed, constructed, built, installed, erected or provided by the Concessionaire on the Project Site, in accordance with the Design Requirements and Construction Requirements, and more specifically set out in Schedule D.

"Project Requirements" means collectively the Design Requirements, Construction Requirements and O&M Requirements, or any of them as the context may admit or require.

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

"Project Site Delivery Schedule" means the schedule for delivery of the Project Site by the Government of _____(State) to the Concessionaire, as set out in Schedule E. (to be jointly agreed)

"Proposal Due Date" means the date set by the Request For Proposal (RFP).

"Provisional Certificate" means the Completion Certificate that may be issued by the Independent Engineer pending completion of the Punch List items in accordance with Article 11.1.

"Punch List" shall have the meaning ascribed thereto in Article 11.1.

"Reduction in Cost" means the reduction in capital expenditure or the operating costs or both, as the case may be, on account of a Change of Scope as certified by the Independent Engineer.

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

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

"Scheduled Project Completion Date" shall have the meaning set forth in Article 11.

"Specifications" and **"Standards"** means the specifications and standards relating to the quality, capacity and other requirements for the Project as set forth in Schedules G, H and I, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Government of _____(State).

"State Support Agreement" means the Agreement to be entered into between the Government of _____(State) and the Concessionaire envisaging the various supports and incentives to be provided under this Project by the Government of _____(State), as set forth in Schedule Q.

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

"Substitution/Direct Agreement" means the agreement to be entered into among the Concessionaire, the Government of _____(State) and the Lenders in the form set forth in Schedule P providing, inter alia, for the substitution of the Concessionaire by another Person subject to and in accordance with the provisions of this Agreement and that Substitution Agreement.

"Substitute Entity" means the person chosen by the Lenders to substitute for the Concessionaire in accordance with the Substitution Agreement for the purposes of continuing the Project and assuming all rights and obligations of the Concessionaire under this Agreement.

"Tax" means and includes all taxes, fees, cesses and levies that may be payable by the Concessionaire under any Applicable Law. Provided that, for the purpose of Article 23 (Change in Law) "Tax" shall not include any penalty, interest or other penal sum levied on or payable by the Concessionaire on account of non-payment, short payment or delayed payment of Tax or on account of any other default.

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

"Termination Date" means the date specified in the Termination Notice as the date on which the Termination occurs.

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

"Termination Payment" means the aggregate of the amounts payable by the Government of _____(State) to the Concessionaire under this Agreement upon Termination under Article 22.

"Tests" means the tests to be carried out as set forth in and in accordance with Schedule H (Construction Requirements) or Schedule I (O&M Requirements) to determine the Project Completion and its certification by the Independent Engineer prior to commencement of commercial operation of the Project.

1.1 Interpretation

1.1.1 General Rules

In this Agreement, unless the context otherwise requires:

- (a) references to Articles, sub-Articles, paragraphs and Schedules are to Articles, sub-Articles, paragraphs of, and Schedules to, this Agreement;
- (b) any reference to a statutory provision shall include such provision as from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (c) references to Applicable Law shall include the laws, acts, ordinance, rules, regulations, notifications, guidelines or bye-laws which have the force of law in any State or Union Territory forming part of the Union of India;
- (d) words importing the singular shall include the plural, and vice versa;
- (e) use of any gender includes the other gender;
- (f) references to a "company" shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (g) references to a "person" shall be construed so as to include any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity or entities (whether or not having a separate legal personality);

- (h) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (i) the words "include" and "including" are to be construed without limitation;
- (j) any reference to any period of time shall mean a reference to Indian Standard Time;
- (k) any reference to a "day" shall mean a reference to a calendar day;
- (l) any reference to a "month" shall mean a reference to a calendar month;
- (m) the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (n) any reference at any time to any agreement, deed, instrument, license or other document of any description shall be construed as a reference to that document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (o) a document in the "agreed form" means a document in a form agreed to by the Government of _____ (State) and the Concessionaire and initialed on behalf of each Party for the purpose of identification on the date of this Agreement;
- (p) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates.

1.1.2 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to two decimal places, with the third digit of 5 and above being rounded up and below 5 being rounded down, except that in a Fee calculation it shall be rounded off to the nearest Rupee.

1.1.3 Resolution of Ambiguities or Discrepancies

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

- (i) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over provisions in other Articles;
- (ii) between the Articles and the Schedules, the Articles shall prevail;
- (iii) between any value written in numerals and that in words, the latter shall prevail;
- (iv) should any Article, sub-Article, paragraph or Schedule of this Agreement prove illegal or unenforceable, the Parties hereto shall undertake to replace it by a valid such part that comes closest to what the illegal or unenforceable part intended to stipulate. Is such replacement is not possible, then the rest of this Agreement shall survive and bind the Parties hereto as if the illegal or unenforceable part in question was not part of this Agreement.

Article 2. GRANT AND ACCEPTANCE OF CONCESSION

2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Government of _____(State) hereby grants and authorizes the Concessionaire to investigate, study, design, engineer, procure, finance, construct, operate and maintain the Project/Project Facility and to exercise and/or enjoy the rights, powers, privileges, authorizations and entitlements set forth in this Agreement, including, but not limited to, the right to levy, demand, collect and appropriate Fee from vehicles and Persons liable to payment of Fee for using the Project/Project Facility or any part thereof (collectively "The Concession")/

2.2 Acceptance of the Concession

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

Article 3. CONCESSION PERIOD

The Concession hereby granted is for a period of _____ years starting from the Commencement Date (Effective Date), except where terminated or extended in accordance with the provisions of this Agreement. During that period, the Concessionaire is authorized to implement the Project and to operate the Project Facility in accordance with the provisions hereof.

Article 4. PROJECT SITE

4.1 Access to Project Site/Handover of Project Site

(a) The Government of _____(State) hereby undertakes to handover to the Concessionaire physical possession of the Project Site free from Encumbrance within thirty (30) days from the date of this Agreement, together with the necessary rights of way/easements, for the purpose of implementing the Project in accordance with this Agreement.

(b) The Government of _____(State) confirms that, upon the Project Site being handed over pursuant to the preceding sub-article (a), the Concessionaire shall have the exclusive right to enter upon, occupy and use the Project Site and to make, at its own costs, charges and expenses, such development and improvements in that Site as may be necessary or appropriate to implement the Project and to provide the Project Facility subject to and in accordance with the provisions of this Agreement.

4.2 Use of Project Site

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

4.3 Information About the Project Site

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

4.4 Peaceful Possession

The Government of _____(State) warrants that:

(a) the Project Site, together with the necessary right of way/easement, has been acquired through the due process of law and belongs to and is vested in the Government of _____(State), and that the Government of _____(State) has full powers to hold, dispose of and deal with the Site, consistent with the provisions of this Agreement;

(b) the Concessionaire shall have no obligation or liability as to payment of any compensation whatsoever to or the rehabilitation and resettlement of, any Person from whom the Project Site or any part thereof had been acquired and that such payment shall be the sole responsibility of the Government of _____(State); and

(c) the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have an interest in or charge on the Project Site or any part thereof, the Government of _____(State) shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any direct or consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

4.5 Rights and Title Over the Project Site

(a) The Concessionaire shall have exclusive rights to the use of the Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of same by third parties.

(b) The Concessionaire shall allow access to, and use of, the Project Site/Project Facility for telegraph lines, electric lines or such other public purposes as the Government of _____(State) may specify, provided that such access or use does not result in a Material Adverse Effect or closure of Project Facility for a period exceeding 120 days, and that the Government of _____(State) undertakes to ensure that the Project Facility is restored at the cost and expense of the Government of _____(State) as per the Specifications and Standards. Where such access or use causes any loss of Fee to the Concessionaire, the Government of _____(State) shall compensate the Concessionaire for such loss of Fee by increasing the Concession Period suitably.

(c) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement. Provided, however, that nothing contained herein shall be construed or interpreted as a restriction on the right of the Concessionaire to appoint any Contractor for the performance of its obligations hereunder, including for operation and maintenance of all or any part of the Project/Project Facility.

4.6 Clearances

The Government of _____(State) confirms that the Project/Project Site has been granted the clearances listed in Schedule F. The Concessionaire shall be responsible and shall be in compliance with the terms and conditions subject to which these clearances have been issued. The Concessionaire shall obtain all Applicable Permits in such sequence as is consistent with the Project Requirements.

Article 5. PERFORMANCE SECURITY

5.1 Performance Security

(a) The Concessionaire shall, for due and punctual performance of its obligations during the Implementation Period, deliver to the Government of _____(State), simultaneously with the execution of this Agreement, a bank guarantee from a scheduled bank acceptable to the Government of _____(State), in the form set forth in Schedule N (Performance Security) for a sum of Rs._____.

5.2 Fresh Performance Security

In the event of the encashment of the Performance Security by the Government of _____(State) pursuant to an Encashment Notice issued in accordance with the provisions of Article 22, the Concessionaire shall within thirty (30) days of the Encashment Notice furnish to the Government of _____(State) Fresh Performance Security, failing with the Government of _____(State) shall be entitled to terminate this Agreement in accordance with the provisions of Article 22. The provisions set forth in Article 5.1 above shall apply mutatis mutandis to such Fresh Performance Security.

Article 6. OBLIGATIONS AND UNDERTAKINGS OF THE CONCESSIONAIRE

6.1 General Obligations of the Concessionaire

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement, the Concessionaire shall at its own cost and expense:

- (i) investigate, study, design, construct, operate and maintain the Project Assets/Project Facility in accordance with the provisions of this Agreement, Good Industry Practice and Applicable Laws;
- (ii) obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance with those Permits at all times during the Concession Period;
- (iii) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (iv) ensure and procure that each Project Agreement contains provisions that would entitle the Government of _____(State), or a nominee of the Government of _____(State), to step into such agreement at the discretion of the Government of _____(State), in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement or the Substitution Agreement;
- (v) provide all necessary assistance to the Independent Engineer, as it may reasonably require for the performance of its duties and services under this Agreement;
- (vi) appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements, as may be necessary;
- (vii) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;

- (viii) make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Laws and Applicable Permits;
- (ix) be responsible for quality, soundness, durability, safety and the overall Project Requirements, notwithstanding the appointment by it of Contractor(s) to implement and/or operate and maintain the Project/Project Facilities;
- (x) ensure that the Project Site remains free from all encroachments and take all steps necessary to prevent or, as the case may be, remove encroachments, if any;
- (xi) make payments to the Police Department or any Government Agency/Body, if required, for provision of such services as are not provided in the normal course or which are available only on payment;
- (xii) afford access to the Project Site to the authorized representatives of the Government of _____ (State), the Independent Engineer and any Government Body/Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority, and, upon reasonable notice, the Concessionaire shall provide to such persons the assistance reasonably required to carry out their respective duties and functions;
- (xiii) obtain at its cost and charges special or temporary right of access, occupation or use of any property that may be required by it in connection with implementation of the Project. The Concessionaire shall also obtain at its cost such facilities as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.
- (xiv) develop, implement and administer a surveillance and safety program for the Project/Project Facility and the users thereof and the personnel of the Contractors engaged in the provision of any services under any of the Project Agreements, including correction of safety violations and deficiencies, and the taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (xv) take all reasonable precautions for the prevention of accidents on or about the Project Site/Project Facility, and provide all reasonable assistance and emergency medical aid to accident victims;
- (xvi) be responsible for safety, soundness and durability of the Project Facility, including all structures forming part thereof, and their compliance with the Specifications and Standards;
- (xvii) operate and maintain the Project at all times during the Operations Period in conformity with this Agreement, including but not limited to, the Specifications and Standards, the Maintenance Programme and Good Industry Practice;
- (xviii) remove promptly according to Good Industry Practice, from the Project Site, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits.

6.2 Obligations of the Concessionaire During Implementation Period

In addition to what is provided for in Article 6.1 above,

- (a) The Concessionaire shall, before commencement of construction of the Project:
 - (i) submit to the Independent Engineer, with due regard to the Project Completion Schedule and Scheduled Project Completion Date, its design, engineering and construction time schedule and shall formulate and provide Critical Path Method (CPM)/Project Evaluation and Review Technique (PERT) charts for the completion of the said activities;
 - (ii) have the requisite organization and designate and appoint suitable officers and representative, as it may deem appropriate, to supervise the Project and to deal with the Independent Engineer and the Representative of the Government of _____(State) and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (iii) undertake, do and perform all such acts, deeds and things as may be necessary or required to adhere to the Project Completion Schedule and to achieve Project Completion under and in accordance with this Agreement;
 - (iv) construct, provide and maintain a furnished site office accommodation for the Independent Engineer at the Project Site; and
 - (v) provide and maintain an adequately equipped field laboratory as required for the Project Site control on the quality of materials and the Construction Works.
- (b) The Concessionaire shall, at all times, afford access to the Project Site, to the authorized representatives of the Government of _____(State), the Independent Engineer and officer of any Government Agency having jurisdiction over the Project, including those persons or agencies concerned with safety, security or environmental protection, to inspect the Project and to investigate any matter within their authority and, upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.
- (c) The Concessionaire shall be responsible for ensuring that any existing utility on, under or above the Project Site is kept in continuous satisfactory use, if necessary, by the use of suitable temporary or permanent divisions.
- (d) The Concessionaire shall bear all costs and charges for special or temporary rights of way required by it in connection with access to the Project Site. The Concessionaire shall obtain at its cost such facilities on or outside the Project Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

6.3 No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent that performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- (a) Force Majeure Event, subject to Article 20;
- (b) Government of _____(State) Event of Default;
- (c) Compliance with the instructions of the Independent Engineer, the Government of _____(State) or the directions of any Government Body

other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;

- (d) Emergency decommissioning of the Project Facilities or part thereof, in accordance with O&M Requirements;
- (e) Closure of the Project Facilities or part thereof with the approval of the Independent Engineer and/or the Government of _____(State);
- (f) Inability of the Concessionaire to remove any accident debris due to non-completion of any police or insurance-related inquiry or survey despite prompt steps having been taken by the Concessionaire in that regard.

6.4 Shareholding

The Concessionaire shall ensure that:

- (a) The Successful Bidder/Consortium hold(s) not less than fifty-one percent (51%) of the paid up equity capital of the Concessionaire until three (3) years after the Commercial Operations Date (COD), and not less than twenty-six percent (26%) of its paid up equity capital during the balance of the Operations Period;
- (b) M/s _____(the "Lead Member") holds at any time not less than fifty percent (50%) of the Consortium's holding in the paid up equity capital of the Concessionaire during the entire Concession Period; or
- (c) M/s _____(the "Lead Technical Member") and M/s _____(the "Lead Financial Member" holds at any time not less than twenty-five percent (25%) each of the Consortium's holding in the paid up equity capital of the Concessionaire during the entire Concession Period, and M/s _____("Member") holds not less than ten percent (10%) of the Consortium's holding in the paid up equity capital of the Concessionaire, until the Commercial Operations Date (COD).

Article 7. OBLIGATIONS AND UNDERTAKINGS OF THE GOVERNMENT OF _____(STATE)

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement, the Government of _____(State) shall:

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

_____(State) in connection with implementation of the Project and the performance of the Concessionaire's obligations under this Agreement;

- (v) subscribe to the Substitution Agreement within 15 days of disclosure by the Concessionaire regarding Financial Close;
- (vi) ensure peaceful use of the Project Site by the Concessionaire under and in accordance with the provisions of this Agreement without any let or hindrance from the Government of _____(State) or persons claiming through or under it;
- (vii) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities, at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities and utilities;
- (viii) ensure that no barriers are erected or placed by the Government of _____(State) or any Government Agency on the Project Facility/Project Site, except on account of any law and order situation or upon national security considerations;
- (ix) assist the Concessionaire in obtaining necessary authority to regulate traffic on the Project Site/Project Facility subject to, and in accordance with, the Applicable Laws;
- (x) assist the Concessionaire in obtaining police assistance against payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Site/Project Facility and implementing this Agreement in accordance with the provisions hereof;
- (xi) observe and comply with all its obligations set forth in this Agreement.

Article 8. INDEPENDENT ENGINEER

8.1 Appointment of Independent Engineer

- (a) The Government of _____(State) and the Concessionaire shall mutually appoint a reputed consulting engineering firm or body corporate to be the Independent Engineer to undertake and perform the duties, work, services and activities set forth in Schedule L.
- (b) Within thirty (30) days of the date of this Agreement, the Concessionaire shall submit to the Government of _____(State) a panel of at least three such firms or companies or body corporate or a combination thereof acceptable to it and having the necessary expertise for appointment as Independent Engineer.
- (c) Within thirty (30) days from the date of receipt of such panel, the Government of _____(State) shall appoint the Independent Engineer out of such panel, and communicate the same to the Concessionaire.
- (d) The Independent Engineer shall report to the Government of _____(State) about their work, services and activities and the progress of implementation of the Project at least once every month or more frequently as the situation may warrant. Such reports of the Independent Engineer shall include, but not be limited to, the matters and things set forth in said Schedule L.
- (e) The Independent Engineer shall submit bills for periodic payment in accordance with the terms of its appointment to the Government of _____(State). One-half of such remuneration,

cost and expenses shall be reimbursed by the Concessionaire to the Government of _____(State) within fifteen (15) days of its receipt of a statement of expenditure from the Government of _____(State).

(f) If either Party disputes any advice, instruction or decision of the Independent Engineer, the same shall be resolved in accordance with the Dispute Resolution Procedure found in Article 25.

8.2 Termination and Fresh Appointment

If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, it may make a written representation to the Government of _____(State), stating its reasons in detail, seeking termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Government of _____(State) shall hold a tripartite meeting with the Concessionaire and Independent Engineer for amicable resolution of the dispute. Such a meeting may also be called by the Government of _____(State) if it has similar problems with the performance of the Independent Engineer. If the dispute remains unresolved, the Concessionaire and the Government of _____(State) may agree to terminate the appointment and appoint another Independent Engineer in accordance with the provisions of Article 8.1(a) to (c) above.

Article 9. INDEPENDENT AUDITOR

9.1 Appointment

(a) Upon the occurrence of any event necessitating or warranting appointment of the Independent Auditor under the provisions of this Agreement, and upon a proposal being made by any Party, the Parties shall promptly (and in any case within fifteen (15) days of such proposal) confer and agree upon a reputed firm of Chartered Accountants practicing in India to be appointed as the Independent Auditor. Thereupon, the Government of _____(State) shall appoint the Independent Auditor on terms and conditions agreed to by the Parties and by the Person to be appointed as the Independent Auditor.

(b) If, upon a proposal being made by a Party for appointment of an Independent Auditor, the other Parties fail to confer and agree upon the Independent Auditor within the said period of fifteen (15) days, the Party proposing the appointment shall be entitled to appoint the Independent Auditor. Such appointment and the terms thereof shall be binding on the other Parties and the Parties shall extend all necessary assistance to the Independent Auditor to carry out the task for which its appointment has been made.

9.2 Payment of Fees

All fees and costs of the Independent Auditor shall be shared equally and borne by the Concessionaire and the Government of _____(State). Within seven (7) days of the claim of the Government of _____(State), the Concessionaire shall pay its share of such fees and costs to the Government of _____(State).

Article 10. DRAWINGS

10.1 Preparation of Drawings

(a) The Concessionaire may, subject to the Design Requirements, adopt with or without modifications the Drawings made available by the Government Of _____(State) or adopt its own Drawings. However, the Concessionaire shall in any event be solely responsible for the adequacy of the drawings.

(b) If the Concessionaire proposes any modifications to the Drawings made available by the Government of _____(State) or submits alternative Drawings or Drawings in respect of any item for which no Drawings are made available by the Government of _____(State), the same shall be subject to review by the Independent Engineer as provided in the following Article 10.2.

10.2 Review of Drawings

(a) The Concessionaire shall promptly, and in such sequence as is consistent with the Construction Requirements, submit a copy of each of the Drawings to the Independent Engineer and to the Government of _____(State).

(b) By forwarding the Drawings to the Independent Engineer and to the Government of _____(State) pursuant to the preceding clause (a), the Concessionaire shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the Design Requirements.

(c) Within fifteen (15) days of receipt of the Drawings, the Independent Engineer shall review those Drawings taking into account, inter alia, the comments of the Government of _____(State), if any with regard to them, and shall convey its comments and observations to the Concessionaire on the conformity of the Drawings with the Design Requirements. If the comments and observations of the Independent Engineer indicate that the Drawings are not in conformity with the Design Requirements, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to the Independent Engineer for further review. The Independent Engineer shall give its observations and comments, if any, within fifteen (15) days of receipt of such revised Drawings, which shall be taken into account by the Concessionaire while finalizing the Drawings.

(d) If, within the period stipulated in the preceding clause (c), the Independent Engineer does not respond to the Drawings submitted to it by the Concessionaire, then the Concessionaire shall be entitled to proceed with the Project on the basis of such Drawings submitted by it to the Independent Engineer.

(e) Notwithstanding any review or failure to review the comments and observations of the Independent Engineer or the Government of _____(State), the Concessionaire shall be solely responsible for the adequacy of the Drawings and their conformity with the Design Requirements, and shall not be relieved or absolved in any manner whatsoever of any of its obligations under this Agreement.

(f) The Concessionaire shall be responsible for delays in meeting the Design Requirements caused by reason of any Drawings not being in conformity with the Design Requirements, and shall not be entitled to seek any relief in that regard from the Government of _____(State).

(g) The Concessionaire shall, in consultation with the Independent Engineer, finalise an implementation schedule for the Project in accordance with the Construction Requirements.

(h) Within ninety (90) days of the Commercial Operations Date (COD), the Concessionaire shall furnish to the Government of _____(State) three (3) copies of "as built" Drawings duly verified by the Independent Engineer, including without limitation an "as built" survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities reflecting the Project as actually designed, engineered and constructed.

Article 11. PROJECT IMPLEMENTATION

(a) The Concessionaire is required to commence Construction Works only on or after the Commencement Date or the Financial Close, whichever is later.

- (b) Nothing contained in the preceding Article 11.1(a) shall be deemed to preclude the Concessionaire from commencing Construction Works prior to the Commencement Date, provided that the Concessionaire shall do so entirely at its own cost and risk, and shall not be entitled to seek any compensation therefore or in respect thereof in the event the Agreement is terminated prior to Financial Close for whatever reasons. However, unless permitted by the Government of _____(State), no Construction Works shall begin until the Independent Engineer is in place and has assumed charge. The Concessionaire shall immediately upon commencement of Construction Works notify the Government of _____(State) of the same.
- (c) The Concessionaire shall adhere to the Construction Requirements and achieve the beginning of Commercial Operations (COD) on or before the Scheduled Project Completion Date.
- (d) The Concessionaire may undertake Construction Works by itself or through a Contractor possessing the requisite technical, financial and management expertise and capability but, in either case, the Concessionaire shall remain solely responsible to meet the Construction Requirements.
- (e) The Concessionaire shall, before commencement of Construction Works:
- (i) have the requisite organization and designate and appoint suitable officers and representatives, as it may deem appropriate, to supervise the Project, to deal with the Independent Engineer and the Government of _____(State) and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (ii) construct, provide and maintain a reasonably furnished site office accommodation for the Independent Engineer, at the Project Site.
- (f) For the purposes of determining that Construction Works are being undertaken in accordance with the Project Requirements, the Concessionaire shall, with due diligence, carry out all necessary and periodical Tests in accordance with the instructions and under the supervision of the Independent Engineer and in accordance with the Construction Requirements. The Concessionaire shall maintain a proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- (g) All Tests shall be conducted in accordance with Construction Requirements. If the Tests are successful and all parts of Project Facilities can be safely and reliably opened for commercial operation, the Independent Engineer shall issue a Completion Certificate.
- (h) However, notwithstanding that certain works or things forming part of Construction Works are not complete, if following Tests, the Independent Engineer determines that the Project Facilities can be safely and reliably opened for operations, the Independent Engineer may issue a Provisional Certificate to the Concessionaire. The Provisional Certificate shall have appended to it a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "Punch List"). All Punch List items shall be completed by the Concessionaire within such time as may be determined by the Independent Engineer, not exceeding ninety (90) days of the date of issue of the Provisional Certificate. Upon satisfactory completion of all Punch List items, the Independent Engineer shall promptly, and in any case within fifteen (15) days thereof, issue the Completion Certificate.
- (i) If the Concessionaire fails to complete the Punch List items within the said period of ninety (90) days, the Government of _____(State) may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Concessionaire. The cost incurred by the Government of _____(State) in completing the Punch List items, as certified by the Independent Engineer, shall be reimbursed by the Concessionaire to the Government of _____(State) within seven (7) days from the date of receipt of a claim in

respect thereof from the Government of _____(State). Thereupon, the Independent Engineer may issue the Completion Certificate.

(j) The Independent Engineer may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if in its reasonable opinion the same is being carried out in a manner that is not in conformity with the Construction Requirements.

(k) The Project shall be deemed to be complete and open to traffic only when the Provisional Certificate or the Completion Certificate is issued by the Independent Engineer in accordance with the provisions of this Agreement.

(l) In case the Commercial Operations Date (COD) is different from the Scheduled Project Completion Date, the provisions of Article 18.3 (Bonus/Reduction in Annuity) shall apply.

(m) If the Commercial Operations Date (COD) is delayed beyond 120 days of the Scheduled Project Completion Date, the Government of _____(State) shall, subject to the provisions of Article 6.3 (No Breach of Obligations), be entitled to terminate this Agreement and to appropriate the Performance Security.

Article 12. OPERATIONS AND MAINTENANCE

12.1 Operation and Maintenance Requirements

The Concessionaire shall operate and maintain the Project/Project Facilities in accordance with the O&M Requirements, either by itself or through a Contractor possessing the requisite technical, financial and managerial expertise and capability, but, in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.

12.2 Failure to Meet O&M Requirements

In the event the Concessionaire has failed to operate and maintain the Project Facilities in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the Independent Engineer or the Government of _____(State) (the "Notice to Remedy"), the Government of _____(State) may, without prejudice to any of its other rights and remedies under this Agreement, be entitled to cause the repair and maintenance of the Project Facilities at the risk and cost of the Concessionaire. The Concessionaire shall reimburse all costs incurred by the Government of _____(State) on account of such repair and maintenance within seven (7) days of receipt of the claim of the Government of _____(State) therefore.

12.3 Material Breach of O&M Requirements

The Concessionaire shall be deemed to be in material breach of O&M Requirements if the Independent Engineer, acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire:

- (i) there has been a failure or undue delay in carrying out scheduled or planned maintenance or that maintenance has not been carried out in accordance with the O&M Requirements;
- (ii) the riding quality of the Carriageway or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
- (iii) there has been a serious or persistent let up in adhering to safety requirements and standards and thereby the Project Highway or any part thereof is not safe for operations;

- (iv) Non-Availability (as hereinafter defined in Article 18.4 (Assured Availability) during any Annuity Payment Period has exceeded 1000 lane kilometer hours;
- (v) There has been persistent breach of O&M Requirements. "Persistent Breach" shall mean:
 - (a) any breach of O&M Requirement by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the Independent Engineer or Government of _____(State);
 - (b) recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the Independent Engineer or Government of _____(State) requiring the Concessionaire to remedy a breach; and
 - (c) repeated occurrences of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

12.4 Rights of Government of _____(State)

Upon the occurrence of a material breach of O&M Requirements, the Government of _____(State) shall, without prejudice to and notwithstanding any other consequences provided therefore under this Agreement, be entitled to terminate this Agreement.

Article 13. FINANCING ARRANGEMENT

13.1 Financing Arrangement

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

13.2 Amendments to Financing Documents

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

Article 14. SUPERVISION CHARGES

14.1 Supervision Charges

(a) All works under or in course of execution or executed in pursuance of this Agreement shall at all times be open to inspection and supervision by the authorized representatives of the Government of _____(State). The Concessionaire shall, at all times during the usual working hours and at all other times at which reasonable notice of the intention of the representatives of the Government of _____(State) to visit the work has been given to it, have a responsible agent or representative present at the Project for that purpose.

(b) To compensate the Government of _____(State) for its supervision work, the Concessionaire shall pay supervision charges fixed at 1.5% of the estimate project cost, towards the supervision provided for in preceding sub-article.

(c) The supervision charges may be paid in equal annual installments over the original Concession Period with the first installment being paid on the Commencement Date and every subsequent installment on the date of the respective anniversary of the Commencement Date, by way of a cheque or demand draft(s) drawn in favour of _____.

14.2 Project Monitoring Expenses

The Concessionaire shall also pay towards the Project Monitoring and Coordination Expenses of the Government of _____(State), a sum of Rs. _____ Lakh (Rupees _____ Lakh) per annum by way of cheque or demand draft(s) drawn or issued in favour of _____. The amounts paid by the Concessionaire pursuant to this Article shall be held in a separate account and appropriated or utilized as per instructions of the Government of _____(State).

Article 15. INSURANCE

15.1 Insurance During the Implementation Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Implementation Period (that is from the date of handing over of the possession of the land to Concessionaire or upon commencement of construction pursuant to the Project Development Plan, whichever is the earlier, till the Commercial Operation Date), such insurance as is necessary, including but not limited to the following:

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

15.2 Insurance During the Operations Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Operations Period (that is from the Commercial Operation Date until the End Date of this Agreement) insurance to cover against:

- (i) loss, damage or destruction of the Project Facility, at replacement value;
- (ii) the Concessionaire's general liability arising out of the Concession;

- (iii) workmen's compensation insurance;
- (iv) liability to third parties; and
- (v) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iv).

15.3 Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Project Assets and/or the Project Facility through Indian insurance companies, and if so permitted by the Government of _____(State) through foreign insurance companies, to the extent that insurance is necessary to be effected through them.

15.4 Evidence of Insurance Cover

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

15.5 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Project Facility or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the policies in their favour as security for the financial assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facility or any part thereof shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

15.6 Validity of the Insurance Cover

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

Article 16. CHANGE OF SCOPE

16.1 Definition of Change of Scope

The Government of _____(State) may, notwithstanding anything to the contrary contained in this Agreement, require provision of such addition or deletion to the works and services on or about the Project which are beyond the scope of the Project as contemplated in this Agreement ("Change of

Scope”), provided that such changes do not require expenditure exceeding Rs. _____ and do not adversely affect the Scheduled Project Completion Date. All such changes shall be made by the Government of _____ (State) by an order (the “Change of Scope Order”) issued in accordance with the procedure set forth in Article 16.2 below.

16.2 Procedure For Change of Scope

(a) The Government of _____ (State) shall, whenever it desires provision of addition or deletion of works and services referred to in Article 16.1 above, issue to the Concessionaire a notice of Change of Scope (the “Change of Scope Notice”) through the Independent Engineer.

(b) Upon receipt of a Change of Scope Notice, the Concessionaire shall, within a period of fifteen (15) days, provide to the Independent Engineer such information as is necessary and reasonable together with preliminary documentation in support of the following:

- (i) the impact which the Change of Scope is likely to have on the Project Completion Schedule if the work is required to be carried out before the Commercial Operations Date (COD); and
- (ii) the cost to the Concessionaire of complying with such Change of Scope Notice on account of increases in quantities of items of work mentioned in the Bill of Quantities at the rate mentioned therein. In case the Bill of Quantities does not carry certain items of work required under the Change of Scope, the Concessionaire shall provide the analysis of rates for carrying out such items of work.

(c) The Independent Engineer shall review the information provided by the Concessionaire, assess the change in quantities of items of work, verify the analysis of rates (if required), determine the additional cost to the Concessionaire as a result of such Change of Scope, add such further cost to Initial Investment in the Cash Flow Projections, and determine the extension, if any, to the Concession Period in order to maintain the Internal Rate of Return. This is provided that the projections for years beyond the Concession Period shall be the average of the three years immediately preceding the last year of the original Cash Flow Projections. The Independent Engineer shall communicate its recommendation to the Representative of the Government of _____ (State) within a period of fifteen (15) days from the receipt of information from the Concessionaire.

(d) The Government of _____ (State) shall issue the Change of Scope Order within a period of fifteen (15) days from the date of the recommendation made by the Independent Engineer in accordance with preceding sub-Article(c) above.

(e) The Change of Scope Order shall be effective and binding upon receipt thereof by the Concessionaire. Notwithstanding a Dispute regarding cost and time for implementation of such order, the Concessionaire shall proceed with the performance of such order promptly following receipt thereof. Any Dispute regarding the extension in the Concession Period recommended by the Independent Engineer shall be resolved in accordance with the Dispute Resolution Procedure found in Article 25 of this Agreement.

(f) All claims by the Concessionaire pursuant to this Article 16.2 shall be supported by such documentation as is reasonably sufficient for the Independent Engineer to determine the accuracy thereof, including invoices from Contractors and certification of such claims by the Statutory Auditors.

Article 17. ENVIRONMENT AND SOCIAL ASSESSMENT

The Parties will each comply with their respective obligations specified in the Environment and Social Assessment Report set out in Schedule K.

Generally the allocation of responsibility in these areas will be divided between the Concession Authority and the Concessionaire. There will be three phases, namely the preconstruction phase, the construction phase and the post construction phase. In the preconstruction phase all statutory clearances should remain the responsibility of the Government or in the case of an investor proposed concession, the Government/Concession Authority should provide all necessary assistance possible to obtain those clearances. For those preconstruction clearances which are commercial in nature, those will remain the responsibility of the Concessionaire. During construction, responsibility is again shared. The provision of agreed compensation or environmental mitigation measures which have been accepted by the Concessionaire, will be the responsibility of the Concessionaire. Ensuring that the commitments made are carried through and that the quality of environmental mediation or ameliorisation provided for in the agreement is achieved remains the responsibility of the Concessioning Authority. In the post construction period, it is the responsibility of the Concession Authority to monitor environmental and social commitments made as part of the concession agreement, such as replanting of trees or rehabilitation of wetlands, and to ensure that the Concessionaire adheres to the agreements made as part of the concession.

Article 18. ANNUITY

18.1 General Definition

Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, the Government of _____(State) agrees and undertakes to pay to the Concessionaire, on each Annuity Payment Date, the sum of Rs. _____million (the "Annuity").

18.2 Payment of Annuity

(a) Subject to the provisions of this Article 18 and any other applicable provisions of this Agreement, the Government of _____(State) shall make payment of Annuity to the Concessionaire on each Annuity Payment Date.

(b) The Government of _____(State) shall, as security for payment of Annuity, provide to the Concessionaire (if need be by renewal or reinstatement thereof from time to time) an irrevocable Letter of Credit established by a Scheduled Bank in India for a sum equal to Rs. _____Million, the amount of one Annuity Payment. Such Letter of Credit shall be established within thirty (30) days from the expected Commercial Operations Date (COD) as intimated by the Concessionaire.

18.3 Bonus/Reduction in Annuity

(a) The Concessionaire shall either receive a bonus for early completion of the Project (the "Bonus") or incur a reduction in the Annuity for delayed completion of the Project (the "Reduction"), as the case may be.

(b) For the purpose of this sub-Article 18.3, each Annuity Payment Period shall be deemed to be a period of 180 calendar days.

(c) The Bonus or Reduction, as the case may be, shall be computed as under:

(i) If COD is achieved prior to first Annuity Payment Date:

$$B \text{ or } R = ((SPCD - COD) + X) * A / 180$$

(ii) If COD is achieved between two Annuity Payment Dates:

$$B \text{ or } R = ((\text{PAPD}-\text{COD}) = + X) * A / 180$$

Where,

A= Annuity

B= Bonus

PAPD= Previous Annuity Payment Date

R= Reduction

SPCD= Scheduled Project Completion Date

X= As determined by the Independent Engineer, the aggregate number of days of delay caused by:

- (i) delay in delivery of the Project Site or any part thereof by the Government of _____(State);
- (ii) suspension of Construction Works or part thereof by the Government of _____(State), for reasons not attributable to the Concessionaire;
- (iii) Change of Scope Order pursuant to Article 16;
- (iv) Stoppage of the Construction Works or part thereof on account of the Concessionaire allowing access and use of the Project Site for public purposes pursuant to Article 4.5;
- (v) Force Majeure Event which is a Political Event or Other Event;
- (vi) Government of _____(State) Event of Default.

(d) If the resultant figure arrived at pursuant to computation made in accordance with the preceding sub-Article is positive, then the same shall be the amount of Bonus payable to the Concessionaire, and if negative, the same shall be the amount of Reduction.

(e) The Bonus shall be paid or Reduction shall be effected on the first Annuity Payment Date occurring after the COD.

(f) Notwithstanding anything inconsistent contained anywhere in this Agreement, the obligation of the Government of _____(State) to pay Annuity shall arise subject to and only upon occurrence of the COD.

18.4 Assured Availability

(a) If due to the Concessionaire's failure to perform or discharge its obligations under this Agreement the actual availability of the Carriageway in any Annuity Payment Period during the Operations Period was less than the Assured Availability, the right of the Concessionaire to receive Annuity shall proportionately abate. The difference between the Assured Availability and the actual availability of the Carriageway is hereafter referred to as Non-Availability.

Provided that:

- (i) to the extent that the Non-Availability is due to Political Events and/or events set out in Article 6.3, the same shall not constitute Non-Availability; and

- (ii) to the extent that the Non-Availability is due to Other Events, one-fourth thereof shall only constitute Non-Availability.
- (b) Subject to the proviso in the preceding (a), the Carriageway or part thereof shall be deemed to be unavailable if:
- (i) the same is closed for traffic otherwise than in accordance with the O&M Requirements;
- (ii) irrespective of whether the same is closed for traffic or not, if the Independent Engineer has determined that the riding quality thereof has deteriorated to a level which is below the acceptable level prescribed in the O&M Requirements or the same is not, in the opinion of the Independent Engineer, safe for operations.
- (c) The Non-Availability shall be measured in terms of the sum total of lane kilometer hours for which the Carriageway or part thereof, as the case may be, was unavailable.
- (d) The length of a lane that was unavailable for the use of the traffic shall be the actual length of the affected stretch of that lane, as determined by the Independent Engineer, plus one hundred (100) metres (fifty (50) metres on either side of the affected stretch).
- (e) If in respect of any Annuity Payment Period, the Independent Engineer has reported Non-Availability or if Non-Availability has otherwise been established, then the Annuity payable for the immediately succeeding Annuity Payment Period shall be adjusted for such Non-Availability (the "Adjusted Annuity"), as defined below, and paid.

Adjusted Annuity= $(AA-N) * A/AA$

Where

AA= Assured Availability

N= $\sum_{i=1}^n L_i \times h_i$

Where,

N= Non-Availability during the previous Annuity Payment Period (in lane kilometer hours)

n= total number of days of Non-Availability (including the deemed Non-Availability under Article 12.3;

L_i = length of non-available portion of the lane on each day (in kilometers)

h_i = number of hours of Non-Availability, on each day.

Provided that, if L_i is less than one lane kilometer hour in a given day, then the same shall be ignored.

Provided further that, if the Non-Availability relates to the last of the Annuity Payment Periods, then the Annuity Payable for that Annuity Payment Period shall be adjusted as above and paid. In such an event, the Annuity is paid on or before the 15th day after the relevant Annuity Payment Date.

(f) Adjustment of Annuity on account of Non-Availability in accordance with this Article 18.4 shall be without prejudice to any other right and remedy available to the Government of _____(State) on account of breach of its obligations by the Concessionaire. The Government of _____(State)

shall be entitled to treat frequent occurrences of Non-Availability or continued Non-Availability (beyond a reasonable time having regard to Good Industry Practice) as a persistent breach of O&M Requirements within the meaning of Article 12.3.

18.5 Payment Mechanism

(a) Submission of Invoice

The Concessionaire shall, at least one (1) month prior to the relevant Annuity Payment Date, submit to the Independent Engineer, its invoice in the form contained in Schedule R in four copies addressed to the designated Representative of the Government of _____(State) for payment of Annuity duly adjusted for Non-Availability, if any, in accordance with the preceding Article 18.4. The Independent Engineer shall promptly process the invoice so submitted and certify the Annuity/ Adjusted Annuity payable to the Concessionaire on the relevant Annuity Payment Date and communicate the same to the Representative of the Government of _____(State) and the Concessionaire. For this purpose, the Independent Engineer shall add to each copy of the invoice, its certificate as to the Annuity/ Adjusted Annuity payable on the relevant Annuity Payment Date and forward one copy of the invoice to the designated Representative of the Government of _____(State) with its recommendation for payment and return one copy of the invoice of the Concessionaire at least fifteen (15) days prior to the relevant Annuity Payment Date. One copy shall be retained by the Independent Engineer for his records. The remaining copy of the said invoice shall be forwarded to the Representative of the Government of _____(State) for its records.

(b) Payment of Annuity

Upon receipt of the invoice together with the recommendation for payment forwarded by the Independent Engineer, the Representative of the Government of _____(State) shall take all necessary steps and ensure payment of the Annuity/ Adjusted Annuity on the relevant Annuity Payment Date. Failing such payment, the Concessionaire shall be entitled to encash the Letter of Credit established by the Government of _____(State) pursuant to Article 18.2 to the extent of the Annuity/ Adjusted Annuity certified and recommended for payment by the Independent Engineer, by submitting to the bank concerned the relevant invoice containing the Independent Engineer's certificate as to the Annuity/ Adjusted Annuity payable on the relevant Annuity Payment Date.

For avoidance of doubt, the Parties agree that, notwithstanding any dispute which any of them may have as to the amount of the invoice for Annuity certified and recommended for payment by the Independent Engineer, the Annuity/ Adjusted Annuity payable on the relevant Annuity Payment Date shall be that certified by the Independent Engineer. This is provided that such payment shall be without prejudice subject to a final adjustment according to the terms on which such dispute is resolved whether amicably or through arbitration in accordance with the provisions of Article 25.

Article 19. LEVY AND COLLECTION OF USER FEE

19.1 Levy and Collection

(a) Notwithstanding anything inconsistent contained in this Agreement, but subject to any applicable laws, the Representative of the Government of _____(State) or any other Government Agency or a statutory body duly authorized by the Government of _____(State) (the "Authorised Agency") shall be entitled to levy on and collect from the Persons using the Project Facilities such fees ("User Fees") as may be approved by the Government of _____(State) from time to time.

Provided that, the Authorized Agency shall, at its own cost, be responsible to construct, erect, install, operate and maintain plazas (including the plazas envisaged at the designated places in the Project Site), as may be necessary, for the levy and collection of User Fees.

(b) Any arrangement or contract made or entered into in connection with the levy and collection of User Fees shall be independent of this Agreement. No such arrangement or contract shall have the effect of adding to or enlarging in any way the obligations or the scope thereof or the liability of the Concessionaire under this Agreement. The obligations and liabilities of the Concessionaire shall be set and limited to those contained in this Agreement only.

(c) The Authorized Agency or Persons duly authorized by the Authorised Agency shall have access to and use of the Project Site for all purposes necessary or incidental to the levy and collection of User Fees.

Provided that, to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur or suffer any liability on account thereof.

Provided further, the Representative of the Government of _____(State) shall, in the event of any physical damage to the Project Facilities on account of such access or use, cause such damage to be promptly repaired and the Project Facilities restored at its cost and expenses.

(d) The Concessionaire shall not levy, demand or collect from or in respect of any vehicle or Person, for the use of Project Facilities, any sum whatsoever in the nature of a toll or User Fee. For avoidance of doubt, the Concessionaire agrees that, unless otherwise provided in this Agreement, the Project revenue shall consist of the Annuity only.

19.2 Advertising and Hoarding, Etc.

(a) The Government of _____(State) shall have the right to permit or allow any advertisement or hoarding or other commercial activity in the Project Site, provided that no such activity shall in any way affect the safe and smooth flow of traffic or cause any physical damage to the Project Site/Project Facilities which the Government of _____(State) has not undertaken to restore entirely at its cost.

(b) The Concessionaire shall not permit or allow any advertisement or hoarding or other commercial activity in the Project Site, other than those specifically permitted or allowed by the Government of _____(State), and shall not be entitled to charge, collect or receive any sums on account of any such activity.

Article 20. FORCE MAJEURE

20.1 General Rule

The Concessionaire or the Government of _____(State), as the case may be, will be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by a Force Majeure Event.

20.2 Force Majeure Events

As used in this Agreement, a Force Majeure Event means any event or circumstance or combination of events or circumstances, being Non-Political Events, Indirect Political Events and/or Political Events, as defined in Articles 20.3, 20.4 and 20.5, respectively, which prevent the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event:

- (i) is beyond the reasonable control of the Affected Party;

- (ii) the Affected Party could not have prevented or reasonably overcome it with the exercise of due diligence and reasonable skill and care;
- (iii) does not result from the negligence of such Party or the failure of such Party to perform its obligations hereunder; and
- (iv) is of an incapacitating nature and prevents or causes a delay or impediment in performance.

20.3 Non-Political Event

For the purposes of this Article 20, "Non-Political Event" shall mean one or more of the following acts or events:

- (i) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquakes, cyclones, floods, volcanic eruptions, fire or other extreme atmospheric conditions;
- (ii) radioactive contamination or ionizing radiation;
- (iii) strikes, lockouts, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire;
- (iv) any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than the failure of the Concessionaire to comply with any applicable law or applicable permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or the exercise of any of its rights under this Agreement by the Government of _____ (State); or
- (v) any event or circumstances of a nature analogous to any of the foregoing.

20.4 Indirect Political Event

For purposes of this Article 20, "Indirect Political Event" shall mean one or more of the following acts or events:

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

20.5 Political Event

For purposes of this Article 20, "Political Event" shall mean one or more of the following acts or events by or on account of the Government of India, the Government of _____ (State) or any other Government Agency:

- (i) Change in Law, other than any Tax Laws, for which no relief is provided under Article 23 of this Agreement;
- (ii) Expropriation or compulsory acquisition by any Government Agency of any material assets or rights of the Concessionaire or of Contractors, for no fault of the Concessionaire or such Contractors;
- (iii) Any unlawful or unauthorized revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement (other than a consent the obtaining of which is condition precedent), provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to the grant, maintenance or renewal of such consents or permits, applied on a non-discriminatory basis.

20.6 Effect of Force Majeure Event

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

- (i) There shall be no Termination of this Agreement, except as provided in Article 20.8 below;
- (ii) Where the Force Majeure Event occurs before the Commercial Operations Date, the dates set forth in the Project Completion Schedule and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- (iii) Where a Force Majeure Event occurs after the Commercial Operations Date, the Concessionaire shall continue to make all reasonable efforts to operate the Project and/or to collect the Fee, but if it is unable or prevented from doing so, the Concession Period shall, having due regard to the extent of the impact thereof as determined by the Government of _____ (State), be extended by the period for which collection of Fee remains affected on account thereof; and
- (iv) Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of Article 20.7 below.

20.7 Allocations of Costs During Subsistence of Force Majeure

(a) Subject to the provisions of Article 20.6 above, upon occurrence of a Force Majeure Event, the costs arising out of such event shall be allocated as follows:

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

shall be reimbursed by the Government of _____(State) to the Concessionaire within ninety (90) days from the date of receipt of Concessionaire's claim therefore; and

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

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

20.8 Termination

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

20.9 Termination Payment for Force Majeure Events

Upon Termination of this Agreement pursuant to Article 20.8 above, Termination Payment to the Concessionaire shall be made in accordance with the following:

(a) If the Termination is on account of a Non-Political Event, the Concessionaire shall be entitled to receive from the Government of _____(State) by way of Termination Payment an amount equal to ninety percent (90%) of the Debt Due less pending insurance claims, if any. However, in the event such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from the Government of _____(State) a further sum equal to ninety percent (90%) of the amount of such claims not admitted;

(b) If the Termination is on account of an Indirect Political Event, the Concessionaire shall be entitled to receive from the Government of _____(State) by way of Termination Payment an amount equal to:

- (i) the total Debt Due, less pending insurance claims, if any. Provided, however, that if any of such insurance claims are not admitted and paid, the Concessionaire shall be entitled to receive from the Government of _____(State) further sum equal to _____(xx%) of such claims not admitted, plus
- (ii) _____(xx%) of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during three (3) years beginning from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in Wholesale Price Index (WPI) during such year, and the adjusted amount so arrived at shall be reduced every year by _____percent (xx%) per annum.

(c) If the Termination of this Agreement is on account of a Political Event, the Concessionaire shall be entitled to receive from the Government of _____(State) by way of Termination Payment an amount equal to:

- (i) the total Debt Due, plus

- (ii) _____ Percent (xx%) of the Equity subscribed in cash and actually spent on the Project, if such Termination occurs at any time during three (3) years beginning from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in the Wholesale Price Index (WPI) during such year, and the adjusted amount so arrived at shall be reduced by _____ percent (xx%) per annum.

20.10 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 set forth in Article 25. However, 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.

20.11 Liability For Other Losses and Damages

Save and except as expressly provided in this Article 20, neither Party to this Agreement shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claim, demands and proceedings relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise of any right pursuant to this Article 20.

20.12 Duty To Report

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

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

(b) Any notice pursuant to this Article 20.12 shall include full particulars of:

- (i) the nature and extent of each Force Majeure Event which is the subject of any claim of relief under this Article 20 with evidence in support thereof;
- (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (iii) the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and
- (iv) any other information relevant to the Affected Party's claim.

(c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Article 20.12 and such other information as the other Party may reasonably request the Affected Party to provide.

20.13 Excuse From Performance Of Obligations

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

obligations to the extent it is unable to perform on account of such Force Majeure Event, provided that:

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

Article 21. EVENTS OF DEFAULT

21.1 General Scope

"Event of Default" means the Concessionaire Event of Default or the Government of _____(State) Event of Default, or both as the context may admit or require.

21.2 Concessionaire Event of Default

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

- (a) The Concessionaire fails to commence the Construction Works within thirty (30) days from the Commencement Date;
- (b) The Concessionaire fails to achieve Commercial Operations Date (COD) within 180 days from the Scheduled Project Completion Date;
- (c) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (d) The Concessionaire creates any Encumbrance on the Project Site/Project Facility in favour of any Person save and except as expressly permitted under Article 27.1 (Assignment and Charges);
- (e) The aggregate shareholding of the members of the Consortium/Sponsors falls below the minimum prescribed under Article 6.4;
- (f) The transfer, pursuant to law, of either:
 - (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements; or
 - (ii) all or a material part of the Concessionaire,

except where such transfer, in the reasonable opinion of the Government of _____(State), does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform its material obligations under the Project Agreements.

- (g) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire.

(h) Any petition for the winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and also provided that:

- (i) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a creditworthiness at least as good as that of the Concessionaire as at the Commencement Date; and
- (iii) each of the Project Agreements remains in full force and effect.

(i) A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents, or under any of them as are applicable.

(j) The Concessionaire suspends or abandons the operations of the Project without the prior consent of the Government of _____(State), provided that the Concessionaire shall be deemed not to have suspended or abandoned operation if such suspension or abandonment was:

- (i) as a result of a Force Majeure Event and is only for the period such Force Majeure is continuing; or
- (ii) is on account of a breach of its obligations under this Agreement by the Government of _____(State).

(k) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.

(l) The Concessionaire suffers an attachment being levied on any of its assets causing a Material Adverse Effect on the Project, and such attachment continues for a period exceeding forty-five (45) days.

(m) The Concessionaire has delayed any payment that has fallen due under this Agreement, if such delay exceeds ninety (90) days.

(n) The Concessionaire is otherwise in Material Breach of this Agreement.

21.3 Government of _____(State) Event of Default

Any of the following events shall constitute an event of default by the Government of _____(State) ("Government of _____(State) Event of Default"), unless caused by a Concessionaire Event of Default or a Force Majeure Event:

(a) Government of _____(State) is in breach of this Agreement and has failed to cure such breach within thirty (30) days of receipt of notice thereof issued by the Concessionaire;

- (b) Government of _____ (State) has repudiated this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- (c) Government of _____ (State) has failed to execute the Substitution Agreement or the State Support Agreement in accordance with Article 7 or having executed the same is in breach of any of its obligations thereunder and such breach has not been cured within thirty (30) days from the date of written notice thereof given by the Concessionaire;
- (d) Government of _____ (State) or any Governmental Agency has by an act of commission or omission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Concessionaire and failed to cure the same within sixty (60) days of notice thereof by the Concessionaire;
- (e) Government of _____ (State) has delayed payment of any amount that has fallen due in terms of this Agreement beyond ninety (90) days;
- (f) Any representation made or warranty given by the Government of _____ (State) under this Agreement has been found to be false or misleading.

Article 22. TERMINATION DUE TO EVENT OF DEFAULT

22.1 Termination For Concessionaire Event of Default

(a) Without prejudice to any other right or remedy which the Government of _____ (State) may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the Government of _____ (State) shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire, provided that before issuing the Termination Notice, the Government of _____ (State) shall, by a notice in writing, inform the Concessionaire of its intention to issue the Termination Notice (the "Preliminary Notice"). In case the underlying breach or default is not cured with a period of sixty (60) days from the date of the Preliminary Notice (Cure Period), the Government of _____ (State) shall be entitled to terminate this Agreement by issuing the Termination Notice. Provided further, that:

- (i) if the default is not cured within thirty (30) days of the Preliminary Notice, the Government of _____ (State) shall be entitled to encash the Performance Security with a notice to the Concessionaire (Encashment Notice);
- (ii) if the default is not cured within thirty (30) days of the Encashment Notice and a Fresh Performance Security is not furnished within the same period in accordance with Article 5.2, the Government of _____ (State) shall, subject to the provisions of the Substitution Agreement, be entitled to issue the Termination Notice.

(b) The following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement:

- (i) The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages caused by its breach or default;
- (ii) The Cure Period shall not in any way be extended by any period of suspension under this Agreement;
- (iii) If the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Government of _____ (State) or the Government Agency concerned hereunder, then the applicable Cure Period

shall be extended by the period taken by the Government of _____(State) or the Government Agency concerned to accord the required approval.

(c) Upon Termination by the Government of _____(State) on account of the occurrence of a Concessionaire Event of Default during the Operations Period, the Government of _____(State) shall pay to the Concessionaire by way of Termination Payment an amount equal to _____percent (xx%) of the Debt Due less pending insurance claims, if any. However, in the event that such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from the Government of _____(State) a further sum equal to _____ percent (xx%) of the amount of such claims not admitted.

22.2 Termination for Government of _____(State) Events of Default

(a) The Concessionaire may, upon the occurrence and continuation of any Government of _____(State) Event of Default terminate this Agreement by issuing a Termination Notice to the Government of _____(State).

(b) Upon Termination of this Agreement by the Concessionaire due to a Government of _____(State) Event of Default, the Concessionaire shall be entitled to receive from the Government of _____(State), by way of Termination Payment, a sum equal to:

- (i) the total Debt Due, plus
- (ii) _____Percent (xx%) of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during three (3) years beginning from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in Wholesale Price Index (WPI) during such year and the adjusted amount so arrived at shall be reduced by _____ percent (xx%) per annum.

22.3 Rights of Government of _____(State) on Termination

Upon Termination of this Agreement for any reason whatsoever, the Government of _____(State) shall have the power and authority to:

- (i) take possession and control of Project Assets forthwith;
- (ii) prohibit the Concessionaire, and any person claiming through or under the Concessionaire, from entering upon the Project Assets or dealing with them or any part of them;
- (iii) step in and succeed upon election by the Government of _____(State) without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Government of _____(State) may in its discretion deem appropriate, with effect from the date of communication of such election to the other Party to the relative Project Agreements. However, any sums claimed by such other Party as being due and owing for work and services performed or accruing on account of any act, omission or event prior to such date of election shall and shall always constitute debt between the Concessionaire and such other Party and the Government of _____(State) shall in no way or manner be liable or responsible for such sums. The Concessionaire shall ensure that the Project Agreements contain provisions necessary to give effect to the provisions of this Article 22.3.

22.4 Termination Payments

The Termination Payment pursuant to Article 21 or Article 22, as the case may be, shall be payable of the Concessionaire by the Government of _____(State) within thirty (30) days of demand being made by the Concessionaire, with the necessary particulars duly certified by the Statutory Auditors. If the Government of _____(State) fails to pay the Termination Payment in full within the said period of sixty (60) days, the amount remaining unpaid shall be paid along with interest at the Prime Lending Rate set by the State Bank of India (SBI PLR) plus two percent (2%), from the Termination Date till payment.

22.5 Mode of Payment

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

22.6 Termination Without Prejudice to Other Rights of Either Party

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

Article 23. CHANGE IN LAW

23.1 Definition of Change in Law

(a) "Change in Law" means the occurrence or coming into force of any of the following after the Proposal Due Date:

- (i) the enactment of a new Indian law;
- (ii) the repeal, modification or re-enactment of any existing Indian law;
- (iii) a change in the interpretation or application of any Indian law by a court of record;
- (iv) a directive or notification by any governmental agency which has the force of law or statutory effect.

(b) "Change in Law" shall not include:

- (i) the coming into effect, after the Proposal Due Date, of any provision of a statute which is already in place as of the Proposal Due Date;
- (ii) any new Law or any change in the existing Law under the active consideration of or in the contemplation of any Government as of the Proposal Due Date, which is a matter of public knowledge.

23.2 Relief Under Change in Law

If, after the date of this Agreement, there is a change in the Law by which the Concessionaire suffers an increase in costs or reduction in net after tax return or other financial burden which is substantial in any Accounting Year, then the Concessionaire may, by written notice, request amendments to the terms of this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no Change in Law resulting in such cost increase, reduction in return or other financial burden. The Concessionaire shall not be entitled to any compensation whatsoever from the Government of _____(State) as a result of Change in Law. However, the Government of _____(State) may decide, after discussion with the Concessionaire, to amend the terms of this Agreement, including the extension of the Concession Period.

23.3 Changes in Tax Laws and Regulations

The Concessionaire is not entitled to any compensation for any increase in indirect tax and/or direct tax which it is liable to pay with regard to this Project.

Article 24. TRANSFER AFTER THE CONCESSION PERIOD (Handover and Defect Liability Period)

24.1 Handing Over of the Project Assets

(a) Upon the expiry of the Concession at the end of the Concession Period, the Concessionaire shall hand over vacant and peaceful possession of the Project Assets, including the Project Site/Facility at no cost to the Government of _____(State).

(b) Twelve (12) months prior to the anticipated expiry of the Concession Period, the Government of _____(State), as represented by _____, and the Concessionaire will meet and agree on detailed procedures for the transfer of facilities. At the time of such meeting, the Concessionaire will submit a detailed list of the structures, equipment, and items to be transferred and the names of its representatives in charge of the transfer. The Government of _____(State) will inform the Concessionaire of the identity of its representatives in charge of the transfer.

(c) As part of the meeting mentioned in (b), there shall be a joint inspection by the Parties. Within fifteen (15) days of such inspection, the representative of the Government of _____(State) shall furnish to the Concessionaire a list of works, jobs, additions and alterations, if any, to be carried out to bring the Project to the prescribed level of service condition at least two (2) months prior to the date of expiry of the Concession Period. In case the Concessionaire fails to carry out the above works within the stipulated time period, the Government of _____(State) shall be at liberty to have these works executed by any other Person at the risk and cost of the Concessionaire. Any cost incurred by the Government of _____(State) in this regard shall be reimbursed by the Concessionaire to the Government of _____(State) within seven (7) days of receipt of demand. For this purpose, the Government of _____(State) shall, without prejudice to any other right or remedy available to it under this Agreement, have the right to appropriate the Performance Security and/or to set off any amounts due, if any, and payable by the Government of _____(State) to the Concessionaire to the extent required or available and to recover the deficit amount, if any, from the Concessionaire.

(d) During the six (6) month period prior to the anticipated transfer of the Facilities, the Concessionaire will provide such training services to the representatives and employees of the Government of _____(State) as may be reasonably necessary for the Government of _____(State) to operate and maintain the Facilities efficiently and safely following such transfer.

(e) Except as otherwise provided in this Agreement, there shall be no payment, charge or cost payable by the Government of _____(State) to the Concessionaire in respect of the transfer of the Concession, the Facilities, the Site and all other assets (excluding cash, bank balance and marketable securities) and rights of the Concessionaire as to the Government of _____(State) upon the expiration of the Concession Period except only taxes, stamp duty, registration or similar charges payable on the transfer of the assets (which taxes, duties or charges shall be borne by the Government of _____(State)). This sub-Article is without prejudice to amounts due by the Government of _____(State) to the Concessionaire hereunder and accrued but unpaid on the date of such transfer.

24.2 Retention Amount

(a) In case the Concessionaire fails to carry out the above works, within the stipulated period, then the Government of _____(State) shall be at liberty to have those works executed by any other Person at the risk and cost of the Concessionaire and, in such an event, the Concessionaire shall be liable to reimburse the Government of _____(State) for any such cost incurred by it in that regard.

(b) For this purpose, the Government of _____(State) may withhold a sum of Rs. _____million (25% of an Annuity) for each of the Annuity Payments to be made during two years immediately preceding the expiry of the Concession Period (collectively the "Retention Amount") or accept a guarantee from a Scheduled Bank for a sum equal to the Retention Amount furnished by the Concessionaire in lieu thereof.

(c) The Retention Amount or, as the case may be, the bank guarantee shall be released and returned by the Government of _____(State) upon the Independent Engineer certifying compliance by the Concessionaire with the requirement of preceding Article 24.1 or appropriated to the extent required toward the costs reimbursable by the Concessionaire in terms of preceding clause (a) of this Article 24.2.

Article 25. DISPUTE RESOLUTION

25.1 Applicable Law

This Agreement shall be construed and interpreted in accordance with the laws in force in the State of [...], as they may be amended from time to time, and any dispute which arises out of, or in relation to, this Agreement, or the breach, termination or invalidity thereof shall be equally so governed.

25.2 Conciliation

(a) If a dispute arises out of or in relation to this Agreement, or the breach, termination or invalidity thereof, the parties agree to seek an amicable settlement of that dispute by conciliation under the Rules of Conciliation of the Indian Council of Arbitration in force at the date of the signing of this contract. Accordingly, the parties hereby accord their written consent to conciliate, and agree that such consent constitutes the acceptance of the invitation to conciliate in terms of Rule 3 of the said rules.

(b) A single conciliator shall be appointed by the Indian Council of Arbitration within 30 days from the date a party has requested the Indian Council of Arbitration to effect such an appointment. The Indian Council of Arbitration will provide administrative services in accordance with its Rules of Conciliation.

25.3 Domestic Arbitration

(a) If the dispute was not settled by conciliation under section 2, the dispute shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties.

(b) Pending the submission of and/or decision on a dispute and until the arbitral award is made, the parties shall continue to perform their respective obligations under this agreement, without prejudice to a final adjustment in accordance with such award.

(c) The party challenging howsoever an award made under subsection (a), including making an application to set aside the award pursuant to section 34 of the Arbitration and Conciliation Act, 1996 (Central Act No. 26 of 1996), shall in addition to all of his own costs and fees reimburse on a monthly basis all the direct costs and fees incurred by the party defending the award, including all direct costs and fees associated with any appeal thereof. It is important to remember that although the inclusion of such a provision may be desirable to avoid routine challenge of arbitral awards, under Indian law the court has the discretion to award the costs of such suits. Furthermore, this provision may not be enforceable, if it is construed by the court as defeating the remedy and therefore, struck down as being unreasonable and onerous, particularly in the case of foreign arbitration.

Article 26. REPRESENTATIONS AND WARRANTIES

26.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Government of _____ (State) that:

- (i) it is duly organized, validly existing and in good standing under the laws of India;
- (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iv) it has the financial standing and capacity to undertake the Project;
- (v) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms thereof;
- (vi) it is subject to the civil and commercial laws of India in respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (vii) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (viii) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually may result in any Material Adverse Effect;

- (ix) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any materially adverse effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (x) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect, and is able to perform its obligations and duties under this Agreement;
- (xi) each Consortium Member was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and request the Government of _____ (State) to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (xii) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Government of _____ (State) or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (xiii) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into of this Agreement or for influencing or attempting to influence any officer or employee of the Government of _____ (State) in connection therewith.

26.2 Representations and Warranties of the Government of _____ (State)

The Government of _____ (State) represents and warrants to the Concessionaire that:

- (i) the Government of _____ (State) has full power and authority to grant the Concession;
- (ii) the Government of _____ (State) has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- (iii) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (iv) there are no suits or other legal proceedings pending or threatened with regard to the Project Site or the Project;
- (v) the Government of _____ (State) is subject to the civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement.

26.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who made such representation or gave such warranty shall promptly notify the other Party of the same.

Article 27. MISCELLANEOUS

27.1 Assignment and Charges

- (a) Subject to sub-articles (b) and (c) herein below, this Agreement shall not be assigned by the Concessionaire save and except with prior written consent of the other Party.
- (b) Except as provided in sub-article (c) herein below, the Concessionaire shall not create or permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement, except with the prior written consent of the Government of _____ (State), which consent the Government of _____ (State) shall not withhold unreasonably.
- (c) Restraint set forth in sub-articles (a) and (b) above shall not apply to:
 - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
 - (ii) mortgages/pledges/hypothecation of goods/assets other than the Project Site, as security for indebtedness, in favour of the Lenders and working capital provides for the Project;
 - (iii) assignment of Concessionaire's rights, title and interest under this Agreement to or in favour of the Lenders pursuant to and in accordance with the Substitution Agreement as security for their financial assistance. (Bangalore-Maddur-18.1-only has "in favour of the Lenders as security for financial assistance provided by them").
- (d) Upon occurrence of the Concessionaire Event of Default, the Lenders shall have the right of substitution as provided in the Substitution Agreement.

As an alternative to the Substitution Agreement referenced in (d) above, the following clause may be considered.

For the sole purpose of financing the implementation of the project and the fulfillment of his obligations under the Concession Agreement, the Operator may assign, by way of security, the benefit of, or his interest in, this Agreement, according to the requirements of any of the financing documents, and create other forms of security over any property or rights forming part of his interests in the project in favor of any lender, provided that the payment of rents and royalties to the Authority shall have priority over any such security and that before any such security takes effect, the holder of the security must have entered into a 'Lender's Direct Agreement' with the Authority.

27.2 Interest and Right of Set Off

- (a) Any sum which becomes payable under any of the provisions of this Agreement by any Party shall, if the same be not paid to the Party entitled to receive the same within the time allowed for such payment, be deemed to be a debt owed by the Party responsible for payment to the Party entitled to receive the same. Until payment is made, such sum shall carry an interest of the Prime Lending Rate of the State Bank of India (SBI PLR) plus three percent (3%) from the due date for payment thereof until the payment is made or is otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

- (b) However, the stipulation regarding interest for delayed payments contained in this Article 27.2 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

27.3 General Liability and Indemnity

(a) The Concessionaire shall indemnify, defend and hold harmless the Government of _____(State) against any and all proceedings, actions and third party claims arising out of a breach by Concessionaire of any of its obligations under this Agreement, except to the extent that any such claim has arisen due to breach by the Government of _____(State) of any of its obligations under this Agreement or a Force Majeure Event which is a Political Event.

(b) The Government of _____(State) shall indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of breach by the Government of _____(State) under this Agreement, except to the extent that any such claim has arisen due to breach by the Concessionaire of any of its obligations under this Agreement.

27.4 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India. The Courts at _____ (State Capital) shall have jurisdiction over all matters arising out of or relating to this Agreement.

27.5 Waiver

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

(b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or 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.

27.6 Survival

Termination of this Agreement:

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

27.7 Amendments

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

27.8 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, then the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. However, failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

27.9 No Partnership

Nothing contained in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association or other co-operative entity between any of the Parties or constitute any party the agent of any other party for any purpose. No Party shall have any authority to bind the other in any manner whatsoever.

27.10 Language

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

27.11 Exclusion of Implied Warranties

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

27.12 Disclosure

The Concessionaire shall make available for inspection to the public during normal business hours on all working days copies of all records and reports to the Government of _____ (State), as and when required.

27.13 Redress of Public Grievances

(a) The Concessionaire shall maintain a public relations office adjacent to each Toll Plaza/Project Site and keep it open to public access at all times. At each such offices, the Concessionaire shall maintain a register/suggestion box (the "Complaints Register") for recording of complaints and suggestions by any person (the "Complainant") at any time of the day.

(b) The Complaints Register shall be securely bound and kept in proper custody at the public relations office. Each page of the Register shall be duly numbered and each complaint recorded therein shall also be duly numbered. Soon after a complaint is registered, the Complainant shall be given a receipt by such office stating the date and complaint number, which the Complainant may refer to in any subsequent correspondence or claim. The Complaints Register shall have appropriate

columns including, but not limited to, the complaint number and date, name and address of the Complainant, the complaint and the action taken by the Concessionaire thereon.

(c) The Concessionaire shall inspect the Complaints Register at reasonable intervals and take prompt steps for redress of the grievances stated in each complaint. The action so taken by the Concessionaire shall be briefly noted in the "Action Taken" column of the Complaints Register and a suitable reply shall also be sent to the Complainant by post under a certificate of posting.

(d) Within one week following the close of each calendar month, the Concessionaire shall send to the Government of _____(State) a true photocopy of the pages of the Complaints Register on which any entries have been recorded of any Complaint regarding the Concessionaire during the course of that month. The Government of _____(State) may, in its discretion, direct the Concessionaire to take such further reasonable action as the Government of _____(State) may deem appropriate for a fair and just redress of any grievance.

27.14 Advertising On The Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Project Site if such advertising, display or hoarding shall be visible to a user of the Project Highway/Facility while driving on it, other than as permissible under this Agreement or expressly approved in writing by the Government of _____(State).

27.15 Counterparts

This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

Article 28. NOTICES

28.1 Notices to be in Writing

A notice under this Agreement shall only be effective if it is in writing. Telexes, faxes and e-mail are permitted.

28.2 Addresses

Notices under this Agreement shall be sent to a party at its address and for the attention of the individual set out below:

**Concessionaire
Managing Director
(or his Designee)**

**Government of _____(State)
Principal Secretary to Designated
Department**

Provided that a party may change its notice details by giving notice to the other parties of the change in accordance with this Article 28. That notice shall only be effective on the date falling five business days after the notification has been received or such later date as may be specified in the notice.

28.3 Receipt of Notices

Any notice given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

- (i) if delivered personally, on delivery;

- (ii) if sent by first class inland post, two clear Business Days after the date of posting;
- (iii) if sent by telex, when dispatched provided the intended recipient's answerback appears correctly at the start and end of the sender's telex; and
- (iv) if sent by facsimile or e-mail, when dispatched.

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 the Government of _____ (State) by:

Signature:

Name:

Designation:

For and on behalf of the Concessionaire

Signature:

Name:

Designation:

In the presence of:

(1) _____

(2) _____

SCHEDULES (to be provided by parties to the Agreement)

- A LETTER OF ACCEPTANCE
- B PROJECT SITE
- C PROJECT
- D PROJECT FACILITIES
- E PROJECT SITE DELIVERY SCHEDULE
- F CLEARANCES
- G DESIGN REQUIREMENTS
- H CONSTRUCTION REQUIREMENTS
- I O&M REQUIREMENTS
- J ANNUITY PAYMENT PERIOD/DATE
- K ENVIRONMENTAL AND SOCIAL ASSESSMENT REPORT
- L INDEPENDENT ENGINEER: SCOPE OF WORK
- M INDEPENDENT AUDITOR: SCOPE OF WORK
- N PERFORMANCE SECURITY

O FINANCING TERMS
P SUBSTITUTION AGREEMENT
Q STATE SUPPORT AGREEMENT
R HANDBACK REQUIREMENTS
S INVOICE

MODEL URBAN MASS TRANSIT CONCESSION AGREEMENT (LIGHT RAIL)

This agreement is taken from the Manila Light Rail Agreement. It is an example only and where appropriate, we have included clauses taken from other Indian agreements that are appropriate for Indian conditions. This example is not a template but rather should be used to guide the development of a specific agreement for a specific project.

**MODEL URBAN MASS TRANSIT CONCESSION AGREEMENT
(LIGHT RAIL)**

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SCHEDULES (Not Drafted)

A	LETTER OF ACCEPTANCE
B	PROJECT SITE
C	DETAILS OF INITIAL SYSTEM
D	DETAILS OF M&E EQUIPMENT
E	DRAWINGS AND DESIGN PROCEDURE
F	PROCEDURES AND CRITERIA FOR TRANSFER AND HANDOVER OF INITIAL SYSTEM
G	INITIAL SYSTEM IMPLEMENTATION SCHEDULES AND KEY DATES
H	CLEARANCES
I	RENTAL FEES
J	DEVELOPMENT RIGHTS PAYMENT SCHEDULE
K	PROJECT COST
L	ENVIRONMENTAL AND SOCIAL ASSESSMENT REPORT
M	INDEPENDENT ENGINEER: SCOPE OF WORK
N	INDEPENDENT AUDITOR: SCOPE OF WORK
O	SUBSTITUTION/COMMON AGREEMENT
P	PROCEDURE FOR CHANGE ORDER
Q	TRANSFER OF TECHNOLOGY AND TRAINING
R	HANDBACK REQUIREMENTS
S	FORM OF DAILY CERTIFICATE

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT entered into on this the ____ day of _____, 200__, at _____(City)

BETWEEN

GOVERNOR OF _____(State), represented by the Secretary, Department of _____(Transport or similar body) having its head office at _____(Building), _____(City), hereinafter referred to as _____(which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its administrators, successors and assigns) ON THE ONE PART.

AND

M/s _____**Limited**, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____(hereinafter referred to as the "**Concessionaire**") (which expression shall unless repugnant to the subject or the context include its successors and permitted assigns) ON THE OTHER PART,

WHEREAS,

- A. The Government of _____(State), cognizant of the transportation needs in the State and specifically in the _____Metropolitan Area, seeks to provide a mass transit system at _____(name of street) for the benefit of the users thereof and the larger economic development of the State,
- B. As part of its various initiatives to encourage private sector participation in the development of infrastructure facilities in _____(State), and vide its G.O. No. _____, the Government of _____(State) has authorized the Department of _____to take up the light rail transit system through such private sector participation,
- C. The Government of _____(State) has carried out extensive project development work in connection with the Project, including engineering studies, assessment of feasibility and preparation of a detailed project report,
- D. The Government of _____(State) has invited proposals through a competitive bidding process from eligible persons for implementing the Project and in response thereto has received proposals from several persons, including the Consortium/Successful Bidder (as hereinafter defined) for implementing the Project,
- E. After evaluation of the aforesaid proposals, the Government of _____(State) has accepted the proposal submitted by the Consortium and issued Letter of Acceptance dated _____(LOA) to the Consortium, a copy of which is hereto attached as Schedule "A".
- F. In terms of G.O. No. _____ dated _____, the Government of _____(State) is authorized to enter into these presents with the Concessionaire being the Successful Bidder/Special Purpose Company set up by the Successful Bidder to undertake the Project,
- G. The proposal of the Government of _____(State) relating to the Project/Project Facilities (as hereinafter defined), along with the Concession Agreement as presented here was considered and approved by _____ on _____(date).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**Article 1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

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

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

"Additional Cost" means the additional capital expenditure and/or the additional operating costs or additional taxes or both, as the case may be, which the Concessionaire has or would be required to incur and which has arisen as a result of Change of Scope or Change of Law.

"Agreement" means this Agreement, including Schedules hereto, as of the date hereof and includes any amendment hereto made in accordance with the provisions of this Agreement.

"Alignment" means the alignment of the light rail system set out in the Specifications.

"Applicable Laws" means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including regulations and rules made thereunder, including judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the effective period of this Agreement which are to be complied with by parties.

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

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

"Available" and **"Availability"** have the meanings specified in Schedule C.

"Change in Law" shall have the meaning ascribed to it in Article 27.

"Change of Scope" shall have the meaning ascribed to it in Article 19.

"Change of Scope Order" shall have the meaning ascribed for it in sub-Article 19.1.

"Circumstance" means any of the following:

- (a) a Variation Order under the Turnkey Contract specifically required by or specifically consented to by the Government of _____(State), which consent shall not be unreasonably withheld;
- (b) a Force Majeure Event;

- (c) failure by the Government of _____(State) to perform any of its obligations under this Agreement not referred to elsewhere in this definition in accordance with the terms hereof;
- (d) a Change in Law of which the Concessionaire has notified the Government of _____(State) in writing within fifteen (15) days after the Concessionaire's knowledge of the Change in Law;
- (e) failure to obtain any Permit that is the responsibility of the Government of _____(State) on or before the date, if any, specified in the Work Schedule for obtaining such Permit;
- (f) the negligent acts or omissions or intentional or willful misconduct of the Government or of any of its agencies or representatives, or any of its affiliates or their affiliate's other contractors or representatives;
- (g) any delay or increase in cost arising from matters within the control of the Government of _____(State) or any of its agencies or representatives, including the failure to timely perform its or their work related to the Project or to timely permit the Concessionaire to perform its works, not including any action by any such other Governmental Authority relating to enforcement or existing Applicable Laws regarding health, safety or the like;
- (h) the encountering of Items of Archaeological Interest or Hazardous Substances at the Project Site, or otherwise failing to comply with the obligations of the Government of _____(State) under Article 14 of this Agreement;
- (i) the failure of the Government of _____(State) to provide peaceful possession and use of and necessary access to the Project Site in accordance with Article 5 or to maintain such possession, use and access for the Concessionaire under that Article;
- (j) the failure of the Government of _____(State) to comply with its other obligations under Article 14 of this Agreement regarding utility relocation and other matters;
- (k) any material misrepresentation or Material Breach of warranty of the Government of _____(State) as set out in Article 31 of this Agreement.

"Collateral Agent" has the meaning specified in the Substitution/Common Agreement.

"Commencement Date" means the later of:

- (i) the date for achievement of Financial Close as prescribed under this Agreement or
- (ii) the date on which the Project Site is completely delivered to the Concessionaire, in accordance with the applicable provisions of this Agreement.

"Commercial Operations Date (COD)" means the date on which the Concessionaire is entitled to commence operation of the Project, that is the date on which the Independent Engineer has issued the Provisional Certificate or the Completion Certificate in accordance with the provisions of Article 7 of this Agreement.

"Common/Substitution Agreement" means the Common Agreement to be entered into among the Concessionaire or its permitted assignee, the Lenders party thereto and certain agents for the Lenders with respect to obtaining long term financing in connection with _____.

"Completion Certificate" means the certificate issued by the Independent/Project Engineer certifying completion of construction of the Project by the Concessionaire in accordance with the Construction Requirements.

"Completion Date" means the date on which the Concessionaire and the Government of _____ (State) certify that the entire _____ has successfully completed the Commissioning Tests in accordance with the provisions of Article 11 and Schedule G of this Agreement.

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

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

"Concessionaire" means M/s _____, and shall include its successors and permitted assigns expressly approved by the Government of _____ (State).

"Consent" means the consent of the Government of _____ (State), substantially in the form of Schedule J of this Agreement.

"Consortium" means the consortium consisting of (i) _____, (ii) _____, (iii) _____ formed/acting pursuant to the Memorandum of Understanding dated _____, entered into by them, for the purpose of submitting the proposal for implementing the Project through a Special Purpose Company/Vehicle to be formed and incorporated by them under the Companies Act, 1956.

"Construction Period" means the period from the date the Works commence to the Completion Date.

"Construction Requirements" means the requirements as to construction of the Project/Project Facilities set forth in Schedule C.

"Construction Timetable" means the Construction Timetable set forth in Article 7.

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

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

"Cure Period" means the period specified in the Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default, and upon the failure of which the Agreement may be terminated by the other Party.

"Daily Certificate" means a daily certificate substantially in the form annexed as Schedule S to this Agreement.

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

- (i) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project (the "Principal") which is outstanding as on the Termination Date

but excluding any part of the Principal that has fallen due for repayment one year prior to the Termination Date, unless such repayment had been rescheduled with the prior consent of the Government of _____(State);

- (ii) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-clause (i) above, up to the date preceding the Termination Date but excluding (a) any interest, fees or charges that had fallen due one year prior to the Termination Date, and (b) penal interest or charges, payable under the Financing Documents to the Lenders.

"Deed of Assignment" means the Deed of Assignment to be entered into among the Concessionaire, the Intercreditor Agent and the Lenders Party thereto substantially in the form set out in Schedule O this Agreement.

"Depot" means the maintenance and storage facilities to be built in accordance with the Specifications and Drawings or, as the context permits, the site on which the Depot is to be built.

"Design Requirements" means the design requirements of the Project/Project Facilities, as set forth in Schedule E.

"Detailed Project Report (DPR)" means the report prepared by the Concessionaire, which is in substantial conformity with the Detailed Proposal, for implementation of the Project as approved by the Government of _____(State) and submitted by the Concessionaire to its Lenders for the purpose of Financial Closure. (Optional is provide DPR to the bidders for the Project as part of the bid documents and include any addenda thereof).

"Detailed Proposal" means the proposal submitted at the Request For Proposal (RFP) stage by the Consortium forming part of this Agreement.

"Development Rights" has the meaning specified in Article 22.

"Development Rights Payment Schedule" means the Development Rights Payment Schedule set out in Schedule J hereto, subject to the provisions of Article 22.4.

"Development Rights Period" means in regard to the Stations, the period commencing on the date of execution set forth on the execution page of this Agreement and ending on the ____ (50th) anniversary of such date, and with regard to the Depot, the period commencing on the date the Concessionaire is given unencumbered access to the Depot area by the Government of _____(State) pursuant to Article 7.3, and ending on the ____ (50th) anniversary of such date. These periods may each be extended for an additional ____ (25) years on terms and conditions to be mutually agreed upon between the Government of _____(State) and the Concessionaire or holder of the Development Rights at least ____ (6) months prior to the ____ (50th) anniversary of the date of execution of the Agreement.

"Dispute" shall have the meaning ascribed thereto in Article 30.

"Dispute Resolution Procedure" means the procedure for resolution of Dispute set forth in Article 30.

"Drawings" means all of the drawings, designs, calculations and documents pertaining to the Project in accordance with the Design Requirements.

"Emergency" means a condition or situation existing or prevailing on or about the Project Site/Project Facilities, which is likely to endanger the safety of persons or vehicles involved in operating, maintaining or using the Site or Facilities or which poses an immediate threat of material damage to any of the Project Site/Project Facilities.

"Encumbrance" means any encumbrance, such as a mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind or other obligation or restriction and shall also include, without limitation, physical or legal obstructions and encroachments on the Site.

"Environmental Requirements" means the requirements set out in the Environmental and Social Assessment Report and all requirements of Law relating to the protection and maintenance of the environment and all requirements as would be complied with in accordance with Good Operating Practices in order to protect and maintain the environment and any such standards prescribed by any Competent Government Authority from time to time.

"Environmental and Social Assessment Report" means the plan for environmental and safety and resettlement and rehabilitation requirements of the Project Facilities and in accordance with which standards the Services will be provided as set out in Schedule L.

"EPC Contract" means the contract(s), if any, entered into by the Concessionaire inter alia for the purpose of design, engineering, procurement of equipment and materials and construction of Project Facilities in accordance with the provisions of this Agreement.

"Equity Documents" means collectively the documents evidencing subscription to Concessionaire's equity capital to the extent of equity component of cost of the Project, and includes documents relating to the funds in any form committed by the Sponsors as per the Means of Finance.

"Equity Value Buyout Price" means, as of any date, an amount equal to:

- (a) an amount that provides the Concessionaire with its Net Economic Return (taking into account any payments actually received by the Concessionaire of Rental Fees set forth in Schedule I and the dates such payments were received; plus
- (b) actual, reasonable and documented costs and expenses incurred or to be incurred by the Concessionaire (including legal fees, demobilization costs and expenses, termination and similar payments owing under contractual obligations and Taxes) in connection with the purchase and transfer of _____(_____).

"Event of Default" shall have the meaning ascribed thereto in Article 25.

"Final Completion Deadline" means _____, 200__, the date by which the Completion Date is expected to have occurred, and all of the Concessionaire's training obligations with respect to maintenance are expected to have been completed.

"Financial Close" means the date on which the Financing Documents providing for Financing/funding by the Lenders have become effective and the Concessionaire has access to the funds committed thereunder subject only to the issue of a notice to draw-down.

"Financing Documents" means all documentation or arrangements of whatever kind evidencing any obligation of the Concessionaire in respect of the Financing or any refinancing for the Project or any portion thereof, as amended, supplemented or otherwise modified from time to time. (called "Financing Agreements" in Visakh from which this definition taken).

"Force Majeure Event" shall have the meaning ascribed thereto in Article 24.

"Force Majeure Period" means, as determined by the Independent Engineer, the period commencing from the date of occurrence of a Force Majeure Event and ending on:

- (i) the date on which the Affected Party, acting in accordance with Good Industry Practice, resumes or should have resumed such of its obligations the performance of which was excused in terms of Article 24; or
- (ii) the Termination Date, as applicable.

"Good Industry Practice/Good Operating Practices" means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a Project of the type similar to that of the Project.

"Government Agency/Authority" means the Government of India, Government of _____ (State), or any State government or governmental, department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body (central, State or local), having jurisdiction over the Concessionaire, the Project Site/Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

"Grace Period" has the meaning specified in Article 7.

"Handback Requirements" means the requirements as to handback of the Project Site/Project Facilities set out in Schedule R.

"Hazardous Substances" means any pollutants, dangerous chemical or biological substances, hazardous materials. Hazardous wastes, hazardous constituents or hazardous or toxic substances, defined or regulated as such under any Applicable Law or otherwise generally considered to be such a thing, including petroleum products (such as crude oil or any fraction thereof) and polychlorinated biphenyls.

"IGAAP" means the Indian generally accepted accounting principles consistently applied.

"Implementation Period" means the period beginning from the Commencement Date and ending on the Commercial Operations Date (COD).

"Independent Auditor" means a reputed firm of Chartered Accountants practicing in India that may be appointed by the Parties pursuant to and in accordance with Article 16.

"Independent Engineer" means a reputed Person being a firm, company or a body corporate appointed in accordance with Article 15 for supervision and monitoring of compliance by the Concessionaire with the Project Requirements, more particularly to undertake, perform, and carry out the duties, responsibilities, services and activities set forth in Schedule M.

"Initial Testing" means the Sub-System Tests, as defined in Schedule G of this Agreement.

"Inspection Firm" has the meaning specified in Article 21.5 (Rental Fee).

"Intercreditor Agent" has the meaning specified in the Common/Substitution Agreement.

"Insurance Proceeds" means the proceeds of the insurance policies taken by the Concessionaire in terms of Article 18, or otherwise.

"Internal Rate of Return" shall have the meaning ascribed thereto in Schedule I.

"Items of Archaeological Interest" means fossils, coins, articles of value or antiquity or structures and other things of geological or archaeological interest.

"Lenders" means any person or persons providing financial assistance to the Concessionaire under any of the Financing Agreements/Documents, including financial institutions, banks, funds, trusts or trustees of the holders of debentures or other securities, their successors and assigns.

"LRTS" means the entire rail transit system, including_____.

"_____" means the rail transport system comprising of _____ line kilometers extending from _____ to _____, plus _____ kms. extending from _____ to _____, together with the Stations, _____ Light Rail Vehicles and all ancillary plant, equipment and facilities, as more particularly detailed in the Specifications.

"LRVs" and **"Light Rail Vehicles"** means the rail vehicles more particularly detailed in the LRVs Technical Specifications.

"LRVs Technical Specifications" means the LRVs Technical Specifications set out in Schedule C hereto, as they may be amended under Article 4.4.

"Maintenance Agreement" means the Maintenance Agreement between permitted assignee of the Concessionaire, or any similar agreement entered into by the permitted assignee of the Concessionaire in replacement thereof, each having the concurrence of the Government of _____(State), which shall not be unreasonably withheld.

"Maintenance Provider" means the Person from time to time providing Technical Maintenance pursuant to the Maintenance Agreement.

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

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

"Means of Finance" means the means of financing the cost of the Project envisaged as at Financial Close.

"Net Economic Return" means the return to be realized by the Concessionaire over the life of this Agreement of the amount of its equity investments into _____(_____) together with _____% (15) per annum thereon, such return to be computed using standard "internal rate of return" methodology and the same assumptions as were utilized in determining the Rental Fees set forth in Table 2 of Schedule I on the date hereof (which assumed equity investments of _____in 200_, _____in 200_, and _____in 200_ and payment obligations commencing on _____(date) with the first payment made on _____). It is understood that the Concessionaire's actual return on equity may be less

than ____ (15%) per annum if there are delays or additional costs resulting from events that are not the responsibility of the Government of _____(State) or any of its agencies or Representatives.

"Operator" means the Person from time to time operating _____(_____), initially the Government of _____(State).

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

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

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

"O&M Expense" means expenses incurred by or on behalf of the Concessionaire, duly certified by its Statutory Auditors, for all regularly scheduled and reasonably anticipated O&M during the Operations Period, including, without limitation:

- (i) all cost of salaries and other employee compensation and contract fee payable to the O&M Contractor, if any;
- (ii) cost of materials, supplies, utilities and other services;
- (iii) premiums for insurance;
- (iv) all franchise, excise, property and other similar taxes and all costs and fees incurred in order to obtain and maintain all Applicable Permits necessary for the O&M of the Project/Project Facility at its full design capacity;
- (v) all repair, replacement and maintenance costs of the Project/Project Facility; and
- (vi) all other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the operation and maintenance of the Project according to the Specifications and Standards, at its full design capacity.

"O&M Requirements" means the requirements as to operation and maintenance of the Project Facilities set forth in Schedule D.

"Operations Period" means the period commencing from the Commercial Operations Date (COD) and ending at the expiry of the Concession Period and this Agreement.

"Partial Opening Date" means the day upon which the lease of a portion of _____(_____) commences pursuant to Article 10.

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

"Peak Service Period" has the meaning specified in Schedule C.

"Performance Security" means the guarantee for performance of its obligations during the Implementation Period to be procured by the Concessionaire from a Scheduled Bank or a Public Financial Institution, in accordance with Article 12.

"Performance Specifications" means the performance specifications for _____(_____) set out in Schedule C.

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

"Preliminary Notice" means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

"Principal Parties" has the meaning specified in Article 9.

"Project" means the design, financing, construction, operations and maintenance of the Project Facilities in accordance with the provisions of this Agreement.

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

"Project Assets" means all physical and other assets relating to and forming part of the Project, including but not limited to:

- (i) Rights over the Project Site in the form of license, right or way or otherwise;
- (ii) Tangible assets such as civil works, including foundations, embankments, pavements, road surface, interchanges, bridges, approaches to bridges and flyovers, road overbridges, drainage works, lighting facilities, traffic signals, sign boards, milestones, Toll Plaza, equipment for the collection of tolls or relating to regulation of traffic, electrical works for lighting on the Project, telephone and other communication systems and equipment for the Project, rest areas, wayside amenities, administration and maintenance depots, relief centers, service facilities, etc.;
- (iii) Project Facility situate on the Project Site;
- (iv) The rights of the Concessionaire under any Project Agreements;
- (v) Financial assets, such as security deposits for electricity supply, telephone and other utilities, etc.;
- (vi) Insurance proceeds subject to Lenders' Rights thereto; and
- (vii) Applicable Permits and authorizations relating to or in respect of the Project.

"Project Completion" shall have the meaning ascribed thereto in Article 10.

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

"Project Facility" means collectively the facilities on the Project Site to be designed, constructed, built, installed, erected or provided by the Concessionaire on the Project Site, in accordance with the Design Requirements and Construction Requirements, and more specifically set out in Schedule C.

"Project Requirements" means collectively the Design Requirements, Construction Requirements and O&M Requirements, or any of them as the context may admit or require.

"Project Scope" means the details of Phase I set out in Schedule C of this Agreement.

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

"Project Site Delivery Schedule" means the schedule for delivery of the Project Site by the Government of _____(State) to the Concessionaire, as set out in Schedule G.

"Reduction in Cost" means the reduction in capital expenditure or the operating costs or both, as the case may be, on account of a Change of Scope as certified by the Independent Engineer.

"Rental Fees" mean the payments due under this Agreement for the lease and maintenance of _____(_____) set forth or referred to in Article 21, as adjusted from time to time in accordance with this Agreement.

"Representative" means, with respect to a Person, any representative, director, officer, employee or agent of such Person and, where the context requires, any contractor or subcontractor of such Person and any representative, director, officer, employee or agent thereof.

"Residual Value Buyout Price" means, as of any date, an amount equal to the fair market value of _____(_____) (as though it were unencumbered by any debt) as completed (or, if after the Completion Date, as restored to operation), taking into account the required transfer to the Government of _____(State) of Concessionaire's ownership of _____(_____) on the ____ (25th) anniversary of the Completion Date as if this Agreement were to continue until such anniversary less:

- (i) the costs of the Government of _____(State), if any, of completion (or, if after the Completion Date, as restored to operation) of _____(_____) less
- (ii) the outstanding principal balance under the Financing Documents and less
- (iii) all amounts paid by the Government of _____(State) pursuant to the Undertaking Letter (a) prior to the Completion Date or (b) after the Completion Date, during the period when _____(_____) is not operational. "Residual Value Buyout Price" may be zero but may not be less than zero.

"Revenue Period" means the period commencing on the Completion Date and ending on the ____ (25th) anniversary thereof, unless earlier terminated pursuant to this Agreement.

"Route" means the route of _____, as detailed in the Specifications.

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

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

"Scheduled Project Completion Date" shall have the meaning set forth in Article 10.

"Specifications" and **"Standards"** means the specifications and standards relating to the quality, capacity and other requirements for the Project, including the LRVs Technical Specifications, the Performance Specifications and the Drawings as set forth in Schedule C, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Government of _____(State).

"State Support Agreement" means the Agreement to be entered into between the Government of _____(State) and the Concessionaire envisaging the various supports and incentives to be provided by the Government of _____(State) under this Agreement.

"Stations" means the stations to be built in accordance with the Specifications.

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

"Substantial Completion" means such stage of completion of _____ or a portion thereof when it can function in accordance with the Drawings and Specifications.

"Substitution/Common Agreement" means the agreement to be entered into among the Concessionaire, the Government of _____(State) and the Lenders in the form set forth in Schedule J providing, inter alia, for the substitution of the Concessionaire by another Person subject to and in accordance with the provisions of this Agreement and that Substitution/Common Agreement.

"Substitute Entity" means the person chosen by the Lenders to substitute for the Concessionaire in accordance with the Substitution/Common Agreement for the purposes of continuing the Project and assuming all rights and obligations of the Concessionaire under this Agreement.

"Tax" means and includes all taxes, fees, cesses and levies that may be payable by the Concessionaire under any Applicable Law. Provided that, "Tax" shall not include any penalty, interest or other penal sum levied on or payable by the Concessionaire on account of non-payment, short payment or delayed payment of Tax or on account of any other default.

"Technical Maintenance" means the maintenance to be carried out pursuant to Articles 6.3 and 8.1, as more particularly set forth in Schedule D to this Agreement.

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

"Termination Date" means the date specified in the Termination Notice as the date on which the Termination occurs.

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

"Termination Payment" means the aggregate of the amounts payable by the Government of _____(State) to the Concessionaire under this Agreement upon Termination, including Termination Payment receivable by the Concessionaire pursuant to Article 26.4.

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

"Total Loss" means damage to _____ that would reduce, for a continuous period of six (6) months or longer, its Capacity by fifty percent (50%) or more.

"Turnkey Contract" means the Amended and Restated Turnkey Contract for the Engineering/Design, Procurement, Construction and Commissioning of the _____ Rail Transit System, Line __, Phase I entered into by the Concessionaire with the concurrence of the Government of _____(State), which shall not be unreasonably withheld.

"Undertaking Letter" means the Undertaking Letter of the Government of _____(State) to be issued to the Intercreditor Agent substantially in the form of Schedule O of this Agreement.

"Work Schedule" has the meaning specified in Article 7.10.

1.2 Interpretation

1.2.1 General Rules

In this Agreement, unless the context otherwise requires:

- (a) references to Articles, sub-Articles, paragraphs and Schedules are to Articles, sub-Articles, paragraphs of, and Schedules to, this Agreement;
- (b) any reference to a statutory provision shall include such provision as from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (c) references to Applicable Law shall include the laws, acts, ordinance, rules, regulations, notifications, guidelines or bye-laws which have the force of law in any State or Union Territory forming part of the Union of India;
- (d) words importing the singular shall include the plural, and vice versa;
- (e) use of any gender includes the other gender;
- (f) references to a "company" shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (g) references to a "person" shall be construed so as to include any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity or entities (whether or not having a separate legal personality);
- (h) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (i) the words "include" and "including" are to be construed without limitation;
- (j) any reference to any period of time shall mean a reference to Indian Standard Time;
- (k) any reference to a "day" shall mean a reference to a calendar day;

- (l) any reference to a "month" shall mean a reference to a calendar month;
- (m) the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (n) any reference at any time to any agreement, deed, instrument, license or other document of any description shall be construed as a reference to that document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (o) a document in the "agreed form" means a document in a form agreed to by the Government of _____(State) and the Concessionaire and initialed on behalf of each Party for the purpose of identification on the date of this Agreement;
- (p) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates.

1.2.2 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to two decimal places, with the third digit of 5 and above being rounded up and below 5 being rounded down, except that in a Fee calculation it shall be rounded off to the nearest Rupee.

1.2.3 Resolution of Ambiguities or Discrepancies

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

- (i) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over provisions in other Articles;
- (ii) between the Articles and the Schedules, the Articles shall prevail;
- (iii) between any value written in numerals and that in words, the latter shall prevail;
- (iv) should any Article, sub-Article, paragraph or Schedule of this Agreement prove illegal or unenforceable, the Parties hereto shall undertake to replace it by a valid such part that comes closest to what the illegal or unenforceable part intended to stipulate. Is such replacement is not possible, then the rest of this Agreement shall survive and bind the Parties hereto as if the illegal or unenforceable part in question was not part of this Agreement.

Article 2. GRANT AND ACCEPTANCE OF CONCESSION

2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Government of _____(State) hereby grants and authorizes the Concessionaire to investigate, study, design, engineer, procure, finance, construct, operate and maintain the Project/Project Facility and to exercise and/or enjoy the rights, powers, privileges, authorizations and entitlements set forth in this Agreement, including, but not limited to, the right to levy, demand, collect and appropriate Fee from vehicles and Persons liable to payment of Fee for using the Project/Project Facility or any part thereof (collectively "The Concession")

2.2 Acceptance of the Concession

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

Article 3. CONCESSION PERIOD

The Concession hereby granted is for a period of _____ years starting from the Commencement Date (Effective Date), except where terminated or extended in accordance with the provisions of this Agreement. During that period, the Concessionaire is authorized to implement the Project and to operate the Project Facility in accordance with the provisions hereof.

Article 4. DETAILS OF THE PROJECT

4.1 Name _____

The Concessionaire will construct and provide Technical Maintenance for _____.

4.2 Project Scope

The details of Phase I and the scope of Phase I to be undertaken, including the mode of transportation, the Route, the Alignment, the Stations and all preliminary specifications, are set out in the Specifications.

4.3 Capacity of _____

As more fully set forth in the Performance Specifications, this Agreement provides for _____ to be constructed to be capable of the following capacities (the "Capacity"):

- (i) _____(xxx) passengers per peak hour per direction, assuming ____ (xx) operating Light Rail Vehicles in trains of ____ (x) cars, each train carrying _____(xx) passengers and with ____ (x) minute headway between trains, producing estimated daily passenger trips of _____(xx) and estimated annual passenger trips of _____(xx);
- (ii) capability of expansion to accommodate daily passenger trips of _____(xx) through the use of ____ (x-car) trains and ____ (x) minute headways.

It is understood that Article _____ (9.2(a)) contains provisions relating to payments based on Availability, and that no actual measurement of passenger movement is required.

4.4 Specifications and Drawings

(a) LRVs

The LRVs shall be constructed and equipped in accordance with the LRVs Technical Specifications. The LRVs Technical Specifications are subject to change and amendment by the Concessionaire provided that the Concessionaire will only make such changes or amendments that:

- (i) are in its opinion technically necessary to ensure completion of _____ in a timely manner;

- (ii) do not adversely affect the Capacity; and
- (iii) the Government of _____(State) is informed of and agrees. Provided that the Government shall in no case unreasonably withhold its agreement and also that the Government shall indicate its approval or objection to the proposed changes or amendments within fourteen (14) days from receipt of notice of the proposed changes or amendments from the Concessionaire. (Failure to communicate an objection within the above period being deemed to be an approval by the Government of the proposed changes or amendments.)

(b) **Drawings**

All drawings, specifications and design data for _____ will be submitted to the Government of _____(State) for its review and approval. In no case, shall the Government unreasonably withhold such approval. If the Government does not indicate its approval or objection within fourteen (14) days of receipt of such material, it shall be deemed to have given its approval.

Article 5. PROJECT SITE

5.1 Access to Project Site/Handover of Project Site

(a) The Government of _____(State) hereby undertakes to handover to the Concessionaire physical possession of the Project Site free from Encumbrance within thirty (30) days from the date of this Agreement, together with the necessary rights of way/easements and air rights, for the purpose of implementing the Project in accordance with this Agreement.

(b) The Government of _____(State) confirms that, upon the Project Site being handed over pursuant to the preceding sub-article (a), the Concessionaire shall have the exclusive right to enter upon, occupy and use the Project Site and to make, at its own costs, charges and expenses, such development and improvements in that Site as may be necessary or appropriate to implement the Project and to provide the Project Facility subject to and in accordance with the provisions of this Agreement.

5.2 Use of Project Site

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

5.3 Information About the Project Site

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

5.4 Peaceful Possession

The Government of _____(State) warrants that:

(a) the Project Site, together with the necessary right of way/easement, has been acquired through the due process of law and belongs to and is vested in the Government of _____(State), and that the Government of _____(State) has full powers to hold, dispose of and deal with the Site, consistent with the provisions of this Agreement;

(b) the Concessionaire shall have no obligation or liability as to payment of any compensation whatsoever to or the rehabilitation and resettlement of, any Person from whom the Project Site or any part thereof had been acquired and that such payment shall be the sole responsibility of the Government of _____(State); and

(c) the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have an interest in or charge on the Project Site or any part thereof, the Government of _____(State) shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any direct or consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

5.5 Rights and Title Over the Project Site

(a) The Concessionaire shall have exclusive rights to the use of the Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of same by third parties.

(b) The Concessionaire shall allow access to, and use of, the Project Site/Project Facility for telegraph lines, electric lines or such other public purposes as the Government of _____(State) may specify, provided that such access or use does not result in a Material Adverse Effect or closure of Project Facility for a period exceeding 120 days, and that the Government of _____(State) undertakes to ensure that the Project Facility is restored at the cost and expense of the Government of _____(State) as per the Specifications and Standards. Where such access or use causes any loss of Fee to the Concessionaire, the Government of _____(State) shall compensate the Concessionaire for such loss of Fee by increasing the Concession Period suitably.

(c) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement. Provided, however, that nothing contained herein shall be construed or interpreted as a restriction on the right of the Concessionaire to appoint any Contractor for the performance of its obligations hereunder, including for operation and maintenance of all or any part of the Project/Project Facility.

5.6 Clearances

The Government of _____(State) confirms that the Project/Project Site has been granted the clearances listed in Schedule H. The Concessionaire shall be responsible and shall be in compliance with the terms and conditions subject to which these clearances have been issued. The Concessionaire shall obtain all Applicable Permits in such sequence as is consistent with the Project Requirements.

Article 6. BUILD AND MAINTENANCE ARRANGEMENT

6.1 Concessionaire's Responsibilities

The Concessionaire shall be responsible for the design, construction, equipping, completion, testing and commissioning of _____.

6.2 Lease

Since the Concessionaire is not franchised to operate a public utility, the Parties agree that upon each Partial Opening Date and on the Completion Date, this Agreement will constitute a lease of the completed portion of _____ or the entire _____, as the case may be, by the Concessionaire to the Government of _____ (State) from such date until the end of the Revenue Period. Such lease and the right of possession of the Government thereunder being subject to payment by the Government of the Rental Fees due pursuant to Article 21 and adjustments thereto and other amounts due pursuant to this Agreement.

6.3 Technical Maintenance

Following each Partial Opening Date and throughout the Revenue Period, the Concessionaire will provide Technical Maintenance of _____ in accordance with Schedule F, subject to payment by the Government of _____ (State) of the Rental Fees due pursuant to Article 21 and all adjustments thereto and other amounts due pursuant to this Agreement.

Article 7. CONSTRUCTION OF THE _____

7.1 Construction in General

The Concessionaire shall undertake the Project, supply and/or provide all LRVs, rails, ties, electric substations, rectifiers, maintenance equipment, communications/signaling cables, other necessary equipment and spare parts, and perform all necessary civil works, including the laying of tracks and the construction of Stations, the electric substations, the Depot and other facilities, required for a complete operational rail transit system in accordance with the Specifications and Drawings. It is understood that the work to be done by the Concessionaire does not include the matters to be performed by the Government of _____ (State) pursuant to Articles 7.3 and 7.10.

7.2 Permits, Etc.

The Concessionaire shall also be responsible for the importation and transport of equipment to the Project Site, obtaining Permits for building and construction works comprised in _____ and visas and work permits for foreign personnel (except that the Government of _____ (State) shall be responsible for obtaining for the Concessionaire, with its assistance, permits for exemptions from the modified vehicle reduction scheme or similar restriction on the use of roads, if any), the recruitment of local labour and compliance with all Applicable Laws, including the payment of all Taxes, executing Government of _____ (State)-Responsible Levies. The Government of _____ (State) hereby undertakes to exert its best efforts to assist the Concessionaire in obtaining all such Permits, visas and work permits or exemptions therefrom.

7.3 Procurement by Government of _____ (State)

In order to enable the Concessionaire to have access to and possession and use of the Project Site for the purposes of this Agreement and in accordance with the Work Schedule, the Government of _____ (State) shall:

- (i) provide necessary access to the Project Site (including the Depot, as set forth in (ii) and (iii) below, and, with respect to access to the Project Site not specified in such paragraphs/ clauses required to perform the work, as mutually agreed upon from

time to time by the Concessionaire and the Government of _____(State), in accordance with a schedule that shall be consistent with the Work Schedule and that shall take into account the Concessionaire's reasonable requirements to conduct the work in accordance with the Project Scope and the Work Schedule and the reasonable requirements of the Government of _____(State) regarding adequate prior notice of the need for access. The Government of _____(State) shall ensure that such access is maintained throughout the execution of the work and shall be responsible for communicating with the relevant Government Authorities and other third Persons in connection therewith;

- (ii) take all reasonable and prudent actions permitted by Applicable Law, including the filing of legal actions, to expel from, and prevent the return to, the Depot area of third Persons other than authorized third Persons present at that area in connection with the work. It shall complete such expulsion and provide reasonably unencumbered access to and peaceful possession of the entire Depot area by _____(Date). It shall provide security at the Depot until all such unauthorized persons have been expelled from the Depot area;
- (iii) ensure that work at intersection areas on (Avenue), including the construction of flyovers and underpasses, to be performed by the Government of _____(State) or national Indian Government Authorities or any of their contractors or subcontractors shall be sufficiently completed before the respective dates agreed to pursuant to clause (i) above, for the commencement of civil, track and installation work at such intersection areas so that such civil, track and installation work can be conducted in accordance with the Project Scope and the Work Schedule. In particular, the Government of _____(State) shall ensure that necessary access shall be provided to the following areas by the following dates with the work described in Section _____ of the Project Scope with respect to such areas sufficiently completed so that the civil, track and installation work can be conducted in accordance with the Project Scope and the Work Schedule, specifically _____(listing of specific work elements to be done by fixed dates);
- (iv) provide at every Station:
 - (A) an area sufficient to incorporate, in accordance with the Project Scope, elevators for the use of handicapped persons in such Station;
 - (B) an area on the sidewalk on each side of such Station sufficient to construct, in accordance with the Project Scope, stairways for the pedestrian overpass for such Station; and
 - (C) rights of way, possession and occupancy of the corresponding portions of _____ Avenue itself and immediately surrounding areas where columns and building supports for the Stations will be constructed or which may be needed during the Construction Period for purposes of such construction;
- (v) design and implement adequate traffic management plans, including traffic rerouting or other traffic management measures in accordance with the Work Schedule; and
- (vi) without limiting the generality of the foregoing, procure and make available to the Concessionaire at all times until the end of the Revenue Period (or the end of the Development Rights Period in the case of Development Rights) unencumbered access to and peaceful and unencumbered possession and use of:

- (A) all rights of way over, rights of access to and possession and occupancy of, and rights to build on, -----, as more particularly specified in the Specifications and Drawings for the purpose of construction of _____ and the continued location of _____ thereon;
- (B) for the Development Rights and the construction of the Stations, electric substations, passenger and other overpasses, flyovers and utilities, and the continued location thereof thereon; all rights of way over, rights of access to and possession and occupancy of, and rights to build in, the necessary airspace over at the areas specified in the Specifications and Drawings, as well as all rights of way to the corresponding portions of ____ (Avenue) itself and immediately surrounding areas where the columns and building supports for the Stations, electric substations, passenger and other overpasses, flyovers and utilities will be constructed or which may be needed during the Construction Period for purposes of such construction;
- (C) for the construction of the access line to the Depot, and the continued location thereof thereon, all rights of way over, rights of access to and possession and occupancy of, and rights to build on, a strip of road or space sufficient to lay down a railway track along _____ (Avenue), or a nearby street extending from the _____ Station to the Depot as specified in the Specifications and Drawings, as well as all rights of way to the corresponding portions of such avenues and streets and immediately surrounding areas where the catenary posts and supports will be constructed;
- (D) for the Development Rights and for the construction of the Depot itself, and such additional improvements at the Depot as the Concessionaire may find necessary, and the continued location thereof thereon, all rights of way over, rights of access to and possession and occupancy of, and rights to build on, the Depot site, as outlined in the Specifications and Drawings; and
- (E) for the construction of the bridges and overpasses and flyovers at the intersections of ____ (Avenue) as per the Specifications and Drawings; and the continued location thereof thereon, all rights of way over, rights of access to and possession and occupancy of, and rights to build over, such intersections, as well as all rights of way to such immediately surrounding areas as are necessary to have access to the construction work in such intersections.

7.4 Real Estate Taxes

The Government of _____ (State) shall be responsible for the payment of all real estate taxes assessed on the Project Site and on the buildings and other improvements thereon, except those assessed on the commercial development referred to in Article 22, which shall be for the account of the Concessionaire or the assignees of the Development Rights, as the case may be.

7.5 Right to Access and Utilities

The Government of _____ (State) shall ensure that all necessary access to and from the Project Site is made available to the Concessionaire, the Principal Parties and their respective Representatives, as well as for their tools, plant and equipment, and shall assist the Concessionaire to ensure that all necessary utilities, including the utilities referred to in Article 7.10, are made available at the Project Site as may be necessary for the construction, testing, commissioning and operation of _____.

7.6 Right to do All Things Necessary

In pursuance of its obligations under Article 6.1, the Concessionaire shall, subject to the rights of the Government of _____(State) under this Agreement and subject to Applicable Law, have the right to do all things necessary or desirable for the completion of _____ in accordance with the Specifications, the Drawings and the Construction Timetable.

7.7 Use of Indian Subcontractors

The Concessionaire shall, where possible, cause the award of subcontracts to Indian contractors and suppliers of materials and services, provided that, in the Concessionaire's opinion, the quality, delivery times, costs, reliability and other terms are comparable to those offered by foreign contractors or suppliers. No subcontracts shall be awarded to contractors and suppliers of materials and services who are or have been blacklisted by the Government of _____(State).

7.8 Supervision Rights of the Government of _____(State)

(a) The Government of _____(State), or its designated representative, shall exercise technical supervision over the Project. The Government may, among other things, supervise, monitor, inspect, check, study and evaluate the progress and the quality of the activities and Works actually or about to be undertaken by the Concessionaire to ensure that _____ is designed, constructed, equipped, completed, tested and commissioned in accordance with the approved costs, plans, drawings and Specifications.

(b) In supervising the Project, the Government of _____(State) may engage the services of domestic and/or international engineering specialists or consultants to assist, advise and/or act for and on behalf of the Government of _____(State).

(c) The cost of technical supervision by the Government of _____(State), including costs for engaging engineering specialists or consultants is part of Project Cost and shall, subject to Article 21.3, be remitted to the Government of _____(State) by the Concessionaire after submission of proper invoices as provided in Article 21.3.

(d) The Concessionaire shall assist and cooperate with the Government of _____(State) in carrying out such technical supervision. Without limiting the foregoing, the Concessionaire shall:

- (i) ensure that the Government of _____(State) and its Representatives are afforded reasonable access to the Project Site at reasonable working hours of the day or night, provided access does not materially interfere with the work or expose any Person on the Project Site to any danger;
- (ii) make available for inspection at the Project Site copies of all plans and designs;
- (iii) within four weeks after completion, supply the Government of _____(State) with four sets of all approved drawings and specifications; and
- (iv) not agree to any Variation under the Turnkey Contract (as defined therein), or to use the contingency amounts provided by the Lenders during the Construction Period, without the consent of the Government of _____(State), which consent shall not unreasonably be withheld.

7.9 Notice of Non-Compliance

Technical supervision by the Government of _____(State) shall not diminish the responsibility of the Concessionaire for the proper design, construction and maintenance of _____, nor does it transfer any part of that responsibility to the Government of _____(State). The Government

shall provide notice to the Concessionaire of any deviation by the Concessionaire from or non-compliance with the approved plans, specifications and standards set forth in this Agreement applicable to the Concessionaire. The Concessionaire shall then take necessary corrective action with respect thereto as soon as commercially feasible, provided that the Concessionaire remains obligated to complete _____ by the Completion Deadline. Any additional cost that shall be incurred to effect such necessary corrective actions shall be borne by the Concessionaire.

7.10 Work Schedule

For purposes of traffic rerouting, relocation of existing utilities and access to the Project Site, the work schedule set forth in Schedule G of this Agreement (the "Work Schedule"). The Work Schedule indicates how _____ is expected to proceed and the times by which the Project Site must be available for work to commence, by which arrangements must be made with utility companies, and by which arrangements must be made with the Governmental Authorities involved in traffic and traffic rerouting and other necessary activities in relation to the carrying out of _____. The Work Schedule will be revised, if necessary, pursuant to Article 10.2 or with the approval of the Government of _____(State), which approval will not be unreasonably withheld.

Article 8. LEASE, OPERATION AND MAINTENANCE OF THE LRTS

8.1 Lease

On the Completion Date and on each Partial Opening Date, this Agreement will constitute a lease of _____ or the appropriate portion thereof by the Concessionaire to the Government of _____(State) until the end of the Revenue Period. During that lease period (or such appropriate portion) the Government of _____(State) shall operate _____ and the Concessionaire shall provide Technical Maintenance in accordance with Schedule F. Such lease and the right of possession of the Government of _____(State) thereunder are subject to payment of that Government of the Rental Fees due pursuant to Article 21 and all adjustments thereto and other amounts due pursuant to this Agreement. For the avoidance of doubt, it is understood and agreed that Rental Fees under Article 21 may be payable prior to the Completion Date.

8.2 Operation

From the Completion Date or the relevant Partial Opening Date, as the case may be, until the end of the Revenue Period, the Government of _____(State) shall ensure that the Operator:

- (a) shall operate _____ or the appropriate portion thereof in accordance with all Government of _____(State)-approved manuals provided by the Concessionaire (such approval not to be unreasonably withheld);
- (b) shall no, except to the extent the Concessionaire is in breach of its obligations under Article 21.2, operate on _____ or the appropriate portion thereof without the Concessionaire's consent (which shall not be unreasonably withheld) any vehicle other than (i) those provided by the Concessionaire pursuant to this Agreement and (ii) those acquired by the Government of _____(State) after having afforded the Concessionaire the right of first refusal to supply such vehicles; and
- (c) in operating _____ or the appropriate portion thereof, shall comply in all material respects with Applicable Law relating to the environment.

8.3 Maintenance

In pursuance of its obligations to provide Technical Maintenance, the Concessionaire shall, subject to Applicable Law, have full right to do all things necessary or desirable for the Technical Maintenance of _____ in accordance with Schedule F.

Article 9. METRO RAIL EXPERTISE

9.1 Principal Parties

The Concessionaire hereby represents that it has entered into agreements with, among others, the following principal parties (the "Principal Parties") who have confirmed their participation in the Project as follows:

- (a) **Turnkey Contractor.** _____ (xx), which shall under the Turnkey Contract have sole overall responsibility on a turnkey basis for the construction means, methods, techniques, sequences and procedures for coordinating all portions of the Works;
- (b) **LRV Contractor.** _____ (xx), who shall provide LRVs for _____ under a Sale and Purchase Agreement with the Concessionaire, dated _____, and assigned to the Turnkey Contractor;
- (c) **Maintenance Contractor.** _____ (xx), who shall provide maintenance, repair and similar services for _____ under the Maintenance Agreement;
- (d) **Construction Consultant.** _____ (xx), who shall provide consulting services for the programme management, design review, construction management and commissioning of _____ under a Consulting Services Contract with the Concessionaire;
- (e) **Financial Advisors.** _____ (xx), as to international financial matters and _____, as to Indian financial matters.

9.2 Replacement of Principal Parties

Notwithstanding Article 9.1, the Concessionaire shall have the right to remove, replace or add such Principal Parties (with the consent of the Intercreditor Agent in the case of the Turnkey Contractor and the -- Contractor) as may be necessary for the immediate and successful implementation of the Project, subject to the concurrence of the Government of _____ (State), which shall not be unreasonably withheld and shall be subject to Applicable Law. The Concessionaire shall immediately advise the Government of _____ (State) if and when any of the Principal Parties withdraw from the Project. In that case, the Concessionaire shall, within sixty (60) days thereof, replace such party with another party of similar or greater capability, experience and qualifications.

9.3 Non-Performance of Principal Parties

The non-performance, withdrawal, removal, replacement or exclusion of any of the Principal Parties shall not relieve the Concessionaire of any of its obligations under this Agreement, including Article 10.3 hereof. The removal or replacement of any of the Principal Parties shall not in and of itself constitute a Circumstance.

Article 10. CONSTRUCTION TIMETABLE AND BUYOUT RIGHTS

10.1 Construction Timetable Dates

The Parties shall work together in order to achieve the timely completion of _____ in accordance with the following Construction Timetable:

Stage Completed	Date
Commencement of Site Works	
Completion Deadline	
Final Completion Deadline	

It is understood that the Completion Deadline shall be extended pursuant to Article 10.2 to take into account delays caused by one or more Circumstances.

10.2 Circumstances

(a) If any Circumstance is responsible for causing a delay in any stage of construction or supply of _____, then the Completion Deadline and the Final Completion Deadline shall be extended by a reasonable period of time commensurate with the effect, if any, of such Circumstance. Further, the Work Schedule shall be evaluated and adjusted reasonably to the extent of activities affecting such extension, all as reasonably agreed in writing between the Government of _____(State) and the Concessionaire. Upon such agreement, the Concessionaire shall notify the Turnkey Contractor and the Lenders of such change.

(b) The Government of _____(State) shall pay all additional costs resulting from a Circumstance (except to the extent that proceeds of insurance are applied thereto) and, if the Concessionaire (or its permitted assignee) incurs additional costs as a result of such Circumstance, then the Concessionaire shall recover such costs through an adjustment to Project Cost (and consequently an adjustment to the Rental Fees set forth in Table 2 of Schedule I to this Agreement that preserves the Concessionaire's Net Economic Return or, at the Concessionaire's option, the Government of _____(State) shall promptly reimburse the Concessionaire on demand for all costs incurred by the Concessionaire (or such permitted assignee) by reason of such Circumstance.

10.3 Penalties; Liquidated Damages

(a) In the event that _____ is not completed by the Completion Deadline, the Concessionaire shall, until the Completion Date (for the avoidance of doubt, it being understood and agreed that nothing in this or any other provision of this Article 10.3 in any way affects the obligation of the Government of _____(State) to ensure that all payments under Article ____ (9.1(c)) are received by the Lenders):

- (i) pay to the Government of _____(State), for each day of delay after the date that is twelve (12) weeks following the Completion Deadline (the "Grace Period"), liquidated damages of ____ per day; **(Project Specific)**
- (ii) without duplication of any payments pursuant to Article 21.2, pay to the Government of _____(State) (upon submission of proper invoices) an amount equal to the costs of the Government of _____(State) during the Grace Period for expenses referred to in Articles __ (7.8, 7.10, 4.10, 10.8(a), 21.4 and 21.5, such payments not to exceed ____ per day nor ____ in aggregate; **(Project Specific)**
- (iii) be responsible (without drawing under any of the Financing Documents) for paying or reimbursing the Government of _____(State) for all interest accruing and principal payments falling due during the period of such delay; provided, however,

that the principal amount of such payments shall be repaid by the Government of _____(State) to the Concessionaire, without interest, on the date that is the eleventh anniversary of the Completion Date;

- (iv) pay any increase in cost under the Turnkey Contract resulting from such delay, provided that such increase is not the result of a Circumstance; and
- (v) with respect to each day during the Grace Period that the Concessionaire reserves liquidated damages from the Turnkey Contractor under the Turnkey Contract, pay liquidated damages to the Government of _____(State) of _____.

All amounts payable by the Concessionaire pursuant to this Article 10.3(a) shall (unless stated otherwise) be paid monthly commencing thirty (30) days after the Completion Deadline, but the amounts payable under clauses (i), (ii) and (v) above shall not, in aggregate, exceed _____. Amounts payable by the Concessionaire pursuant to this Article 10.3(a) shall not form part of the Project Cost and shall not be included in Table 2 of Schedule I. The Concessionaire may, by written notice to the Government of _____(State), authorize the Government of _____(State) to debit the amount of payments or reimbursements referred to in clauses (i) to (v) above from the Rental Fees payable to the Concessionaire pursuant to Table 2 of Schedule I and falling due after the date the corresponding payments were due from the Concessionaire. Any payment of Rental Fees set forth in Table 2 of Schedule I falling due between the Completion Deadline and the Completion Date shall not be paid by the Government of _____(State). Any obligation to make such payment shall be deemed paid and discharged.

(b) If _____ is not completed by the date which is 365 days after the Completion Deadline, the Concessionaire shall pay to the Government of _____(State) a lump-sum liquidated damages amount of _____, less the aggregate of all other amounts paid by the Concessionaire (including those to be debited against the Rental Fees payable to the Concessionaire pursuant to Table 2 of Schedule I) under clauses (i), (ii) and (v) of Article 10.3(a)).

(c) Except as set forth in this Article 10.3, the Concessionaire shall have no other liability or obligation in respect of a failure to complete _____.

10.4 Completion

(a) Subject to Article 10.8, upon Substantial Completion of _____ or a portion thereof, such completed portion shall be subjected to the Commissioning Tests in accordance with Article 11.1 and Schedule G of this Agreement. Upon the joint certification of the Government of _____(State) and the Concessionaire of successful completion of the Commissioning Tests, the Completion Date shall be deemed to have occurred.

(b) The Completion Date may occur with as many as _____ LRVs not yet delivered, without relieving the Concessionaire of its obligation to deliver all LRVs, which must be delivered within fifteen (15) days after the Completion Date. Notwithstanding the foregoing, the timing of the delivery of the LRVs shall not affect the obligation of the Concessionaire under Article 21.2(a). The Government of _____(State) and the Concessionaire will in good faith consider and evaluate alternatives for the delivery of fully assembled LRVs to _____(City of Urban Mass Transit System under this Agreement) in order to have the Completion Date occur earlier.

10.5 Residual Value Buyout

(a) The occurrence of any of the following events shall entitle, but not require, the Government of _____(State) to purchase from the Concessionaire all of its right, title and interest in _____ (which does not include Development Rights) on a date selected by that Government and notified in writing to the Concessionaire (which date shall not be less than thirty (30) days, nor more than ninety (90) days, after the occurrence of such event) at the Residual Value Buyout Price:

- (i) the Concessionaire abandons the Project;
- (ii) the unmatured principal of any of the Concessionaire's loans under any Financing Document is declared or becomes due and payable as a result of an Event of Default other than one described in Article 10.7(a)(1)), and such accelerated amount is not paid by the Concessionaire (or its permitted assignee) to the Lenders (or reimbursed to the Government of _____(State) if previously paid by that Government to the Lenders) within ninety (90) days following such acceleration;
- (iii) the Concessionaire fails to perform any material obligation under this Agreement, other than obligations addressed by clause (iv) below, and such failure is not cured within a period of time reasonably required to do so, as such period shall be agreed between the Parties not later than fifteen (15) days following written notice of such failure to the Concessionaire (or, if such agreement is not reached, as determined by arbitration pursuant to Article 30 it being understood that the right of the Government of _____(State) to purchase as a result of this Clause (iii) is not its exclusive remedy for damage or loss occasioned by such failure; or
- (iv) _____ is not completed by the date that is 365 days following the Completion Deadline; provided, however, that the Government of _____(State) shall not be entitled to effect a purchase pursuant to this Clause (iv) during any period in which the Concessionaire (or its permitted assignee) has paid to the Lenders on the dates they fall due (including applicable grace periods) all interest accruing and principal payments falling due during the period of such delay. Any such payments paid by the Concessionaire shall not form part of Project Cost, nor be included in Table 2 of Schedule I but the portion of such payments corresponding to principal shall be repaid to the Concessionaire, without interest, on the date that is the eleventh anniversary of the Completion Date.

(b) The Residual Value Buyout Price is to be determined and paid promptly following completion of _____, as agreed between the Government of _____(State) and the Concessionaire or, in the absence of such agreement, as determined by arbitration pursuant to Article _____(20.3), together with interest thereon at the rate of fifteen percent (15%) per annum from the date of such purchase to the date of payment of the Residual Value Buyout Price.

(c) Article 29 shall apply to any such purchase. The Government of _____(State) may, but shall not be required to, offset against the payment of such price any amounts owed to it by the Concessionaire pursuant to Article 10.3(a) or (b)). Upon any such purchase, the Concessionaire shall assign to the Government of _____(State) all rights to recover amounts recoverable from the Turnkey Contractor under the Turnkey Contract, including all amounts payable under its performance bonds, subject to any assignment of such rights made by the Concessionaire to the Lenders.

10.6 Equity Value Buyout

(a) The occurrence of any of the following events shall entitle, but shall not require, the Concessionaire to require that the Government of _____(State) purchase all right, title and interest of the Concessionaire in _____ (which does not include the Development Rights) on a date selected by the Concessionaire and notified in writing to the Government of _____(State) (which date shall not be less than thirty (30) days, nor more than ninety (90) days, after the occurrence of such event) at the Equity Value Buyout Price:

- (i) the unmatured principal of any of the Concessionaire's loans under any Financing Document is declared or becomes due and payable as a result of an Event of Default, provided that such Event of Default resulted from a Circumstance, an act or omission of the Government of _____(State) (or its Representatives) in the operation of

_____, the invalidity, unenforceability or nullity or material impairment of this Agreement, the Undertaking Letter or the Consent, a termination of this Agreement by the Government of _____(State) (not including a purchase pursuant to Article 10.6(a)), a termination of the Undertaking Letter or the Consent, any Letter of Credit not being in force or not being in compliance with the requirements therefore set forth in the definition of Letter of Credit, a change in Applicable Law, an expropriation or other taking of _____ by the Government or a lien or encumbrance existing upon the Project that was created or caused by or resulted from the actions or inactions of the Government of _____(State);

- (ii) the Government of _____(State) fails to perform any material obligation under this Agreement, and such failure is not cured within a period of time reasonably required for such cure, as such period shall be agreed between the Parties not later than fifteen (15) days following written notice of such failure to the Government of _____(State) (or, if no such agreement is reached, as determined by arbitration pursuant to Article 30; it being understood that the Concessionaire's right to require such purchase as a result of this Clause (ii) is not its exclusive remedy for damage or loss occasioned by such failure; or
- (iii) one or more Circumstances causes the originally stated Completion Deadline to be extended by more than 180 days in the aggregate.

(b) Article 29 shall apply to any such purchase. Upon any such purchase, the Concessionaire shall assign to the Government of _____(State) all rights to recover amounts recoverable from the Turnkey Contractor under the Turnkey Contract, including all amounts payable under the Turnkey Contractor's performance bonds, subject to any assignment of such rights made by the Concessionaire to the Lenders.

10.7 Partial Opening

(a) Notwithstanding Article 10.1, when the construction of a portion of _____ reaches such stage that it can be partially operated safely, the Parties, recognizing that early operation of _____ may be desirable, shall meet to discuss and determine the visibility and feasibility of operating such portion of _____. If the Parties agree that such operation is financially and economically viable and feasible (it being understood that such test is not met if the Concessionaire is not fully compensated for any increased capital or other costs arising from such partial operation), the Parties shall negotiate in good faith Rental Fees, including those under Tables 1 and 2 of Schedule I, to be paid for such portion for the period from commencement of operation to the beginning of the Revenue Period.

(b) Upon the agreement of the Government of _____(State) and the Concessionaire on such Rental Fees and that such portion is ready for passenger service, and also with consent thereto by the Lenders, then the lease of such portion pursuant to Article 5 shall commence and a Partial Opening Date shall be deemed to have occurred with respect to such portion.

(c) Notwithstanding anything to the contrary herein, the opening of such portion of _____ shall not relieve the Concessionaire of the obligation to complete the Commissioning Tests for the entire _____ or of any of its other unfulfilled obligations under this Agreement.

Article 11. TESTING

11.1 General Provisions

To ensure that _____ complies with the Performance Specifications, the Concessionaire shall undertake the tests, including the Commissioning Tests, set forth in Schedule G to this Agreement in accordance with the provisions set forth therein.

11.2 Notice to Government of _____(State)

The Concessionaire shall give the Government of _____(State) notice of its intention to carry out the Initial Testing and the Commissioning Tests within the time period set forth in Schedule G to this Agreement.

11.3 Employment of Competitors

The Government of _____(State), in the selection of its Representative for testing purposes, shall not retain a competitor of the Concessionaire or any of the Principal Parties and shall refrain from retaining a Person who may be proven to have corporate ties or privileged business relationships with any such competitor. However, should such a Person nevertheless be retained, it shall not be put in charge of the checking, approval, testing and similar tasks regarding such scope of the work which would in essence violate the aforementioned limitation. The task of the Representative of the Government of _____(State) as to such part of the scope of work shall, in such a case, be carried out solely by an independent entity which shall be bound not to disclose any documents or proprietary information relative to such part of the scope of work.

Article 12. PERFORMANCE SECURITY**12.1 Performance Security**

(a) The Concessionaire shall, for due and punctual performance of its obligations during the Implementation Period, deliver to the Government of _____(State), simultaneously with the execution of this Agreement, a bank guarantee from a scheduled bank acceptable to the Government of _____(State), in the form set forth in Schedule N, ("Performance Security For Construction") for a sum of Rs._____.

(b) The Concessionaire shall, for due and punctual performance of obligations during the Operations Period, deliver to the Government of _____(State), on or before the Commercial Operations Date, the bank guarantee from a scheduled bank acceptable to the Government of _____(State), in the form set forth in Schedule N ("Performance Security For Operation and Maintenance") for a sum of Rs._____. **(NOTE: NHA 3.1(b) sets as 1% of estimate project cost, as indicated in the Bid Document).**

12.2 Fresh Performance Security

In the event of the encashment of the Performance Security by the Government of _____(State) pursuant to an Encashment Notice issued in accordance with the provisions of Article 25, the Concessionaire shall within thirty (30) days of the Encashment Notice furnish to the Government of _____(State) Fresh Performance Security, failing with the Government of _____(State) shall be entitled to terminate this Agreement in accordance with the provisions of Article 25 (Events of Default and Termination). The provisions set forth in Article 12.1 above shall apply mutatis mutandis to such Fresh Performance Security.

Article 13. OBLIGATIONS AND UNDERTAKINGS OF THE CONCESSIONAIRE**13.1 General Obligations of the Concessionaire**

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement, the Concessionaire shall at its own cost and expense:

- (i) investigate, study, design, construct, operate and maintain the Project Assets/Project Facility in accordance with the provisions of this Agreement, Good Industry Practice and Applicable Laws;
- (ii) obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance with those Permits at all times during the Concession Period;
- (iii) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (iv) ensure and procure that each Project Agreement contains provisions that would entitle the Government of _____(State), or a nominee of the Government of _____(State), to step into such agreement at the discretion of the Government of _____(State), in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement or the Substitution Agreement;
- (v) provide all necessary assistance to the Independent Engineer, as it may reasonably require for the performance of its duties and services under this Agreement;
- (vi) appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements, as may be necessary;
- (vii) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (viii) make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Laws and Applicable Permits;
- (ix) be responsible for quality, soundness, durability, safety and the overall Project Requirements, notwithstanding the appointment by it of Contractor(s) to implement and/or operate and maintain the Project/Project Facilities;
- (x) ensure that the Project Site remains free from all encroachments and take all steps necessary to prevent or, as the case may be, remove encroachments, if any;
- (xi) make payments to the Police Department or any Government Agency/Body, if required, for provision of such services as are not provided in the normal course or which are available only on payment;
- (xii) afford access to the Project Site to the authorized representatives of the Government of _____(State), the Independent Engineer and any Government Body/Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority, and, upon reasonable notice, the Concessionaire shall provide to such persons the assistance reasonably required to carry out their respective duties and functions;
- (xiii) obtain at its cost and charges special or temporary right of access, occupation or use of any property that may be required by it in connection with implementation of the Project. The Concessionaire shall also obtain at its cost such facilities as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

- (xiv) develop, implement and administer a surveillance and safety program for the Project/Project Facility and the users thereof and the personnel of the Contractors engaged in the provision of any services under any of the Project Agreements, including correction of safety violations and deficiencies, and the taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (xv) take all reasonable precautions for the prevention of accidents on or about the Project Site/Project Facility, and provide all reasonable assistance and emergency medical aid to accident victims;
- (xvi) be responsible for safety, soundness and durability of the Project Facility, including all structures forming part thereof, and their compliance with the Specifications and Standards;
- (xvii) operate and maintain the Project at all times during the Operations Period in conformity with this Agreement, including but not limited to, the Specifications and Standards, the Maintenance Programme and Good Industry Practice;
- (xviii) remove promptly according to Good Industry Practice, from the Project Site, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits.

13.2 Obligations of the Concessionaire During Implementation Period

In addition to what is provided for in Article 13.1 above,

- (a) The Concessionaire shall, before commencement of construction of the Project:
 - (i) submit to the Independent Engineer, with due regard to the Project Completion Schedule and Scheduled Project Completion Date, its design, engineering and construction time schedule and shall formulate and provide Critical Path Method (CPM)/Project Evaluation and Review Technique (PERT) charts for the completion of the said activities;
 - (ii) have the requisite organization and designate and appoint suitable officers and representative, as it may deem appropriate, to supervise the Project and to deal with the Independent Engineer/the Representative of the Government of ____ (State) and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (iii) undertake, do and perform all such acts, deeds and things as may be necessary or required to adhere to the Project Completion Schedule and to achieve Project Completion under and in accordance with this Agreement;
 - (iv) construct, provide and maintain a furnished site office accommodation for the Independent Engineer at the Project Site; and
 - (v) provide and maintain an adequately equipped field laboratory as required for the Project Site control on the quality of materials and the Construction Works.
- (b) The Concessionaire shall, at all times, afford access to the Project Site, to the authorized representatives of the Government of ____ (State), the Independent Engineer and officer

of any Government Agency having jurisdiction over the Project, including those persons or agencies concerned with safety, security or environmental protection, to inspect the Project and to investigate any matter within their authority and, upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

(c) The Concessionaire shall be responsible for ensuring that any existing utility on, under or above the Project Site is kept in continuous satisfactory use, if necessary, by the use of suitable temporary or permanent divisions.

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

13.3 No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent that performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- (a) Force Majeure Event, subject to Article 24;
- (b) Government of _____(State) Event of Default;
- (c) Compliance with the instructions of the Independent Engineer, the Government of _____(State) or the directions of any Government Body other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;
- (d) Emergency decommissioning of the Project Facilities or part thereof, in accordance with O&M Requirements;
- (e) Closure of the Project Facilities or part thereof with the approval of the Independent Engineer and/or the Government of _____(State);
- (f) Inability of the Concessionaire to remove any accident debris due to non-completion of any police or insurance-related inquiry or survey despite prompt steps having been taken by the Concessionaire in that regard.

13.4 Shareholding

The Concessionaire shall ensure that:

- (a) The Successful Bidder/Consortium hold(s) not less than fifty one percent (51%) of the paid up equity capital of the Concessionaire until three (3) years after the Commercial Operations Date (COD), and not less than twenty-six percent (26%) of its paid up equity capital during the balance of the Operations Period;
- (b) M/s _____(the "Lead Member") holds at any time not less than fifty percent (50%) of the Consortium's holding in the paid up equity capital of the Concessionaire during the entire Concession Period; or
- (c) M/s _____(the "Lead Technical Member") and M/s _____(the "Lead Financial Member" holds at any time not less than twenty-five percent (25%) each of the Consortium's holding in the paid up equity capital of the

Concessionaire during the entire Concession Period, and M/s _____ ("Member") holds not less than ten percent (10%) of the Consortium's holding in the paid up equity capital of the Concessionaire, until the Commercial Operations Date (COD).

Article 14. OBLIGATIONS AND UNDERTAKINGS OF THE GOVERNMENT OF _____ (STATE)

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement, the Government of _____ (State) shall:

- (i) handover the physical possession of the Project Site, together with the necessary right of way/easements to the Concessionaire within thirty (30) days from the date of this Agreement (Commencement Date??), free from any Encumbrance; (repetitive of Project Site)
- (ii) procure execution of the State Support Agreement within thirty (30) days from the date of this Agreement;
- (iii) grant, or where appropriate, provide necessary assistance to the Concessionaire in securing Applicable Permits;
- (iv) grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from the Government of _____ (State) in connection with implementation of the Project and the performance of the Concessionaire's obligations under this Agreement;
- (v) subscribe to the Substitution/Common Agreement within 15 days of disclosure by the Concessionaire regarding Financial Close;
- (vi) ensure peaceful use of the Project Site by the Concessionaire under and in accordance with the provisions of this Agreement without any let or hindrance from the Government of _____ (State) or persons claiming through or under it;
- (vii) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities, at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities and utilities;
- (viii) ensure that no barriers are erected or placed by the Government of _____ (State) or any Governmental Agency on the Project Facility/Project Site, except on account of any law and order situation or upon national security considerations;
- (ix) assist the Concessionaire in obtaining necessary authority to regulate traffic on the Project Site/Project Facility subject to, and in accordance with, the Applicable Laws;
- (x) assist the Concessionaire in obtaining police assistance against payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Site/Project Facility and implementing this Agreement in accordance with the provisions hereof;
- (xi) observe and comply with all its obligations set forth in this Agreement.

Article 15. INDEPENDENT ENGINEER**15.1 Appointment of Independent Engineer**

- (a) The Government of _____(State) and the Concessionaire shall mutually appoint a reputed consulting engineering firm or body corporate to be the Independent Engineer to undertake and perform the duties, work, services and activities set forth in Schedule M. (to be provided by Government)
- (b) Within thirty (30) days of the date of this Agreement, the Concessionaire shall submit to the Government of _____(State) a panel of at least three such firms or companies or body corporates or a combination thereof acceptable to it and having the necessary expertise for appointment as Independent Engineer.
- (c) Within thirty (30) days from the date of receipt of such panel, the Government of _____(State) shall appoint the Independent Engineer out of such panel, and communicate the same to the Concessionaire.
- (d) The Independent Engineer shall report to the Government of _____(State) about their work, services and activities and the progress of implementation of the Project at least once every month or more frequently as the situation may warrant. Such reports of the Independent Engineer shall include, but not be limited to, the matters and things set forth in said Schedule M.
- (e) The Independent Engineer shall submit bills for periodic payment in accordance with the terms of its appointment to the Government of _____(State). One-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Government of _____(State) within fifteen (15) days of its receipt of a statement of expenditure from the Government of _____(State).
- (f) If either Party disputes any advice, instruction or decision of the Independent Engineer, the same shall be resolved in accordance with the Dispute Resolution Procedure found in Article 30.

15.2 Termination and Fresh Appointment

If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, it may make a written representation to the Government of _____(State), stating its reasons in detail, seeking termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Government of _____(State) shall hold a tripartite meeting with the Concessionaire and Independent Engineer for amicable resolution of the dispute. Such a meeting may also be called by the Government of _____(State) if it has similar problems with the performance of the Independent Engineer. If the dispute remains unresolved, the Concessionaire and the Government of _____(State) may agree to terminate the appointment and appoint another Independent Engineer in accordance with the provisions of Article 16.1(a) to (c) above.

Article 16. INDEPENDENT AUDITOR**16.1 Appointment**

- (a) Upon the occurrence of any event necessitating or warranting appointment of the Independent Auditor under the provisions of this Agreement, and upon a proposal being made by any Party, the Parties shall promptly (and in any case within fifteen (15) days of such proposal) confer

and agree upon a reputed firm of Chartered Accountants practicing in India to be appointed as the Independent Auditor. Thereupon, the Government of _____(State) shall appoint the Independent Auditor on terms and conditions agreed to by the Parties and by the Person to be appointed as the Independent Auditor.

(b) If, upon a proposal being made by a Party for appointment of an Independent Auditor, the other Parties fail to confer and agree upon the Independent Auditor within the said period of fifteen (15) days, the Party proposing the appointment shall be entitled to appoint the Independent Auditor. Such appointment and the terms thereof shall be binding on the other Parties and the Parties shall extend all necessary assistance to the Independent Auditor to carry out the task for which its appointment has been made.

16.2 Payment of Fees

All fees and costs of the Independent Auditor shall be shared equally and borne by the Concessionaire and the Government of _____(State). Within seven (7) days of the claim of the Government of _____(State), the Concessionaire shall pay its share of such fees and costs to the Government of _____(State).

Article 17. FINANCING ARRANGEMENT

17.1 Financing Arrangement

(a) The Concessionaire shall, at its cost, expenses and risk, make such financing arrangement as would be necessary to finance the Project and to meet its obligations under this Agreement in a timely manner.

(b) In the event of the Concessionaire employing the funds borrowed from the Lenders to finance the Project, the provisions relating to Lenders, including those relating to Financial Close and Substitution Agreement, shall apply.

(c) The Concessionaire shall, within seven (7) days of achieving Financial Close, submit to the Government of _____(State) one set of Financing Documents evidencing Financial Close.

17.2 Amendments to Financing Documents

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

Article 18. INSURANCE

18.1 Insurance During the Implementation Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Implementation Period (Option- "from the date of handing over of the possession of the land to Concessionaire or upon commencement of construction pursuant to the Project Development Plan, whichever is the earlier, till the Commercial Operation Date), such insurance as is necessary, including but not limited to the following:

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

18.2 Insurance During the Operations Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Operations Period (that is from the Commercial Operation Date until the End Date of this Agreement) insurance to cover against:

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

18.3 Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Project Assets and/or the Project Facility through Indian insurance companies, and if so permitted by the Government of _____ (State) through foreign insurance companies, to the extent that insurance is necessary to be effected through them.

18.4 Evidence of Insurance Cover

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

18.5 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Project Facility or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the policies in their favour as security for the financial assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facility or any part thereof shall, after such repair or renovation or

restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

18.6 Validity of the Insurance Cover

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

Article 19. CHANGE OF SCOPE

19.1 Definition of Change of Scope

The Government of _____(State) may, notwithstanding anything to the contrary contained in this Agreement, require provision of such addition or deletion to the works and services on or about the Project which are beyond the scope of the Project as contemplated in this Agreement ("Change of Scope"), provided that such changes do not require expenditure exceeding Rs. _____ and do not adversely affect the Scheduled Project Completion Date. All such changes shall be made by the Government of _____(State) by an order (the "Change of Scope Order") issued in accordance with the procedure set forth in Article 19.2 below.

19.2 Procedure For Change of Scope

- (a) The Government of _____(State) shall, whenever it desires provision of addition or deletion of works and services referred to in Article 19.1 above, issue to the Concessionaire a notice of Change of Scope (the "Change of Scope Notice") through the Independent Engineer.
- (b) Upon receipt of a Change of Scope Notice, the Concessionaire shall, within a period of fifteen (15) days, provide to the Independent Engineer such information as is necessary and reasonable together with preliminary documentation in support of the following:
 - (i) the impact which the Change of Scope is likely to have on the Project Completion Schedule if the work is required to be carried out before the Commercial Operations Date (COD); and
 - (ii) the cost to the Concessionaire of complying with such Change of Scope Notice on account of increases in quantities of items of work mentioned in the Bill of Quantities at the rate mentioned therein. In case the Bill of Quantities does not carry certain items of work required under the Change of Scope, the Concessionaire shall provide the analysis of rates for carrying out such items of work.
- (c) The Independent Engineer shall review the information provided by the Concessionaire, assess the change in quantities of items of work, verify the analysis of rates (if required), determine the additional cost to the Concessionaire as a result of such Change of Scope, add such further cost to Initial Investment in the Cash Flow Projections, and determine the extension, if any, to the Concession Period in order to maintain the Internal Rate of Return. This is provided that the projections for years beyond the Concession Period shall be the average of the three years

immediately preceding the last year of the original Cash Flow Projections. The Independent Engineer shall communicate its recommendation to the Government of _____(State) within a period of fifteen (15) days from the receipt of information from the Concessionaire.

(d) The Government of _____(State) shall issue the Change of Scope Order within a period of fifteen (15) days from the date of the recommendation made by the Independent Engineer in accordance with preceding sub-Article(c) above.

(e) The Change of Scope Order shall be effective and binding upon receipt thereof by the Concessionaire. Notwithstanding a Dispute regarding cost and time for implementation of such order, the Concessionaire shall proceed with the performance of such order promptly following receipt thereof. Any Dispute regarding the extension in the Concession Period recommended by the Independent Engineer shall be resolved in accordance with the Dispute Resolution Procedure found in Article 30 of this Agreement.

(f) All claims by the Concessionaire pursuant to this Article 19.2 shall be supported by such documentation as is reasonably sufficient for the Independent Engineer to determine the accuracy thereof, including invoices from Contractors and certification of such claims by the Statutory Auditors.

Article 20. ENVIRONMENT AND SOCIAL ASSESSMENT

The Parties will each comply with their respective obligations specified in the Environment and Social Assessment Report set out in Schedule L.

Generally the allocation of responsibility in these areas will be divided between the Concession Authority and the Concessionaire. There will be three phases, namely the preconstruction phase, the construction phase and the post construction phase. In the preconstruction phase all statutory clearances should remain the responsibility of the Government or in the case of an investor proposed concession, the Government/Concession Authority should provide all necessary assistance possible to obtain those clearances. For those preconstruction clearances which are commercial in nature, those will remain the responsibility of the Concessionaire. During construction, responsibility is again shared. The provision of agreed compensation or environmental mitigation measures which have been accepted by the Concessionaire, will be the responsibility of the Concessionaire. Ensuring that the commitments made are carried through and that the quality of environmental mediation or ameliorisation provided for in the agreement is achieved remains the responsibility of the Concessioning Authority. In the post construction period, it is the responsibility of the Concession Authority to monitor environmental and social commitments made as part of the concession agreement, such as replanting of trees or rehabilitation of wetlands, and to ensure that the Concessionaire adheres to the agreements made as part of the concession.

Article 21. RENTAL FEE

21.1 Payment of Rental Fee

(a) Rental Fees shall be comprised of:

- (i) the amounts specified in Tables 1 and 2 of Schedule I hereto, as increased or decreased pursuant to this Agreement;
- (ii) the amounts determined pursuant to Article 21.2 below;
- (iii) if applicable, the amounts determined pursuant to Article 10.9;

- (iv) the amounts in respect of maintenance hereinafter specified;
- (v) commencing the First Month, amounts in respect of the Concessionaire's staffing and administrative costs equal to _____) per month (as such amount shall be adjusted at the same times and in the same manner as set forth in Attachment 1 to Annex 1 of the Maintenance Agreement; and
- (vi) reimbursement to the Concessionaire for all payments made to it other than staffing and administrative costs and the Concessionaire's one-quarter share of the cost of the Expert where the Concessionaire has exercised its right to use the Expert).

The Government of _____(State) shall pay the Rental Fees specified in Table 2 of Schedule I to or on the order of the Concessionaire, in United States Dollars to such account or accounts and in such manner as the Concessionaire shall from time to time specify.

The rental fees specified in Table 1 of Schedule I due to loans from foreign aid agencies shall be paid on the respective due dates and in the respective currencies of the corresponding payments owed by the Concessionaire (or its assignee) to the Lenders.

The Rental Fees specified in Table 2 of Schedule I to be paid by the Government of _____(State) shall be paid monthly, the first such monthly payment becoming due on the last day of the first Month. It being understood that such Rental Fees falling due between the Completion Deadline and the Completion Date, if any, shall not be paid by the Government of _____(State) (but shall be deemed paid and discharged).

Any Rental Fees determined pursuant to Article 10.9 shall be due as agreed pursuant thereto. Rental fees in respect of maintenance shall be equal to the maintenance fees (as more fully set forth in the concurrence of the Government of _____(State) to the Maintenance Agreement) payable under the Maintenance Agreement (without taking into account any adjustments therein corresponding to any adjustments under Article 21.3 or resulting from setoff rights of the Concessionaire under the Maintenance Agreement. They shall be payable on the same dates and in the same manner as such Fees are payable by the Concessionaire under the Maintenance Agreement.

Rental fees in respect of reimbursements pursuant to clause (vi) above shall be payable upon presentation of verified invoices for the payments for which reimbursement is sought.

Rental fees set forth in Table 2 of Schedule I of this Agreement to be paid by the Government of _____(State) shall be appropriately increased or decreased to preserve the Concessionaire's Net Economic Return whenever Project Cost changes to reflect such change and whenever required by the provisions of this Agreement.

(b) The Government of _____(State) and the Concessionaire, with the prior consent of the Intercreditor Agent, may amend Table 2 of Schedule I to provide for more rapid payment of the amounts specified therein.

(c) Rental Fees shown in Table 1 of Schedule I to this Agreement are based on certain assumptions regarding the loans from the Lenders, some or all of which may not be valid. Such Rental Fees shall be adjusted, as necessary from time to time, so that they always and at all times (including the Construction Period) are sufficient to pay all principal of the Loans as defined in the Common/Substitution Agreement, interest, any overdue interest, commitment fees, Taxes (including as defined in the Common Agreement), and all other amounts (ncluding costs, fees and expenses referred to in Section ____ (9.03) of the Common Agreement, claims referred to in Section ____ (9.04) of the Common Agreement, premiums referred to in Section ____ (5.05) of the Common Agreement, and amounts referred to in Section ____ (8) of the Common Agreement due, whether at

stated maturity, by acceleration or otherwise, under the Financing Documents as, when and in such currency as they are due.

Notwithstanding anything to the contrary in this Agreement, Rental Fees payable by the Government of _____(State) hereunder shall include amounts corresponding to financing fees, premiums for political risk insurance and/or comprehensive risk insurance and interest on and principal of the Loans (as defined in the Common Agreement), and any other amount owing under the Financing Documents (whether at stated maturity, by acceleration or otherwise) and whether falling due prior to or after the Completion Date, to the extent not paid by the Concessionaire (or its permitted assignee). Rental Fees contemplated by the preceding sentence are payable as and when such corresponding amounts are due in the currencies thereof.

For the avoidance of doubt, any adjustment of Rental Fees pursuant to this Article 21.1(c):

- (i) shall be made based upon certification of the amount of such adjustment by the Intercreditor Agent;
- (ii) shall not require any actual amendment to Schedule I to this Agreement; and
- (iii) may result in payment of Rental Fees on dates other than the due dates contemplated by Schedule I hereto.

The obligation to pay Rental Fees, as so adjusted, shall be unconditional and irrevocable under any and all circumstances, and shall in no way be released, discharged or otherwise affected for any reason (whether the reason shall be voluntary or involuntary or shall come about or be affected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority), including, without limitation:

- (a) any defect in the condition, quality or fitness for use of the Project, _____ or any portion of any thereof;
- (b) any damage to, removal, abandonment, salvage, loss, scrapping or destruction of or any requisition or taking of the Project, _____ or any portion of any thereof;
- (c) any restriction, prevention or curtailment of or interference with any use or possession of the Project, _____ or any portion of any thereof;
- (d) any defect in title to the Project, _____ or any portion of any thereof or any lien on such title;
- (e) any change, amendment, waiver, extension, indulgence or other act or omission in respect of any obligation or liability of the Government of _____(State), the Concessionaire, any Principal Party, any Lender, any Agent or any other Person under any Operative Document, as defined in the Common Agreement, or otherwise;
- (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding or moratorium relating to the Concessionaire, any Principal Party, any Lender, any Agent or any other Person or any action taken with respect to the Undertaking Letter, this Agreement, any Operative Document (as defined in the Common Agreement), or any agreement, document or instrument contemplated by any thereof or by any trustee or receiver of any of the foregoing, or by any court;

- (g) any right or claim of set-off, counterclaim, deduction, abatement, suspension, deferral, diminution, reduction or other defense of the Government of _____(State) or any other right or claim that the Government of _____(State) has or might have against any Person (including, without limitation, the Concessionaire, any Principal Party, any Lender or any Agent), whether in connection with the transactions contemplated by this Agreement, any Operative Document (as defined in the Common Agreement, or any unrelated transaction;
- (h) any failure on the part of the Government of _____(State), the Concessionaire, any Principal Party, any Lender, any Agent or any other Person to perform or comply with any of the terms hereof or of any other agreement (including any failure of the Concessionaire (or any assignee thereof) to make any payment to the Government of _____(State) in respect of Development Rights;
- (i) any failure to complete, any delay in completion of, or any failure or frustration of purpose with respect to, the Project, _____ or any portion of any thereof for any reason whatsoever;
- (j) any termination, rescission, invalidity or unenforceability or disaffirmance of this Agreement or any Operative Document, as defined in the Common Agreement, or any provision of any such document against or by the Government of _____(State), the Concessionaire or any other Person;
- (k) any doctrine of force majeure or frustration; or
- (l) any other occurrence whatsoever, foreseen or unforeseen, whether similar or dissimilar to the foregoing,

whether or not the Government of _____(State) shall have knowledge of the foregoing. All payments made hereunder shall be final, and the Government of _____(State) shall not seek to recover any such payment or any part thereof for any reason whatsoever.

Notwithstanding the foregoing Paragraph, if for any reason whatsoever, including a Circumstance or an event attributable to the Concessionaire, the amounts expended for items described under III (Financing Fees and Political Risk Premiums) and IV (Interest During Construction) of Schedule K (Project Cost) hereto falling due prior to the Completion Date are greater than the amounts specified therefore in that Schedule K, or if any principal of or interest on the loans from the Lenders is paid or payable prior to the Completion Date, or if any amounts are expended in respect of dollar-yen hedging, then the Government of _____(State) shall pay such excess amount or an amount equal to such principal and interest or amount expended to or to the order of the Concessionaire, at times specified by the Concessionaire.

(d) The Concessionaire has agreed to assign absolutely, irrevocably, and unconditionally to the Lenders all of its rights, title and interests in and to the Rental Fees referred to in Table 1 of Schedule I (as adjusted hereunder) and all other amounts payable under Article 16.1(c) pursuant to the Deed of Assignment. The Government of _____(State) has agreed to evidence its acknowledgment and consent to such assignment and its acceptance of its obligations thereunder, including the obligation to make payments of the Rental Fees referred to in Table 1 of Schedule I, and such other amounts, directly to the Intercreditor Agent, pursuant to the Consent (as defined in the Common Agreement;

(e) The Government of _____(State) hereby acknowledges and confirms:

- (i) that the credit enhancement support to be provided by the Government of _____(State) , through the Department of _____ , in the form of the Undertaking Letter is a condition for the Lenders providing financing for the Project at more favourable rates and terms;
 - (ii) that the Undertaking Letter carries the guarantee of the Government of _____(State) and binds the Government of _____(State) to pay to the Intercreditor Agent for and on behalf of the Lenders amounts corresponding to the Rental Fees referred to in Table 1 of Schedule I (as adjusted hereunder) and other amounts payable under Article 21.1(c) , with the right to accelerate payments of such amounts under the circumstances set forth in the Undertaking Letter; and
 - (iii) that the obligation of the Government of _____(State) under the Undertaking Letter to pay the amounts corresponding to such Rental Fees and other amounts is absolute, unconditional and irrevocable.
- (f) The Government of _____(State) understands that the Concessionaire will grant to the Lenders a first priority security interest in all of _____. The Government of _____(State) further understands that this security interest in favour of the Lenders will not be released until the Loans (as defined in the Common/Substitution Agreement) and all other amounts due under the Financing Documents have been paid in full. Accordingly, in order to procure the release of such security interest in _____, in the event that such Loans and other amounts due under the Financing Documents are accelerated or become subject to mandatory prepayment (and in certain other circumstances referred to in Section 5 of the Undertaking Letter), the Government of _____(State) agrees that payment of the Rental Fees referred to in Table 1 of Schedule I and other amounts payable under Article 21.1(c) may be accelerated by notice to the Government of _____(State) by the Intercreditor Agent.

21.2 General Adjustments

(a) Subject to the limitations of this Article 21.2, if during any Peak Service Period during the first ten years of the Revenue Period, the number of Light Rail Vehicles that are available is less than the lesser of a number specified by the Operator at least fifteen (15) days prior to such Peak Service Period (the "Operator's Required Number") and, the Concessionaire shall pay to the Government of _____(State), as liquidated damages and not as a penalty, an amount equal to the Availability Multiplier (as defined below) multiplied by the difference between:

- (i) the lesser of the Operator's Required Number and 54; and
- (ii) the number of Light Rail Vehicles that are Available during such Peak Service Period.

The "Availability Multiplier" shall mean, with respect to Peak Service Periods occurring during the first nine years after the Completion Date, _____ and, with respect to Peak Service Periods occurring during the Tenth Year after the Completion Date, _____.

The Maintenance Agreement provides that the Maintenance Provider will make all payments of liquidated damages into an escrow account (the "Maintenance Escrow Account") to be established and operated in accordance with an escrow agreement, in form and substance satisfactory to the Government of _____(State) and the Concessionaire, that shall provide that the fees of the escrow agent thereunder and all other fees associated with the establishment and operation of the Maintenance Escrow Account shall be borne by the Government of _____(State).

If during any Peak Service Period during the first ten (10) years of the Revenue Period, the Operator's Required Number is greater than 60 and the number of Light Rail Vehicles that are Available during such Peak Service Period is greater than 60, the Concessionaire shall receive a credit (the "Earned Credit") in the amount equal to the Availability Multiplier multiplied by the difference between the

number of Light Rail Vehicles so Available during such Peak Service Period (up to a maximum of the Operator's Required Number) and ____.

During the Revenue Period, neither the liquidated damages nor the Earned Credits under this Article 16.2(a) shall exceed in the aggregate during any year an amount equal to _____. The liquidated damages and the Earned Credits shall be cumulated on a yearly basis during each year and netted against each other as of the last day of such year. If the amount of liquidated damages cumulated with respect to any year is greater than the amount of Earned Credits cumulated with respect to such year, such excess shall be referred to as a "Liquidated Damages Amount Payable", and if the amount of the Earned Credits accumulated with respect to any year is greater than the amount of the liquidated damages cumulated with respect to such year, such excess shall be referred to as a "Credit Amount Payable".

If at the end of any year there is a Credit Amount Payable for such year, then no later than the due date for the first monthly installment of the Annual Maintenance Fee (as set forth in the Maintenance Agreement) for the following year, the Government of _____(State) shall cause a payment to be made from the Maintenance Escrow Account to or to the order of the Concessionaire in an amount equal to the lesser of the:

- (i) the Credit Amount Payable; and
- (ii) the Maintenance Escrow Account balance.

Provided, however, that if the Maintenance Agreement has expired or been earlier terminated pursuant to its terms, the Government of _____(State) shall cause such payment to be made from the Maintenance Escrow Account to the Concessionaire within fifteen (15) days after receipt of an invoice therefore from the Concessionaire.

If the Maintenance Escrow Account balance is less than the Credit Amount Payable, then the Concessionaire shall receive a credit equal to the amount of such difference, which shall be used to offset the Liquidated Damages Amount Payable with respect to subsequent years (such credit, as increased in subsequent years pursuant to this sentence or as reduced in subsequent years as provided below, the "Cumulative Earned Credit")/

If at the end of any year, there is a Liquidated Damages Amount Payable, then, first, the Cumulative Earned Credit (if any) shall be reduced by the amount of the Liquidated Damages Amount Payable, and second, if such Liquidated Damages Amount Payable is greater than the Cumulative Earned Credit, the Government of _____(State) shall deduct such excess from the first monthly payment of the Annual Maintenance Fee (as set forth in the Maintenance Agreement) for the following year and deposit such excess in the Maintenance Escrow Account. Provided, however, that if the Maintenance Agreement has expired or been earlier terminated pursuant to its terms, the Concessionaire shall pay such excess to the Government of _____(State) within fifteen (15) days after receipt of an invoice therefore from the Government of _____(State). For the avoidance of doubt, no amounts payable by the Concessionaire under this Article 21.2 may be set off against any payment of Rental Fees other than those payable under clause (D) of Article 21.1(a).

After the Maintenance Agreement has expired or been earlier terminated pursuant to its terms and all amounts then due thereunder have been paid in full, the Maintenance Escrow Account balance (if any) and any interest that has been earned on amounts deposited to the Maintenance Escrow Account shall be paid from the Maintenance Escrow Account to the Government of _____(State). If any payment by the Concessionaire pursuant to this Article 21.2(a) would exceed the annual payments of Rental Fees specified in Table 2 of Schedule I to this Agreement plus annual payments of Rental Fees in respect of maintenance for the relevant year, then the Concessionaire will not be liable for a such excess.

Commencing six months prior to the expiration of the tenth year of the Revenue Period, the Government of _____(State) and the Concessionaire shall negotiate in good faith the adjustments to Rental Fees for Availability for the remainder of the Revenue Period, and shall complete such determination not later than three months prior to such expiration. All terms concerning payments of Earned Credits and liquidated damages in this Article 21.2 shall from time to time automatically adjust to match similar terms found in the Maintenance Agreement.

(b) The Government of _____(State) shall pay, prior to the Payout Date referred to below, to or on the order of the Concessionaire on or before thirty (30) days after the end of each year, as additional Rental Fees, an amount equal to the difference, stated as a positive number, between (x) the total revenue obtained from passenger fares for _____ during such year plus payments made by the Concessionaire in respect of Development Rights and (y) the sum of the Rental Fees payable during such year pursuant to Clauses (A), (D), (E) and (F) of Article 21.1 plus the costs incurred by the Government of _____(State) in operating _____ during such year, up to a maximum of _____ (with such maximum being adjusted on the first day of each year to take into account the difference between the _____(Country) consumer price index (**Wholesale Price Index**) on such first day and such index on the first day of the Revenue Period as the base.

All payments of Rental Fees set forth under Table 2 of Schedule I that become due and payable after the Payout Date shall be deemed paid and discharged. During each month after the Payout Date, the Concessionaire shall be entitled to receive from the Government of _____(State) an amount equal to one-half of the difference, stated as a positive number, between (x) the total revenue obtained from passenger fares for _____ during such year and (y) the sum of the Rental Fees payable during such year pursuant to clauses (A), (D), (E) and (F) of Article 21.2 plus the costs incurred by the Government of _____(State) in operating _____ up to a maximum of _____ (with such maximum being subject to adjustments on the first day of each year, pursuant to the _____(Country) consumer price index (**Wholesale Price Index**) and using the first day of the Revenue Period as the base). The "Payout Date" shall be the date on which the aggregate of the payments to the Concessionaire of Rental Fees set forth in Table 2 of Schedule I plus all payments to the Concessionaire of additional Rental Fees pursuant to this Clause (b) shall have provided the Concessionaire with its Net Economic Return.

The Government of _____(State) agrees that it shall at all times set passenger fares on _____ such that the average fare paid by such passenger shall be at least fifteen (15) Rupees per ride or, subject to agreement between the Government of _____(State) and the Concessionaire not later than six months prior to the Completion Date, agree on a mechanism to maximize fare box revenues.

21.3 Adjustments of Rental Fees Based on Change of Law and System Redesign

(a) Change in Law

Except where Article 10.2 applies, if by reason of any Change in Law promulgated by any Governmental Authority, the Concessionaire's interest and/or income in _____ is reduced, prejudiced or otherwise adversely affected (including by reason of any restriction on the ability to remit funds in United States Dollars outside of India), the Rental Fee set forth in Table 2 of Schedule I to this Agreement shall be adjusted to preserve the Concessionaire's Net Economic Return.

(b) Redesign

If, in the Concessionaire's determination, it is necessary to change the Specifications to accommodate any construction which other Governmental Authorities or any of their contractors or subcontractors make undertake at or near the Project Site from time to time, or if the Government of _____(State) requests reasonable and justifiable technical changes in _____, the Parties shall agree on the costs in the Specifications and the Work Schedule. Project Cost shall be

appropriately changed and the Rental Fees set forth in Table 2 of Schedule I to this Agreement shall be adjusted to preserve the Concessionaire's Net Economic Return.

21.4 Taxes; Exemption

(a) The Rental Fees do not include:

- (i) Withholding Taxes;
- (ii) VAT imposed by a Governmental Authority;
- (iii) Taxes imposed by Governmental Authorities on the LRTS (including gross receipts and other business and real estate Taxes on the areas and improvements thereon used for the Depot and the Stations as such;
- (iv) Documentary stamp duties on any Letter of Credit, on this Agreement and on any of the transactions contemplated hereby; and
- (v) Taxes on imports of capital equipment, machinery, spare parts and materials to be used exclusively in the construction or operation of the LRTS.

All such taxes are collectively the "Government of _____(State)-Responsible Levies".

(b) The Government of _____(State) shall use its best efforts to ensure that no Government of _____(State)-Responsible Levies are imposed on:

- (i) the Concessionaire or any Principal Party or any sub-contractor thereof or any Lender, or
- (ii) any sub-contractor of a sub-contractor of a Principal Party in connection with the provision of, or preparation for the provision of, maintenance services for _____ of any payments made in connection with such maintenance services.

(c) If any Government of _____(State)-Responsible Levies, other than those referred to in clause (i) regarding VAT above are imposed, then the Government of _____(State) shall reimburse the relevant Person for such Government of _____(State)-Responsible Levies as follows:

- (i) if such Government of _____(State)-Responsible Levies are imposed on or before the Completion Date (including in respect of any period or event occurring prior to the Construction Period), the Government of _____(State) shall, within fifteen (15) days after receipt of evidence of payment thereof, reimburse such Person for the same; and
- (ii) if such Government of _____(State)-Responsible Levies are imposed after the Completion Date, the Government of _____(State) shall reimburse such Person for such levies through an immediate adjustment of the next monthly Rental Fee, unless otherwise agreed between the Concessionaire and the Government of _____(State). If any Government of _____(State)-Responsible Levies referred to in clause (b) above are imposed, then the Government of _____(State) shall reimburse the Concessionaire or the relevant Person for the same (including any interest and penalties thereon) in a manner to be agreed upon by the Parties.

(d) The Government of _____(State) shall reimburse the Concessionaire for payments of its corporate income taxes on the profits arising from its rail operations. The Concessionaire may, at its option, either:

- (i) provide to the Government of _____(State) the appropriate payment forms or tax returns required to be filed with any payment (whether annually, quarterly or for any other period) of such taxes, together with a "Request for Corporate Income Tax Payment" or any successor form. In that case, the Government of _____(State) will timely and duly file such payment forms or tax returns with the appropriate office of the appropriate taxing authority, timely and duly pay all amounts of tax shown thereon prior to the date on which interest or penalty would arise or accrue, and within fifteen (15) days after such filing and payment have occurred, the Government of _____(State) will provide the Concessionaire with a copy of such forms and returns, duly stamped as "received" by such taxing authority, together with proof of payment of such amounts of tax, or
- (ii) make any payment of such income taxes. In that case, the Concessionaire will provide to the Government of _____(State) a copy of the appropriate payment forms or tax returns, duly stamped as "received" by the appropriate taxing authority, proof of payment of the amount of tax shown thereon and a "Request for Reimbursement of Corporate Income Tax Paid" or any successor form. The Government of _____(State) will accept the amount of tax shown on such payment forms or tax returns as conclusive. Also, the Government of _____(State) shall reimburse the same to the Concessionaire within fifteen (15) days after receipt of the request for reimbursement referred to above.

The Concessionaire shall concurrently provide the Government of _____(State) with a certificate from its external auditors confirming that the amount of corporate income tax covered by clause (i) or clause (ii) above corresponds to the Concessionaire's profit from its rail operations. Any amounts paid by the Concessionaire in respect of such taxes shall bear interest at the rate of fifteen percent (15%) per annum from the date of payment to the date of reimbursement by the Government of _____(State), which shall be payable at the same time as such reimbursement.

For the purposes of this Clause (d), "corporate income taxes on the profits arising from its rail operations" includes deficiency taxes, interest and penalties assessed in respect thereof, except to the extent caused by the gross negligence, fraud or willful misconduct of the Concessionaire. Except as set forth above, the Government of _____(State) shall have no right to examine any form or return relating to Concessionaire's income taxes nor to examine Concessionaire's books nor to question any item shown on any such form or return.

(e) Except as set forth in the preceding paragraphs of this Article 21.4, neither the Concessionaire nor any Principal Party or subcontractor thereof shall be entitled to reimbursement for the payment of corporate income tax on its profit, nor for such Taxes as may be assessed and levied in respect of the exercise of the Development Rights, all of which shall be for the account of the Concessionaire or such Principal Party or subcontractor thereof.

21.5 Appointment and Duties of Inspection Firm and Availability Measurement Board (Project Specific)

(a) The Parties will appoint by mutual consent an independent and internationally accredited accounting and auditing firm (the "Inspection Firm") to determine, to the extent the Parties cannot agree thereupon:

- (i) the adjustments and reimbursements referred to in Articles 10.2, 21.3, 24.5, 24.6 and 21.2; and
- (ii) the amounts of payments due to the Government of _____(State) pursuant to Article 21.3.

The Concessionaire will make available to the Inspection Firm (subject to the execution by the Inspection Firm of a confidentiality agreement that shall prohibit disclosure of Concessionaire's assumptions to any third party, including the Government of _____(State)) the methodology and assumptions referred to in the definition of Net Economic Return and any changes made hereunder. The determination of such calculations by the Inspection Firm shall be final.

The Parties hereto agree that the sole responsibility of the Inspection Firm hereunder shall be to make such determinations. Matters of interpretation of this Agreement shall not be within the scope of the Inspection Firm's responsibilities. The Concessionaire and the Government of _____(State) shall keep and at all reasonable times make available to the Inspection Firm books of accounts pertaining to the adjustments of Rental Fees and shall report such expenses and costs, and submit such receipts, vouchers and other documents, as are necessary to enable the Inspection Firm to perform its tasks. The fees of the Inspection Firm shall be borne equally by the Parties. Subject to Article 21.3, the Concessionaire shall advance to the Government of _____(State) _____Rupees that Government's share of any such fees payable prior to the Completion Date. The Concessionaire shall then recover such advances through an adjustment to the Rental Fees pursuant to Article 21.

(b) The Availability Measurement Board shall:

- (i) conduct daily inspection and monitoring of the LRVs and _____ in accordance with Schedule G to this Agreement to ascertain the number of LRVs made Available, and make the calculations necessary to determine the Availability Adjustments, all in accordance with the provisions of that Schedule, and
- (ii) keep, and at all times make available to the Parties, books of accounts which shall, among other things, contain an accurate record of all information necessary or relevant for purposes of the foregoing. The Availability Measurement Board shall issue to the Parties as of the end of each day a Daily Certificate.

21.6 Letters of Credit

(a) The Government of _____(State) shall at all times cause the Letters of Credit to be in effect in the amounts required hereunder. In the event of a drawing upon a Letter of Credit, such Letter of Credit shall be reinstated or replaced within twenty-five (25) days after such drawing. The Government of _____(State) shall replace any Letter of Credit if the issuer thereof becomes insolvent or experiences other financial difficulties. Notwithstanding the foregoing, with the consent of the Intercreditor Agent, the Government of _____(State) may defer having the Letters of Credit in effect until the Completion Date. Each Letter of Credit shall be subject to the provisions of the Uniform Customs and Practice for Documentary Credits in effect when such Letter of Credit was issued. The inability of payments of Rental Fees to be made through and under any Letter of Credit for any reason whatsoever shall not relieve the Government of _____(State) from any of its payment obligations under this Agreement. Those obligations shall be absolute, irrevocable and unconditional.

(b) The Concessionaire shall, subject to Article 21.3, advance to the Government of _____(State) in Indian Rupees or, at the discretion of the Government of _____(State), United States Dollars, the cost incurred prior to the Completion Date of opening and maintaining the Letters of Credit. The Concessionaire shall recover such advances, if any, through an adjustment to the Rental Fees pursuant to Article 21.3. Similar costs advanced by the Concessionaire to the Government of _____(State) after the Completion Date, which are not contemplated, shall be recovered by the Concessionaire through an immediate adjustment of the next monthly Rental Fee.

Article 22. DEVELOPMENT RIGHTS

22.1 Details of Development Rights

(a) The Government of _____(State) hereby confirms and awards to the Concessionaire the rights to:

- (i) develop commercial premises in the Depot and the air space above the Stations, which shall be allowed to such height as is legally and technically feasible;
- (ii) lease or sub-lease interests or assign interests in the Depot and such air space; and
- (iii) obtain any advertising income from the Depot and such air space and _____ (but in the case of _____ for the Revenue Period only).

Collectively, the above shall be called the "Development Rights".

(b) The Development Rights shall run for the Development Rights Period and shall survive the Revenue Period. Upon the expiration of the Development Rights Period and not before, the Development Rights shall revert and thereafter pertain and belong to the Government of _____(State). Accordingly, all rights, titles, development, income, benefits and obligations over all development, lease, sub-lease, advertising and other agreements or contracts entered into in respect of the Development Rights; and all buildings, fixed improvements and facilities introduced by the Concessionaire, its successors, sub-lessees or assigns, pursuant to the Development Rights, shall automatically be transferred and belong to and vest in the Government of _____(State). This vesting shall be free of any lien or encumbrances created by the Concessionaire, its successors, sub-lessees and assigns, or existing as a result of the Concessionaire's actions, without any further consideration.

(c) The Concessionaire shall be deemed to be in compliance with its obligations under preceding sub-Article (b) regarding liens and encumbrances if such successor, sub-lessee or assignee assumes all or an appropriate part of such obligations as set by the Government of _____(State). Such assumption may be affected by way of annotation on a transfer certificate of title.

22.2 Assignment of Rights

During the Development Rights Period, the Concessionaire shall be entitled to assign all or any of its rights, titles and interests in the Development Rights to bona fide real estate developers. In this connection, the Concessionaire may enter into such development, lease, sub-lease or other agreements or contracts relating to the Depot and the air space above the Stations (the space not needed for all or any portion of the operation of the LRTS) for all or any portion of the Development Rights Period. Any such assignment by the Concessionaire shall include an assumption by the assignee of all or an appropriate part of the Concessionaire's obligations with respect to liens and encumbrances found in Article 17.1.

22.3 Development Rights Payments

In consideration of the Development Rights granted to the Concessionaire pursuant to Articles 22.1 and 22.2, the Concessionaire shall make payments to the Government of _____(State) in accordance with the Development Rights Payment Schedule set out in Schedule J of this Agreement, provided, however, that:

(a) all payments under this Article 22.3 shall be computed on the basis of the areas commercially developable (for example, setback and similar requirements of the Government and physical obstructions reduce such areas) at the Depot and in the air space above the Stations, but not including the Stations for which the Concessionaire has forfeited its rights pursuant to sub-Article (b) below, and such payments shall commence upon the Completion Deadline;

- (b) the Concessionaire has the option to commence the development of the air space above the Stations not later than the Completion Date. If by that date such commencement of development has not occurred, then the Concessionaire shall automatically forfeit its Development Rights to such air space (other than a Station with a concourse level below ground) and such Development Rights shall revert to the Government of _____(State). The Government may then award those rights to third parties or undertake the development itself, if it so desires;
- (c) notwithstanding the provisions of preceding sub-Article (b), the Concessionaire shall construct at each Station the foundations for the commercial development of at least one level above the concourse level in the mass transit system, at its own cost;
- (d) considering that the payment for the Development Rights is primarily intended to reduce the income deficiency of the Government of _____(State) in operating the LTRS, in the event that any payment becomes due to the Government of _____(State) under this Article 22.3 prior to the actual operation of the LTRS, the Concessionaire may defer such payment. In case of such deferral, such payments shall be made in equal monthly payments during the first year of the Revenue Period, together with interest from the respective dates such payments become due to the respective dates such payments are made, at a rate of 15% per annum compounded annually (based on a 360-day year); and
- (e) each yearly payment reflected in the Development Rights Payment Schedule shall be paid by the Concessionaire in twelve (12) monthly installments during such year, with each payment to be made by the seventh day of each month, with respect to each of the Depot and the air space above the Stations. If payments for Development Rights commence within three years after the start of the Development Rights Period, then the payment shown for the forty-seventh year (and, if necessary, the forty-sixth year and then the forty-fifth year, and so on) in the Development Rights Payment Schedule shall be adjusted downwards so that the net present value of all payments, discounted annually at fifteen percent (15%) per annum, equals the net present value, so discounted, of all payments as if the payments had commenced exactly three years after the start of the Development Rights Period.
- (f) in the event that:
- (i) the Letter of Credit in favour of the Concessionaire is not in effect or is not replenished in accordance with the terms of this Agreement; and
 - (ii) the Government of _____(State) fails to make any payment of Rental Fees due under Table 2 of Schedule J of this Agreement, then the Concessionaire may offset such amount due from the Government of _____(State) against the next payment or payments due for Development Rights.

22.4 Linkage

- (a) The Development Rights and _____ shall not be separate, but shall be linked in the following manner. Should the Government of _____(State) acquire _____ pursuant to Article 10.6, then the payments in respect of Development Rights thereafter shall become equal to 1.5 times the amounts set forth in Schedule J. Provided, however, that from and after the date of the last scheduled payment of interest or principal under the Financing Documents (without taking into account any amendment thereof), the payments in respect of Development Rights shall revert to the amounts set forth in Schedule J.
- (b) Should the Government of _____(State) acquire _____ pursuant to Article 10.7 or Article 24.5 or pursuant to any right to acquire afforded by Applicable Law, then the payments in respect of Development Rights thereafter shall become equal to one-half of the amounts set forth in Schedule J. Provided, however, that from and after the date of the last scheduled payment of

interest or principal under the Financing Documents, the payments in respect of Development Rights shall revert to the amounts set forth in Schedule J.

(c) Notwithstanding the foregoing in sub-Articles (a) or (b), no failure of the Concessionaire to complete _____ shall affect any of its rights in this Article 17.

Article 23. UTILITIES

The Government of _____(State) shall be responsible for the supply of and payment for uninterrupted power and water from _____, including power used in Technical Maintenance, during the Revenue Period, except that the Concessionaire shall be responsible for any failure of any _____ electric sub-station. Notwithstanding Article 21.2 or Schedule I, no reduction in Rental Fees shall occur if LRVs are not made available to the Government of _____(State) as a result of uninterrupted power not being supplied to the _____ electric sub-stations.

Article 24. FORCE MAJEURE

24.1 General Rule

The Concessionaire or the Government of _____ (State), as the case may be, will be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by a Force Majeure Event.

24.2 Force Majeure Events

As used in this Agreement, a Force Majeure Event means any event or circumstance or combination of events or circumstances, being Non-Political Events, Indirect Political Events and/or Political Events, as defined in Articles 24.3, 24.4 and 24.5, respectively, which prevent the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event:

- (i) is beyond the reasonable control of the Affected Party;
- (ii) the Affected Party could not have prevented or reasonably overcome it with the exercise of due diligence and reasonable skill and care;
- (iii) does not result from the negligence of such Party or the failure of such Party to perform its obligations hereunder; and
- (iv) is of an incapacitating nature and prevents or causes a delay or impediment in performance.

24.3 Non-Political Event

For the purposes of this Article 24, "Non-Political Event" shall mean one or more of the following acts or events:

- (i) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquakes, cyclones, floods, volcanic eruptions, fire or other extreme atmospheric conditions;

- (ii) radioactive contamination or ionizing radiation;
- (iii) strikes, lockouts, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire;
- (iv) any judgement or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than the failure of the Concessionaire to comply with any applicable law or applicable permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or the exercise of any of its rights under this Agreement by the Government of _____ (State); or
- (v) any event or circumstances of a nature analogous to any of the foregoing.

24.4 Indirect Political Event

For purposes of this Article 24, "Indirect Political Event" shall mean one or more of the following acts or events:

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

24.5 Political Event

For purposes of this Article 24, "Political Event" shall mean one or more of the following acts or events by or on account of the Government of India, the Government of _____ (State) or any other Government Agency:

- (i) Change in Law, other than any Tax Laws, for which no relief is provided under Article 27 of this Agreement;
- (ii) Expropriation or compulsory acquisition by any Government Agency of any material assets or rights of the Concessionaire or of Contractors, for no fault of the Concessionaire or such Contractors;
- (iii) Any unlawful or unauthorized revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement (other than a consent the obtaining of which is condition precedent), provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to the grant, maintenance or renewal of such consents or permits, applied on a non-discriminatory basis.

24.6 Effect of Force Majeure Event

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

- (i) There shall be no Termination of this Agreement, except as provided in Article 15.8 below;
- (ii) Where the Force Majeure Event occurs before the Commercial Operations Date, the dates set forth in the Project Completion Schedule and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- (iii) Where a Force Majeure Event occurs after the Commercial Operations Date, the Concessionaire shall continue to make all reasonable efforts to operate the Project and/or to collect the Fee, but if it is unable or prevented from doing so, the Concession Period shall, having due regard to the extent of the impact thereof as determined by the Representative of the Government of _____(State), be extended by the period for which collection of Fee remains affected on account thereof; and
- (iv) Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of Article 24.7 below.

24.7 Allocations of Costs During Subsistence of Force Majeure

- (a) Subject to the provisions of Article 24.6 above, upon occurrence of a Force Majeure Event, the costs arising out of such event shall be allocated as follows:
 - (i) When the Force Majeure Event is a Non-Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such Force Majeure Event;
 - (ii) Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the "Force Majeure Cost") shall be borne by the Concessionaire to the extent of the Insurance Cover, and to the extent Force Majeure Costs, as duly certified by the Statutory Auditors, exceed the Insurance Cover, one-half of the same shall be reimbursed by the Government of _____(State) to the Concessionaire within ninety (90) days from the date of receipt of the Concessionaire's claim therefore;
 - (iii) Where the Force Majeure Event is a Political Event, the Force Majeure Costs, to the extent actually incurred and certified by the Statutory Auditors of Concessionaire, shall be reimbursed by the Government of _____(State) to the Concessionaire within ninety (90) days from the date of receipt of Concessionaire's claim therefore; and
 - (iv) The Government of _____(State) may, at its option, reimburse the Force Majeure Costs to the Concessionaire in cash or compensate the Concessionaire for such costs by appropriate extension of the Concession Period, which extension shall also be given effect within the period of ninety (90) days specified in preceding sub-articles (b) or (c), as the case may be.
- (b) For avoidance of doubt, Force Majeure Costs shall not include loss of Fee revenues or any debt repayment obligations but shall include interest payments on such debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event.

24.8 Termination

If a Force Majeure Event continues, or in the reasonable judgement of the Parties is likely to continue beyond a period of 120 days, then the Parties may mutually decide to terminate this Agreement or to continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an

agreement in this regard, the Affected Party shall, after the expiry of the said period of 120 days, be entitled to terminate this Agreement by issuing a Termination Notice.

24.9 Termination Payment for Force Majeure Events

Upon Termination of this Agreement pursuant to Article 24.8 above, Termination Payment to the Concessionaire shall be made in accordance with the following:

(a) If the Termination is on account of a Non-Political Event, the Concessionaire shall be entitled to receive from the Government of _____(State) by way of Termination Payment an amount equal to ____ percent (xx%) of the Debt Due less pending insurance claims, if any. However, in the event such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from the Government of _____(State) a further sum equal to ____ percent (xx%) of the amount of such claims not admitted;

(b) If the Termination is on account of an Indirect Political Event, the Concessionaire shall be entitled to receive from the Government of _____(State) by way of Termination Payment an amount equal to:

- (i) the total Debt Due, less pending insurance claims, if any. Provided, however, that if any of such insurance claims are not admitted and paid, the Concessionaire shall be entitled to receive from the Government of _____(State) further sum equal to ____ percent (xx%) of such claims not admitted, plus
- (ii) ____ Percent (xx%) of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during three (3) years beginning from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in Wholesale Price Index (WPI) during such year, and the adjusted amount so arrived at shall be reduced every year by ____ percent (xx%) per annum.

(c) If the Termination of this Agreement is on account of a Political Event, the Concessionaire shall be entitled to receive from the Government of _____(State) by way of Termination Payment an amount equal to:

- (i) the total Debt Due, plus
- (ii) ____ Percent (xx%) of the Equity subscribed in cash and actually spent on the Project, if such Termination occurs at any time during three (3) years beginning from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in the Wholesale Price Index (WPI) during such year, and the adjusted amount so arrived at shall be reduced by ____ percent (xx%) per annum.

24.10 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 set forth in Article 30. However, 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.

24.11 Liability For Other Losses and Damages

Save and except as expressly provided in this Article 24, neither Party to this Agreement shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense,

claim, demands and proceedings relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise of any right pursuant to this Article 24.

24.12 Duty To Report

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

- (a) The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within seven (7) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable Material Effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- (b) Any notice pursuant to this Article 24.12 shall include full particulars of:
 - (i) the nature and extent of each Force Majeure Event which is the subject of any claim of relief under this Article 24 with evidence in support thereof;
 - (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
 - (iii) the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and
 - (iv) any other information relevant to the Affected Party's claim.
- (c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Article 24.12 and such other information as the other Party may reasonably request the Affected Party to provide.

24.13 Excuse From Performance Of Obligations

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

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

Article 25. Events of Default

25.1 Event of Default

"Event of Default" means the Concessionaire Event of Default or the Government of _____ (State) Event of Default, or both as the context may admit or require.

25.2 Concessionaire Event of Default

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

- (a) The Concessionaire fails to commence the Construction Works within thirty (30) days from the Commencement Date;
- (b) The Concessionaire fails to achieve Commercial Operations Date (COD) within 180 days from the Scheduled Project Completion Date;
- (c) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (d) The Concessionaire creates any Encumbrance on the Project Site/Project Facility in favour of any Person save and except as expressly permitted under Article 32.1 (Assignment and Charges);
- (e) The aggregate shareholding of the members of the Consortium/Sponsors falls below the minimum prescribed under Article 13.4;
- (f) The transfer, pursuant to law, of either:
 - (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements; or
 - (ii) all or a material part of the Concessionaire,

except where such transfer, in the reasonable opinion of the Government of _____ (State), does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform its material obligations under the Project Agreements.

(g) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire.

(h) Any petition for the winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and also provided that:

- (i) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a creditworthiness at least as good as that of the Concessionaire as at the Commencement Date; and
- (iii) each of the Project Agreements remains in full force and effect.

(i) A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents, or under any of them as are applicable.

(j) The Concessionaire suspends or abandons the operations of the Project without the prior consent of the Government of _____(State), provided that the Concessionaire shall be deemed not to have suspended or abandoned operation if such suspension or abandonment was:

- (i) as a result of a Force Majeure Event and is only for the period such Force Majeure is continuing; or
- (ii) is on account of a breach of its obligations under this Agreement by the Government of _____(State).

(k) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.

(l) The Concessionaire suffers an attachment being levied on any of its assets causing a Material Adverse Effect on the Project, and such attachment continues for a period exceeding forty-five (45) days.

(m) The Concessionaire has delayed any payment that has fallen due under this Agreement, if such delay exceeds ninety (90) days.

(n) The Concessionaire is otherwise in Material Breach of this Agreement.

25.3 Government of _____(State) Event of Default

Any of the following events shall constitute an event of default by the Government of _____(State) ("Government of _____(State) Event of Default"), unless caused by a Concessionaire Event of Default or a Force Majeure Event:

(a) Government of _____(State) is in breach of this Agreement and has failed to cure such breach within thirty (30) days of receipt of notice thereof issued by the Concessionaire; (NHAI- 60 days)

(b) Government of _____(State) has repudiated this Agreement or otherwise evidences an intention not to be bound by this Agreement;

(c) Government of _____(State) has failed to execute the Common/Substitution Agreement or the State Support Agreement in accordance with Article 14 or having executed the same is in breach of any of its obligations thereunder and such breach has not been cured within thirty (30) days from the date of written notice thereof given by the Concessionaire.

(d) Government of _____(State) or any Governmental Agency has by an act of commission or omission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Concessionaire and failed to cure the same within sixty (60) days (NHAI) of notice thereof by the Concessionaire;

(e) Government of _____(State) has delayed payment of any amount that has fallen due in terms of this Agreement beyond ninety (90) days;

(f) Any representation made or warranty given by the Government of _____(State) under this Agreement has been found to be false or misleading.

Article 26. Termination Due To Event of Default**26.1 Termination For Concessionaire Event of Default**

(a) Without prejudice to any other right or remedy which the Government of _____(State) may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the Government of _____(State) shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire, provided that before issuing the Termination Notice, the Government of _____(State) shall, by a notice in writing, inform the Concessionaire of its intention to issue the Termination Notice (the "Preliminary Notice"). In case the underlying breach or default is not cured with a period of sixty (60) days from the date of the Preliminary Notice (Cure Period), the Government of _____(State) shall be entitled to terminate this Agreement by issuing the Termination Notice. Provided further, that:

- (i) if the default is not cured within thirty (30) days of the Preliminary Notice, the Government of _____(State) shall be entitled to encash the Performance Security with a notice to the Concessionaire (Encashment Notice);
- (ii) if the default is not cured within thirty (30) days of the Encashment Notice and a Fresh Performance Security is not furnished within the same period in accordance with Article 12.2, the Government of _____(State) shall, subject to the provisions of the Substitution Agreement, be entitled to issue the Termination Notice.

(b) The following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement:

- (i) The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages caused by its breach or default;
- (ii) The Cure Period shall not in any way be extended by any period of suspension under this Agreement;
- (iii) If the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Government of _____(State) or the Government Agency concerned hereunder, then the applicable Cure Period shall be extended by the period taken by the Government of _____(State) or the Government Agency concerned to accord the required approval.

(c) Upon Termination by the Government of _____(State) on account of the occurrence of a Concessionaire Event of Default during the Operations Period, the Government of _____(State) shall pay to the Concessionaire by way of Termination Payment an amount equal to ___ percent (xx%) of the Debt Due less pending insurance claims, if any. However, in the event that such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from the Government of _____(State) a further sum equal to ___ percent (xx%) of the amount of such claims not admitted.

26.2 Termination for Government of _____(State) Events of Default

(a) The Concessionaire may, upon the occurrence and continuation of any Government of _____(State) Event of Default terminate this Agreement by issuing a Termination Notice to the Government of _____(State).

(b) Upon Termination of this Agreement by the Concessionaire due to a Government of _____(State) Event of Default, the Concessionaire shall be entitled to receive from the Government of _____(State), by way of Termination Payment, a sum equal to:

- (i) the total Debt Due, plus
- (ii) _____ Percent (xx%) of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during three (3) years beginning from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in Wholesale Price Index (WPI) during such year and the adjusted amount so arrived at shall be reduced by _____ percent (xx%) per annum.

26.3 Rights of Government of _____(State) on Termination

Upon Termination of this Agreement for any reason whatsoever, the Government of _____(State) shall have the power and authority to:

- (i) take possession and control of Project Assets forthwith;
- (ii) prohibit the Concessionaire, and any person claiming through or under the Concessionaire, from entering upon the Project Assets or dealing with them or any part of them;
- (iii) step in and succeed upon election by the Government of _____(State) without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Government of _____(State) may in its discretion deem appropriate, with effect from the date of communication of such election to the other Party to the relative Project Agreements. However, any sums claimed by such other Party as being due and owing for work and services performed or accruing on account of any act, omission or event prior to such date of election shall and shall always constitute debt between the Concessionaire and such other Party and the Government of _____(State) shall in no way or manner be liable or responsible for such sums. The Concessionaire shall ensure that the Project Agreements contain provisions necessary to give effect to the provisions of this Article 26.3.

26.4 Termination Payments

The Termination Payment pursuant to Article 25 or Article 26, as the case may be, shall be payable at the Concessionaire by the Government of _____(State) within thirty (30) days of demand being made by the Concessionaire, with the necessary particulars duly certified by the Statutory Auditors. If the Government of _____(State) fails to pay the Termination Payment in full within the said period of sixty (60) days, the amount remaining unpaid shall be paid along with interest at the Prime Lending Rate set by the State Bank of India (SBI PLR) plus two percent (2%), from the Termination Date till payment.

26.5 Mode of Payment

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

26.6 Termination Without Prejudice to Other Rights of Either Party

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

Article 27. Change in Law**27.1 Definition of Change in Law**

(a) "Change in Law" means the occurrence or coming into force of any of the following after the Proposal Due Date:

- (i) the enactment of a new Indian law;
- (ii) the repeal, modification or re-enactment of any existing Indian law;
- (iii) a change in the interpretation or application of any Indian law by a court of record;
- (iv) a directive or notification by any governmental agency which has the force of law or statutory effect.

(b) "Change in Law" shall not include:

- (i) the coming into effect, after the Proposal Due Date, of any provision of a statute which is already in place as of the Proposal Due Date;
- (ii) any new Law or any change in the existing Law under the active consideration of or in the contemplation of any Government as of the Proposal Due Date, which is a matter of public knowledge.

27.2 Relief Under Change in Law

If, after the date of this Agreement, there is a change in the Law by which the Concessionaire suffers an increase in costs or reduction in net after tax return or other financial burden which is substantial (NHAI- exceeds Rs. 2-3 million recommended) in any Accounting Year, then the Concessionaire may, by written notice, request amendments to the terms of this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no Change in Law resulting in such cost increase, reduction in return or other financial burden. The Concessionaire shall not be entitled to any compensation whatsoever from the Government of _____ (State) as a result of Change in Law. However, the Government of _____ (State) may decide, after discussion with the Concessionaire, to amend the terms of this Agreement, including the extension of the Concession Period. (SS- time period??)

27.3 Changes in Tax Laws and Regulations

The Concessionaire is not entitled to any compensation for any increase in indirect tax and/or direct tax which it is liable to pay with regard to this Project.

Article 28. TRAINING AND TECHNICAL ASSISTANCE

The Concessionaire shall train the personnel of the Government of _____(State) in the operation, use, maintenance and repair of the rolling stock, sub-stations, electrical equipment, signaling and communications equipment supplied under this Agreement, as specified in Schedule Q to this Agreement.

Article 29. TRANSFER AFTER THE CONCESSION PERIOD

(Handover and Defect Liability Period)

29.1 Handing Over of the Project Assets

(a) Upon the expiry of the Concession at the end of the Concession Period, the Concessionaire shall hand over vacant and peaceful possession of the Project Assets, including the Project Site/Facility at no cost to the Government of _____(State).

(b) Twelve (12) months prior to the anticipated expiry of the Concession Period, the Government of _____(State), as represented by _____, and the Concessionaire will meet and agree on detailed procedures for the transfer of facilities. At the time of such meeting, the Concessionaire will submit a detailed list of the structures, equipment, and items to be transferred and the names of its representatives in charge of the transfer. The Government of _____(State) will inform the Concessionaire of the identity of its representatives in charge of the transfer.

(c) As part of the meeting mentioned in (b), there shall be a joint inspection by the Parties. Within fifteen (15) days of such inspection, the representative of the Government of _____(State) shall furnish to the Concessionaire a list of works, jobs, additions and alterations, if any, to be carried out to bring the Project to the prescribed level of service condition at least two (2) months prior to the date of expiry of the Concession Period. In case the Concessionaire fails to carry out the above works within the stipulated time period, the Government of _____(State) shall be at liberty to have these works executed by any other Person at the risk and cost of the Concessionaire. Any cost incurred by the Government of _____(State) in this regard shall be reimbursed by the Concessionaire to the Government of _____(State) within seven (7) days of receipt of demand. For this purpose, the Government of _____(State) shall, without prejudice to any other right or remedy available to it under this Agreement, have the right to appropriate the Performance Security and/or to set off any amounts due, if any, and payable by the Government of _____(State) to the Concessionaire to the extent required or available and to recover the deficit amount, if any, from the Concessionaire.

(d) _____, including all equipment and facilities, and all inventories transferred pursuant this Article shall be transferred on an "as is where is" basis. The Concessionaire shall subrogate or assign to the Government of _____(State) any and all rights and benefits with respect thereto which it is able to subrogate or assign on any unexpired warranties in respect of _____.

(e) During the six (6) month period prior to the anticipated transfer of the Facilities, the Concessionaire will provide such training services to the representatives and employees of the Government of _____(State) as may be reasonably necessary for the Government of _____(State) to operate and maintain the Facilities efficiently and safely following such transfer.

(f) Except as otherwise provided in this Agreement, there shall be no payment, charge or cost payable by the Government of _____(State) to the Concessionaire in respect of the transfer of the Concession, the Facilities, the Site and all other assets (excluding cash, bank balance and marketable securities) and rights of the Concessionaire as to the Government of _____(State) upon the expiration of the Concession Period except only taxes, stamp duty, registration or similar charges payable on the transfer of the assets (which taxes, duties or charges shall be borne by the Government of _____(State)). This sub-Article is without prejudice to

amounts due by the Government of _____(State) to the Concessionaire hereunder and accrued but unpaid on the date of such transfer.

(g) The Government of _____(State) shall be responsible for all costs and expenses (including legal fees and taxes) incurred in connection with the transfer and shall at its own cost obtain or effect all Governmental Approvals and other approvals and take such other action as may be necessary for transfer pursuant to this Article. It shall reimburse the Concessionaire on demand for all such costs and expenses so incurred by the Concessionaire for such transfer, if any.

29.2 Buy Out of Project Assets

(a) A purchase by the Government of _____(State) of Concessionaire's right, title and interest in _____ pursuant to Article 10.6 or Article 10.7 of this Agreement shall be accomplished by the Concessionaire's transferring to that Government (or to a third party designated by the Government of _____(State) either:

- (i) the outstanding share capital of the entity owning _____, or
- (ii) all right, title and interest of the Concessionaire in _____.

There shall be payment by the Government in cash of the Residual Value Buyout Price or the Equity Value Buyout Price, as the case may be.

(b) Provided, however, that no buy out of the Concessionaire's right, title and interest in _____ pursuant to Article 10.6 or Article 10.7 shall be effected in a manner that would cause or result in the termination of this Agreement or that would impair the collateral security granted to the Lenders or that would impair any obligation to pay any Rental Fees pursuant to Article 21.1, it being understood that such obligation would survive any such buyout) without the prior written consent of the Intercreditor Agent. It is understood that such shares and other assets may, at the time of such transfer, be subject to liens and encumbrances in favour of the Lenders but such transfer shall be made free and clear of any other lien or encumbrance created by the Concessionaire or existing as a result of the Concessionaire's actions.

Article 30. DISPUTE RESOLUTION

30.1 Applicable Law

This Agreement shall be construed and interpreted in accordance with the laws in force in the State of [...], as they may be amended from time to time, and any dispute which arises out of, or in relation to, this Agreement, or the breach, termination or invalidity thereof shall be equally so governed.

30.2 Conciliation

(a) If a dispute arises out of or in relation to this Agreement, or the breach, termination or invalidity thereof, the parties agree to seek an amicable settlement of that dispute by conciliation under the Rules of Conciliation of the Indian Council of Arbitration in force at the date of the signing of this contract. Accordingly, the parties hereby accord their written consent to conciliate, and agree that such consent constitutes the acceptance of the invitation to conciliate in terms of Rule 3 of the said rules.

(b) A single conciliator shall be appointed by the Indian Council of Arbitration within 30 days from the date a party has requested the Indian Council of Arbitration to effect such an appointment. The Indian Council of Arbitration will provide administrative services in accordance with its Rules of Conciliation.

30.3 Arbitration

(a) If the dispute was not settled by conciliation under section 2, the dispute shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties.

(b) Pending the submission of and/or decision on a dispute and until the arbitral award is made, the parties shall continue to perform their respective obligations under this agreement, without prejudice to a final adjustment in accordance with such award.

(c) The party challenging howsoever an award made under subsection (a), including making an application to set aside the award pursuant to section 34 of the Arbitration and Conciliation Act, 1996 (Central Act No. 26 of 1996), shall in addition to all of his own costs and fees reimburse on a monthly basis all the direct costs and fees incurred by the party defending the award, including all direct costs and fees associated with any appeal thereof. It is important to remember that although the inclusion of such a provision may be desirable to avoid routine challenge of arbitral awards, under Indian law the court has the discretion to award the costs of such suits. Furthermore, this provision may not be enforceable, if it is construed by the court as defeating the remedy and therefore, struck down as being unreasonable and onerous, particularly in the case of foreign arbitration.

Article 31. Representations and Warranties

31.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Government of _____ (State) that:

- (i) it is duly organized, validly existing and in good standing under the laws of India;
- (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iv) it has the financial standing and capacity to undertake the Project;
- (v) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms thereof;
- (vi) it is subject to the civil and commercial laws of India in respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (vii) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (viii) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which

may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually may result in any Material Adverse Effect;

- (ix) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any materially adverse effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (x) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- (xi) each Consortium Member was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and request the Government of _____ (State) to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (xii) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Government of _____ (State) or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (xiii) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into of this Agreement or for influencing or attempting to influence any officer or employee of the Government of _____ (State) in connection therewith.

31.2 Representations and Warranties of the Government of _____ (State)

The Government of _____ (State) represents and warrants to the Concessionaire that:

- (i) the Government of _____ (State) has full power and authority to grant the Concession;
- (ii) the Government of _____ (State) has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- (iii) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (iv) there are no suits or other legal proceedings pending or threatened against in respect of the Project Site or the Project;
- (v) the Government of _____ (State) is subject to the civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement.

31.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who made such representation or gave such warranty shall promptly notify the other Party of the same.

Article 32. MISCELLANEOUS

32.1 Assignment and Charges

- (a) Subject to sub-articles (b) and (c) herein below, this Agreement shall not be assigned by the Concessionaire save and except with prior written consent of the other Party.
- (b) Except as provided in sub-article (c) herein below, the Concessionaire shall not create or permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement, except with the prior written consent of the Government of _____ (State), which consent the Government of _____ (State) shall not withhold unreasonably).
- (c) Restraint set forth in sub-articles (a) and (b) above shall not apply to:
 - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
 - (ii) mortgages/pledges/hypothecation of goods/assets other than the Project Site, as security for indebtedness, in favour of the Lenders and working capital provides for the Project;
 - (iii) assignment of Concessionaire's rights, title and interest under this Agreement to or in favour of the Lenders pursuant to and in accordance with the Substitution Agreement as security for their financial assistance.
- (d) Upon occurrence of the Concessionaire Event of Default, the Lenders shall have the right of substitution as provided in the Substitution Agreement.

As an alternative to the Substitution Agreement referenced in (d) above, the following clause may be considered.

For the sole purpose of financing the implementation of the project and the fulfillment of his obligations under the Concession Agreement, the Operator may assign, by way of security, the benefit of, or his interest in, this Agreement, according to the requirements of any of the financing documents, and create other forms of security over any property or rights forming part of his interests in the project in favor of any lender, provided that the payment of rents and royalties to the Authority shall have priority over any such security and that before any such security takes effect, the holder of the security must have entered into a 'Lender's Direct Agreement' with the Authority.

32.2 Interest and Right of Set Off

- (a) Any sum which becomes payable under any of the provisions of this Agreement by any Party shall, if the same be not paid to the Party entitled to receive the same within the time allowed for such payment, be deemed to be a debt owed by the Party responsible for payment to the Party entitled to receive the same. Until payment is made, such sum shall carry an interest of the Prime Lending Rate of the State Bank of India (SBI PLR) plus three percent (3%) from the due date for payment thereof until the payment is made or is otherwise realized by the Party entitled to the same.

Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

(b) However, the stipulation regarding interest for delayed payments contained in this sub-Article 32.2 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

32.3 General Liability and Indemnity

(a) The Concessionaire shall indemnify, defend and hold harmless the Government of _____ (State) against any and all proceedings, actions and third party claims arising out of a breach by Concessionaire of any of its obligations under this Agreement, except to the extent that any such claim has arisen due to breach by the Government of _____ (State) of any of its obligations under this Agreement or a Force Majeure Event which is a Political Event.

(b) The Government of _____ (State) shall indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of breach by the Government of _____ (State) under this Agreement, except to the extent that any such claim has arisen due to breach by the Concessionaire of any of its obligations under this Agreement.

(c) Notwithstanding that the Concessionaire will own the LRTS during the Revenue and Construction Periods, the Government of _____ (State), and not the Concessionaire, shall have all the obligations and liabilities of a common carrier.

32.4 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India. The Courts at _____ (State Capital) shall have jurisdiction over all matters arising out of or relating to this Agreement.

32.5 Waiver

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

(b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or 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.

32.6 Survival

Termination of this Agreement:

(a) shall not relieve the Concessionaire or the Government of _____ (State) of any obligations hereunder which expressly or by implication survives Termination hereof; and

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

32.7 Amendments

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

32.8 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, then the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. However, failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

32.9 No Partnership

Nothing contained in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association or other co-operative entity between any of the Parties or constitute any party the agent of any other party for any purpose. No Party shall have any authority to bind the other in any manner whatsoever.

32.10 Language

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

32.11 Exclusion of Implied Warranties

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

32.12 Disclosure

The Concessionaire shall make available for inspection by the public during normal business hours on all working days copies of all records and reports to the Government of _____ (State), as and when required.

32.13 Redress of Public Grievances

(a) The Concessionaire shall maintain a public relations office adjacent to each Toll Plaza/Project Site and keep it open to public access at all times. At each such offices, the Concessionaire shall maintain a register/suggestion box (the "Complaints Register") for recording of complaints and suggestions by any person (the "Complainant") at any time of the day.

(b) The Complaints Register shall be securely bound and kept in proper custody at the public relations office. Each page of the Register shall be duly numbered and each complaint recorded therein shall also be duly numbered. Soon after a complaint is registered, the Complainant shall be

given a receipt by such office stating the date and complaint number, which the Complainant may refer to in any subsequent correspondence or claim. The Complaints Register shall have appropriate columns including, but not limited to, the complaint number and date, name and address of the Complainant, the complaint and the action taken by the Concessionaire thereon.

(c) The Concessionaire shall inspect the Complaints Register at reasonable intervals and take prompt steps for redress of the grievances stated in each complaint. The action so taken by the Concessionaire shall be briefly noted in the "Action Taken" column of the Complaints Register and a suitable reply shall also be sent to the Complainant by post under a certificate of posting.

(d) Within one week following the close of each calendar month, the Concessionaire shall send to the Government of _____(State) a true photocopy of the pages of the Complaints Register on which any entries have been recorded of any Complaint regarding the Concessionaire during the course of that month. The Government of _____(State) may, in its discretion, direct the Concessionaire to take such further reasonable action as the Government of _____(State) may deem appropriate for a fair and just redress of any grievance.

32.14 Advertising On The Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Project Site, other than as permissible under this Agreement or expressly approved in writing by the Government of _____(State).

32.15 Counterparts

This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

Article 33. NOTICES

33.1 Notices to be in Writing

A notice under this Agreement shall only be effective if it is in writing. Telexes, faxes and e-mail are permitted.

33.2 Addresses

Notices under this Agreement shall be sent to a party at its address and for the attention of the individual set out below:

**Concessionaire
Managing Director
(or his Designee)**

**Government of _____(State)
Principal Secretary to Designated
Department**

Provided that a party may change its notice details by giving notice to the other parties of the change in accordance with this Article 33. That notice shall only be effective on the date falling five business days after the notification has been received or such later date as may be specified in the notice.

33.3 Receipt of Notices

Any notice given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

- (i) if delivered personally, on delivery;
- (ii) if sent by first class inland post, two clear Business Days after the date of posting;
- (iii) if sent by telex, when dispatched provided the intended recipient's answerback appears correctly at the start and end of the sender's telex; and
- (iv) if sent by facsimile or e-mail, when dispatched.

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 the Government of _____ (State) by:

Signature:

Name:

Designation:

For and on behalf of the Concessionaire

Signature:

Name:

Designation:

In the presence of:

(1) _____

(2) _____

SCHEDULES

- A LETTER OF ACCEPTANCE*
- B PROJECT SITE*
- C DETAILS OF INITIAL SYSTEM
- D DETAILS OF M&E EQUIPMENT
- E DRAWINGS AND DESIGN PROCEDURE
- F PROCEDURES AND CRITERIA FOR TRANSFER AND
HANDOVER OF INITIAL SYSTEM
- G INITIAL SYSTEM IMPLEMENTATION SCHEDULES AND KEY DATES
- H CLEARANCES*
- I RENTAL FEES
- J DEVELOPMENT RIGHTS PAYMENT SCHEDULE
- K PROJECT COST
- L ENVIRONMENTAL AND SOCIAL ASSESSMENT REPORT*
- M INDEPENDENT ENGINEER: SCOPE OF WORK*
- N PERFORMANCE SECURITY/FORM OF PERFORMANCE BOND
- O SUBSTITUTION/COMMON AGREEMENT
- P PROCEDURE FOR CHANGE ORDER
- Q TRANSFER OF TECHNOLOGY AND TRAINING
- R HANDBACK REQUIREMENTS*
- S FORM OF DAILY CERTIFICATE

MODEL STATE PORTS CONCESSION AGREEMENT

This example ports concession agreement is taken primarily from the Gangavaram Port Concession in Gujarat. However, as with the other agreements, we have inserted additional clauses or wording from other examples where they improve, in our opinion, on the clauses in the original Gangavarm Agreement. This example agreement may be used as a guide in preparing a full concession agreement for any future port project. As noted earlier, all concession agreements are individual and specific to the project, but this example can offer a starting structure that can guide and serve as a checklist for the further development of a new agreement.

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SCHEDULES (not drafted)

- A LETTER OF INTENT AND ITS ACCEPTANCE**
- B DETAILED PROPOSAL OF THE CONCESSIONAIRE**
- C PROJECT SITE/DETAILS OF LAND**
- D PROJECT FACILITIES (PORT)**
- E CLEARANCES**
- F DESIGN REQUIREMENTS**
- G CONSTRUCTION REQUIREMENTS**
- H O&M REQUIREMENTS**
- I ENVIRONMENTAL AND SOCIAL ASSESSMENT REPORT**
- J INDEPENDENT ENGINEER: TERMS OF REFERENCE**
- K INDEPENDENT AUDITOR: TERMS OF REFERENCE**
- L PERFORMANCE GUARANTEE/SECURITY**
- M FINANCING TERMS**
- N SUBSTITUTION AGREEMENT**
- O STATE SUPPORT AGREEMENT**
- P PROJECT DEVELOPMENT PLAN/
DETAILED PROJECT REPORT**
- Q HANDBACK REQUIREMENTS/
APPROVED LAY-OUT PLAN (GMB)**

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT entered into on this the ____ day of _____, 200__, at _____(City)

BETWEEN

(Official Signing Authority) OF _____(State), represented by the (Official), _____ (Concession Authority) having its head office at _____(Building), _____(City), hereinafter referred to as _____ (which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its administrators, successors and assigns) ON THE ONE PART.

AND

M/s _____ **Limited**, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____(hereinafter referred to as the "**Concessionaire**") (which expression shall unless repugnant to the subject or the context include its successors and permitted assigns) ON THE OTHER PART,

WHEREAS,

A. The Government of _____(State) is desirous of implementing various port projects in the State with private sector participation for the benefit of the users thereof and the larger economic development of the State, and in pursuance of that objective has decided that a key priority is the development of _____Port,

B. As part of its various initiatives to encourage private sector participation in the development of port infrastructure facilities in _____(State), and vide its G.O. No. _____, the Government of _____(State) has authorized the _____Maritime Board through such private sector participation,

C. The Government of _____(State) has carried outprecursory work in anticipation of the Project

D. The Government of _____(State) has invited proposals through a competitive bidding process from eligible persons for implementing the Project and in response thereto has received proposals from several persons, including the Consortium/Successful Bidder(as hereinafter defined) for implementing the Project,

E. After evaluation of the aforesaid proposals, the Government of _____(State) has accepted the proposal submitted by the Consortium and issued Letter of Acceptance dated _____(LOA) to the Consortium, a copy of which is hereto attached as Schedule "A".

F. In terms of G.O. No. _____ dated _____, the Government of _____(State) is authorized to enter into these presents with the Concessionaire being the Successful Bidder/Special Purpose Company set up by the Successful Bidder to undertake the Project,

G. The proposal of the Government of _____(State) relating to the Project/Project Facilities (as hereinafter defined), along with the Concession Agreement as presented here was considered and approved by _____ on _____(date).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

Article 1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Accounting Year" means the financial year commencing from _____ of any calendar year and ending on _____ of the next calendar year.

"Additional Cost" means the additional capital expenditure and/or the additional operating costs or additional taxes or both, as the case may be, which the Concessionaire has or would be required to incur and which has arisen as a result of Change of Scope or Change of Law.

"Agreement" means this Agreement, including Schedules hereto, as of the date hereof and includes any amendment hereto made in accordance with the provisions of this Agreement.

"Applicable Laws" means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including regulations and rules made thereunder, including judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the effective period of this Agreement which are to be complied with by parties.

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

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

"Best Efforts" shall mean best efforts made in the circumstances.

"Change in Law" shall have the meaning ascribed to it in Article 23.

"Change of Scope" shall have the meaning ascribed to it in Article 16.

"Change of Scope Order" shall have the meaning ascribed for it in Article 16.1.

"Commencement Date" means the later of:

- (i) the date for achievement of Financial Close as prescribed under this Agreement or
- (ii) the date on which the Project Site is completely delivered to the Concessionaire, in accordance with the applicable provisions of this Agreement.

"Commercial Operations Date (COD)" means the date on which the Concessionaire is entitled to commence operation of the Project Port or part thereof, in accordance with the provisions of this Agreement.

"Completion Certificate" means the certificate issued by the Independent/Project Engineer certifying completion of construction of the Project by the Concessionaire in accordance with the Construction Requirements.

"Complete Proposal Value" means the aggregate amount the replacement developer has committed to the Government of _____(State) as part of his proposal to takeover the Port Assets.

"Concession" shall have the meaning ascribed thereto in Article 2.1, that is the exclusive right and authority granted by the Government of _____(State) to the Concessionaire for designing, financing, building, owning, maintaining, operating and transferring this Port, together with the right to levy, collect and retain appropriate charges for Port Services rendered to port users during the Concession Period.

"Concession Period" means the period of Concession specified in Article 3, as applicable.

"Concessionaire" means M/s _____, and shall include its successors and permitted assigns expressly approved by the Government of _____ (State).

"Consortium" means the consortium consisting of (i) _____, (ii) _____, (iii) _____ formed/acting pursuant to the Memorandum of Understanding dated _____, entered into by them, for the purpose of submitting the proposal for implementing the Project through a Special Purpose Company/Vehicle to be formed and incorporated by them under the Companies Act, 1956.

"Construction Requirements" means the requirements as to construction of the Project/Project Facilities set forth in Schedule G.

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

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

"Cure Period" means the period specified in the Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default upon the failure of which the Agreement may be terminated by the other Party.

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

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

"Design Requirements" means the design requirements of the Project/Project Facilities, as set forth in Schedule F.

"Detailed Project Report (DPR)" means the report prepared by the Concessionaire, which is in substantial conformity with the Detailed Proposal, for implementation of the Project as approved by

the Government of _____(State) and submitted by the Concessionaire to its Lenders for the purpose of Financial Closure. (An option is to provide the DPR to the bidders for the Project as part of the bid documents and include any addenda thereof).

"Detailed Proposal" means the proposal submitted at the Request For Proposal (RFP) stage by the Consortium forming part of this Agreement.

"Dispute" shall have the meaning ascribed thereto in Article 25.

"Dispute Resolution Procedure" means the procedure for resolution of Dispute set forth in Article 25.

"Drawings" means all of the drawings, designs, calculations and documents pertaining to the Project in accordance with the Design Requirements.

"Emergency" means a condition or situation existing or prevailing on or about the Project Site/Project Facilities, which is likely to endanger the safety of persons or vehicles involved in operating, maintaining or using the Site or Facilities or which poses an immediate threat of material damage to any of the Project Site/Project Facilities.

"Encumbrance" means any encumbrance, such as a mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind or other obligation or restriction and shall also include, without limitation, physical or legal obstructions and encroachments on the Site.

"End Date" means the date on which the Port is transferred entirely to the Government of _____(State) by the Concessionaire on completion of the Concession Period as specified in this Agreement.

"Environmental Requirements" means the requirements set out in the Environmental and Social Assessment Report and all requirements of Law relating to the protection and maintenance of the environment and all requirements as would be complied with in accordance with Good Operating Practices in order to protect and maintain the environment and any such standards prescribed by any Competent Government Authority from time to time.

"Environmental and Social Assessment Report" means the plan for environmental and safety and resettlement and rehabilitation requirements of the Project Facilities and in accordance with which standards the Services will be provided as set out in Schedule I.

"EPC Contract" means the contract(s), if any, entered into by the Concessionaire inter alia for the purpose of design, engineering, procurement of equipment and materials and construction of the Project/Project Facilities in accordance with the provisions of this Agreement.

"Equity Documents" means collectively the documents evidencing subscription to Concessionaire's equity capital to the extent of equity component of cost of the Project, and includes documents relating to the funds in any form committed by the Sponsors as per the Means of Finance/Financing..

"Essential Moveable Assets" means navigation aids, port craft, electrical facilities, fire fighting and other emergency facilities, pollution control facilities and other moveable assets as may be mutually agreed at the time of transfer.

"Event of Default" shall have the meaning ascribed thereto in Article 21.

"Expert" means any Person of repute with recognized technical or professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement, appointed by the Parties by mutual consent.

"Financing" means all funded and non-funded financing, including but not limited to, loans, advances, lease assistance and guarantees required for implementation of the Project.

"Financial Close" means the date on which the Financing Documents providing for Financing/funding by the Lenders have become effective and the Concessionaire has access to the funds committed thereunder subject only to the issue of a notice to draw-down.

"Financing Documents/Agreements" means all documentation or arrangements of whatever kind evidencing any obligation of the Concessionaire in respect of the Financing or any refinancing for the Project or any portion thereof, as amended, supplemented or otherwise modified from time to time.

"Force Majeure Event" shall have the meaning ascribed thereto in Article 20.

"Force Majeure Period" means, as determined by the Independent Engineer, the period commencing from the date of occurrence of a Force Majeure Event and ending on:

- (i) the date on which the Affected Party, acting in accordance with Good Industry Practice, resumes or should have resumed such of its obligations the performance of which was excused in terms of Article 20.13;
- (ii) the Termination Date, as applicable.

"GOI" means the Government of India.

"Good Industry Practice/Good Operating Practices" means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a Project of the type similar to that of the Project.

"Government Agency/Authority" means the Government of India, Government of _____(State), or any State government or governmental, department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body (central, State or local), having jurisdiction over the Concessionaire, the Project Site/Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

"Gross Income" means and includes Gross Income generated by the Concessionaire from the operation of the Port or any other service in respect of vessels and cargo, as audited by the approved audit firm of the Government of _____(State), including but not limited to, berth hire, pilotage, tug assistance fee, hire charges for flotilla, towage, stevedoring, wharfage, transshipment, lighterage, intra-port transportation, demurrage, storage, cargo handling (including stuffing and stripping of containers), hire of floating craft, railway services, and all other revenues from Services within the Port, except interest income, whether collected or not by the Concessionaire and its assignees or sub-contractors and sub-licenceses.

"Gross Profit" means Gross Income less all expenses incurred by the Concessionaire to operate and maintain the Port, including the operating expenses, but excluding tax.

"Handback Requirements" means the requirements as to handback of the Project Site/Project Facilities set out in Schedule Q.

"IGAAP" means the Indian generally accepted accounting principles consistently applied.

"Immoveable Assets" means the permanent structures in the Port, including breakwaters, berths, buildings, internal roads and internal rail.

"In-Operation Period/Implementation Period" means the period for pre-development activities and the construction period, commencing from the date of this Agreement up to the Commercial Operations Date (COD).

"Independent Auditor" means a reputed firm of Chartered Accountants practicing in India that may be appointed by the Parties pursuant to and in accordance with Article 9.

"Independent Engineer" means a reputed Person being a firm, company or a body corporate appointed in accordance with Article 8 for supervision and monitoring of compliance by the Concessionaire with the Project Requirements, more particularly to undertake, perform, and carry out the duties, responsibilities, services and activities set forth in Schedule J.

"Initial Investment" shall have the meaning ascribed thereto in Schedule M.

"Insurance Proceeds" means the proceeds of the insurance policies taken by the Concessionaire in terms of Article 15, or otherwise.

"Internal Rate of Return" shall have the meaning ascribed thereto in Schedule M.

"Lenders" means any person or persons providing financial assistance to the Concessionaire under any of the Financing Agreements/Documents, including financial institutions, banks, funds, trusts or trustees of the holders of debentures or other securities, their successors and assigns.

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

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

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

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

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

"O&M Expense" means expenses incurred by or on behalf of the Concessionaire, duly certified by its Statutory Auditors, for all regularly scheduled and reasonably anticipated O&M during the Operations Period, including, without limitation:

- (i) all cost of salaries and other employee compensation and contract fee payable to the O&M Contractor, if any;
- (ii) cost of materials, supplies, utilities and other services;
- (iii) premiums for insurance;

- (iv) all franchise, excise, property and other similar taxes and all costs and fees incurred in order to obtain and maintain all Applicable Permits necessary for the O&M of the Project/Project Facility at its full design capacity;
- (v) all repair, replacement and maintenance costs of the Project/Project Facility; and
- (vi) all other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the operation and maintenance of the Project according to the Specifications and Standards, at its full design capacity.

"O&M Requirements" means the requirements as to operation and maintenance of the Project Facilities set forth in Schedule H.

"Operations Period" means the period commencing from the Commercial Operations Date (COD) and ending at the expiry of the Concession Period and this Agreement.

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

"Performance Security" means the guarantee for performance of its obligations during the Implementation Period to be procured by the Concessionaire from a Scheduled Bank or a Public Financial Institution, in accordance with Article 5.

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

"Port" means the Greenfield, modern, all-weather, deep water, multipurpose port to be developed at _____ in the State of _____.

"Port Assets" mean and include but are not limited to the following:

- (i) land (including submerged land, if any) transferred by the Government of _____(State) to the Concessionaire;
- (ii) water area inside Port boundaries, as notified by the Government of _____(State) as seaward port limits;
- (iii) other immovable assets, such as internal roads, rails, breakwaters, buildings, etc., and movable assets, such as equipment, cranes, etc., constructed or provided by the Concessionaire under this Agreement; and
- (iv) tugs, pilot launches and other flotilla for providing Port Services to the ships,

within the limits of _____ Port.

"Port Dues" shall have the same meaning as in the Indian Ports Act, 1908, as amended from time to time. (see Chapter V of that Act).

"Port Operator" shall mean the Firm nominated as the Port Operator by the Consortium at the RFP (Request For Proposal) stage, holding the equity stake in the Concessionaire for a period of five (5) years from the Commercial Operation Date as required under Article 6.5 of this Agreement, and responsible for port operations during the Concession Period.

"Port Services" includes the following activities to be performed by the Concessionaire within the Port:

- (i) landing, shipping or transshipping of goods and passengers between vessels in the Port and the wharves, piers, quays or docks;
- (ii) unloading, loading, removing, shifting, transporting, storing or delivering goods brought into the Port;
- (iii) carrying of cargo landed into or shipped from the Port by rail, road, conveyors, barges, pipelines or any other mode within the limits of _____ Port;
- (iv) services to ships of all kinds, including but not limited to, piloting, tug assistance, hauling, mooring, unmooring, supply of oil and water, discharge of sludge and residues, provisioning, and minor ship repair; and
- (v) any other services, as may be required from time to time, including services during emergencies to ships and cargoes within Port boundaries.

"Preliminary Notice" means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

"Project" is limited to areas inside defined Port boundaries and means the design, financing, construction, operations and maintenance of the Project Facilities in accordance with the provisions of this Agreement. It includes, but is not limited to, the construction and provision of facilities such as navigation channels, harbour basins, breakwaters, aids to navigation, docks, berths, storage (both covered and open), internal roads, rails, conveyor systems, cargo handling facilities and systems, utilities (such as water supply, power supply, bunkering facilities, sewage systems, etc.), communication facilities, ship repair facilities and all other engineering structural facilities, etc. and the associated infrastructure facilities, for the development of _____ Port in the State of _____.

"Project Agreements" means collectively this Agreement, the Shareholders' Agreement, the State Support Agreement and other legal documents as may be mutually agreed to between the Government of _____ (State) and the Concessionaire/Developer, necessary for the implementing of the Project, other than the Equity Documents and Financing Documents.

(Gangavaram- uses term "Developer")

"Project Assets" means all physical and other assets relating to and forming part of the Project, including but not limited to:

- (i) Rights over the Project Site in the form of license, right or way or otherwise;
- (ii) Tangible assets such as civil works at the Port Site;
- (iii) Project Facility situate on the Project Site;
- (iv) The rights of the Concessionaire under any Project Agreements;
- (v) Financial assets, such as security deposits for electricity supply, telephone and other utilities, etc.;
- (vi) Insurance proceeds subject to Lenders' Rights thereto; and
- (vii) Applicable Permits and authorizations relating to or in respect of the Project.

"Project Completion" shall have the meaning ascribed thereto in Article 10.2.

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

"Project Development Plan (PDP)" means the phased investment in the Port Project as per the Detailed Proposal and as modified in the Detailed Project Report (DPR) approved by the Government of _____(State) and appraised by the Lenders, which shall form the basis for future implementation. In the event of any change in the volumes or composition of cargo, or for any other reason, necessitating changes in time frame and/or investment, the Concessionaire shall submit a revised plan to the Government of _____(State) for consideration. Any revision of the Project Development Plan is subject to mutual consent.

"Project Facilities" means collectively the facilities on the Project Site to be designed, constructed, built, installed, erected or provided by the Concessionaire on the Project Site, in accordance with the Design Requirements and Construction Requirements, and more specifically set out in Schedule D.

"Project Requirements" means collectively the Design Requirements, Construction Requirements and O&M Requirements, or any of them as the context may admit or require.

"Project Schedule" means the progressive Report milestones as per the Detailed Project Report (DPR) for the realization of the Port Project complete in all respects by the Commercial Operation Date.

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

"Project Site Delivery Schedule" means the schedule for delivery of the Project Site by the Government of _____(State) to the Concessionaire, as set out in Schedule P.

"Proposal Due Date" means the date for submitting the proposal, as defined in the Request For Proposal (RFP).

"Reduction in Cost" means the reduction in capital expenditure or the operating costs or both, as the case may be, on account of a Change of Scope as certified by the Independent Engineer.

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

"Scheduled Project Completion Date" shall have the meaning set forth in Article 10.2

"Shareholders' Agreement" shall mean the Agreement entered into between the Government of _____(State) and the Consortium members, covering inter alia, the roles and responsibilities of all shareholders, the shareholding pattern of the Concessionaire/Special Purpose Company, etc.

"Specifications" and **"Standards"** means the specifications and standards relating to the quality, capacity and other requirements for the Project as set forth in Schedule P, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Government of _____(State).

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

"State Support Agreement" means the Agreement entered into between the Government of _____(State) and the Concessionaire envisaging the various supports and incentives to be provided by the Government of _____(State).

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

"Substitution Agreement" means the agreement to be entered into among the Concessionaire, the Government of _____(State) and the Lenders in the form set forth in Schedule N providing, inter alia, for the substitution of the Concessionaire by another Person subject to and in accordance with the provisions of this Agreement and that Substitution Agreement.

"Substitute Entity" means the person chosen by the Lenders to substitute for the Concessionaire in accordance with the Substitution Agreement for the purposes of continuing the Project and assuming all rights and obligations of the Concessionaire under this Agreement.

"Tax" means and includes all taxes, fees, cesses and levies that may be payable by the Concessionaire under any Applicable Law. Provided that, for the purpose of Article 23 (Change of Law), "Tax" shall not include any penalty, interest or other penal sum levied on or payable by the Concessionaire on account of non-payment, short payment or delayed payment of Tax or on account of any other default.

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

"Termination Date" means the date specified in the Termination Notice as the date on which the Termination occurs.

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

"Termination Payment" means the aggregate of the amounts payable by the Government of _____(State) to the Concessionaire under this Agreement upon Termination, including Termination Payment receivable by the Concessionaire pursuant to Article 22.9.

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

1.2 Interpretation

1.2.1 General Rules

In this Agreement, unless the context otherwise requires:

- (a) references to Articles, sub-Articles, paragraphs and Schedules are to Articles, sub-Articles, paragraphs of, and Schedules to, this Agreement;
- (b) any reference to a statutory provision shall include such provision as from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (c) references to Applicable Law shall include the laws, acts, ordinance, rules, regulations, notifications, guidelines or bye-laws which have the force of law in any State or Union Territory forming part of the Union of India;
- (d) words importing the singular shall include the plural, and vice versa;

- (e) use of any gender includes the other gender;
- (f) references to a "company" shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (g) references to a "person" shall be construed so as to include any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity or entities (whether or not having a separate legal personality);
- (h) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (i) the words "include" and "including" are to be construed without limitation;
- (j) any reference to any period of time shall mean a reference to Indian Standard Time;
- (k) any reference to a "day" shall mean a reference to a calendar day;
- (l) any reference to a "month" shall mean a reference to a calendar month;
- (m) the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (n) any reference at any time to any agreement, deed, instrument, license or other document of any description shall be construed as a reference to that document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (o) a document in the "agreed form" means a document in a form agreed to by the Government of _____ (State) and the Concessionaire and initialed on behalf of each Party for the purpose of identification on the date of this Agreement;
- (p) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates.

1.2.2 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to two decimal places, with the third digit of 5 and above being rounded up and below 5 being rounded down, except that in a Fee calculation it shall be rounded off to the nearest Rupee.

1.2.3 Resolution of Ambiguities or Discrepancies

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

- (i) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over provisions in other Articles;
- (ii) between the Articles and the Schedules, the Articles shall prevail;
- (iii) between any value written in numerals and that in words, the latter shall prevail;
- (iv) should any Article, sub-Article, paragraph or Schedule of this Agreement prove illegal or unenforceable, the Parties hereto shall undertake to replace it by a valid such part that comes closest to what the illegal or unenforceable part intended to stipulate. Is such replacement is not possible, then the rest of this Agreement shall survive and

bind the Parties hereto as if the illegal or unenforceable part in question was not part of this Agreement.

Article 2. GRANT AND ACCEPTANCE OF CONCESSION

2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Government of _____(State) hereby grants and authorizes the Concessionaire to investigate, study, design, engineer, procure, finance, construct, operate and maintain the Project/Project Facility and to exercise and/or enjoy the rights, powers, privileges, authorizations and entitlements set forth in this Agreement, including, but not limited to, the right to levy, demand, collect and appropriate Fee from vehicles and Persons liable to payment of Fee for using the Project/Project Facility or any part thereof (collectively "The Concession").

2.2 Acceptance of the Concession

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

2.3 Port Conservator

The Government of _____(State) shall delegate to the Concessionaire the powers and duties of the Port Conservator of the Port as per the Indian Ports Act, 1908, before financial closure.

2.4 Exclusive Rights

The Government of _____(State) agrees that no party other than the Concessionaire shall have the right to develop a new port within 30 kms. on either side of the original Port Limits of the _____ Port (excluding _____ existing Port), during the Concession Period under this Agreement.

2.5 Extraordinary Additions and Improvements in Port Area

(a) Upon prior consent of the Government of _____(State), the Concessionaire may make extra-ordinary changes, additions and improvements, beyond those approved under the Detailed Project Report or the Project Development Plan, to the Port area or expand the Port areas and Port Assets further from time to time, for the purpose of implementation of this Port Project.

(b) All such extra-ordinary additions and improvements shall be and remain the property of the Concessionaire at all times during the term of this Agreement. Thereafter, disposition of said extra-ordinary additions and improvements shall be as agreed to by the Parties to this Agreement at the time of the approval of the Government of _____(State) of said extra-ordinary additions and improvements.

2.6 Right of Concessionaire to Grant License

The Concessionaire may license any portion of the Port for effectively implementing the objectives of this Agreement, with prior approval of the Government of _____(State), provided that the license ends within the End Date.

Article 3. CONCESSION PERIOD

The Concession hereby granted is for a period of _____ years starting from the Commencement Date (Effective Date), except where terminated or extended in accordance with the provisions of this Agreement. During that period, the Concessionaire is authorized to implement the Project and to operate the Project Facility in accordance with the provisions hereof.

Article 4. PROJECT SITE**4.1 Access to Project Site/Handover of Project Site**

(a) The Government of _____ (State) hereby undertakes to make "Best Efforts" to handover to the Concessionaire physical possession of the Project Site free from Encumbrance in as short a delay as is reasonably possible from the date of this Agreement, together with the necessary rights of way/easements, for the purpose of implementing the Project in accordance with this Agreement.

(b) The Government of _____ (State) confirms that, upon the Project Site being handed over pursuant to the preceding sub-article (a), the Concessionaire shall have the exclusive right to enter upon, occupy and use the Project Site and to make, at its own costs, charges and expenses, such development and improvements in that Site as may be necessary or appropriate to implement the Project and to provide the Project Facility subject to and in accordance with the provisions of this Agreement.

4.2 Use of Project Site

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

4.3 Information About the Project Site

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

4.4 Peaceful Possession

The Government of _____ (State) warrants that:

(a) the Project Site, together with the necessary right of way/easement, has been acquired through the due process of law and belongs to and is vested in the Government of _____ (State), and that the Government of _____ (State) has full powers to hold, dispose of and deal with the Site, consistent with the provisions of this Agreement;

(b) the Concessionaire will be liable for payment of compensation relating to the rehabilitation and resettlement of, any Person from whom the Project Site or any part thereof had been acquired,

whereas the Government of _____(State) will be required to provide the necessary legal assistance, at no charge to the Concessionaire, as reasonably required, to draw to a close rehabilitation and resettlement efforts

(c) the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have an interest in or charge on the Project Site or any part thereof, the Government of _____(State) shall, if called upon by the Concessionaire, provide the necessary legal assistance, at no charge to the Concessionaire, to defend such claims and proceedings, on account of any such right, title, interest or charge.

4.5 Rights and Title Over the Project Site

(a) The Concessionaire shall have exclusive rights to the use of the Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of same by third parties.

(b) The Concessionaire shall allow access to, and use of, the Project Site/Project Facility for telegraph lines, electric lines or such other public purposes as the Government of _____(State) may specify, provided that such access or use does not result in a Material Adverse Effect or closure of Project Facility for a period exceeding 120 days, and that the Government of _____(State) undertakes to ensure that the Project Facility is restored at the cost and expense of the Government of _____(State) as per the Specifications and Standards. Where such access or use causes any loss of Fee to the Concessionaire, the Government of _____(State) shall compensate the Concessionaire for such loss of Fee by increasing the Concession Period suitably.

(c) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement. Provided, however, that nothing contained herein shall be construed or interpreted as a restriction on the right of the Concessionaire to appoint any Contractor for the performance of its obligations hereunder, including for operation and maintenance of all or any part of the Project/Project Facility.

4.6 Permitted Charge on Port Assets

(a) The Concessionaire shall be entitled to mortgage, hypothecate or otherwise charge, from time to time, all its rights, title and interest in the Port Assets in favour of Lenders for securing Financing provided or agreed to be provided by them under the Financing Documents.

(b) In the event of termination of this Agreement, the Concessionaire shall ensure that the said charges are extinguished on payment of compensation by the Government of _____(State) to the Concessionaire to the extent that the Concessionaire is entitled to receive the same in accordance with the provisions of this Agreement. However, nothing contained in this provision shall apply to the Port Assets of the Concessionaire not taken over by the Government of _____(State) and the existing charge, if any, on such Port Assets shall, subject to the provisions of the Financing Documents, continue to subsist.

4.7 Clearances

The Government of _____(State) confirms that the Project/Project Site has been granted the clearances listed in Schedule F. The Concessionaire shall be responsible and shall be in compliance with the terms and conditions subject to which these clearances have been issued. The

Concessionaire shall obtain all Applicable Permits in such sequence as is consistent with the Project Requirements.

4.8 Additional Land

The Government of _____(State) agrees to make available more land belonging to it, if found necessary, at the appropriate time as may be required by the Concessionaire for future development plans in connection with the Port. Such additional land would be made available on an annual lease rental (for the first year) at the rate of ____% (xx%) per annum of Fair Market Value, as provided by the (Revenue) Collector, _____(xx). For subsequent years during the Concession Period, the lease rentals would be escalated at the rate of ____% (xx%) per annum over the previous year's amount. Such additional land shall stand vested in the Government of _____(State), free of all encumbrances, at the end of the Concession Period.

4.9 Reclaimed Land

For the development of the Port, the Concessionaire may, with prior approval of the Government of _____(State), reclaim and use further land on the waterfront within the Port Limits over and above the land allotted to the Concessionaire. The cost of such reclamation, will be born by the Concessionaire. The ownership of the reclaimed land shall stand vested in that Government. Such reclaimed land would be available on an annual lease rental (for the first year) at the rate of ____% (xx%) of the amount reimbursed by the Government of _____(State) towards the reclamation cost. For subsequent years during the Concession Period, the lease rentals would be escalated at the rate of ____% (xx%) per annum over the previous year's amount. Such reclaimed land shall stand vested in the Government of _____(State), at the end of the Concession Period.

4.10 Reservations

The Government of _____(State) expressly reserves its rights on the mineral rights, if any, air space and easements and rights of way with reference to the Port for the purpose of maintaining and/or modifying utility lines and access roads, provided that exercise of these reserved rights by the Government of _____(State) will be without expense to the Concessionaire for its operations and will not unreasonably or materially interfere with the Concessionaire's use of the Port and will not cause delay in the exercise of the Concessionaire's rights or duties under this Agreement.

4.11 Access to Government of _____(State)

The Government of _____(State) and its licensees, permittees and invitees shall have the right of free access, ingress to and egress from the Port, for purposes relating to this Agreement.

Article 5. PERFORMANCE SECURITY

5.1 Performance Security- General

(a) The Concessionaire shall, for due and punctual performance of its obligations during the Implementation Period, deliver to the Government of _____(State), simultaneously with the execution of this Agreement, a bank guarantee from a scheduled bank acceptable to the Government of _____(State), in the form set forth in Schedule L, ("Performance Security For Construction") for a sum of Rs._____.

(b) The Concessionaire shall, for due and punctual performance of obligations during the Operations Period, deliver to the Government of _____(State), on or before the Commercial Operations Date, the bank guarantee from a scheduled bank acceptable to the Government of _____.

_____(State), in the form set forth in Schedule B("Performance Security For Operation and Maintenance") for a sum of Rs._____.

5.2 Fresh Performance Security

In the event of the encashment of the Performance Security by the Government of _____(State) pursuant to an Encashment Notice issued in accordance with the provisions of Article 22.1, the Concessionaire shall within thirty (30) days of the Encashment Notice furnish to the Government of _____(State) Fresh Performance Security, failing with the Government of _____(State) shall be entitled to terminate this Agreement in accordance with the provisions of Article 22. The provisions set forth in Article 5.1 above shall apply mutatis mutandis to such Fresh Performance Security.

Article 6. OBLIGATIONS AND UNDERTAKINGS OF THE CONCESSIONAIRE

6.1 General Obligations of the Concessionaire

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement, the Concessionaire shall at its own cost and expense:

- (i) investigate, study, design, construct, operate and maintain the Project Assets/Project Facility in accordance with the provisions of this Agreement, Good Industry Practice and Applicable Laws;
- (ii) obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance with those Permits at all times during the Concession Period;
- (iii) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (iv) ensure and procure that each Project Agreement contains provisions that would entitle the Government of _____(State), or a nominee of the Government of _____(State), to step into such agreement at the discretion of the Government of _____(State), in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement or the Substitution Agreement;
- (v) provide all necessary assistance to the Independent Engineer, as it may reasonably require for the performance of its duties and services under this Agreement;
- (vi) appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements, as may be necessary;
- (vii) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (viii) make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Laws and Applicable Permits;
- (ix) be responsible for quality, soundness, durability, safety and the overall Project Requirements, notwithstanding the appointment by it of Contractor(s) to implement and/or operate and maintain the Project/Project Facilities;

- (x) ensure that the Project Site remains free from all encroachments and take all steps necessary to prevent or, as the case may be, remove encroachments, if any;
- (xi) make payments to the Police Department or any Government Agency/Body, if required, for provision of such services as are not provided in the normal course or which are available only on payment;
- (xii) afford access to the Project Site to the authorized representatives of the Government of _____(State), the Independent Engineer and any Government Body/Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority, and, upon reasonable notice, the Concessionaire shall provide to such persons the assistance reasonably required to carry out their respective duties and functions;
- (xiii) obtain at its cost and charges special or temporary right of access, occupation or use of any property that may be required by it in connection with implementation of the Project. The Concessionaire shall also obtain at its cost such facilities as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.
- (xiv) develop, implement and administer a surveillance and safety program for the Project/Project Facility and the users thereof and the personnel of the Contractors engaged in the provision of any services under any of the Project Agreements, including correction of safety violations and deficiencies, and the taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (xv) take all reasonable precautions for the prevention of accidents on or about the Project Site/Project Facility, and provide all reasonable assistance and emergency medical aid to accident victims;
- (xvi) be responsible for safety, soundness and durability of the Project Facility, including all structures forming part thereof, and their compliance with the Specifications and Standards;
- (xvii) operate and maintain the Project at all times during the Operations Period in conformity with this Agreement, including but not limited to, the Specifications and Standards, the Maintenance Programme and Good Industry Practice;
- (xviii) remove promptly according to Good Industry Practice/Good Operating Practices, from the Project Site, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits.

6.2 General Obligations of the Concessionaire During Implementation Period

In addition to what is provided for in Article 6.1 above,

- (a) The Concessionaire shall, before commencement of construction of the Project:

- (i) submit to the Independent Engineer, with due regard to the Project Completion Schedule and Scheduled Project Completion Date, its design, engineering and construction time schedule and shall formulate and provide Critical Path Method (CPM)/Project Evaluation and Review Technique (PERT) charts for the completion of the said activities;
 - (ii) have the requisite organization and designate and appoint suitable officers and representative, as it may deem appropriate, to supervise the Project and to deal with the Independent Engineer/the Representative of the Government of _____(State) and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (iii) undertake, do and perform all such acts, deeds and things as may be necessary or required to adhere to the Project Completion Schedule and to achieve Project Completion under and in accordance with this Agreement;
 - (iv) construct, provide and maintain a furnished site office accommodation for the Independent Engineer at the Project Site; and
 - (v) provide and maintain an adequately equipped field laboratory as required for the Project Site control on the quality of materials and the Construction Works.
- (b) The Concessionaire shall, at all times, afford access to the Project Site/Port to the authorized representatives of the Government of _____(State), the Independent Engineer and officer of any Government Agency having jurisdiction over the Project, including those persons or agencies concerned with safety, security or environmental protection, to inspect the Project and to investigate any matter within their authority and, upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.
- (c) The Concessionaire shall be responsible for ensuring that any existing utility on, under or above the Project Site is kept in continuous satisfactory use, if necessary, by the use of suitable temporary or permanent divisions.
- (d) The Concessionaire shall bear all costs and charges for special or temporary rights of way required by it in connection with access to the Project Site. The Concessionaire shall obtain at its cost such facilities on outside the Project Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

6.3 Port-Specific Obligations of the Concessionaire During the Operations/ Implementation Period

In addition to any of its obligations under this Agreement, during the Operations Period, the Concessionaire shall:

- (a) make efforts to maximize cargo handled so as to achieve optimal utilization of the Port;
- (b) provide courteous, efficient and fast Port Services to users adopting efficient methods and procedures;
- (c) employ qualified and skilled personnel required to operate the Port. The Concessionaire is free to frame the terms of employment. All such employees shall always remain the responsibility of the Concessionaire;
- (d) abide by all orders of the Government of _____(State) and/or the Government of India during an emergency situation like war, famine, shortage of some essential

commodity, etc., directing the Concessionaire to grant priority to handling ships of specified types;

- (e) obtain within three (3) years of the Commercial Operation Date (COD), ISO 9002 certification in respect of Port Services from an International accreditator, which shall be kept valid till the end of the Concession Period;
- (f) be directly responsible to the authorities concerned, for the payment of all charges for water, power, fuel, telephone, garbage collection and disposal, gas and other utilities used within the Port;
- (g) take all necessary measures to ensure compliance with all Environmental Laws, Laws relating to pollution and other Applicable Laws, and shall be entirely liable for any violations or breaches thereof attributable to the Concessionaire;
- (h) upon prior intimation by the Government of _____(State), provide a duly authorized representative of that Government with access to the Port for inspection and review of operations and also to ascertain compliance with any of the requirements of this Agreement;
- (i) make its own arrangement for security in the Port and abide by international security regulations and protocols, including the ISPS code, as well as procedures prescribed by the Government of _____(State) from time to time. However, the Government of _____(State) may, at the option of the Concessionaire, provide help in engaging the Central Industrial Security Force (CISF) and/or the _____(State) State Security Force, at the cost of the Concessionaire;
- (j) be responsible for payment of all taxes to local bodies and authorities as per relevant local tax laws.

6.4 No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent that performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- (a) Force Majeure Event, subject to Article 20.13;
- (b) Government of _____(State) Event of Default;
- (c) Compliance with the instructions of the Independent Engineer, the Government of _____(State) or the directions of any Government Body other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;
- (d) Emergency decommissioning of the Project Facilities or part thereof, in accordance with O&M Requirements;
- (e) Closure of the Project Facilities or part thereof with the approval of the Independent Engineer and/or the Government of _____(State);
- (f) Inability of the Concessionaire to remove any accident debris due to non-completion of any police or insurance-related inquiry or survey despite prompt steps having been taken by the Concessionaire in that regard.

6.5 Shareholding

The Concessionaire shall ensure that:

- (a) The Successful Bidder/Consortium hold(s) not less than fifty-one percent (51%) of the paid up equity capital of the Concessionaire until three (3) years after the Commercial Operations Date (COD), and not less than twenty-six percent (26%) of its paid up equity capital during the balance of the Operations Period;
- (b) M/s _____ (the "Lead Member") holds at any time not less than fifty percent (50%) of the Consortium's holding in the paid up equity capital of the Concessionaire during the entire Concession Period; or
- (c) M/s _____ (the "Lead Technical Member") and M/s _____ (the "Lead Financial Member") holds at any time not less than twenty-five percent (25%) each of the Consortium's holding in the paid up equity capital of the Concessionaire during the entire Concession Period, and M/s _____ ("Member") holds not less than ten percent (10%) of the Consortium's holding in the paid up equity capital of the Concessionaire, until the Commercial Operations Date (COD).

6.6 Pilotage

The Concessionaire shall provide pilotage for vessels calling at the Port. The pilots shall be qualified and licensed by the competent Government Authority, and shall conduct operations as per the licensing guidelines, if any, issued from time to time.

6.7 Priority Services

- (a) The Concessionaire acknowledges that the Government of _____ (State), the Central Government or other public or statutory authorities having jurisdiction over the Port, may direct the Concessionaire to provide priority services and the Concessionaire shall comply with all such requests.
- (b) The Concessionaire shall be entitled to levy and collect port charges as per the published commercial tariff schedule of the Port and ensure that the entity availing of such priorities carries out port handling, vessel servicing operations and other operations commensurate with the prevailing productivity levels of the operations and facilities at the Port.
- (c) The Concessionaire agrees that the Government of _____ (State) shall not be liable for any direct or indirect loss, consequential damages or loss of profits to the Concessionaire in the event that priority services are mandated. The Concessionaire will keep the Government of _____ (State) indemnified from any claims made by the users of the Port or other parties as a result of such priority directives.

Article 7. OBLIGATIONS AND UNDERTAKINGS OF THE GOVERNMENT OF _____ (STATE)

7.1 General Obligations

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement, the Government of _____ (State) shall:

- (i) make "Best Efforts" to handover the physical possession of the Project Site, together with the necessary right of way/easements to the Concessionaire within as short a delay as is reasonably possible from the Commencement Date, free from any Encumbrance;
- (ii) make "Best Efforts" to procure execution of the State Support Agreement within as short a delay as is possible from the date of this Agreement;
- (iii) grant, or where appropriate, provide necessary assistance to the Concessionaire in securing Applicable Permits. It shall provide assistance for obtaining all Central Government clearances on a "Best Efforts" basis;
- (iv) grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from the Government of _____(State) in connection with implementation of the Project and the performance of the Concessionaire's obligations under this Agreement;
- (v) subscribe to the Substitution Agreement within 15 days of disclosure by the Concessionaire regarding Financial Close;
- (vi) ensure peaceful use of the Project Site by the Concessionaire under and in accordance with the provisions of this Agreement without any let or hindrance from the Government of _____(State) or persons claiming through or under it;
- (vii) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities, at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities and utilities;
- (viii) ensure that no barriers are erected or placed by the Government of _____(State) or any Governmental Agency on the Project Facility/Project Site, except on account of any law and order situation or upon national security considerations;
- (ix) assist the Concessionaire in obtaining necessary authority to regulate traffic on the Project Site/Project Facility subject to, and in accordance with, the Applicable Laws;
- (x) assist the Concessionaire in obtaining police assistance against payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Site/Project Facility and implementing this Agreement in accordance with the provisions hereof;
- (xi) observe and comply with all its obligations set forth in this Agreement.

7.2 External Infrastructure

- (a) The Government of _____(State) shall provide all existing facilities, as per the State Support Agreement. All additional facilities and requirements shall be provided for by the concessionaire, at its own expense.
- (b) The Government of _____(State) shall make "Best Efforts", without financial commitment, for providing external rail connectivity between the nearest national rail network and the Port boundary.

7.3 Government of _____(State) Assistance During Operation Period

During the Operation Period, the Government of _____(State) shall:

- (a) upon written request from the Concessionaire, and in accordance with existing laws, assist the Concessionaire on a "Best Efforts" basis in obtaining immigration clearances and employment permits for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project;
- (b) subject to the Concessionaire complying with the requirements under the Applicable Laws including but not limited to payment of customs and other duty, assist the Concessionaire or EPC Contractor to import into India all items of equipment and materials required for the Project;
- (c) upon receipt of the Completion Certificate issued by the Independent Engineer, and in accordance with existing laws, promptly obtain approval of the Collector of Customs, publish the requisite notifications in the Official Gazette, and declare the Port as ready for operation.

Article 8. INDEPENDENT ENGINEER

8.1 Appointment of Independent Engineer

- (a) The Government of _____(State) and the Concessionaire shall mutually appoint a reputed consulting engineering firm or body corporate to be the Independent Engineer to undertake and perform the duties, work, services and activities set forth in Schedule L.
- (b) Within thirty (30) days of the date of this Agreement, the Concessionaire shall submit to the Government of _____(State) a panel of at least three such firms or companies or body corporate or a combination thereof acceptable to it and having the necessary expertise for appointment as Independent Engineer.
- (c) Within thirty (30) days from the date of receipt of such panel, the Government of _____(State) shall appoint the Independent Engineer out of such panel, and communicate the same to the Concessionaire.
- (d) The Independent Engineer shall report to the Government of _____(State) about their work, services and activities and the progress of implementation of the Project at least once every month or more frequently as the situation may warrant. Such reports of the Independent Engineer shall include, but not be limited to, the matters and things set forth in said Schedule L.
- (e) The Independent Engineer shall submit bills for periodic payment in accordance with the terms of its appointment to the Government of _____(State). One-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Government of _____(State) within fifteen (15) days of its receipt of a statement of expenditure from the Government of _____(State).
- (f) If either Party disputes any advice, instruction or decision of the Independent Engineer, the same shall be resolved in accordance with the Dispute Resolution Procedure found in Article 25.

8.2 Termination and Fresh Appointment

If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, it may make a written representation to the

Government of _____(State), stating its reasons in detail, seeking termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Government of _____(State) shall hold a tripartite meeting with the Concessionaire and Independent Engineer for amicable resolution of the dispute. Such a meeting may also be called by the Government of _____(State) if it has similar problems with the performance of the Independent Engineer. If the dispute remains unresolved, the Concessionaire and the Government of _____(State) may agree to terminate the appointment and appoint another Independent Engineer in accordance with the provisions of Article 8.1(a) to (c) above.

Article 9. INDEPENDENT AUDITOR

9.1 Appointment

(a) Upon the occurrence of any event necessitating or warranting appointment of the Independent Auditor under the provisions of this Agreement, and upon a proposal being made by any Party, the Parties shall promptly (and in any case within fifteen (15) days of such proposal) confer and agree upon a reputed firm of Chartered Accountants practicing in India to be appointed as the Independent Auditor. Thereupon, the Government of _____(State) shall appoint the Independent Auditor on terms and conditions agreed to by the Parties and by the Person to be appointed as the Independent Auditor.

(b) If, upon a proposal being made by a Party for appointment of an Independent Auditor, the other Parties fail to confer and agree upon the Independent Auditor within the said period of fifteen (15) days, the Party proposing the appointment shall be entitled to appoint the Independent Auditor. Such appointment and the terms thereof shall be binding on the other Parties and the Parties shall extend all necessary assistance to the Independent Auditor to carry out the task for which its appointment has been made.

9.2 Payment of Fees

All fees and costs of the Independent Auditor shall be borne by the Concessionaire. Within seven (7) days of the claim of the Government of _____(State), the Concessionaire shall pay its share of such fees and costs to the Government of _____(State).

Article 10. IMPLEMENTATION, OPERATION AND MAINTENANCE OF PORT

10.1 Review and Approval of Plans and Designs

(a) The Concessionaire shall submit the plans and designs for the Port Project for the approval of the Independent Engineer and/or the Government of _____(State). The Independent Engineer and/or the Government of _____(State) shall review the plans and designs for the Port Project prior to implementation to ensure conformity with the Project Development Plan (PDP) and accepted engineering design codes and practices. With a reasonable period, but not exceeding four (4) weeks, the Government of _____(State) shall accept or reject, or accept or reject in part, the plans and/or designs submitted. If the Government does not so object within such period, then it shall be deemed to have approved such plans and designs and the Concessionaire shall be entitled to proceed with the Project accordingly.

(b) The Concessionaire may commence construction of any approved plan and/or design or part thereof, if such part is reasonably initiated separately from other parts upon acceptance by the Government of _____(State). The Concessionaire shall amend and resubmit for review by that Government any plans and/or designs or parts thereof previously rejected by the Government of _____(State) within a given time span. The Concessionaire shall not materially change any plans

and/or designs approved or deemed to be approved by the Government of _____(State) under this Agreement, without the prior written consent of that Government, provided that the Concessionaire may, for more efficient functioning of the Project, propose to the Government of _____(State) changes to the approved plans and design consistent with all design standards applicable to the Project and the Applicable Laws. The review and acceptance of the Government of _____(State) is limited to compliance with the Project Development Plan (PDP) of the Port Project as set forth in Schedule P of this Agreement and in accepted engineering design codes and practices. The Concessionaire shall submit copies of the drawings of works upon completion of works to the Government of _____(State).

10.2 Major Milestones During Implementation of the Project

(a) The following major milestones with regard to implementation of the Port Project shall be achieved:

- (i) The Concessionaire, from the Commencement Date, shall completed the Detailed Project Report for _____(Phase I Development), as per the period indicated by the Consortium in its Detailed Proposal;
- (ii) The Concessionaire, from the Commencement Date, shall achieve Financial Closure, as per the period indicated by the Consortium in its Detailed Proposal;
- (iii) The Concessionaire, from the Commencement Date, shall complete construction of _____(Phase I Development), as per the period indicated by the Consortium in its Detailed Report;
- (iv) The Project Facilities, as per the Project Development Plan or the Detailed Project Report for Phase I Development shall be set up, and the amount shall be invested that is required for that set up as per the cost envisaged in the EPC Contract.

(b) Starting from the Commencement Date of this Agreement, the Concessionaire shall begin the construction/implementation, strictly adhering to the Project Development Plan and implementation schedule as given in the Detailed Project Report. Any variation from the Project Development Plan shall be carried out only with the prior written approval of the Government of _____(State).

(c) For non-achievement of the milestones during _____(Phase I Development) within the specified periods, as given in Clause (a) above, the following Performance Security in the form of Bank Guarantee shall be encashed:

- For Sub-Clause (a)(i): 1st Performance Security;
- For Sub-Clause (a)(ii): 2nd Performance Security;
- For Sub-Clause (a)(iii): 3rd Performance Security.

In case of two defaults in succession, the Government of _____(State) may also consider termination of this Agreement. No prior notice will be given before encashment of Bank Guarantees.

(d) The Performance Security amount will be reduced pro-rata to the construction cost. The Bank Guarantee amount will be re-worked every quarter based on the report of the Independent Engineer. The Concessionaire will replace the existing Bank Guarantee with a fresh bank guarantee.

(e) The Government of _____(State) shall release the Performance Security within thirty (30) days of achievement of the respective milestones.

10.3 Extension

The Concessionaire guarantees completion of implementation of _____ (Phase I Development) as per the Project Development Plan (PDP) and as per the milestones given in Article 10.2. The Concessionaire can claim extension of time limits, in case of Force Majeure and delay in completion caused on account of orders of the Government of _____ (State) and such other grounds beyond the control of the Concessionaire and considered reasonable by that Government. Such extensions shall be approved by the Government of _____ (State) within one month of cessation of the events. Such extensions shall be obtained by the Concessionaire in writing from that Government, within one month from the occurrence of the event.

10.4 Operation Period

The Operation Period shall commence with the Port, Phase I or part thereof are declared ready for operations by the Government of _____ (State). The Operation Period shall be co-terminous with the Concession Period.

10.5 Performance Standards

The Concessionaire shall observe and adhere to minimum performance standards at the _____ Port as given hereunder:

(a) Average Pre-Berthing Time

For ships, the average pre-berthing time shall not exceed twelve (12) hours on account of non-availability of the berth, facilities, services and operations. Any ships subject to delay for any of the following reasons shall be excluded:

- Government of India military operations in or near the Port;
- Labour action , vessel grounding/ sinking, or other Force Majeure Event within the Port;
- Labour action, vessel grounding/ sinking or other Force Majeure Event at another regional port, which leads to diversion of vessels to _____ Port;
- Major weather or other natural disturbances which force the closure of part or all of the Port;
- Delays due to non-availability of Bills of Lading or a vessel's failure to tender Notice of Readiness;
- Government of India imports of grains or other materials through the Port;
- Labour action, accident or other Force Majeure Event affecting suppliers, receivers or transportation intermediaries outside of the Port.

(b) Average Ship Berth Day Throughput

Cargo Class	Performance
General Cargo	
Steel Products	1,750 million tons (MT) per net crane day
Other General Cargo	No Performance Requirement

Containers

Ships Gear	No Performance Requirement
Feeder Vessels (less than 500 total moves)	18 net moves per crane hour
Mainline Vessels (500 or more total moves)	25 net moves per crane hour
Dry Bulk-Loading	70% of loading system's rated capacity- any time lost for shifting of loaders, trimming and deballasting of ship shall be executed for calculation purposes.
Dry Bulk- Unloading	50% of unloading system's net rated capacity
Liquid Bulk	Ship's pumping capacity or 80% of rated capacity of the loading/unloading system

(c) The Concessionaire shall observe and adhere to minimum performance standards for one (1) year after the Commercial Operation Date (COD) for each cargo handling facility.

(d) Performance standards are subject to availability of cargo. Any loading and discharging time lost due to weather (rain, humidity, wind, etc.) shall be excluded from calculations. Time lost due to electricity supply failure from the external power source shall also be excluded. All performance standards shall not apply during times of Force Majeure.

10.6 Failure to Achieve Performance Standards

Failure on the part of the Concessionaire to achieve Performance Standards, as given in Article 10.5, shall result in the levying of a penalty and/or termination of this Agreement. The levying of penalty and termination shall be according to the description given hereunder:

- (a) Performance standards shall be calculated on a yearly basis, i.e. periods of April to March;
- (b) When during any year, average waiting time of ship exceeds the standard specified in Article 10.5, a penalty of 0.25% of the Concession Fee paid during the previous financial year shall be levied for every additional day or part thereof of ships beyond the standard specified. If the Performance Standard for average waiting of ships are not met by the Concessionaire for four (4) years in succession, the Government of _____(State), in addition to levying the penalties as stated above, may also consider termination of this Agreement;
- (c) When during any year, the average ship berth day throughputs for some cargo groups fall below performance standards specified for these cargo groups in Article 10.8, then a penalty equal to 0.25% of the Concession Fee paid during the previous financial year shall be levied for the same cargo group for which the Performance Standard has not been met. In the event of defaults in Performance Standards for average ship berth day throughputs for four (4) years in succession, the Government

of _____(State), in addition to levying the penalties as stated above, may also consider termination of this Agreement;

- (d) The penalty under this Article 10.6 is to be paid within thirty (30) days from the date of receipt of demand from the Government of _____(State).

10.7 Maintenance and Repairs

(a) The Concessionaire shall, at all times during the term of this Agreement, maintain the Port Assets in accordance with good industry practices with the objective of providing adequate service standards and ensuring that all Port Assets being transferred to the Government of _____(State) upon expiry of the Concession Period are in good condition, normal wear and tear excepted.

(b) The Concessionaire shall, at its cost, plan for replacement of equipment well ahead of the due dates therefore and replace such equipment as per the Equipment Replacement Plan in a phase-wise fashion as per the Project Development Plan. The Concessionaire shall, at its own cost, promptly repair, replace or restore any portion of the Port Assets which may be lost, damaged or destroyed.

(c) Except as provided under this Agreement, the Concessionaire shall not, without the prior approval of the Government of _____(State), remove or replace any Port Assets.

10.8 Failure of Concessionaire to Maintain and Repair

In the event the Concessionaire fails to make any repair or maintenance for which it is liable or fails to commence work thereon and to execute the said work diligently, then the Government of _____(State) shall have the option to make the same after written notice to the Concessionaire. The Concessionaire shall immediately reimburse the Government of _____(State) for the cost thereof, including administrative overheads and penalties at __% of the actual cost.

10.9 Reports

(a) Proper maintenance schedules, manuals, etc., as prescribed by the Government of _____(State) from time to time, should be maintained in respect of machinery and equipment. The Government of _____(State) shall have the right to inspect these materials by themselves or through an Independent Engineer.

(b) The Concessionaire shall furnish detailed reports of the movement of cargo and vessels at the Port in the form, substance and frequency acceptable to the Government of _____(State). The Concessionaire shall furnish to that Government quarterly statistical data of its operational activities and maintenance and development of its facilities and equipment, and detailed quarterly operational reports and annual audited accounts. Such quarterly information shall be submitted before sixty (60) days from the end of the quarter, and the annual information within 180 days after closure of the financial year.

10.10 Right of Inspection and Port Assets Survey During Operation Period

The Government of _____(State) shall have the right to inspect Project Facilities with regard to operation and maintenance of the Port with prior intimation to Concessionaire. Pursuant to the operational audit required under this Agreement, the Government of _____(State) may conduct an annual physical inventory of plants, equipment and accessories provided by the Concessionaire as part of the Port development. The Concessionaire shall not withdraw and/or remove any of the aforementioned inventories or any part thereof from the Port areas without prior written approval of the Government of _____(State). However, in case of consistent heavy drop in cargo volume for two (2) consecutive years, the Concessionaire may, with the specific permission of the Government, reduce the equipment deployed.

10.11 Business Risks

The Concessionaire shall bear all business risks that are inherent to the development, construction, operation and maintenance of the Port and shall hold the Government of _____(State) harmless from any potential claim except in respect of the obligations of the Government under this Agreement. The Concessionaire shall provide evidence to the Government of _____(State) for having taken out all necessary insurances and other measures under the Applicable Law.

10.12 Navy's Right to Operate the Port

The Concessionaire shall permit the Indian Navy the exclusive right to make use of the Port and the Port Facilities in any situation including emergency situations like an act of war (whether declared or undeclared), hostilities, invasion, armed conflict or act of foreign enemy, blockade, embargo, prolonged riot, insurrection, terrorist or military action. In such an event, the Navy shall take over the entire area of the Port and the Port Facilities for its exclusive use. Once the operations are over, the Navy will hand over the Port and other facilities occupied by the Navy back to the Concessionaire. The Concessionaire shall be entitled to compensation as per Applicable Law.

Article 11. DRAWINGS

11.1 Preparation of Drawings

(a) The Concessionaire may, subject to the Design Requirements, adopt with or without modifications the Drawings made available by the Government of _____(State) or adopt its own Drawings. However, the Concessionaire shall in any event be solely responsible for the adequacy of the drawings.

(b) If the Concessionaire proposes any modifications to the Drawings made available by the Government of _____(State) or submits alternative Drawings or Drawings in respect of any item for which no Drawings are made available by the Government of _____(State), the same shall be subject to review by the Independent Engineer as provided in the following Article 11.2.

11.2 Review of Drawings

(a) The Concessionaire shall promptly, and in such sequence as is consistent with the Construction Requirements, submit a copy of each of the Drawings to the Independent Engineer and to the Government of _____(State).

(b) By forwarding the Drawings to the Independent Engineer and to the Government of _____(State) pursuant to the preceding clause (a), the Concessionaire shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the Design Requirements.

(c) Within fifteen (15) days of receipt of the Drawings, the Independent Engineer shall review those Drawings taking into account, inter alia, the comments of the Government of _____(State), if any with regard to them, and shall convey its comments and observations to the Concessionaire on the conformity of the Drawings with the Design Requirements. If the comments and observations of the Independent Engineer indicate that the Drawings are not in conformity with the Design Requirements, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to the Independent Engineer for further review. The Independent Engineer shall give its observations and comments, if any, within fifteen (15) days of receipt of such revised Drawings, which shall be taken into account by the Concessionaire while finalizing the Drawings.

(d) If, within the period stipulated in the preceding clause (c), the Independent Engineer does not respond to the Drawings submitted to it by the Concessionaire, then the Concessionaire shall be entitled to proceed with the Project on the basis of such Drawings submitted by it to the Independent Engineer.

(e) Notwithstanding any review or failure to review the comments and observations of the Independent Engineer or the Government of _____(State), the Concessionaire shall be solely responsible for the adequacy of the Drawings and their conformity with the Design Requirements, and shall not be relieved or absolved in any manner whatsoever of any of its obligations under this Agreement.

(f) The Concessionaire shall be responsible for delays in meeting the Design Requirements caused by reason of any Drawings not being in conformity with the Design Requirements, and shall not be entitled to seek any relief in that regard from the Government of _____(State).

(g) The Concessionaire shall, in consultation with the Independent Engineer, finalise an implementation schedule for the Project in accordance with the Construction Requirements.

(h) Within ninety (90) days of the Commercial Operations Date (COD), the Concessionaire shall furnish to the Government of _____(State) three (3) copies of "as built" Drawings duly verified by the Independent Engineer, including without limitation an "as built" survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities reflecting the Project as actually designed, engineered and constructed.

Article 12. OPERATIONS AND MAINTENANCE

12.1 Operation and Maintenance Requirements

The Concessionaire shall operate and maintain the Project/Project Facilities in accordance with the O&M Requirements, either by itself or through a Contractor possessing the requisite technical, financial and managerial expertise and capability, but, in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.

12.2 Failure to Meet O&M Requirements

In the event the Concessionaire has failed to operate and maintain the Project Facilities in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the Independent Engineer or the Government of _____(State) (the "Notice to Remedy"), the Government of _____(State) may, without prejudice to any of its other rights and remedies under this Agreement, be entitled to cause the repair and maintenance of the Project Facilities at the risk and cost of the Concessionaire. The Concessionaire shall reimburse all costs incurred by the Government of _____(State) on account of such repair and maintenance within seven (7) days of receipt of the claim of the Government of _____(State) therefore.

12.3 Material Breach of O&M Requirements

The Concessionaire shall be deemed to be in material breach of O&M Requirements if the Independent Engineer, acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire:

- (i) there has been a failure or undue delay in carrying out scheduled or planned maintenance or that maintenance has not been carried out in accordance with the O&M Requirements;

- (ii) the quality of the Port or Port Assets or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
- (iii) there has been a serious or persistent let up in adhering to safety requirements and standards and thereby the Project Port or any part thereof is not safe for operations;
- (iv) There has been persistent breach of O&M Requirements. "Persistent Breach" shall mean:
 - (a) any breach of O&M Requirement by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the Independent Engineer or Government of _____(State);
 - (b) recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the Independent Engineer or Government of _____(State) requiring the Concessionaire to remedy a breach; and
 - (c) repeated occurrences of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

12.4 Rights of Government of _____(State)

Upon the occurrence of a material breach of O&M Requirements, the Government of _____(State) shall, without prejudice to and notwithstanding any other consequences provided therefore under this Agreement, be entitled to terminate this Agreement.

Article 13. FINANCING ARRANGEMENT

13.1 Financing Arrangement- General

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

13.2 Amendments to Financing Documents

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

Article 14. SUPERVISION CHARGES

14.1 Supervision Charges- General

(a) All works under or in course of execution or executed in pursuance of this Agreement shall at all times be open to inspection and supervision by the authorized representatives of the Government of _____(State). The Concessionaire shall, at all times during the usual working hours and at all other times at which reasonable notice of the intention of the representatives of the Government of _____(State) to visit the work has been given to it, have a responsible agent or representative present at the Project for that purpose.

(b) The Concessionaire shall pay supervision charges fixed at 1.5% of the estimate project cost, towards the supervision provided for in preceding sub-article

(c) The supervision charges may be paid in equal annual installments over the original Concession Period with the first installment being paid on the Commencement Date and every subsequent installment on the date of the respective anniversary of the Commencement Date, by way of a cheque or demand draft(s) drawn in favour of _____.

14.2 Project Monitoring Expenses

The Concessionaire shall also pay towards the Project Monitoring and Coordination Expenses of the Government of _____(State), a sum of Rs. _____ Lakh (Rupees _____ Lakh) per annum by way of cheque or demand draft(s) drawn or issued in favour of _____. The amounts paid by the Concessionaire pursuant to this Article shall be held in a separate account and appropriated or utilized as per instructions of the Government of _____(State).

Article 15. INSURANCE

15.1 Insurance During the In- Operation Phase/ Implementation Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Implementation Period/In-Operation Phase, that is from the date of handing over of the possession of the land to Concessionaire or upon commencement of construction pursuant to the Project Development Plan, whichever is the earlier, till the Commercial Operation Date. Such insurance as is necessary, including but not limited to the following:

- (i) builders' all risk insurance;
- (ii) comprehensive third party liability insurance, including for injury or death to personnel of the Concessionaire and others who may legally enter the Project Site;
- (iii) workmen's compensation insurance;
- (iv) marine cum storage cum erection insurance ;
- (v) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iv).

15.2 Insurance During the Operations Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Operations Period (that is from the Commercial Operation Date until the End Date of this Agreement) insurance to cover against:

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

15.3 Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Project Assets and/or the Project Facility through Indian insurance companies, and if so permitted by the Government of _____(State) through foreign insurance companies, to the extent that insurance is necessary to be effected through them.

15.4 Evidence of Insurance Cover

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

15.5 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Project Facility or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the policies in their favour as security for the financial assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facility or any part thereof shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

15.6 Validity of the Insurance Cover

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

Article 16. CHANGE OF SCOPE

16.1 Definition of Change of Scope

The Government of _____(State) may, notwithstanding anything to the contrary contained in this Agreement, require provision of such addition or deletion to the works and services on or about the Project which are beyond the scope of the Project as contemplated in this Agreement ("Change of Scope"), provided that such changes do not require expenditure exceeding Rs. _____ and do not adversely affect the Scheduled Project Completion Date. All such changes shall be made by the Government of _____(State) by an order (the "Change of Scope Order") issued in accordance with the procedure set forth in Article 16.2 below.

16.2 Procedure For Change of Scope

(a) The Government of _____(State) shall, whenever it desires provision of addition or deletion of works and services referred to in Article 16.1 above, issue to the Concessionaire a notice of Change of Scope (the "Change of Scope Notice") through the Independent Engineer.

(b) Upon receipt of a Change of Scope Notice, the Concessionaire shall, within a period of fifteen (15) days, provide to the Independent Engineer such information as is necessary and reasonable together with preliminary documentation in support of the following:

- (i) the impact which the Change of Scope is likely to have on the Project Completion Schedule if the work is required to be carried out before the Commercial Operations Date (COD); and
- (ii) the cost to the Concessionaire of complying with such Change of Scope Notice on account of increases in quantities of items of work mentioned in the Bill of Quantities at the rate mentioned therein. In case the Bill of Quantities does not carry certain items of work required under the Change of Scope, the Concessionaire shall provide the analysis of rates for carrying out such items of work.

(c) The Independent Engineer shall review the information provided by the Concessionaire, assess the change in quantities of items of work, verify the analysis of rates (if required), determine the additional cost to the Concessionaire as a result of such Change of Scope, add such further cost to Initial Investment in the Cash Flow Projections, and determine the extension, if any, to the Concession Period in order to maintain the Internal Rate of Return. This is provided that the projections for years beyond the Concession Period shall be the average of the three years immediately preceding the last year of the original Cash Flow Projections. The Independent Engineer shall communicate its recommendation to the Representative of the Government of _____(State) within a period of fifteen (15) days from the receipt of information from the Concessionaire.

(d) The Government of _____(State) shall issue the Change of Scope Order within a period of fifteen (15) days from the date of the recommendation made by the Independent Engineer in accordance with preceding sub-Article(c) above.

(e) The Change of Scope Order shall be effective and binding upon receipt thereof by the Concessionaire. Notwithstanding a Dispute regarding cost and time for implementation of such order, the Concessionaire shall proceed with the performance of such order promptly following receipt thereof. Any Dispute regarding the extension in the Concession Period recommended by the Independent Engineer shall be resolved in accordance with the Dispute Resolution Procedure found in Article 25 of this Agreement.

(f) All claims by the Concessionaire pursuant to this Article 16.2 shall be supported by such documentation as is reasonably sufficient for the Independent Engineer to determine the accuracy thereof, including invoices from Contractors and certification of such claims by the Statutory Auditors.

Article 17. ENVIRONMENT AND SOCIAL ASSESSMENT

The Parties will each comply with their respective obligations specified in the Environment and Social Assessment Report set out in Schedule I.

Generally the allocation of responsibility in these areas will be divided between the Concession Authority and the Concessionaire. There will be three phases, namely the preconstruction phase, the construction phase and the post construction phase. In the preconstruction phase all statutory clearances should remain the responsibility of the Government or in the case of an investor proposed concession, the Government/Concession Authority should provide all necessary assistance possible to obtain those clearances. For those preconstruction clearances which are commercial in nature, those will remain the responsibility of the Concessionaire. During construction, responsibility is again shared. The provision of agreed compensation or environmental mitigation measures which have been accepted by the Concessionaire, will be the responsibility of the Concessionaire. Ensuring that the commitments made are carried through and that the quality of environmental mediation or ameliorisation provided for in the agreement is achieved remains the responsibility of the Concessioning Authority. In the post construction period, it is the responsibility of the Concession Authority to monitor environmental and social commitments made as part of the concession agreement, such as replanting of trees or rehabilitation of wetlands, and to ensure that the Concessionaire adheres to the agreements made as part of the concession.

Article 18. TARIFF FOR PORT SERVICES**18.1 General Provisions**

(a) The Concessionaire shall have the right to levy, collect and retain charges for all services rendered or performed at the Port and authorized under this Agreement in accordance with Applicable Law. The Concessionaire shall also have freedom in fixing and revising the tariffs, in consultation with the Government of _____(State), for its various Port Services on and related to the Port, based on compliance with the provisions of the Indian Ports Act, 1908, as amended. To the extent permitted by law, the Concessionaire may structure the tariff at its discretion and the currency of denomination of tariff.

(b) The Concessionaire shall be fair to all users in allocation of Port facilities, operation of facilities and levying of tariffs. The Concessionaire agrees and acknowledges that the tariff shall, subject to the provisions of this Article, be non-discriminatory.

18.2 Public Notification

(a) A comprehensive tariff schedule ("Notified Tariff") and the time period from which such tariff shall be in effect, shall be notified to the public by the Concessionaire. Any user shall be entitled to avail the Port's services at the Notified Tariffs. A revision in the Notified Tariff shall be intimated to the Government of _____(State) and notified at the Port premises and in two newspapers being circulated in the area in the local language and in English at least a month before the revisions come into effect.

(b) The Concessionaire may customize separate service and tariff packages for specific users from time to time. Such customization may include long term contracts with large and/or dedicated users.

18.3 Statutory Tariff Schedules

In the event that the tariff is required to be notified in accordance with Applicable Law, the Government of _____(State) shall take all steps within its power to notify the same in accordance with the Applicable Law in that behalf.

18.4 Collection Agency

Subject to Applicable Law, all tariffs from users may be collected by the Concessionaire or by an agency appointed by the Concessionaire.

Article 19. PAYMENTS BY CONCESSIONAIRE TO GOVERNMENT OF _____(STATE)

19.1 Payment of Concession Fee

(a) Concession fee shall be fixed by the Government to the best of Government advantage by competitive bidding process.

(b) accordingly, the Concession Fee shall be paid to the Government of _____(State) in the form of four (4) equal installments based on annual revenue projections. Any surplus or shortage shall be adjusted with the installments for the subsequent year and for the last year of the Concession Period within three (3) months of the End Date.

(c) However, the Concessionaire shall not pay Concession Fee to the Government of _____(State) in respect of any year where the Concessionaire does not have Gross Profit.

19.2 Interest

The payment of Concession Fee, as indicated in Article 19.1, shall be made to the Government of _____(State) within the first fifteen (15) banking days of the succeeding quarter. Failure to remit these payments on the due date shall render the Concessionaire liable to pay interest on the due amounts at the prevailing rate of the State Bank of India PLR (SBI PLR) plus two percent (2%) per annum for every month or part thereof of delay, the liability of which shall commence from the first day of the next month. Interest payments by the Concessionaire shall be without prejudice to other remedies available to the Government of _____(State) under this Agreement.

19.3 Guarantee For Payment of Concession Fee to Government of _____(State)

(a) The Concessionaire shall furnish to the Government of _____(State) within thirty (30) days from the Commercial Operation Date (COD), a guarantee for payment of the Concession Fee, in the form of a bank guarantee from a Scheduled Bank operating in India, of one and one-quarter times (1.25) the estimated Concession Fee payable to that Government for the first year of operation.

(b) Upon completion of the first year of operation, the Concession Fee payable to the Government of _____ shall be assessed to fix the amount for the guarantee amount for the subsequent years of the Concession Period on a half-yearly basis. The basis of assessment shall _____ times (xx) the Concession Fee paid during the previous half-year period or one and _____ times (xx) the estimated Concession Fee payable to the Government of _____(State) for that six month period, whichever is higher.

(c) On assessment as per Clause (b) above, the Concessionaire shall furnish a new Bank Guarantee in place of that of Clause (a) above from a Scheduled Bank operating in India.

(d) In the event of non-payment of dues to the Government of _____(State) within two (2) months of its due date, these payments, along with interest thereon as specified in Article 19.2, shall be recovered from the above Bank Guarantee.

(e) All penalties, as specified in this Agreement, shall have to be paid by the Concessionaire within one month of the date of its communication by the Government of _____(State) failing which these shall be recovered from the above Bank Guarantee.

(f) In the event of the encashment of the above Bank Guarantee by the Government of _____(State), the Concessionaire shall be required to make good the amount so encashed from the Bank Guarantee by giving another Bank Guarantee of the same amount within ten (10) days of communication in this regard by the Government of _____(State) to the Concessionaire.

Article 20. FORCE MAJEURE

20.1 General Rule

The Concessionaire or the Government of _____ (State), as the case may be, will be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by a Force Majeure Event.

20.2 Force Majeure Events

As used in this Agreement, a Force Majeure Event means any event or circumstance or combination of events or circumstances, being Non-Political Events, Indirect Political Events and/or Political Events, as defined in Articles 20.3, 20.4 and 20.5, respectively, which prevent the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event:

- (i) is beyond the reasonable control of the Affected Party;
- (ii) the Affected Party could not have prevented or reasonably overcome it with the exercise of due diligence and reasonable skill and care;
- (iii) does not result from the negligence of such Party or the failure of such Party to perform its obligations hereunder; and
- (iv) is of an incapacitating nature and prevents or causes a delay or impediment in performance.

20.3 Non-Political Event

For the purposes of this Article 20, "Non-Political Event" shall mean one or more of the following acts or events:

- (i) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquakes, cyclones, floods, volcanic eruptions, fire or other extreme atmospheric conditions;
- (ii) radioactive contamination or ionizing radiation;
- (iii) strikes, lockouts, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire;

- (iv) any judgement or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than the failure of the Concessionaire to comply with any applicable law or applicable permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or the exercise of any of its rights under this Agreement by the Government of _____ (State); or
- (v) any event or circumstances of a nature analogous to any of the foregoing.

20.4 Indirect Political Event

For purposes of this Article 20, "Indirect Political Event" shall mean one or more of the following acts or events:

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

20.5 Political Event

For purposes of this Article 20, "Political Event" shall mean one or more of the following acts or events by or on account of the Government of India, the Government of _____ (State) or any other Government Agency:

- (i) Change in Law, other than any Tax Laws, for which no relief is provided under Article 23 of this Agreement;
- (ii) Expropriation or compulsory acquisition by any Government Agency of any material assets or rights of the Concessionaire or of Contractors, for no fault of the Concessionaire or such Contractors;
- (iii) Any unlawful or unauthorized revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement (other than a consent the obtaining of which is condition precedent), provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to the grant, maintenance or renewal of such consents or permits, applied on a non-discriminatory basis.

20.6 Effect of Force Majeure Event

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

- (i) There shall be no Termination of this Agreement, except as provided in Article 15.8 below;
- (ii) Where the Force Majeure Event occurs before the Commercial Operations Date, the dates set forth in the Project Completion Schedule and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;

- (iii) Where a Force Majeure Event occurs after the Commercial Operations Date, the Concessionaire shall continue to make all reasonable efforts to operate the Project and/or to collect the Fee, but if it is unable or prevented from doing so, the Concession Period shall, having due regard to the extent of the impact thereof as determined by the Representative of the Government of _____(State), be extended by the period for which collection of Fee remains affected on account thereof; and
- (iv) Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of Article 20.7 below.

20.7 Allocations of Costs During Subsistence of Force Majeure

- (a) Subject to the provisions of Article 20.6 above, upon occurrence of a Force Majeure Event, the costs arising out of such event shall be allocated as follows:
 - (i) When the Force Majeure Event is a Non-Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such Force Majeure Event;
 - (ii) Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the "Force Majeure Cost") shall be borne by the Concessionaire to the extent of the Insurance Cover, and to the extent Force Majeure Costs, as duly certified by the Statutory Auditors, exceed the Insurance Cover, one-half of the same shall be reimbursed by the Government of _____(State) to the Concessionaire within ninety (90) days from the date of receipt of the Concessionaire's claim therefore;
 - (iii) Where the Force Majeure Event is a Political Event, the Force Majeure Costs, to the extent actually incurred and certified by the Statutory Auditors of Concessionaire, shall be reimbursed by the Government of _____(State) to the Concessionaire within ninety (90) days from the date of receipt of Concessionaire's claim therefore; and
 - (iv) The Government of _____(State) may, at its option, reimburse the Force Majeure Costs to the Concessionaire in cash or compensate the Concessionaire for such costs by appropriate extension of the Concession Period, which extension shall also be given effect within the period of ninety (90) days specified in preceding sub-articles ii) or (iii), as the case may be.
- (b) For avoidance of doubt, Force Majeure Costs shall not include loss of Fee revenues or any debt repayment obligations but shall include interest payments on such debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event.

20.8 Termination

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

20.9 Termination Payment for Force Majeure Events

Upon Termination of this Agreement pursuant to Article 20.8 above, Termination Payment to the Concessionaire shall be made in accordance with the following:

(a) If the Termination is on account of a Non-Political Event, the Concessionaire shall be entitled to receive from the Government of _____(State) by way of Termination Payment an amount equal to ____ percent (xx%) of the Debt Due less pending insurance claims, if any. However, in the event such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from the Government of _____(State) a further sum equal to ____ percent (xx%) of the amount of such claims not admitted;

(b) If the Termination is on account of an Indirect Political Event, the Concessionaire shall be entitled to receive from the Government of _____(State) by way of Termination Payment an amount equal to:

- (i) the total Debt Due, less pending insurance claims, if any. Provided, however, that if any of such insurance claims are not admitted and paid, the Concessionaire shall be entitled to receive from the Government of _____(State) further sum equal to ____ percent (xx%) of such claims not admitted, plus
- (ii) ____ Percent (xx%) of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during three (3) years beginning from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in Wholesale Price Index (WPI) during such year, and the adjusted amount so arrived at shall be reduced every year by ____ percent (xx%) per annum.

(c) If the Termination of this Agreement is on account of a Political Event, the Concessionaire shall be entitled to receive from the Government of _____(State) by way of Termination Payment an amount equal to:

- (i) the total Debt Due, plus
- (ii) ____ Percent (xx%) of the Equity subscribed in cash and actually spent on the Project, if such Termination occurs at any time during three (3) years beginning from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in the Wholesale Price Index (WPI) during such year, and the adjusted amount so arrived at shall be reduced by ____ percent (xx%) per annum.

20.10 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 set forth in Article 25. However, 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.

20.11 Liability For Other Losses and Damages

Save and except as expressly provided in this Article 20, neither Party to this Agreement shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claim, demands and proceedings relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise of any right pursuant to this Article 20.

20.12 Duty To Report

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

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

(b) Any notice pursuant to this Article 20.12 shall include full particulars of:

- (i) the nature and extent of each Force Majeure Event which is the subject of any claim of relief under this Article 20 with evidence in support thereof;
- (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (iii) the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and
- (iv) any other information relevant to the Affected Party's claim.

(c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Article 20.12 and such other information as the other Party may reasonably request the Affected Party to provide.

20.13 Excuse From Performance Of Obligations

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

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

Article 21. EVENTS OF DEFAULT

21.1 Event of Default

"Event of Default" means the Concessionaire Event of Default or the Government of _____ (State) Event of Default, or both as the context may admit or require.

21.2 Concessionaire Event of Default

Any of the following events shall constitute an event of default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of a Government of _____ (State) Default or a Force Majeure Event, as set out in this Agreement.

- (a) The Concessionaire fails to commence the Construction Works within thirty (30) days from the Commencement Date;
- (b) The Concessionaire fails to achieve Commercial Operations Date (COD) within 180 days from the Scheduled Project Completion Date;
- (c) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (d) The Concessionaire creates any Encumbrance on the Project Site/Project Facility in favour of any Person save and except as expressly permitted under Article 27.1 (Assignment and Charges);
- (e) The aggregate shareholding of the members of the Consortium/Sponsors falls below the minimum prescribed under Article 6.5;
- (f) The transfer, pursuant to law, of either:

- (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements; or
 - (ii) all or a material part of the Concessionaire,

except where such transfer, in the reasonable opinion of the Government of _____(State), does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform its material obligations under the Project Agreements.

- (g) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire.

(h) Any petition for the winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and also provided that:

- (i) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a creditworthiness at least as good as that of the Concessionaire as at the Commencement Date; and
 - (iii) each of the Project Agreements remains in full force and effect.

- (i) A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents, or under any of them as are applicable.

- (j) The Concessionaire suspends or abandons the operations of the Project without the prior consent of the Government of _____(State), provided that the Concessionaire shall be deemed not to have suspended or abandoned operation if such suspension or abandonment was:

- (i) as a result of a Force Majeure Event and is only for the period such Force Majeure is continuing; or
- (ii) is on account of a breach of its obligations under this Agreement by the Government of _____(State).
- (k) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
- (l) The Concessionaire suffers an attachment being levied on any of its assets causing a Material Adverse Effect on the Project, and such attachment continues for a period exceeding forty-five (45) days.
- (m) The Concessionaire has delayed any payment that has fallen due under this Agreement, if such delay exceeds ninety (90) days.
- (n) The Concessionaire is otherwise in Material Breach of this Agreement.
- (o) The Concessionaire fails to maintain and repair the Port Assets as per Article 10.7;
- (p) The Concessionaire engages in illegal activities or any of the employees or contractors of the Concessionaire, by taking advantage of free access to the facilities at the Port and the vessels calling at the Port, engages in or knowingly takes part in the commission of illegal activities, which the Concessionaire has knowledge of and fails to take preventive action against;
- (q) The Concessionaire uses the Port for purposes other than the purposes for which it is given, without the prior written consent of the Government of _____(State);
- (r) The Concessionaire fails to provide guarantee as per Article 24 (Handover).

21.3 Government of _____(State) Event of Default

Any of the following events shall constitute an event of default by the Government of _____(State) ("Government of _____(State) Event of Default"), unless caused by a Concessionaire Event of Default or a Force Majeure Event:

- (a) Government of _____(State) is in breach of this Agreement and has failed to cure such breach within thirty (30) days of receipt of notice thereof issued by the Concessionaire; (NHAI- 60 days)
- (b) Government of _____(State) has repudiated this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- (c) Government of _____(State) has failed to execute the Substitution Agreement or the State Support Agreement in accordance with Article 7.1 or having executed the same is in breach of any of its obligations thereunder and such breach has not been cured within thirty (30) days from the date of written notice thereof given by the Concessionaire;
- (d) Government of _____(State) has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement:

(e) Government of _____(State) or any Governmental Agency has by an act of commission or omission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Concessionaire and failed to cure the same within sixty (60) days (NHA) of notice thereof by the Concessionaire, or has unreasonably withheld or delayed grant of any approval or permission);

(f) Government of _____(State) has delayed payment of any amount that has fallen due in terms of this Agreement beyond ninety (90) days;

(g) Any representation made or warranty given by the Government of _____(State) under this Agreement has been found to be false or misleading.

Article 22. TERMINATION DUE TO EVENT OF DEFAULT

22.1 Termination For Concessionaire Event of Default

(a) Without prejudice to any other right or remedy which the Government of _____(State) may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the Government of _____(State) shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire, provided that before issuing the Termination Notice, the Government of _____(State) shall, by a notice in writing, inform the Concessionaire of its intention to issue the Termination Notice (the "Preliminary Notice"). In case the underlying breach or default is not cured with a period of sixty (60) days from the date of the Preliminary Notice (Cure Period), the Government of _____(State) shall be entitled to terminate this Agreement by issuing the Termination Notice. Provided further, that:

- (i) if the default is not cured within thirty (30) days of the Preliminary Notice, the Government of _____(State) shall be entitled to encash the Performance Security with a notice to the Concessionaire (Encashment Notice);
- (ii) if the default is not cured within thirty (30) days of the Encashment Notice and a Fresh Performance Security is not furnished within the same period in accordance with Article 5.2, the Government of _____(State) shall, subject to the provisions of the Substitution Agreement, be entitled to issue the Termination Notice.

(b) The following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement:

- (i) The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages caused by its breach or default;
- (ii) The Cure Period shall not in any way be extended by any period of suspension under this Agreement;
- (iii) If the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Government of _____(State) or the Government Agency concerned hereunder, then the applicable Cure Period shall be extended by the period taken by the Government of _____(State) or the Government Agency concerned to accord the required approval.

(c) Upon Termination by the Government of _____(State) on account of the occurrence of a Concessionaire Event of Default during the Operations Period, the Government of _____(State) shall pay to the Concessionaire by way of Termination Payment an amount

equal to ninety percent (90%) of the Debt Due less pending insurance claims, if any. However, in the event that such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from the Government of _____(State) a further sum equal to eighty percent (80%) of the amount of such claims not admitted.

22.2 Termination for Government of _____(State) Events of Default

(a) The Concessionaire may, upon the occurrence and continuation of any Government of _____(State) Event of Default terminate this Agreement by issuing a Termination Notice to the Government of _____(State).

(b) Upon Termination of this Agreement by the Concessionaire due to a Government of _____(State) Event of Default, the Concessionaire shall be entitled to receive from the Government of _____(State), by way of Termination Payment, a sum equal to:

- (i) the total Debt Due, plus
- (ii) One Hundred Fifty Percent (150%) of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during three (3) years beginning from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in Wholesale Price Index (WPI) during such year and the adjusted amount so arrived at shall be reduced by seven and one-half percent (7.5%) per annum.

22.3 Termination For Efflux of Time

(a) In the event of expiry of the Concession by efflux of time, the Concession having run its full course, the land shall stand vested to the Government of _____(State) as on the said date of transfer.

(b) The Consideration to be paid will be based on the higher of the following:

- (i) the aggregate of the land value as per the date of the signing of this Agreement, as escalated at a rate of 6.5% per annum compounded from the Commencement Date, plus the value of all other Immovable Assets and Essential Movable Assets which shall be transferred to the Government of _____(State) by the Concessionaire on terms and conditions agreed to by the Parties as part of the Handover process under Article 24 below prior to the Concession End Date. The basis for the valuation shall be the depreciated historical cost; or
- (ii) the Complete Proposal Value received by the Government of _____(State) for the Port Assets from a Replacement Concessionaire/Developer.

In any event, the Debt Outstanding shall be covered.

(c) If, at the time of handing over of the Port back to the Government of _____(State), any performance standard or facility specification is not complied with by the Concessionaire in the intervening period between the last review or inspection by the Independent Engineer and the handing over, then the Government of _____(State) shall be entitled to impose a penalty on the Concessionaire.

22.4 Notice of Intent to Terminate/Preliminary Notice

(a) On the happening of any event of termination by either Party as set out in Article 22.1 or Article 22.2, as the case may be, the non-defaulting Party may initiate termination of this Agreement by delivering a notice to the defaulting Party of its intention to terminate this Agreement. ("Notice of

Intent to Terminate"). The non-defaulting Party shall also send a copy of the Notice of Intent to Terminate to the Lenders.

(b) In the Notice of Intent to Terminate, the Party giving notice must specify with reasonable detail the defaults committed by the defaulting Party. Service of a Notice of Intent to Terminate by one Party shall not at any time preclude:

(i) the non-defaulting Party from issuing subsequent Notice of Intent to Terminate for subsequent breaches committed by the defaulting Party;

(ii) the defaulting Party from issuing a Notice of Intent to Terminate to the non-defaulting Party for any breach committed by the latter.

22.5 Consultation Period

(a) Following the service of a Notice of Intent to Terminate, the Parties shall consult for a period of ninety (90) days or such further period as they shall mutually agree. ("the Consultation Period"). Such consultation shall be with the Lenders as to what steps are to be taken or are proposed to be taken with a view of rectifying or remedying the default giving rise to the issue of the Notice of Intent to Terminate. The parties may mutually agree to waive the Consultation Period in respect of a Notice of Intent to Terminate served by the non-defaulting Party.

(b) During the Consultation Period, both Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

(c) During the Consultation Period, the Party in default may continue to undertake efforts to cure the default, and the non-defaulting Party shall not, by any Act or omission, impede or otherwise interfere with the endeavours of the defaulting Party to remedy the event of default which gave rise to the commencement of such Consultation Period.

(d) If during the Consultation Period, the underlying Event of Default is cured or waived or the Parties and the Lenders agree upon any of the measures set out in clause (a) above, then the Notice of Intent to Terminate shall be withdrawn by the Party who has issued the same. Withdrawal of the Notice of Intent to Terminate shall be in writing with a copy to the Lenders.

22.6 Termination Notice

(a) Upon the expiry of the Consultation Period, unless the Parties shall have otherwise agreed or the Event of Default giving rise to the Notice of Intent to Terminate shall have ceased to exist or default have been rectified or remedied, the non-defaulting Party may terminate this Agreement by giving a written notice ("the Termination Notice") to the defaulting Party. The Termination Notice shall expire at the end of ninety (90) days (or such further period as the Parties may mutually agree) from the date of receipt of such notice by the defaulting Party. Upon the expiry of the ninety (90) day period (or such further period), if the breach has not been cured to the satisfaction of the Government of _____ (State), then that Government shall be entitled to issue a Termination Order and terminate this Agreement. The non-defaulting Party shall also send a copy of the Termination Notice to the Lenders.

(b) During the period of the Termination Notice, both Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Port to the users, failing with the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure or breach.

22.7 Requisition

(a) Upon the issue or receipt of a Termination Notice, as the case may be, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, the Government of _____(State) shall by a notice in writing ("the Requisition") call upon the Concessionaire to furnish the following information to enable the Government of _____(State) to estimate the likely compensation payable and/or to finalise the items of the Port Assets of the Concessionaire to be handed over/taken over by the Government of _____(State), including:

(i) the full details of amounts outstanding under the Financing Documents related to the Port Project;

(ii) all or any date or records, as specified by the Government of _____(State) regarding the operation and maintenance of the Port; and

(iii) any other information or records, as specified by the Government of _____(State) regarding the Concessionaire, its business, its assets and liabilities, and related information.

(b) The Concessionaire shall furnish the particulars above called for by the Government of _____(State) within a period of fifteen (15) days of receipt of such Requisition.

22.8 Rights of Government of _____(State) on Termination

Upon Termination of this Agreement for any reason whatsoever, the Government of _____(State) shall have the power and authority to:

- (i) take possession and control of Project Assets forthwith;
- (ii) prohibit the Concessionaire, and any person claiming through or under the Concessionaire, from entering upon the Project Assets or dealing with them or any part of them;
- (iii) step in and succeed upon election by the Government of _____(State) without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Government of _____(State) may in its discretion deem appropriate, with effect from the date of communication of such election to the other Party to the relative Project Agreements. However, any sums claimed by such other Party as being due and owing for work and services performed or accruing on account of any act, omission or event prior to such date of election shall and shall always constitute debt between the Concessionaire and such other Party and the Government of _____(State) shall in no way or manner be liable or responsible for such sums. The Concessionaire shall ensure that the Project Agreements contain provisions necessary to give effect to the provisions of this Article 22.8.

22.9 Termination Payments

The Termination Payment pursuant to Article 21 or this Article 22, as the case may be, shall be payable to the Concessionaire by the Government of _____(State) within thirty (30) days of demand being made by the Concessionaire, with the necessary particulars duly certified by the Statutory Auditors. If the Government of _____(State) fails to pay the Termination Payment in full within the said period of sixty (60) days, the amount remaining unpaid shall be paid along with interest at the Prime Lending Rate set by the State Bank of India (SBI PLR) plus two percent (2%), from the Termination Date till payment.

22.10 Mode of Payment

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

22.11 Termination Without Prejudice to Other Rights of Either Party

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

22.12 Early Termination

(a) Notwithstanding that none of the events specified in Article 21 or Article 22 has occurred or that the Concessionaire has been discharging its obligations in accordance with this Agreement, the Government of _____(State) shall, subject to the following clauses (b) and (c) of this Article, have the right to terminate the Concession and this Agreement earlier than the Concession Period specified in Article 3 for reasons of national security or national emergency.

(b) The Government of _____(State) shall issue a written notice of not less than one (1) month of the intended Early Termination, to the Concessionaire specifying therein in reasonable detail (??) the reasons for the Early Termination and expressing its readiness to take over the whole of the undertaking of the Concessionaire in accordance with the provisions of clause (c) below.

(c) On or before the expiry of the period of notice of intended Early Termination issued by the Government of _____(State) pursuant to clause (b) above, the Government of _____(State) shall pay for and acquire the whole of the Port Assets at a price equal to the Fair Market Value as determined by Experts of (A) the Immovable Assets (except land allotted to the Project under Article 4), and (B) the Essential Moveable Assets as on the date of the Termination Notice. Land value, as per Article 4, would be escalated at the rate of 6.5% per annum, compounded from the Commencement Date. In any event, the Debt Outstanding shall be covered.

(d) The payment to the Lenders of the Debt Outstanding (pursuant to takeover of liabilities) and to the Concessionaire in accordance with the preceding clause (c) shall be made simultaneously on or before the expiry of the period of notice of intended Early Termination. However, it shall be open to the Government of _____(State) to enter into any other arrangements with the Lenders for payment of the Debt Outstanding on mutually agreed terms.

(e) Simultaneously with the payment as aforesaid by the Government of _____(State), the Concessionaire shall hand over or transfer vacant and peaceful possession of all the Port Assets. The Concessionaire shall also deliver:

(i) deliver to the Government of _____(State) the documents, manuals and records referred to in Article 22.7;

(ii) transfer technology and up-to-date know-how;

(iii) transfer or cause to be transferred Project Agreements and comply with all the formalities in connection therewith. The cost of such transfer shall be borne by the Government of _____(State).

(f) If due to any Governmental action, including but not limited to expropriation or nationalization of the Project ("Governmental Action"), this Agreement is frustrated or rendered illegal or impossible of being performed in accordance with the provisions hereof, then this Agreement shall be deemed to be determined on and from the date the Governmental Action is implemented, enforced or given effect.

(g) Upon termination of this Agreement pursuant to preceding clause (f), the Concessionaire shall be entitled to receive from the Government of _____(State) Compensation as provided for in Article 22.2. Such Compensation shall be paid to the Concessionaire within ninety (90) days from the date when this Agreement is deemed to be determined in terms of clause (f) above. The provisions of Article 22.2 shall, to the extent relevant, apply to the Compensation payable by the Government of _____(State) to the Concessionaire pursuant to this clause (g).

Article 23. CHANGE IN LAW

23.1 Definition of Change in Law

(a) "Change in Law" means the occurrence or coming into force of any of the following after the Proposal Due Date:

- (i) the enactment of a new Indian law;
- (ii) the repeal, modification or re-enactment of any existing Indian law;
- (iii) a change in the interpretation or application of any Indian law by a court of record;
- (iv) a directive or notification by any governmental agency which has the force of law or statutory effect.

(b) "Change in Law" shall not include:

- (i) the coming into effect, after the Proposal Due Date, of any provision of a statute which is already in place as of the Proposal Due Date;
- (ii) any new Law or any change in the existing Law under the active consideration of or in the contemplation of any Government as of the Proposal Due Date, which is a matter of public knowledge.

23.2 Relief Under Change in Law

If, after the date of this Agreement, there is a change in the Law by which the Concessionaire suffers an increase in costs or reduction in net after tax return or other financial burden which is substantial (NHAI- exceeds Rs. 2-3 million recommended) in any Accounting Year, then the Concessionaire may, by written notice, request amendments to the terms of this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no Change in Law resulting in such cost increase, reduction in return or other financial burden. The Concessionaire shall not be entitled to any compensation whatsoever from the Government of _____(State) as a result of Change in Law. However, the Government of _____(State) may decide, after discussion with the Concessionaire, to amend the terms of this Agreement, including the extension of the Concession Period.

23.3 Changes in Tax Laws and Regulations

The Concessionaire is not entitled to any compensation for any increase in indirect tax and/or direct tax which it is liable to pay with regard to this Project.

Article 24. TRANSFER AFTER THE CONCESSION PERIOD

(a) Upon the expiry of the Concession at the end of the Concession Period, the Concessionaire shall hand over vacant and peaceful possession of the Project Assets, including the Project Site/Facility at no cost to the Government of _____(State).

(b) Twelve (12) months prior to the anticipated expiry of the Concession Period, the Government of _____(State), as represented by _____, and the Concessionaire will meet and agree on detailed procedures for the transfer of facilities. At the time of such meeting, the Concessionaire will submit a detailed list of the structures, equipment, and items to be transferred and the names of its representatives in charge of the transfer. The Government of _____(State) will inform the Concessionaire of the identity of its representatives in charge of the transfer.

(c) As part of the meeting mentioned in (b), there shall be a joint inspection by the Parties. Within fifteen (15) days of such inspection, the representative of the Government of _____(State) shall furnish to the Concessionaire a list of works, jobs, additions and alterations, if any, to be carried out to bring the Project to the prescribed level of service condition at least two (2) months prior to the date of expiry of the Concession Period. In case the Concessionaire fails to carry out the above works within the stipulated time period, the Government of _____(State) shall be at liberty to have these works executed by any other Person at the risk and cost of the Concessionaire. Any cost incurred by the Government of _____(State) in this regard shall be reimbursed by the Concessionaire to the Government of _____(State) within seven (7) days of receipt of demand. For this purpose, the Government of _____(State) shall, without prejudice to any other right or remedy available to it under this Agreement, have the right to appropriate the Performance Security and/or to set off any amounts due, if any, and payable by the Government of _____(State) to the Concessionaire to the extent required or available and to recover the deficit amount, if any, from the Concessionaire.

(d) During the six (6) month period prior to the anticipated transfer of the Facilities, the Concessionaire will provide such training services to the representatives and employees of the Government of _____(State) as may be reasonably necessary for the Government of _____(State) to operate and maintain the Facilities efficiently and safely following such transfer.

(e) Except as otherwise provided in this Agreement, there shall be no payment, charge or cost payable by the Government of _____(State) to the Concessionaire in respect of the transfer of the Concession, the Facilities, the Site and all other assets (excluding cash, bank balance and marketable securities) and rights of the Concessionaire as to the Government of _____(State) upon the expiration of the Concession Period except only taxes, stamp duty, registration or similar charges payable on the transfer of the assets (which taxes, duties or charges shall be borne by the Government of _____(State)). This sub-Article is without prejudice to amounts due by the Government of _____(State) to the Concessionaire hereunder and accrued but unpaid on the date of such transfer.

Article 25. DISPUTE RESOLUTION

25.1 Applicable Law

This Agreement shall be construed and interpreted in accordance with the laws in force in the State of [...], as they may be amended from time to time, and any dispute which arises out of, or in relation to, this Agreement, or the breach, termination or invalidity thereof shall be equally so governed.

25.2 Conciliation

(a) If a dispute arises out of or in relation to this Agreement, or the breach, termination or invalidity thereof, the parties agree to seek an amicable settlement of that dispute by conciliation under the Rules of Conciliation of the Indian Council of Arbitration in force at the date of the signing of this contract. Accordingly, the parties hereby accord their written consent to conciliate, and agree that such consent constitutes the acceptance of the invitation to conciliate in terms of Rule 3 of the said rules.

(b) A single conciliator shall be appointed by the Indian Council of Arbitration within 30 days from the date a party has requested the Indian Council of Arbitration to effect such an appointment. The Indian Council of Arbitration will provide administrative services in accordance with its Rules of Conciliation.

25.3 Domestic Arbitration

(a) If the dispute was not settled by conciliation under section 2, the dispute shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties.

(b) Pending the submission of and/or decision on a dispute and until the arbitral award is made, the parties shall continue to perform their respective obligations under this agreement, without prejudice to a final adjustment in accordance with such award.

(c) The party challenging howsoever an award made under subsection (a), including making an application to set aside the award pursuant to section 34 of the Arbitration and Conciliation Act, 1996 (Central Act No. 26 of 1996), shall in addition to all of his own costs and fees reimburse on a monthly basis all the direct costs and fees incurred by the party defending the award, including all direct costs and fees associated with any appeal thereof. It is important to remember that although the inclusion of such a provision may be desirable to avoid routine challenge of arbitral awards, under Indian law the court has the discretion to award the costs of such suits. Furthermore, this provision may not be enforceable, if it is construed by the court as defeating the remedy and therefore, struck down as being unreasonable and onerous, particularly in the case of foreign arbitration.

Article 26. REPRESENTATIONS AND WARRANTIES

26.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Government of _____ (State) that:

- (i) it is duly organized, validly existing and in good standing under the laws of India;
- (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iv) it has the financial standing and capacity to undertake the Project;

- (v) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms thereof;
- (vi) it is subject to the civil and commercial laws of India in respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (vii) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (viii) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually may result in any Material Adverse Effect on its business, properties or Assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;
- (ix) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any materially adverse effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (x) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- (xi) each Consortium Member was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and request the Government of _____ (State) to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (xii) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Government of _____ (State) or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (xiii) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into of this Agreement or for influencing or attempting to influence any officer or employee of the Government of _____ (State) in connection therewith.

26.2 Representations and Warranties of the Government of _____ (State)

The Government of _____ (State) represents and warrants to the Concessionaire that:

- (i) the Government of _____ (State) has full power and authority to grant the Concession;
- (ii) the Government of _____ (State) has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- (iii) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof and there are no suits or other legal proceedings pending or threatened against it in respect of the Project Site or the Project;
- (iv) the Government of _____ (State) is subject to the civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement.

26.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who made such representation or gave such warranty shall promptly notify the other Party of the same.

Article 27. MISCELLANEOUS

27.1 Assignment and Charges

- (a) Subject to sub-articles (b) and (c) herein below, this Agreement shall not be assigned by the Concessionaire save and except with prior written consent of the other Party.
- (b) Except as provided in sub-article (c) herein below, the Concessionaire shall not create or permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement, except with the prior written consent of the Government of _____ (State), which consent the Government of _____ (State) shall not withhold unreasonably);
- (c) Restraint set forth in sub-articles (a) and (b) above shall not apply to:
 - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
 - (ii) mortgages/pledges/hypothecation of goods/assets other than the Project Site, as security for indebtedness, in favour of the Lenders and working capital provides for the Project;
 - (iii) assignment of Concessionaire's rights, title and interest under this Agreement to or in favour of the Lenders pursuant to and in accordance with the Substitution Agreement as security for their financial assistance.
- (d) Upon occurrence of the Concessionaire Event of Default, the Lenders shall have the right of substitution as provided in the Substitution Agreement.

As an alternative to the Substitution Agreement referenced in (d) above, the following clause may be considered.

For the sole purpose of financing the implementation of the project and the fulfillment of his obligations under the Concession Agreement, the Operator may assign, by way of

security, the benefit of, or his interest in, this Agreement, according to the requirements of any of the financing documents, and create other forms of security over any property or rights forming part of his interests in the project in favor of any lender, provided that the payment of rents and royalties to the Authority shall have priority over any such security and that before any such security takes effect, the holder of the security must have entered into a 'Lender's Direct Agreement' with the Authority.

27.2 Interest and Right of Set Off

(a) Any sum which becomes payable under any of the provisions of this Agreement by any Party shall, if the same be not paid to the Party entitled to receive the same within the time allowed for such payment, be deemed to be a debt owed by the Party responsible for payment to the Party entitled to receive the same. Until payment is made, such sum shall carry an interest of the Prime Lending Rate of the State Bank of India (SBI PLR) plus three percent (3%) from the due date for payment thereof until the payment is made or is otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

(b) However, the stipulation regarding interest for delayed payments contained in this Article 27.2 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

27.3 General Liability and Indemnity

(a) The Concessionaire shall indemnify, defend and hold harmless the Government of _____ (State) against any and all proceedings, actions and third party claims arising out of a breach by Concessionaire of any of its obligations under this Agreement, except to the extent that any such claim has arisen due to breach by the Government of _____ (State) of any of its obligations under this Agreement or a Force Majeure Event which is a Political Event.

(b) The Government of _____ (State) shall indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of breach by the Government of _____ (State) under this Agreement, except to the extent that any such claim has arisen due to breach by the Concessionaire of any of its obligations under this Agreement.

27.4 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India. The Courts at _____ (State Capital) shall have jurisdiction over all matters arising out of or relating to this Agreement.

27.5 Waiver

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

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

(b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or 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.

27.6 Survival

Termination of this Agreement:

(a) shall not relieve the Concessionaire or the Government of _____ (State) of any obligations hereunder which expressly or by implication survives Termination hereof; and

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

27.7 Amendments

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

27.8 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, then the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. However, failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

27.9 No Partnership

Nothing contained in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association or other co-operative entity between any of the Parties or constitute any party the agent of any other party for any purpose. No Party shall have any authority to bind the other in any manner whatsoever.

27.10 Language

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

27.11 Exclusion of Implied Warranties

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

27.12 Disclosure

The Concessionaire shall make available for inspection by the public during normal business hours on all working days copies of all records and reports to the Government of _____(State), as and when required.

27.13 Redress of Public Grievances

(a) The Concessionaire shall maintain a public relations office adjacent to each Toll Plaza/Project Site and keep it open to public access at all times. At each such offices, the Concessionaire shall maintain a register/suggestion box (the "Complaints Register") for recording of complaints and suggestions by any person (the "Complainant") at any time of the day.

(b) The Complaints Register shall be securely bound and kept in proper custody at the public relations office. Each page of the Register shall be duly numbered and each complaint recorded therein shall also be duly numbered. Soon after a complaint is registered, the Complainant shall be given a receipt by such office stating the date and complaint number, which the Complainant may refer to in any subsequent correspondence or claim. The Complaints Register shall have appropriate columns including, but not limited to, the complaint number and date, name and address of the Complainant, the complaint and the action taken by the Concessionaire thereon.

(c) The Concessionaire shall inspect the Complaints Register at reasonable intervals and take prompt steps for redress of the grievances stated in each complaint. The action so taken by the Concessionaire shall be briefly noted in the "Action Taken" column of the Complaints Register and a suitable reply shall also be sent to the Complainant by post under a certificate of posting.

(d) Within one week following the close of each calendar month, the Concessionaire shall send to the Government of _____(State) a true photocopy of the pages of the Complaints Register on which any entries have been recorded of any Complaint regarding the Concessionaire during the course of that month. The Government of _____(State) may, in its discretion, direct the Concessionaire to take such further reasonable action as the Government of _____(State) may deem appropriate for a fair and just redress of any grievance.

27.14 Advertising On The Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Project Site if such advertising, display or hoarding shall be visible to a user of the Port, other than as permissible under this Agreement or expressly approved in writing by the Government of _____(State).

27.15 Confidentiality

(a) No Party shall, without the prior written consent of the other Parties, at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose to any person or use for any purpose unconnected with the Project any information which is, by its nature or which is marked "proprietary material" concerning the other (including any information concerning the contents of this Agreement) except to their respective officers, directors, employers, agents, representatives and professional advisors or as may be required by any law, rule, regulation or any judicial process, for a period of five (5) years after the End Date.

(b) However, any Party, with the written consent of the other Parties, may issue press releases containing non-sensitive information in relation to the progress of the Report. This Clause shall not apply to information:

- (i) already in the public domain, otherwise than by breach of this Agreement, or information covered by Article 27.12 (Disclosure) above;

(ii) already in the possession of the receiving Party before it was received from any other Party in connection with this Agreement and which was not obtained under any obligation of confidentiality;

(iii) obtained from a third party who is free to divulge the same and which was not obtained under any obligation of confidentiality;

(iv) disclosure to Lenders under terms of confidentiality;

(v) disclosure required under any Law for the time being in force.

27.16 Counterparts

This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

Article 28. NOTICES

28.1 Notices to be in Writing

A notice under this Agreement shall only be effective if it is in writing. Telexes, faxes and e-mail are permitted.

28.2 Addresses

Notices under this Agreement shall be sent to a party at its address and for the attention of the individual set out below:

**Concessionaire
Managing Director
(or his Designee)**

**Government of _____ (State)
Principal Secretary to Designated
Department**

Provided that a party may change its notice details by giving notice to the other parties of the change in accordance with this Article 28. That notice shall only be effective on the date falling five business days after the notification has been received or such later date as may be specified in the notice.

28.3 Receipt of Notices

Any notice given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

- (i) if delivered personally, on delivery;
- (ii) if sent by first class inland post, two clear Business Days after the date of posting;
- (iii) if sent by telex, when dispatched provided the intended recipient's answerback appears correctly at the start and end of the sender's telex; and
- (iv) if sent by facsimile or e-mail, when dispatched.

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 the Government of _____ (State) by:

Signature:

Name:

Designation:

For and on behalf of the Concessionaire

Signature:

Name:

Designation:

In the presence of:

(1) _____

(2) _____

SCHEDULES

- A LETTER OF INTENT AND ITS ACCEPTANCE
- B DETAILED PROPOSAL OF THE CONCESSIONAIRE
- C PROJECT SITE/DETAILS OF LAND
- D PROJECT FACILITIES (PORT)
- E CLEARANCES
- F DESIGN REQUIREMENTS
- G CONSTRUCTION REQUIREMENTS
- H O&M REQUIREMENTS
- I ENVIRONMENTAL AND SOCIAL ASSESSMENT REPORT
- J INDEPENDENT ENGINEER: SCOPE OF WORK
- K INDEPENDENT AUDITOR: SCOPE OF WORK
- L PERFORMANCE GUARANTEE/SECURITY
- M FINANCING TERMS
- N SUBSTITUTION AGREEMENT
- O STATE SUPPORT AGREEMENT
- P PROJECT DEVELOPMENT PLAN/ DETAILED PROJECT REPORT
- Q HANDBACK REQUIREMENTS/ APPROVED LAY-OUT PLAN (GMB)

MODEL WATER SUPPLY CONCESSION AGREEMENT (BULK WATER)

This example agreement is based on the Visakh Bulk Water Supply Agreement of Andhra Pradesh. This agreement should not be considered a template but rather an example of the clauses used in a typical agreement. Where we have considered a clause from one of the other agreements reviewed to be an improvement or a useful addition to the clauses in the Visakh Agreement we have included them here. This agreement can be used as a guide and a checklist for any organization wishing to develop a new bulk water project in India.

Note: This agreement template deals with bulk water supply exclusively. It should not be used – as is - for different types of water projects such as distribution, combined supply and distribution, etc. Since these other types of water projects are relatively new for India, we have not tried to predict what type of clauses should be used. However, most of the standard clauses included here can form the basis of other water project agreements.

**MODEL WATER SUPPLY CONCESSION AGREEMENT
(BULK WATER)**

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SCHEDULES (not drafted)

- A LETTER OF ACCEPTANCE**
- B TERMS OF THE WATER DRAWAL**
- C PROJECT SITE**
- D PHASE I CONSTRUCTION WORKS, TECHNICAL SPECIFICATIONS**
- TECHNICAL SCHEDULES AND DRAWINGS**
- E OPERATION AND MAINTENANCE PERFORMANCE STANDARDS**
- F ENVIRONMENTAL AND SOCIAL REQUIREMENTS**
- G INDEPENDENT ENGINEER: TERMS OF REFERENCE**
- H INDEPENDENT AUDITOR: TERMS OF REFERENCE**
- I CHARGES**

J	TERMS OF DIRECT/SUBSTITUTION AGREEMENT
K	PERFORMANCE TESTS
L	CLEARANCES
M	ABSTRACTION AREA
N	HANDBACK REQUIREMENTS
O	FINANCING TERMS

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT entered into on this the ____ day of _____, 200__, at _____(City)

BETWEEN

(Signing Authority) OF _____(State), represented by the (official), Department of (Name of Department) having its head office at _____(Building), _____(City), hereinafter referred to as _____ (which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its administrators, successors and assigns) ON THE ONE PART.

AND

M/s _____ **Limited**, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____(hereinafter referred to as the "**Concessionaire**") (which expression shall, unless repugnant to the subject or the context, include its successors and permitted assigns) ON THE OTHER PART,

WHEREAS,

A. The Government of _____(State) is desirous of upgrading and expanding the water supply network in the State of _____ for the benefit of the users thereof and the larger economic development of the State, and in pursuance of that objective has decided to _____;

B. As part of its various initiatives to encourage private sector participation in the development of infrastructure facilities in _____(State), and vide its G.O. No. _____, the Government of _____(State) has authorized the Public Works Department of Municipal Administration and Water Supply to take up this Water Supply Project through such private sector participation,

C. The Government of _____(State) has carried out extensive project development work in connection with the Project, including engineering studies, assessment of feasibility and preparation of a detailed project report,

D. The Government of _____(State) has invited proposals through a competitive bidding process from eligible persons for implementing the Project and in response thereto has received proposals from several persons, including the Consortium/Successful Bidder(as hereinafter defined) for implementing the Project,

E. After evaluation of the aforesaid proposals, the Government of _____(State) has accepted the proposal submitted by the Consortium and issued Letter of Acceptance dated _____(LOA) to the Consortium, a copy of which is hereto attached as Schedule "A".

F. In terms of G.O. No. _____ dated _____, the Government of _____(State) is authorized to enter into these presents with the Concessionaire being the Successful Bidder/Special Purpose Company set up by the Successful Bidder to undertake the Project,

G. The proposal of the Government of _____(State) relating to the Project/Project Facilities (as hereinafter defined), along with the Concession Agreement as presented here was considered and approved by _____ on _____(date).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**Article 1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

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

"Abstraction Area" means the area as stated in Schedule M from which the Concessionaire has the right to abstract water in accordance with the terms of this Agreement.

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

"Actual Tail End Supply Capacity" means the amount of Raw Water which could be made available by the Concessionaire, assuming that it had, at such time, complied with all of its obligations under this Agreement.

"Additional Cost" means the additional capital expenditure and/or the additional operating costs or additional taxes or both, as the case may be, which the Concessionaire has or would be required to incur and which has arisen as a result of Change of Scope or Change of Law.

"Agreement" means this Agreement, including Schedules hereto, as of the date hereof and includes any amendment hereto made in accordance with the provisions of this Agreement.

"Applicable Laws" means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including regulations and rules made thereunder, including judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the effective period of this Agreement, which are to be complied with by parties.

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

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

"Bank Guarantee" means each of the Initial Guarantee, the Performance Guarantee, the _____ Pipeline Guarantee and the Rehabilitation Works Guarantee, as the context may require.

"Billing Statement" means a billing statement provided by the Concessionaire to a User pursuant to a contract for the supply of Raw Water.

"Bulk Water Supply Agreements" means the agreements for the supply of Raw Water by the Concessionaire to each of the Purchasers under this Agreement.

"Certificate of Compliance" means the certificate to be issued by the Government of _____ (State) when all the Conditions Precedent have been satisfied in full or otherwise waived by the Government of _____ (State) at its absolute discretion.

"Change in Law" shall have the meaning ascribed to it in Article 25.

"Change of Scope" shall have the meaning ascribed to it in Article 18.

"Change of Scope Order" shall have the meaning ascribed for it in sub-Article 18.1.

"Charge" means the amounts determined, levied, demanded, collected, retained and appropriated by the Concessionaire from Purchasers for Services, including any duties, levies, excesses or other charges that may be imposed in relation to the Project and which are passed through to the Users/Purchasers.

"Charges Equalisation Fund" means the fund created by the decision of the Government of _____ (State) to provide contingent funding support in the initial years of the Concession Period to the extent of difference between the Charges and the Special Charges payable by the Users.

"Commencement Date" means the later of:

- (i) the date for achievement of Financial Close as prescribed under this Agreement or
- (ii) the date on which the Project Site is completely delivered to the Concessionaire, in accordance with the applicable provisions of this Agreement.

"Commercial Operations Date (COD)" means the date on which the Concessionaire is entitled to commence operation of the Project, that is the date on which the Independent Engineer has issued the Certificate of Compliance in accordance with the provisions of Article 4 of this Agreement.

"Concession" shall have the meaning prescribed in Article 2.1, including the right to carry out the Works and operate the Project Facilities, to carry out the Project, to provide the Services to Purchasers, to charge for the Services and all rights and interests granted to the Concessionaire under this Agreement.

"Concession Period" means the period for which the Concession is granted to the Concessionaire hereunder, as specified in Article 3.

"Concessionaire" means M/s _____, and shall include its successors and permitted assigns expressly approved by the Government of _____ (State).

"Conditions Precedent" means the conditions precedent set out in Article 4.

"Consortium" means the consortium consisting of (i) _____, (ii) _____, (iii) _____ formed/acting pursuant to the Memorandum of Understanding dated _____, entered into by them, for the purpose of submitting the proposal for implementing the Project through a Special Purpose Company/Vehicle to be formed and incorporated by them under the Companies Act, 1956.

"Construction Requirements" means the requirements as to construction of the Project/Project Facilities set forth in Schedule D.

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

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

"Cure Period" means the period specified in the Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default, and upon the failure of which the Agreement may be terminated by the other Party.

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

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

"Design Requirements" means the design requirements of the Project/Project Facilities, as set forth in Schedule D.

"Detailed Project Report (DPR)" means the report prepared by the Concessionaire, which is in substantial conformity with the Detailed Proposal, for implementation of the Project as approved by the Government of _____(State) and submitted by the Concessionaire to its Lenders for the purpose of Financial Closure.

"Detailed Proposal" means the proposal submitted at the Request For Proposal (RFP) stage by the Consortium forming part of this Agreement.

"Dispute" shall have the meaning ascribed thereto in Article 27.

"Dispute Resolution Procedure" means the procedure for resolution of Dispute set forth in Article 27.

"Drawings" means all of the drawings, designs, calculations and documents pertaining to the Project in accordance with the Design Requirements.

"Easement" 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.

"Effective Date" means the date on which the Certificate of Compliance is issued by the Government of _____(State) in accordance with Article 4.2 (Actions to Procure Effective Date) or the date on which the Conditions Precedent are otherwise deemed to be satisfied in accordance with the terms of this Agreement.

"Emergency" means a condition or situation existing or prevailing on or about the Project Site/Project Facilities, which is likely to endanger the safety of persons or vehicles involved in operating, maintaining or using the Site or Facilities or which poses an immediate threat of material damage to any of the Project Site/Project Facilities.

"Encumbrance" means any encumbrance, such as a mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind or other obligation or restriction and shall also include, without limitation, physical or legal obstructions and encroachments on the Site.

"Environmental Requirements" means the requirements set out in the Environmental and Social Assessment Report and all requirements of Law relating to the protection and maintenance of the environment and all requirements as would be complied with in accordance with Good Operating Practices in order to protect and maintain the environment and any such standards prescribed by any Competent Government Authority from time to time.

"Environmental and Social Assessment Report" means the plan for environmental and safety and resettlement and rehabilitation requirements of the Project Facilities and in accordance with which standards the Services will be provided as set out in Schedule F.

"EPC Contract" means the contract(s), if any, entered into by the Concessionaire inter alia for the purpose of design, engineering, procurement of equipment and materials and construction of Project Facilities in accordance with the provisions of this Agreement.

"Equity Return" means achievement of real equity IRR of 15% over the concession period with an objective to reach a nominal equity IRR of 18% in 15 years.

"Equity Documents" means collectively the documents evidencing subscription to Concessionaire's equity capital to the extent of equity component of cost of the Project, and includes documents relating to the funds in any form committed by the Sponsors.

"Event of Default" shall have the meaning ascribed thereto in Article 23.

"Financing" means the amounts to be provided by way of loan, lease finance or otherwise to the Concessionaire for the development, establishment, financing, design, construction, testing, commissioning, upgrading, implementation, operation, maintenance and transfer of the Project, and includes all related financial charges, fees and expenses.

"Financial Close" means the date on which the Financing Documents providing for Financing/funding by the Lenders have become effective and the Concessionaire has access to the funds committed thereunder subject only to the issue of a notice to draw-down.

"Financing Agreements/Documents" means all documentation or arrangements of whatever kind evidencing any obligation of the Concessionaire in respect of the Financing or any refinancing for the Project or any portion thereof, as amended, supplemented or otherwise modified from time to time.

"Force Majeure Event" shall have the meaning ascribed thereto in Article 22.

"Force Majeure Period" means, as determined by the Independent Engineer, the period commencing from the date of occurrence of a Force Majeure Event and ending on:

- (i) the date on which the Affected Party, acting in accordance with Good Industry Practice, resumes or should have resumed such of its obligations the performance of which was excused in terms of Article 20; or
- (ii) the Termination Date, as applicable.

"Good Industry Practice/Good Operating Practices" means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a Project of the type similar to that of the Project.

"Government Agency/Authority" means the Government of India, Government of _____(State), or any State government or governmental, department, commission, board, body,

bureau, agency, authority, instrumentality, court or other judicial or administrative body (central, State or local), having jurisdiction over the Concessionaire, the Project Site/Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

"Handback Requirements" means the requirements as to handback of the Project Site/Project Facilities set out in Schedule N.

"IGAAP" means the Indian generally accepted accounting principles consistently applied.

"Implementation Period" means the period beginning from the Commencement Date and ending on the Commercial Operations Date (COD).

"Independent Auditor" means a reputed firm of Chartered Accountants practicing in India that may be appointed by the Parties pursuant to and in accordance with Article 11.

"Independent Engineer" means a reputed Person being a firm, company or a body corporate appointed in accordance with Article 10 for supervision and monitoring of compliance by the Concessionaire with the Project Requirements, more particularly to undertake, perform, and carry out the duties, responsibilities, services and activities set forth in Schedule G.

"Initial Charges" means the initial level of Charges to be levied by the Concessionaire as determined by the Charges Review Committee in accordance with the procedures and principles set out in Schedule I.

"Initial Guarantee" means an on demand bank guarantee in form and substance acceptable to the Government of _____ (State) and from a bank acceptable to the Government of _____ (State) which guarantees the performance of the Concessionaire's obligations hereunder prior to the Effective Date in respect of the relevant tests set out in Schedule K and which provides for the payment of liquidated damages to the Government of _____ (State) in accordance with such Schedule in the event of non-performance by the Concessionaire.

"Insurance Proceeds" means the proceeds of the insurance policies taken by the Concessionaire in terms of Article 17, or otherwise.

"Internal Rate of Return" shall have the meaning ascribed thereto in Schedule O.

"Lenders" means any person or persons providing financial assistance to the Concessionaire under any of the Financing Agreements/Documents, including financial institutions, banks, funds, trusts or trustees of the holders of debentures or other securities, their successors and assigns.

"Long Stop Date" means the anniversary of the date of this Agreement.

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

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

"Means of Finance" means the means of financing the cost of the Project envisaged as at Financial Close.

"Model" means the Project financial model in the agreed form on the date of this Agreement (a copy of which has been initialed by the Parties for the purpose of identification).

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

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

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

"O&M Expense" means expenses incurred by or on behalf of the Concessionaire, duly certified by its Statutory Auditors, for all regularly scheduled and reasonably anticipated O&M during the Operations Period, including, without limitation:

- (i) all cost of salaries and other employee compensation and contract fee payable to the O&M Contractor, if any;
- (ii) cost of materials, supplies, utilities and other services;
- (iii) premiums for insurance;
- (iv) all franchise, excise, property and other similar taxes and all costs and fees incurred in order to obtain and maintain all Applicable Permits necessary for the O&M of the Project/Project Facility at its full design capacity;
- (v) all repair, replacement and maintenance costs of the Project/Project Facility; and
- (vi) all other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the operation and maintenance of the Project according to the Specifications and Standards, at its full design capacity.

"O&M Requirements" means the requirements as to operation and maintenance of the Project Facilities set forth in Schedule E.

"Operations Period" means the period commencing from the Commercial Operations Date (COD) and ending at the expiry of the Concession Period and this Agreement.

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

"Performance Guarantee/Security" means the guarantee for performance of its obligations during the Implementation Period to be procured by the Concessionaire from a Scheduled Bank or a Public Financial Institution, in accordance with Article 6.

"Performance Standards" means the performance standards set out in Schedules D and E.

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

"Preliminary Notice" means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

"Price Equalisation" means the difference of tariff notified by the Charges Review Committee and the actual tariff paid by the Purchasers.

"Project" means the design, financing, construction, operations and maintenance, and transfer of the Project Facilities and Works and all activities incidental thereto, in accordance with the provisions of this Agreement.

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

"Project Assets" means all physical and other assets relating to and forming part of the Project, including but not limited to:

- (i) Rights over the Project Site in the form of license, right or way or otherwise;
- (ii) Tangible assets such as civil works;
- (iii) Project Facility situate on the Project Site;
- (iv) The rights of the Concessionaire under any Project Agreements;
- (v) Financial assets, such as security deposits for electricity supply, telephone and other utilities, etc.;
- (vi) Insurance proceeds subject to Lenders' Rights thereto; and
- (vii) Applicable Permits and authorizations relating to or in respect of the Project.
- (viii) Rights of the Concessionaire in agreements that it would enter into with contractors

"Project Completion" shall have the meaning ascribed thereto in Article 13.

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

"Project Development Cost" means all Project development expenditure incurred by APIIC and India Project Development Fund on the Project development with the agreed returns on these investments plus the success fees payable to the Project Advisors as per the terms and conditions stipulated in the Request For Proposal (RFP).

"Project Development Plan" means the Plan (as amended from time to time in accordance with this Agreement) in a form agreed between the Concessionaire and the Government of _____(State) on the date of this Agreement for the investment required for the completion of the Works.

"Project Facility" means collectively the facilities on the Project Site to be designed, constructed, built, installed, erected or provided by the Concessionaire on the Project Site, in accordance with the Design Requirements and Construction Requirements, and more specifically set out in Schedule D.

"Project Requirements" means collectively the Design Requirements, Construction Requirements and O&M Requirements, or any of them as the context may admit or require.

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

"Project Site Delivery Schedule" means the schedule for delivery of the Project Site by the Government of _____(State) to the Concessionaire, as set out in Schedule C.

"Raw Water" means the untreated water received or abstracted from the Abstraction Area and water supplied to Purchasers.

"Reduction in Cost" means the reduction in capital expenditure or the operating costs or both, as the case may be, on account of a Change of Scope as certified by the Independent Engineer.

"Requirements" means the Environmental Requirements, the Performance Standards, Good Operating Practices and the Technical Requirements.

"Revenue" means the pre-tax gross revenues of the Concessionaire for any period including all amounts received (or which would have been received) from Users for the supply of Raw Water and all other net amounts which fall (or would fall) to be credited to the profit and loss account of the Concessionaire for the Financial Year in which the relevant period falls, but shall exclude, for the avoidance of any doubt, all amounts received (or which would have been received) by the Concessionaire which are payments in satisfaction (directly or indirectly) of any obligation of any shareholder in the Concessionaire to contribute funds to the Concessionaire.

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

"Site Lease Agreement" means the agreement between the Government of _____(State) and the Concessionaire stipulating the terms and conditions of the lease of the Project Site.

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

"Scheduled Project Completion Date" shall have the meaning set forth in Article 13.

"Services" means the supply of Raw Water to Users/Purchasers in accordance with this Agreement.

"Special Charges" means such lower or higher Charges set by the Government of _____(State) by notice in writing at any time to the Concessionaire.

"Specifications" and **"Standards"** means the specifications and standards relating to the quality, capacity and other requirements for the Project as set forth in Schedule D and E, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Government of _____(State).

"State Support Agreement" means the Agreement to be entered into between the Government of _____(State) and the Concessionaire envisaging the various supports and incentives to be provided by the Government of _____ under this Agreement.

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

"Substitution/Direct Agreement" means the agreement to be entered into among the Concessionaire, the Government of _____(State) and the Lenders in the form set forth in Schedule J providing, inter alia, for the substitution of the Concessionaire by another Person subject to and in accordance with the provisions of this Agreement and that Substitution/Direct Agreement.

"Substitute Entity" means the person chosen by the Lenders to substitute for the Concessionaire in accordance with the Substitution/Direct Agreement for the purposes of continuing the Project and assuming all rights and obligations of the Concessionaire under this Agreement.

"Tail End Supply Capacity" means the actual Raw Water supply which can be made available in aggregate to Users at the downstream end through offtake points assuming that:

- (i) the Rehabilitation Works have been satisfactorily completed in accordance with the provisions of Article 7.4;
- (ii) the Government of _____ (State) releases water from the _____ (Yeleru Reservoir and _____ River) in a manner which satisfies the full allocation to the Concessionaire and in a manner in accordance with the requirements of Schedule B; and
- (iii) the Government of _____ (State) has complied with its obligations as set out in Article 8.

"Tax" means and includes all taxes, fees, cesses and levies that may be payable by the Concessionaire under any Applicable Law. Provided that, for the purpose of Article 25 (Change of Law), "Tax" shall not include any penalty, interest or other penal sum levied on or payable by the Concessionaire on account of non-payment, short payment or delayed payment of Tax or on account of any other default.

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

"Termination Date" means the date specified in the Termination Notice as the date on which the Termination occurs.

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

"Termination Payment" means the aggregate of the amounts payable by the Government of _____ (State) to the Concessionaire under this Agreement upon Termination, including Termination Payment receivable by the Concessionaire pursuant to Article 24.4.

"Tests" means the tests to be carried out as set forth in and in accordance with D and E to determine the Project Completion and its certification by the Independent Engineer prior to commencement of commercial operation of the Project.

"TMC" means "thousand million cubic feet" (volume of water).

"Unit Cost of Water" means the Charges emerging from the accepted financial model submitted by the selected bidder and agreed upon by the Government of _____ (State), enclosed at Schedule I.

"User/Purchaser" means any person to whom the Concessionaire provides Raw Water in accordance with this Agreement.

"Vacant Possession" means delivery to the Concessionaire of possession of the Project Site or any part thereof, free from all encumbrances, restrictions or impediments and the grant of all Easements and all other rights in relation thereto, so that the Concessionaire enjoys complete, uninterrupted and quiet possession and control thereof throughout the Concession Period.

"Water Demand" means any requirement for the supply of Raw Water to a User/Purchaser.

“Water Shortage” means a circumstance that exists when the Concessionaire, notwithstanding the fulfillment of all of its obligations, is unable to draw Raw Water as required to perform its obligations under this Agreement for a period of three (3) full days.

“Water Shortage Period” means a Lean Period, that is a period of hydrologically dry conditions as defined in Schedule B or a period as notified by the Concessionaire during which the Concessionaire is unable to draw Raw Water in the Abstraction Area due to a Water Shortage.

“Water Year” means in any year the period from _____.

“Works” means in respect of any phase of the Project, all or any part of the works, services and things to be designed, manufactured, supplied, executed, constructed, installed, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken in order properly to complete that Phase.

1.2 Interpretation

1.2.1 General Rules

In this Agreement, unless the context otherwise requires:

- (a) references to Articles, sub-Articles, paragraphs and Schedules are to Articles, sub-Articles, paragraphs of, and Schedules to, this Agreement;
- (b) any reference to a statutory provision shall include such provision as from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (c) references to Applicable Law shall include the laws, acts, ordinance, rules, regulations, notifications, guidelines or bye-laws which have the force of law in any State or Union Territory forming part of the Union of India;
- (d) words importing the singular shall include the plural, and vice versa;
- (e) use of any gender includes the other gender;
- (f) references to a “company” shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (g) references to a “person” shall be construed so as to include any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity or entities (whether or not having a separate legal personality);
- (h) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (i) the words “include” and “including” are to be construed without limitation;
- (j) any reference to any period of time shall mean a reference to Indian Standard Time;
- (k) any reference to a “day” shall mean a reference to a calendar day;
- (l) any reference to a “month” shall mean a reference to a calendar month;

- (m) the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (n) any reference at any time to any agreement, deed, instrument, license or other document of any description shall be construed as a reference to that document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (o) a document in the "agreed form" means a document in a form agreed to by the Government of _____(State) and the Concessionaire and initialed on behalf of each Party for the purpose of identification on the date of this Agreement;
- (p) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates.

1.2.2 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to two decimal places, with the third digit of 5 and above being rounded up and below 5 being rounded down, except that in a Fee calculation it shall be rounded off to the nearest Rupee.

1.2.3 Resolution of Ambiguities or Discrepancies

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

- (i) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over provisions in other Articles;
- (ii) between the Articles and the Schedules, the Articles shall prevail;
- (iii) between any value written in numerals and that in words, the latter shall prevail;
- (iv) should any Article, sub-Article, paragraph or Schedule of this Agreement prove illegal or unenforceable, the Parties hereto shall undertake to replace it by a valid such part that comes closest to what the illegal or unenforceable part intended to stipulate. Is such replacement is not possible, then the rest of this Agreement shall survive and bind the Parties hereto as if the illegal or unenforceable part in question was not part of this Agreement.

Article 2. GRANT AND ACCEPTANCE OF CONCESSION

2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Government of _____(State) hereby grants the following concessions to the Concessionaire:

- (i) the right to supply Raw Water to Purchasers to meet Water Demand in accordance with the terms and conditions of this Agreement;
- (ii) the right to develop, finance, design, construct, operate and maintain the Project Facilities during the Concession Period;
- (iii) subject to the terms of the Water Drawal set out in Schedule B, the right to abstract up to a maximum of _____TMC of Raw Water from the _____River during any Water Year, and up to a maximum of _____TMC of Raw Water from the

_____ River during any Water Year, without interruption, for the Concession Period;

- (iv) the right to set charges and bill Purchasers and collect revenues, in accordance with the provisions of Article 21;
- (v) the right to sub-contract any of the Works, provided that the sub-contractor is capable of discharging the obligations under this Agreement for and on behalf of and under the name of the Concessionaire or its contractors and provided that the Concessionaire shall not sub-contract the Concession as a whole. Notwithstanding the foregoing, the Concessionaire shall remain liable for the due performance of its obligations under this Agreement; and
- (vi) the right to carry out such other activities incidental to the foregoing or proper or desirable for the sale, efficient and economic operation of the Project Facilities.

2.2 Acceptance of the Concession

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

Article 3. CONCESSION PERIOD

The Concession hereby granted is for a period of _____ years starting from the Commencement Date (Effective Date), except where terminated or extended in accordance with the provisions of this Agreement. During that period, the Concessionaire is authorized to implement the Project and to operate the Project Facility in accordance with the provisions hereof.

Article 4. CONDITIONS PRECEDENT/EFFECTIVE DATE

4.1 Conditions Precedent to Signing of the Agreement

This Agreement (except for the provisions referred to in Article 4.3) is conditional upon each of the Loan Agreement, the Shareholders' Agreement, the Site Lease Agreement, and each Bulk Water Supply Agreement being in full force and effect on which Share Transfer Mechanism is completed, subject only to the occurrence of the Effective Date under this Agreement (and, in the case of the Bulk Water Supply Agreements, the occurrence of the Commercial Operations Date). Immediately upon the execution of this Agreement, the Concessionaire will procure that the duly executed Initial Guarantee is delivered to the Government of _____ (State) in full force and effect.

4.2 Actions To Procure Effective Date

Each Party shall take all such action as is available to it to ensure that the Effective Date occurs as soon as possible after the execution of this Agreement. Such action shall include entering into, or procuring the entry into by persons under its control and influence, of each of the agreements referred to in Article 4.1 above.

4.3 Provisions Not Affected By Conditionality

The provisions of this Article 4 and of Articles 1 and of the provisions of Articles 29 (Miscellaneous) and 30 (Notices) shall take effect on the date of this Agreement and shall not be subject to any condition.

4.4 Payment of Project Development Cost

On the execution of the Agreements under Article 4.1 above, unless already paid in full, the Concessionaire shall pay the Project Development Cost to the Government of _____(State).

4.5 Non-Satisfaction of Conditions

(a) Each Party undertakes to disclose in writing to the other Party anything which will or may prevent any of the conditions referred to in Article 4.1 from being satisfied on or before the Long Stop Date, immediately as it comes to the notice of that Party.

(b) If this Agreement has not become unconditional in all respects on or before the Long Stop Date, it shall automatically terminate on that date and no party shall subsequently have any rights or obligations under this Agreement save in respect of the provisions of Article 4.3. For the avoidance of doubt, all rights and liabilities of the Parties which have accrued before such termination shall continue to exist.

Article 5. PROJECT SITE

5.1 Access to Project Site/Handover of Project Site

The Government of _____(State) hereby undertakes to handover to the Concessionaire physical possession of the Project Site, as identified in Schedule C, with Vacant Possession free from Encumbrance within thirty (30) days from the date of this Agreement, together with the necessary rights of way/easements, for the purpose of implementing the Project in accordance with this Agreement.

5.2 Execution of Site Lease Agreements

The Parties will enter into a Site Lease Agreement on the date upon which the Project Site is made available by the Government of _____(State) to the Concessionaire in accordance with Article 5.1.

5.3 Lease Premiums and Rentals

Upon execution of the Site Lease Agreement, the Concessionaire shall pay to the Government of _____(State), in consideration of the grant of the rights over the Project Site in favour of the Concessionaire, a lease premium of Rs. _____. The Parties agree that such payment shall be satisfied by the Concessionaire issuing to the Government of _____(State) (or such person as the Government of _____(State) may nominate) _____(one crore fifty-five lacs only) equity shares of Rs.____ (10) each (face value) in the capital of the Concessionaire. The Concessionaire shall also pay to the Government of _____(State) annually in advance (on the date of the execution of the Site Lease Agreement and on each anniversary thereof) a rental payment in respect of the lease of the Site of Rs._____(Rupees fifty-four lacs forty thousands only) per annum. Such annual rental payment shall be paid in cash on the due date in immediately available funds to such account of the Government of _____(State) (or its nominee) as it may notify to the Concessionaire from time to time. The payment shall be made by the Concessionaire from immediately available funds on the due date into such account as the Government of _____(State) may notify to the Concessionaire from time to time subject to the provisions of the Loan Agreement.

5.4 General Provisions Relating to the Site

- (a) The Concessionaire will enjoy complete and uninterrupted possession and control of the Site, including the enjoyment of all Easements and with free access to the Site during the Concession Period. The Government of _____(State) will (at its own cost and expense) evacuate, relocate, rehabilitate and resettle residents, close or divert roads and take other similar action within its authority as may be reasonably necessary to enable the Concessionaire to carry out the Project.
- (b) The Government of _____(State) will ensure that the Site Lease Agreement is registered with the appropriate Competent Government Authority as soon as practicable following its execution. All applicable stamp duties and registration charges shall be borne by the Government of _____(State).
- (c) The Government of _____(State) will provide to the Concessionaire such documents as it may reasonably require for encumbering the Project Site and its rights to the Project Site for the purposes of Financing. The Government of _____(State) will execute such documents as the Lenders may reasonably required in order to implement and to perfect such security.

5.5 Use of Project Site

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

5.6 Information About the Project Site

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

5.7 Rights and Title Over the Project Site

- (a) The Concessionaire shall have exclusive rights to the use of the Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of same by third parties.
- (b) In extreme cases where social considerations prevent urban local bodies or other groups from purchasing water, resulting in political and social pressures for the Government of _____(State), the concessioning authority may, in consultation with the concessionaire, influence the use and sale of water by the concessionaire, but will be required to compensate the concessionaire for resulting lost revenues.
- (c) The Concessionaire shall allow access to, and use of, the Project Site/Project Facility for telegraph lines, electric lines or such other public purposes as the Government of _____(State) may specify, provided that such access or use does not result in a Material Adverse Effect or closure of Project Facility for a period exceeding 120 days, and that the Government of _____(State) undertakes to ensure that the Project Facility is restored at the cost and expense of the Government of _____(State) as per the Specifications and Standards. Where such access or use causes any loss of Fee to the Concessionaire, the Government of _____(State) shall be liable to compensate the Concessionaire for such loss.

_____(State) shall compensate the Concessionaire for such loss of Fee by increasing the Concession Period suitably.

(d) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement. Provided, however, that nothing contained herein shall be construed or interpreted as a restriction on the right of the Concessionaire to appoint any Contractor for the performance of its obligations hereunder, including for operation and maintenance of all or any part of the Project/Project Facility.

5.8 Clearances

The Government of _____(State) confirms that the Project/Project Site has been granted the clearances listed in Schedule L. The Concessionaire shall be responsible and shall be in compliance with the terms and conditions subject to which these clearances have been issued. The Concessionaire shall obtain all Applicable Permits in such sequence as is consistent with the Project Requirements.

Article 6. PERFORMANCE SECURITY

6.1 Initial Guarantee

The Concessionaire shall maintain the Initial Guarantee in full force and effect from the date of this Agreement until the Effective Date/Commercial Operations Date.

6.2 Performance Guarantee

The Concessionaire shall maintain the Performance Guarantee in full force and effect from the Effective Date/Commercial Operations Date until the expiration of the Concession Period or sooner termination of this Agreement or, if later, on a revolving basis, until all obligations and liabilities of the Concessionaire hereunder are fully discharged.

6.3 _____ Pipeline Guarantee (Project Specific)

The Concessionaire shall maintain the _____ Pipeline Guarantee in full force and effect from the date for the commencement of the Works for the _____ Pipeline until the Works for _____ Pipeline have been completed, as certified by the Independent Engineer.

6.4 Rehabilitation Works Guarantee (Project Specific)

The Concessionaire shall maintain the Rehabilitation Works Guarantee in full force and effect from the Effective Date/Commercial Operations Date as determined under Article 7.4 until the Rehabilitation Works have been completed, as certified by the Independent Engineer.

6.5 Payment of Damages

If the Concessionaire fails at any time to meet any of the tests set out in Schedule K on the due date for performance as set out in such Schedule, the Concessionaire will pay to the Government of _____(State) on such date on which performance was due the liquidated damages as set out adjacent to the relevant test, less any amounts paid to Users/Purchasers for a failure to supply Bulk Water under the relevant contract of supply resulting for the same breach by the Concessionaire. The Government of _____(State) may demand payment under the relevant Bank Guarantee for the payment of liquidated damages due from the Concessionaire under this Article 6.5.

6.6 Liquidated Damages Not A Penalty (Project Specific)

The Parties acknowledge and agree that because of the unique nature of the Project it is difficult to determine with precision the amount of damages that would or might be incurred by the Government of _____(State) as a result of the Concessionaire's failure to achieve the tests set out in Schedule K. It is understood and agreed by the Parties that:

- (i) The Government of _____(State) will be damaged by a failure of the Concessionaire to meet such tests;
- (ii) It would be impracticable or extremely difficult to fix the actual damages resulting therefrom;
- (iii) The payments from the Concessionaire to the Government of _____(State) are in the nature of liquidated damages and are not a penalty and are fair and reasonable;
- (iv) Such payment represents a reasonable estimate of fair compensation that may be anticipated from such failure which are payable on submission of necessary proof;
and
- (v) The liquidated damages are intended to represent a ceiling on damages payable for a failure to meet such tests, but without prejudice to any other rights of the Government of _____(State) including the right to terminate this Agreement.

6.7 Liability

Neither Party under this Agreement shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, including damages arising in respect of consequential financial or economic loss.

Article 7. OBLIGATIONS AND UNDERTAKINGS OF THE CONCESSIONAIRE

7.1 General Obligations of the Concessionaire

In addition to its basic primary obligation of providing water, as per the terms of this Agreement, and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement, the Concessionaire shall at its own cost and expense:

- (i) investigate, study, design, construct, operate and maintain the Project Assets/Project Facility in accordance with the provisions of this Agreement, Good Industry Practice and Applicable Laws;
- (ii) obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance with those Permits at all times during the Concession Period;
- (iii) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (iv) ensure and procure that each Project Agreement contains provisions that would entitle the Government of _____(State), or a nominee of the Government of _____(State), to step into such agreement at the discretion of the Government of _____(State), in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement or the Substitution Agreement;
- (v) provide all necessary assistance to the Independent Engineer, as it may reasonably require for the performance of its duties and services under this Agreement;

- (vi) appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements, as may be necessary;
- (vii) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (viii) make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Laws and Applicable Permits;
- (ix) be responsible for quality, soundness, durability, safety and the overall Project Requirements, notwithstanding the appointment by it of Contractor(s) to implement and/or operate and maintain the Project/Project Facilities;
- (x) ensure that the Project Site remains free from all encroachments and take all steps necessary to prevent or, as the case may be, remove encroachments, if any;
- (xi) make payments to the Police Department or any Government Agency/Body, if required, for provision of such services as are not provided in the normal course or which are available only on payment;
- (xii) afford access to the Project Site to the authorized representatives of the Government of _____ (State), the Independent Engineer and any Government Body/Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority, and, upon reasonable notice, the Concessionaire shall provide to such persons the assistance reasonably required to carry out their respective duties and functions;
- (xiii) obtain at its cost and charges special or temporary right of access, occupation or use of any property that may be required by it in connection with implementation of the Project. The Concessionaire shall also obtain at its cost such facilities as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.
- (xiv) develop, implement and administer a surveillance and safety program for the Project/Project Facility and the users thereof and the personnel of the Contractors engaged in the provision of any services under any of the Project Agreements, including correction of safety violations and deficiencies, and the taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (xv) take all reasonable precautions for the prevention of accidents on or about the Project Site/Project Facility, and provide all reasonable assistance and emergency medical aid to accident victims;
- (xvi) be responsible for safety, soundness and durability of the Project Facility, including all structures forming part thereof, and their compliance with the Specifications and Standards;
- (xvii) operate and maintain the Project at all times during the Operations Period in conformity with this Agreement, including but not limited to, the Specifications and Standards, the Maintenance Programme and Good Industry Practice;

- (xviii) remove promptly according to Good Industry Practice, from the Project Site, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits;
- (xix) carry out the Works in accordance with the requirements of this Agreement and will operate and maintain the Facilities and otherwise implement the Project in order to supply Raw Water to Purchasers in accordance with the Requirements and to ensure a Maximum Tail End Supply Capacity of at least _____Mld (520), subject to the Government of _____(State) complying with its obligation to supply Raw Water to the Concessionaire, as set out in Article 7.4.

7.2 Commencement of _____ Pipeline (Project Specific)

(a) As soon as reasonably practicable after the Effective Date, and in any event no later than the date falling three (3) months after the Effective Date, the Concessionaire shall:

- (i) procure that the _____ Pipeline Guarantee is in full force and effect;
- (ii) obtain all Clearances required to carry out the Works to construct the _____ Pipeline (subject to compliance by the Government of _____(State) of its obligations under this Agreement in respect of the grant of any such Clearance); and
- (iii) subject to the Government of _____(State) handing over Project Site to the Concessionaire as envisaged under Article 5 of this Agreement, commence the Works for the construction of the _____ Pipeline.

(b) In the event that the Concessionaire fails to comply with its obligations under clause (a) above, then the Government of _____(State) shall then have the right to demand payment under the Initial Guarantee for the full amount payable thereunder without any requirement for any further notice or demand to be given to the Concessionaire and to terminate this Agreement with immediate effect. However, the Government of _____(State) shall not be entitled to make a demand under the Initial Guarantee if the failure to obtain any Clearance or to enter into the Site Lease Agreement arose out a default by the Government of _____(State) of its obligations under the Agreement. Upon any termination under this clause (b), each Party shall automatically be released from their obligations and liabilities to each other, except for any obligation or liability arising or incurred prior to such termination and which remains to be performed or fulfilled. Article 26 (Transfer and Purchase of Facilities and Step Out Rights) shall apply accordingly upon any such termination.

(c) The Concessionaire will carry out all Works for the proper implementation and completion of _____ Pipeline on or before the date which falls ten (10) months after the date on which the full advance payment for all Works relating to the construction of the _____ Pipeline is paid.

(d) The time for completion of such Works shall be extended by a period equal to any delay caused by:

- (i) delay in the confirmation, renewal or extension of any Clearances that are within the control of the Government of _____(State) where the Concessionaire or the relevant applicant has acted reasonably in complying with the application requirements and eligibility criteria with respect to the grant of such Clearance;
- (ii) the occurrence of an event of Force Majeure; or

- (iii) a breach by the Government of _____(State) of any of its obligations under this Agreement.

(e) The Parties acknowledge that the works undertaken and performed pursuant to the Construction Contract form part of the Works for the construction of the _____ Pipeline and, from its Commencement Date, shall be subject to and carried out in accordance with the terms and conditions of this Agreement as if performed (or to be performed) under this Agreement.

7.3 Commencement of Commercial Operations

- (a) Upon the earliest to occur of:
 - (i) the date on which the Works for the construction of the _____ Pipeline have been completed (as certified by the Independent Engineer);
 - (ii) the date on which the water level in the _____ Reservoir has reached a level where it is possible for water to flow by gravity into the _____ for a continuous period of sixty (60) days and to meet the requirements for the delivery of Raw Water under the Bulk Water Supply Agreements (as certified by the Independent Engineer),

the Parties shall procure as soon as possible thereafter (but no later than twenty-one (21) days after such date) that meetings of the Water Drawal Committee and the Charges Review Committee are held for the purpose of making all determinations required in order to commence the supply of Raw Water under each Bulk Water Supply Agreement (including the setting of the Initial Charges). The Parties shall procure that all such determinations are provided within such twenty-one (21) day period and the date upon which all such determinations have been provided shall be the Commercial Operations Date.

- (b) On and with effect from the Commercial Operations Date, the Concessionaire shall conduct the Commercial Operations as required by the terms and conditions of this Agreement until the expiration of the Concession Period or the sooner termination of this Agreement.

7.4 Commencement of Rehabilitation Works

- (a) The Concessionaire will commence the Rehabilitation Works on the first date on which each of the following conditions is fulfilled:
 - (i) the Government of _____(State) is, on the relevant date, in compliance with its obligations under Article 21.2 (Review of Formulae and Basis For Determining Charges);
 - (ii) the aggregate net profit after tax of the Concessionaire for the period commencing on the Effective Date until the relevant date is not less than ninety percent (90%) of the projected aggregated net profit for such period as set out in the Model;
 - (iii) on the relevant date the aggregate amount of Raw Water to be supplied pursuant to the Bulk Water Supply Agreements entered into with Users is not less than _____ Mld (371); and
 - (iv) on the relevant date, the Concessionaire has secured commitments for the provision of financing (or such finance should reasonably be expected to be available taking into account all of the circumstances at the relevant time) on a basis which is non-recourse to the shareholders of the Concessionaire (other than security over the shares held by the shareholders in the capital of the Concessionaire or an obligation to contribute to such capital) in order to carry out the Rehabilitation Works having exercised its best endeavours to obtain such financing. However, if there is any

dispute as to whether financing should reasonably be expected to be available, then the matter shall be determined by an appropriately qualified merchant banker whose decision shall be final and binding on the Parties. On the request of either Party, the other Party shall propose the names of three (3) appropriately qualified merchant bankers, and the first Party shall make the necessary appointment from the names provided. The costs and expenses of the merchant banker shall be borne by the Parties in equal proportions or as the merchant banker otherwise determines in his absolute discretion in the circumstances.

(b) the Rehabilitation Works will be completed (as certified by the Independent Engineer) within ____ months (48) of the date upon which such Rehabilitation Works are to be commenced in accordance with clause (a) above, subject to an extension to such ____ month period for such period during which closure of the ____ is deferred pursuant to the provisions of Schedule ____.

(c) upon commencement of the Rehabilitation Works, the Concessionaire shall:

- (i) prepare as soon as reasonably practicable and submit to the Government of ____ (State) and the Independent Engineer, the Rehabilitation Project Development Plan (PDP) showing the plan for the phased investment required in order for the Concessionaire to complete the Rehabilitation Works within the required time period and in order to comply with its obligations under this Agreement (the detail, scope and form of the Rehabilitation PDP to be consistent with and to a standard commensurate with the Project Development Plan);
- (ii) diligently proceed with the Rehabilitation Works in compliance with the Rehabilitation PDP and otherwise to ensure that the Rehabilitation Works are completed within the required time period;
- (iii) throughout the period when the Rehabilitation Works are being carried out, submit to the Government of ____ (State) and the Independent Engineer the detailed drawings and designs of the Rehabilitation Works which will be prepared on a timely basis in advance of the relevant Works to which they apply to enable the proper and reasonable review by the Government of ____ (State) and the Independent Engineer;
- (iv) prepare as soon as reasonably practicable, and submit to the Government of ____ (State) and the Independent Engineer, the technical requirements for the Rehabilitation Works (the detail, scope and form of which must be consistent with, and to a standard commensurate with, the Technical Requirements); and
- (v) take into account all reasonable comments and make such reasonable amendments to the Rehabilitation PDP and any submitted designs and drawings and the Technical Requirement as the Government of ____ (State) or the Independent Engineer may require.

(d) The Concessionaire shall be entitled to an extension of time for the completion of the Rehabilitation Works in the manner set out in Article 7.2(d), should any of the events set out in that Article occur.

(e) Notwithstanding the foregoing, the Concessionaire may elect, at its absolute discretion, to proceed with the Rehabilitation Works at any time prior to the date upon which it is obliged to commence the Rehabilitation Works determined in Article 7.4(a). In the event that the Concessionaire so elects, it shall give notice in writing thereof to the Government of ____ (State) and the requirements of this clause (e) shall apply accordingly.

7.5 Construction Obligations

The Parties will comply with the requirements of Schedule D which apply to and govern the relationship between the Parties in relation to the Works to be completed under this Agreement, including inspections, completion certificates, variations, measurement, valuations and such other matters dealt with in that Schedule.

7.6 Supply of Raw Water and Payment of Appropriate Charges

Within three (3) months of any application by any person for the supply of Raw Water, the Concessionaire shall enter into an agreement to supply Raw Water to such person on terms which are reasonable and consistent with existing agreements for supply and with the terms and conditions of this Agreement at the appropriate Charges as reflected in the Model and as determined in accordance with Article 21. However, if additional or new works are required to enable offtake and metering for supply to that person, then the Concessionaire shall be entitled to include within the relevant agreement such reasonable charges as are necessary to compensate the Concessionaire for all reasonable costs and expenses associated with such works, and the Concessionaire shall in no event be required to supply Raw Water in excess of the Actual Tail End Supply Capacity.

7.7 Maintenance and Repairs

(a) The Concessionaire shall, from the Commercial Operations Date and at all times during the term of this Agreement thereafter, operate and maintain the Project Facilities in good working condition to ensure that it supplies Raw Water in accordance with the Requirements and to ensure that the Facilities transferred to the Government of _____(State), upon expiry of the Concession Period, are in good condition, normal wear and tear excepted having regard to their use in accordance with the terms of this Agreement.

(b) The Concessionaire shall, at its cost, plan for replacement of equipment well ahead of the end of the useful life thereof and replace such equipment in accordance with the Project Development Plan. The Concessionaire shall, at its own cost, promptly and diligently repair or restore any portion of the Project Facilities which may be lost, damaged or destroyed.

(c) The condition of the Project Facilities as transferred to the Government of _____(State) on the expiration of the Concession Period or on the Termination Date shall be such that they are fully operational as intended under this Agreement and require only a continuation of the programme of continuous maintenance, as performed regularly by the Concessionaire during the Concession Period, in order to maintain this fully operational condition. If the Facilities are not in fully operational condition at the time of transfer, the Government of _____(State) shall direct the Concessionaire to make the Facilities operational as envisaged in this Agreement. If the Concessionaire fails to comply with that direction, within a reasonable time frame, then the Government of _____(State) has the right to carry out the repairs to bring them up to such condition. The Concessionaire shall indemnify the Government of _____(State) for any such costs (and any such costs may be deducted from amounts payable to the Concessionaire).

7.8 Business Risks

Subject to the terms of this Agreement, the Concessionaire shall bear all business risks that are inherent in the development, construction, operation and maintenance of the Project Facilities.

7.9 Royalty (Project Specific)

On and with effect from the Commercial Operations Date, the Concessionaire will pay to the Government of _____(State), on a quarterly basis in arrears, a royalty on the aggregate quantity of Raw Water requested and received by the Concessionaire as releases through the head works from the Yeleru Reservoir and abstracted from the _____ River during the Concession Period

calculated at a rate of Rs. ____ (0.33) per cubic metre of Raw Water received or abstracted. Such rate will be subject to periodic indexation at the same rate as that applied to the Water Charges from time to time. The royalty will be paid on the first Business Day falling three (3) months after the Commercial Operations Date and on the first Business Day falling every three (3) months thereafter during the Concession Period and a pro rata payment shall be made on the Termination Date or on the expiration of the Concession Period. The payment shall be made by the Concessionaire from immediately available funds on the due date into such amount as the Government of _____ (State) may notify to the Concessionaire from time to time subject to the provisions of the Loan Agreement.

7.10 Financial and Project Information

The Concessionaire shall deliver to the Independent Engineer and Independent Auditor and the Government of _____ (State) the following documents and information at the intervals described below:

(A) Financial Information

- (a) annual audited accounts (in compliance with Indian Generally Accepted Accounting Principles) of the Concessionaire delivered within 180 days of the end of each Financial Year;
- (b) unaudited financial statements (in compliance with Indian Generally Accepted Accounting Principles) of the Concessionaire delivered quarterly within thirty (30) days of the end of each such period;
- (c) within the fourteen (14) days of the end of each month, the monthly quantum and value of water received and sold in such month;
- (d) notification of any material change in the financial condition of the Concessionaire and/or the Project promptly following such occurrence;
- (e) all reports, notifications and information, including construction progress reports, with respect to the execution of the Works, as required in accordance with Schedule D;
- (f) all reports, notifications and information, including operations reports, with respect to the performance of the operation and management of the Project Facilities, as required in accordance with Schedule E.

(B) Additional Information

The Concessionaire agrees to provide to the Government of _____ (State), the Independent Engineer and the Independent Auditor such further information as any of them may reasonably request in order for them to monitor the progress and Performance Standards for the Project.

(C) Budgets

At the commencement of each Financial Year, the Concessionaire will prepare and submit to the Independent Engineer and the Independent Auditor a statement confirming:

- (i) the expenditure incurred or committed or to be incurred by the Concessionaire for the period from the date of the last such statement to and including the date of the current statement; and
- (ii) future expenditure anticipated to be made during the next Financial Year.

(D) Financial Year

The Concessionaire shall not change its Financial Year without the prior written approval of the Government of _____(State).

7.11 Conveyance of Water For Domestic and Irrigation Use From the _____

The Concessionaire will (subject to the Government of _____(State) making available the requisite amount of Raw Water) make all necessary arrangements for an additional ____TMC (2) of Raw Water per year to be conveyed for meeting domestic water needs in communities along the alignment of the _____ and an additional ____TMC (5) of Raw Water per year for irrigation purposes. The additional Raw Water for irrigation, after allowing for hydraulic transmission losses, will be drawn from the _____ at identified off take points and paid for as indicated in Schedule B hereto. These additional amounts of Raw Water will be conveyed by utilising the surplus capacity of the _____ following execution of the Rehabilitation Works and in accordance with the terms of the Water Drawal.

7.12 Project Development Plan and Rehabilitation PDP

The Project Development Plan and the Rehabilitation PDP may be amended from time to time by agreement between the Parties where appropriate or necessary for the proper and efficient implementation of the Project.

7.13 Other Obligations

- (a) The Concessionaire shall comply with all Applicable Laws and give due regard to safety in its construction and planning activities in order to protect life, health, property and the environment.
- (b) The Concessionaire shall provide reasonable access at reasonable times to Competent Government Authorities to discharge their duties, including access to the Project Site, to review progress in construction and operation and maintenance and to ascertain compliance with any of the requirements of this Agreement.
- (c) The Concessionaire shall be directly responsible to the authorities concerned, for the payment of all charges for power, fuel, telephone, and other utilities used.
- (d) The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities. The Concessionaire is free to frame the terms of employment in compliance with Applicable Laws in India. All such employees shall always remain the responsibility of the Concessionaire.

7.14 No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent that performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- (a) Force Majeure Event, subject to Article 22;
- (b) Government of _____(State) Event of Default;
- (c) Compliance with the instructions of the Independent Engineer, the Government of _____(State) or the directions of any Government Body other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;

- (d) Emergency decommissioning of the Project Facilities or part thereof, in accordance with O&M Requirements;
- (e) Closure of the Project Facilities or part thereof with the approval of the Independent Engineer and/or the Government of _____(State);
- (f) Inability of the Concessionaire to remove any accident debris due to non-completion of any police or insurance-related inquiry or survey despite prompt steps having been taken by the Concessionaire in that regard.

7.15 Shareholding

The Concessionaire shall ensure that:

- (a) The Successful Bidder/Consortium hold(s) not less than fifty-one percent (51%) of the paid up equity capital of the Concessionaire until three (3) years after the Commercial Operations Date (COD), and not less than twenty-six percent (26%) of its paid up equity capital during the balance of the Operations Period;
- (b) M/s _____(the "Lead Member") holds at any time not less than fifty percent (50%) of the Consortium's holding in the paid up equity capital of the Concessionaire during the entire Concession Period; or
- (c) M/s _____(the "Lead Technical Member") and M/s _____(the "Lead Financial Member" holds at any time not less than twenty-five percent (25%) each of the Consortium's holding in the paid up equity capital of the Concessionaire during the entire Concession Period, and M/s _____("Member") holds not less than ten percent (10%) of the Consortium's holding in the paid up equity capital of the Concessionaire, until the Commercial Operations Date (COD).

Article 8. OBLIGATIONS AND UNDERTAKINGS OF THE GOVERNMENT OF _____(STATE)

8.1 Water-Related Obligations

(a) Subject to the terms of the Water Drawal set out in Schedule B and all other terms and conditions of this Agreement and as requested from time to time by the Concessionaire in accordance with the Water Drawal, the Government of _____(State) undertakes from the Commercial Operations Date to release from the _____ into the _____ up to a maximum of _____TMC (5) of Raw Water during any Water Year and (upon completion of the Works of the _____ permit abstraction of up to a maximum of _____TMC (5) of Raw Water from the _____ during any Water Year. The Government of _____(State) shall have no obligation to supply Raw Water in accordance with any standard or to meet any quality.

(b) The Government of _____(State) agrees that it will not, by itself or through any agency or person under its control, supply Raw Water to the Identified Users/ Purchasers, which might reasonably be expected to materially and adversely affect the rights of the Concessionaire hereunder.

(c) The Government of _____(State) will not grant any permission for carrying out any construction, building or laying of pipes or wires or planting of trees along the canal service road and common services or for any other purpose whatsoever which might materially and adversely affect the Works or the Project Facilities. Without limiting the foregoing, the Government of _____(State)

shall not construct, and shall not permit the construction of, any intake structures within a radius of _____metres (500) of the intake structures for the _____, excluding only the already existing intake structure constructed by the _____. **(Project Specific)**

(d) The Government of _____(State), except as set out in Article 22 (Force Majeure) or Article 26 (Transfer and Purchase of Facilities and Step Out Rights), will not acquire or take possession of, confiscate, expropriate or requisition the Project Site or the Project Facilities, or any other asset or right of the Concessionaire.

(e) The Government of _____(State) shall make payment of the financial support, by the Due Date, in accordance with the provisions of the Charges Equalisation Fund, as set out in Schedule I, to meet the provisions of Article 21.2.

8.2 Government of _____(State) Actions In Support Of The Concession

(a) The Government of _____(State), upon notice from the Concessionaire, will enter into the Direct/Substitution Agreement in the form set out in Schedule J or in such other form as the Lenders may reasonably acquire.

(b) In the event of a Change of Law, the Concessionaire may, by notice in writing to the Government of _____(State), request such modifications to the terms of this Agreement as the Concessionaire believes (acting reasonably) are necessary to enable it to enjoy the rights and benefits conferred on it hereunder on the date of this Agreement. The Parties will thereafter consult in good faith and decide on what modifications might reasonably be made. In the event that agreement cannot be reached, either Party may refer the matter to arbitration in accordance with Article 27(Dispute Resolution).

(c) The Government of _____(State) will provide the Concessionaire, on a best efforts basis, with access to all infrastructure facilities and utilities (including uninterrupted supply of electricity on demand with Priority Sector Status) at fair rates and on terms no less favourable to the Concessionaire than those generally available to purchasers receiving substantially equivalent services and which are necessary for the Concessionaire to implement the Project.

(d) The Government of _____(State) shall, upon written request from the Concessionaire, provide on a best efforts basis all possible assistance to the Concessionaire and any other person providing services to the Concessionaire for the implementation of the Project in obtaining immigration and residents permits for foreign personnel and their dependants and employment permits for the foreign personnel who are employed in relation to the implementation of the Project. **(Project specific)**

(e) The Government of _____(State) will, upon request from the Concessionaire, grant 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, subject to the Concessionaire or the relevant applicant complying with the eligibility criteria for the grant of such Clearances applied on a non-discriminatory basis.

(f) The Government of _____(State) will assist the Concessionaire on a best efforts basis to obtain Clearances from any entity other than the Government of _____(State) required for the implementation of the Project from time to time.

(g) The Government of _____(State) will share information available to it, to the extent requested by the Concessionaire, as is necessary and appropriate for the implementation of the Project.

(h) The Government of _____(State) shall ensure that any Competent/Government Authority under its direction or control will at all times comply with the obligations of the Government

of _____(State) as set out in this Agreement. The Government of _____(State) shall, if requested by the Concessionaire, issue written instructions to a Competent/Government Authority as described above, directing it to comply with this Agreement with immediate effect.

8.3 Other Obligations of the Government of _____(State)

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement, the Government of _____(State) shall:

- (i) handover the physical possession of the Project Site, together with the necessary right of way/easements to the Concessionaire within thirty (30) days from the date of this Agreement (Commencement Date), free from any Encumbrance;
- (ii) procure execution of the State Support Agreement within thirty (30) days from the date of this Agreement;
- (iii) grant, or where appropriate, provide necessary assistance to the Concessionaire in securing Applicable Permits;
- (iv) grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from the Government of _____(State) in connection with implementation of the Project and the performance of the Concessionaire's obligations under this Agreement;
- (v) subscribe to the Substitution/Direct Agreement (within fifteen (15) days of disclosure by the Concessionaire regarding Financial Close;
- (vi) ensure peaceful use of the Project Site by the Concessionaire under and in accordance with the provisions of this Agreement without any let or hindrance from the Government of _____(State) or persons claiming through or under it;
- (vii) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities, at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities and utilities;
- (viii) ensure that no barriers are erected or placed by the Government of _____(State) or any Government Agency on the Project Facility/Project Site, except on account of any law and order situation or upon national security considerations;
- (ix) assist the Concessionaire in obtaining necessary authority to regulate traffic on the Project Site/Project Facility subject to, and in accordance with, the Applicable Laws;
- (x) assist the Concessionaire in obtaining police assistance against payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Site/Project Facility and implementing this Agreement in accordance with the provisions hereof;
- (xi) observe and comply with all its obligations set forth in this Agreement.

Article 9. SECURITY AND ILLEGAL OFFTAKE

(a) The Concessionaire shall maintain security in relation to the Project Site and Project Facilities. This will include procedures to monitor and identify the illegal offtake of Raw Water and to take such action as is available to it (and which it can lawfully perform) in order to prevent such illegal offtake. In the event that the Concessionaire requires the Government of _____(State) (or any Competent Government Authority, including the Police) to take official action in order to prevent such illegal offtake, it shall provide notice in writing to the Government of _____(State) giving details of the illegal offtake (including the site of the offtake and, if known, the identity of the offtaker) and setting out steps which the Concessionaire requires the Government of _____(State) to take in order to prevent such illegal offtake.

(b) The Government of _____(State) agrees that, following the receipt of a notice from the Concessionaire under sub-Article (a), it will, at the cost and expense of the Concessionaire, take such steps as requested by the Concessionaire in such notice and which are available to it in order to prevent the illegal offtake of Raw Water. The Concessionaire shall indemnify the Government of _____(State) on demand for all costs, expenses and liabilities arising out of or as a consequence of it (or any Competent Government Authority, including the Police) taking such action as requested by the Concessionaire. Without limiting the foregoing, the Government of _____(State) shall provide, at the request of the Concessionaire, such police personnel as may be reasonable for the purpose of patrolling the Project Facilities and for providing security at the Project Site, provided that the Concessionaire shall pay all costs in connection with the provision of such services at rates determined in accordance with the relevant published official order of the Government of _____(State).

(c) If the Government of _____(State) fails or elects not to comply with its obligation under sub-Article (b) above to prevent the illegal offtake of Raw Water (and subject to the Concessionaire having indemnified it as required by sub-Article (b) for any action taken), then the Government of _____(State) shall:

- (i) release more Raw Water from the _____(Yeleru Reservoir) or permit further extraction of Raw Water from the _____ (_____ River) to ensure that the Concessionaire receives and has available for supply an extra volume of Raw Water which is equivalent to the amount of Raw Water which is being illegally taken; or
- (ii) indemnify the Concessionaire for all costs, expenses and liabilities suffered or incurred by it and arising out of or as a consequence of the failure by the Government of _____(State) to prevent the illegal offtake of Raw Water; or
- (iii) agree to an adjustment to the Charges for the supply of Raw Water which would appropriately compensate the Concessionaire for any costs, expenses and liabilities suffered by it and arising out of or as a consequence of the failure by the Government of _____(State) to prevent the illegal offtake of Raw Water.

(d) The Government of _____(State) expressly acknowledges and agrees that the Concessionaire shall not be in breach of any provision of this Agreement which breach would otherwise occur because of a breach by the Government of _____(State) of its obligations under sub-Articles (b) or (c) above.

Article 10. INDEPENDENT ENGINEER

10.1 Appointment of Independent Engineer

(a) The Government of _____(State) and the Concessionaire shall mutually appoint a reputed consulting engineering firm or body corporate to be the Independent Engineer to undertake and perform the duties, work, services and activities set forth in Schedule G.

- (b) Within thirty (30) days of the date of this Agreement, the Concessionaire shall submit to the Government of _____(State) a panel of at least three such firms or companies or body corporates or a combination thereof acceptable to it and having the necessary expertise for appointment as Independent Engineer.
- (c) Within thirty (30) days from the date of receipt of such panel, the Government of _____(State) shall appoint the Independent Engineer out of such panel, and communicate the same to the Concessionaire.
- (d) The Independent Engineer shall report to the Government of _____(State) about their work, services and activities and the progress of implementation of the Project at least once every month or more frequently as the situation may warrant. Such reports of the Independent Engineer shall include, but not be limited to, the matters and things set forth in said Schedule G.
- (e) The Independent Engineer shall submit bills for periodic payment in accordance with the terms of its appointment to the Government of _____(State). One-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Government of _____(State) within fifteen (15) days of its receipt of a statement of expenditure from the Government of _____(State).
- (f) If either Party disputes any advice, instruction or decision of the Independent Engineer, the same shall be resolved in accordance with the Dispute Resolution Procedure found in Article 27.

10.2 Termination and Fresh Appointment

If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, it may make a written representation to the Government of _____(State), stating its reasons in detail, seeking termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Government of _____(State) shall hold a tripartite meeting with the Concessionaire and Independent Engineer for amicable resolution of the dispute. Such a meeting may also be called by the Government of _____(State) if it has similar problems with the performance of the Independent Engineer. If the dispute remains unresolved, the Concessionaire and the Government of _____(State) may agree to terminate the appointment and appoint another Independent Engineer in accordance with the provisions of Article 10.1(a) to (c) above.

Article 11. INDEPENDENT AUDITOR

11.1 Appointment

- (a) Upon the occurrence of any event necessitating or warranting appointment of the Independent Auditor under the provisions of this Agreement, and upon a proposal being made by any Party, the Parties shall promptly (and in any case within fifteen (15) days of such proposal) confer and agree upon a reputed firm of Chartered Accountants practicing in India to be appointed as the Independent Auditor. Thereupon, the Government of _____(State) shall appoint the Independent Auditor on terms and conditions agreed to by the Parties and by the Person to be appointed as the Independent Auditor.
- (b) If, upon a proposal being made by a Party for appointment of an Independent Auditor, the other Parties fail to confer and agree upon the Independent Auditor within the said period of fifteen (15) days, the Party proposing the appointment shall be entitled to appoint the Independent Auditor. Such appointment and the terms thereof shall be binding on the other Parties and the Parties shall extend all necessary assistance to the Independent Auditor to carry out the task for which its appointment has been made.

11.2 Payment of Fees

All fees and costs of the Independent Auditor shall be shared equally and borne by the Concessionaire and the Government of _____(State). Within seven (7) days of the claim of the Government of _____(State), the Concessionaire shall pay its share of such fees and costs to the Government of _____(State).

Article 12. DRAWINGS

12.1 Preparation of Drawings

(a) The Concessionaire may, subject to the Design Requirements, adopt with or without modifications the Drawings made available by the Government Of _____(State) or adopt its own Drawings. However, the Concessionaire shall in any event be solely responsible for the adequacy of the drawings.

(b) If the Concessionaire proposes any modifications to the Drawings made available by the Government of _____(State) or submits alternative Drawings or Drawings in respect of any item for which no Drawings are made available by the Government of _____(State), the same shall be subject to review by the Independent Engineer as provided in the following sub-Article 16.2.

12.2 Review of Drawings

(a) The Concessionaire shall promptly, and in such sequence as is consistent with the Construction Requirements, submit a copy of each of the Drawings to the Independent Engineer and to the Government of _____(State).

(b) By forwarding the Drawings to the Independent Engineer and to the Government of _____(State) pursuant to the preceding clause (a), the Concessionaire shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the Design Requirements.

(c) Within fifteen (15) days of receipt of the Drawings, the Independent Engineer shall review those Drawings taking into account, inter alia, the comments of the Government of _____(State), if any with regard to them, and shall convey its comments and observations to the Concessionaire on the conformity of the Drawings with the Design Requirements. If the comments and observations of the Independent Engineer indicate that the Drawings are not in conformity with the Design Requirements, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to the Independent Engineer for further review. The Independent Engineer shall give its observations and comments, if any, within fifteen (15) days of receipt of such revised Drawings, which shall be taken into account by the Concessionaire while finalizing the Drawings.

(d) If, within the period stipulated in the preceding clause (c), the Independent Engineer does not respond to the Drawings submitted to it by the Concessionaire, then the Concessionaire shall be entitled to proceed with the Project on the basis of such Drawings submitted by it to the Independent Engineer.

(e) Notwithstanding any review or failure to review the comments and observations of the Independent Engineer or the Government of _____(State), the Concessionaire shall be solely responsible for the adequacy of the Drawings and their conformity with the Design Requirements, and shall not be relieved or absolved in any manner whatsoever of any of its obligations under this Agreement.

- (f) The Concessionaire shall be responsible for delays in meeting the Design Requirements caused by reason of any Drawings not being in conformity with the Design Requirements, and shall not be entitled to seek any relief in that regard from the Government of _____(State).
- (g) The Concessionaire shall, in consultation with the Independent Engineer, finalise an implementation schedule for the Project in accordance with the Construction Requirements.
- (h) Within ninety (90) days of the Commercial Operations Date (COD), the Concessionaire shall furnish to the Government of _____(State) three (3) copies of "as built" Drawings duly verified by the Independent Engineer, including without limitation an "as built" survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities reflecting the Project as actually designed, engineered and constructed.

Article 13. PROJECT IMPLEMENTATION

13.1 Construction Works- General

- (a) The Concessionaire is required to commence Construction Works only on or after the Commencement Date or the Financial Close, whichever is later.
- (b) Nothing contained in the preceding Article 13.1(a) shall be deemed to preclude the Concessionaire from commencing Construction Works prior to the Commencement Date, provided that the Concessionaire shall do so entirely at its own cost and risk, and shall not be entitled to seek any compensation therefore or in respect thereof in the event the Agreement is terminated prior to Financial Close for whatever reasons. However, unless permitted by the Government of _____(State), no Construction Works shall begin until the Independent Engineer is in place and has assumed charge. The Concessionaire shall immediately upon commencement of Construction Works notify the Government of _____(State) of the same.
- (c) The Concessionaire shall adhere to the Construction Requirements and achieve the beginning of Commercial Operations (COD) on or before the Scheduled Project Completion Date.
- (d) The Concessionaire may undertake Construction Works by itself or through a Contractor possessing the requisite technical, financial and management expertise and capability but, in either case, the Concessionaire shall remain solely responsible to meet the Construction Requirements.
- (e) The Concessionaire shall, before commencement of Construction Works:
- (i) have the requisite organization and designate and appoint suitable officers and representatives, as it may deem appropriate, to supervise the Project, to deal with the Independent Engineer and the Government of _____(State) and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (ii) construct, provide and maintain a reasonably furnished site office accommodation for the Independent Engineer, at the Project Site.

13.2 Tests

- (a) For the purposes of determining that Construction Works are being undertaken in accordance with the Project Requirements, the Concessionaire shall, with due diligence, carry out all necessary and periodical Tests in accordance with the instructions and under the supervision of the Independent Engineer and in accordance with the Construction Requirements. The Concessionaire shall maintain a

proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

(b) All Tests shall be conducted in accordance with Construction Requirements. If the Tests are successful and all parts of Project Facilities can be safely and reliably opened for commercial operation, the Independent Engineer shall issue a Certificate of Compliance.

13.3 Other Conditions

(a) The Independent Engineer may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if in its reasonable opinion the same is being carried out in a manner that is not in conformity with the Construction Requirements.

(b) If the Commercial Operations Date (COD) is delayed beyond 120 days of the Scheduled Project Completion Date, the Government of _____(State) shall, subject to the provisions of Article 7.14 (No Breach of Obligations), be entitled to terminate this Agreement and to appropriate the Performance Security.

Article 14. OPERATIONS AND MAINTENANCE

14.1 Operation and Maintenance Requirements

The Concessionaire shall operate and maintain the Project/Project Facilities in accordance with the O&M Requirements, either by itself or through a Contractor possessing the requisite technical, financial and managerial expertise and capability, but, in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.

14.2 Failure to Meet O&M Requirements

In the event the Concessionaire has failed to operate and maintain the Project Facilities in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the Independent Engineer or the Government of _____(State) (the "Notice to Remedy"), the Government of _____(State) may, without prejudice to any of its other rights and remedies under this Agreement, be entitled to cause the repair and maintenance of the Project Facilities at the risk and cost of the Concessionaire. The Concessionaire shall reimburse all costs incurred by the Government of _____(State) on account of such repair and maintenance within seven (7) days of receipt of the claim of the Government of _____(State) therefore.

14.3 Material Breach of O&M Requirements

The Concessionaire shall be deemed to be in material breach of O&M Requirements if the Independent Engineer, acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire:

- (i) there has been a failure or undue delay in carrying out scheduled or planned maintenance or that maintenance has not been carried out in accordance with the O&M Requirements;
- (ii) the riding quality of the Project/Project Facility or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
- (iii) there has been a serious or persistent let up in adhering to safety requirements and standards and thereby the Project or any part thereof is not safe for operations;

- (iv) There has been persistent breach of O&M Requirements. "Persistent Breach" shall mean:
 - (a) any breach of O&M Requirement by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the Independent Engineer or Government of _____(State);
 - (b) recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the Independent Engineer or Government of _____(State) requiring the Concessionaire to remedy a breach; and
 - (c) repeated occurrences of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

14.4 Rights of Government of _____(State)

Upon the occurrence of a material breach of O&M Requirements, the Government of _____(State) shall, without prejudice to and notwithstanding any other consequences provided therefore under this Agreement, be entitled to terminate this Agreement.

Article 15. FINANCING ARRANGEMENT

15.1 Financing Arrangement

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

15.2 Amendments to Financing Documents

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

Article 16. SUPERVISION Charges

16.1 Supervision Charges

- (a) All works under or in course of execution or executed in pursuance of this Agreement shall at all times be open to inspection and supervision by the authorized representatives of the Government of _____(State). The Concessionaire shall, at all times during the usual working hours and at all other times at which reasonable notice of the intention of the representatives of the

Government of _____(State) to visit the work has been given to it, have a responsible agent or representative present at the Project for that purpose.

(b) To compensate the Government of _____(State) for its supervision work, the Concessionaire shall pay supervision charges fixed at 1.5% of the estimate project cost, towards the supervision provided for in preceding sub-article.

(c) The supervision charges may be paid in equal annual installments over the original Concession Period with the first installment being paid on the Commencement Date and every subsequent installment on the date of the respective anniversary of the Commencement Date, by way of a cheque or demand draft(s) drawn in favour of _____.

16.2 Project Monitoring Expenses

The Concessionaire shall also pay towards the Project Monitoring and Coordination Expenses of the Government of _____(State), a sum of Rs. _____ Lakh (Rupees _____Lakh) per annum by way of cheque or demand draft(s) drawn or issued in favour of _____. The amounts paid by the Concessionaire pursuant to this Article shall be held in a separate account and appropriated or utilized as per instructions of the Government of _____(State).

Article 17. INSURANCE

17.1 Insurance During the Implementation Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Implementation Period (that is from the date of handing over of the possession of the land to Concessionaire or upon commencement of construction pursuant to the Project Development Plan, whichever is the earlier, till the Commercial Operation Date), such insurance as is necessary, including but not limited to the following:

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

17.2 Insurance During the Operations Period

The Concessionaire shall, at its cost and expense, purchase and maintain during the Operations Period (that is from the Commercial Operation Date until the End Date of this Agreement) insurance to cover against:

- (i) loss, damage or destruction of the Project Facility, at replacement value;
- (ii) the Concessionaire's general liability arising out of the Concession;
- (iii) workmen's compensation insurance;

- (iv) liability to third parties; and
- (v) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iv).

17.3 Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Project Assets and/or the Project Facility through Indian insurance companies, and if so permitted by the Government of _____(State) through foreign insurance companies, to the extent that insurance is necessary to be effected through them.

17.4 Evidence of Insurance Cover

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

17.5 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Project Facility or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the policies in their favour as security for the financial assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facility or any part thereof shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

17.6 Validity of the Insurance Cover

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

Article 18. CHANGE OF SCOPE

18.1 Definition of Change of Scope

The Government of _____(State) may, notwithstanding anything to the contrary contained in this Agreement, require provision of such addition or deletion to the works and services on or about the Project which are beyond the scope of the Project as contemplated in this Agreement ("Change of Scope"), provided that such changes do not require expenditure exceeding Rs. _____ and do not adversely affect the Scheduled Project Completion Date. All such changes shall be made by the

Government of _____ (State) by an order (the "Change of Scope Order" issued in accordance with the procedure set forth in Article 18.2 below.

18.2 Procedure For Change of Scope

(a) The Government of _____ (State) shall, whenever it desires provision of addition or deletion of works and services referred to in Article 18.1 above, issue to the Concessionaire a notice of Change of Scope (the "Change of Scope Notice") through the Independent Engineer.

(b) Upon receipt of a Change of Scope Notice, the Concessionaire shall, within a period of fifteen (15) days, provide to the Independent Engineer such information as is necessary and reasonable together with preliminary documentation in support of the following:

- (i) the impact which the Change of Scope is likely to have on the Project Completion Schedule if the work is required to be carried out before the Commercial Operations Date (COD); and
- (ii) the cost to the Concessionaire of complying with such Change of Scope Notice (including, without limitation, material and labour cost information furnished in accordance with the current schedule of rates applicable to the works assigned by the Government of _____ (State) to its contractors, including the premium on such rates); and
- (iii) the options suggested for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time for the implementation thereof, including a detailed breakdown by work classifications.

(c) The Independent Engineer shall review the information provided by the Concessionaire, assess the change in quantities of items of work, verify the analysis of rates (if required), determine the additional cost to the Concessionaire as a result of such Change of Scope, add such further cost to Initial Investment in the Cash Flow Projections, and determine the extension, if any, to the Concession Period in order to maintain the Internal Rate of Return. This is provided that the projections for years beyond the Concession Period shall be the average of the three years immediately preceding the last year of the original Cash Flow Projections. The Independent Engineer shall communicate its recommendation to the Representative of the Government of _____ (State) within a period of fifteen (15) days from the receipt of information from the Concessionaire.

(d) The Government of _____ (State) shall issue the Change of Scope Order within a period of fifteen (15) days from the date of the recommendation made by the Independent Engineer in accordance with preceding sub-Article(c) above.

(e) The Change of Scope Order shall be effective and binding upon receipt thereof by the Concessionaire. Notwithstanding a Dispute regarding cost and time for implementation of such order, the Concessionaire shall proceed with the performance of such order promptly following receipt thereof. Any Dispute regarding the extension in the Concession Period recommended by the Independent Engineer shall be resolved in accordance with the Dispute Resolution Procedure found in Article 27 of this Agreement.

(f) All claims by the Concessionaire pursuant to this Article 18.2 shall be supported by such documentation as is reasonably sufficient for the Independent Engineer to determine the accuracy thereof, including invoices from Contractors and certification of such claims by the Statutory Auditors.

Article 19. ENVIRONMENT AND SOCIAL ASSESSMENT

The Parties will each comply with their respective obligations specified in the Environment and Social Assessment Report set out in Schedule F.

The Parties will each comply with their respective obligations specified in the Environment and Social Assessment Report set out in Schedule J.

Generally the allocation of responsibility in these areas will be divided between the Concession Authority and the Concessionaire. There will be three phases, namely the preconstruction phase, the construction phase and the post construction phase. In the preconstruction phase all statutory clearances should remain the responsibility of the Government or in the case of an investor proposed concession, the Government/Concession Authority should provide all necessary assistance possible to obtain those clearances. For those preconstruction clearances which are commercial in nature, those will remain the responsibility of the Concessionaire. During construction, responsibility is again shared. The provision of agreed compensation or environmental mitigation measures which have been accepted by the Concessionaire, will be the responsibility of the Concessionaire. Ensuring that the commitments made are carried through and that the quality of environmental mediation or ameliorisation provided for in the agreement is achieved remains the responsibility of the Concessioning Authority. In the post construction period, it is the responsibility of the Concession Authority to monitor environmental and social commitments made as part of the concession agreement, such as replanting of trees or rehabilitation of wetlands, and to ensure that the Concessionaire adheres to the agreements made as part of the concession.

Article 20. WATER SHORTAGE PERIOD

20.1 Water Shortage Period Notified by the Government of _____(State)

The Government may notify the Concessionaire by notice in writing of the commencement of a Lean Period based on the operating rules prepared in accordance with the terms of Water Drawal set in Schedule B. The Government of _____(State) must notify the Concessionaire in writing promptly of the cessation of the Lean Period as soon as the circumstances giving rise to the Lean Period have ceased. The obligation of the Government of _____(State) to supply Raw Water in accordance with Article 8.1 shall recommence upon the cessation of the Lean Period.

20.2 Effect of Water Shortage Period

During the subsistence of a Water Shortage Period (whether notified by the Government of _____(State) or otherwise):

- (i) the Concessionaire will proportionately reduce the supply of Raw Water to all Purchasers unless instructed otherwise by the Government of _____(State);
- (ii) the Concessionaire may identify and apply to the Government of _____(State) or the appropriate Competent/Government Authority for the right to draw Raw Water from a different source or site other than the Abstraction Area in the event that the Water Shortage Period continues for a period longer than seven(7) days. The Government of _____(State) or the appropriate Competent/Government Authority may consider such an application at their discretion;
- (iii) the Concessionaire will have the right to suspend Services under this Agreement, once the available storage capacity at the disposal of the Concessionaire is fully utilized; and
- (iv) the Government of _____(State) shall have no liability to recompense the Concessionaire for any liability incurred as a result of a Water Shortage Period,

provided however, that the effect of a Water Shortage Period should be subject to mitigation pursuant to Article 21.2.

Article 21. CHARGES

21.1 Collection of Charges

- (a) The Concessionaire shall be entitled to collect and appropriate Charges from Users/Purchasers. The collection of Charges may be delegated by the Concessionaire to any person, who shall collect such Charges as agent for and on behalf of and in the name of the Concessionaire.
- (b) The Government of _____(State) expressly recognizes that if any Purchaser fails to pay Charges as required, the Concessionaire may exercise all rights and remedies available under the law for recovery of Charges, including suspension, termination or cancellation of supply of Services to the relevant Purchaser. The Concessionaire will notify the Government of _____(State) from time to time of all action taken to recover Charges.

21.2 Review of Formulae and Basis For Determining Charges

- (a) The Parties shall procure that the Initial Charges to be levied by the Concessionaire shall be determined by the Charges Review Committee according to the procedures and principles set out in Schedule I within the time periods required under Article 7.3 (Commencement of Commercial Operations). Charges are to be reset each year by the Charges Review Committee. Effective from _____ each year succeeding the first year of the Concession, the Concessionaire shall submit to the Charges Review Committee a review of the Charges based on the principles and formula set out in Schedule I. Each of the Concessionaire and the Government of _____(State) will ensure that throughout the term of the Concession each of them has nominated and appointed one representative each to the Charges Review Committee (the first such nomination and appointment to be made no later than the Effective Date). The Concessionaire will nominate its representative, who is from organizations or agencies other than that of the Government of _____(State), and holding equity in the Concessionaire. The third member, who shall be the Chairperson, will be a retired judge of any of the High Courts of Judicature in India, appointed by the Government of _____(State) from and out of three (3) names recommended by the Concessionaire.
- (b) The Charges Review Committee will consider each review of charges submitted by the Concessionaire and will either confirm such review, or if it does not agree with the Concessionaire's review, otherwise confirm its own review based on the provisions and formula set out in Schedule I. The Charges will be amended accordingly upon such confirmation by the Charges Review Committee
- (c) The Concessionaire will have the right to request an increase in the Charges on the occurrence of any event set out hereunder:
- (i) the occurrence of any Shortfall (as certified by the Independent Auditor) which has not previously been accounted for in an increase of Charges; or
 - (ii) there occurs a Water Shortage Period; or
 - (iii) there occurs a Force Majeure Event; or
 - (iv) there is loss of revenue when the Government of _____(State) temporarily assumes control of the Project Facilities pursuant to Article 21.1 (Collection of Charges) and the expenses incurred to repair any damage that occurred to the Project Facilities during the period of requisition of Project Facilities by the Government of _____(State); or

- (v) the Government of _____(State) is in breach of any of its obligations under Article 8 of this Agreement.

(d) The Charges Review Committee will review the basis for determining Charges on account of the occurrence of any event set out above and determine the revised rate within a period of three (3) months from the date of receipt of a request for an increase in Charges from the Concessionaire. The revised rate must properly and reasonably compensate the Concessionaire for the effect of the event any losses or damages incurred or likely to be incurred as a consequence thereof and to ensure that the Concessionaire is substantially in the same economic and financial position as it would have been in but for the occurrence of the relevant event.

(e) The Government of _____(State) shall have the right at any time, by notice in writing to the Concessionaire, to require the Concessionaire to set Special Charges for any User/ Purchaser.

(f) In the event of the Government of _____(State) exercising its rights under clause (e) above, then:

- (i) if the Special Charges are lower than the Charges which the Concessionaire would otherwise be entitled to receive, the Concessionaire will, at the same time as a Billing Statement is sent to the relevant User/ Purchaser under the relevant supply contract, send to the Representative of the Government of _____(State) as per the Charges Equalisation Fund mechanism provided in Schedule I of this Agreement) an invoice for payment by that Representative (on behalf of the Government of _____(State) of an amount equal to the difference between the Charges and the Special Charges;
- (ii) if the Special Charges are higher than the Charges, the Concessionaire will, at the same time as a Billing Statement is sent to the relevant User under the relevant supply contract, send to the Representative of the Government of _____(State) a statement setting out the payment to be made by the Concessionaire to the Representative of the Government of _____(State), on its behalf, of the excess amount which it will receive as a result of it charging the Special Charges rather than the Charges;
- (iii) any payment due by the Representative of the Government of _____(State), on its behalf, to the Concessionaire under clause (i) above and any payment due by the Concessionaire to the Representative of the Government of _____(State) under clause (ii) shall each be made on the relevant Due Date upon which the relevant User is required to make its payment under the Bulk Water Supply Agreement with the Concessionaire, subject, in the case of payment by the Concessionaire to receipt of the relevant payment from the User; and
- (iv) any payment received by the Representative on behalf of the Government of _____(State) from the Concessionaire shall be deposited into a trust account with abank approved by the Concessionaire and any amounts standing to the credit of that account from time to time shall only be used for the purpose of making payments to the Concessionaire in accordance with clause (i) above. The terms applying to the operation of such account shall require the joint signatures of the Representative (on behalf of the Government of _____(State) and the Concessionaire in order to make any withdrawal. Any amount standing to the credit of such account upon the expiration of the Concession Period or the Termination Date shall be paid to the Representative, on behalf of the Government of _____(State).

(g) The decisions of the Charges Review Committee will be final and binding on the Parties hereto.

Article 22. FORCE MAJEURE

22.1 General Rule

The Concessionaire or the Government of _____ (State), as the case may be, will be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by a Force Majeure Event.

22.2 Force Majeure Events

As used in this Agreement, a Force Majeure Event means any event or circumstance or combination of events or circumstances, being Non-Political Events, Indirect Political Events and/or Political Events, as defined in Articles 22.3, 22.4 and 22.5, respectively, which prevent the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event:

- (i) is beyond the reasonable control of the Affected Party;
- (ii) the Affected Party could not have prevented or reasonably overcome it with the exercise of due diligence and reasonable skill and care;
- (iii) does not result from the negligence of such Party or the failure of such Party to perform its obligations hereunder; and
- (iv) is of an incapacitating nature and prevents or causes a delay or impediment in performance.

22.3 Non-Political Event

For the purposes of this Article 22, "Non-Political Event" shall mean one or more of the following acts or events:

- (i) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquakes, cyclones, floods, volcanic eruptions, fire or other extreme atmospheric conditions;
- (ii) radioactive contamination or ionizing radiation;
- (iii) strikes, lockouts, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire;
- (iv) any judgement or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than the failure of the Concessionaire to comply with any applicable law or applicable permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or the exercise of any of its rights under this Agreement by the Government of _____ (State); or
- (v) any event or circumstances of a nature analogous to any of the foregoing.

22.4 Indirect Political Event

For purposes of this Article 22, "Indirect Political Event" shall mean one or more of the following acts or events:

- (i) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion, or politically motivated sabotage, for a continuous period exceeding seven (7) days;
- (ii) industry-wide or state-wide or India-wide strikes or industrial action for a period exceeding seven (7) days (which prevents collection of Fee by the Concessionaire);
- (iii) any public agitation (which prevents collection of Fee by the Concessionaire);
- (iv) following the Commercial Operations Date, a Water Shortage Period for a continuous period of not less than 12 months.

22.5 Political Event

For purposes of this Article 22, "Political Event" shall mean one or more of the following acts or events by or on account of the Government of India, the Government of _____ (State) or any other Government Agency:

- (i) Change in Law, other than any Tax Laws, for which no relief is provided under Article 25 of this Agreement;
- (ii) Expropriation or compulsory acquisition by any Government Agency of any material assets or rights of the Concessionaire or of Contractors, for no fault of the Concessionaire or such Contractors;
- (iii) Any unlawful or unauthorized revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement (other than a consent the obtaining of which is condition precedent), provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to the grant, maintenance or renewal of such consents or permits.

22.6 Effect of Force Majeure Event

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

- (i) There shall be no Termination of this Agreement, except as provided in Article 22.8 below;
- (ii) Where the Force Majeure Event occurs before the Commercial Operations Date, the dates set forth in the Project Completion Schedule and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- (iii) Where a Force Majeure Event occurs after the Commercial Operations Date, the Concessionaire shall continue to make all reasonable efforts to operate the Project and/or to collect the Fee, but if it is unable or prevented from doing so, the Concession Period shall, having due regard to the extent of the impact thereof as determined by the Representative of the Government of _____ (State), be extended by the period for which collection of Fee remains affected on account thereof; and

- (iv) Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of Article 22.7 below.

22.7 Allocations of Costs During Subsistence of Force Majeure

(a) Subject to the provisions of Article 22.6 above, upon occurrence of a Force Majeure Event, the costs arising out of such event shall be allocated as follows:

- (i) When the Force Majeure Event is a Non-Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such Force Majeure Event;
- (ii) Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the "Force Majeure Cost") shall be borne by the Concessionaire to the extent of the Insurance Cover, and to the extent Force Majeure Costs, as duly certified by the Statutory Auditors, exceed the Insurance Cover, one-half of the same shall be reimbursed by the Government of _____(State) to the Concessionaire within ninety (90) days from the date of receipt of the Concessionaire's claim therefore;
- (iii) Where the Force Majeure Event is a Political Event, the Force Majeure Costs, to the extent actually incurred and certified by the Statutory Auditors of Concessionaire, shall be reimbursed by the Government of _____(State) to the Concessionaire within ninety (90) days from the date of receipt of Concessionaire's claim therefore; and
- (iv) The Government of _____(State) may, at its option, reimburse the Force Majeure Costs to the Concessionaire in cash or compensate the Concessionaire for such costs by appropriate extension of the Concession Period, which extension shall also be given effect within the period of ninety (90) days specified in preceding sub-articles (b) or (c), as the case may be.

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

22.8 Termination

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

22.9 Termination Payment for Force Majeure Events

Upon Termination of this Agreement pursuant to Article 22.8 above, Termination Payment to the Concessionaire shall be made in accordance with the following:

- (a) If the Termination is on account of a Non-Political Event, the Concessionaire shall be entitled to receive from the Government of _____(State) by way of Termination Payment an amount equal to _____percent (xx%) of the Debt Due less pending insurance claims, if any. However, in the event such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from the Government of _____(State) a further sum equal to _____percent (xx%) of the amount of such claims not admitted;

(b) If the Termination is on account of an Indirect Political Event, the Concessionaire shall be entitled to receive from the Government of _____(State) by way of Termination Payment an amount equal to:

- (i) the total Debt Due, less pending insurance claims, if any. Provided, however, that if any of such insurance claims are not admitted and paid, the Concessionaire shall be entitled to receive from the Government of _____(State) further sum equal to ____ percent (xx%) of such claims not admitted, plus
- (ii) ____ Percent (xx%) of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during three (3) years beginning from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in Wholesale Price Index (WPI) during such year, and the adjusted amount so arrived at shall be reduced every year by ____ percent (xx%) per annum.

(c) If the Termination of this Agreement is on account of a Political Event, the Concessionaire shall be entitled to receive from the Government of _____(State) by way of Termination Payment an amount equal to:

- (i) the total Debt Due, plus
- (ii) ____ Percent (xx%) of the Equity subscribed in cash and actually spent on the Project, if such Termination occurs at any time during three (3) years beginning from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in the Wholesale Price Index (WPI) during such year, and the adjusted amount so arrived at shall be reduced by ____percent (xx%) per annum.

22.10 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 set forth in Article 27. However, 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.

22.11 Liability For Other Losses and Damages

Save and except as expressly provided in this Article 22, neither Party to this Agreement shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claim, demands and proceedings relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise of any right pursuant to this Article 22.

22.12 Duty To Report

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

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

(b) Any notice pursuant to this Article 22.12 shall include full particulars of:

- (i) the nature and extent of each Force Majeure Event which is the subject of any claim of relief under this Article 22 with evidence in support thereof;
- (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (iii) the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and
- (iv) any other information relevant to the Affected Party's claim.

(c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Article 22.12 and such other information as the other Party may reasonably request the Affected Party to provide.

22.13 Excuse From Performance Of Obligations

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

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

Article 23. EVENTS OF DEFAULT

23.1 Event of Default

"Event of Default" means the Concessionaire Event of Default or the Government of _____ (State) Event of Default, or both as the context may admit or require.

23.2 Concessionaire Event of Default

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

- (a) a material breach by the Concessionaire of its obligations of this Agreement which is not cured within a period of three (3) months from the giving of notice by the Government of _____ (State);
- (b) a breach of any express representation or warranty by the Concessionaire where such breach is not remedied within 120 days of receipt of written notice from the Government

- of _____(State) specifying such breach and requiring the Concessionaire to remedy the same;
- (c) there is a change in ownership or control of the Concessionaire without the prior written consent of the Government of _____(State);
 - (d) the Dissolution of the Concessionaire;
 - (e) repudiation of this Agreement by the Concessionaire;
 - (f) The Concessionaire creates any Encumbrance on the Project Site/Project Facility in favour of any Person save and except as expressly permitted under Article 29.1 (Assignment and Charges);
 - (g) A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents, or under any of them as are applicable;
 - (h) The Concessionaire suspends or abandons the operations of the Project without the prior consent of the Government of _____(State), provided that the Concessionaire shall be deemed not to have suspended or abandoned operation if such suspension or abandonment was:
 - (i) as a result of a Force Majeure Event and is only for the period such Force Majeure is continuing; or
 - (ii) is on account of a breach of its obligations under this Agreement by the Government of _____(State).
 - (i) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
 - (j) The Concessionaire suffers an attachment being levied on any of its assets causing a Material Adverse Effect on the Project, and such attachment continues for a period exceeding forty-five (45) days.
 - (k) The Concessionaire has delayed any payment that has fallen due under this Agreement, if such delay exceeds ninety (90) days.
 - (l) The Concessionaire is otherwise in Material Breach of this Agreement.

23.3 Government of _____(State) Event of Default

Any of the following events shall constitute an event of default by the Government of _____(State) ("Government of _____(State) Event of Default"), unless caused by a Concessionaire Event of Default or a Force Majeure Event:

- (a) a material breach by the Government of _____(State) of its obligations under s 8 or 9 of this Agreement which in each such case is not cured within a period of three (3) months from the giving of notice by the Concessionaire;
- (b) breach of any express representation or warranty by the Government of _____(State) where such breach is not remedied within 120 days of receipt of written notice from the Concessionaire specifying such breach and requiring that Government to remedy the same;

- (c) repudiation of this Agreement by the Government of _____(State); or
- (d) failure by the Government of _____(State) to make any payment to the Concessionaire under Article 21.2 (Charges) which is not cured within a period of three (3) months from the giving of notice by the Concessionaire.

(e) Government of _____(State) has failed to execute the Direct/Substitution Agreement or the State Support Agreement in accordance with Article 8 or having executed the same is in breach of any of its obligations thereunder and such breach has not been cured within thirty (30) days from the date of written notice thereof given by the Concessionaire;

(f) Government of _____(State) or any Governmental Agency has by an act of commission or omission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Concessionaire and failed to cure the same within sixty (60) days of notice thereof by the Concessionaire;

(g) Government of _____(State) has delayed payment of any amount that has fallen due in terms of this Agreement beyond ninety (90) days;

(h) Any representation made or warranty given by the Government of _____(State) under this Agreement has been found to be false or misleading.

Article 24. TERMINATION DUE TO EVENT OF DEFAULT

24.1 Termination For Concessionaire Event of Default

(a) Without prejudice to any other right or remedy which the Government of _____(State) may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the Government of _____(State) shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire, provided that before issuing the Termination Notice, the Government of _____(State) shall, by a notice in writing, inform the Concessionaire of its intention to issue the Termination Notice (the "Preliminary Notice"). In case the underlying breach or default is not cured with a period of sixty (60) days from the date of the Preliminary Notice (Cure Period), the Government of _____(State) shall be entitled to terminate this Agreement by issuing the Termination Notice. Provided further, that:

- (i) if the default is not cured within thirty (30) days of the Preliminary Notice, the Government of _____(State) shall be entitled to encash the Performance Security with a notice to the Concessionaire (Encashment Notice);
- (ii) if the default is not cured within thirty (30) days of the Encashment Notice and a Fresh Performance Security is not furnished within the same period in accordance with Article 6, the Government of _____(State) shall, subject to the provisions of the Substitution Agreement, be entitled to issue the Termination Notice.

(b) The following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement:

- (i) The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages caused by its breach or default;

- (ii) The Cure Period shall not in any way be extended by any period of suspension under this Agreement;
 - (iii) If the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Government of _____(State) or the Government Agency concerned hereunder, then the applicable Cure Period shall be extended by the period taken by the Government of _____(State) or the Government Agency concerned to accord the required approval.
- (c) Upon Termination by the Government of _____(State) on account of the occurrence of a Concessionaire Event of Default during the Operations Period, the Government of _____(State) shall pay to the Concessionaire by way of Termination Payment an amount equal to ninety percent (90%) of the Debt Due less pending insurance claims, if any. However, in the event that such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from the Government of _____(State) a further sum equal to eighty percent (80%) of the amount of such claims not admitted.

24.2 Termination for Government of _____(State) Events of Default

- (a) The Concessionaire may, upon the occurrence and continuation of any Government of _____(State) Event of Default terminate this Agreement by issuing a Termination Notice to the Government of _____(State).
- (b) Upon Termination of this Agreement by the Concessionaire due to a Government of _____(State) Event of Default, the Concessionaire shall be entitled to receive from the Government of _____(State), by way of Termination Payment, a sum equal to:
 - (i) the total Debt Due, plus
 - (ii) _____ Percent (xx%) of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during three (3) years beginning from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in Wholesale Price Index (WPI) during such year and the adjusted amount so arrived at shall be reduced by _____ percent (xx%) per annum.

24.3 Rights of Government of _____(State) on Termination

Upon Termination of this Agreement for any reason whatsoever, the Government of _____(State) shall have the power and authority to:

- (i) take possession and control of Project Assets forthwith;
- (ii) prohibit the Concessionaire, and any person claiming through or under the Concessionaire, from entering upon the Project Assets or dealing with them or any part of them;
- (iii) step in and succeed upon election by the Government of _____(State) without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Government of _____(State) may in its discretion deem appropriate, with effect from the date of communication of such election to the other Party to the relative Project Agreements. However, any sums claimed by such other party as being due and owing for work and services performed or accruing on account of any act, omission or event prior to such date of election shall and shall always constitute debt between the Concessionaire and such other party and the Government of _____(State).

_____ (State) shall in no way or manner be liable or responsible for such sums. The Concessionaire shall ensure that the Project Agreements contain provisions necessary to give effect to the provisions of this Article 24.3.

24.4 Termination Payments

The Termination Payment pursuant to Article 17 or Article 18, as the case may be, shall be payable of the Concessionaire by the Government of _____ (State) within thirty (30) days of demand being made by the Concessionaire, with the necessary particulars duly certified by the Statutory Auditors. If the Government of _____ (State) fails to pay the Termination Payment in full within the said period of sixty (60) days, the amount remaining unpaid shall be paid along with interest at the Prime Lending Rate set by the State Bank of India (SBI PLR) plus two percent (2%), from the Termination Date till payment.

24.5 Mode of Payment

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

24.6 Termination Without Prejudice to Other Rights of Either Party

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

Article 25. CHANGE IN LAW

25.1 Definition of Change in Law

(a) "Change in Law" means the occurrence or coming into force of any of the following after the Proposal Due Date:

- (i) the enactment of a new Indian law;
- (ii) the repeal, modification or re-enactment of any existing Indian law;
- (iii) a change in the interpretation or application of any Indian law by a court of record;
- (iv) a directive or notification by any governmental agency which has the force of law or statutory effect.

(b) "Change in Law" shall not include:

- (i) the coming into effect, after the Proposal Due Date, of any provision of a statute which is already in place as of the Proposal Due Date;
- (ii) any new Law or any change in the existing Law under the active consideration of or in the contemplation of any Government as of the Proposal Due Date, which is a matter of public knowledge.

25.2 Relief Under Change in Law

If, after the date of this Agreement, there is a change in the Law by which the Concessionaire suffers an increase in costs or reduction in net after tax return or other financial burden which is substantial in any Accounting Year, then the Concessionaire may, by written notice, request amendments to the terms of this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no Change in Law resulting in such cost increase, reduction in return or other financial burden. The Concessionaire shall not be entitled to any compensation whatsoever from the Government of _____ (State) as a result of Change in Law. However, the Government of _____ (State) may decide, after discussion with the Concessionaire, to amend the terms of this Agreement, including the extension of the Concession Period.

25.3 Changes in Tax Laws and Regulations

The Concessionaire is not entitled to any compensation for any increase in indirect tax and/or direct tax which it is liable to pay with regard to this Project.

Article 26. TRANSFER AND PURCHASE OF FACILITIES AND STEP OUT RIGHTS

(a) Upon the expiry of the Concession at the end of the Concession Period, the Concessionaire shall hand over vacant and peaceful possession of the Project Assets, including the Project Site/Facility at no cost to the Government of _____ (State).

(b) Twelve (12) months prior to the anticipated expiry of the Concession Period, the Government of _____ (State), as represented by _____, and the Concessionaire will meet and agree on detailed procedures for the transfer of facilities. At the time of such meeting, the Concessionaire will submit a detailed list of the structures, equipment, and items to be transferred and the names of its representatives in charge of the transfer. The Government of _____ (State) will inform the Concessionaire of the identity of its representatives in charge of the transfer.

(c) As part of the meeting mentioned in (b), there shall be a joint inspection by the Parties. Within fifteen (15) days of such inspection, the representative of the Government of _____ (State) shall furnish to the Concessionaire a list of works, jobs, additions and alterations, if any, to be carried out to bring the Project to the prescribed level of service condition at least two (2) months prior to the date of expiry of the Concession Period. In case the Concessionaire fails to carry out the above works within the stipulated time period, the Government of _____ (State) shall be at liberty to have these works executed by any other Person at the risk and cost of the Concessionaire. Any cost incurred by the Government of _____ (State) in this regard shall be reimbursed by the Concessionaire to the Government of _____ (State) within seven (7) days of receipt of demand. For this purpose, the Government of _____ (State) shall, without prejudice to any other right or remedy available to it under this Agreement, have the right to appropriate the Performance Security and/or to set off any amounts due, if any, and payable by the Government of _____ (State) to the Concessionaire to the extent required or available and to recover the deficit amount, if any, from the Concessionaire.

(d) During the six (6) month period prior to the anticipated transfer of the Facilities, the Concessionaire will provide such training services to the representatives and employees of the

Government of _____(State) as may be reasonably necessary for the Government of _____(State) to operate and maintain the Facilities efficiently and safely following such transfer.

(e) Except as otherwise provided in this Agreement, there shall be no payment, charge or cost payable by the Government of _____(State) to the Concessionaire in respect of the transfer of the Concession, the Facilities, the Site and all other assets (excluding cash, bank balance and marketable securities) and rights of the Concessionaire as to the Government of _____(State) upon the expiration of the Concession Period except only taxes, stamp duty, registration or similar charges payable on the transfer of the assets (which taxes, duties or charges shall be borne by the Government of _____(State)). This sub-Article is without prejudice to amounts due by the Government of _____(State) to the Concessionaire hereunder and accrued but unpaid on the date of such transfer.

Article 27. DISPUTE RESOLUTION

27.1 Applicable Law

This Agreement shall be construed and interpreted in accordance with the laws in force in the State of [...], as they may be amended from time to time, and any dispute which arises out of, or in relation to, this Agreement, or the breach, termination or invalidity thereof shall be equally so governed.

27.2 Conciliation

(a) If a dispute arises out of or in relation to this Agreement, or the breach, termination or invalidity thereof, the parties agree to seek an amicable settlement of that dispute by conciliation under the Rules of Conciliation of the Indian Council of Arbitration in force at the date of the signing of this contract. Accordingly, the parties hereby accord their written consent to conciliate, and agree that such consent constitutes the acceptance of the invitation to conciliate in terms of Rule 3 of the said rules.

(b) A single conciliator shall be appointed by the Indian Council of Arbitration within 30 days from the date a party has requested the Indian Council of Arbitration to effect such an appointment. The Indian Council of Arbitration will provide administrative services in accordance with its Rules of Conciliation.

27.3 Domestic Arbitration

(a) If the dispute was not settled by conciliation under section 2, the dispute shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties.

(b) Pending the submission of and/or decision on a dispute and until the arbitral award is made, the parties shall continue to perform their respective obligations under this agreement, without prejudice to a final adjustment in accordance with such award.

(c) The party challenging howsoever an award made under subsection (a), including making an application to set aside the award pursuant to section 34 of the Arbitration and Conciliation Act, 1996 (Central Act No. 26 of 1996), shall in addition to all of his own costs and fees reimburse on a monthly basis all the direct costs and fees incurred by the party defending the award, including all direct costs and fees associated with any appeal thereof. It is important to remember that although the inclusion of such a provision may be desirable to avoid routine challenge of arbitral awards, under Indian law the court has the discretion to award the costs of such suits. Furthermore, this provision may not be enforceable, if it is construed by the court as defeating the remedy and

therefore, struck down as being unreasonable and onerous, particularly in the case of foreign arbitration.

Article 28. REPRESENTATIONS AND WARRANTIES

28.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Government of _____ (State) that:

- (i) it is duly organized, validly existing and in good standing under the laws of India;
- (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iv) it has the financial standing and capacity to undertake the Project;
- (v) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms thereof;
- (vi) it is subject to the civil and commercial laws of India in respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (vii) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (viii) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually may result in any Material Adverse Effect;
- (ix) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any materially adverse effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (x) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect, and is able to perform its obligations and duties under this Agreement;
- (xi) each Consortium Member was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and request the Government of _____ (State) to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

- (xii) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Government of _____(State) or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (xiii) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into of this Agreement or for influencing or attempting to influence any officer or employee of the Government of _____(State) in connection therewith.

28.2 Representations and Warranties of the Government of _____ (State)

The Government of _____ (State) represents and warrants to the Concessionaire that:

- (i) the Government of _____ (State) has full power and authority to grant the Concession;
- (ii) the Government of _____ (State) has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- (iii) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof, and there are no suits or other legal proceedings pending or threatened against in respect of the Project Site or the Project;
- (iv) the Government of _____(State) is subject to the civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement.

28.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who made such representation or gave such warranty shall promptly notify the other Party of the same.

Article 29. MISCELLANEOUS

29.1 Assignment and Charges

- (a) Subject to sub-articles (b) and (c) herein below, this Agreement shall not be assigned by the Concessionaire save and except with prior written consent of the other Party.
- (b) Except as provided in sub-article (c) herein below, the Concessionaire shall not create or permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement, except with the prior written consent of the Government of _____ (State), which consent the Government of _____ (State) shall not withhold unreasonably.
- (c) Restraint set forth in sub-articles (a) and (b) above shall not apply to:

- (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
 - (ii) mortgages/pledges/hypothecation of goods/assets other than the Project Site, as security for indebtedness, in favour of the Lenders and working capital provides for the Project;
 - (iii) assignment of Concessionaire's rights, title and interest under this Agreement to or in favour of the Lenders pursuant to and in accordance with the Substitution Agreement as security for their financial assistance.
- (d) Upon occurrence of the Concessionaire Event of Default, the Lenders shall have the right of substitution as provided in the Substitution Agreement.

As an alternative to the Substitution Agreement referenced in (d) above, the following clause may be considered.

For the sole purpose of financing the implementation of the project and the fulfillment of his obligations under the Concession Agreement, the Operator may assign, by way of security, the benefit of, or his interest in, this Agreement, according to the requirements of any of the financing documents, and create other forms of security over any property or rights forming part of his interests in the project in favor of any lender, provided that the payment of rents and royalties to the Authority shall have priority over any such security and that before any such security takes effect, the holder of the security must have entered into a 'Lender's Direct Agreement' with the Authority.

29.2 Interest and Right of Set Off

- (a) Any sum which becomes payable under any of the provisions of this Agreement by any Party shall, if the same be not paid to the Party entitled to receive the same within the time allowed for such payment, be deemed to be a debt owed by the Party responsible for payment to the Party entitled to receive the same. Until payment is made, such sum shall carry an interest of the Prime Lending Rate of the State Bank of India (SBI PLR) plus three percent (3%) from the due date for payment thereof until the payment is made or is otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.
- (b) However, the stipulation regarding interest for delayed payments contained in this sub-Article 29.2 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

29.3 General Liability and Indemnity

- (a) The Concessionaire shall indemnify, defend and hold harmless the Government of _____ (State) against any and all proceedings, actions and third party claims arising out of a breach by Concessionaire of any of its obligations under this Agreement, except to the extent that any such claim has arisen due to breach by the Government of _____ (State) of any of its obligations under this Agreement or a Force Majeure Event which is a Political Event.
- (b) The Government of _____ (State) shall indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of breach by the Government of _____ (State) under this Agreement, except to the extent that any such claim has arisen due to breach by the Concessionaire of any of its obligations under this Agreement.

29.4 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India. The Courts at _____ (State Capital) shall have jurisdiction over all matters arising out of or relating to this Agreement.

29.5 Waiver

- (a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or 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.

29.6 Survival

Termination of this Agreement:

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

29.7 Amendments

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

29.8 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, then the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. However, failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

29.9 No Partnership

Nothing contained in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association or other co-operative entity between any of the Parties or constitute any party the agent of any other party for any purpose. No Party shall have any authority to bind the other in any manner whatsoever.

29.10 Language

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

29.11 Exclusion of Implied Warranties

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

29.12 Disclosure

The Concessionaire shall make available for inspection by the public during normal business hours on all working days copies of all records and reports to the Government of _____(State), as and when required.

29.13 Redress of Public Grievances

(a) The Concessionaire shall maintain a public relations office adjacent to each Toll Plaza/Project Site and keep it open to public access at all times. At each such offices, the Concessionaire shall maintain a register/suggestion box (the "Complaints Register") for recording of complaints and suggestions by any person (the "Complainant") at any time of the day.

(b) The Complaints Register shall be securely bound and kept in proper custody at the public relations office. Each page of the Register shall be duly numbered and each complaint recorded therein shall also be duly numbered. Soon after a complaint is registered, the Complainant shall be given a receipt by such office stating the date and complaint number, which the Complainant may refer to in any subsequent correspondence or claim. The Complaints Register shall have appropriate columns including, but not limited to, the complaint number and date, name and address of the Complainant, the complaint and the action taken by the Concessionaire thereon.

(c) The Concessionaire shall inspect the Complaints Register at reasonable intervals and take prompt steps for redress of the grievances stated in each complaint. The action so taken by the Concessionaire shall be briefly noted in the "Action Taken" column of the Complaints Register and a suitable reply shall also be sent to the Complainant by post under a certificate of posting.

(d) Within one week following the close of each calendar month, the Concessionaire shall send to the Government of _____(State) a true photocopy of the pages of the Complaints Register on which any entries have been recorded of any Complaint regarding the Concessionaire during the course of that month. The Government of _____(State) may, in its discretion, direct the Concessionaire to take such further reasonable action as the Government of _____(State) may deem appropriate for a fair and just redress of any grievance.

29.14 Advertising On The Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Project Site, other than as permissible under this Agreement or expressly approved in writing by the Government of _____(State).

29.15 Counterparts

This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

Article 30. NOTICES

30.1 Notices to be in Writing

A notice under this Agreement shall only be effective if it is in writing. Telexes, faxes and e-mail are permitted.

30.2 Addresses

Notices under this Agreement shall be sent to a party at its address and for the attention of the individual set out below:

**Concessionaire
Managing Director
(or his Designee)**

**Government of _____(State)
Principal Secretary to Designated
Department**

Provided that a party may change its notice details by giving notice to the other parties of the change in accordance with this Article 22. That notice shall only be effective on the date falling five business days after the notification has been received or such later date as may be specified in the notice.

30.3 Receipt of Notices

Any notice given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

- (i) if delivered personally, on delivery;
- (ii) if sent by first class inland post, two clear Business Days after the date of posting;
- (iii) if sent by telex, when dispatched provided the intended recipient's answerback appears correctly at the start and end of the sender's telex; and
- (iv) if sent by facsimile or e-mail, when dispatched.

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 the Government of _____ (State) by:

Signature:

Name:

Designation:

For and on behalf of the Concessionaire

Signature:**Name:****Designation:**

In the presence of:

(1) _____

(2) _____

SCHEDULES

- A LETTER OF ACCEPTANCE
- B TERMS OF THE WATER DRAWAL
- C PROJECT SITE
- D PHASE I CONSTRUCTION WORKS; TECHNICAL SPECIFICATIONS;
TECHNICAL SCHEDULES AND DRAWINGS
- E OPERATION AND MAINTENANCE PERFORMANCE STANDARDS
- F ENVIRONMENTAL AND SOCIAL REQUIREMENTS
- G INDEPENDENT ENGINEER: TERMS OF REFERENCE
- H INDEPENDENT AUDITOR: TERMS OF REFERENCE
- I CHARGES
- J TERMS OF DIRECT/SUBSTITUTION AGREEMENT
- K PERFORMANCE TESTS
- L CLEARANCES
- M ABSTRACTION AREA
- N HANDBACK REQUIREMENTS
- O FINANCING TERMS