National Highways Authority of India
(Ministry of Road Transport & Highways)
Government of India

FOUR-LANING OF JORBAT-SHILLONG (BARAPANI) SECTION OF NH-40 FROM KM 0/000 TO 61/800 IN THE STATES OF ASSAM AND MEGLELYA ON DBFOT PATTERN UNDER SARDP-NE ON BOT (ANNUITY) BASIS

CONCESSION AGREEMENT

between

National Highways Authority of India
G-5&6, Sector-10, Dwarka, New Delhi – 110075

and

M/s Jorabat Shillong Expressway Limited
The IL&FS Financial Center, Plot C – 22, G-Block, Bandra Kurla Complex, Bandra (East),
Mumbai – 400051, Maharashtra, India

VOLUME - I

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CONCESSION AGREEMENT
AND ENCLOSURES
NATIONAL HIGHWAYS AUTHORITY OF INDIA, NEW DELHI

CONCESSION AGREEMENT

FOR

Four-Laning of Jorbat-Shillong (Barapani) Section of NH-40 from km 0/000 to 61/800 in the states of Assam & Meghalaya

On

DBFOT pattern under SARDP-NE on

(Build Operate and Transfer on Annuity Basis)
Concession Agreement
Part I

Preliminary
CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the 16th day of July, 2010

BETWEEN

1 THE NATIONAL HIGHWAYS AUTHORITY OF INDIA, established under the National Highways Authority of India Act 1988, represented by its Chairman and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075 (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 JORABAT SHILLONG EXPRESSWAY LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at The IL&FS Financial Center, Plot C-22, G-Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051, Maharashtra, India, (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

G. H. Soni

[Signature]
रियायत करार

यह करार 16 जुलाई, 2010 को निर्माणकित के बीच किया गया:

1. भारतीय स्वतंत्र राज्य राज्यगान्धर्षक अधिनियम, 1988 के अंतर्गत स्थापित भारतीय स्वतंत्र राज्य राज्यगान्धर्षक जिसका प्रतिनिधित्व इसके अध्यक्ष करते हैं और जिसका प्रधान कार्यालय जी-5 और 6, सेक्टर-10, दिल्ली, नई दिल्ली-110075 में है (जिसे इसके पश्चात् "प्राधिकरण" संदर्भित किया गया है और जिसकी अभिव्यक्ति में जब तक इसके संदर्भ अथवा अर्थ से असंगत न हो, इसके प्रशासक, उत्तराधिकारी और समूहदेहिता शामिल होंगे), एक पक्ष;

2. जोरबाट शिरोम एक्सप्रेसवे सिलिकेट, जो कंपनी अधिनियम, 1956 के प्रवाहानुक्रमों के अधीन नियंत्रित एक कंपनी है और जिसका पंजीकृत कार्यालय दि आई.एल.एफ्टे फाइनेंसियल सेंटर, पॉज्ट सी-22, जी-ब्लॉक, बांदा कुल्ला कॉम्प्लेक्स, बांदा (पूर्व), मुम्बई-400051, महाराष्ट्र, भारत में है (जिसे इसमें इसके पश्चात "शिल्पवाहकी" संदर्भित किया गया है और जिसकी अभिव्यक्ति में जब तक इसके संदर्भ अथवा अर्थ से असंगत न हो, इसके उत्तराधिकारी और अनुमत समूहदेहिता तथा एकजी शामिल होंगे), दूसरा पक्ष.

[Signature]
WHEREAS:

(A) The Government of India had entrusted to the Authority the development, maintenance and management of National Highway No. 40 in a Section from km 0/000 to km 61/800 (approx. 61.92 km).

(B) The Authority had resolved to augment the existing road from km 0/000 to km 61/800 (approximately 61.92 km) on the Jorbat-Shillong (Barapani) section of National Highway No.40 (hereinafter called the “NH-40”) in the states of Assam and Meghalaya by Four-Laning on Design, Build, Finance, Operate and Transfer (DBFOT) pattern on build, operate and transfer on annuity (“BOT Annuity”) basis in accordance with the terms and conditions set forth in this Agreement.

(C) The Authority had accordingly invited proposals by its Notice dated 8 December, 2008 (the “Tender Notice”) for short listing of bidders for construction, operation and maintenance of the above referred section of NH 40 on DBFOT pattern on BOT Annuity basis and had shortlisted certain bidders including, inter alia, the consortium comprising M/s IL&FS Transportation Networks Limited and Ramky Infrastructure Limited (collectively the “Consortium”) with IL&FS Transportation Networks Limited as its Lead Member.

(D) The Authority had prescribed the technical and commercial terms and conditions, and invited bids from the shortlisted bidders pursuant to the Tender Notice for undertaking the Project.

(E) After evaluation of the bids received, the Authority had accepted the bid of the Consortium and issued its letter of acceptance No. NHAI/BOT/IIO19/9/2003/318 dated 20.05.2010 (hereinafter called the “LOA”) to the Consortium requiring, inter alia, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue thereof.

(F) The Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.

(G) By its letter dated 21.06.2010, the Concessionaire has also joined in the said request of the Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Consortium for the purposes hereof.

(H) The Authority has agreed to the said request of the Consortium and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement incorporating the said request under the terms and conditions set forth in this Agreement.
Agreement with the Concessionaire for execution of the Project on BOT Annuity basis, subject to and on the terms and conditions set forth hereinafter.

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

Four-Laning of Jorhat-Shillong (Barpeta) Section of NH-40 on BOT(Annuity) under SARDP-NE
ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 48) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

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

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

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

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

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

(f) references to “construction” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” shall be construed accordingly;

any reference to any period of time shall mean a reference according to Indian Standard Time;

any reference to day shall mean a reference to a calendar day;
references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Delhi are generally open for business;

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

references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;

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

the words importing singular shall include plural and vice versa;

references to any gender shall include the other and the neutral gender;

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

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

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

any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, on behalf and not otherwise;
the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

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

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

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

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

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements and errors/discrepancies

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

(a) this Agreement, and

all other agreements and documents forming part hereof; i.e. the Agreement at (a) above shall prevail over the agreements and documents at above.
1.4.2 Subject to Clause 1.4.1 in case of ambiguities or discrepancies within this Agreement, the following shall apply:

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

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

(c) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(d) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and

(e) between any value written in numerals and that in words, the latter shall prevail.
Part II
The Concession
ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

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

(a) construction of the Project Highway on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;

(b) operation and maintenance of the Project Highway in accordance with the provisions of this Agreement; and

(c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.
ARTICLE 3
GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority during the subsistence of this Agreement to construct, operate and maintain the Project (the “Concession”) for a period of 20 (twenty) years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein:

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

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

(b) construct the Project Highway;

(c) Subject to Clause 3.1.2(d), manage, operate and maintain the Project Highway and regulate the use thereof by third parties;

(d) allow and assist the Authority or Authority’s Contractor(s) in demanding, collecting and appropriating Fee from vehicles and persons liable for payment of Fee for using the Project Highway or any part thereof and refusing entry of any vehicle if the Fee due is not paid;

(e) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;

(f) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and

(g) not assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Highway nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.
ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 24, 34, 44 and 47, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "Conditions Precedent").

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 90 (ninety) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the conditions precedent required to be satisfied by the Authority prior to the Appointed Date shall be deemed to have been fulfilled when the Authority shall have:

(a) provided to the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1; provided that the conditions set forth in Clause 10.3.2 shall also be satisfied on or prior to the Appointed Date;

(b) [deleted]

(c) procured approval of the Railway authorities in the form of a general arrangement drawing that would enable the Concessionaire to construct road overbridges/underbridges at level crossings on the Project Highway in accordance with the Specifications and Standards and subject to the terms and conditions specified in such approval; and

(d) procured all Applicable Permits relating to environmental protection and conservation of the Site:

(e) Ensured and procured execution of the State Support Agreement

Provided that the Authority may from time to time by notice extend, for up to 6 (six) months, the period for procuring the approval set forth in Sub-clause (c) and/or Sub-clause (d) above and in that event the land to be covered by overbridges or the affected sections of the Project Highway, as the case may be, shall be included in the Appendix referred to in Clause 10.3 and dealt with in accordance with the provisions thereof; and provided further that upon procurement of such approval, the Concessionaire shall be entitled to a period of 12 (twelve) months therefrom for completion of the overbridges.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:
National Highways Authority of India

(a) provided Performance Security to the Authority;
(b) executed and procured execution of the Escrow Agreement;
(c) executed and procured execution of the Substitution Agreement;
(d) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect;
(e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
(f) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
(g) delivered to the Authority from the Jorabat Shillong Expressway Limited, their respective confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (k), (l) and (m) of clause 7.1 of this Agreement; and
(h) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3.

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

4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall be liable to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay.
the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.
ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its cost and expense procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project Highway and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

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

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

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

(a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Applicable Permits (other than those set forth in Clause 4.1.2) and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;

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

(c) perform and fulfil its obligations under the Financing Agreements;

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

(e) make reasonable efforts to facilitate the acquisition of land required for the purposes of this Agreement;

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

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

(h) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the terms of this Agreement; and
(i) transfer the Project Highway to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

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

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

5.2.3 The Concessionaire shall not make any replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.

5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension.

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

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority.

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

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

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

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

For the purposes of this Clause 5.3.2:

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

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

Four-Laning of Jorhat-Shillong (Barapani) Section of NH-40 on BOT(Annuity) under...
(c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Employment of foreign nationals

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

5.5 Employment of trained personnel

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

5.6 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as expressed herein.
ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

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

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

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

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

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

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

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

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

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

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

(i) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharging by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.
6.2 Maintenance obligations prior to Appointed Date

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

REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

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

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

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

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

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

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

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

(h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

(i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order by any
Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

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

(k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the Consortium Members, together with its Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that each member of the Consortium whose technical and financial capacity was evaluated for the purposes of prequalification and short-listing in response to the Request for Qualification shall hold at least 26% (twenty six per cent) of Equity during the Construction Period and two years thereafter along with its Associates.

Provided further that any such request made under Clause 7.1(k) and/or Art 48, at the option of the Authority, may be required to be accompanied by a suitable no objection letter from lenders’.

(l) the Consortium Members and their Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

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

(n) all its rights and interests in the Project Highway shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

(o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty; and
(p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith.

7.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

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

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

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

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

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

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

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

(h) all information provided by it in the Tender Notice and invitation to bid in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;

(i) it has the right, power and authority to manage and operate the Project Highway up to the Appointed Date;

Upon the Concessionaire paying the Concession Fee and covenants herein, it shall not at any time during the term hereof, interfere...
with peaceful exercise of the rights and discharge of the obligations by the Concessionaire, in accordance with this Agreement.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.
ARTICLE 8
DISCLAIMER

8.1 Disclaimer

8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Tender Notice, Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 7.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.

8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, the Consortium Members and their Associates or any person claiming through or under any of them.
Part III
Development and Operations
ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority no later than 180 (one hundred and eighty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 26.80 crore (Rupees twenty six crore eighty lakh) in the form set forth in Schedule-F (the “Performance Security”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 37. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 37.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 20% (twenty per cent) of the Total Project Cost; and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish compliance of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.
ARTICLE 10
RIGHT OF WAY

10.1 The Site

The site of the Project Highway shall comprise of the real estate described in Schedule-A and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the “Site”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for Four-Laning of the Project Highway as set forth in Schedule-A.

10.2 Licence, Access and Right of Way

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

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

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

It is expressly agreed that the Licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Licence, upon the Termination of this Agreement for any reason whatsoever.

10.2.4 The Concessionaire hereby irrevocably appoints the Authority to be its true and lawful attorney, to execute and sign in the name of the...
Concessionaire a transfer or surrender of the License granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6 It is expressly agreed that:

(i) trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period;

(ii) any archaeological discoveries shall belong to and vest in the Government and the Concessionaire shall promptly report the discovery thereof to the Authority and follow its instructions for safe removal thereof;

(iii) mining rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Licensed Premises. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein, and

(iv) Collection and appropriation of Fee for the use of Project Highway or any part thereof do not form part of the License granted to the Concessionaire under this Agreement.

10.3 Procurement of the Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the “Appendix”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid licence and Right of Way to the Concessionaire for the and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than twenty per cent of the total area of the Site required and necessary for the Four-Laning of Jorbat-Shillong (Barapani) Section of NH-40 on BOT(Annuity) under SARDP-NE.
Lane Project Highway, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.

10.3.3 On and after signing the memorandum and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.4 The Authority shall make best efforts to provide and grant the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 50 (Rupees fifty) per day for every 1,000 (one thousand) square meters or part thereof, commencing from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured.

10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 90 (ninety) days of the Appointed Date shall be completed before the Project Completion Date. It is further agreed that the obligation of the Concessionaire to complete the affected Construction Works shall subsist so long as the Authority continues to pay the Damages specified herein, and upon the Authority ceasing to pay such Damages after giving 60 (sixty) days' notice thereof to the Concessionaire, the obligation of the Concessionaire to complete such works on such part of the Site shall cease forthwith.

10.3.6 The Concessionaire shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for Toll Plazas, Traffic Aid Posts, under passes and over passes or for construction of works specified in Change of Scope Order issued under Article 16, in accordance with this Agreement and upon procurement, such land shall form part of the Site and vest in the Authority; provided that the Concessionaire may, by notice given to the Authority no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be, require the Authority to initiate and undertake proceedings for acquisition of such land under the provisions of the National Highways Act, 1956 and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Authority in accordance with the Act; provided that the land to be acquired by the Authority hereunder shall be deemed to be included.
the Appendix referred to in this Clause 10.3 and dealt with in accordance with the provisions thereof. For the avoidance of doubt, it is agreed that the minimum area of land to be acquired for the Toll Plazas and approach roads thereof shall conform to the provisions of Schedule-B and Schedule-C. It is further agreed that the Authority may, at any time after the Bid Date, suo moto acquire the land required hereunder.

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

10.4 Site to be free from Encumbrances

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

10.5 Protection of Site from encroachments

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

10.6 Special/temporary right of way

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

10.7 Access to the Authority and Independent Engineer

The licence, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Engineer and their employees and agents for inspection, viewing and enforcing their rights and performance of their obligations under this Agreement.
ARTICLE 11

UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

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

11.3 New utilities and roads

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

11.3.2 The Authority may, by notice require the Concessionaire to connect any adjoining road to the Project Highway, and the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at the Authority’s cost in accordance with Article 16. The maintenance of such connecting portion shall be undertaken by the Concessionaire in accordance with the provisions of Clause 17.1.3.

11.3.3 The Authority may by notice require the Concessionaire to connect, through a paved road, any adjoining service station, hotel, motel or any other public facility or amenity to the Project Highway, whereupon the connecting portion thereof that falls within the Site shall be constructed and maintained by the Concessionaire upon advance payment of the cost to be made by the beneficiary.
accordance with the amount and period as determined by the Independent Engineer. For the avoidance of doubt, any connecting road constructed prior to the Appointed Date and falling within the Site shall be maintained by the Concessionaire upon advance payment to be made by the beneficiary entity in accordance with the provisions of this Clause.

11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project Highway. The cost of such felling shall be borne by the Authority, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its discretion deem appropriate.
ARTICLE 12
CONSTRUCTION OF THE PROJECT HIGHWAY

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

(a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;

(b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;

(c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and

(d) make its own arrangements for quarrying of materials needed for the Project Highway under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Maintenance during Construction Period

During the Construction Period, the Concessionaire shall maintain, at its cost, the existing lane(s) of the Project Highway so that its traffic worthiness and safety are at no time materially inferior as compared to its condition 7 (seven) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project Highway.

12.3 Drawings

In respect of the Concessionaire’s obligations with respect to the Drawings of the Project Highway as set forth in Schedule-H, the following shall apply:

(a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three or more copies of all Drawings to the Independent Engineer for review;
By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Specifications and Standards;

Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;

If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;

No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;

Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to alignment of the Project Highway, finished road level, location and layout of the Toll Plaza and general arrangement drawings of major bridges, flyovers and grade separators, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.3 shall apply mutatis mutandis to the review and comments hereunder; and

Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project Highway as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project Highway and setback lines, if any, of the buildings and structures forming part of Project Facilities.

12.4 Four-Laning of the Project Highway

12.4.1 On or after the Appointed Date, the Concessionaire shall undertake the Four-Laning of Four-Laning as specified in Schedule-B and Schedule-C, and in conformity
with the Specifications and Standards set forth in Schedule-D. The 1095th (One thousand ninety fifth) day from the Appointed Date shall be the scheduled date for completion of Four-Laning (the “Scheduled Four-Laning Date”) and the Concessionaire agrees and undertakes that Four-Laning shall be completed on or before the Scheduled Four-Laning Date.

12.4.2 The Concessionaire shall construct the Project Highway in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Four-Laning Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Four-Laning Date, the Damages paid under this Clause 12.4.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.4.3 In the event that Four-Laning is not completed within 270 (two hundred and seventy) days from the Scheduled Four-Laning Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.5 Construction of service lanes by the Authority

The Authority shall, at any time after the 8th (eighth) anniversary of the Appointed Date, be entitled in its discretion to undertake at its cost, construction of service lanes on the Project Highway in accordance with the specifications and standards applicable to other district roads (ODRs) in the State. Such construction shall be undertaken without causing undue disruption to traffic and upon its completion, the Concessionaire shall have the obligation to maintain the service lanes in accordance with Good Industry Practice and regulate the use thereof in accordance with the provisions of this Agreement.
ARTICLE 13
MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

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

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out Tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall normally comprise 10% (ten per cent) of the quantity and/or number of tests prescribed by IRC and/or MORTH for the construction works undertaken by the Authority through their contractors. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until certain.
such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

If the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that Four-Laning is not likely to be achieved by the Scheduled Four-Laning Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5 Suspension of unsafe Construction Works

13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users and pedestrians.

13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of Clause 34.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "Preservation Costs"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the...
Scheduled Four-Laning Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Four-Laning Date.

13.6 Video recording

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the end of each quarter.
ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

14.1.1 At least 30 (thirty) days prior to the likely completion of the Project Highway, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project Highway to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Engineer.

14.1.2 All Tests shall be conducted in accordance with Schedule-I. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project Highway with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project Highway or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Highway with Specifications and Standards.

14.2 Completion Certificate

Upon completion of Construction Works and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-J (the "Completion Certificate").

14.3 Provisional Certificate

The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the "Provisional Certificate") if the Tests are successful and the Project Highway can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "Punch List"), provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.
14.4 Completion of Punch List items

14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.5 Withholding of Provisional Certificate

14.5.1 If the Independent Engineer determines that the Project Highway or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project Highway is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project Highway and direct the Independent Engineer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that he is unable to issue the Completion Certificate or Provisional Certificate, the case may be, because of events or circumstances on account of which the Tests...
could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.
ARTICLE 15
ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

Four-Laning shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the “COD”). The Project Highway shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to receive Annuity from the Authority in accordance with the provisions of Article 27.

15.2 Damages for delay

Subject to the provisions of Clause 12.4, if COD does not occur prior to the 91st (ninety first) day from the Scheduled Four-Laning Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.
ARTICLE 16

CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement ("Change of Scope"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.

16.2 Procedure for Change of Scope

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

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:

(a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period, and

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

16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the terms and costs for implementation thereof. Upon reaching an agreement, the Authority shall have an
order (the “Change of Scope Order”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

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

16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 16.3.1. In the event that the total cost arising out of Change of Scope Orders (if any) issued prior to the Project Completion Date is less than 0.25% (zero point two five per cent) of the Total Project Cost, the difference thereof shall be credited by the Concessionaire to the Safety Fund within a period of 180 (one hundred and eighty) days of the Project Completion Date.

16.4 Restriction on certain works

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of Four-Laning; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of Four-Laning and issuing the Provisional Certificate.

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order which causes excessive costs relating to all the Change of Scope Orders. Four-Laning of Jorhat-Shillong (Barapani) Section of NH-40 on BOT (Annuity) under SARDP.
(five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.

16.5 Power of the Authority to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority\(^1\) (the Authority shall transfer 75% (seventy five percent) of the amount so received to the first ranked bidder whose bid has been matched by the Concessionaire), and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof.

16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Project Highway. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 16.5.

16.6 Reduction in Scope of the Project

16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty percent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

16.6.2 For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply mutatis mutandis, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

\(^1\) The Authority shall transfer 75% (seventy five percent) of the amount so received to the first ranked bidder whose bid has been matched by the Concessionaire.
ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

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

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

(b) allowing and assisting Authority or Authority Contractor(s) in collecting and appropriating the Fee;

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

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

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

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

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

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

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

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

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

(l) complying with Safety Requirements in accordance with Article 18.
17.1.2 The Concessionaire shall remove promptly from the Project Highway all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Highway in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

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

17.2 Maintenance Requirements

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

17.3 Maintenance Manual

Not later than 180 (one hundred and eighty) days prior to the Scheduled Four-Laning Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the "Maintenance Manual") for the regular and preventive maintenance of the Project Highway in conformity with the Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, mutatis mutandis, to such revision.

17.4 Maintenance Programme

17.4.1 Not later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the "Maintenance Programme") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

(a) preventive maintenance schedule;

(b) arrangements and procedures for carrying out urgent repairs;

(c) criteria to be adopted for deciding maintenance needs;

(d) intervals and procedures for carrying out inspection of all elements of the Project Highway;

(e) intervals at which the Concessionaire shall carry out periodic maintenance;

(f) arrangements and procedures for carrying out safety related works, and
17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

17.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply mutatis mutandis to such modifications.

17.5 Safety, vehicle breakdowns and accidents

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

17.5.2 The Concessionaire’s responsibility for rescue operations on the Project Highway shall be limited to an initial response to any particular incident until such time that the competent authority takes charge and shall include prompt removal of vehicles or debris or any other obstruction, which may endanger or interrupt the smooth flow of traffic. For this purpose, it shall maintain and operate a round-the-clock vehicle rescue post with one mobile crane having the capacity to lift a truck with a Gross Vehicle Weight of 20,000 (twenty thousand) kilograms.

17.6 De-commissioning due to Emergency

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

17.6.2 The Concessionaire shall re-commission the Project Highway or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project Highway.

Lane closure

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

17.7.2 The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to closure of any lane for a period not exceeding 2 (two) hours in a day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak hours when the flow of traffic is comparatively lower.

17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated lane for the period specified therein, and in the event of any delay in re-opening such lane, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of the Average Daily Annuity for every stretch of 250 (two hundred and fifty) meters, or part thereof, for each day of delay until the lane has been re-opened for traffic. Such Damages shall be recovered by the Authority in accordance with Article 28 of this Agreement.

17.7.4 Notwithstanding anything to the contrary contained in this Agreement, the Annuity of the Concessionaire shall be liable to be reduced for any reduction in Assured Lane Availability in accordance with Article 28 of this Agreement and any Damages to be paid as specified in the Clause 17.7.3 above shall be in addition to the reduction / adjustment in the Annuity amount to be paid to the Concessionaire for the respective Annuity Payment Period.

17.8 Damages for breach of maintenance obligations

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Annuity, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof. Such Damages shall be recovered by the Authority in accordance with Article 28 of this Agreement.

17.8.2 The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.
17.9 Authority’s right to take remedial measures

17.9.1 In the event the Concessionaire does not maintain and/or repair the Project Highway or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages.

17.9.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.9.2 and debit the same to O&M Expenses.

17.10 Overriding powers of the Authority

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

17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein.

17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 34.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project Highway or give such directions to the Concessionaire as may be deemed advisable; provided that the exercise of such overriding powers by the Authority shall be
no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of Article 34.

17.11 Restoration of loss or damage to Project Highway

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

17.12 Modifications to the Project Highway

The Concessionaire shall not carry out any material modifications to the Project Highway save and except where such modifications are necessary for the Project Highway to operate in conformity with the Maintenance Requirements and Good Industry Practice; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire’s proposal.

17.13 Excuse from performance of obligations

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

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

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

17.14 Barriers and diversions

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

17.15 Advertising on the Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall be visible to the Users while driving on such Highway; provided that this restriction shall not apply to the Toll Plaza, rest areas, bus shelters and telephone booths located on the Project Highway if the advertising thereon does not, in the opinion of the Authority, distract the Users or violates extant guidelines of MORTH. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time, and no compensation shall be claimed on account thereof.
ARTICLE 18

SAFETY REQUIREMENTS

18.1 Safety Requirements

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

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

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 16. Costs and expenses on works and services not covered hitherto before and arising out of Safety Requirements shall be borne from out of a dedicated safety fund (the “Safety Fund”) to be managed and operated by the Authority or a substitute thereof.

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ARTICLE 19

MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

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

19.2 Inspection

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

19.3 Tests

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

19.4 Remedial measures

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project Highway into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project Highway conforms to the Maintenance Requirements. In the event that remedial measures are not completed within the time limits prescribed in this Agreement, the Independent Engineer may take such action as may be expedient in the circumstances including termination of this Agreement.
measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.
ARTICLE 20

TRAFFIC REGULATION

20.1 Traffic regulation by the Concessionaire

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

20.2 Police assistance

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

20.3 Buildings for Traffic Aid Posts

The Concessionaire shall, in accordance with the type designs prescribed for such police outpost buildings by the State Government or a substitute thereof, construct buildings not exceeding 25 (twenty five) square meters of plinth area, for the Traffic Aid Post, and hand them over to the Authority not later than 30 (thirty) days prior to the Scheduled Four-Laning Date. The Traffic Aid Post shall be deemed to be part of the Site and shall vest in the Authority.

20.4 Recurring expenditure on Police assistance

On or before the Scheduled Four-Laning Date, the Concessionaire shall provide to the State Police Department or a substitute thereof one Jeep or similar vehicle in good working condition along with chauffeurs for round-the-clock patrolling as set forth in Clause 20.2 and shall meet the operating costs of such vehicle including the salaries and allowances of the chauffeurs.
ARTICLE 21

EMERGENCY MEDICAL AID

21.1 Ambulance

For providing emergency medical aid during the Operation Period, as set forth in this Agreement, the Concessionaire shall provide to the State Government or a substitute thereof to be designated by the Authority round-the-clock ambulance services for victims of accidents on the Project Highway.

21.2 Deleted

21.3 Recurring expenditure on Ambulance

On or before COD, the Concessionaire shall provide to the State Medical Department or a substitute thereof to be designated by the Authority one ambulance in good working condition along with chauffeurs for round-the-clock ambulance services as set forth in Clause 21.1 and meet the operating costs of such ambulance including the salaries and allowances of the chauffeurs. The Concessionaire shall also reimburse to the State Medical Department (or a substitute thereof to be designated by the Authority) the actual expenditure incurred by it in each Accounting Year on the medical equipment, and the pay and allowances of up to 2 (two) medical personnel deployed exclusively for the ambulance. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State Medical Department or a substitute thereof to be designated by the Authority.
ARTICLE 22

TRAFFIC CENSUS AND SAMPLING

22.1 Deleted

22.2 Deleted

22.3 Traffic sampling

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

22.3.2 Deleted

22.4 Computer systems and network

The Concessionaire shall install, operate and maintain a computer system with round-the-clock connections to the networks of the Authority and other related entities for exchange of data and information useful or necessary for efficient and transparent regulation and management of traffic. For this purpose, it shall follow such protocol for Electronic Data Interchange (the “EDI”) as the Authority may specify.
ARTICLE 23

INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm from a panel of 10 (ten) firms or bodies corporate, constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule-P, to be the independent consultant under this Agreement (the “Independent Engineer”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-P to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

23.2 Duties and functions

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

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

23.3 Remuneration

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

23.4 Termination of appointment

23.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 23.1.

23.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.
23.5 Authorised signatories

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

23.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
Part IV
Financial Covenants
ARTICLE 24

FINANCIAL CLOSE

24.1 Financial Close

24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 120 (one hundred and twenty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure.

24.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

24.2 Termination due to failure to achieve Financial Close

24.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 34.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 24.1.1, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 24.2.1 shall not apply.

24.2.2 Upon Termination under Clause 24.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with Damages equal to 25% (twenty-five per cent) thereof. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to the security.

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ARTICLE 25
LEVY AND COLLECTION OF FEE

25.1 Concessionaire’s obligation

25.1.1 The Concessionaire shall not levy, demand or collect from or in respect of any User, vehicle or Person, for the use of Project Facilities, any sum whatsoever in the nature of a toll or fee.

25.1.2 The Concessionaire shall not permit or allow any advertisement/hoarding or other commercial activity and shall not be entitled to charge, collect or receive any sums on account of any such activity. For avoidance of doubt, the Concessionaire agrees that unless otherwise provided in this Agreement, the Project revenue shall consist of Annuity only.

25.2 Authority’s Rights

25.2.1 Notwithstanding anything to the contrary contained in this Agreement, Authority shall have the right and authority to levy toll or fee on the Users and vehicles using the Project Facilities ("the Fee") and to demand, collect, retain and appropriate the Fee in accordance with the Applicable Laws.

25.2.2 Authority may at its sole discretion levy, demand, collect, retain and appropriate the Fee either by itself or authorize any Person (the "Authority Contractor") by contract or otherwise to levy, demand, collect, retain and appropriate the same as Authority may deem fit in its sole discretion and in accordance with the Applicable Laws.

25.2.3 Any arrangement or contract made or entered into by Authority for levy and collection of fee shall be independent of this Agreement and that 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 and that the Concessionaire’s obligations and liabilities shall be limited to, those contained in this Agreement only.

25.2.4 Authority / Authority Contractor shall have access to and use of the Site for all purposes necessary or incidental to levy and collection of the Fee. 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/suffer any liability on account thereof. Provided further, that Authority shall, in the event of any physical damage to the Project Facilities on account of such access or use, ensure that such damage is promptly repaired and the Project Facilities are restored at its own cost and expenses.
ARTICLE 26
CONCESSION FEE

26.1 Concession Fee

26.1.1 In consideration of the grant of Concession under this Agreement, the Concession Fee payable by the Concessionaire to the Authority shall be Re.1.00 (Rupee One) per year during the term of this Agreement.

26.1.2 The Concession Fee, for each year, shall be paid in advance within 90 (ninety) days of the commencement of the Accounting Year, for which it is leviable and payable.
ARTICLE 27

ANNUITY

27.1 Annuity
27.1.1 Subject to the provisions of this Agreement, the Concessionaire upon achieving COD for the Project Highway 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, Authority agrees and undertakes to pay to the Concessionaire, for each Annuity Payment Period, on each Annuity Payment Date as set forth in Schedule M – Annuity Payment Schedule, the sum of Rs. 72,51,00,000 (Rupees Seventy Two Crore Fifty One Lakh Only) (the “Annuity”) as set forth in its Bid.

27.2 Payment of Annuity
27.2.1 Subject to the provisions of this Article 27 and Article 28 and any other applicable provisions of this Agreement, Authority shall make payment of Annuity to the Concessionaire on each Annuity Payment Date. For avoidance of doubt the number of such Annuities shall not exceed 34 over the Concession Period and will commence from COD.

27.2.2 The first Annuity Payment Date shall be the date falling after 6 (six) calendar months from COD. In case COD is different from the Scheduled four-laning Date, the Annuity Payment Schedule at Schedule M shall be suitably modified. Each Annuity payment period shall be deemed to be a period of 6 (six) calendar months from the preceding Annuity Payment date.

27.2.4 Notwithstanding anything contrary contained to anywhere in this Agreement, Authority’s obligation to pay Annuity shall arise subject to and only upon occurrence of COD.

27.3 Submission of invoice, adjustment and certification
27.3.1 The Concessionaire shall at least 30 days prior to the relevant Annuity Payment Date submit to the Independent Engineer, its invoice, addressed to the Authority for payment of Annuity for the applicable Annuity Payment Period.

27.3.2 The Independent Engineer shall verify the invoices and duly adjust the same for any bonus or reduction in Annuity in accordance with Article 28 of this Agreement and should be submitted with necessary documentation in this regard.

27.3.3 The Independent Engineer shall after verification and certification of the amount claimed in the invoice along with adjustments, forward the invoice to Authority with necessary documentation recommending payment in full or part thereof so as to reach Authority at least 15 days prior to the relevant Annuity Payment Date.

27.3.4 Upon receipt of the invoice together with recommendation for payment forwarded by the Independent Engineer, Authority shall take all necessary steps and ensure payment of Annuity on the relevant Annuity Payment Date. The mode of payment of Annuity shall be as provided in Clause 27.4.
27.3.5 For avoidance of doubt, the Parties agree that notwithstanding any dispute which either of them may have as to the amount of invoice/Annuity certified and recommended for payment by the Independent Engineer, the Annuity payable on the relevant Annuity Payment Date shall be that certified by the Independent Engineer. Provided such payment shall be without prejudice 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 44.

27.4 Mode of Payment

27.4.1 The Concessionaire hereby expressly authorises Authority to pay the Annuity, including any bonus or reduction or adjustments in accordance with Article 28, Termination Payment and any other payment which becomes payable by Authority to the Concessionaire under this Agreement directly by the credit to the Escrow Account.

27.4.2 The Concessionaire hereby agrees, undertakes and confirms that the payment to the credit of the Escrow Account shall be made by Authority notwithstanding any instructions to the contrary issued or disputes raised by the Concessionaire and such payments made in accordance with this Clause 27.4 shall constitute Authority's valid discharge of its Annuity payment obligations under this Agreement and Authority shall to the extent of the payment so made be relieved and discharged of all its obligations in respect of such payments under this Agreement.
ARTICLE 28
BONUS AND REDUCTION IN ANNUITY

28.1 Bonus in Annuity on account of early Project Completion

28.1.1 In case the Concessionaire achieves COD prior to the Scheduled four laning Date then shall it shall be entitled to receive from the Authority a bonus for early completion of the Project (the “Bonus”). Such Bonus shall be paid alongwith the first Annuity payment on the first Annuity Payment Date.

28.1.2 The Bonus for such early completion shall be the product of Average Daily Annuity and the number of days by which the COD preceded the Scheduled Four Laning Date.

28.1.3 The number of days by which COD preceded the Scheduled Four Laning Date, shall also include, as certified by the Independent Engineer, the aggregate number of days of delay caused by:

(i) Suspension or stoppage of Construction Works or part thereof by Authority or the Independent Engineer, for reasons not attributable to the Concessionaire;

(ii) Force Majeure Event which is a Political Event; and

(iii) Authority Event of Default

28.1.4 The number of days of delays caused due to the reasons provided in the Clause 28.1.3 shall be included for computation of Bonus, as certified by the Independent Engineer, in accordance with the Project Completion Schedule at Schedule-G.

28.1.5 If any delays, as provided in Clause 28.1.3, resulted in the extension / modification of the Scheduled Four Laning Date, then such delays shall only be considered for computation of Bonus in cases where the Independent Engineer certifies that actual project completion, before the Scheduled Four Laning Date was extended / modified due the reasons at Clause 28.1.3, was at least 60 days ahead of the Project Completion Schedule at Schedule-G.

28.2 Reduction in Annuity on account of delayed Project Completion

28.2.1 In case the Concessionaire achieves COD after to the Scheduled four laning Date then shall it shall be liable for reduction in its first Annuity for delayed
completion of the Project (the “Reduction”). Such Reduction shall be effected on the first Annuity payment on the first Annuity Payment Date.

28.2.2 The Reduction for such delayed completion shall be the product of Average Daily Annuity and the number of days by which the COD exceeded the Scheduled Four Laning Date.

28.2.3 The number of days by which COD exceeded the Scheduled Four Laning Date, shall exclude the aggregate number of days of delay, as certified by the Independent Engineer, caused by:

(i) Suspension or stoppage of Construction Works or part thereof by Authority or the Independent Engineer, for reasons not attributable to the Concessionaire;
(ii) All Force Majeure Event; and
(iii) Authority Event of Default

28.2.4 The number of days of delays caused due to the reasons provided in the Clause 28.1.3 shall be excluded for computation of Reduction, as certified by the Independent Engineer, in accordance with the Project Completion Schedule at Schedule-G.

28.3 Reduction in Annuity on account of non adherence to Maintenance Requirements

28.3.1 If in an Annuity Payment Period, the Concessionaire fails to maintain the Project Highway in accordance with the Maintenance Requirements as provided in Schedule-K, then it shall be liable for payment of Damages in accordance with Article 17 of this Agreement. The aggregate sum of such Damages in an Annuity Payment Period shall be computed and certified by the Independent Engineer and aggregate sums of such Damages shall be reduced from its Annuity payment for the respective Annuity Payment Period.

28.4 Reduction in Annuity on account of non-provision of assured lane availability

28.4.1 If in an Annuity Payment Period, the Actual Lane Availability is below the Assured Lane Availability as computed and certified by the Independent Engineer in accordance with Service Level Requirements at Schedule-K, then it shall be liable for reduction in its Annuity payment for that Annuity payment
Period in proportion to the Actual Lane Availability below the Assured Lane Availability level.

28.4.2 For every 1% (one percent) fall in Actual Lane Availability, or a part thereof, till an aggregate reduction of 5% as compared to Assured Lane Availability the Annuity payment for that Annuity Payment Period shall be reduced by 1% (one percent). For every 1% (one percent) fall of Actual Lane Availability, or part thereof, beyond 5% of Assured Lane Availability the Annuity payment for that Annuity Payment Period shall be reduced by 2% (two percent).

28.4.3 The aggregate of such reductions below Assured Lane Availability in an Annuity Payment Period shall be computed and certified by the Independent Engineer and reduced in accordance with Clause 28.4.2 from its Annuity payment for the respective Annuity Payment Period.

28.5 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
ARTICLE 29
CAPACITY AUGMENTATION AND EARLY DETERMINATION

Four-Laning of Jorhat-Shillong (Barapani) Section of NH-40 on BOT(Annuity) under SARDP-NE
ARTICLE 30
DELETED
ARTICLE 31
ESCROW ACCOUNT

31.1 Escrow Account

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

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

31.2 Deposits into Escrow Account

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

(a) all funds constituting the Financial Package;
(b) all Annuities and any other revenues from or in respect of the Project Highway, including the proceeds of insurance claims; and
(c) all payments by the Authority, after deduction of any outstanding Concession Fee:

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

31.3 Withdrawals during Concession Period

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

(a) all taxes due and payable by the Concessionaire;
(b) all payments relating to construction of the Project Highway, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
(c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
(d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the
Authority as due and payable to it;

(e) Concession Fee due and payable to the Authority;

(f) monthly proportionate provision of Debt Service due in an Accounting Year;

(g) Deleted

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

(i) debt service in respect of Subordinated Debt;

(j) any reserve requirements set forth in the Financing Agreements; and

(k) balance, if any, in accordance with the instructions of the Concessionaire.

31.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 31.3.1, except with the prior written approval of the Authority.

31.4 Withdrawals upon Termination

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

(a) all taxes due and payable by the Concessionaire;

(b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;

(c) outstanding Concession Fee;

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

(e) retention and payments relating to the liability for defects and deficiencies set forth in Article 39;

(f) outstanding Debt Service including the balance of Debt Due;

(g) outstanding Subordinated Debt;

(h) incurred or accrued O&M Expenses;

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

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

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 31.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 38.
31.4.2 The provisions of this Article 31 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 31.4.1 have been discharged.
ARTICLE 32

INSURANCE

32.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the "Insurance Cover"). The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders’ dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders’ dues.

32.2 Notice to the Authority

Not later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 32. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

32.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 32 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

32.4 Remedy for failure to insure

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

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 32 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

32.6 Concessionaire's waiver

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

32.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 31.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Highway, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf Financing Agreements.
ARTICLE 33
ACCOUNTS AND AUDIT

33.1 Audited accounts

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

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

33.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) O&M expenses (b) Annuity received, and (c) such other information as the Authority may reasonably require.

33.2 Appointment of auditors

33.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the “Panel of Chartered Accountants”), such list to be prepared substantially in accordance with the criteria set forth in Schedule-T. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

33.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint an
time to time and at anytime, another firm (the “Additional Auditors”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

33.2.4 Deleted

33.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

33.4 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.
Part V

Force Majeure and Termination
ARTICLE 34

FORCE MAJEURE

34.1 Force Majeure

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 34.2, 34.3 and 34.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

34.2 Non-Political Event

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

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

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project Highway for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 34.3;

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

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

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

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

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

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

(c) any civil commotion, boycott or political agitation which prevents the Affected Party from performing any of its obligations for an aggregate period exceeding 7 (seven) days in an Accounting Year;

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

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

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

34.4 Political Event

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

(a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 41 and its effect, in financial terms, exceeds the sum specified in Clause 41.1;

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

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

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

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

34.5 Duty to report Force Majeure Event

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

(a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 34 with evidence in support thereof;

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

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

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

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

34.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 34.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

34.6 Effect of Force Majeure Event on the Concession

34.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 24.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

34.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

(a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists;

(b) Deleted
34.7 Allocation of costs arising out of Force Majeure

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

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

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

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

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

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

34.7.3 Save and except as expressly provided in this Article 34, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

34.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 34, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) day period, whether or not it is in receipt of such representation, in its sole discretion...
issue the Termination Notice.

34.9 **Termination Payment for Force Majeure Event**

34.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of Book value of physical Project Assets less Insurance Cover.

34.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to the discounted value of future Annuity payments, the discounting factor applied being the then SBI PLR – (minus) 3%.

34.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 37.3.2 as if it were an Authority Default.

34.10 **Dispute resolution**

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

34.11 **Excuse from performance of obligations**

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

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

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

(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.
ARTICLE 35

COMPENSATION FOR BREACH OF AGREEMENT

35.1 Compensation for default by the Concessionaire

In the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 35.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement.

35.2 Compensation for default by the Authority

In the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material default but shall not include loss of Annuity or debt repayment obligations, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

35.3 Extension of Concession Period

In the event that a material default or breach of this Agreement set forth in Clause 35.2 causes delay in achieving COD, the Authority shall, in addition to payment of compensation under Clause 35.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed.

35.4 Compensation for Competing Roads

35.4.1 Deleted

35.4.2 Deleted

35.5 Compensation to be in addition

Compensation payable under this Article 35 shall be in addition to, and in substitution for, or derogation of, Termination Payment, if any.
ARTICLE 36

SUSPENSION OF CONCESSIONAIRE’S RIGHTS

36.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire’s right to receive Annuity, and other revenues pursuant hereto, and (ii) exercise such rights itself or authorise any other person to exercise the same on its behalf during such suspension (the “Suspension”). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders’ Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

36.2 Authority to act on behalf of Concessionaire

36.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, operate and maintain the Project Highway under and in accordance with this Agreement. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 31.3.

36.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the Project Highway shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period.

36.3 Revocation of Suspension

36.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

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

Substitution of Concessionaire

Any time during the period of Suspension, the Lenders’ Representative on
behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative thereunder, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 36.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

36.5 Termination

36.5.1 At any time during the period of Suspension under this Article 36, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 36.4, the Authority shall within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 37.

36.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 36.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.
ARTICLE 37
TERMINATION

37.1Termination for Concessionaire Default

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

(a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;

(c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 90 (ninety) days;

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

(e) Project Completion Date does not occur within the period specified in Clause 12.4.3;

(f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;

(g) the Concessionaire is in breach of the Maintenance Requirements

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

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

(j) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified in the Substitution Agreement.
(k) a breach of any of the Project Agreements by the Concessionaire has
caused a Material Adverse Effect;

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

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

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

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

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

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

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

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

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

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

each of the Project Agreements remains in full force and effect.
(t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false or the Concessionaire is at any time hereafter found to be in breach thereof;

(u) the Concessionaire submits to the Authority any statement which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or

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

37.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of clause 37.1.3.

37.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 37.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

37.2 Termination for Authority Default

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

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

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

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

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

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

37.3 Termination Payment

37.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to the discounted value of future Annuity payments, the discounting factor being the then SBI PLR + (plus) 3% less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be deducted from the termination payment so assessed. For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD.

37.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to the discounted value of future Annuity payments, the discounting factor being the then SBI PLR - (minus) 3%.

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

37.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

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

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

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

(d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 38.1; and

(e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, it is hereby agreed, and the Concessionaire hereby acknowledges, that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

37.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without...
prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.
ARTICLE 38
DIVESTMENT OF RIGHTS AND INTEREST

38.1 Divestment Requirements

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

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

(b) deliver forthwith the actual or constructive possession of the Project Highway, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;

(c) cure all Project Assets, including the road, bridges, structures and equipment, of all defects and deficiencies so that the Project Highway is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;

(d) deliver relevant records and reports pertaining to the Project Highway and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date;

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

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

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

38.2 Inspection and cure

Not earlier than 90 (ninety) days before Termination but not later than 15 (fifteen) days before the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements and, if required, cause appropriate testing to be carried out at the Concessionaire's cost for this purpose. Default in any, of the
Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 39 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 38.

### 38.3 Vesting Certificate

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

### 38.4 Additional Facilities

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

### 38.5 Divestment costs etc.

#### 38.5.1

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

#### 38.5.2

In the event of any dispute relating to matters covered by and under Article 38, the Dispute Resolution Procedure shall apply.
ARTICLE 39
DEFECTS LIABILITY AFTER TERMINATION

39.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project Highway for a period of 120 (One hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project Highway during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire’s risk and cost so as to make the Project Highway conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account.

39.2 Retention in Escrow Account

39.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 39.2.3, a sum equal to 10% (ten per cent) of the Annuity immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 39.1.

39.2.2 Without prejudice to the provisions of Clause 39.2.1, the Independent Engineer shall carry out an inspection of the Project Highway at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project Highway is such that a sum larger than the amount stipulated in Clause 39.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

39.2.3 The Concessionaire may, for the performance of its obligations under this Article 39, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 39.2.1 or 39.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "Performance Guarantee"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire’s risk and cost in accordance with the provisions of this Article 39. Upon furnishing of a Performance Guarantee under this Clause 39.2.3, the retention of funds in the Escrow Account in terms of Clause 39.2.1, as the case may be, shall be dispensed with.
Part VI

Other Provisions
ARTICLE 40
ASSIGNMENT AND CHARGES

40.1 Restrictions on assignment and charges

40.1.1 Subject to Clauses 40.2 and 40.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

40.1.2 Subject to the provisions of Clause 40.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

40.2 Permitted assignment and charges

The restraints set forth in Clause 40.1 shall not apply to:

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

(b) mortgages/pledges/hypothecation of goods/assets other than Project Assets, and their related documents of title, a charge on the Escrow Account, arising or created in the ordinary course of business of the Project Highway, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project Highway;

(c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and

(d) liens or encumbrances required by any Applicable Law.

40.3 Substitution Agreement

40.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire in accordance with the agreement for substitution of the Concessionaire (the “Substitution Agreement”) to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-V.

40.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enter all
rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

40.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days’ notice to the Concessionaire, assign any of its rights and benefits and/or obligations under this Agreement; to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority’s then outstanding obligations under this Agreement.
ARTICLE 41
CHANGE IN LAW

41.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 1.0% (one percent) of the Annuity (Annuity Amount in Rs.72,51,00,000) in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.1 shall be restricted to changes in law directly affecting the Concessionaire’s costs of performing its obligations under this Agreement.

41.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 1.0% (one percent) of the Annuity in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein, provided that if the Authority shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure.
Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to changes in law directly affecting the Concessionaire’s costs of performing its obligations under this Agreement.

41.3 Protection of NPV

Pursuant to the provisions of Clauses 41.1 and 41.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

41.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 41 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than two years from the close of such Accounting Year.

41.5 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recovered from the Users.
ARTICLE 42
LIABILITY AND INDEMNITY

42.1 General indemnity

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

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

42.2 Indemnity by the Concessionaire

42.2.1 Without limiting the generality of Clause 42.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

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

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

42.2.2 Without limiting the generality of the provisions of this paragraph, the Concessionaire will indemnify, defend, save and hold harmless the Authority and the Authority Indemnified Persons from and against any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Authority Indemnified Persons.
Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire’s Contractors in performing the Concessionaire’s obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project Highway, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

42.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 42 (the “Indemnified Party”) it shall notify the other Party (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

42.4 Defence of claims

42.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 42, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of the defense thereof.
Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

42.4.2 If the Indemnifying Party has exercised its rights under Clause 42.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

42.4.3 If the Indemnifying Party exercises its rights under Clause 42.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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

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

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

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

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

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

Provided that if Sub-clauses (b), (c) or (d) of this Clause 42.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

42.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 42, the indemnities herein provided shall not constitute any claim or recovery in respect of any cost, expense, loss or damage, direct, incidental or consequential
nature, including loss of profit, except as expressly provided in this Agreement.

42.6 **Survival on Termination**

The provisions of this Article 42 shall survive Termination.
ARTICLE 43
RIGHTS AND TITLE OVER THE SITE

43.1 Licensee rights

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

43.2 Access rights of the Authority and others

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

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

43.3 Property taxes

The Concessionaire shall not be liable to pay any property taxes for the Site.

43.4 Restriction on sub-letting

The Concessionaire shall not sublicense or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of any part of the Project Highway.
ARTICLE 44
DISPUTE RESOLUTION

44.1 Dispute resolution

44.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 44.2.

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

44.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 44.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 44.3.

44.3 Arbitration

44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 44.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

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

44.3.3 The arbitrators shall make a reasoned award (the “Award”). An award made in...
any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

44.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

44.4 **Adjudication by Regulatory Authority or Commission**

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 44.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.
ARTICLE 45

DISCLOSURE

45.1 Disclosure of Specified Documents

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

45.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project Highway, free of charge, during normal business hours on all working days, at the Concessionaire’s Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.
ARTICLE 46

REDRESSAL OF PUBLIC GRIEVANCES

46.1 Complaints Register

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

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

46.1.3 Without prejudice to the provisions of Clauses 46.1.1 and 46.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

46.2 Redressal of complaints

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

46.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.
ARTICLE 47
MISCELLANEOUS

47.1 Governing law and jurisdiction

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

47.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

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

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

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

47.3 State Support Agreement

The Concessionaire acknowledges that it has received from the Authority a
certified true copy of the agreement executed between MoRTH and the State
Government for providing the support and services specified therein (the “State
Support Agreement”), and the Parties hereto agree to make their best
efforts to procure the support of the State Government.

47.4 Depreciation

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

47.5 Delayed payments
The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.
47.6 Waiver

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

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

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

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

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

47.7 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

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

47.8 Exclusion of implied warranties etc.

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

47.9 Survival

47.9.1 Termination shall:

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

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

47.10 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

47.11 Severability

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

47.12 No partnership

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

47.13 Third Parties

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

47.14 Successors and Assigns

This Agreement shall bind upon, and inure to the benefit of the Parties and
47.15 Notices

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

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

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

(c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

47.16 Language

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

47.17 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.
ARTICLE 48
DEFINITIONS

48.1 Definitions

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

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

“Actual Lane Availability” shall have the meaning set forth in Clause 28.4

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

“Adjusted Equity” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “Reference Date”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

(a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;

(b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;

(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42% (zero point four two per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Base Adjusted Equity shall be made for a period equal to the portion, if any, for which the Concession Period is extended, but the revision on any side of WPI shall continue to be made;
"Affected Party" shall have the meaning set forth in Clause 34.1;

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

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

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

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

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

"Appointed Date" means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Concession Period;

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

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

"Assured Lane Availability" shall have the meaning set forth in Clause 28.4 and Schedule-K

"Authority Default" shall have the meaning set forth in Clause 37.2.1;

"Authority Contractor" means such person or persons as may be authorised in writing by the Authority to act on its behalf under any of Authority's engagements,
including this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under any of Authority's agreements, including this Agreement.

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

"Average Daily Annuity " means the amount arrived at after dividing the Annuity for an Annuity Payment Period by the number of days in that Annuity Payment Period;

"Bank" means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

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

"Bid" means the documents in their entirety comprised in the bid submitted by the Concessionaire/Consortium in response to the Tender Notice in accordance with the provisions thereof;

"Bid Security" means the security provided by the Concessionaire/Consortium to the Authority along with the Bid in a sum of Rs. 10.54 crore (Rupees ten crore fifty four lakh), in accordance with the Tender Notice, and which is to remain in force until substituted by the Performance Security;

"Bus" means any passenger motor vehicle with a registered carrying capacity exceeding 32 (thirty two) excluding the driver.

"Capacity Augmentation" means creation of additional capacity for the Project Highway in accordance with Article 29 of this Agreement for the Users of the Project.

"COD" or "Commercial Operation Date" shall have the meaning set forth in Clause 15.1;

"Car" means and includes a light motor vehicle, car, jeep, van, omnibus, or three-wheeled motor vehicle with a Gross Vehicle Weight not exceeding 7500 (seven thousand five hundred) kilograms, or a registered carrying capacity not exceeding 12 (twelve) excluding the driver, but does not include a Motor Cycle, Tractor or road roller;
"Change in Law" means the occurrence of any of the following after the date of Bid:

(a) the enactment of any new Indian law;

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

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

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

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

"Change in Ownership" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Consortium Members together with their Associates in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period, and two years thereafter, provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application of Bid, as the case may be,) in the proportion of the equity holding of any Consortium Member to the total Equity, if it occurs prior to completion of a period two years after COD, shall constitute Change in Ownership.

"Change of Scope" shall have the meaning set forth in Clause 16.1;

"Company" means the Company acting as the Concessionaire under this Agreement;

"Completion Certificate" shall have the meaning set forth in Clause 14.2;

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

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

"Concession Fee" shall have the meaning set forth in Clause 26.1;

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

"Concessionaire Default" shall have the meaning set forth in Clause 37.1.1;

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

"Consortium" shall have the meaning set forth in Recital (C);
"Consortium Member" means a company specified in Recital (C) as a member of the Consortium;

"Construction Period" means the period beginning from the Appointed Date and ending on the COD;

"Construction Works" means all works and things necessary to complete the Project Highway in accordance with this Agreement;

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

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

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

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

(c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

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

"Debt Due" means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

(a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "principal") but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;

(b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any expense or charges in relation to accelerated repayment of debt except where such charges have arisen due to
Default; and

(c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"Debt Service" means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

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

"Dispute" shall have the meaning set forth in Clause 44.1.1;

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 44;

"Divestment Requirements" means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 38.1;

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

"Drawings" means all of the drawings, calculations and documents pertaining to the Project Highway as set forth in Schedule-H, and shall include 'as built' drawings of the Project Highway;

"EPC Contract" means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project Highway in accordance with the provisions of this Agreement;

"EPC Contractor" means the person with whom the Concessionaire has entered into an EPC Contract;

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

"Encumbrances" means, in relation to the Project Highway, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries
or any similar arrangement under any insurance policy pertaining to the Project Highway, where applicable herein but excluding utilities referred to in Clause 11.1;

"Equity" means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

"Escrow Account" means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

"Escrow Agreement" shall have the meaning set forth in Clause 31.1.2;

"Escrow Bank" shall have the meaning set forth in Clause 31.1.1;

"Escrow Default" shall have the meaning set forth in Schedule-S;

"Fee" means the charge that may be levied on and payable to the Authority / Authority Contractor for a vehicle using the Project Highway or a part thereof.

"Financial Close" means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

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

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

"Financial Package" means the financing package indicating the total capital cost of Four-Laning and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

"Financing Agreements" means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost.
amendments or modifications made in accordance with Clause 5.2.2;

"Force Majeure" or "Force Majeure Event" shall have the meaning ascribed to it in Clause 34.1;

"Four-Laning" or "Four-Lane" means the construction and completion of all works included in or constituting a Four-lane Project Highway, as specified in Article 2 read with Schedule-B and Schedule-C;

"GOI" means the Government of India;

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

"Government" means the Government of India;

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

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

"IRC" means the Indian Roads Congress;

"Indemnified Party" means the Party entitled to the benefit of an indemnity pursuant to Article 42;

"Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Article 42;

"Independent Engineer" shall have the meaning set forth in Clause 23.1;

"Indirect Political Event" shall have the meaning set forth in Clause 34.3;

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 32, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;

"LOA" or "Letter of Acceptance" means the letter of acceptance referred to in Recital (E);
"Lenders' Representative" means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

"Light Commercial Vehicle" or "LCV" means any passenger vehicle, minibus, light goods vehicle or goods carrier with a Gross Vehicle Weight exceeding 7500 (seven thousand five hundred) kilograms but less than 12000 (twelve thousand) kilograms or a registered passenger carrying capacity exceeding 12 (twelve) but less than 32 (thirty two) excluding the driver and includes a Tractor with Trailer;

"Local User" means a person using a vehicle registered for non-commercial purposes and used as such for commuting on a section of the Project Highway, provided that (a) such vehicle is owned by a person who resides within a distance of 20 km (twenty kilometres) from the nearest Toll Plaza; (b) its use of such section of the Project Highway does not extend beyond a Toll Plaza other than such nearest Toll Plaza; and (c) such section of the Project Highway has no service road or alternative road; and shall include a vehicle that uses a section of the Project Highway but does not cross a Toll Plaza;

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

"Maintenance Manual" shall have the meaning ascribed to it in Clause 17.3;

"Maintenance Programme" shall have the meaning ascribed to it in Clause 17.4.1;

"Maintenance Requirements" shall have the meaning set forth in Clause 17.2;

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

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

"Multi-axle truck" or "Heavy Truck" means any goods carrier, heavy construction machinery or earth moving equipment with a Gross Vehicle Weight exceeding 20,000 (twenty thousand) kilograms, but less than 60,000 (sixty thousand) kilograms, and includes a truck with three to six axles;

"Nominated Company" means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

"Non-Political Event" shall have the meaning set forth in Clause 34.2;

"O&M" means the operation and maintenance of the Project Highway and includes all matters connected with incidental to such operation and maintenance and provision of services and facilities in accordance with the provisions of this Agreement;
“O&M Contract” means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

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

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

“O&M Inspection Report” shall have the meaning set forth in Clause 19.2;

“O&M Support” shall have the meaning set forth in Clause 25.3.1;

“Operation Period” means the period commencing from COD and ending on the Transfer Date;

“PCU” shall have the meaning ascribed to a passenger car unit in the Indian Roads Congress Publication No. IRC-64, 1990 or any substitute or modification thereof;

“Panel of Chartered Accountants” shall have the meaning set forth in Clause 33.2.1;

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

“Performance Security” shall have the meaning set forth in Clause 9.1;

“Political Event” shall have the meaning set forth in Clause 34.4;

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

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement and the Substitution Agreement;

“Project Assets” means all physical and other assets relating to and forming part of the Site including (a) rights of Way on the Site in the form of licence, Right of Way
National Highways Authority of India

or otherwise; (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road overbridges, drainage works, traffic signals, sign boards, kilometre-stones, toll plazas, electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project Highway, but does not include Additional Facilities;

"Project Completion Date" means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14;

"Project Completion Schedule" means the progressive Project Milestones set forth in Schedule-G for completion of the Project Highway on or before the Scheduled Four-Laning Date;

"Project Facilities" means all the amenities and facilities situated on the Site, as described in Schedule-C;

"Project Highway" means the Site comprising the existing road comprising NH-40 from km 0/000 to km 61/800 and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement;

"Project Milestones" means the project milestones set forth in Schedule-G;

"Provisional Certificate" shall have the meaning set forth in Clause 14.3;

"Punch List" shall have the meaning ascribed to it in Clause 14.3;

"RBI" means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

"Reference Exchange Rate" means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

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

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

"Safety Consultant" shall have the meaning set forth in Clause 18.1.2;
“Safety Requirements” shall have the meaning set forth in Clause 18.1.1;

“Safety Fund” shall have the meaning set forth in Clause 18.2;

“Scheduled Four-Laning Date” shall have the meaning set forth in Clause 12.4.1;

“Scope of the Project” shall have the meaning set forth in Clause 2.1;

“Senior Lenders” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold pari passu charge on the assets, rights, title and interests of the Concessionaire;

“Site” shall have the meaning set forth in Clause 10.1;

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project Highway, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project Highway submitted by the Concessionaire to, and expressly approved by, the Authority;

“State” means the States of Assam and Meghalaya and “State Governments” means the governments of these States;

“State Support Agreement” shall have the meaning set forth in Clause 47.3;

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 33.2.1;

“Subordinated Debt” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

(a) the principal amount of debt provided by lenders or the Concessionaire for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

(b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity...
at the option of the lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"Substitution Agreement" shall have the meaning set forth in Clause 40.3;

"Suspension" shall have the meaning set forth in Clause 36.1;

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

"Tender Notice" shall have the meaning set forth in Recital ‘C’;

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

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

"Termination Payment" means the amount payable by the Authority to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the product arrived at by subtracting Debt Due from Total Project Cost;

"Tests" means the tests set forth in Schedule-I to determine the completion of Four-Laning in accordance with the provisions of this Agreement;

"Toll Plaza" means the structures and barriers erected on of the Project Highway for the purpose of regulating the entry and exit of vehicles in accordance with the provisions of this Agreement and shall include all land, buildings, equipment, and other facilities required in accordance with or incidental to the provisions of this Agreement;

"Total Project Cost" means the
(a) the capital cost of the Project, as set forth in the Financial Package;

(b) the actual capital cost of the Project upon completion of Four-Laning of the Project Highway; and

(c) a sum of Rs. 536 crore (Rupees five hundred thirty six crore),

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement.

“Traffic Aid Post” shall have the meaning set forth in Clause 20.2;

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

“Truck” means any goods carrier with a Gross Vehicle Weight exceeding 12,000 (twelve thousand) kilograms but less then 20,000 (twenty thousand) kilograms and includes a road roller;

“User” means a person who travels on the Project Highway or any part thereof in/on any vehicle;

“Vesting Certificate” shall have the meaning set forth in Clause 38.3; and

“WPI” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.
IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED
For and on behalf of
NATIONAL HIGHWAYS AUTHORITY OF INDIA by: (G.K.Sahu)

General Manager(Tech)
National Highways Authority of India
G-5&6, Sector-10, Dwarka
New Delhi-110075

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE CONCESSIONAIRE by: (Ajay Menon)

Director
Jorabat Shillong Expressway Limited
The IL&FS Financial Center,
Plot C-22, G-Block,
Bandra Kurla Complex,
Bandra (East),
Mumbai-400051,
Maharashtra

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire in its meeting held on the 18th day of June, 2010 hereunto affixed in the presence of Mr. Ajay Menon, Director, who has signed these presents in token thereof and Mr. Kuljit Ahluwalia, who has countersigned the same in token thereof:

In presence of:  
1. 
2. 

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire in its meeting held on the 18th day of June, 2010 hereunto affixed in the presence of Mr. Ajay Menon, Director, who has signed these presents in token thereof and Mr. Kuljit Ahluwalia, who has countersigned the same in token thereof:

In presence of:  
1. 
2. 
इसके साक्षरस्वरूप दोनों पक्षों ने इस करार को उपर लिखी तिथि, माह और वर्ष को निर्माणित किया और सुपूर्द किया।

भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
के लिए और उसकी ओर से
हस्ताक्षर करके, मुहर बंद करके साँचा
दिया

द्वारा:

(पी.के. साहु)
महाप्रबंधक (तकनीकी)
भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
जी-5 और 6,
सेक्टर-10, दिल्ली
नई दिल्ली-110075

रियायतप्राप्ती के लिए और उसकी ओर से
हस्ताक्षर करके, मुहर बंद करके साँचा
दिया

द्वारा:

(अजय मेनन)
निदेशक
जोकारा शिलाग एक्सप्रेसवे हिमितेड,
दि आईएलएफएफएफ फाइनसियल सेंटर,
प्लांट सी-18, जी-ब्रॉक,
बंद्रा कुलरा कॉम्प्लेक्स,
बंद्रा (जुलूस), मुम्बई-400051,
महाराष्ट्र

रियायतप्राप्ती के निदेशक मण्डल द्वारा दिनांक
18 जून, 2010 को हुई अपनी बैठक में पारित
संकल्प के अनुसार में, श्री अजय मेनन,
निदेशक की उपस्थिति में इस पर रियायतप्राप्ती
की आम मुहर लगाई गई और उसके
प्राधिकरणस्वरूप उन्होंने इस पर हस्ताक्षर किए तथा
श्री कुलरा अहलूवालिया ने प्राधिकरणस्वरूप इन
पर अपने प्रतिस्ताक्षर किए।

की उपस्थिति में:

1. 

2. 

1. 

2. 

(नाम)
Invitation for Qualification

NATIONAL HIGHWAYS AUTHORITY OF INDIA
(Ministry of Shipping, Road Transport & Highways, Government of India)

Request for Qualification

(International Competitive Bidding)

Four-laning of Jorbat-Shillong section of NH-40 from km 0/000 to 61/800 in the states of Assam & Meghalaya on DBFOT pattern under SARDP-NE on Build, Operate and Transfer (Annuity) basis

1. The National Highways Authority of India (NHAI) invites applications for pre-qualifications from Applicants interested in design, engineering, construction, development, finance, operation and maintenance for Four-laning of Jorbat-Shillong section of NH-40 from km 0/000 to 61/800 in the states of Assam & Meghalaya to be executed as BOT (Annuity) Project under SARDP-NE for a pre-agreed concession period (the "Concession Period").

2. The scope of work includes widening of the existing 2 lane road to 4 lane with paved shoulders on Design, Build, Finance, Operate and Transfer (DBFOT) pattern of the following stretch of NH-40

<table>
<thead>
<tr>
<th>S. No</th>
<th>Package No.</th>
<th>State</th>
<th>Sections</th>
<th>NH</th>
<th>Project Length (in kms)</th>
<th>Estimated Total Project Cost (TPC) (Rs. in Million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>NHAI/SARDP</td>
<td>Assam &amp; Meghalaya</td>
<td>Jorbat-Shillong Section of NH-40</td>
<td>40</td>
<td>61.92</td>
<td>5360.00</td>
</tr>
</tbody>
</table>

3. An agreement will be drawn up between NHAI and a selected bidder on Annuity basis (the "Concession Agreement").

4. Interested Applicants may obtain the Request for Qualification documents (the "RFQ" document) from the address given at para no.9 upto 22nd January, 2009 on all working days between 1000 hrs and 1700 hrs Indian Standard Time (IST) clearly stating "Request for Qualification for Four-laning of Jorbat-Shillong section of NH-40 from km 0/000 to 61/800 in the states of Assam & Meghalaya on DBFOT pattern under SARDP-NE on Build, Operate and Transfer (Annuity) basis " and on submission of a non-refundable fee of Indian Rupees ("Rs") 10,000 (Rupees Ten Thousand Only) for the Project, mentioned at para no. 2 above, payable of a crossed demand draft drawn in favor of

NATIONAL HIGHWAYS AUTHORITY OF INDIA

MINISTRY OF SHIPING, ROAD TRANSPORT & HIGHWAYS
GOVERNMENT OF INDIA

NEW DELHI-110011
in favor of 'National Highways Authority of India', payable on any scheduled bank in New Delhi.

5. NHAI will not be responsible for any delay, loss or non-receipt of RFQ document sent by post/ courier. Further, NHAI shall not be responsible for any delay in receiving the Applications and reserves the right to accept/ reject any or all applications without assigning any reason thereof.

6. The RFQ document contains brief information about pre-qualification requirements and process.

7. The RFQ document is also available on the NHAI website (http://www.nhai.org) with effect from 8th December 2008. Applicants who download the RFQ document from the website will be required to pay the non-refundable fee of Rs.10,000 (Rupees Ten Thousand only), for the Project in the manner described above at para no 4, at the time of RFQ submission.

8. Further, all copies of every Application must be submitted in a hard bound form (spiral bound form, loose form, etc. will not be accepted) with all pages numbered serially, along with an index of submissions. In the event of any of the instructions mentioned herein have not been adhered to, NHAI will reject the Application.

9. RFQ submissions must be received not later than 1100 hrs IST on 23rd January 2009 in the manner specified in the RFQ document at the address given below:

G.K. Sahu
General Manager (BOT)
National Highways Authority of India, G-5 & G-6, Sector 10,
Dwarka,
New Delhi - 110 075
Phone: +91 11 25074340 (Extn. 1337)
Fax: +91 11 25074341
Design, Engineering, Finance, Construction, Operation and Maintenance of Four Laning of Jorabat - Shillong Section of NH - 40 from km 0.000 to km 61.800 in the State of Meghalaya Under SARDP-NE on Build, Operate and Transfer (BOT) (Annuity) Basis.

Amendment No.-1

The following amendments in the RFP for the above mentioned project have been made with immediate effect for which due date of bid submission is 19.02.2010 (11.00 AM).

Clause 2.1.18 (i)
A Bidder shall not be eligible for bidding hereunder if, as on bid due date, the Bidder, its Member or Associate was, either by itself or as member of a consortium has been declared by the Authority as the Selected Bidder for undertaking 3 (three) or more projects and the bidder is yet to achieve financial close. A bidder shall be considered as declared Selected Bidder for the projects of NHAI, where the LOA has been issued.

Clause 2.1.18 (ii)

The Concessionaire shall engage only such EPC Contractors for execution of the work who have experience of at least one single completed highway work of value at least 20% of the Estimated Project Cost in the preceding 5 years. An undertaking to this effect shall be provided by the Concessionaire along with the EPC Project Agreement Document.
Four-Laning of Jorbat-Shillong (Barapani) Section of NH-40 from Km.0.000 to 61.800 in the States of Assam and Meghalaya on DBFOT pattern under SARDP-NE on Build, Operate and Transfer (Annuity) basis.

**Amendment No.2**

1. **Amendments in Draft Concession Agreement**

<table>
<thead>
<tr>
<th>Clause/ Art.</th>
<th>Description</th>
<th>Existing Provision</th>
<th>As modified</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 48</td>
<td>“Change in Ownership”</td>
<td>“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the [existing promoters/Consortium Members] together with their Associates in the total Equity to decline below (i) 51% (fifty one per cent) thereof during Construction Period, (ii) 33% (thirty three per cent) thereof during a period of 3 (three) years following COD, and (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process) in the proportion of the equity holding of [any Consortium Member] to the total Equity, if it occurs prior to completion of a period two years after COD, shall constitute Change in Ownership; provided further that any transfer of the direct and/or indirect, legal or beneficial ownership leading to acquisition of more than 15% (fifteen per cent) of the total Equity by any person and/or his Associate at any time during the Concession Period shall constitute a Change in Ownership. For the avoidance of doubt, indirect, legal or beneficial ownership of any shares, or securities convertible into shares shall include transfer of the</td>
<td>“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the (selected bidder/ Consortium Members), together with (its/their) Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and two years thereafter, provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of (the selected bidder/ any Consortium Member) to the total Equity, if it occurs prior to completion of a period two years after COD, shall constitute Change in Ownership;</td>
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<tr>
<td>Clause/Art.</td>
<td>Description</td>
<td>Existing Provision</td>
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<td>direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in any person acquiring control over the Equity or voting rights of the shares of the Concessionaire;</td>
<td>it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the [existing promoters/ Consortium Members] together with their Associates hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; [that the respective holding of each Consortium Member conforms to the representation made by the Consortium and accepted by the Authority as part of the Bid; and that no member of the Consortium shall hold less than 26 (twenty six per cent) of such Equity during the Construction Period];</td>
</tr>
<tr>
<td>Clause 7.1(k)</td>
<td>Representations and Warranties of the Concessionaire</td>
<td>it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the [selected bidder/ Consortium Members], together with (its/ their) Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that each member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall hold at least 26% (twenty six per cent) of Equity during the Construction Period and two years thereafter along with its Associates.</td>
<td>Provided further that any such request made under Clause 7.1(k) and/or Art 48, at the option of the Authority, may be required to be accompanied by a suitable no objection letter from lenders”.</td>
</tr>
<tr>
<td>Clause 40.2(b)</td>
<td>Permitted assignment and charges</td>
<td>mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project Highway, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements</td>
<td>mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, a charge on the Escrow Account, arising or created in the ordinary course of business of the Project Highway, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project Highway;</td>
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</tbody>
</table>

Four-Laning of Jorbat-Shillong (Barapani) Section of NH-40 in the States of Assam and Meghalaya

Amendment No. 2
<table>
<thead>
<tr>
<th>Clause/Art.</th>
<th>Description</th>
<th>Existing Provision</th>
<th>As modified</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>for the Project Highway;</td>
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</table>
## 2. Amendments in Request for Proposal

<table>
<thead>
<tr>
<th>Clause</th>
<th>Description</th>
<th>Existing Provision</th>
<th>As modified</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1.14</td>
<td>General terms of Bidding</td>
<td>2.1.14: A Bidder shall not have a conflict of interest (the &quot;Conflict of Interest&quot;) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder's proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if:</td>
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<td></td>
<td>(i) such Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest, provided that this qualification shall not apply in cases where the direct or indirect shareholding in a Bidder or a constituent thereof in the other Bidder(s) (or any of its constituents) is less than 1% of its paid up and subscribed capital; or</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>(ii) a constituent of such Bidder is also a constituent of another Bidder.</td>
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</table>

As modified:

2.1.14: A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate 5% of the value of the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder's proposal, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if: |

(i) such Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding in a Bidder or a constituent thereof in the other Bidder(s) (or any of its constituents) is not more than 25% (twenty five per cent) of its paid up and subscribed capital; or
<table>
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<tbody>
<tr>
<td>(iii)</td>
<td>such Bidder receives or has received any direct or indirect subsidy from any other Bidder, or has provided any such subsidy to any other Bidder; or</td>
<td>(ii) a constituent of such Bidder is also a constituent of another Bidder; or</td>
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<tr>
<td>(iv)</td>
<td>such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or</td>
<td>(iii) such Bidder receives or has received any direct or indirect subsidy from any other Bidder, or has provided any such subsidy to any other Bidder; or</td>
<td></td>
</tr>
<tr>
<td>(v)</td>
<td>such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each others' information about, or to influence the Bid of either or each of the other Bidder; or</td>
<td>(iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or</td>
<td></td>
</tr>
<tr>
<td>(vi)</td>
<td>such Bidder has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.</td>
<td>(v) such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each others' information about, or to influence the Bid of either or each of the other Bidder; or</td>
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</tbody>
</table>

Notwithstanding anything stated herein a conflict of interest situation arising at the pre-qualification stage will be deemed to subsist only, as between such applicants attracting conflict of interest provisions on account of shareholdings, submit bids under this document.

2.20.7 The Bid Security shall be forfeited and appropriated by the Authority as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority.

2.20.7 The Bid Security shall be forfeited and appropriated by the Authority as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority.
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<tr>
<th>Clause</th>
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<th>Existing Provision</th>
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<td>Authority hereunder or otherwise, under the following conditions:</td>
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<td>the Authority hereunder or otherwise, under the following conditions:</td>
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<td>a) If a Bidder submits a non-responsive Bid;</td>
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<td>a) If a Bidder submits a non-responsive Bid;</td>
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<td>Subject however that in the event of encashment of bid security occurring due to operation of para 2.20.7 (a), the damage so claimed by the Authority shall be restricted to 5% of the value of the Bid security.</td>
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</tbody>
</table>
Minutes of the meeting of the Evaluation Committee held on 25-09-2009

1. In the pre-bid meeting held on 14.09.2009, no queries were received from the bidders.

2. The evaluation Committee based on the amendments issued for 2-laning of Shillong bypass on Annuity mode, reviewed the RFP and Concession Agreement in its meeting held on 25.09.2009 and recommends the following amendments.

i) Clause 2.1.8 of RFP:

There is discrepancy in clause 2.1.8 when compared to clause 1.2.4 in regards of Bid validity. The Bid validity shall be 180 days. Accordingly, clause 2.1.8 is recommended to be amended.

ii) Clause 2.1.14 (i) of RFP:

The Committee noted that in the RFQ the cross holding under conflict of interest is 1% as this document was issued in December, 2008 and so is under RFP also. The committee took note of amendment of RFQ document by the Ministry vide letter dated 20.02.2009 and subsequent amendment vide letter dated 24.06.2009 wherein the cross holding has been allowed upto 5%.

Considering the latest amendment by the Ministry, the Committee recommended that the cross holding of 5% may also be allowed in the RFP.

vii) Schedule W (State Support Agreement):

The tripartite State Support Agreement has been included in Schedule W. The Ministry vide letter dated 31.07.2009 has forwarded a bipartite State Support Agreement to be followed. In view of this, the tripartite State Support Agreement is recommended to be replaced by the bipartite State Support Agreement forwarded by the Ministry. Accordingly, necessary amendment is recommended in clause 47.3 of CA.
Four-Laning of Jorbat-Shillong (Barapani) Section of NH-40 from Km.0.000 to 61.800 in the States of Assam and Meghalaya on DBFOT pattern under SARDP-NE on Build, Operate and Transfer (Annuity) basis.

Clarification No.2

"The relationship(s) through JVs and SPVs will not come under purview of "Conflict of Interest" under sub-clause (v) of clause 2.1.14 of RFP, unless has knowledge of the bid of the other bidder or a bidder can influence the other bidder."
The Deputy General Manager, (BOT)IIA
National Highways Authority of India
G-5& G-6, Sector 10, Dwarka
New Delhi – 110 075

Sub: Bid for “Design, Engineering, Construction, Development, Finance, Operation and Maintenance Four Laning of Jorbat – Shillong (Barapani) Section of NH –40 from km 0.000 to Km. 61.800 of NH- 40 in the State of Assam and Meghalaya under SARDP-NE on Build, Operate and Transfer (BOT) (Annuity) Basis”

Dear Sir,

With reference to your RFP document dated August 2009, we, having examined the Bidding Documents and understood their contents, hereby submit our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

2. All information provided in the Bid and in the Appendices is true and correct.

3. This statement is made for the express purpose of qualifying as a Bidder for the Design, Engineering, Construction, Development, Finance, Operation and Maintenance of the aforesaid Project.

4. We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.

5. We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

6. We certify that in the last three years, we/ any of the Consortium Members have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
We declare that:

(a) We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority.

(b) We do not have any conflict of interest in accordance with Clauses 2.1.14 and 2.1.15 of the RFP document;

(c) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and  

(d) We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

8. We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.6 of the RFP document.

9. We believe that our Consortium satisfies the Net Worth criteria and meet(s) the requirements as specified in the RFQ document and is qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process.

10. We declare that we/ any Member of the Consortium, is not a Member of a/ any other Consortium submitting a Bid for the Project.

11. We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which could result to a grave offence that outrages the moral sense of the community.
We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.

13. We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/employees.

14. We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Appendix-V thereof.

15. We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.

16. We acknowledge that our Consortium was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Members who will own at least 26% of the equity of the Concessionaire and undertake that each of such Consortium Members shall continue to hold at least 26% of the equity of the Concessionaire until the Commercial Operation Date of the Project is achieved under and in accordance with the provisions of the Concession Agreement. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.

17. We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFQ, We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.

18. We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate itself as such prior to execution of the Concession Agreement.
19. We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

20. In the event of our being declared as the Selected Bidder, We agree to enter into a Concession Agreement in accordance with the draft that has been provided to us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

21. We have studied all the Bidding Documents carefully and also surveyed the project highway and the traffic. We understand that except to the extent as expressly setforth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Concession.

22. The Annuity has been quoted by us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Bid.

23. We offer a Bid Security of Rs. 10.54 crores (Rupees Ten crores and Fifty Four lakhs only) to the Authority in accordance with the RFP Document.

24. The Bid Security in the form of a Bank Guarantee is attached.

25. We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to us or our Bid is not opened.

26. We hereby submit our Bid and require fixed semi annual Annuity of Rs. 72,51,00,000/-(Rupees Seventy Two Crore Fifty One lakhs only) only for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

27. We agree to keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.

28. We agree and undertake to abide by all the terms and conditions of the RFP.
In witness thereof, we submit this Bid under and in accordance with the terms of the RFP document.

Date: February 19, 2010
Place: Mumbai

Yours faithfully,

Ravi Sreehari
Assistant Vice President
IL&FS Transportation Networks Limited
To,

NATIONAL HIGHWAY AUTHORITY OF INDIA
G-5&6, SECTOR 10, DWARKA,
NEW DELHI 110075
NEW DELHI

Dear Sirs,

BG No. 000401000041
Date of Issue 12-10-2009
Amount of BG Rs. 10,54,00,000.00 (RUPEES TEN CRORES FIFTYFOUR LAKHS ONLY)
Expiry Date 30-06-2010
Claim Expiry Date 30-06-2010
Name and Address of the Applicant
OTH IL&FS TRANSPORTATION NETWORKS LTD
CTNL, ILFS FIN CENTRE, BANDRA KURLA COMPLEX
BANDRA (E)

We forward herewith the above Inland Bank Guarantee in original issued by us in your favour.

The above Guarantee is issued subject to the condition that the Bank's liability is restricted to the amount mentioned above and in the said Guarantee. Our Guarantee shall remain in force till the expiry date. Unless a demand or claim under the guarantee is made on the Bank in writing and delivered to the bank on or before the Expiry date/Claim Expiry Date, the Bank shall be discharged from all liability under the said guarantee thereafter.

Please Note:
The beneficiary in their own interest should verify the genuineness of this guarantee from the Zonal office of the bank at the following address

AXIS BANK LIMITED
WESTERN ZONAL OFFICE
3RD FLR, RNA CORPORATE PARK, NR CHETNA COLLEGE
KALANAGAR, BANDRA (EAST),
MUMBAI-400051

FOR AXIS BANK LIMITED

AUTHORIZED SIGNATORY
NAME: AVINASH SAWAKEKAR
SS No. S. S. No. 2856

FOR AXIS BANK LIMITED

AUTHORIZED SIGNATORY
NAME: SHILPA MELKA
SS No. 608

Encl: Bank Guarantee Number 00040100004160
APPENDIX – II

Bank Guarantee for Bid Security

B.G. No: 000401000004160 dated: 12.10.2009

In consideration of you, National Highways Authority of India, having its office at G-5 & 6, Sector-10, Dwarka, New Delhi-110075, (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of IL&FS Transportation Networks Limited, a Company registered under provision of the Companies Act, 1956 and having its registered office at The IL&FS Financial Centre, Plot C-22, G Block, Bandra Kurla Complex, Bandra East, Mumbai 400051 and acting on behalf of its Consortium (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the Four Laning of Jorbat – Shillong (Barapani) Section from 0.000 to Km. 61.800 of NH- 40 in the State of Assam and Meghalaya. BOT (Annuity) basis (hereinafter referred to as “the Project”) pursuant to the RFP Document dated

For AXIS BANK LTD.

P. Subramaniam
Authorised Esignatory 2012

[Signature]

[Stamp]
August 2009 issued in respect of the Project and other related documents (hereinafter collectively referred to as "Bidding Documents"), we Axis Bank Ltd. having our registered office at 3rd floor, "Trishul", Opp Samartheshwar Temple, Law Garden, Ellis Bridge, Ahmedabad – 380 006 and one of its branches at Universal Insurance Building, Sir P M Road, Fort, Mumbai – 400 001 (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of Clause 2.1.7 read with Clause 2.1.8 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. 10.54 crores (Rupees Ten Crores and Fifty Four Lakhs only) as bid security (hereinafter referred to as the "Bid Security") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.

2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.

3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. 10.54 crores (Rupees Ten Crores and Fifty Four Lakhs only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days i.e. up to 30.06.2010 (expiry date) or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

For AXIS BANK LTD.

[Signature]

For AXIS BANK LTD.

[Signature]
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to Axis Bank Ltd, Universal Insurance Building, Sir P.M. Road, Fort, Mumbai 400 001 and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.

10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.

12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
Ref No: CMC/MUM/SS/5433/2009-10
Date: 12-01-2010

To,
NATIONAL HIGHWAY AUTHORITY OF INDIA
G-5&6, SECTOR 10, DWARKA,
NEW DELHI 110075

Dear Sir,

BG No.: 0004010004160
Date of Issue.: 12-10-2009
Name and Address of the Applicant: IL&FS TRANSPORTATION NETWORKS LTD
CTNL, ILFS FIN CENTRE, BANDRA KURLA COMPLEX
BANDRA (E)

Date of Amendment: 12-01-2010
Amended Amount of BG: Rs. 10,54,00,000.00 (RUPEES TEN CRORES FIFTYFOUR LAKHS ONLY)
Amended Expiry Date: 30-09-2010
Amended Claim Expiry Date: 30-09-2010

We forward herewith the amendment to the above Inland Bank Guarantee in original issued by us in your favour.

The above Guarantee is issued subject to the condition that the Bank's liability is restricted to the amount mentioned above and in the said Guarantee. Our Guarantee shall remain in force till the expiry date. Unless a demand or claim under the guarantee is made on the Bank in writing and delivered to the bank on or before the Expiry Date/Claim Expiry Date, the Bank shall be discharged from all liability under the said guarantee thereafter.

All other terms, conditions and clauses of original Bank Guarantee shall stand unaltered and remain in force till the date of expiry.

Please Note:

The beneficiary in their own interest should verify the genuineness of this guarantee from the official office of the bank at the following address.

AXIS BANK LIMITED
WESTERN ZONAL OFFICE
3RD FLR, RNA CORPORATE PARK, NR CHEETAH COLLEGE
KALANAGAR, BANDRA (EAST),
MUMBAI-400051

Encl: Amendment to Bank Guarantee Number 0004010004160

For AXIS BANK LTD.

Arun G Rane
Authorised Signatory

Credit Management Centre, Mumbai
Address for correspondence & dispatch of documents
Jeevan Prakash Building, Sir P. M. Road, Fort, Mumbai-400009
Tel. No. (022)-6610 7202/03/26/28 Fax: 66137241; website: www.axisbank.com

Payal Sabharwal
S. No. 2812
Authorized Signatory

National Highways Authority of India
G-5&6, Sector 10, Dwarka,
New Delhi 110075.

Extension to our Bank Guarantee no. 00040100004160 dated 12.10.2009 of Rs. 10,54,00,000/-(Rs Ten Crore Fifty Four Lakhs) issued in your favour on behalf of M/s IL&FS Transportation Networks Ltd.

With reference to our Guarantee No 00040100004160 dated 12.10.2009 issued in your favour by us on behalf M/s IL&FS Transportation Networks Ltd. We, AXIS Bank Ltd, hereby extend the validity and claim period from 01.07.2010 to 30.09.2010.

All other terms and conditions of our original guarantee no. 00040100004160 dated 12.10.2009 remains unchanged.

This amendment forms integral part of our aforesaid guarantee and should be presented along with the original guarantee.

For AXIS BANK LTD.

Authorized Signature
Signature No. 5887
Date: 20.05.2010

To,
M/s IL & FS Transportations Networks Ltd.&
Ramky Infrastructure Ltd.-Consortium,
IL&FS Financial Centre,
Plot C-22, G-Block,
Bandra-Kurla Complex,
Bandra (E), Mumbai-51

Sub:- Four Laning of Jorabat - Shillong (Barapani) Section of NH - 40 from km 0.000 to km 61.800 in the State of Assam & Meghalaya on DBFOT pattern under SARDP-NE on BOT (Annuity) Basis: Letter of Award (LOA) reg

Ref: Your bid submitted on 19.02.2010.

Sir,

This is to notify that based on your bid submitted for Four Laning of Jorabat – Shillong (Barapani) Section of NH – 40 from km 0.000 to km 61.800 in the State of Assam & Meghalaya on Design, Build, Finance, Operate and Transfer (DBFOT) pattern under SARDP-NE on Build, Operate and Transfer (BOT) (Annuity) Basis for annuity (semi-annuity) of Rs. 72,51,00,000/- (Rs Seventy Two Crores Fifty One Lakhs Only) is hereby accepted by NHAI declaring you as the “Successful Bidder”. The Concession period is 20 years including the construction period of 3 years.

2. The annuity (semi-annual annuity) quoted by you shall be disbursed in accordance with Article 27 of DCA.

3. In accordance with the Clause 3.3.5 (refer RFP), you are hereby requested to confirm us of your acceptance of this Letter of Award within 7 days of its issue. Thereafter, pursuant to DCA, you are required to execute the Concession Agreement within 45 days from issue of LOA.

4. You shall promote and incorporate the Concessionaire as a limited liability company under the Companies Act 1956, as the entity which shall undertake and perform the obligations and exercise the rights of the Bidder under the LOA, including the obligation to enter into the Concession Agreement pursuant to the LOA for executing the Project. The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority no later than 180 (one hundred and eighty) days from the date of the Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs.26.80 crore (Rupees Twenty Six Crores Eighty Lakhs only) in the form set forth in Schedule-F (the “Performance Security”).

5. In case of default on your part, action as per relevant conditions of Bid Document shall be taken.

Please acknowledge the receipt.

Yours faithfully,

(G.K. Sahi)
General Manager (Tech), NE
June 21, 2010

To
Mr. G K Sahu
General Manager (Tech) NE
National Highways Authority of India
G-5 & G-6, Sector 10, Dwarka
New Delhi – 110 075

Reg.: Four Laning of Jorbat – Shillong (Barapani) Section of NH – 40 from km 0.000 to Km. 61.800 of NH- 40 in the State of Assam and Meghalaya on DBFOT under SARDP-NE on Build, Operate and Transfer (BOT) (Annuity) Basis – Signing of Concession Agreement

Ref.: Letter of Acceptance issued through your letter no. NHAI/BOT/11019/2003/ 318; dated 20.05.2010
Letter submitted by the Consortium, dated June 21, 2010 for introducing SPV

This is in continuation to above referred letters. Jorabat Shillong Expressway Limited (JSEL), has been incorporated as a Special Purpose Vehicle (SPV) by Consortium of IL&FS Transportation Networks Limited (ITNL) and Ramky Infrastructure Ltd. (Ramky) (Consortium) for development and implementation of the captioned Project on BOT (Annuity) basis.

As per recitals (F) and (G) of the Concession Agreement, selected bidder has to incorporate a limited liability company under the Companies Act 1956. In this regard, selected bidder vide their letter dated June 21, 2010 has requested National Highways Authority of India (NHAI) to accept JSEL as the Concessionaire for entering into Concession Agreement with NHAI for implementation of the Project and subsequently for JSEL to perform the obligations and exercise the rights on behalf of the Consortium.

In view of the above, we confirm that JSEL shall enter into Concession Agreement with NHAI and shall perform the obligations and exercise the rights of the Concessionaire as specified in the Concession Agreement for development and implementation of the Project.

We request NHAI to acknowledge the same and provide the concurrence to JSEL as Concessionaire for development and implementation of the Project and accordingly intimate us a suitable date for signing of Concession Agreement for the implementation of the Project.

For Jorabat Shillong Expressway Limited

Ravi Sreehari
Director

Registered Office: The IL&FS Financial Centre, 5th Floor, G Block, Bandra Kurla Complex (BKC), Mumbai- 400051
Ph: 022-26521979 022-26521978
JORABAT SHILLONG EXPRESSWAY LIMITED

Certified true copy of the resolution passed by the members of the Company at the Extraordinary General Meeting held on July 8, 2010

"RESOLVED THAT pursuant to the provisions of Section 31 of the Companies Act, 1956, the Articles of Association of the Company be altered in following manner

(A) In Chapter I containing Article 1, the following sub clauses shall be included at relevant places and the existing sub-clauses be renumbered accordingly:

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

(b) "Concession Agreement" shall mean agreement to be entered into by the Company with National Highway Authority of India (NHAI) for undertaking the Four Laning of Jorabat Shillong (Barapani) section of NH-40 from Km. 0.000 to Km 61.800 in the State of Assam and Meghalaya on DBFOT Pattern under SARDP-NE on BOT (Annuity) Basis ("the Project")

(c) "Consortium" shall mean IL&FS Transportation Networks Limited and Ramky Infrastructure Limited

(d) "Consortium Member" or "Consortium Members": IL&FS Transportation Networks Limited and Ramky Infrastructure Limited shall jointly mean as Consortium Members and individually as Consortium Member

(e) "Construction Period" shall have the same meaning as defined in the Concession Agreement

(f) "ITNL" shall mean IL&FS Transportation Networks Limited, a company incorporated under the Companies Act, 1956 and having its Registered Office at C-22, G Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051, and includes its successors and assigns

(g) "NHAI" shall mean National Highway Authority of India

(h) "RIL" shall mean Ramky Infrastructure Limited, a company incorporated under the Companies Act, 1956 and having its Registered Office at Ramky House, Rajbhavan Road, Somajiguda, Hyderabad - 500082, and includes its successors and assigns

[Stamp and Seal]
BORAT SHILLONG EXPRESSWAY LIMITED

The following new Articles shall be inserted as Article 71A after the existing Article 71:

71A (a) The Consortium of IL&FS Transportation Networks Limited (ITNL) and Ramky Infrastructure Limited (RIL) together with their Associates shall hold not less than 51% of the issued and paid up capital of the Company during the Construction Period and two years thereafter in accordance with the provisions of the Concession Agreement to be entered into by the Company with the NHAI.

(b) The Company shall not undertake or permit any Change in Ownership, except with the prior approval of the NHAI up to the period mentioned in Article 71A (a) above.

(c) The Consortium of ITNL & RIL together with their Associates agrees and acknowledges the following:

(i) all acquisition of Equity and acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen percent) of the total Equity of the Consortium of ITNL & RIL together with their Associates.

(ii) acquisition of any control directly or indirectly of the Board of Directors of the Company by any person either by himself or together with any person or persons acting in concert with him shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Company, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Company without such prior approval of the Authority as per the Concession Agreement. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Company from any liability or obligation under the Concession Agreement.

Further,

(a) The expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1992.
JORABAT SHILLONG EXPRESSWAY LIMITED

statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Company

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

(c) Power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Company, not less than half of the directors on the Board of Directors of the Company or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen percent) of the Equity of the Company shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Company

CERTIFIED TO BE TRUE

For JORABAT SHILLONG EXPRESSWAY LIMITED

[Signature]

Director / Authorised Secretary

[Signature]

[Registered Office: The ILD House, 2nd Floor, C-22, G Block, Bandra Kurla Complex (East), Mumbai - 400051]

Fax: 022-26523979
JORABAT SHILLONG EXPRESSWAY LIMITED

Certified true copy of the explanatory statement annexed to the notice dated July 6, 2010 of the Extraordinary General Meeting of the Members of the Company dated July 8, 2010

The National Highways Authority of India (NHAI) had vide Letter of Award (LOA) dated May 20, 2010 awarded the Project for four-laning of Jorabat Shillong (Barapani) section of NH-40 from Km. 0.000 to Km 61.800 in the State of Assam and Meghalaya on DBFOT Pattern under SARDP-NE on BOT (Annuity) Basis ("the Project") to the Consortium of IL&FS Transportation Networks Limited and Ramky Infrastructure Limited ("the Consortium"). The Company was incorporated on June 18, 2010 by the Consortium for undertaking the said Project.

The Company is now required to execute the Concession Agreement for execution of the Project with the NHAI. The Company had submitted to NHAI all the required documents in connection therewith including the Memorandum and Articles of Association of the Company for verification by their legal advisors. NHAI had thereafter advised the Company to incorporate the provisions contained in the Concession Agreement relating to holding and transfer of equity shares by the Consortium in the Articles of Association of the Company. Accordingly, it is proposed to alter the Articles of Association of the Company as mentioned in the resolution enclosed in the notice of the meeting.

In terms of Section 31 of the Companies Act, 1956, alteration to the Articles of Association of the Company is required to be approved by the Shareholders by passing of a Special Resolution.

Accordingly, your Directors recommend the resolution for approval of the Members.

None of the Directors of the Company may be deemed to be concerned or interested in the Resolution.

CERTIFIED TO BE TRUE

For JORABAT SHILLONG EXPRESSWAY LIMITED

[Signature]

Ajay Meena

Director

Registered Office: The IL&FS Financial Center, Plot C-22, G Block, Bandra Kurla Complex, Bandra (East), Mumbai- 400051
Ph: 022-2653333 Tele: 022-26523479
June 21, 2010

To
Mr. G K Sahu
General Manager (Tech) NE
National Highways Authority of India
G-5 & G-6, Sector 10, Dwarka
New Delhi – 110 075

Reg.: Four Laning of Jorhat – Shillong (Barapani) Section of NH – 40 from km 0.000 to Km. 61.800 of NH- 40 in the State of Assam and Meghalaya on DBFOT under SARDP-NE on Build, Operate and Transfer (BOT) (Annuity) Basis – Signing of Concession Agreement

Ref.: Letter of Acceptance issued through your letter no. NHAI/BOT/11019/2003/ 318; dated 20.05.2010

Dear Sir,

This is in continuation to the above-referred letter regarding our acceptance provided to the Letter of Acceptance (LOA) issued by National Highways Authority of India (NHAI) for implementation of the captioned Project. In line with Clause “F” of the recital in the Concession Agreement, a company in the name of “Jorhat Shillong Expressway Limited (JSEL)” has been incorporated. We authorize JSEL to undertake and perform the obligations as Concessionaire under the Concession Agreement to be executed between JSEL and NHAI for implementation of the Project. In this regard, please find attached a copy of Memorandum & Articles of Association of JSEL. Also find attached the Board Resolution from each of the Consortium Members i.e. IL&FS Transportation Networks Limited (ITNL) and Ramky Infrastructure Limited (Ramky), authorizing their company to invest in JSEL.

In view of the above, we request NHAI to indicate us a suitable date for signing of the Concession Agreement between JSEL and NHAI. Should you need any clarifications / additional information, please feel free to advice us accordingly.

We once again thank you for giving us the opportunity for implementation of the Project and reiterate our commitment for successful implementation of the Project.

Sincerely,

For the Consortium of IL&FS Transportation Networks Limited (ITNL) and Ramky Infrastructure Limited (Ramky)

[Signatory]

Authorised Signatory
"RESOLVED THAT:

(a) Pursuant to the Letter of Award dated May 20, 2010 issued by National Highways Authority of India (NHAI) for Four Laning of Jorabat Shillong (Barapani) section of NH-40 from km. 0.000 to km 61.800 of NH-40 in the State of Assam and Meghalaya on Build, Operate and Transfer (Annuity) basis (the Project) to the Consortium between Ramky Infrastructure Ltd and the Company, the Company do undertake to domicile the Project in the SPV formed for implementation of the Project viz. Jorabat Shillong Expressway Limited

(b) The Company do invest in the Equity Capital of Jorabat Shillong Expressway Limited to the extent of Rs. 67 Crores and undertake to maintain its equity participation in JSEL in accordance with the Concession Agreement to be entered into between JSEL and NHAI

(c) The Company do undertake to raise funds from Lending Institutions / Banks etc. for financing the construction of the Project along with Ramky Infrastructure Limited"

"RESOLVED FURTHER THAT any one of the Directors of the Company, or Mr. K. Ramchand, Managing Director or Mr. Mukund Sapre, Executive Director or Mr. Cherian George, Chief Financial Officer or Mr. Ajay Menon, Assistant Vice President or Mr. Ravi Sreehari, Assistant Vice President or Mr. Krishna Ghag, Associate Vice President & Company Secretary be and hereby severally authorized to take all necessary steps to give effect to the foregoing resolutions including but not limited to:

a) Execution of Shareholders Agreement
b) Execute any deed, documents, undertakings, papers as may be required in this regard
c) Appear before any statutory, regulatory, local authority (ies) for and on behalf of the Company
d) Settle any dispute, queries, question, doubt that may arise in relation thereto
e) Release share application money or advance towards equity of JSEL
f) Arrange/ raise finance from the Lending Institutions/ Banks etc. for funding the requirements for construction of the Project"

Certified to be true
For IL&FS Transportation Networks Limited

Krishna Ghag
Associate Vice President &
Company Secretary

For JORABAT SHILLONG EXPRESSWAY LIMITED

"RESOLVED THAT:

(a) Pursuant to the Letter of Award dated May 20, 2010 issued by National Highways Authority of India (NHAI) for Four Laning of Jorabat Shillong (Bampani) section of NH 40 from km. 0.000 to Km 61.800 of NH-40 in the State of Assam and Meghalaya on Build, Operate and Transfer (Annuity) basis (the Project) to the Consortium between IL & FS Transportation Networks Limited and the Company, the Company do undertake to domicile the Project in the SPV formed for implementation of the Project viz. Jorabat Shillong Expressway Limited

(b) Subject to the shareholders approvals, the Company do invest in the Equity Capital of Jorabat Shillong Expressway Limited to the extent of Rs. 67 Crores and undertake to maintain its equity participation in JSEL in accordance with the Concession Agreement to be entered into between JSEL and NHAI

(c) The Company do undertake to raise funds from Lending Institutions / Banks etc. for financing the construction of the Project along with IL & FS Transportation Networks Limited"

"RESOLVED FURTHER THAT Mr. Y R Nagaraja, Managing Director or Mr. S Vijaya Rami Reddy, General Manager or Mr S Chakradhar, General Manager (Business Development) or Mr. V Phanibhushan Asst. General Manager & Company Secretary be and are hereby severally authorized to take all necessary steps to give effect to the foregoing resolutions including but not limited to:

a) Execution of Shareholders Agreement
b) Execute any deed, documents, undertakings, papers as may be required in this regard
c) Appear before any statutory, regulatory, local authority (ies) for and on behalf of the Company
d) Settle any disputes, queries, question, doubt that may arise in relation thereto
e) Release shares application money or advance towards equity to the Project Company
f) Arrange/ raise finance from the Lending Institutions/ Banks for funding the requirements for construction of the Project"

CERTIFIED TRUE COPY
For Ramky Infrastructure Limited

V Phanibhushan
AGM & Company Secretary.

For JORABAT SHILLONG EXPRESSWAY LIMITED

Director / Authorized Signatory
June 28, 2010

To

Mr. G K Sahu
General Manager (Tech), NE
National Highways Authority of India
G-5& G-6, Sector 10, Dwarka
New Delhi – 110 075

Reg.: Four Laning of Jorhat – Shillong (Barapani) Section of NH – 40 from km 0.000 to Km. 61.800 of NH-40 in the State of Assam and Meghalaya on DBFOT under SARDP-NE on Build, Operate and Transfer (BOT) (Annuity) Basis – Further requirement of documents regd.

Ref. : Your letter no. NHAI/BOT/11019/9/2003/333; dated 24.06.2010 regarding further requirement of documents

Dear Sir,

This is in reference to the above-referred letter regarding the further requirement of documents. Please find attached herewith

i. The legal opinion provided by M/s Crawford Bayley & Co., the legal counsel of Jorhat Shillong Expressway Limited, as required.

ii. The Commencement of Business (CoB) Certificate of Jorhat Shillong Expressway Limited

In view of the above, we request NHAI to indicate us a suitable date for signing of the Concession Agreement between JSEL and NHAI. Should you need any clarifications or additional information, please feel free to advice us accordingly.

Sincerely,

For the consortium of IL&FS Transportation Networks Limited (ITNL) and Ramky Infrastructure Limited (Ramky)

Ravi Sreekanti
Authorised Signatory
Sir,

Re: Concession Agreement to be entered into between Jorabat Shillong Expressway Limited (the "SPV") and National Highways Authority of India ("NHAI") for enabling the SPV to undertake four lanning of Jorabat Shillong (Barapani) section of NH-40 from KM 0.000 to 61.800 in the state of Assam and Meghalaya on DBFOT Pattern under SARDP-NE on BOT (Annuity) basis in terms of the Letter of Award dated the May 20, 2010 issued by NHAI (the "Project") on the terms and conditions contained in the draft Concession Agreement.

1. Background

1.1 We have acted as legal advisers to the SPV in respect of the captioned Project to be undertaken by the SPV pursuant to the Concession Agreement to be signed between the SPV and NHAI (the "Agreement").

1.2 This opinion is rendered to you pursuant to the provisions of the Agreement.

1.3 For the purposes of giving this opinion, we have examined a draft of the Agreement; certified copies of the Memorandum of Association and Articles of Association of the SPV, the Board Resolution authorizing the SPV to enter into and perform the Agreement, the Board Resolution passed by ILFS Transportation Networks Limited, the Board Resolution passed by Ramky Infra Limited for making the investment and the Letter of Award dated the May 20, 2010 issued by NHAI for implementing the Project.
2. Assumptions:

For the purpose of our opinion herein we have assumed that there are no facts or circumstances in existence and no events have occurred which render any of the documents void or voidable, repudiated or frustrated or capable of rescission for any reason and in particular, but without limitation by reason of lack of consideration, default, fraud or misrepresentation.

3. Qualifications

In addition to any exception (which shall for the purpose herein, be construed as a qualification) included in the foregoing, this opinion is further subject to the following qualifications:

- The terms "enforceable" or "enforced" as used in this opinion means that the obligations are of a type which Indian courts and arbitral tribunals would enforce, subject to the following exceptions:
  
i. Enforcement may be limited by general principles of equity for example, equitable remedies such as injunction and specific performance may be granted at the discretion of the court and may not be available where damages are considered by the court to be an adequate remedy, or where the Court does not regard specific performance to be the appropriate remedy;
  
ii. Claims may become barred under the Limitation Act, 1963 or may be or become subject to set off or counterclaim, and failure to exercise a right of action within the relevant limitation period prescribed will operate as a bar to the exercise of such right;
  
iii. Enforcement may be limited by bankruptcy, insolvency, liquidation, reorganization and other laws of general application relating to or affecting the rights of the creditors;
  
iv. Where obligations are to be performed in a jurisdiction outside India, they may not be enforceable in India to the extent that performance would be illegal or contrary to public policy under the laws of that jurisdiction;
  
v. This opinion is limited to the laws of India in force as of date and no opinion is expressed as to the laws of other jurisdiction. We assume that there is no foreign law (as to which we have made no independent investigation), which would affect this opinion.

4. Opinion

4.1 Based on and subject to the foregoing, we are of the following opinion:

(i) The SPV is a limited company duly incorporated and validly existing under the laws of India and has all the requisite corporate power and authority under the laws of India to enter into the Agreement and to perform its obligations therein, and to own, lease and operate its assets and to carry on the business as presently conducted and as proposed to be conducted.
The execution and delivery of the Agreement and other related Project documents by the SPV and the performance by SPV of their obligations under the Agreement have been duly and validly authorized by all necessary corporate or other action on the part of the SPV and no other corporate proceedings or other action on the part of the SPV is necessary to authorize the Agreement or to consummate the transactions contemplated therein.

The execution, delivery and performance of the Agreement and other related Project documents by the SPV will constitute legal, valid and binding obligations of the SPV, in accordance with the applicable provisions of law and are enforceable against the SPV in accordance with their terms and the applicable Law.

This opinion is given to the NHAI in connection with the execution and implementation of the Project which is evidenced by the Agreement. It may not be transmitted to any Third Party nor is it to be relied upon by any Third Party (other than respective legal advisers of the Parties to the Agreement) or for any other purpose or quoted or referred to any public document or filed with any one without our proper written consent.

Yours faithfully,

[Signature]

Partner
For Crawford Bayley & Co.
FORM 20

Declaration of compliance with the provisions of section 149(2)
(b) of the Companies Act, 1956

Pursuant to section 149(2)(c) of the Companies Act, 1956

Note - All fields marked in * are to be mandatorily filled.

1. (a) *Corporate identity number (CIN) of company U45203MH2010PLC204458
   (b) Global location number (GLN) of company

2. (a) Name of the company Jorabat Shillong Expressway Limited
   (b) Address of the registered office of the company
   THE IL&FS FINANCIAL CENTER, PLOT C-22, G BLOCK
   BANDRA KURLA COMPLEX, BANDRA (EAST)
   MUMBAI
   Maharashtra
   INDIA
   400051

(c) *e-mail ID of the company krishna.ghag@ilfsindia.com

3. " Krishna Ghag
   residing at (Present residential address)
   *Line I E-37/0.2, Shantiniketan CHS
   Line II Sector 4, Phase III, Navi Mumbai
   *City Mumbai
   *State Maharashtra-MH
   Pin code 400706
   ISO country code IN
   Country INDIA

*being
   o a director of the company, do solemnly and sincerely declare
   o the secretary of the company, do solemnly and sincerely declare
   o a company secretary (in whole-time practice), do solemnly and sincerely declare

i. "That the amount of the share capital of the company subject to the payment of the whole amount thereof in cash is Rs. 500,000.00"

ii. That the company has not issued a prospectus inviting the public to subscribe for its shares, and that it has filed with registrar a statement in lieu of prospectus.

iii. "That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of Rs. 500,000.00"

iv. *That every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion [payable on application and allotment on the shares payable in cash], except for the directors, namely

Mr Yancharla RathiNagaraja and Mr Swami Panduranga Reddy

who has or have not taken or contracted to take shares, for which he is or they are liable to pay in cash.

v. "The statement in paragraphs i, ii, iii & iv above are true to my knowledge and those in the remaining paragraphs are true to the best of my information and belief."
4. Particulars of payment of stamp duty
State or Union territory in respect of which stamp duty is paid

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<td>Manual</td>
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<td>Name of vendor authorised to sell stamp papers on behalf of the Government</td>
<td>Axis Bank Limited</td>
</tr>
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<td>Serial number of stamp paper</td>
<td>80442129455</td>
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<td>Registration number of vendor</td>
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<td>Date of purchase of stamp paper</td>
<td>18/06/2010 (DD/MM/YYYY)</td>
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<td>Place of purchase of stamp paper</td>
<td>Mumbai</td>
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Attachments

1. Statement in lieu of prospectus (schedule III)  Attach
2. Optional attachment(s) - if any  Attach

List of attachments

Remove attachment

Verification

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I have been authorised by the Board of directors' resolution number 10 dated 18/06/2010 (DD/MM/YYYY) to sign and submit this form.

I further declare that the company has paid correct stamp duty as per applicable Stamp Act.

To be digitally signed by

Director or secretary or company secretary (in whole-time practice)  
* Director identification number of the director; or
* Membership number, if applicable or Income-tax permanent account number (income-tax PAN) of the secretary (secretary of a company who is not a member of ICSI, may quote his/ her income-tax PAN); or
* Certificate of practice number of the company secretary (in whole time practice)

In case of a company secretary (in whole time practice) whether associate or fellow  
Associate  Fellow

For office use only:

eForm Service request number (SRN)  eForm filing date (DD/MM/YYYY)

This e-Form is hereby registered

Digital signature of the authorising officer  Confirm Submission

Date of signing  (DD/MM/YYYY)
MINISTRY OF CORPORATE AFFAIRS
RECEIPT
G.A.R.7

SRN: A87512844
Payment made into: ICICI Bank
Service Request Date: 21/06/2010

Name: KRISHNA DHONDU GHAG
Address: ILFS FINANCIAL CENTRE, BKC, MUMBAI, MAHARASHTRA, INDIA - 400051

Entity on whose behalf money is paid:
CIN: U45203MH2010PLC204156
Name: Jorabat Shillong Expressway Limited
Address: THE IL&FS FINANCIAL CENTER, PLOT C-22, G BLOCK, BANDRA KURLA COMPLEX, BANDRA (EAST), MUMBAI, MAHARASHTRA, INDIA - 400051

Full Particulars of Remittance:
Service Type: eFiling

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<td>600.00</td>
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Mode of Payment: Credit Card - ICICI Bank
Received Payment Rupees: Six Hundred only

Note: The defects or incompleteness in any respect in this eForm as noticed by the Registrar shall be placed on the Ministry’s website (www.mca.gov.in). In case the eForm is marked as RSUB or PUCL, please resubmit the eForm or file Form 67 (Addendum), respectively. Please track the status of your transaction at all times till it is finally disposed off by the Registrar. (Please refer Regulation 17 of the Companies Regulation, 1956)

It is compulsory to file Form 67 (Addendum) electronically within the due date whenever the document is put under PUCL by the ROC, failing which the system will treat the document as invalid and will not be taken on record.

[Signature]
[Seal]
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<td>Company Incorporation</td>
<td>Jorabat Shillong Expressway Limited</td>
<td>U45203MH2010PLC204456</td>
<td>21/06/2010</td>
<td>Approved</td>
<td></td>
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Form 1
Certificate of Incorporation

Corporate Identity Number: U45203MH2010PLC204456
2010 - 2011

I hereby certify that Jorabat Shillong Expressway Limited is a company incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the company is limited.

Given under my hand at Mumbai this Eighteenth day of June Two Thousand Ten.

[Signature]

Deputy Registrar of Companies
Mumbai, Maharashtra

Mailing Address as per record available in Register of Companies office,
Jorabat Shillong Expressway Limited,
THE KAFS, INNOVATION CENTER, PLOT C-22, G BLOCK, BANDRA KURLA COMPLEX, BANDRA (EAST),
Mumbai - 400051,
Maharashtra, India.

[Signature]

Directors (Authorized Signatories)
Certificate for Commencement of Business

Pursuant to Section 149(4) of the Companies Act, 1956

Corporate Identity Number: U45203MH2010PLC204458

I hereby certify that the Jorabet Shillong Expressway Limited, which was incorporated under the Companies Act, 1956 (No. 1 of 1956) on the Eighteenth day of June, Two Thousand Ten, and which has this day filed or duly verified declaration in the prescribed form that the conditions of the Section 149(4) to (6) of the said act, have been complied with and is entitled to commence business.

Given under my hand at Mumbai this Twenty-Eighth day of June, Two Thousand Ten.

[Stamp]

[Signature]

[Deputy Registrar of Companies]

Maharashtra, Mumbai

Certified True Copy

For JORABAT SHILLONG EXPRESSWAY LIMITED

[Stamp]

[Director/Authorized Signatory]
JORABAT SHILLONG EXPRESSWAY LIMITED

July 12, 2010

To,

Mr. G K Sahu,
General Manager (T) NE,
National Highways Authority of India,
G-5&5, Sector 10, Dwarka
New Delhi – 110075

Sub: Four Laning of Jorbat Shillong (Barapani) section of NH-40 from Km. 00.000 to Km. 61.800 of NH-40 in the State of Assam and Meghalaya on DBFOT pattern under SARDP - NE on Build Operate and Transfer (Annuity) Basis – Signing of the Concession Agreement


Dear Sir,

With reference to the captioned subject and above referred letter, please find below our point wise reply to the queries seek by NHAI

Point No. 5
The Conting of the Clause no. 5.3 of the Draft Concession Agreement relating to the Change in Ownership has been incorporated in Article of Association (AoA) and the same has also been filed at Registrar of Companies (ROC), Mumbai. Please find enclosed herewith certified true copy of the Receipt of the Fees Paid at ROC, Filed Form no. 23 with RoC and the attachments filed with the Form23 along with the revised AoA duly signed by the Director of the Company.

In view of the above, we undertake that compliance with respect to Point No. 5 shall be complied and shall furnish the amended and approved AoA after the receipt from the ROC.

Point No. 6 & 7
Revised Board resolution from the promoter of the Company M/s. IL&FS Transportation Networks Limited (ITNL) and M/s. Ramky Infrastructure Limited (Ramky) are attached herewith.

In view of the above, request NHAI to consider Company's compliance to all the information and documents required for signing of Concession Agreement and sign the Concession Agreement at the earliest.

Should you need any further clarifications, please advise.

Sincerely,

For Jorabat Shillong Expressway Limited

[Signature]

Ravi Sreechari
Director

Registered Office : The IL&FS Financial Center, Plot C-22, G Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400051
Ph : 022-26533333 Fax : 022-26521979
**MINISTRY OF CORPORATE AFFAIRS**
**RECEIPT**
**G.A.R.7**

**SRN:** A88709472  **Service Request Date:** 09/07/2010

**Payment Made Into:** ICICI Bank

**Name:** KRISHNA DHONDU GHAG
**Address:** ILFS FINANCIAL CENTRE, BKC, MUMBAI, MAHARASHTRA, INDIA - 400051

**Entity on whose behalf money is paid**
**CIN:** U45203MH2010PLC204456
**Name:** Jorabat Shillong Expressway Limited
**Address:** THE IL&FS FINANCIAL CENTER, PLOT C-22, G BLOCK, BANDRA KURLA COMPLEX, BANDRA (EAST), MUMBAI, MAHARASHTRA, INDIA - 400051

**Full Particulars of Remittance**

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<th>Service Description</th>
<th>Type of Fee</th>
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**Mode of Payment:** Credit Card - ICICI Bank
**Received Payment Rupees:** Three Hundred only

**Note:** The defects or incompleteness in any respect in this eForm as noticed by the Registrar shall be placed on the Ministry’s website (www.mca.gov.in). In case the eForm is marked as RSUB or PUCL, please resubmit the eForm or file Form 67 (Addendum), respectively. Please track the status of your transaction at all times till it is finally disposed of by the Registrar. (Please refer Regulations 17 of the Companies Regulation, 1956)

It is compulsory to file Form 67 (Addendum) electronically within the due date whenever the document is put under PUCL by the ROC, failing which the system will treat the document as invalid and will not be taken on record.

**For JORABAT SHILLONG EXPRESSWAY LIMITED**

Director / Authorised Signatory
FORM 23
Registration of resolution(s) and agreement(s)

[Pursuant to section 192 of the Companies Act, 1956]

Note - All fields marked in * are to be mandatorily filled.

1. (a) Corporate identity number (CIN) of company U45203MH2010PLC204456
(b) Global location number (GLN) of company

2. (a) Name of the company Jorabat Shillong Expressway Limited
(b) Address of the registered office of the company
THE IL&FS FINANCIAL CENTER, PLOT C-22, G BLOCK
BANDRA KURLA COMPLEX, BANDRA (EAST)
MUMBAI
Maharashtra
INDIA
400051
(c) *e-mail ID of the company krishna.ghag@ilfsindia.com

3. *Registration of Resolution(s) ☒ Agreement ☐ Postal ballot resolution(s) under section 192A

4. Date of dispatch of notice for passing of
(a) Resolution(s) 06/07/2010 (DD/MM/YYYY)
(b) Postal ballot resolution(s)

5. Date of passing of
(a) Resolution(s) 08/07/2010 (DD/MM/YYYY)
(b) Postal ballot resolution(s)

6. Number of resolution(s) for which the form is being filed 1

Details of the resolution

1. (a) Section of the Companies Act, 1956 under which passed
(b) Purpose of passing the resolution
Alteration of Articles
If others, mention the section and purpose

(c) Subject matter of the resolution
Addition of new Article no. 71 A after the existing Article no. 71 and modification in the definitions in Article 1

(d) In case of listed company, mention whether resolution passed by postal ballot ☐ Yes ☒ No

(e) Indicate the authority passing or agreeing to the resolution
☐ Board of directors ☒ Shareholders ☐ Class of shareholders ☐ Creditors

(f) Whether ordinary or special resolution or with requisite majority
☐ Ordinary resolution ☒ Special resolution ☐ Requisite majority

Page 1 of 4
7. (a) In case of alteration in object clause, whether there is any change in the industrial activity of the company  

[ ] Yes  [ ] No

(b) If yes, provide the main division of new industrial activity of the company

Description of the main division

8. In case of voluntary winding up under section 484, provide the following details

(a) Mode of winding up  [ ] Members'  [ ] Creditors'

(b) Date of commencement of winding up ___________________________ (DD/MM/YYYY)

(c) Number of liquidator(s)

Details of liquidator(s)

I. Income-tax permanent account number (income-tax PAN) ___________________________

   Name ___________________________

   Address ___________________________

   [Line I] ___________________________

   [Line II] ___________________________

   City ___________________________

   State ___________________________

   Country ___________________________

   Pin Code ___________________________

II. Income tax PAN ___________________________

   Name ___________________________

   Address ___________________________

   [Line I] ___________________________

   [Line II] ___________________________

   City ___________________________

   State ___________________________

   Country ___________________________

   Pin Code ___________________________
9. Details of the agreement

- (a) Date of the agreement: [DD/MM/YYYY]  
- (b) Section of the Companies Act, 1956 under which agreement made:  
- (c) Purpose of entering into the agreement:  
- If others, mention the section and purpose:  
- (d) Subject matter of the agreement:  
- (e) Indicate the authority adopting the agreement:  
  - Board of directors  
  - Shareholders  
  - Class of shareholders  
  - Creditors

10. Service request number (SRN) of Form21 (in case of alteration in object clause)

**Attachments**

- 1. Copy(s) of resolution(s) along with copy of explanatory statement under section 173
- 2. Altered memorandum of association
- 3. Altered articles of association
- 4. Copy of agreement
- 5. Optional attachment(s) - if any

**List of attachments**

- AQA JSEL_revised by NHAI.pdf  
- CTC_Board resoln.pdf  
- ex. st.pdf  
- CTC_EGM_resoln.pdf  
- 22A.pdf  

[Signatures]
Verification
To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete. It is also certified that copy of the resolution(s) or agreement(s) filed herewith is or are a true copy(s) of the original.

I have been authorised by the Board of directors' resolution number 14 dated 18/06/2010 (DD/MM/YYYY)

To be digitally signed by

Managing Director or director or manager or secretary or liquidator of the company

*Designation Director

Name of liquidator

*Director identification number of the director or Managing Director; or Income-tax PAN of the manager or liquidator; or Membership number, if applicable or Income-tax PAN of the secretary (secretary of a company who is not a member of ICSI, may quote his/her income-tax PAN)

Certificate
It is hereby certified that I have verified the above particulars (including attachment(s)) from the records of Jorabat Shillong Expressway Limited

and found them to be true and correct. I further certify that all required attachment(s) have been completely attached to this form.

☐ Chartered accountant (in whole-time practice) or ☐ Cost accountant (in whole-time practice) or
☐ Company secretary (in whole-time practice)

*Whether associate or fellow ☐ Associate ☐ Fellow

*Membership number or certificate of practice number 8124

For office use only:

This e-Form is hereby registered

Digital signature of the authorising officer
MEMORANDUM

AND

ARTICLES OF ASSOCIATION

OF

JORABAT SHILLONG EXPRESSWAY LIMITED

Certified True Copy

For JORABAT SHILLONG EXPRESSWAY LIMITED
I. The name of the Company is Jorabat Shillong Expressway Limited

II. The Registered Office of the Company will be situated in the State of Maharashtra is within the jurisdiction of Registrar of Companies, Maharashtra, Mumbai

III. The Objects for which the Company is established are:

A. MAIN OBJECTS OF THE COMPANY TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION:

1. Four laning of Jorabat Shillong (Barapani) section of NH-40 from Km. 0.000 to Km. 61.800 in the state of Assam and Meghalaya on DBFOT Pattern under SARDP-NE on BOT (Annuity) Basis

B. INCIDENTAL OR ANCILLARY TO THE ATTAINMENT OF THE MAIN OBJECTS:

2. To promote, develop, undertake studies, surveys and investigations, establish, build, construct, equip, operate, maintain, control, upgrade, regulate, modify and/or take over the roads/lanes and its ancillary facilities including the approach roads, minor and major bridges, flyovers, inter-changes, culverts, tunnels, links, buildings, toll booths, electric fittings, drains, waterways, as well as to develop the land around such road, other bridges and other ancillary facilities for commercial or other use and to compensate, rehabilitate, resettle, and to charge, demand, collect, retain, contract, auction and to levy/increase tolls, fees, cess, rents from the users of the road, other bridges and other ancillary facilities from time to time and to appropriate receivables towards does, investments, returns, servicing/repayments of debt or capital

3. To promote, develop, establish, construct, build, install, equip, operate and maintain, administer, control, regulate, modify rehabilitate, improve, augment and/or take over, upgrade all types of systems, methods or facilities for facilitating the travel and transportation or commuting of passengers, cargo or freight and to further these objectives amongst others, to construct, build, equip, operate and maintain roads, paths, routes, circuits, courses, streets, approaches, avenues, arteries, boulevards, channels, drags, highways, passes, promenades, roadways, straits thoroughfares, trails, bridges, overpasses, trestles, via ducts, tunnels, passageways, conduits, pathways, culverts, shafts, subways, tubes, bye-passes, freeways, highways, expressways and all types of surface transport infrastructure and all other works, constructions and erections or buildings and things of all description whatsoever either upon lands acquired by the Company or upon other lands and generally, to alter and improve the lands and other properties of
Company or otherwise and to finance and arrange for the financing of any such activities.

4. To acquire by purchase, lease, exchange, hire or otherwise, immovable properties including lands, buildings, tenements and premises of any tenure or value, whether subject or not to any charges or encumbrances, and to hold and develop or to sell, let, alienate, mortgage, charge, license or otherwise deal with all or any of such lands, buildings, tenements or premises or other immovable property.

5. To participate in any capacity in any scheme or program sponsored or promoted by any Government or other authority or person, Indian or Foreign, for the purpose of, and/or for undertaking the construction, operation, regulation, improvement, rehabilitation, development of transport facilities of any kind, and to provide the requisite infrastructure therefore and to collect fees, tolls, charges and dues from the public or any Government or other authority for the use of any construction or erection or building established, constructed or built in pursuance of sub-clause (1) or managing or for providing the management of or for the maintenance of facilities or infrastructure put up or acquired by the Company as principal or as agent of, or on behalf of any Government or any other authority or any person whatsoever.

6. To participate in various Schemes promoted by the Central/ State Government(s) for and to undertake regulation and improvement of transport facilities and provide the requisite infrastructure therefore on privatisation principles and to charge, demand, collect fees, tolls, rentals, taxes and duties from the public for providing, management or maintaining facilities or infrastructure put up or acquired by the Company as Principals or as agents of all and concessionaire on behalf of Government or any other authority or any person whatsoever.

7. To establish and maintain any agencies in India or any part of the world for the conduct of the business of the Company.

8. To establish Branches, Agencies or appoint Representatives in India and elsewhere for anyone or more of the objects of the Company and to regulate and/or discontinue the same.

9. To enter into all types of internal or external foreign collaborations, licence arrangements, technical assistance, financial or commercial arrangements including the survey of markets for export and to study market conditions in India and outside, for the fulfillment of any objects herein contained.

10. To give advice and/or to offer, give, take circulate and/or otherwise organise, accept or implement and/or takeover bids, mergers, amalgamations, acquisitions, diversification, rehabilitation, or restructuring of any business, concern undertaking, company, body corporate, partnership firm or any other association of persons whether incorporated or not, by acquisition of shares or assets and liabilities, and whether as a going concern or as part of the concern or otherwise as may be required having regard to infrastructure business exigencies; and further to promote or procure incorporation formation or setting up of concerns and undertakings whether as company, body corporate, partnership or any other association of persons for engaging in any industrial, commercial or business activities.

11. To set up, incorporate and manage, provide and/or participate in providing venture capital, technology funds, underwriting fund or any other funds for seed capital, risk capital foundation, including giving guarantees or such other financial assistance as may be conducive for development of new enterprises, innovative methods of production and development of existing and new technology, to signify projects including infrastructure projects ideas, to prepare project details, profit reports, market research, feasibility studies and reports, pre-investment studies and investigation of industries on micro and macro level.
undertake appropriate service to identify scope of potential for economic and industrial development in any particular geographical area or location whether in India or abroad, to act as lead managers in respect of project assignments by undertaking follow up, supervision and co-ordination work at the instance, behest or on behalf of banks, financial institutions, companies, bodies corporate and to monitor the same to the participants, to act as an adviser in the management of the undertakings, business enterprises, offices, trade occupations and professions systems and by introducing modern techniques and systems and render all assistance as may be necessary including acting as agents for recruitment of personnel, technical, skilled, unskilled, supervisory, managerial or otherwise, and to act as an advisor in the selection of technical process, economic size, sources of plant and machinery and other utilities for business entrepreneurs for the attainment of foregoing business activity

12 To acquire, purchase, takeover and/or amalgamate business of companies which under existing circumstances, from time to time, may conveniently or advantageously be combined with the business of the Company and to amalgamate or merge with companies whose business are so acquired, purchased or taken over and/or to enter into agreement with the object of acquisition of such undertaking and/or business

13 To enter into partnership or into any arrangements for sharing profits, union of interest, co-operation, joint venture, reciprocal concessions or otherwise, with any person, firm, association, company or corporation carrying on or engaged in or about to carry on or engage in any business or transaction which this Company is authorised to carry on or engage in or any business or undertaking or transaction which may seem capable of being carried on or conducted so as directly or indirectly benefit the company and to lend money, to guarantee contract or otherwise acquire and hold shares or securities of any such person, firm or company and to take or otherwise acquire and hold shares or securities of any such person, firm or companies and to sell re-issue with or without guarantee or otherwise deal with the same

14 To apply for, promote and obtain any Act, charter, privileges, concession, licence, authorisation, if any, Government, State or Municipality provisional order or licence of any authority for enabling the Company to carry any of its objects in effect, or for extending any of the powers of the Company or for effecting any modification of the Company's constitution, or for any other purpose which may seem expedient and to oppose any proceedings or applications which may seem calculated, directly or indirectly to prejudice the Company's interest

15 To pay all the costs, charges and expenses of and incidental to the promotion and formation, registration and establishment of the Company and issue of its capital including costs, charges, expenses of negotiations and contracts and arrangement made prior to and in anticipation of the formation and incorporation of the Company

16 To pay professional fees, charges and remuneration (by cash or otherwise or in kind or by allotment of fully or partly paid shares or shares credited as fully or partly paid up or in any other manner) any persons, firms, associations, or companies for services, rendered or to be rendered or in rendering technical aid and advice, granting licences or permission for the use of patents, trade secrets, trade marks, processes and acting as trustee for debentureholders or debenture stock-holders of the company or for subscribing or agreeing to subscribe whether absolutely or conditionally or for procuring or agreeing to procure subscriptions whether absolute or conditional for any shares, debentures, or debenture stock, or other securities of the Company or of any company promoted by this company for services rendered in or about the formation or promotion for the company or any company promoted by this Company or in introducing any property or business to the Company or about the conduct of the business of the Company or guaranteeing payments of such debenture-stock or other securities and interest thereon
To draw, make, execute, issue, accept, endorse, discount and negotiate promissory notes, mortgage backed securities, Hundies, bills of exchange, bills of lading, delivery orders, warrants, certificates, debentures and other negotiable transferable or mercantile instrument or securities

To arrange for finance, receive loans, advances, grants or other money on interest or otherwise from any person, or persons, institution, society, company, local authority, Government, international agency, and use it for furthering the objects of this Company

To take over, manage and administer any of the assets of any borrowing agency that defaults or operates the fund given in contravention of any of the conditions agreed to by it, at the time of sanction of the loan, advance, agreement

To create any Depreciation Fund, Sinking Fund, Reserve Fund, Insurance Fund, Development Fund or any other special funds whether for depreciation or for repairing, improving, extending or maintaining any of the property of the Company, or for any other purpose conducive to the interests of the Company

To carry out the Objects of the Company either as principal, agent, factor, contractor or trustees or in such other capacity and either alone or in conjunction with any other person, firm, body corporate, municipality, state body or government or person.

To incur debts and obligations for the conduct of any business of the Company and to purchase or hire goods, materials or machinery on credit or otherwise for any business or purpose of this Company.

To pay out of the funds of the Company all expenses which the Company may lawfully pay with respect to the formation and registration of the Company or for the issue of its Capital including brokerage and commission for obtaining applications, for or taking, placing or underwriting or procuring the underwriting of shares, debentures or other securities of the Company and all expenses of negotiations, contracts arrangement made prior to and in anticipation of the formation and incorporation of the Company.

To amalgamate, enter into partnership or into any arrangement for sharing profits, union of interest, co-operation, joint venture or reciprocal concession, or for limiting competition with any individual, person or Company having similar objects.

To receive money on deposit or loan and borrow or raise in such manner as the Company shall think fit, subject to relevant provisions of the Companies Act, 1956, and other laws in force, and in particular by the issue of debentures or debenture-stock, (perpetual or otherwise) bonds, promissory notes, with right to convert into shares and to secure the repayment of any money borrowed, raised or owing by mortgage, charge or lien upon all or any of the property or assets of the Company (both present and future) including its uncalled capital, and also by a similar mortgage, charge or lien to secure and guarantee the performance by the Company or any other person or company of any obligation undertaken by the Company or any other person or company as the case may be but shall not carry on the business of banking as defined in the Banking Regulation Act, 1949, subject to Section 58-A of the Companies Act, 1956 and Reserve Bank of India Directives.

To purchase, acquire or take over as a going concern by purchase of, or lease or for management of the whole or any part of the business undertaking together with the goodwill, property, contracts, agreements, rights, privileges, effects and liabilities of any person, firm or company including its trade name, trade marks, patents and upon such terms and subject to such stipulations and conditions.
or for such price or consideration (if any) in money, shares, debentures, money's worth or otherwise as may be deemed fit, and to conduct and carry on or liquidate and wind up any such business.

27 To enter into, make and perform contracts and arrangements of every kind and description with Corporate Body, State or Central Government or any companies, firms or persons that may seem conducive to the Company's objectives or any of them and to obtain from any such authority any rights, privileges, charters, contracts, concessions, licences or purchase and sale of any kind of goods, machinery, spare parts, securities, shares, stocks, debentures, etc. which the Company for the time being may consider necessary or desirable to obtain and to carry out, exercise and comply with such arrangements, rights, privileges and concessions.

28 To employ experts to investigate and examine into the condition, prospects, value, character and circumstances of any business concerns and undertaking and generally of any assets, property or rights.

29 To sell, mortgage, assign or lease and in any other manner deal with or dispose of the undertaking or property of the Company or any part thereof, whether movable or immovable for such consideration as the Company may think fit and in particular for shares, debentures and other securities of any other Company having objects altogether or in part similar to those of this Company.

30 To promote, form, establish or aid in the promotion, formation or establishment of any company or companies, association or associations subsidiary to this Company otherwise, for the purpose of acquiring or purchasing or taking over the entire undertaking of this Company or any of its subsidiary undertakings or any property or rights of this Company, or any of its contracts, options or liabilities or for any other purpose which the Company or its Directors may deem directly or indirectly calculated to benefit this Company, or land or estate which it is interested or to assist in attainment or promotion of its objects, and to subscribe for, place, commissions to secure the subscription of the capital or securities of or loans to any such company.

31 To procure the incorporation, registration or other recognition of the Company in any country, state or place and to establish and regulate agencies for the purpose of the Company's business and to apply or join in applying to any Parliament, Local Government, Municipal or other authority or body, Indian or foreign, for any acts of Parliament laws, decrees, concessions, orders, rights or privileges that may seem conducive to the Company's objects or any of them and to oppose any proceedings or applications which may seem calculated directly to prejudice the Company's interests.

32 To apply for, secure, acquire by grant, legislative enactment, assignment, transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, licence, power, authority, franchise, concession, right or privileges, which any Government or authority or any Corporation or other public body may be empowered to grant, and to pay for, aid in, and contribute towards carrying on the same effect.

33 To promote, form and to be interested in, and take, hold and dispose of shares in any other company having similar objects, and to subsidiae or assist any such companies financially or otherwise by issuing or subscribing for or guaranteeing the subscription and issue or other securities of such company and to transfer to any such company any property of this Company and to take or otherwise acquire, hold and dispose of shares, debentures and other securities in or of any such company/companies.
To open any account or accounts in any bank or banks to the credit of the Company to such amount as may be thought fit for the purpose of the Company or of any property of the Company or of any future or present members of the Company or any officers or directors or any employees of the Company, and in particular for the benefit of the Directors of the Company or of any ex-employees or other persons who were at any time in any capacity employed by or connected with any other State body or Government or any agency, factor, or other persons with whom the Company was connected, and in particular by advertising in any newspaper or other periodical or for any other public or charitable purposes to any bank or banks, and to invest the surplus moneys from time to time being used in any manner for any of the purposes of the Company or for the benefit of any bank, the Company, and in particular to customers or for any other charitable or religious or other purposes, and to grant licenses or permits for the benefit of any body or government or any agency, factor, or other persons with whom the Company was connected, and in particular by advertising in any newspaper or other periodical or for any other public or charitable purposes to any bank or banks, and to invest the surplus moneys from time to time being used in any manner for any of the purposes of the Company or for the benefit of any bank, the Company, and in particular to customers or for any other charitable or religious or other purposes, and to grant licenses or permits for the benefit of any bank or any other State body or Government.

To make loans or advances to any bank or any other State body or Government or any agency, factor, or other persons with whom the Company was connected, and in particular by advertising in any newspaper or other periodical or for any other public or charitable purposes to any bank or banks, and to invest the surplus moneys from time to time being used in any manner for any of the purposes of the Company or for the benefit of any bank, the Company, and in particular to customers or for any other charitable or religious or other purposes, and to grant licenses or permits for the benefit of any bank or any other State body or Government.

To make or to accept any mortgage or any other security for any sum of money or for any property of the Company or for the benefit of the Company or for any bank or any other State body or Government or any agency, factor, or other persons with whom the Company was connected, and in particular by advertising in any newspaper or other periodical or for any other public or charitable purposes to any bank or banks, and to invest the surplus moneys from time to time being used in any manner for any of the purposes of the Company or for the benefit of any bank, the Company, and in particular to customers or for any other charitable or religious or other purposes, and to grant licenses or permits for the benefit of any bank or any other State body or Government.

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To promote, form and register and aid in promotion, formation and registration of any company or companies and giving financial or other assistance to any company or companies in India or abroad independently or in association with any person, Government or any other agencies whether incorporated or not, for any business of the Company or for the purpose of acquiring all or any of the property, undertaking, rights and liabilities of such company and to be interested in, or take or otherwise acquire, purchase, hold, sell or otherwise dispose of shares, debentures, and other securities in or of any such company or any other Company, for all or any of the objects mentioned in this Memorandum and to subsidise or otherwise assist any such company and to undertake the management or other work, duties and business of any such company on such terms and conditions as may be determined.

To sink wells and shafts, and to make, build and construct, lay down and maintain, reservoirs, water works, cisterns, culverts, filter-beds, main and other pipes and appliances, and to execute and do all other works and things necessary or convenient for obtaining, storing, selling, delivering, measuring and distributing water, or otherwise for the purposes of the Company.

To give guarantees and carry on and transact every kind of guarantee and counter-guarantee business and in particular to guarantee the payment of any principal moneys, interest or other moneys secured by or payable under any debentures, bonds, debenture-stocks, mortgages, charges, contracts, obligations and securities and the payment of dividends on and the repayment of the capital of stocks and shares.

To carry on in all their respective branches all or any of the businesses of builders masonry and general construction contractors and haulers and among other things to construct, execute, carry out, equip, improve, work and advertise railways, roadways, tramways, docks, harbours, wharves, canals, water-courses, reservoirs, embankments, irrigations, reclamations, sewage, drainage, and other sanitary works, water, gas, electric and other supply works, houses, buildings, and erections of every kind, and businesses that are customarily or usually carried on in connection therewith or naturally incidental thereto.

To act as principals, agents, contractors, trustees, agents, or otherwise, and by or through trustees, agents or otherwise and either alone or in conjunction with others.

C. OTHER OBJECTS

To construct, maintain, improve, develop, work, control, and manage any waterworks, gasworks, reservoirs, tramways, electric power, heat and light supply works, telephone works, hotels, clubs, restaurants, baths, places of worship, places of amusement, pleasure grounds, parks, gardens, reading rooms, stores, shops, dairies, and other works and conveniences which the Company may think directly or indirectly conducive to these objects, and to contribute or otherwise assist or take part in the construction, maintenance, development, working, control, and management thereof.

To develop and turn to account any land acquired by the Company or in which the Company is interested, and in particular by levying out and preparing the same for building purposes, constructing, altering, pulling down, decorating, maintaining, furnishing, fitting up, and improving buildings, and by planting, paving, draining, farming, cultivating, letting on building, lease or building agreement, and by advancing money to and entering into contracts and arrangements of all kinds with builders, tenants, and others.

To set up, create, issue, float and manage trusts or funds including any mutual fund, growth funds, investment funds, income or capital funds, taxable or exempt funds, provident, pension, gratuity and superannuation funds, charge funds, trusts, or consortium funds to act as administrators or managers thereof.
funds and trusts and to act as trustees for bondholders, debentureholders and for other purposes herein

51 To set up, operate, install, commission, maintain, and to lease, license, let, hire, for charge, cess, toll, rent or other user charges for telecommunication net works in the nature of cellular, mobile, paging systems, fax systems, E-Mail systems, mobile telephones, phones, commercial band communication systems, ship-to-shore telecommunication systems, walkie-talkie systems, data transmission systems, TV signal transmission system or any other mode of telecommunication, microwave telecommunication systems.

52 To adopt new technologies that have been developed in the field of telecommunications from time to time and utilisation the same to its business.

53 To carry on the business as merchants, traders, commission agents, buying agents, selling agents, brokers, adatias, buyers, sellers, importers, exporters, dealers in, collectors, or in any other capacity and to import, export, buy, sell, barter, exchange, pledge, mortgage, advance upon or otherwise trade and deal in machinery, equipments, components, spare parts, goods, produce, articles and merchandise of any kind whatsoever and without prejudice to the generality of the foregoing agricultural commodities, food grains, cash crops, cotton, tea, jute, coffee, fruits, vegetables, flowers, milk, milk products, meat, seeds, raw materials required by industries, semi-finished products of industries and finished products of industries including machinery, equipment, chemicals, intermediates, electrical goods, textile yarns, garments, furniture, minerals, ores and oils as wholesalers or retailers on the basis of ready delivery or forward contracts or on commission basis.

54 To purchase, take on lease, under concession or otherwise, lands, buildings, works, mines, mineral, deposits, mining rights, plantations, forests and other rights or privileges or interest therein and to exploit, develop, build or upon any land or properties which may be purchased, leased or acquired, and to work alternative account for the same any properties in possession of the Company which are in the nature of, buildings, houses, erections, factories, commercial complexes, works or business which may be directly or indirectly conductive to any of the objectives of the Company and which would contribute to the business of the Company, and would aid or subsidize the business of the Company and to undertake the business of land and property development, of franchise of land in connection with the said buildings and erections as may be considered necessary for commercial developments by the Company and to sell, lead, charter or otherwise dispose, develop, cultivate, maintain, improve, manage, control and exploit the said property or otherwise dispose off the said property, land, building, construction, erections, belonging to the Company, as aforesaid.

55 To purchase, hold, take on lease or exchange, take on mortgage and give on mortgage, hire or otherwise acquire and hold or deal in any moveable or immovable property including shops, flats, offices, godowns, patents, licences, and any rights interests and privileges therein and to develop and turn to account or let them out on rent.

IV The liability of the Members is limited

V (A) The Authorised Share Capital of the Company is Rs. 5,00,000 (Rupees Five Lakhs) divided into 50,000 (Fifty Thousand) Equity Shares of Rs 10/- each

(B) The paid up share Capital of the Company shall be minimum 5,00,000-(Rupees Five Lakhs Only)
We, the several persons, whose names, addresses and description are hereunder subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the Capital of the Company set opposite to our respective names:

<table>
<thead>
<tr>
<th>Sr No</th>
<th>Name, Address, Description and Occupation of each Subscribers</th>
<th>No of Equity Shares taken by each Subscriber</th>
<th>Signature of Subscribers</th>
<th>Signature of Witness with Description &amp; Occupation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>IL&amp;FS Transportation Networks Limited (Through) Mr Krishna Ghag (authorised vide resolution dated November 12, 2009) The IL&amp;FS Financial Center, Plot C-22, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051 (Company)</td>
<td>24,950</td>
<td>Sd/-</td>
<td>Common witness for all subscribers Pravin Mewada, 8/10th Floor, Wadala Chs, Mumbai 400010 (Resident)</td>
</tr>
<tr>
<td>2</td>
<td>Ramky Infrastructure Limited (Through Mr Y Nagaraja) (authorised vide resolution dated May 25, 2010) 6-3-1089/6/10 &amp; 11, 1st Floor, Gulmohar Avenue, Rajbhavan Road, Somajiguda, Hyderabad – 500082 (Company)</td>
<td>25,000</td>
<td>Sd/-</td>
<td>(2) D-32, Govind Dwar, Chs, Mumbai 400010 (Service)</td>
</tr>
<tr>
<td>3</td>
<td>Mr Krishna Ghag S/o Mr Dhand Ghag E-370/2, Shantiniketan CHS, Sector 4, Phase III, Navi Mumbai-400706, Maharashtra (Service)</td>
<td>10</td>
<td>Sd/-</td>
<td>(2) D-32, Govind Dwar, Chs, Mumbai 400010 (Service)</td>
</tr>
<tr>
<td>4</td>
<td>Mr Ravi Sreehari S/o Mr M Sreehari Flat 201/202, “A”Wing, West End Building, Raheja Vihar, Powai Mumbai 4000102 (Service)</td>
<td>10</td>
<td>Sd/-</td>
<td>(2) D-32, Govind Dwar, Chs, Mumbai 400010 (Service)</td>
</tr>
<tr>
<td>5</td>
<td>Mr Ajay Menon S/o Gopal Krishna Menon 6/86, Aadarsh Nagar, Worli Mumbai-30 (Service)</td>
<td>10</td>
<td>Sd/-</td>
<td>(2) D-32, Govind Dwar, Chs, Mumbai 400010 (Service)</td>
</tr>
<tr>
<td>6</td>
<td>Mr Narayan Doraiswamy S/o Mr Doraiswamy Sirrangan Flat 203, 2nd Floor, L Wing, Mayuresh Shristi Park, Lake Road, Bhandup (West), Mumbai-400078 (Service)</td>
<td>10</td>
<td>Sd/-</td>
<td>(2) D-32, Govind Dwar, Chs, Mumbai 400010 (Service)</td>
</tr>
<tr>
<td>7</td>
<td>Mr Chandrakant Jagasia S/o Mr Ramchandra Jagasia Plot No. 79, First Floor, Sindhi Soc, Chenab, Mumbai 400071 (Service)</td>
<td>10</td>
<td>Sd/-</td>
<td>(2) D-32, Govind Dwar, Chs, Mumbai 400010 (Service)</td>
</tr>
</tbody>
</table>

**TOTAL** 50,000

Date: June 10, 2010
Place: Mumbai
THE COMPANIES ACT, 1956
COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

JORABAT SHILLONG EXPRESSWAY LIMITED

I PRELIMINARY

(1) (i) "The Act" or "the said Act" means the Companies Act, 1956 and includes any statutory modification or re-enactment thereof for the time being in force in India containing the provisions of the Legislature in relation to companies.

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

(iii) "Beneficial Owner" shall mean beneficial owner as defined in clause (a) of sub-section (1) of Section 2 of the Depositories Act, 1996.

(iv) "Board of Directors" or "Board" means the Board of Directors, duly called and constituted or the collective Body of directors for the time being of the Company, or as the case may be, the Directors assembled at a Board Meeting or acting by circular under the Articles.

(v) "Capital" means the share capital for the time being raised or authorised to be raised for the purpose of the Company.

(vi) "The Company" or "this Company" means Jorabat Shillong Expressway Limited

(vii) * "Concession Agreement" shall mean agreement to be entered into by the Company with National Highway Authority of India (NHAI) for undertaking the Four Laning of Jorabat Shillong (Barapani) section of NH-40 from Km 0.000 to Km 61.800 in the State of Assam and Meghalaya on DBFOT Pattern under SARDP-NE on BOT (Annuity) Basis ("the Project")

(viii) * "Consortium" shall mean IL&FS Transportation Networks Limited and Ramky Infrastructure Limited

(ix) * "Consortium Member" or "Consortium Members": IL&FS Transportation Networks Limited and Ramky Infrastructure Limited shall jointly mean as Consortium Members and individually as Consortium Member

(x) *"Construction Period" shall have the same meaning as Concession Agreement
(xi) "Debenture" includes debenture-stock.

(xii) "Depository" means a Company formed and registered under the Companies Act, 1956, and which has been granted a certificate of registration to act as a depository under the Securities & Exchange Board of India Act, 1992.

(xiii) "Depository Act, 1996" shall include any statutory modification or re-enactment thereof for the time being in force.

(xiv) "IL&FS Transportation Networks Limited, a company incorporated under the Companies Act, 1956 and having its Registered Office at C-22, G Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051, and includes its successors and assigns.

(xv) "Member" means the registered holder from time to time of the shares in the capital of the Company and includes every person who is holding equity shares of the Company and whose name is entered as a beneficial owner in the records of the depository.

(xvi) "NHAI" shall mean National Highway Authority of India.

(xvii) 'Office' means the Registered Office for the time being of the Company.

(xviii) 'Persons' includes corporations and firms as well as individuals.

(xix) 'Proxy' means an instrument whereby any person is authorised to vote for a member at a General Meeting on a poll, and includes Attorney duly constituted under a Power of Attorney.

(xx) "Month" means a calendar month according to the English calendar, unless otherwise specified.

(xxi) "Year" means the calendar year and "Financial Year" shall have the meaning assigned thereto by Section 2(17) of the Act.

(xxii) "The Register "or "The Registers" means the Register of Members to be kept pursuant to Section 150 of the Act.

(xxiii) "RIL" shall mean Ramky Infrastructure Limited, a company incorporated under the Companies Act, 1956 and having its Registered Office at Ramky House, Rajbhavan Road, Somajiguda, Hyderabad - 500082, and includes its successors and assigns.

(xxiv) "Seal" means the Common Seal for the time being of the Company.

(xxv) "Auditors" means and includes those persons appointed as such for the time being by the Company.

(xxvi) "SEBI" means the Securities and Exchange Board of India.

(xxvii) "Secretary" means and includes any person appointed in accordance with the provisions of the Companies (Appointment and Qualification of Secretary) Rules, 1988, or any other rules for the time being in force.

(xxviii) "Shareholders" means shareholders of the Company and "Shareholder" means any one of them singly.

(xxix) "Officer" includes the Director, Manager or Secretary, or any person in accordance with whose directions or instruments the Board of Directors...
or any or more of the directors is or are accustomed to act), but save in Sections 477, 478, 539, 543, 545, 621, 625 and 633 does not include an auditor, "Officer who is in default" shall mean any officer of the Company who is knowingly guilty of the default, non-compliance, failure, refusal or contravention mentioned in that provision, or who knowingly or willfully authorises or permits such default, non-compliance, failure, refusal or contravention.

(xxx) "Ordinary Resolution" and "Special Resolution" shall have the meanings assigned thereto respectively by section 189 of the Act.

(xxxi) "In writing" or "written" mean and include words printed, lithographed, represented or reproduced in any mode in a visible form.

(a) Words importing the singular number also include the plural number.

(b) Words importing the plural number also include the singular number.

(c) Words importing the masculine gender also include the feminine gender.

* Inserted pursuant to the Special Resolution passed by the members of the Company at the extraordinary general meeting held on July 8, 2010

(2) The Regulations contained in Table "A" of the First Schedule to the Companies Act, 1956, (1) of 1956 shall not apply to this Company save and except so far as such regulations are embodied in these Articles.

(3) The regulations for the management of the Company and for the observance of the members thereof and their representatives subject to any exercise of the statutory powers of the Company in reference to the repeal or alteration of, addition to, its regulations in the manner prescribed by Section 31 of the Act, shall be such as are contained in these Articles.

II SHARE CAPITAL

(4) Increase in Capital

The Authorised Share Capital of the Company shall be in accordance with the Memorandum of Association of the Company.

The Company in general meeting may from time to time, increase the capital by creation of new shares of such amount as may be deemed expedient. Subject to the provisions of the Act, any shares of the original or increased capital shall be issued upon such terms and conditions as the General Meeting resolving upon the creation thereto shall direct, and if no direction be given, as the Directors shall determine; and in particular, such shares may be issued with preferential or qualified rights as to dividends, and in the distribution of the assets of the Company, with a special or without any right of voting at the General Meeting of the Company in conformity with Section 87 of the Act and the rules made in this behalf by the Central Government. Whenever the capital of the Company has been increased under the provision of this Article, the Directors shall cause with the provisions of Section 97 of the Act.
The minimum paid up capital of the Company shall be Rs 5,00,000/- (Rupees Five Lakhs only)

(5) Power to issue Equity Capital

The Company shall have power to issue equity capital:

(a) with voting rights

(b) with differential rights as to dividend, voting or otherwise in accordance with such rules and subject to such conditions as may be prescribed under the Act

(6) On what conditions new shares may be issued

The new shares shall be issued on such terms and conditions and with such rights and privileges annexed thereto, as the General Meeting, resolving upon the creation thereof, shall direct and if no direction be given, as the Directors shall determine; and in particular such shares may be issued with a preferential or qualified right to dividends and in the distribution of assets of the Company and subject to the rules made in this behalf by the Central Government, with a special or without any right of voting

(7) New capital same as existing capital

Except so far as otherwise provided by the conditions of issue or by these presents, any capital raised by the creation of new shares shall be considered as a part of the existing capital and shall be subject to the provisions herein contained, with reference to the payment of calls and instalments, forfeiture, lien, surrender, transfer and transmission, voting and otherwise

(8) Power to issue Preference Shares

The Company shall have power to issue Cumulative/ Non-Cumulative, Convertible/ Non-Convertible, Redeemable Preference Shares carrying a right of redemption out of the profits of the Company or out of Share Premium account of the Company or out of the proceeds of the fresh issue of shares made for the purpose of the redemption in accordance with and subject to the provisions of Section 80 of the Act

(9) Terms and Conditions of issue of Preference Shares

The Preference Shares to be issued by the Company shall carry such rights, powers and authority and be subject to the provisions of the Act, the terms of issue and the guidelines, if any, issued by the Central Government at the time of the issue.

(10) Buy-back of shares

Notwithstanding anything contained in these Articles, in accordance with the provisions of Section 77A of the Act, the Company may purchase its own shares or specified securities as it may think necessary, subject to such limits, upon such terms & conditions and subject to such approval as may be prescribed/required in terms of the provisions of the Act.
(11) Shares under the control of Directors

Subject to the provisions of these Articles and of the Act, the shares shall be under the control of the Directors; who may issue, allot or otherwise dispose off the same to such persons on such terms and conditions and at such times as the Directors think fit and with such full power to give any person the option to call for or be allotted shares of any class of the Company either (subject to the provisions of Section 78 and 79 of the Act) at a premium or at a discount, and such option being exercisable for such time and for such consideration as the Directors think fit. The Board shall cause to be filed the returns as to allotment provided for in Section 75 of the Act.

(12) Instalment on shares to be duly paid

If by the conditions of allotment of any share, the whole or part of the amount or issue price thereof, shall be payable by instalment, every such instalment shall when due, be paid to the Company by the person who for the time being and from time to time shall be the registered holder of the share, or his legal representative.

(13) Commission for placing shares

In accordance with the provisions of Section 76 of the Act, the Company may, at any time, pay a commission to any person, for subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares, debentures, debenture stock of the Company or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares, debentures or debenture-stock of the Company. Such Commission may be paid or satisfied in cash or in shares, debentures or debenture-stock of the Company.

(14) Liability of Members

Every member or his heirs, executors or administrators shall pay to the Company, the portion of the capital represented by his share or shares which may, for the time being remain unpaid thereon, in such amounts, at such time or times and in such manner as the Board of Directors shall, from time to time, require or fix for the payment thereof.

The joint holder of a share shall be severally as well as jointly liable for the payment of all instalments and calls due in respect of such shares.

(15) Shares to be numbered progressively and no shares to be sub-divided

The shares in the capital shall be numbered progressively according to their several denominations and except in the manner herein mentioned, no share shall be sub-divided provided however that the provisions relating to progressive numbering shall not apply to the shares of the Company which are in dematerialised form.

(16) Trust not recognized
Except as ordered by a Court of competent jurisdiction or as provided by the Act, no notice of any trust, express, implied or constructive shall be entered on the register of members or of debenture holders of the Company.

(17) Notice of change of name or address of member

No member who shall change his name or address or who being a female, shall marry, respectively shall be entitled to recover any dividend or to vote, until notice of the change of name or address or of marriage be given to the Company in order that the same be registered.

(18) Acceptance of shares

Any application signed by or on behalf of any applicant for shares in the Company followed by an allotment of any of the shares therein, shall be an acceptance of shares within the meaning of these Articles, and every person who thus or otherwise accepts any shares and whose name is on the Register shall, for the purposes of these Articles, be a Member.

(19) Reduction of capital

The Company may (subject to the provisions of Section 78, 80, 100 to 105 inclusive, of the Act) from time to time by special resolution reduce its capital and any capital redemption reserve account, premium account in any manner for the time being authorised by law, and in particular, capital may be paid off on the footing that it may be called up again or otherwise. This Article is not to derogate from any power of the Company would have if it were omitted.

(20) Sub-division, consolidation and cancellation of shares

Subject to the provisions of Section 94 of the Act, the Company, in a General Meeting may, from time to time, sub-divide or consolidate its shares or any of them and the resolution whereby any shares are sub-divided, may determine that as between the holders of the shares resulting from such sub-division, one or more of such shares shall have some preference or special advantage as regards dividend, capital or otherwise over or as compared with other.

(21) Issue of further pari passu shares not to affect the right of shares already issued

The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of the issue of shares of that class, be deemed to be varied by the creation or issue of further shares ranking pari passu therewith.

III SHARES & CERTIFICATES

(22) Certificates how to be issued

The certificate(s) of shares or debentures shall be issued under seal of the Company and shall bear the signature of any person.
authorized by the Board in that behalf. Every person whose name is entered as a member in the Register shall be entitled to receive the share certificates within three months after allotment or within two months after the application for the registration of transfer (or within such period as the conditions of issue shall provide). The Director may sign a share certificate by affixing his signature thereon by means of any machine equipment or other mechanical means such as engraving in metal or lithography. PROVIDED ALWAYS that notwithstanding anything contained in this Article, the certificates of title to shares may be executed and issued in accordance with such relevant provisions of the Act or the Rules made thereunder, as may be in force from time to time.

(23) Member's right to certificate

Every member shall be entitled, free of charges, to one or more certificates for all or any of the shares registered in his name. Every certificate of shares shall specify the number and the denoting numbers/numbers of the shares in respect of which it was issued and the amount paid up thereon. The share certificates shall be issued in marketable lots and where share certificates are issued more or less that the marketable lots, consolidation and sub-division of share certificates into marketable lots, shall be done free of charge.

(24) Fractional Certificates

The Company may issue such fractional certificates as the Directors may approve in respect of any of the shares of the Company on such terms as the Directors think fit as to the period within which the fractional certificates are to be converted into share certificates.

(25) Issue of new certificate in place of one defaced, lost or destroyed

If any certificate be worn out or defaced or torn or be otherwise mutilated or there is no further space on the back thereof for endorsement of transfer, then, upon production thereof to the Directors, they may order the same to be cancelled and may issue a new certificate in lieu thereof, and if any certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the Directors and on such indemnity and payment of out-of-pocket expenses incurred by the Company as the Directors deem adequate being given and upon such advertisement being published as the Board may require, a new certificate in lieu thereof shall be given to the party entitled to such lost or destroyed certificate.

Such sum not exceeding Rupees Two as the Directors may from time to time prescribe shall be paid to the Company for every certificate issued under this clause. Provided that no fee shall be charged for issue of new certificates in replacement of those which are old, decrepit or worn out or where the ciphers on the reverse for recording transfers have been fully utilised.

(26) Issue of Certificates to joint holders

The certificate of shares registered in names of two or more persons shall be delivered to the person first named in the Register.

(27) The first named of joint holders deemed sole holder
If any share stands in the names of two or more persons, the person first named in the Register shall as regards receipt of dividends or cash bonus, or service of notices or any other matter connected with the Company except voting at meetings and the transfer of the shares, be deemed the sole holder thereof but the joint holders of a share shall be severally as well as jointly liable for, the payment of all instalments and calls due in respect of such shares and for all incidents thereof according to the provisions of the Act.

(28) Dematerialisation of securities

Notwithstanding anything contained in these Articles, the Company shall be entitled to dematerialise its securities and to offer them in a dematerialised form pursuant to the Depositories Act, 1996.

(a) Option for Investors

Every person subscribing to securities offered by the Company shall have the option to receive security certificates or to hold the securities with a Depository. Such a person who is the beneficial owner of the securities can at any time opt out of a depository, if permitted by the law, in respect of any security in the manner provided by the Depositories Act, and the Company shall in the manner and within the time prescribed, issue to the beneficial owner the required Certificate of Securities.

If a person opts to hold his security with a Depository, the Company shall intimate to such Depository the details of allotment of the security and on receipt of the information, the Depository shall enter in its record the name of the allottee as the beneficial owner of the security.

If a beneficial owner seeks to opt out of a depository in respect of any security, the beneficial owner shall inform the depository accordingly.

The depository shall on receipt of intimation as above make appropriate entries in the records and shall inform the Company.

The Company shall after receipt of intimation from the depository and on fulfilment of such conditions and on payment of such fees as may be specified by the regulations, issue the certificate of securities to the beneficial owner or the transferee as the case may be.

(b) Securities in Depositories to be in fungible form

All securities held by a Depository shall be dematerialised and in fungible form. Nothing contained in Sections 153 and 187C of the Act shall apply to a Depository in respect of the securities held by it on behalf of the beneficial owners.

(c) Rights of Depositories and Beneficial Owners

Notwithstanding anything to the contrary contained in the Act or these Articles, a Depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of the beneficial owner. Save as otherwise provided in (a) above, the Depository as the registered owner of the securities shall not have any voting rights or any other rights in respect of such securities held by it.
Every person holding securities of the Company and whose name is entered as the beneficial owner in the records of the Depository shall be deemed to be a member of the Company. The beneficial owner of securities shall be entitled to all the rights and benefits and be subject to all the liabilities in respect of his securities, which are held by a Depository.

(d) Allotment of securities dealt with on a Depository

Notwithstanding anything in the Act or these Articles where securities are dealt with by a Depository, the Company shall intimate the details thereof to the Depository immediately on allotment of such securities.

(e) Distinctive numbers of securities held in a depository

Nothing contained in the Act or these Articles regarding the necessity of having distinctive numbers for securities issued by the Company shall apply to securities held with a Depository.

(f) Register and Index of Beneficial Owner

The Register and Index of beneficial owners maintained by a Depository under the Depositories Act, 1996 shall be deemed to be the Register and Index of Members and Security holders for the purpose of these Articles.

(g) Company not to recognise any interest in shares other than member

Except as ordered by a court of competent jurisdiction or as required by law, the Company shall be entitled to treat the person whose name appears on the Register of Members as the holder of any share or where the name appears as the beneficial owner of shares in the records of the Depository as the absolute owner thereof and accordingly shall not be bound to recognise benami trust or equitable, contingent future or partial interest in any share, or (except only as is by these Articles otherwise expressly provided) any right in respect of share other than an absolute right thereto in accordance with these Articles, on the part of any other person whether or not it has express or implied notice thereof, but the Board shall be at liberty at their sole discretion to register any share in the joint names of any two or more persons or survivor or survivors of them.

(h) Disclosure of Beneficial Interest

(i) Notwithstanding anything herein contained, a person whose name is at any time entered in the Register of Members of the Company as the holder of a share in the Company, but who does not hold the beneficial interest in such share, shall, within such time and in such form as may be prescribed, make a declaration to the Company specifying the same and other particulars of the person or persons who hold the beneficial interest in such share in the manner provided in the Act.

(ii) Any person who holds a beneficial interest in a share or a class of shares of the Company shall, within the time prescribed, after his becoming such beneficial owner, make a declaration to the Company specifying the nature of his interest.
particulars of the person in whose name the share stands in the Register of members of the Company and such other particulars as may be prescribed in the Act;

(iii) Whenever there is a change in the beneficial interest in a share referred to above, the beneficial owner shall, within the time prescribed from the date of such change make a declaration to the Company in such form and containing such particulars as may be prescribed as provided in the Act;

(iv) Notwithstanding anything contained in the Act and Article 32 where any declaration referred to above is made to the Company, the Company shall make note of such declaration in the Register of Members and file within the time prescribed from the date of receipt of the declaration a return in the prescribed form with the Registrar with regard to such declaration.

(29) Articles to apply to debentures

The provisions of Articles 22 to 28 shall mutatis mutandis apply to debentures of the Company.

IV CALLS

(30) Calls

The Directors may, from time to time by resolution passed at a meeting of the Directors and not by a circular resolution, make such calls as they think fit upon the members in respect of all moneys unpaid on the shares held by them (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times. Each member shall pay the amount of every call so made on him to the persons and at the time and place appointed by the Directors. A call may be made payable by instalments and shall be deemed to have been made when the resolution of the Directors authorising such calls was passed.

(31) Notice of call

At least 14 days’ notice of any call shall be given by the Company specifying the time and place of payment and to whom such call shall be paid, provided that before the time for payment of such call, the Directors may, by notice in writing to the members, revoke the same or extend the time for payment thereof.

(32) Amount payable at fixed times or by instalments payable as calls

If by the terms of issue of any share or otherwise any amount is or becomes payable on allotment or at any fixed date or by instalments at fixed times whether on account of the nominal amount of the share or by way of premium, every such amount or instalment shall be payable as if it were a call daily made by the Directors and payable on the date on which by the terms of issue or otherwise such sum became payable and of which due notice has been given. In case of non-payment of such sum, all the relevant provisions herein contained as to payment of interest and expense...
forfeiture or otherwise shall apply as if such amount had become payable by virtue of a call duly made and notified.

(33) When interest on call or instalment payable

If sum payable in respect of any call or instalment be not paid on or before the day appointed for payment thereof, the holder for the time being of the share in respect of which the call shall have been made or the instalment shall be due, shall pay interest at such rate as the Directors may determine. The Directors may, however, in their absolute discretion waive payment of any interest.

(34) Evidence in action for call

On the trial or hearing of any action for the recovery of any money due for any call, it shall be sufficient to prove that the name of the member sued is entered in the Register as the holder or one of the holders, of the shares, in respect of which such debt accrued, that the resolution making the call is duly recorded in the minute book and that notice of such call was duly given to the member sued, in pursuance of these presents and it shall not be necessary to prove the appointment of the Directors who made such call, nor that a quorum of Directors was present at the Board at which any call was made nor any other matters whatsoever and the proof of the matters aforesaid shall be conclusive evidence of the debt.

(35) Partial payment not to preclude forfeiture

Neither a judgement nor a decree in favour of the Company for calls or other moneys due in respect of any shares nor the receipt by the Company of a portion of any money which shall from time to time be due from any member in respect of any shares either by way of principal or interest nor any indulgence granted by the Company in respect of payment of any such money shall preclude the Company from thereafter proceeding to enforce a forfeiture of such shares as herein provided.

(36) Payments of call in advance

The Directors may, if they think fit, receive from any member willing to advance the same, all or any part of the sum due upon the shares held by him beyond the sums actually called for; and upon the moneys so paid in advance or so much thereof as from time to time exceeds the amount of calls then made upon the shares in respect of which such advance has been made, the Company may (until the same would but for such advance become presently payable) pay interest at such rate as the member paying such sum in advance and the Directors may agree upon and the Directors may at any time repay the amount so advanced upon giving to such member, notice in writing as agreed upon at the time of receiving the advance. The member making such advance payment shall not, however, be entitled to dividends or to participate in profits of the Company or exercise any voting rights in respect of the moneys so paid by him until the same would, but for such payment, become presently payable.

(37) Members not entitled to privileges of membership until all calls paid

No member shall be entitled to receive any dividend or to exercise any privilege as a member until he shall have paid all calls for the time being.
due and payable on every share held by him, whether alone or jointly with any other person together with interest and expenses, if any.

V FORFEITURE AND LIEN

(38) If call or installment not paid, notice may be given

If any member fails to pay any call or installment on or before the day appointed for the payment of the same, the Directors may at any time thereafter, during such time as the call or installment remains unpaid serve a notice on such member requiring him to pay the same together with any interest that may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.

(39) Form of notice

The notice shall name a day (not being earlier than the expiry of fourteen days from the date of service of the notice) and a place or places, on and at which such call or installment and such interest and expenses as aforesaid are to be paid. The notice shall also state that in the event of non-payment on or before the time and at the place appointed, the shares in respect of which the call was made or installment is payable will be liable to be forfeited.

(40) If notice not complied with, shares may be forfeited

If the requisitions of any such notice as aforesaid are not complied with, any shares, in respect of which such notice has been given may, at any time thereafter, before payment on all calls or installments, interest and expenses, due in respect thereof, be forfeited by a resolution of the Board of Directors to that effect. Such forfeiture shall include all dividends and other benefits declared in respect of the forfeited shares and not actually paid or effected, as the case may be, before the forfeiture.

(41) Notice of forfeiture

When any share shall have been so forfeited, notice of the resolution of the Board of Directors shall be given to the member in whose name it stood immediately prior to the forfeiture and an entry of the forfeiture with the date thereof shall forthwith be made in the register of members, provided however, that the failure to give such notice will not in any way invalidate the forfeiture.

(42) Forfeited shares to become property of the Company

Any shares so forfeited shall be deemed to be the property of the Company and the Directors may sell, re-allot and otherwise dispose of the same in such manner, as they think fit.

(43) Power to annul forfeiture

The Directors may, at any time, before any share so forfeited shall have been sold, re-allotted or otherwise disposed of, annul the forfeiture thereof.
as a matter of grace and favour but not as a matter of right, upon such terms and conditions as they may think fit.

(44) Arrears to be paid notwithstanding forfeiture

Any member whose shares shall have been forfeited shall, notwithstanding the forfeiture, be liable to pay and shall forthwith pay to the Company all calls, instalments, interest and expenses, owing upon or in respect of such shares at the time of the forfeiture together with interest thereon, from the time of forfeiture until payment, at the rate of 12 percent per annum and the Directors may enforce the payment of such moneys or any part thereof if they think fit, but shall not be under any obligation so to do.

(45) Effect of forfeiture

The forfeiture of a share shall involve the extinction of all interest in and also of all claims and demand against the Company in respect of the share and all other rights incidental to the same except only such of those rights as by these presents are expressly saved.

(46) Certificate of forfeiture

A certificate in writing under the hands of any Director and countersigned by the Secretary of the Company, that the call in respect of a share was made and notice thereof was given and that default in payment of the call was made and that the forfeiture of the shares was made by a resolution of the Board of Directors to that effect, shall be conclusive evidence of that fact stated therein as against all persons entitled to such share.

(47) Title of purchaser and allottee of forfeited shares

The Company may receive the consideration, if any, given for any share forfeited, on any sale, re-allotment or other disposal thereof and may execute transfer of the share in favour of the person to whom the share is sold or disposed of and the person to whom such share is sold, re-allotted or disposed of may be registered as the holder of the share. Any such purchaser or allottee shall not (unless by express agreement) be liable to pay any calls, amounts, instalments, interest and expenses owing to the Company prior to such purchase or allotment nor shall he be entitled (unless by express agreement) to any of the dividends, interest or bonus accrued or which might have accrued upon the share before the time of completing such purchase or before such allotment. Such purchaser or allottee shall not be bound to see the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, re-allotment or disposal of the share.

(48) Company's lien on shares

The Company shall have no lien on its fully paid up shares. In the case of partly paid up shares, the Company shall have a lien only to the extent of all moneys called or payable at a fixed time in respect of such shares, otherwise such partly paid up shares shall be free from any lien of the Company. Any lien on shares shall extend to all dividends from time to time declared in respect of such shares. Unless otherwise agreed, the registration of a transfer of shares shall operate as a waiver of the Company's right.
any on such shares. The Board of Directors may at any time declare any shares to be wholly or in part exempt from the provisions of this Article.

(49) Enforcement of lien by sale

For the purpose of enforcing such lien, the Board of Directors may sell the shares subject thereto in such manner as they think fit; but no sale shall be made until such period as aforesaid shall have arrived and until notice in writing of the intention to sell have been served as provided in Article 41 hereof on such member, his heirs, executors or administrators and default shall have been made by him or them in the payment, fulfilment, or discharge of such debts, liabilities, or engagements for seven days after such notice. To give effect to any such sale, the Board may authorize some person to execute an instrument of transfer in respect of the shares sold and to transfer the shares sold to the purchaser thereof and the purchaser shall be registered as the holder of the shares comprised in any such transfer. Upon any such sale as aforesaid the certificates in respect of the shares sold shall stand cancelled and become null and void and of no effect, and the Directors shall be entitled to issue a new certificate in lieu thereof to the purchaser or purchasers concerned.

(50) Application of proceeds of sale

The net proceeds of such sale shall be received by the Company and after payment of the cost of such sale shall be applied in or towards satisfaction of the debts, liabilities or engagements of such member and the residue if any, paid to him, his heirs, executors and administrators or assigns or other legal representative as the case may be.

(51) Validity of sale in exercise of lien and after forfeiture

Upon any sale after forfeiture or for enforcing a lien in purported exercise of the powers herein before given, the Board of Directors may appoint some person to execute an instrument of transfer of the shares sold and cause the purchaser's name to be entered in the Register in respect of the shares sold and the purchaser shall not be bound to see the regularity of the proceedings nor to the application of the purchase money and after his name has been entered in the Register in respect of such shares, the validity of the sale and the entry in the Register in respect of the shares sold shall not be impeached by any person and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

(52) Board of Directors may issue new certificates

Where any shares under the powers in that behalf herein contained are sold by the Board of Directors after forfeiture or for enforcing a lien and the certificate in respect thereof has not been delivered up to the Company by the former holder of such shares, the Board of Directors may issue a new certificate of such shares distinguishing it in such manner as they may think fit from the certificate not so delivered.

(53) Application of forfeit provisions

The provisions of the Articles as to forfeiture shall apply in the case of non-payment of any sum which by the terms of the issue of a share becomes payable at a fixed time, whether on special or the amount of the share is mentioned thereon.
by way of premium, as if the same had been payable by virtue of a call duly made and notified.

(54) Articles to apply to debentures

The provisions contained in Articles 39 to 53 shall mutatis mutandis apply to debentures of the Company.

VI TRANSFER AND TRANSMISSION OF SHARES

(55) Members have right of pre-emption.

Except as hereinafter provided no shares in the Company shall be transferable unless and until the rights of pre-emption hereinafter conferred shall have been exhausted.

(56) Form of notice

Every Member who intends to transfer shares (hereinafter called the "Transferor") shall give a notice in writing (hereinafter called "Transfer Notice") to the Board or the Agent for the sale of the said shares in one or more lots at the discretion of the Board of Directors of the Company and at a price to be approved by the Board in its absolute discretion.

(57) Board to give Notice to Members

Upon the price being fixed as aforesaid, the Board shall forthwith give notice to all Members of the Company of the number and price of the shares to be sold and invite each of them to state in writing within 21 days from the date of the said notice whether he is willing to purchase any of the said shares, and if so, what maximum number of shares.

(58) Board to allocate shares to Member(s) willing to buy

At the expiration of the said period of 21 days, the Board shall allocate the said shares to or amongst the Member(s) who shall have expressed his/her willingness to purchase as aforesaid, such allocation to be made in proportion to existing shareholding of these Members, provided that no Member shall be obliged to take more than maximum number of shares so notified by him as aforesaid. If all or some of the said shares available for sale are not agreed to be purchased, the Board shall offer such shares to the Members (other than the transferor and any Member who has declared to take any shares) and such further allocation of shares shall be made within a further period of sixty days from the date of the original notice and shall be in the like manner as hereinbefore provided. Upon such allocation being made, the Transferor shall be bound on payment of the said price to transfer the shares to the purchaser(s), and if the Transferor makes default in so doing, the Board may receive and give a good discharge for the purchase money on behalf of the Transferor and enter the name of the purchaser in the Register of Members as holder by transfer of the said shares purchased by him.

(59) Shares not taken may be transferred
In the event of the whole of the said shares not being sold under the Articles 57 and 58 hereof, the Transferor may, at any time within three calendar months after the expiration of the said period sixty days, transfer the shares remaining unsold to any price to any person.

(60) Exception

The provision of Articles 56, 57 and 58 hereof shall not apply to transfer to person who is already a Member of the Company nor to a transfer by a Member who is a Body Corporate to its parent Company, or to any of its Subsidiary Companies or to a Corporation which controls or is controlled by or is under the common control of such transferor Corporation or to any of its associates or affiliates, nor to a transfer by a Member to his wife, husband, son, daughter, grandson, granddaughter, father, mother, brother and sister.

(61) Form of transfer

Shares in the Company may be transferred by an instrument in writing in the usual common form or in such other form as shall from time to time be approved by Directors provided that if so required by the provision of the Act, such instrument of transfer shall be in the form prescribed and shall be duly stamped and delivered to the Company within the prescribed period.

(62) No transfer to infant etc

No transfer shall be made to a minor, an infant or person of unsound mind.

(63) Transfer to be left at office and evidence of title given when transfer to be retained

Every instrument of transfer duly executed and stamped shall be left at the office of the Company for registration accompanied by the certificate of the shares to be transferred and such other evidence as the Company may require to prove the title of the transferor or his right to transfer the shares. All instruments of transfer which shall be registered shall be retained by the Company, but any instrument of transfer which the Directors may decline to register shall on demand, be returned to the person depositing the same.

(64) Fee on transfer or transmission

There shall be paid to the Company, in respect if the transfer or transmission of any number of shares to the same party, such fee, if any, not exceeding Re 1. for each transfer as the Board may require.

(65) Closure of transfer books

The Directors may, after giving not less than seven days previous notice by advertisement as required by Section 154 of the Act, close the Register of Members or the Register of the Debenture-holders for any period or periods not exceeding in the aggregate forty-five days in each year, exceeding thirty days at any one time.

(66) Title to share of deceased holder
The executors or administrators of a deceased member shall be the only persons recognised by the Company as having any title to his share except in case of joint holders, in which case the surviving holder or holders or the executors or administrators of the last surviving holder shall be the only persons entitled to be so recognised; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share jointly held by him. The Company shall not be bound to recognise such executor or administrator unless he shall have obtained probate or letters of administration or other legal representation, as the case may be, from a duly constituted Court in India to grant such probate or letters of administration, provided nevertheless that in cases, which the Board in its discretion consider to be special cases and in such cases only, it shall be lawful for the Board of Directors to dispense with the production of probate or letters of administration or such other legal representation upon such terms as to indemnity or otherwise as the Board of Directors may deem fit. The holder of succession certificate relating to the share of a deceased member and operative in the State of Maharashtra shall be deemed to be an administrator for the purposes of this Article.

(67) Directors' power to reject application for transfer

The Board of Directors shall have absolute and uncontrolled discretion and power to decline to register any proposed transfer or transmission of any shares without assigning any reasons whatsoever, subject however, to the provisions of Section 111 of the Act, and the rules made thereunder. This Article shall apply notwithstanding that the proposed transferee or the proposed holder under transmission may already be a member of the Company. Registration of a transfer shall not be refused on the ground of the transferor being either alone or jointly with any other person or persons indebted to the Company on any account whatsoever except a lien on the shares.

(68) Registration of persons entitled to shares otherwise than by transfer (transmission clause)

Subject to the provisions of the Act and these presents, any person becoming entitled to a share in consequence of death, bankruptcy or insolvency of any member or by any lawful means other than by a transfer in accordance with these presents, may with the consent of the Directors (which they shall not be under any obligation to give) and upon producing such evidence as the Board thinks sufficient either be registered himself as the holder of the share or elect to have some person nominated by him and approved by the Board, registered as such holder; provided nevertheless, that if such person shall elect to have his nominee registered he shall testify the election by executing to his nominee an instrument of transfer of the share in accordance with the provisions herein contained and until he does so, he shall not be freed from any liability in respect of the share.

Transfer by legal representative: A transfer of the share in the Company of a deceased member made by his legal representative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the instrument of transfer.

(69) Persons entitled may receive dividends without being registered as members

A person entitled to a share by transmission shall, subject to the right of the Directors to retain such dividends as they may think proper, receive all dividends declared on the share as if the transferee provided the
entitled to receive, and may give a discharge for, any dividends or other monies payable in respect of the share.

(70) Board may require evidence of transmission

Every transmission of share shall be verified in such manner as the Directors may require and the Company may refuse to register any such transmission until the same be so verified or until and unless an indemnity be given to the Company with regard to such registration which the Directors in their discretion shall consider sufficient, provided nevertheless that there shall not be any obligation on the Company or the Directors to accept any indemnity.

(71) Certificate of transfer

The certification by the Company of any instrument of transfer of shares in or debentures of the Company, shall be taken as a representation by the Company to any person acting on the faith of the certification that there have been produced to the Company such documents as on the face of them show a prima facie title to the shares or debentures in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares or debentures.

* (71 A) (a) The Consortium of IL&FS Transportation Networks Limited (ITNL) and Ramky Infrastructure Limited (RIL) together with their Associates shall hold not less than 51% of the issued and paid up capital of the Company during the Construction Period and two years thereafter in accordance with the provisions of the Concession Agreement to be entered into by the Company with the NHAI

(b) The Company shall not undertake or permit any Change in Ownership, except with the prior approval of the NHAI up to the period mentioned in Article 71 A (a) above

(c) The Consortium of ITNL & RIL together with their Associates agrees and acknowledges the following:

(i) all acquisition of Equity and acquiree, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen percent) of the total Equity of the Consortium of ITNL & RIL together with their Associates

(ii) acquisition of any control directly or indirectly of the Board of Directors of the Company by any person either by himself or together with any person or persons acting in concert with him shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Company, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Company without such prior approval of the Authority as per the Concession Agreement. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Company from any liability or obligation under the Concession Agreement.
Further,

(a) The expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Company.

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

(c) Power to appoint, whether by contract of by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Company, not less than half of the directors on the Board of Directors of the Company or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen percent) of the Equity of the Company shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Company.

* Inserted pursuant to the special resolution passed by the members of the Company at the extraordinary general meeting held on July 8, 2010

(72) Transfer of debentures

The provisions contained in Articles 56 to Article 72 shall mutatis mutandis apply to the transfer of or the transmission by operation of law of the right to Debentures of the Company.

VII JOINT HOLDERS

(73) Joint holders

Where two or more persons are registered as the holders of any share, the person first named in the Register as one of the joint holders of the share shall be deemed the sole holder for matters connected with the Company subject to the following and other provisions contained in these presents:

(a) The joint holders of any share shall be liable severally as well as jointly for and in respect of all calls and other payments which ought to be made in respect of such share.

(b) On the death of any such joint holders the survivor or survivors shall be the only person or persons, recognised by the Company as having any title to the share but the Directors may require such evidence of death, as they may deem fit and nothing herein contained shall be taken to release the estate of a deceased joint holder from any liability on shares held by him jointly with any other persons.

(c) Any one of several persons who are registered as joint holders of any share may give effectual receipts for all dividends and payment on account of dividends in respect of such share.

* Inserted pursuant to the special resolution passed by the members of the Company at the extraordinary general meeting held on July 8, 2010
(d) Only the person whose name stands first in the Register of Members as one of the joint holders of any shares shall be entitled to the delivery of the certificates relating to such share or to receive documents (which expression shall be deemed to include all documents referred to in these Presents, from the Company and any documents served on or sent to such person) shall be deemed to be served on all the joint holders.

(e) Any one of two or more joint holders may vote at any meeting either personally or by attorney duly authorised under power of attorney or by proxy in respect of such shares as if he were solely entitled thereto and if more than one of such joint holders be present at any meeting personally or by proxy or by attorney then one of such persons whose name stands first or higher (as the case may be) on the Register in respect of such share shall alone be entitled to vote in respect thereof but the other or others of the joint holders shall be entitled to be present at the meeting provided always that a joint holder present at any meeting personally shall be entitled to vote in preference to a joint holder present by attorney or proxy although the name of such joint holder present by an attorney or proxy stands first or higher (as the case may be) in the Register in respect of such shares. Several executors or administrators of a deceased member in whose name any share stands, shall, for the purpose of this sub-clause, be deemed joint holders.

VIII MODIFICATION OF RIGHTS

(74) Power to vary shareholders' rights

Whenever the capital, by reason of the issue of preference shares or otherwise, is divided into different classes of shares, all or any of the rights and privileges attached to each class, may subject to the provisions of Section 106 and 107 of the Act, be modified, commuted, affected, abrogated or dealt with by agreement between the Company and any person purporting to contract on behalf of that class, provided such agreement is ratified in writing by the holders of at least three-fourths in nominal value of the issued shares of the class or is confirmed by special resolution passed at a separate General Meeting of the holders of shares of that class.

IX BORROWING POWERS

(75) Power to borrow

Subject to the provisions of Section 292 of the Act, the Board of Directors may from time to time by a resolution passed at a Meeting of the Board, accept deposits from members, either in advance of calls or otherwise and may generally raise or borrow or secure the payment of any sum or sums of money for the Company.

(76) Conditions for repayment of moneys borrowed

The payment or repayment of moneys borrowed pursuant to Article 75 of these presents may be secured on such security and upon such terms and conditions in all respects as the Board of Directors may think fit including
by the issue of debentures or debenture stock of the Company charged upon all or any part of the undertakings or property of the Company (both present and future) and its uncalled share capital for the time being pursuant to a resolution passed at the meeting of Board of Directors but not by its circular resolution.

(77) Debentures and securities to be subject to control of Directors

Any debentures, debenture stock, bonds or other securities issued or to be issued by the Company shall be under the control of the Directors who may issue them upon such terms and conditions and in such manner and for such consideration as they shall consider to be for the benefit of the Company.

(78) Terms of issue of Debentures

Any debentures, debenture stock or other securities may be issued at a discount, premium or otherwise and may be issued on condition that they shall be convertible into shares of any denomination, and with any privileges and conditions as to redemption, surrender, drawing, allotment of shares and attending general meetings of the Company and the right to appoint Directors and otherwise. Debentures carrying the right of conversion into or allotment of shares shall be issued only with the consent of the Company in general meeting and subject to and in accordance with the provisions as Section 81 of the Act.

(79) Mortgage uncalled capital

If any uncalled capital of the Company is included in or charged by any mortgage or other security, the Board of Directors shall subject to the provisions of the Act and these presents make calls on the members in respect of such uncalled capital in trust for the person in whose favour such mortgage or security is executed or, if permitted by the Act, may, by instrument under the Company's Seal, authorise the person in whose favour such mortgage or security is executed or any other person in trust for him, to make calls on the members in respect of such uncalled capital, and the provisions herein before contained in regard to calls shall, mutatis mutandis, apply to calls made under such authority, and such authority may be made exercisable either conditionally or unconditionally and either presently or contingently and either to the exclusion of the Board's power or otherwise, and shall be assignable if expressed so to be.

(80) Priority over charge on uncalled capital

Where any uncalled capital of the Company is charged, all persons taking any subsequent charge thereon shall take the same charge subject to such prior charge and shall not be entitled by notice to the shareholders or otherwise, to obtain priority over such prior charge.

(81) Indemnity may be given

If the Directors or any of them or any other persons shall become personally liable for the payment of any sum primarily due from the Company under the due process of law or under the authority of any law enforcement agencies, the Directors may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the
Company by way of indemnity to secure the Directors or persons so becoming liable as aforesaid from any loss in respect of such liability.

X GENERAL MEETINGS

(82) Annual or ordinary General Meeting

The Annual General Meeting shall be held in accordance with Section 166 of the Act and shall be called for a time during business hours on a day that is not a public holiday and shall be held either at the Registered Office of the Company or at such place in the city, town or village in which the Registered Office of the Company is situated, as the Board of Directors may determine and the notices calling the meeting shall specify it as the Annual General Meeting.

(83) Right to attend General Meetings

Every member of the Company shall be entitled to attend every general meeting either in person or by proxy, and the Auditor of the Company shall have the right to attend and to be heard at any general meeting on any part of the business which concerns him as Auditor.

(84) Reports, Statements and Registers to be laid on the table

At every Annual General Meeting of the Company there shall be laid on the table the Directors' Report and audited Statement of Accounts, Auditors' Report (if not already incorporated in the audited Statement of Accounts), the proxies lodged and the Register of Directors' holdings maintained under Section 307 of the Act. The Auditors' Report shall be read before the Company in General Meeting and shall be open to inspection by any member of the Company.

(85) Distinction between Ordinary and Extra-Ordinary General Meeting

All general meetings other than Annual General Meetings shall be called Extra-ordinary General Meetings.

(86) Who may call Extra-Ordinary General Meeting

The Board may, whenever it thinks fit, call an Extraordinary General Meeting. If at any time there are not within India Directors capable of acting who are sufficient in number to form a quorum, any Director or any two members of the Company may call an Extraordinary General Meeting in the same manner, as nearly as possible as that in which such a meeting may be called by the Board at such time and place as it or they may determine.

(87) Calling of Extra-ordinary General Meeting on requisition

The Board of Directors of the Company shall on the requisition of such number of members of the Company as is specified in sub-section (4) of Section 169 of the Act, forthwith proceed duly to call an Extraordinary General Meeting of the Company, and in respect of any such requisition and of any meeting so called or quorum thereto, all the other provisions of
Section 169 of the Act and of any statutory modification thereof for the time being shall apply.

(88) Notice of meeting

A general meeting of the Company may be called by giving not less than 21 days notice in writing. However, a general meeting may be called after giving a shorter notice than that of 21 days, if consent is accorded thereto:

(i) in the case of an Annual General Meeting, by all the members entitled to vote thereat; and

(ii) in the case of any other meeting, by members of the Company holding not less than 95 per cent of such part of the paid up share capital of the Company as gives them a right to vote at that meeting;

Provided that where any members of the Company are entitled to vote only on some resolutions or resolution to be passed at the meeting and not on the others, those members shall be taken into account for the purpose of this Article in respect of the former resolution or resolutions but not in respect of the latter.

(89) Contents of notice

Every notice of a meeting of the Company shall specify the place, the date and hour of the meeting, and shall contain a statement of the business to be transacted thereat. No general meeting, annual or extraordinary shall be competent to enter upon, discuss or transact any business which has not been specifically mentioned in the notice or notices upon which it was convened.

(90) Special business

In the case of an Annual General Meeting all business to be transacted at the meeting shall be deemed Special, with the exception of business relating to:

(a) the consideration of the accounts, Balance Sheet and Profit and Loss Account and the Report of the Board of Directors and of the Auditors,

(b) the declaration of dividend,

(c) the appointment of Directors in the place of those retiring,

(d) the appointment and the fixing of the remuneration of the Auditors

In the case of any other meeting all business shall be deemed Special.

(91) Service of notice

Notice of every meeting shall be given to every member of the Company as provided in Section 57.
(92) Notice to be given to Auditors

Notice of every meeting of the Company shall be given to the Auditor or Auditors for the time being of the Company, in the manner provided in Section 53 of the Act.

(93) Omission to give notice not to invalidate meeting

The accidental omission to give notice of any meeting to or the non-receipt of any notice by any member or other person to whom it should be given shall not invalidate the proceedings at the meeting.

(94) Resolution requiring Special Notice

Where by any provision contained in the Act or in these presents, Special Notice is required of any resolution, notice in respect of the same shall be given to the Company and by the Company as provided in Section 190 of the Act.

XI PROCEEDINGS AT GENERAL MEETINGS

(95) Business of Ordinary Meeting

The business of an Annual General Meeting shall be to receive and consider the Profit and Loss Account, the Balance Sheet and the Reports of the Directors and of the Auditors, to elect Directors in place of those retiring, to appoint Auditors and to fix their remuneration, to declare dividends and to transact any other business which, under these presents, ought to be transacted at an Annual General Meeting.

(96) Business of Ordinary Meeting - Special Business

All other business transacted at an Annual General Meeting and all business transacted at an Extraordinary General Meeting shall be deemed Special.

(97) Quorum to be present when business commenced

Five members present in person shall be quorum for a general meeting and no business shall be transacted at any general meeting unless the quorum requisite be present at the commencement of the business.

(98) Chairman of General Meetings

The members present shall on a show of hands, elect one of them to be Chairman of the meeting.

If a poll is demanded on the election of the chairman, it shall be taken forthwith in accordance with the provisions of the Act and these presents and the Chairman elected on show of hands shall exercise all the powers of the Chairman under the same provisions. If some other person is elected Chairman as a result of the poll, he shall be the Chairman for the rest of the meeting.
When, if quorum not present, meeting to be dissolved and to be adjourned

If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon such requisition as aforesaid, shall be dissolved; but in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to such other day, time and place, as the Directors may by notice to the shareholders appoint. If at such adjourned meeting a quorum is not present those members who are present shall be a quorum and may transact the business for which the meeting was called.

Business confined to election of Chairman while Chair vacant

No business shall be discussed at any General Meeting except election of a Chairman while the Chair is vacant.

How questions to be decided at meetings - casting vote

Every question submitted to a meeting shall be decided, in the first instance, by a show of hands and in the case of an equality of votes, the Chairman shall, both on a show of hands and on a poll have a casting vote in addition to the vote to which he may be entitled as a member.

Voting by show of hands

At any General Meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded be decided on a show of hands.

Result of voting

A declaration by the Chairman that on a show of hands, a resolution has or has not been carried either unanimously or by a particular majority and an entry to that effect in the books containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes cast in favour of or against such resolution.

Demand for poll

Before or on the declaration of the result of the voting on any resolution on a show of hands, a poll may be ordered to be taken by the Chairman of the meeting of his own motion, and shall be ordered to be taken by him on a demand made in that behalf by member or members present in person or by proxy and holding shares in the Company which confer a power to vote on the resolution not being less than one-tenth of the total voting power in respect of the resolution or on which an aggregate sum of not less than fifty thousand rupees has been paid up.

Poll may be withdrawn

The demand for a poll may be withdrawn at any time by the person or persons who made the demand.

Time of taking poll
Any poll duly demanded on the question of adjournment shall be taken forthwith. A poll demanded on any other question (not being a question relating to the election of a Chairman) shall be taken at such time not exceeding 48 hours from the time when the demand was made, as the Chairman may direct.

(107) Power to adjourn General Meeting

The Chairman of a General Meeting, may with the consent of the meeting, adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(108) Business may proceed notwithstanding demand for poll

The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question of which a poll has been demanded.

(109) Scrutineers at poll

Where a poll is to be taken, the Chairman of the meeting shall appoint two scrutineers to scrutinise the votes given on the poll and to report thereon to him.

(110) Power to remove Scrutineer

The Chairman shall have power, at any time before the result of the poll is declared to remove a scrutineer from office and to fill vacancies in the office of scrutineer arising from such removal or from any other cause.

(111) Member to be Scrutineer

Of the two scrutineers, one shall always be a member (not being an officer or employee of the Company) present at the meeting, provided such a member is available and willing to be appointed.

(112) Manner of taking poll

The Chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.

(113) Result of poll

The result of the poll shall be deemed to be decision of the meeting on the resolution on which the poll was taken.

(114) Chairman to be the sole judge of the validity of the vote tendered at meeting and at poll

The Chairman of any meeting shall be the sole judge of the validity of every vote tendered at such meeting. The Chairman present at the meeting of all
polls shall be the sole judge of the validity of every vote tendered at such poll.

(115) Right of member to use his vote

On a poll taken at meeting of the Company, a member entitled to more than one vote, or his proxy or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses.

(116) Resolution passed at adjourned meeting

Where a resolution is passed at an adjourned meeting of the Company, the resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

(117) Minutes of General Meeting

The Company shall cause minutes of the proceedings of every general meeting to be entered in the book kept for that purpose and the minutes shall contain and include the matters specified in Section 193 of the Act.

(118) Inspection of Minutes Books of General Meetings

The books containing the aforesaid minutes shall be kept at the Registered Office of the Company and be open to the inspection of any member without charge as provided in Section 196 of the Act. Any member shall be furnished with a copy of any minutes in accordance with the terms of that section.

(119) Votes may be given by proxy or attorney

Subject to provisions of the Act and these presents, votes may be given personally or by attorney duly authorised under power of attorney or by proxy or in case of a body corporate also by a representative duly authorised under Section 187 of the Act or by proxy of such representative of the body corporate.

XII VOTING RIGHTS

(120) Votes of members

Every member, who being an individual, is present in person or being a corporation, is present by a representative, shall have one vote on a show of hands.

(121) Voting right in proportion to share of paid up capital of the Company

Every member, who being an individual present in person or by a proxy or by attorney duly authorised under power of attorney, or being a Corporation...
is present by a representative or his proxy shall, on a poll, have a voting right in proportion to his share of the paid up equity capital of the Company.

(122) No voting by Proxy on show of hands

No member not personally present shall be entitled to vote on a show of hands unless such member is present by attorney duly authorised under power of attorney or unless such member is a body corporate present by a representative duly authorised under Section 187 of the Act in which case such attorney or representative may vote on a show of hands as if he were a member of the Company.

(123) Person entitled under the Transmission Clause may vote at General Meeting

Any person entitled under the Transmission Clause to any shares may vote at any General Meeting in respect thereof in the same manner as if he were the registered holder of such share, provided that forty-eight hours at least before the time of holding the meeting or adjourned meeting as the case may be, at which he proposes to vote he shall satisfy the Board of Directors of his right to Transmission of such shares, unless the Directors shall have previously admitted his right to Transmission of such shares or his right to vote at such meeting in respect thereof.

(124) Instrument appointing Proxy

The instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney duly authorised in writing or, if such appointer is a corporation, under his common seal or the hand of an officer or an attorney duly authorised by it. A person may be appointed a proxy though he is not a member of the Company, but such proxy shall not have any right to speak at any meeting.

(125) Member's rights to appoint Proxy to be stated in notice

Every notice convening a meeting of the Company shall state that a member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote on poll instead of him and that a proxy need not be a member of the Company.

(126) Instrument appointing Proxy to be deposited at Office

The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the Registered Office of the Company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote in case of a poll and in default the instrument of proxy shall not be treated as valid.

(127) When vote by proxy valid, though authority revoked

A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death of the Principal or revocation of the proxy or transfer of the share in respect of which the vote is given, provided no intimation of such event has been communicated to the person named in the instrument of proxy, and such vote shall be valid and effectual as if such death, revocation or transfer should have been unknown to the person voting.
received at the office of the Company or by the Chairman of the meeting before the vote is given.

(128) Form of Proxy

Every instrument of proxy, whether for a specified meeting or otherwise shall as nearly as circumstances will admit, be in the form specified in Schedule IX of the Act.

(129) Time and place to inspect the Proxies lodged

Every member entitled to vote at a meeting of the Company according to the provisions of these presents on any resolution to be moved therein, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the Company, provided not less than three days' notice in writing of the intention to inspect is given to the Company.

(130) No member entitled to vote etc while call due to Company

No member shall be entitled to vote either personally or by proxy at any General Meeting of a class of shareholders either upon a show of hands or on poll in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid or in regard to which the Company has exercised any right of lien.

XIII DIRECTORS

(131) First Directors

The First Directors of the Company are:

(i) Mr Krishna Ghag
(ii) Mr Ajay Menon
(iii) Mr Yancha Rao Ranganath Naganna
(iv) Mr Swarna Vijayaram Reddy

(132) Board of Directors

The Company shall be managed and controlled by its Board of Directors and shall have the responsibility, power and authority to manage and supervise the financial, commercial and personnel activities of the Company and for determining the overall policies and objectives of the Company.

(133) Number of Directors

Until otherwise determined by the Company in General Meeting and subject to the provisions of Section 252 of the Act, the total number...
Directors (excluding the Nominee Director/s of Financial Institutions and/or Special Director/s) shall not be less than three and not more than twelve.

(134) Appointment of Alternate Directors

The Board may appoint an Alternate Director to act for a Director (hereinafter called "the Original director") during his absence for a period of not less than three months from the State in which the meetings of the Board are ordinarily held. An Alternate Director appointed under these Article shall not hold office for a period longer than that permissible to the original director in whose place he has been appointed and shall vacate office if and when the original director returns to that State. If the term of office of the Original director is determined before he so returns to that State, any provisions in the Act or these Articles for the automatic re-appointment of retiring director in default of another appointment, shall apply to the original director and not to the alternate director.

(135) Appointment of Additional Directors

Subject as aforesaid, the Board shall have power at any time and from time to time, to appoint or as an additional Director pursuant to and in accordance with the provisions of Section 260 of the Act, but so that the total number of Directors shall not at any time exceed the maximum number fixed by Article 133. But any additional Director or Directors so appointed shall hold office only until the next following Annual General Meeting of the Company and shall then be eligible for re-election.

(136) Appointment of Director in casual vacancy

Subject to the provisions of Sections 262, 264(1) the Board shall have power at any time and from time to time to appoint any other qualified person to be a director to fill up a casual vacancy. Any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated by him.

(137) Nominee Directors

The Company shall, subject to the provisions of the Act, be entitled to appoint with any person, firm or body corporate, being a Member of the Company, that he or it shall have the right to appoint his or its nominee on the Board of Directors of the Company upon such terms and conditions as the Company may deem fit. Such nominee and their successors in office appointed under this Article shall be called "Nominee Directors" of the Company.

(138) Terms of office of Nominee Directors

The Nominee Directors appointed under the last preceding Article shall be entitled to hold office until removed by the firm or body corporate who may have appointed them, and will not be bound to retire by rotation or be subject to Articles hereof. A Nominee Director shall not require any qualification Shareholding. As and whenever a Nominee Director vacates office whether upon request as aforesaid or by death, resignation or otherwise, the firm or body corporate who appointed such Nominee Director may appoint another Director in his place. Every nomination appointment or removal of a Nominee Director or other notification under
this Article shall be in writing and shall in the case of a Company under the
hand of a Director of such Company duly authorised in that behalf by a
resolution of the Board of Directors. Subject as aforesaid, a Nominee
Director shall be entitled to the same rights and privileges and be subject to
the same obligations as any other Director of the Company

(139) Nominee directors of Financial institutions/bank

In case the Company obtains any loans/other facilities from financial
institutions/banks and it is a term thereof that the said financial
institutions/banks shall have the right to nominate one or more Directors,
then subject to such terms and conditions as may be agreed upon, the said
financial institutions/banks shall be entitled to nominate one or more
Directors as the case may be, on the Board of Directors of the Company and
to remove from office any such director so appointed who resigns or
otherwise vacates his office. Any director or directors so nominated shall
not be liable to retire by rotation. Any such nomination or removal shall be
made in writing and by a resolution of the Board of Directors of such
financial institution/banks and shall be signed by the said financial
institution/banks or by any person duly authorised by it. Removal of any
such Nominee Director by any such Financial Institution/banks shall take
effect upon communication by such Financial Institution/banks in writing
confirming compliance of the procedure stated above.

The Board of Directors of the Company shall have no power to remove
from office the Nominee Director/s appointed by Financial Institution/banks. Such nominee Director/s shall not be required to hold any
share qualification in the Company. Subject as aforesaid, the Nominee
Director/s shall be entitled to the same rights and privileges and be subject
to the same obligations as any other Director of the Company

The Nominee Director/s so appointed shall hold the said office only so long
as any moneys remain owing by the Company to the Financial Institution/banks or the liability of the Company arising out of the
Guarantee is outstanding and the Nominee Director/s so appointed in
exercise of the said power shall ipso facto vacate such office immediately
upon the moneys owing by the Company to the Financial Institution/banks
being paid off or on the satisfaction of the liability of the Company arising
out of the guarantee furnished by the Financial Institution/banks.

The Nominee Director/s appointed under this Article shall be entitled to
receive all notices of and attend all, Board Meetings and of the Meetings
of the Committee of which the Nominee Director/s is / are member/s, as also
the minutes of such meetings. The Financial Institution/banks shall also be
entitled to receive all such notices and minutes.

The Company shall pay to the Nominee Director/s sitting fees and expenses
to which the other Directors of the Company are entitled, but if any other
fees, commission, monies or remuneration in any form is payable to the
Directors of the Company, the fees, commission, monies and remuneration
in relation to such Nominee Director/s shall accrue to the Financial
Institution/banks and the same shall accordingly be paid by the Company
directly to the Financial Institution/banks. Any expenses that may be
incurred by the Financial Institution/banks or such Nominee Director/s in
connection with their appointment or Directorship shall also be paid or
reimbursed by the Company to the Financial Institution/banks or, as the
case may be to such Nominee Director/s

Provided also that in the event of the Nominee Director/s being appointed
as whole time Directors, such Nominee Director/s shall exercise such
powers and duties as may be approved by the Financial Institution/banks and have such rights as are usually exercised or available to a whole-time Director in the management of the affairs of the Company. Such whole-time Director/s shall be entitled to receive such remuneration, fees, commission and monies as may be approved by the Financial Institution/banks.

(140) Qualification Shares
A director of the Company shall not be bound to hold any qualification shares.

(141) Remuneration of Directors
(a) Subject to the provisions of the Act, a Managing Director or a Director who is the wholetime employment of the Company, may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the Company or partly by one way and partly by another.

(b) Subject to the provisions of the Act, a Director, who is neither in the wholetime employment nor a Managing Director may be paid remuneration either -

(i) by way of a monthly, quarterly or annual payments, or

(ii) by way of commission if the Company by a Special Resolution authorises such payment.

(142) Compensation in addition to remuneration
The Directors may offer and pay to any Director who is not a bonafide resident of the place where a meeting is held and who shall come to such place for the purpose of attending a meeting, such sum as the Directors may consider fair compensation for travelling, hotel and other expenses in addition to his remuneration as above specified and the Directors may from time to time fix the remuneration to be paid to any member or members of their body constituting a committee appointed by the Directors in terms of these presents and may pay the same.

(143) Remuneration for extra services
If any Director, being willing, shall be called upon to perform extra services or to make any special exertions in going or residing abroad or otherwise for any of the purposes of the Company, the Company shall remunerate such Director, in such manner as may be determined by the Board of Directors and such remuneration may be in addition to the fee payable to him under the preceding Article. Attendance at a Board Meeting or Committee Meeting at the Registered Office of the Company shall not be deemed to be extra service or special exertion within the meaning of this Article.

(144) Directors may act notwithstanding
The continuing Directors or Director may act notwithstanding any vacancy in the Board but, so that, if their number falls below the minimum above fixed, the Directors or Director shall not except for the purpose of filling vacancies or summoning a General Meeting, act so long as the number is below the minimum.

(145) When office of Director to be vacated

(a) Subject to the provisions of Section 283(2) of the Act the office of Director shall become vacant if:

(i) he is found to be of unsound mind by a Court of competent jurisdiction; or

(ii) he applies to be adjudicated as an insolvent; or

(iii) he is adjudged as an insolvent; or

(iv) he fails to pay any call made on him in respect of shares of the Company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call unless the Central Government has, by notification in the Official Gazette, removed the disqualification incurred by such failure; or

(v) any office or place of profit under the Company or any subsidiary thereof is held by him in contravention of Section 314(1) of the Act; or

(vi) he absents himself from three consecutive meetings of the Board of Directors or from all meetings of the Board of Directors for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board of Directors; or

(vii) he becomes disqualified by an Order of the Court under Section 203 of the Act; or

(viii) he is removed in pursuance of Article 155 and Section 284 of the Act; or

(ix) he (whether by himself or by any person for his benefit or on his account) or any firm in which he is a partner or any private Company of which he is a director, accepts a loan, or any guarantee or security for a loan, from the Company in contravention of Section 295 of the Act; or

(x) he acts in contravention of Section 299 of the Act; or

(xi) he is convicted by a Court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; or

(xii) he having been appointed a Director by virtue of his holding any office or other employment in the Company, ceases to hold such office or other employment in the Company.

(b) Subject to the provisions of the Act a Director may resign his office at any time by notice in writing addressed to the Company or to the Board of Directors.
Directors may contract with the Company

(a) A Director or his relative, a firm in which such Director or relative is a partner, any other person in such firm or a private Company of which the Director is a member or Director, may enter into any contract with the Company for the sale, purchase of supply of any goods, materials or services of for underwriting the subscription of any shares in or debentures of the Company only after obtaining the sanction of the Board of Directors. Provided that in the case of the Company having a paid up Capital of not less than Rupees One Crore no such contract shall be entered into except with the previous approval of the Central Government.

(b) No sanction, however, shall be necessary for:

(i) any purchase of goods and materials from the Company or the sale of goods or materials to the Company, by any such Director, relative, firm, partner or private Company as aforesaid for cash at prevailing market price; or

(ii) any contract or contracts between the Company on one side and any such Director, relative, firm, partner or private Company on the other for sale, purchase or supply of any goods, materials and services in which either the Company or the Director, relative, firm, partner or private Company, as the case may be, regularly trades or does business where the value of the goods and materials or the cost of such services do not exceed Rs 5,000/- in the aggregate in any year comprised in the period of the contract or contracts

Provided that in circumstances of urgent necessity, the Company may without obtaining the consent of the Board enter into any such contract or contracts with the Director, relative, firm, partner or private Company even if the value of such goods or materials or the cost of such services exceeds Rs 5,000/- in the aggregate in any year comprised in the period of the agreement, if the consent of the Board shall be obtained to such contract or contracts at a meeting within three months of the date on which the contract was entered into.

(c) A Director of the Company who is in any way, whether directly or indirectly concerned or interested in a contract or arrangement entered into or a proposed contract or arrangement to be entered into by or on behalf of the Company, shall disclose the nature of his concern or interest at a meeting of the Board in the manner provided in Section 299(2) of the Act. A general notice given to the Board by the Director to the effect that he is a Director or Member of a specified body corporate or is a member of a specified firm and it is to be regarded as concerned or interested in any contract or arrangement which may, after the date of the notice, be entered into with that body corporate or firm shall be deemed to be a sufficient disclosure of concern or interest in relation to any contract or arrangement so made. Any such general notice shall expire at the end of the financial year in which it is given but may be renewed for a further period of one financial year at any time by a fresh notice given in the last month of the financial year in which it would have otherwise expired. No such general notice and no renewal thereof shall be of effect unless, either it is given at a meeting of the Board or the Director concerned takes reasonable steps to secure that it is brought up and read at the first meeting of the Board after it is given.
(147) Register of contracts in which Directors are interested

The Company shall keep a Register of all contracts or arrangements in which any Director is interested or concerned as required by Section 301 of the Act.

(148) Director may be a director of companies promoted by the Company

A Director of this Company may be or become a director of any Company promoted by this Company or in which it may be interested as a vendor, purchaser, shareholder or otherwise and no such Director shall be accountable for any benefits received as director or member of such Company.

XIV ROTATION OF DIRECTORS

(149) Retirement by rotation

The Directors shall be liable to retire by rotation with the exception of the Managing Director appointed under Article 169.

(150) Retirement of one-third of Directors

At the First Annual General Meeting of the Company held next after the date of the general meeting at which the first directors are appointed and at every subsequent annual general meeting, one third of such of the directors for the time being are liable to retire by rotation or if their number is not three or a multiple of three, then the number nearest to one third, but not exceeding one third shall retire from office.

(151) Ascertaintment of Directors retiring by rotation and eligibility for re-appointment

Subject to Section 284(5) of the Act, the Directors to retire by rotation under the foregoing Article at every Annual General Meeting shall be those who have been longest in office since their last appointment, but as between persons who became Directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot. A retiring Director shall retain office until the conclusion of the meeting at which his re-appointment is decided or his successor is appointed. The retiring Director shall be eligible for re-appointment.

(152) Company to appoint successors

Subject to the provisions of the Act at the Annual General Meeting at which a Director retires in the manner aforesaid, the members present at the meeting may fill up the vacated office by electing the retiring Director or some other person thereto.

(153) Provisions in default of appointment

(a) If the place of the retiring Director is not so filled up and the meeting has not expressly required not to fill the vacancy th
meeting shall stand adjourned till the same day in the next week at
the same time and place, or if that day is public holiday, till the next
successing day which is not a public holiday, at the same time and
place.

(b) If at the adjourned meeting also, the place of the retiring Director is
not filled up and that meeting also has not expressly resolved not to
fill the vacancy, the retiring Director shall be deemed to have been
re-appointed at the adjourned meeting, unless

(i) at the meeting or at the previous meeting a resolution for the
re-appointment of such Director has been put to the meeting
and lost;

(ii) the retiring Director has, by a notice in writing addressed to
the Company or its Board of Directors, expressed his
unwillingness to be so re-appointed;

(iii) he is not qualified or is disqualified for appointment

(iv) a resolution whether special or ordinary, is required for the
appointment or re-appointment by virtue of any provisions of
the Act, or

(v) the proviso to sub-section (2) of Section 263 of the Act is
applicable to the case.

(154) Company may increase or reduce the number of Directors

Subject to Sections 252 and 259 of the Act, the Company may, by ordinary
resolution, from time to time, increase or reduce the number of Directors,
within the limits fixed in that behalf by these presents.

(155) Removal of Directors

Subject to the provisions of Section 284 of the Act the Company may
remove any Director before the expiration of his period of office and
appoint another person in his place. The person so appointed shall hold
office during such time as the Director in whose place he is appointed
would have held the same if he had not been removed.

(156) Notice of candidature for Office of Director

(a) Subject to the provisions of the Act and these presents any person
who is not a retiring Director shall be eligible for appointment to the
office of Director at any general meeting, if he or some member
intending to propose him has, not less than fourteen days before the
meeting left at the office of the Company a notice in writing under
his hand signifying his candidature for the office of Director or the
intention of such member to propose him as a candidate for that
office as the case may be.

(b) Every person (other than a Director retiring by rotation or otherwise
or a person who has left at the office of the Company a notice under
Section 257 signifying his candidature for the office of a Director)
proposed as a candidate for the office of a Director shall sign, and
file with the Company, his consent to qualify to act as a Director, if
appointed.
(c) A person other than –

(i) Director re-appointed after retirement by rotation or immediately on the expiry of his term of office; or

(ii) an additional or alternate Director or a person filling a casual vacancy in the office of a Director under Section 262 of the Act, appointed as a Director or re-appointed as an additional or alternate Director, immediately on the expiry of his term of office; or

(iii) a person named as a director of the Company under its Articles as first registered –

shall not act as a Director of the Company unless has within thirty days of his appointment signed and filed with the Registrar his consent in writing to act as such Director

XV PROCEEDINGS OF DIRECTORS

(157) Proceedings of Directors

(a) The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they may think fit

(b) A meeting of the Board of Directors shall be held at least once in every calendar quarter and at least 4 such meetings shall be held in every year

(c) A Director may and the Secretary on the requisition of a Director shall at any time summon a meeting of the Board

(d) Notice of each meeting of the Board Directors of the Company shall be sent to all Directors and all alternate directors for the time together with the agenda for the meeting at least 7 business days before the meeting is proposed to be held every quarter

(e) The meetings of the Board of Directors will be held at a place mutually decided upon by the Directors provided that if and when permitted by the Companies Act, 1956 meetings of the Board of Directors may be generally held at Mumbai or at a place mutually decided upon by the Directors having given due regard to ease of access of the Directors to such meetings of the Board of Directors. All meetings of the Board of Directors shall be attended in person, provided that if and when permitted by the Companies Act, 1956 meetings may be attended in person or by telephone, conference call or video conferencing where each Director participating in the meeting can hear all other Directors participating in the meeting

(158) Quorum for a Board Meeting

Subject to the provisions of Section 287 of the Act, the quorum for a meeting of the Board of Directors shall be two or one third of its total strength excluding Directors, if any of whose place may be vacant at the
Chairman of the Board

The Board of Directors would mutually elect a Chairman from amongst its Directors who may or may not be Whole time Directors of the Company. The Chairman shall hold office for such time as the Board stipulates at the time of appointment and shall not have a casting vote.

Decision of Questions

Questions arising at any meeting shall be decided by a majority of votes. Each Director would be entitled to one vote and the Chairman will not have a second or casting vote.

Powers of quorum

A Meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions which by or under the Act or these presents are for the time being vested in or exercisable by the Directors generally.

Directors may appoint Committee and delegate powers

Subject to the restrictions contained in Section 292 of the Act, the Board may delegate any of its powers to Committees of the Board consisting of such Members of its body, as it thinks fit. Every Committee of the Board so formed shall in exercise of the powers so delegated conform to any regulations that may from time to time be imposed on it by the Board. All acts done by such Committee of the Board in conformity with such regulations and in fulfilment of the purposes of their formation but not otherwise, shall have like force and effect as if done by the Board.

Passing of resolution by the Board

A resolution shall be deemed to have been duly passed by the Board only if it has been approved by a majority of the Directors as are entitled to vote on the resolution.

Resolution by circulation

A resolution shall be deemed to have been duly passed by the Board by circulation if the resolution has been circulated in draft together with the necessary papers, if any, to all the Directors at their respective addresses registered with the Company and has been approved by a majority of the Directors as are entitled to vote on the resolution.

Acts of Board or Committee valid notwithstanding defective appointment etc.

All acts done by any meeting of the Board or by a committee of the Board or by any person acting as a Director, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of
such Directors or Committee or person acting as aforesaid, or that they or any of them were or was disqualified or had vacated office or that the appointment of any of them had been terminated by virtue of any provisions contained in the Act or in these presents, be as valid as if every such person had been duly appointed and was qualified to be a Director and had not vacated office or his appointment had not been terminated; provided that nothing in this Article shall be deemed to give validity to acts done by a Director after his appointment has been shown to the Company to be invalid or to have terminated.

XVI POWERS OF THE BOARD OF DIRECTORS

(166) General power of the Board

Subject to the provisions of the Act, the Board of Directors shall be entitled to exercise all such powers, and to do all such acts and things, as the Company is authorised to exercise and do; provided that the Directors shall not exercise any power or do any act or thing which is directed or required, whether by the Act or any other Act or by the Memorandum of Association of the Company or these presents or otherwise, to be exercised or done by the Company in General Meeting; provided further that in exercising any such power or doing any such act or thing, the Board of Directors shall be subject to the provisions contained in that behalf in the Act or in any other Act or in the Memorandum of Association of the Company or these presents or in any regulations not inconsistent therewith and duly made thereunder including regulations made by the Company in General Meeting.

(167) Certain powers to be exercised by Directors only at a meeting

The Board of Directors of the Company shall exercise the following powers on behalf of the Company, and it shall do so, only by means of resolutions passed at meeting of the Board of Directors -

(a) the power to make calls on shareholders in respect of moneys unpaid on their shares;

(aa) the power to authorise the buy-back referred to in the first proviso to clause (b) of sub-section 77A of the Companies Act, 1956

(b) the power to issue debentures;

(c) the power to borrow moneys otherwise than on debentures including the power to enter into arrangements with bankers for the borrowing of moneys by way of overdraft or cash credit or otherwise but not the actual day to day availing of such arrangements;

(d) the power to invest the funds of the Company; and

(e) the power to make loans;

Provided that the Board of Directors may, by a resolution passed at a meeting, delegate to any Committee of Directors, the Managing Director, the Manager or any other principal officer of the Company or in the case of a branch office of the Company, a principal officer of the branch office the powers specified in clauses (c), (d) and (e) to the extent specified below:
(1) Every resolution delegating the power to borrow moneys otherwise than on debentures shall specify the total amount at any one time upto which the moneys may be borrowed by the delegate;

(2) Every resolution delegating the power referred to in clause (d) above shall specify the total amount upto which the funds may be invested and the nature of the investment of the investments which may be made by the delegatee;

(3) Every resolution delegating the power referred to in clause (e) above shall specify the total amount upto which loans may be made by the delegatee(s), the purpose for which the loan may be made for each such purpose in individual cases;

(4) Nothing in this Article contained shall be deemed to affect the right of the Company in General Meeting to impose restrictions and conditions on the exercise by the Directors of any powers herein specified

(168) Specific powers given to Directors

Without prejudice to the general powers conferred by the last preceding Article and the other powers conferred by these presents it is hereby expressly declared that the Board shall have the following powers, that is to say, power;

(a) To pay the costs, charges and expenses preliminary and incidental to the promotion, formation, establishment and registration of the Company

(b) To purchase or otherwise acquire for the Company, any property, rights or privileges which the Company is authorised to acquire at such price and generally on such terms and conditions, as they think fit and in any such purchase or other acquisition to accept such title as the Directors may believe or may be advised to be necessarily satisfactory

(c) To insure and keep insured against loss or damage by fire or otherwise for such period and to such extent as they may think proper all or any part of the buildings, machinery, goods, stores, produce and other movable property of the Company either separately or jointly; also to insure all or any portion of the goods, produce, machinery and other articles imported or exported by the Company and to sell, assign, surrender or discontinue any policies of assurance effected in pursuance of this power

(d) To open accounts with any bank or bankers or with any Company, firm or individual and to pay moneys into and draw moneys from any such account from time to time as the Directors may think fit

(e) At their discretion, to pay for any property, rights or privileges acquired by or services rendered to the Company, either wholly or partially in cash or in shares, bonds, debentures, mortgages or other securities of the Company and any such shares may be issued either as fully paid up or with such amounts credited as fully paid up thereon as may be agreed upon, and any such bonds, debentures, mortgages or other securities may be either specifically charged upon all or any part of the property of the Company and its uncalled capital or not so charged
(f) To secure the fulfilment of any contracts or agreements entered into by the Company by mortgage or charge of all or any of the properties of the Company and its uncalled capital for the time being or in such other manner as they may think fit.

(g) To appoint and at their discretion, remove or suspend, such committee or committees of experts, technicians or advisers, such managers, secretaries, officers, clerks, agents and servants for permanent, temporary or special services, as they may from time to time think fit and to determine their powers and duties and fix their salaries or emoluments and to require security in such instances and to such amount as they think fit.

(h) To contribute to any charitable object of public utility within the limits prescribed by Section 293 of the Act.

(i) To support and subscribe to any institution, society or club which may be for the benefit of the Company or its employees or may be connected with any town or place where the Company carries on business to give pensions, gratuities, bonuses or charitable aid to any person or persons who have served the Company or to the wives, children, or dependants of such person or persons that may appear to the Directors just or proper whether any such person, his widow, children or dependants have or have not a legal claim upon the Company.

(j) Subject to the provisions of the Act to accept from any member, on such terms and conditions as shall be agreed, a surrender of his shares or any part thereof.

(k) To appoint any person or persons (whether incorporated or not) to accept and hold in trust for the Company any property belonging to the Company or in which it is interested or for any other purposes and to execute and do all such deeds and things as may be requisite in relation to any such trust and to provide for the remuneration of such trustee or trustees.

(l) To institute, conduct, defend, compound or abandon any legal proceedings by or against the Company or its officers or otherwise concerning the affairs of the Company and also to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Company.

(m) To refer any claims or demands by or against the Company to arbitration.

(n) To make and give receipts, releases and other discharges for moneys payable to the Company and for the claims and demands of the Company.

(o) To determine who shall be entitled to sign on the Company's behalf bills, notes, receipts, endorsements, cheques, releases, contracts and documents.

(p) To provide from time to time, for the management of the affairs of the Company in such manner as they think fit and in particular to appoint any person to be the attorneys or agents of the Company with such powers (including power to sub-delegate) and upon such terms as may be thought fit.
The Board may submit and delegate any matter, function or responsibility to a Management Committee, Investment Committee or any other special committee established by the Board as it may deem appropriate, under guidelines which it may determine.

(q) To invest and deal with any of the moneys of the Company not immediately required for the purposes thereof upon such securities (not being shares in this Company) and in such manner as they may think fit and from time to time to vary or realise such investments, provided however, that the profits, if any, arising on the sale or change of investments of the Company, unless prohibited by any other statute for the time being in force, shall be treated as capital moneys and carried to the Capital Reserve Account

(r) To execute in the name and on behalf of the Company, in favour of any Director or other person who may incur or be about to incur any personal liability for the benefit of the Company, such mortgages of the Company's property (present and future) as they think fit and any such mortgage may contain a power of sale and such other powers, covenants and provisions as shall be agreed upon

(s) To give to any person employed by the Company a commission on the profits of any particular business or transaction or a share in the general profits of the Company and such commission or share of profits shall be treated as part of the working expenses of the Company

(t) From time to time, to make, vary and repeal rules and regulations for the conduct of the business and affairs of the Company, its officers and servants

(u) Subject to the provisions of the Act and these presents for or in relation to any of the matters aforesaid or otherwise for the purposes of the Company to enter into all such negotiations and contracts and rescind and vary all such contracts and execute and do all such acts, deeds and things in the name of and on behalf of the Company as they may consider expedient for or in relation to any of the matters aforesaid or otherwise for the purposes of the Company

(v) Before recommending any dividend and subject to the requirements of Section 205 of the Act, to set aside out of the profits of the Company such sums as they think proper for depreciation or to a Depreciation Fund or to an Insurance Fund or as a Reserve Fund or Sinking Fund or any Special Fund to meet contingencies or to repay debentures or debenture-stock or for special dividends or for equalising dividends or for repairing, improving, extending and maintaining any of the properties of the Company and for such other purposes, as the Board of Directors may, in their absolute discretion, think conducive to the interest of the Company and subject to Section 292 of the Act to invest the several sums so set aside or so much thereof as required to be invested, upon such investments (other than shares of the Company) as they may think fit and from time to time deal with and vary such investments and dispose of and apply and expend all or any part thereof for the benefit of the Company, in such manner and for such purposes as the Board of Directors, in their absolute discretion think conducive to the interest of the Company, notwithstanding that the matters, to which the Board of Directors apply or upon which they expend the same or any part thereof may be matters, to or upon which the capital moneys of the Company might rightly be applied or expended; and to divide the Reserve Fund into such parts as the Board of
Directors may think fit, and to employ the assets constituting all or any of the above funds, including the Depreciation Fund, in the business of the Company or in the purchase or repayment of debentures or debenture-stock and that without being bound to keep the same separate from the other assets and without being bound to pay interest on the same, with power however to the Board of Directors at their discretion to pay or allow to the credit of such funds interest at such rate as the Board of Directors may think proper.

(w) To pay and charge to the capital account of the Company any commission or interest lawfully payable therefrom under the provisions of Sections 76 and 208 of the Act.

(x) To comply with the requirements of any local law which in their opinion it shall in the interests of the Company be necessary or expedient to comply with.

(y) From time to time and at any time to establish any Local Board for managing any of the affairs of the Company in any specified locality in India or elsewhere and to appoint any person to be members of such Local Board or any managers or agents and to fix their remuneration.

(z) Subject to the provisions of Section 292 of the Act from time to time, and at any time to delegate to any such Local Board, or any member or members thereof of any managers so appointed any of the powers, authorities and discretions for the time being vested in the Board of Directors, and to authorise the members for the time being of any such Local Board, or any of them to fill up any vacancies therein and to act notwithstanding vacancies; and any such appointment or delegation may be made on such terms and subject to such conditions as the Board of Directors may think fit, and the Board of Directors may at any time remove any person so appointed, and may annul or vary any such delegation.

(aa) Generally subject to the provisions of the Act and these presents to delegate the powers, authorities and discretions vested in the Directors to any person, committee, firm, Company, or fluctuating body of persons.

Except as above all decisions of the Board or any Committee/s of the Board of Directors or shareholders would be determined in accordance with the provisions of the Act.

(169) Appointment of Managing Director.

(a) The Board of Directors may appoint a Director from amongst themselves as the Managing Director of the Company on such conditions and for such term not exceeding five years at a time as they may think fit and may from time to time (subject to the provisions of any contract between him or them and the Company) remove or dismiss him or them from office and appoint another or others in his or their place or places. The Managing Director shall have experience in field of the Company's business. He shall be appointed for exercising powers of management subject to the superintendence, control and direction of the Board and shall be responsible for the day-to-day management of the Company and its business. The Board has the power to prescribe and stipulate any limitations on the powers of the Managing Director.
(b) Subject to the provisions of the Act and of these presents, the Chief Executive Officer/ Director in charge/Managing Director or a Whole-time Director shall not, while he continues to hold that office, be subject to retirement by rotation under Article 150 but he shall, subject to the provisions of any contract between him and the Company, be subject to the same provisions as to resignation and removal as the other Directors of the Company and he shall ipso facto and immediately cease to be a Chief Executive Officer/Director in charge/Managing Director or Whole-time Director if he ceases to hold the office of Director for any cause, provided that if at any time the number of Directors (including the Chief Executive Officer/ Director in charge/Managing Director or Whole-time Director) as are not subject to rotation beyond one-third of the total number of the Directors for the time being, then such Chief Executive/Director in charge/Managing Director or Managing Directors or Whole-time Director or Whole-time Directors, as the Directors, may from time to time select, shall be liable to retirement by rotation to the extent that the Directors so liable to retirement by rotation shall not exceed one-third of the total number of Directors for the time being.

(c) Subject to the provisions of the Act and to the approval of the Company in General Meeting the remuneration of a Chief Executive/Director in charge/Managing Director or Whole-time Director shall from time to time be fixed by the Directors, and may be by way of fixed salary, or commission on profits of the Company, or by participation in any such profits or by any or all of those modes.

XVII MINUTES

(170) Minutes

The Company shall cause minutes of all proceedings of every General Meeting and of all proceedings of every meeting of its Board of Directors or of every Committee of the Board to be kept as and in the manner prescribed under Section 193 of the Act.

(171) Minutes to be evidence

Any such minutes, if purporting to be signed by the Chairman of the Meeting at which the proceedings take place or by the Chairman of the next succeeding meeting shall be evidence of the proceedings.

(172) Presumptions to be drawn where minutes duly drawn are signed

Where minutes of the proceedings of any General Meeting of the Company or of any meeting of the Board or of a Committee of the Directors have been made and signed in accordance with the provisions of these presents and the Act, then until the contrary is proved, the Meeting shall be deemed to have been duly called and held and all proceedings there at to have been duly taken place and in particular all appointments of Directors or Liquidators made at the meeting shall be deemed to be valid.

(173) Time and place for inspection of minute books
The books containing the minutes of the proceedings of any General Meeting of the Company shall be kept at the Registered Office of the Company and shall be open for inspection of members without charge between the hours of 2 p.m. to 5 p.m. during business hours on each working day except Saturday.

(174) Inspection of Minute Books of General Meetings by members

Any member of the Company shall be entitled to be furnished within seven days after he has made a request in that behalf to the Company with a copy of any minute referred to in Article 173 hereof on payment of cost incurred by the Company in respect of the minutes to be copied.

XVIII THE SECRETARY

(175) Secretary may be appointed

The Directors may from time to time appoint a person (hereinafter called "the Secretary") to keep the Statutory Registers, to perform any other functions which by the Act and the Articles for the time being of the Company are to be performed by the Secretary and to execute any other duties which may from time to time be assigned to the Secretary by the Directors and at their discretion the Directors may remove the person so appointed. The Directors may also from time to time appoint one or more Joint Secretaries or Additional Secretaries and Branch Office Secretary to perform any or all of the functions of the Secretary and at their discretion the Directors may remove one or more Joint Secretaries or Additional Secretaries or Branch Office Secretary so appointed.

(176) Temporary Substitute

The Directors may at any time appoint a temporary substitute for the Secretary, who shall for the purposes of these presents be deemed to be the Secretary.

XIX THE SEAL

(177) The Seal, its custody and use

The Board shall provide a Common Seal for the purposes of the Company and shall have power from time to time to destroy the same and substitute a new Seal in lieu thereof and shall provide for the safe custody of the Seal for the time being and the Seal shall never be used or moved to any other place except by the authority of the Board of Directors or a Committee of the Directors previously given. Every deed or other instrument to which the Seal of the Company shall be affixed shall be signed by at least one Director and countersigned by the Secretary or such other person as may be authorised in that behalf by the Directors, provided nevertheless that certificates of shares may be under the signatures of such persons as provided by the Companies (Issue of Share Certificates) Rules, 1960, in force from time to time. Save as otherwise expressly provided by the Act, a document or processing requiring authentication by the Company may be signed by a Director, or the Secretary or any other person authorised in that behalf by the Board and need not be under the Seal.
The Company shall keep and maintain Registers as required by the Act including the following Registers:

(a) Register of investments made by the Company but not held in its own name, as required by Section 49(7) of the Act and shall keep it open for inspection of any member or debenture holder of the Company without charge.

(b) Register of charges as required by Section 143 of the Act and shall keep it open for inspection of any creditor or member of the Company without fee and any other person on payment of a fee of Re 1/- for each inspection.

(c) Register of Members under Section 150 of the Act and shall keep the same open for inspection of any member or debenture holder without fee and of any other person on payment of a fee of Re 1/- for each inspection.

(d) Register of Debenture holders under Section 152 of the Act and shall keep it open for inspection of any member or debenture holder without fee and for any other person on payment of a fee of Re 1/- for each inspection.

(e) Register of Contracts in which Directors are interested, as required by Section 301 and shall keep it open for inspection of any member without fee.

(f) Register of Directors and Secretary, as required by Section 303 of the Act and shall keep it open for inspection of any member of the Company without charge and of any other person on payment of a fee of Re 1/- for each inspection.

(g) Registers as to the holdings by Directors of shares and debentures in the Company as required by Section 307 of the Act and shall keep it open for inspection of any member or debenture holder of the Company on any working day during the period beginning 14 days before the date of the Company's Annual General Meeting and ending 3 days after the date of its conclusion.

(h) Books of Accounts in accordance with the provisions of Section 209 of the Act.

(i) Copy of instruments creating any charge requiring registration according to Section 156 of the Act.

(j) Copies of Annual Returns prepared under Section 159 of the Act together with the copies of certificates and documents required to be annexed thereto under Section 161 of the Act.

(k) Register of Renewed and Duplicate Certificates according to Rule 7(2) of the Companies (Issue of Share Certificates) Rules, 1960.

Copies of entries in the above Registers shall be furnished to the persons entitled to the same on payment of thirty-seven paise for every hundred words or fractional part thereof required to be copied.
The Company shall give inspection of the above Registers to the persons entitled to the same on any working day between the hours of 2 pm and 5 pm except Saturday.

XXI ANNUAL RETURNS

(179) Annual Returns

The Company shall make the requisite Annual Returns in accordance with Sections 159 and 161 of the Act and shall file the same with the Registrar with three copies of the Balance Sheet and Profit and Loss Account in accordance with Section 220 of the Act.

XXII DIVIDENDS

(180) Dividends

The profits of the Company, subject to any special rights relating thereto created or authorised to be created by these presents and subject to the provisions of these presents and the Act as to the Reserve Fund, the Depreciation Fund or other special fund or funds, shall be divisible among the members in proportion to the amount of capital paid up on the shares held by them respectively.

Provided always that (subject as aforesaid) any capital paid upon a share during the period in respect of which a dividend is declared shall unless the Directors otherwise determine, entitle and shall be deemed always to have entitled the holders of such share only to an apportioned amount of such dividend as from the date of payment.

Provided that where capital is paid up on any shares in advance of calls upon the footing that the same shall carry interest, such capital shall not whilst carrying interest, confer a right to participate in profit.

(181) Declaration of dividends, restrictions on amount of Dividend

The Company in General Meeting may declare a dividend to be paid to the members according to their rights and interests in the profits and may fix the time for payment. No larger dividend shall be declared than is recommended by the Directors, but the Company in General Meeting may declare a smaller dividend.

(182) Dividend out of profits only and shall not carry interest

No dividend shall be paid otherwise than out of the profits of the year or any other undistributed profits of the Company and no dividend shall carry interest as against the Company.

(182) What to be deemed net profits

The declaration of the Directors as to the amount of net profits of the Company shall be conclusive.
(183) Dividends in proportion to amount paid up

The Company shall pay dividends in proportion to the amount paid up or credited as paid up on each share, where a larger amount is paid up or credited as paid up on some shares than on others.

(184) Interim dividends

The Directors may from time to time pay to the members such interim dividends as in their judgement the position of the Company justifies.

(185) Debts may be deducted

The Directors may retain any dividends payable on shares on which the Company has a lien and may apply the same in or towards satisfaction of the debts, liabilities or engagements in respect of which the lien exists.

(186) Dividend and call together set off allowed

Any General Meeting declaring a dividend may make a call on the members of such amount as the meeting fixes, but so that the call on each member shall not exceed the dividend payable to him and so that the call be made payable at the same time as the dividend and the dividend may, if so arranged between the Company and the member, be set off against the call. The making of a call under this Article shall be deemed ordinary business of an Annual General Meeting which declares a dividend.

(187) Effect of transfer

A transfer of shares shall not pass the right to any dividend declared thereon after such transfer and before the registration of the transfer.

(188) Retention in certain cases

The Directors may retain the dividends payable upon shares in respect of which any person is under the Transmission Clause entitled to become a member or which any person under that Article is entitled to transfer, until such person shall become a member, in respect of such shares or shall duly transfer the same.

(189) No member to receive dividend whilst indebted to the Company and the Company's right to reimbursement thereof

No member shall be entitled to receive payment of any interest or dividend in respect of his share or shares, whilst any money may be due or owing from him to the Company in respect of such share or shares or otherwise howsoever, either alone or jointly with any other person or persons; and the Directors may deduct from the interest or dividend payable to any member all sums of money so due from him to the Company.

(190) Dividend to joint holders
Any one of several persons who are registered as the joint holders of any share may give effectual receipts for all dividends and payments on account of dividends in respect of such shares.

(191) Payment by post

Unless otherwise directed any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled or in the case of joint holders, to the registered address of that one whose name stands first on the Register in respect of the joint holding; and every cheque or warrant so sent shall be made payable to the order of the person to whom it is sent. Several executors or administrators of a deceased member in whose sole name any share shall stand, shall for the purposes of this Article be deemed to be joint holders thereof.

(192) Company not liable for loss in transit etc

The Company shall not be responsible or liable for any cheque or warrant lost in transit or for any dividend lost to the member or person entitled thereto by the forged endorsement of any cheque or warrant or the fraudulent recovery thereof by any other means.

(193) Dividend to be paid within thirty days

The Company shall pay the dividend or send warrant in respect thereof to the shareholder entitled to the payment of the dividend, within thirty days from the date of the declaration of the dividend unless:

(a) Where the dividend could not be paid by reason of the operation of any law

(b) Where a shareholder has given directions regarding the payment of dividend and those directions cannot be complied with

(c) Where there is a dispute regarding the right to receive the dividend

(d) Where the dividend has been lawfully adjusted by the Company against any sum due to it from the shareholders

OR

Where for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the Company.

(194) Unclaimed dividend

If the Company has declared a dividend but which has not been paid within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, the Company shall within 7 days from the date of expiry of the said period of 30 days, open a special account in that behalf in any Scheduled Bank called "the Unpaid Dividend Account of Jorhat Shillong Expressway Limited", and deposit the amount of such unclaimed dividend in the said account.

(195) Dividend to be transferred to Investors Education and Protection Fund
Any money transferred to the unpaid dividend account of the Company which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the Company to the Investor Education and Protection Fund established under Section 205C of the Act and no claims shall lie against the fund or the Company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

XXIII RESERVE AND DEPRECIATION FUNDS

(196) Reserve Fund

After the transfer to the reserves of the Company, of such percentage of the profits of the Company as is mandatorily required to be transferred under Section 205 of the Act, the Board may from time to time before recommending any dividend set apart any such portion of the profits of the Company as they think fit as a Reserve Fund to meet contingencies or for the liquidation of any debentures, debts or other liabilities of the Company, for equalisation of dividends or for repairing, improving and maintaining any of the property of the Company and for such other purpose of the Company as the directors in their absolute discretion think conducive to the interest of the Company and may invest the several sums so set aside upon such investment (other than shares of the Company) as they may think fit and from time to time to deal with and vary such investments and dispose of all or any part thereof for the benefit of the Company and may divide the Reserve Fund to another Special Fund as they think fit with full power to transfer the whole or any portion of a Reserve Fund or a division of a Reserve Fund and also with full power to employ the Reserve Funds or any part thereof in the business of the Company separate from the other assets and without being bound to pay interest on the same with power, however to the Board in their discretion to pay or allow to the credit of such funds interest at such rate as the Board may think proper.

(197) Depreciation Fund

Over and above the mandatory requirement of providing for depreciation on accordance and subject to Section 205 of the Act, the Board may, from time to time before recommending any dividend, set apart any such portion of the profits of the Company, as they think fit, as a depreciation fund applicable at the discretion of the Directors, for providing against any depreciation in the investments of the Company or for rebuilding, restoring, replacing or for altering any part of the buildings, work, plant, machinery or other property of the Company, destroyed or damaged by fire, flood, storm, tempest, earthquake, accident, riot, wear and tear or any other means whatsoever and for repairing, altering and keeping in good condition the property of the Company or for extending and enlarging the building, machinery and property of the Company with full power to employ the assets constituting such depreciation fund in the business of the Company and that without being bound to keep the same separate from the other assets.

(198) Investment of moneys

All moneys carried to any reserve fund or depreciation fund respectively, over and above the amounts mandatorily required under Section 205 of the
Act to be carried to the said funds, shall nevertheless remain and be profits of the Company applicable subject to due provisions being made for actual loss or depreciation, for the payment of dividend and such moneys and all the other moneys of the Company may be invested by the Directors in or upon such investments or securities as they may select or may be used as working capital or may be kept at any bank on deposit or otherwise as the Directors may from time to time think proper.

XXIV CAPITALISATION

(199) Capitalisation of Reserves

(a) Any General Meeting may upon the recommendations of the Directors, resolve that any moneys, investments or other assets forming part of the undivided profits of the Company, standing to the credit of any of the Company's Reserve Funds or to the credit of the Profit and Loss Account or any Capital Redemption Reserve Fund or in the hands of the Company and available for dividend or representing premium received on the issue of shares and standing to the credit of the Share Premium Account be, subject to the provisions of Section 78 of the Act, capitalised and distributed amongst such of the shareholders as would be entitled to receive the same if distributed by way of dividend and in the same proportions on the footing that they become entitled thereto as capital and that all or any part of such capitalised fund shall not be paid in cash but shall be applied subject to the provisions contained in clause (b) hereof on behalf of such shareholders in full or towards

(i) paying either at par or at such premium as the Resolution may provide, any unissued shares or debentures or debenture-stock of the Company which shall be allotted, distributed and credited as fully paid up to and amongst such members in the proportions as aforesaid; or

(ii) paying up any amounts for the time being remaining unpaid on any shares or debentures or debenture-stock held by such members respectively; or

(iii) paying up partly in the way specified in sub-clause (i) and partly in that specified in sub-clause (ii) and that such distribution or payment shall accepted by such shareholders in full satisfaction of their interest in the said capitalised sum

(b) (i) Any moneys, investments or other assets representing premiums received on the issue of shares and standing to the credit of Share Premium Account; and

(ii) if the Company shall have redeemed any Redeemable Preference Shares, all or any part of any Capital Redemption Fund arising from the redemption of such shares, may by resolution of the Company be applied only in paying up in full or in part any new shares or any shares then remaining unissued to be issued to such members of the Company as the General Meeting may resolve up to an amount equal to the nominal amount of the shares so issued;

(c) Any General Meeting may resolve that any surplus moneys arising from the realisation of any capital asset of the Company or any investments representing the same or any other undistributed profits
of the Company not subject to charge for income-tax be distributed among the members of the footing that they receive the same as capital.

(d) For the purposes of giving effect to any such resolution under this Article, the Director may settle any difficulty which may arise in regard to the distribution of payment as aforesaid as they think expedient and in particular, may issue fractional certificates and may fix the value for distribution of any specific assets and may determine that cash payment shall be made upon the footing of the value so fixed or that fractions of less value than Rs 1/- may be disregarded in order to adjust the rights of all parties and may vest any such cash or specific assets in trustees upon such trust for the persons entitled to the dividend capitalised fund as may seem expedient to the Directors and generally may make such arrangements for the acceptance allotment and sale of such shares or other specific assets and fractional certificates or otherwise as they may think fit.

(e) If and whenever any shares become held by any member in fraction, the Directors may subject to the provisions of the Act and these presents and to the directions of the Company in General Meeting if any sell these shares which members hold in fractions for the best price reasonably obtainable and shall pay and distribute to any amongst the members entitled to such shares in due proportion the net proceeds of the sale thereof. For the purpose of giving effect to any such sale, the Directors may authorise any person to transfer the shares sold to the purchaser thereof comprised in any such transfer and he shall not be bound to see the application of such money nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

(f) Where requisite, a proper contract shall be delivered to the Registrar for registration in accordance with Section 75 of the Act and Directors may appoint any person to sign such contract on behalf of the persons entitled to the dividend or capitalised fund and such appointment shall be effected.

XXV ACCOUNTS

(200) Books of accounts to be kept

The Company shall cause to be kept proper books of account in accordance with Section 209 of the Act with respect to:

(a) all sums of moneys received and expended by the Company and the matters in respect of which receipts and expenditure take place;

(b) all sales and purchases of goods by the Company;

(c) the assets and liabilities of the Company;

(d) such particulars relating to utilisation of labour or material or to other items of cost as may be required and prescribed by the Central Government in this regard.

(201) Books where to be kept
The books of account and other books and papers shall be kept at the Registered Office of the Company or at such other place or places as the Board of Directors think fit and shall be open to inspection by any Director or any other person authorised under the Act during business hours.

(202) Books of accounts to be preserved

The books of account of the Company relating to a period of not less than eight years immediately preceding the current year together with the vouchers relevant to any entry in such books of account shall be preserved in good order.

(203) Inspection by Members

The Board of Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books and documents of the Company or any of them shall be open to the inspection of the members, and no member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by statute or authorised by the Board of Directors or by a resolution of the Company in General Meeting.

(204) Statement of Accounts to be furnished at General Meeting

The Board of Directors shall lay before each Annual General Meeting a Profit and Loss Account for the financial year of the Company and a Balance Sheet made up as at the end of the financial year which shall be a date which shall not precede the day of the meeting by more than six months or where an extension of time has been granted by the Registrar of Companies under the provisions of the Act by more than six months and the extension so granted.

(205) Balance Sheet and Profit and Loss Account

(a) Subject to the provisions of Section 211 of the Act, every Balance Sheet and Profit and Loss Account of the Company shall be in the forms set out in Part I and II respectively of Schedule VI of the Act, or as near thereto as circumstances admit.

(b) So long as the Company is a holding Company having a subsidiary, the Company shall conform to Section 212 and other applicable provisions of the Act.

(c) If in the opinion of the Board, any of the current assets of the Company have not a value on realisation in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion shall be stated.

(206) Authentication of Balance Sheet and Profit and Loss Account

(a) Every Balance Sheet and every Profit and Loss Account of the Company shall be signed on behalf of the Board of Directors by the Secretary, and by not less than two Directors of the Company, one of whom shall be a Managing Director where there is one
(b) Provided that when only one Director is for the time being in India, the Balance Sheet and Profit and Loss Account shall be signed by such Director and in such a case there shall be attached to the Balance Sheet and the Profit and Loss Account a statement signed by him explaining the reason of non-compliance with the provisions of Clause (a) above.

(207) Profit and Loss Account to be annexed and Auditors' Report to be attached to the Balance Sheet

(a) The Balance Sheet and the Profit and Loss Account shall be approved by the Board of Directors before they are signed on behalf of the Board in accordance with the provisions of this Article and before they are submitted to the Auditors for their report thereon.

(b) The Profit and Loss Account shall be annexed to the Balance Sheet and the Auditor's Report (including the Auditor's separate, special or supplementary report, if any) shall be attached thereto.

(208) Board's report to be attached to Balance Sheet

(a) Every Balance Sheet laid before the Company in General Meeting shall have attached to it a Report by the Board of Directors with respect to the state of the Company's affairs, the amounts, if any, which it proposes to carry to any Reserve in such Balance Sheet and the amount, if any, which it recommends to be paid by way of dividend and material changes and commitments, if any, affecting the financial position of the Company which have occurred between the end of the financial year of the Company to which the Balance Sheet relates and the date of the Report.

(b) The Report shall, so far as it is material for the appreciation of the state of the Company's affairs by its members, and will not in the Board's opinion be harmful to the business of the Company or of any of its subsidiaries, deal with any changes which have occurred during the financial year in the nature of the Company's business, in the Company's subsidiaries or in the nature of the business carried on by them and generally in the classes of business in which the Company has an interest.

(c) The Board shall also give the fullest information and explanations in its report or in cases falling under the proviso to Section 222 of the Act in an addendum to that report, on every reservation, qualification or adverse remark contained in the Auditor's Report.

(209) Authentication of Board's Report

The Board's Report and addendum (if any) thereto shall be signed by its Chairman if he is authorised in that behalf by the Board; and where he is not so authorised, shall be signed by such number of Directors as are required to sign the Balance Sheet and the Profit and Loss Account of the Company by virtue of Clauses (a) and (b) of Article 208.

(210) Board's power to ensure compliance of

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The Board shall have the right to charge any person not being a Director with the duty of seeing that the provisions of Article 208 are complied with.

(211) Company to comply with Section 219

The Company shall comply with the requirements of Section 219 of the Act.

XXVI AUDIT

(212) Accounts to be audited

Every Balance Sheet and Profit and Loss Account shall be audited by one or more Auditors to be appointed as hereinafter mentioned.

(213) Audit provisions

The Company at the Annual General Meeting in each year shall appoint an Auditor or Auditors to hold office from the conclusion of that meeting until the conclusion of the next Annual General Meeting and shall comply with the provisions of Sections 224, 224A to 226 and other applicable provisions in regard thereto of the Act.

The Company shall also appoint an Independent Auditor in accordance with the provisions of the Act and the Concession Agreement.

(214) Remuneration of Auditors

The remuneration of the Auditors of the Company shall be fixed by the Company in general meeting or by the Board of Directors if so authorised in this behalf by the Members in general meeting; the remuneration of the Auditors appointed to fill any casual vacancy may be fixed by the Directors.

(215) Powers and duties of Auditors

The powers and duties of the Auditors of the Company shall as be laid down in Section 227 of the Act.

(216) Audit of Branch Offices

The Company shall comply with the provisions of Section 228 of the Act in relation to the audit of the accounts of branch offices of the Company except to the extent to which any exemption may be granted by the Central Government in that behalf.

(217) Reading and inspection of Auditors' Report

The Auditor's Report shall be read before the Company in general meeting and shall be open to inspection by any member of the Company.

(218) When accounts to be deemed conclusive

Every account when audited and approved by a general meeting shall be conclusive and binding as regards any error discovered therein within the
months next after the approval thereof. Whenever any such error is discovered within that period the account shall forthwith be corrected and henceforth shall be conclusive.

XXVII SERVICE OF NOTICE, ETC.

(219) Service of documents on members by Company

A document (which shall for this purpose be deemed to include and shall include any summons, requisition, process, order, judgement, or any other document in relation to the winding up of the Company) or notice may be served by the Company on any member thereof either personally or by sending it by post to him at his registered address or if he has no registered address in India, to the address, if any, within India supplied by him to the Company for giving of notices to him.

(220) Service of documents on Company

(a) Where a document or notice is sent by post:

service thereof shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document or the notice, provided that where a member has intimated to the Company in advance that documents should be sent to him under a certificate of posting or by registered post with or without acknowledgment due and has deposited with the Company a sum sufficient to defray the expenses of doing so, service of the document or notice shall not be deemed to be effected unless it is sent in the manner intimated by the member; and

such service shall be deemed to have been effected:

in the case of a notice of a meeting at the expiration of forty-eight hours after the letter containing the same is posted;

and in any other case, at the time at which the letter would be delivered in the ordinary course of post.

(b) Advertisements

A document or notice advertised in a newspaper circulating in the neighbourhood of the Registered Office of the Company shall be deemed to be duly served on the day on which the advertisement appears, on every member of the Company who has no registered address in India and has not supplied to the Company an address within India for giving of notices to him.

(221) Service of documents by the Company on joint holders

A document or notice may be served by the Company on the joint holders of a share by serving it on the joint holder named first in the Register in respect of the share.

(222) Service of document in consequence of death or insolvency of member
A document or notice may be served by the Company on the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in prepaid letter addressed to them by name, or by the title of representatives of the deceased or assignees of the insolvent or by any like description, at the address, if any, in India supplied for the purpose by the persons claiming to be so entitled or until such an address has been supplied, by serving the document or notice in any manner in which it might have been served if the death or insolvency had not occurred.

(223) Signature on document

The signature on any document or notice to be given by the Company, may be written or printed or lithographed.

(224) Manner of service of document to Company

A document may be served on the Company or an officer thereof by sending it to the Company or officer at the Registered Office of the Company by post under a certificate of posting or by registered post or by leaving it at its Registered Office.

(225) When document deemed to be duly served

Subject to the provisions of the Act any document required to be served or sent by the Company on or to the members, or any of them, and not expressly provided for by these presents, shall be deemed to be duly served or sent if advertised once in one daily English and one daily vernacular newspaper circulating in the local area in which the registered office of the Company is situated.

(226) Transferees etc. to be bound by prior notices

Every person, who by operation of law, transfer or other means whatsoever shall become entitled to any share, shall be bound by every notice in respect of such share which, previously to his name and address and title to the share being notified to the Company, shall be duly given to the person from whom he derives his title to such share.

XXVIII SECRECY CLAUSE

(227) Members not entitled to information

Subject to the provisions of the Companies Act, no member shall be entitled except to the extent expressly permitted by the Act or these presents to enter upon the property of the Company or to require discovery of or any information respecting any detail of the Company's trading or any matter which is or may be in the nature of a trade secret, mystery of trade or secret process which may relate to the conduct of the business of the Company and which in the opinion of the Directors, it will be inexpedient in the interest of the members of the Company to communicate to the public.

(228) Indemnity
Subject to the provisions of Section 201 of the Act, every Director, Managing Director, Officer or servant of the Company shall be indemnified by the Company against, and it shall be the duty of the Directors, to pay out of the funds of the Company all costs, charges, losses and expenses which any such Officer or servant may incur or become liable to by reason of any contract entered into or act or thing done by him as such Officer or servant or in any way in the discharge of his duties including expenses and in particular and so as not to limit the generality of the foregoing provisions, against all liabilities incurred by him as such Director, Managing Director, Officer or servant in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or he is acquitted or in connection with any application under Section 633 of the Act in which relief is granted by the Court and the amount for which such indemnity is provided shall immediately attach as a lien on the property of the Company.

(229) Individual responsibility of Directors

Subject to the provisions of Section 201 of the Act, no Director, Managing Director, Officer of the Company shall be liable for the acts, receipts, neglects of any other Director or Officer or for joining in any receipt or other act for conformity or for any loss or expenses happening to the Company through the insufficiency or deficiency of title to any property acquired by order of the Directors for or on behalf of the Company or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortuous act of any person with whom any moneys, securities or effects shall be deposited or for any loss occasioned by an error of judgement, omission, default or oversight on his part or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto unless the same happens through his own dishonesty.

XXIX WINDING UP

(230) Distribution of assets

If the Company shall be wound up, and the assets available for distribution among the members as such shall be insufficient to repay the whole of the paid up capital, such assets shall be distributed so that as nearly as may be, the losses shall be borne by the members in proportion to the capital paid up, or which ought to have been paid up, at the commencement of the winding up, on the shares held by them respectively. And if in a winding up the assets available for distribution among the members shall be more than sufficient to repay the whole of the capital paid up at the commencement of the winding up, the excess shall be distributed amongst the members in proportion to the capital, at the commencement of the winding up, paid up or which ought to have been paid up on the shares issued upon special terms and conditions.

(231) Distribution in specie or kind

If the Company shall be wound up, whether voluntarily or otherwise, the liquidators may with the sanction of a special resolution, divide amongst the contributories, in specie or kind, any part of the assets of the Company and may, with the like sanction, vest any part of the assets of the Company in Trustees upon such trusts for the benefit of the contributories, or part of them, as the liquidators, with the like sanction shall think fit.
Rights of shareholders in case of sale

(a) If thought expedient any such division may subject to the provisions of the Act be otherwise than in accordance with the legal rights of the contributories (except where unalterably fixed by the Memorandum of Association) and in particular any class may be given preferential or special rights or may be excluded altogether or in part but in case any division otherwise than in accordance with the legal rights of the contributories shall be determined on, any contributory who would be prejudiced thereby shall have a right to dissent and ancillary rights as if such determination were a special resolution passed pursuant to Section 494 of the Act.

(b) In case any shares to be divided as aforesaid involve a liability to calls or otherwise any person entitled under such division to any of the said shares may within ten days after the passing of the special resolution by notice in writing direct the liquidators to sell his proportion and pay him the net proceeds and the liquidators shall if practicable act accordingly.

(c) A special resolution sanctioning a sale to any other Company duly passed pursuant to Section 494 of the Act may subject to the provisions of the Act in like manner as aforesaid determine that any shares or other consideration receivable by the liquidators be distributed amongst the members otherwise than in accordance with their existing rights and any such determination shall be binding upon all the members subject to the rights of dissent and consequential rights conferred by the said section.
We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of these Articles of Association:

<table>
<thead>
<tr>
<th>Sr</th>
<th>Name, Address, Description and Occupation of each Subscriber</th>
<th>Signature of Subscribers</th>
<th>Signature of Witness with Description &amp; Occupation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>IL&amp;FS Transportation Networks Limited (Through Mr Krishna Ghag) (authorised vide resolution dated November 12, 2009) The IL&amp;FS Financial Center, Plot C-22, G Block, Bandra Kurla Complex, Bandra (East), Mumbai -400051 (Company)</td>
<td>Sd/-</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Ramky Infra Limited (Through Mr Y Nagaraja) (authorised vide resolution dated May 26, 2010) 6-3-1089/6/10 &amp; 11, 1st Floor, Gruhshobha Avenue, Rajbhavan Road, Somajiguda, Hyderabad - 500082 (Company)</td>
<td>Sd/-</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Mr Krishna Ghag S/o Mr Dhonda Ghag E-37/0:2, Shantinketan CHS, Sector 4, Phase III, Navi Mumbai-400706, Maharashtra (Service)</td>
<td>Sd/-</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Mr Ravi Sreehari S/o Mr M Sreehari Flat 201/202, “A”Wing, West End Building, Raheja Vilas, Powai Mumbai 400002 (Service)</td>
<td>Sd/-</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Mr Ajay Menon S/o Gopal Krishna Menon 6/86, Audrabi Nagar, Worli, Mumbai-30 (Service)</td>
<td>Sd/-</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Mr Narayanan Doraiswamy S/o Mr Doraiswamy Sirrangam Flat 203, 2nd Floor, L Wing, Mayuresh Shristi Park, Lake Road, Bhandup (West), Mumbai-400078 (Service)</td>
<td>Sd/-</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Mr Chandrakanth Jagasia S/o Mr Ramchandra Jagasia Plot No. 79, First Floor, Sindhi Soc., Chembury, Mumbai 400071 (Service)</td>
<td>Sd/-</td>
<td></td>
</tr>
</tbody>
</table>

Date: June 10, 2010
Place: Mumbai
Ref: JPS/2010-11/108

To,
Shri G. K. Sahu
General Manager (BOT)
National Highways Authority of India,
G – 5 & 6, Sector – 10, Dwarka,
New Delhi – 110 075

13th July, 2010

Sub: Four-Laning of JORBAT SHILLONG section of NH – 40 under SARDP-NE on BOT (Annuity) basis – SPV Formation for Signing of Agreement


Dear Sir,

We are in receipt of the following documents in response to our letter submitted on 5th July vide ref no. JPS/2010-11/100.

5. Copy of Filed Form no. 23 with ROC.
6. Copy of Revised Articles of Association.

We have duly perused the above stated documents and are of the opinion that the comments/observations/suggestions given by our previous letter has been complied with and the submitted documents are in order.

Since the documentation for formation of SPV is in order, a Concession Agreement may be signed between Jorbat Shillong Expressway Limited and NHAI.

Thanking you and with best regards,

For JPS Associates (P) Ltd.

[Signature]

Mr. Satyapal Dubas

[Stamp]
CONCESSION AGREEMENT
(Jorabat – Shillong)

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