



Government of Karnataka

**Public Works, Ports & Inland Water Transport Department
Project Implementation Unit**

Karnataka State Highways Improvement Project-II



UPGRADING AND MAINTENANCE OF STATE HIGHWAYS UNDER DESIGN, BUILD, FINANCE, OPERATE, MAINTAIN AND TRANSFER (DBFOMT) ON ANNUITY BASIS

(Package No. WAP1)

**Design, Build, Finance, Operate, Maintain and Transfer (DBFOMT) of
Existing State Highway(SH-3 & 33) from Malavalli to Pavagada
(Approx Length 193.344 Kms) in the State of Karnataka on DBFOMT
Annuity Basis**

CONCESSION AGREEMENT

March 2014

Project Implementation Unit,
Karnataka State Highways Improvement Project
1st Floor, PWD Annex building,
KR Circle, Bangalore 560 001
Telephone: + 91 80 2212 6758/59/61
Facsimile number: + 91 80 2222 9666/22230510
Electronic mail address: piukship@gmail.com

For Mysore Bellary Highway Pvt. Ltd

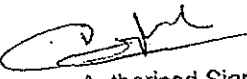
Authorised Signatory

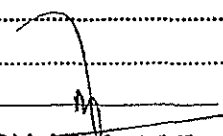
**Chief Project Officer
PIU, KSHIP,
Bangalore.**

Contents

PART I PRELIMINARY	8
ARTICLE 1.....	11
DEFINITIONS AND INTERPRETATION.....	11
1.1 DEFINITIONS.....	11
1.2 INTERPRETATION.....	11
1.3 MEASUREMENTS AND ARITHMETIC CONVENTIONS	13
1.4 PRIORITY OF AGREEMENTS AND ERRORS/DISCREPANCIES.....	13
PART II.....	14
THE CONCESSION.....	14
ARTICLE 2.....	15
SCOPE OF THE PROJECT	15
2.1 SCOPE OF THE PROJECT	15
ARTICLE 3.....	16
GRANT OF CONCESSION.....	16
3.1 THE CONCESSION	16
ARTICLE 4.....	17
CONDITIONS PRECEDENT.....	17
4.1 CONDITIONS PRECEDENT.....	17
4.2 DAMAGES FOR DELAY BY THE AUTHORITY	18
4.3 Damages for delay by the Concessionaire	
ARTICLE 5.....	20
OBLIGATIONS OF THE CONCESSIONAIRE	20
5.1 OBLIGATIONS OF THE CONCESSIONAIRE.....	20
5.2 OBLIGATIONS RELATING TO PROJECT AGREEMENTS	21
5.3 CHANGE IN OWNERSHIP	22
5.4 EMPLOYMENT OF FOREIGN NATIONALS	23
5.5 EMPLOYMENT OF TRAINED PERSONNEL.....	23
5.6 SOLE PURPOSE OF THE CONCESSIONAIRE.....	23
5.7 EMPLOYMENT OF INNOVATIVE TECHNOLOGIES	23
ARTICLE 6.....	24
OBLIGATIONS OF THE AUTHORITY	24
6.1 OBLIGATIONS OF THE AUTHORITY	24
6.2 MAINTENANCE OBLIGATIONS PRIOR TO APPOINTED DATE	25
ARTICLE 7.....	26
REPRESENTATIONS AND WARRANTIES.....	26
7.1 REPRESENTATIONS AND WARRANTIES OF THE CONCESSIONAIRE.....	26
7.2 REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY	27
7.3 DISCLOSURE.....	28
ARTICLE 8.....	29
DISCLAIMER.....	29
8.1 DISCLAIMER	29

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

PART III	30
DEVELOPMENT AND OPERATIONS	30
ARTICLE 9	31
PERFORMANCE SECURITY	31
9.1 PERFORMANCE SECURITY	31
9.2 APPROPRIATION OF PERFORMANCE SECURITY	31
9.3 RELEASE OF PERFORMANCE SECURITY	31
ARTICLE 10	32
RIGHT OF WAY	32
10.1 THE SITE	32
10.2 LICENCE, ACCESS AND RIGHT OF WAY	32
10.3 PROCUREMENT OF THE SITE	33
10.4 SITE TO BE FREE FROM ENCUMBRANCES	35
10.5 PROTECTION OF SITE FROM ENCROACHMENTS	35
10.6 SPECIAL/TEMPORARY RIGHT OF WAY	35
10.7 ACCESS TO THE AUTHORITY AND INDEPENDENT ENGINEER	35
ARTICLE 11	36
UTILITIES, ASSOCIATED ROADS AND TREES	36
11.1 EXISTING UTILITIES AND ROADS	36
11.2 SHIFTING OF OBSTRUCTING UTILITIES	36
11.3 NEW UTILITIES AND ROADS	36
11.4 FELLING OF TREES	37
ARTICLE 12	38
CONSTRUCTION OF THE PROJECT HIGHWAY	38
12.1 OBLIGATIONS PRIOR TO COMMENCEMENT OF CONSTRUCTION	38
12.2 MAINTENANCE DURING CONSTRUCTION PERIOD	38
12.3 DRAWINGS	39
12.4 TWO-LANING STANDARD OF THE PROJECT HIGHWAY	40
ARTICLE 13	41
MONITORING OF CONSTRUCTION	41
13.1 MONTHLY PROGRESS REPORTS	41
13.2 INSPECTION	41
13.3 TESTS	41
13.4 DELAYS DURING CONSTRUCTION	42
13.5 SUSPENSION OF UNSAFE CONSTRUCTION WORKS	42
13.6 VIDEO RECORDING	42
ARTICLE 14	43
COMPLETION CERTIFICATE	43
14.1 TESTS	43
14.2 COMPLETION CERTIFICATE	43
14.3 PROVISIONAL CERTIFICATE	43
14.4 COMPLETION OF PUNCH LIST ITEMS	43
14.5 WITHHOLDING OF PROVISIONAL CERTIFICATE	44
14.6 RESCHEDULING OF TESTS	44
ARTICLE 15	45
ENTRY INTO COMMERCIAL SERVICE	45
15.1 COMMERCIAL OPERATION DATE (COD)	45

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

WAP-1 Malavalli - Pavagada	Concession Agreement
15.2 DAMAGES FOR DELAY	45
ARTICLE 16.....	46
CHANGE OF SCOPE	46
16.1 CHANGE OF SCOPE	46
16.2 PROCEDURE FOR CHANGE OF SCOPE	46
16.3 PAYMENT FOR CHANGE OF SCOPE.....	47
16.4 RESTRICTION ON CERTAIN WORKS.....	48
16.5 POWER OF THE GOVERNMENT TO UNDERTAKE WORKS - DELETED	48
16.6 REDUCTION IN SCOPE OF THE PROJECT	48
ARTICLE 17.....	49
OPERATION AND MAINTENANCE.....	49
17.1 O&M OBLIGATIONS OF THE CONCESSIONAIRE	49
17.2 MAINTENANCE REQUIREMENTS	50
17.3 MAINTENANCE MANUAL.....	50
17.4 MAINTENANCE PROGRAMME	50
17.5 SAFETY, VEHICLE BREAKDOWNS AND ACCIDENTS	51
17.6 DE-COMMISSIONING DUE TO EMERGENCY.....	51
17.7 LANE CLOSURE.....	51
17.8 DAMAGES FOR BREACH OF MAINTENANCE OBLIGATIONS	52
17.9 AUTHORITY'S RIGHT TO TAKE REMEDIAL MEASURES	52
17.10 OVERRIDING POWERS OF THE AUTHORITY	53
17.11 RESTORATION OF LOSS OR DAMAGE TO PROJECT HIGHWAY	53
17.12 MODIFICATIONS TO THE PROJECT HIGHWAY	53
17.13 EXCUSE FROM PERFORMANCE OF OBLIGATIONS	54
17.14 BARRIERS AND DIVERSIONS	54
17.15 ADVERTISING ON THE SITE.....	54
ARTICLE 18.....	55
ENVIRONMENT, HEALTH AND SAFETY REQUIREMENTS.....	55
18.1 SAFETY REQUIREMENTS.....	55
ARTICLE 19.....	56
MONITORING OF OPERATION AND MAINTENANCE.....	56
19.1 MONTHLY STATUS REPORTS	56
19.2 INSPECTION	56
19.3 TESTS	56
19.4 REMEDIAL MEASURES	56
ARTICLE 20.....	57
TRAFFIC REGULATION.....	57
20.1 TRAFFIC REGULATION BY THE CONCESSIONAIRE.....	57
20.2 POLICE ASSISTANCE.....	57
20.4 RECURRING EXPENDITURE ON POLICE ASSISTANCE.....	57
ARTICLE 21.....	58
EMERGENCY MEDICAL AID.....	58
21.1 MEDICAL AID POSTS.....	58
21.2 BUILDINGS FOR MEDICAL AID POSTS	58
21.3 RECURRING EXPENDITURE ON MEDICAL AID POSTS.....	58
ARTICLE 22.....	59
TRAFFIC SAMPLING.....	59

For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

WAP-1 Malavalli - Pavagada	Concession Agreement
22.1 TRAFFIC SAMPLING.....	59
22.2 COMPUTER SYSTEMS AND NETWORK.....	59
ARTICLE 23.....	60
INDEPENDENT ENGINEER.....	60
23.1 APPOINTMENT OF INDEPENDENT ENGINEER.....	60
23.2 DUTIES AND FUNCTIONS.....	60
23.3 REMUNERATION.....	60
23.4 TERMINATION OF APPOINTMENT.....	60
23.5 AUTHORISED SIGNATORIES.....	61
23.6 DISPUTE RESOLUTION.....	61
PART IV.....	62
FINANCIAL COVENANTS.....	62
ARTICLE 24.....	63
FINANCIAL CLOSE.....	63
24.1 FINANCIAL CLOSE.....	63
24.2 TERMINATION DUE TO FAILURE TO ACHIEVE FINANCIAL CLOSE.....	63
ARTICLE 25.....	64
LEVY AND COLLECTION OF FEE.....	64
25.1 CONCESSIONAIRE'S OBLIGATION.....	64
25.2 AUTHORITY'S RIGHTS.....	64
ARTICLE 26.....	65
CONCESSION FEE.....	65
26.1 CONCESSION FEE.....	65
ARTICLE 27.....	66
LUMP SUM PAYMENT, ANNUITY.....	66
27.1 ANNUITY.....	66
27.2 PAYMENT OF ANNUITY.....	66
27.3 SUBMISSION OF INVOICE, ADJUSTMENT AND CERTIFICATION.....	66
27.4 MODE OF PAYMENT.....	67
27.5 LUMP SUM PAYMENT.....	67
ARTICLE 28.....	69
BONUS AND REDUCTION IN ANNUITY.....	69
28.1 BONUS IN ANNUITY ON ACCOUNT OF EARLY PROJECT COMPLETION.....	69
28.2 REDUCTION IN ANNUITY ON ACCOUNT OF DELAYED PROJECT COMPLETION.....	69
28.3 REDUCTION IN ANNUITY ON ACCOUNT OF NON ADHERENCE TO MAINTENANCE REQUIREMENTS.....	69
28.4 REDUCTION IN ANNUITY ON ACCOUNT OF NON-PROVISION OF ASSURED LANE AVAILABILITY.....	70
28.5 REDUCTION IN ANNUITY ON ACCOUNT OF NON-ADHERENCE TO ENVIRONMENTAL MANAGEMENT AND MITIGATION MEASURES AS PER THE EMP AND STATUTORY REQUIREMENTS.....	70
ARTICLE 29.....	71
CAPACITY AUGMENTATION.....	71
29.1 CAPACITY AUGMENTATION.....	71
ARTICLE 30.....	72
FRAUD AND CORRUPTION.....	72
30. FRAUD AND CORRUPTION.....	72

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

WAP-1 Malavalli - Pavagada	Concession Agreement
ARTICLE 31.....	74
ESCROW ACCOUNT.....	74
31.1 ESCROW ACCOUNT.....	74
31.2 DEPOSITS INTO ESCROW ACCOUNT.....	74
31.3 WITHDRAWALS DURING CONCESSION PERIOD.....	74
31.4 WITHDRAWALS UPON TERMINATION.....	75
ARTICLE 32.....	76
32.5 APPLICATION OF INSURANCE PROCEEDS.....	78
ARTICLE 33.....	79
ACCOUNTS AND AUDIT.....	79
33.1 AUDITED ACCOUNTS.....	79
33.2 APPOINTMENT OF AUDITORS.....	79
33.3 CERTIFICATION OF CLAIMS BY STATUTORY AUDITORS.....	80
33.4 DISPUTE RESOLUTION.....	80
PART V.....	81
FORCE MAJEURE AND TERMINATION.....	81
ARTICLE 34.....	82
FORCE MAJEURE.....	82
34.1 FORCE MAJEURE.....	82
34.2 NON-POLITICAL EVENT.....	82
34.3 INDIRECT POLITICAL EVENT.....	82
34.4 POLITICAL EVENT.....	83
34.5 DUTY TO REPORT FORCE MAJEURE EVENT.....	83
34.6 EFFECT OF FORCE MAJEURE EVENT ON THE CONCESSION.....	84
34.7 ALLOCATION OF COSTS ARISING OUT OF FORCE MAJEURE.....	84
34.8 TERMINATION NOTICE FOR FORCE MAJEURE EVENT.....	85
34.9 TERMINATION PAYMENT FOR FORCE MAJEURE EVENT.....	85
34.10 DISPUTE RESOLUTION.....	86
34.11 EXCUSE FROM PERFORMANCE OF OBLIGATIONS.....	86
ARTICLE 35.....	87
COMPENSATION FOR BREACH OF AGREEMENT.....	87
35.1 COMPENSATION FOR DEFAULT BY THE CONCESSIONAIRE.....	87
35.2 COMPENSATION FOR DEFAULT BY THE AUTHORITY.....	87
35.3 EXTENSION OF CONCESSION PERIOD.....	87
35.4 COMPENSATION FOR COMPETING ROADS -DELETED.....	87
35.5 COMPENSATION TO BE IN ADDITION.....	87
ARTICLE 36.....	88
SUSPENSION OF CONCESSIONAIRE'S RIGHTS.....	88
36.1 SUSPENSION UPON CONCESSIONAIRE DEFAULT.....	88
36.2 AUTHORITY TO ACT ON BEHALF OF CONCESSIONAIRE.....	88
36.3 REVOCATION OF SUSPENSION.....	88
36.4 SUBSTITUTION OF CONCESSIONAIRE.....	88
36.5 TERMINATION.....	89
ARTICLE 37.....	90
TERMINATION.....	90
37.1 TERMINATION FOR CONCESSIONAIRE DEFAULT.....	90
37.2 TERMINATION FOR AUTHORITY DEFAULT.....	92

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

WAP-1 Malavalli - Pavagada	Concession Agreement
37.3	TERMINATION PAYMENT 93
37.4	OTHER RIGHTS AND OBLIGATIONS OF THE AUTHORITY 93
37.5	SURVIVAL OF RIGHTS 94
ARTICLE 38..... 95	
DIVESTMENT OF RIGHTS AND INTEREST 95	
38.1	DIVESTMENT REQUIREMENTS 95
38.2	INSPECTION AND CURE 95
38.3	VESTING CERTIFICATE 96
38.4	ADDITIONAL FACILITIES..... 96
38.5	DIVESTMENT COSTS ETC..... 96
ARTICLE 39..... 97	
DEFECTS LIABILITY AFTER TERMINATION..... 97	
39.1	LIABILITY FOR DEFECTS AFTER TERMINATION 97
39.2	RETENTION IN ESCROW ACCOUNT 97
PART VI 98	
OTHER PROVISIONS..... 98	
ARTICLE 40..... 99	
ASSIGNMENT AND CHARGES..... 99	
40.1	RESTRICTIONS ON ASSIGNMENT AND CHARGES 99
40.2	PERMITTED ASSIGNMENT AND CHARGES 99
40.3	SUBSTITUTION AGREEMENT 99
40.4	ASSIGNMENT BY THE AUTHORITY 100
ARTICLE 41..... 101	
CHANGE IN LAW 101	
41.1	INCREASE IN COSTS 101
41.2	REDUCTION IN COSTS 101
41.3	PROTECTION OF NPV 102
41.4	RESTRICTION ON CASH COMPENSATION..... 102
ARTICLE 42..... 103	
LIABILITY AND INDEMNITY 103	
42.1	GENERAL INDEMNITY 103
42.2	INDEMNITY BY THE CONCESSIONAIRE 103
42.3	NOTICE AND CONTEST OF CLAIMS..... 104
42.4	DEFENCE OF CLAIMS..... 104
42.5	NO CONSEQUENTIAL CLAIMS 105
42.6	SURVIVAL ON TERMINATION..... 105
ARTICLE 43..... 106	
RIGHTS AND TITLE OVER THE SITE..... 106	
43.1	LICENSEE RIGHTS 106
43.2	ACCESS RIGHTS OF THE AUTHORITY AND OTHERS..... 106
43.3	PROPERTY TAXES 106
43.4	RESTRICTION ON SUB-LETTING 106
ARTICLE 44..... 107	
DISPUTE RESOLUTION..... 107	
44.1	DISPUTE RESOLUTION..... 107
44.2	MEDIATION AND AMICABLE SETTLEMENT 107

For Mysore Bellary Highway Pvt. Ltd

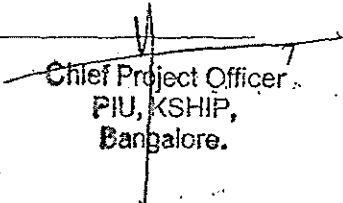
Authorised Signatory

Chief Project Officer
FIU, KSHIP,
Bangalore.

WAP-1 Malavalli - Pavagada	Concession Agreement
44.3 DISPUTE REVIEW BOARD	107
44.4 ARBITRATION.....	108
ARTICLE 45.....	111
DISCLOSURE.....	111
45.1 DISCLOSURE OF SPECIFIED DOCUMENTS	111
45.2 DISCLOSURE OF DOCUMENTS RELATING TO SAFETY.....	111
ARTICLE 46.....	112
REDRESSAL OF PUBLIC GRIEVANCES.....	112
46.1 COMPLAINTS REGISTER.....	112
46.2 REDRESSAL OF COMPLAINTS	112
ARTICLE 47.....	113
MISCELLANEOUS.....	113
47.1 GOVERNING LAW AND JURISDICTION.....	113
47.2 WAIVER OF IMMUNITY	113
47.4 DEPRECIATION	113
47.5 DELAYED PAYMENTS.....	113
47.6 WAIVER.....	114
47.7 LIABILITY FOR REVIEW OF DOCUMENTS AND DRAWINGS.....	114
47.8 EXCLUSION OF IMPLIED WARRANTIES ETC.....	114
47.9 SURVIVAL.....	114
47.10 ENTIRE AGREEMENT	115
47.11 SEVERABILITY.....	115
47.12 NO PARTNERSHIP	115
47.13 THIRD PARTIES	115
47.14 SUCCESSORS AND ASSIGNS	115
47.15 NOTICES.....	116
47.16 LANGUAGE.....	116
47.17 COUNTERPARTS	116
ARTICLE 48.....	117
DEFINITIONS	117
48.1 DEFINITIONS.....	117

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

Part I Preliminary

For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bengaluru.

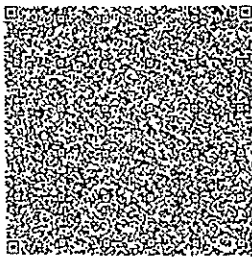


सत्यमेव जयते

INDIA NON JUDICIAL Government of Karnataka

e-Stamp

Certificate No.	: IN-KA38797761143953M
Certificate Issued Date	: 12-Mar-2014 03:53 PM
Account Reference	: NONACC (FI)/ kaksfcl08/ SANJAYNAGAR1/ KA-BA
Unique Doc. Reference	: SUBIN-KAKAKSFCL0833999229755772M
Purchased by	: MYSORE BELLARY HIGHWAY PVT LTD
Description of Document	: Article 12 Bond
Description	: CONCESSION AGREEMENT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: KARNATAKA STATE HIGHWAY IMPROVEMENT PROJECT
Second Party	: MYSORE BELLARY HIGHWAY PVT LTD
Stamp Duty Paid By	: MYSORE BELLARY HIGHWAY PVT LTD
Stamp Duty Amount(Rs.)	: 500 (Five Hundred only)



Please write or type below this line

No. PIU/KSHIP/DBF&MT/Annuitly/WAP-I/2013-14 148 dt. 24-3-2014
THIS CONCESSION AGREEMENT (the "Agreement") is entered into on this the 24th day of March, 2014

BETWEEN

1. THE GOVERNOR OF KARNATAKA represented by THE CHIEF PROJECT OFFICER, Project Implementation Unit, Karnataka State Highway Improvement Project, and having its principal office at First floor, PWD Annexe Building, KR Circle, Bengaluru - 560 001 (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;

For Mysore Bellary Highway Pvt. Ltd

Statutory Alert:

The authenticity of this Stamp Certificate should be verified at www.karnataka.gov.in on the website renders it invalid. Onus of checking the authenticity is on the users of the certificate. A complaint may be made to the Competent Authority.

Chief Project Officer

PIU/KSHIP
Bangalore

9a

AND

2. **MYSORE-BELLARY HIGHWAY PRIVATE LIMITED**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Sadbhav House, Opposite Law Garden Police Chowki, Ellisbridge, Ahmedabad -380006, Gujarat, 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.

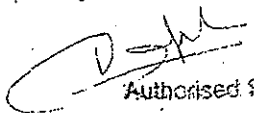
WHEREAS:


(A) The Government of Karnataka had entrusted to the Authority on of Design, Build, Finance, Operate and Maintain and Transfer (DBFOMT) of Existing State Highway (SH 3 & 33) from Malavalli to Pavagada (Approx length 193.344 kms) in the State of Karnataka on DBFOMT annuity Basis which includes additional length of 0.976 Km from NH-209 to Malavalli.

(B) The Authority had resolved to augment the Design, Build, Finance, Operate and Maintain and Transfer (DBFOMT) of Existing State Highway (SH 3 & 33) from Malavalli to Pavagada (Approx length 193.344 kms) in the State of Karnataka on DBFOMT annuity Basis in accordance with the terms and conditions set forth in this Agreement.

(C) The Authority had accordingly invited proposals by its Invitation for Qualification (the "RfQ") No. RFQ/2010-11 dated 17-02-2011 (the "Tender Notice") for qualification of bidders for Design, Build, Finance, Operate, Maintain and Transfer (DBFOMT) on Annuity basis of the above referred section of SH - 33 & 3 and had prequalified certain bidders including, inter alia, the Sadbhav Engineering Limited and GKC Projects Limited (collectively the "Joint Venture" and each member individually referred to as a "Joint Venture Member") with Sadbhav Engineering Limited as its Lead Member.

For Mysore Bellary Highway Pvt. Ltd.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

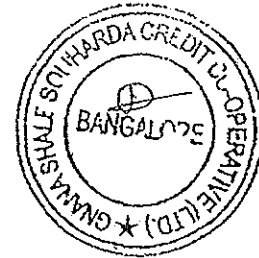
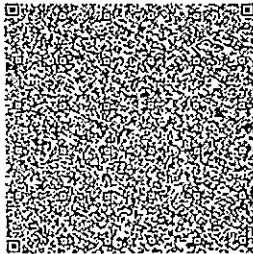


सत्यमेव जयते

INDIA NON JUDICIAL Government of Karnataka

e-Stamp

Certificate No. : IN-KA38797221294991M
Certificate Issued Date : 12-Mar-2014 03:53 PM
Account Reference : NONACC (FI)/ kaksfcl08/ SANJAYNAGAR1/ KA-BA
Unique Doc. Reference : SUBIN-KAKAKSFCL0834004419831404M
Purchased by : MYSORE BELLARY HIGHWAY PVT LTD
Description of Document : Article 12 Bond
Description : CONCESSION AGREEMENT
Consideration Price (Rs.) : 0
(Zero)
First Party : KARNATAKA STATE HIGHWAY IMPROVEMENT PROJECT
Second Party : MYSORE BELLARY HIGHWAY PVT LTD
Stamp Duty Paid By : MYSORE BELLARY HIGHWAY PVT LTD
Stamp Duty Amount(Rs.) : 500
(Five Hundred only)



-----Please write or type below this line-----

(D) The Authority had prescribed the technical and commercial terms and conditions, and invited bids, through a Request for Proposal dated 13-07-2012 ("the RfP"), from the prequalified bidders pursuant to the Tender Notice for undertaking the Project.

Chief Project Officer
PIU, KSHIP,
Bangalore.

For Mysore Bellary Highway Pvt. Ltd

Statutory Agent

The authenticity of this Stamp Certificate should be verified at www.e-stamp.com. Any discrepancy on the website renders it invalid. For details on this Certificate, please refer to the details on this Certificate.

10a

(E) After evaluation of the bids received, the Authority had accepted the bid of Joint Venture comprising Sadbhav Engineering Limited and GKC Projects Limited (the "Selected Bidder") and issued its Letter of Award No. PIU/KSHIP/DBFOMT/WAP1/LOA/2013-14/4216 dated 01.02.2014 (hereinafter called the "LOA") to the Sadbhav Engineering Limited and GKC Projects Limited Joint Venture requiring, inter alia, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue thereof.

(F) The Sadbhav Engineering Limited and GKC Projects Limited Joint Venture 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 Joint Venture 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 27.02.2014, the Concessionaire has also joined in the said request of the Joint Venture to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Joint Venture 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 Joint Venture for the purposes hereof

(H) The Authority has agreed to the said request of the Joint Venture and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOMT (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:

For Mysore Bellary Highway Pvt. Ltd

Authorized Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

106

ARTICLE I
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;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Bangalore are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer
PIU, KSHIP,
Bangalore.

- (k) 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;
- (l) 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;
- (m) the words importing singular shall include plural and vice versa;
- (n) references to any gender shall include the other and the neutral gender;
- (o) "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
- (p) "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;
- (q) 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;
- (r) 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;
- (s) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (t) 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;
- (u) 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
- (v) 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").

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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

(b) all other agreements and documents forming part hereof; i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) 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;

(e) between any value written in numerals and that in words, the latter shall prevail : and

(f) between any two Schedules, the Schedules relevant to the issue shall prevail

For Mysore Bypass Highway Pvt. Ltd

PIU, KSHIP

Authorised Signatory

Chief Project Officer¹³
PIU, KSHIP,
Bangalore.

Part II The Concession

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
P/U, KSHIP,
Bangalore.

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the "Scope of the Project") shall mean, 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 and Schedule-L;
- (b) operation and maintenance of the Project Highway in accordance with the provisions of this Agreement; and
- (c) performance and fulfillment 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.

For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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 10 (ten) 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) to allow and cooperate with 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 fulfill 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorized Signatory

Chief Project Officer 16
PIU, KSHIP,
Bangalore.

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 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) 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;
- (c) procured all Applicable Permits relating to environmental protection and conservation of the Site

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 (b) and/ or Sub-clause (c) 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.

Notwithstanding the above, the Concessionaire may, upon providing the Performance Security under Article 9 to the Authority within 60 days from date of this Agreement, at any time after the said period of 60 days, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth above within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein

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:

- (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;

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



Authorized Signatory

W

Chief Project Officer
PIU, KSHIP,
Bangalore.

- (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 Joint Venture Members, their respective confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (l) and (m) of Article 7.1 and Article 5.3 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; and
- (i) procured and furnished copies of all the insurances mentioned in Article 32 of this Agreement to the Authority.

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 Apart from 4.1.2 and 4.1.3, the Conditions Precedent to be satisfied by the Authority and the Concessionaire shall be deemed to be fulfilled only after the Dispute Review Board under Article 44.3 has been constituted.
- 4.1.5 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.
- 4.1.6 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 fulfillment 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 pay 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's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 120 (one hundred and twenty) days from the date of this agreement, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (Zero point two per cent)

WAP-1 Malavalli - Pavagada

Concession Agreement

of the Performance Security for each day's delay until the fulfillment of such Conditions
Precedent, subject to a maximum of 20% (twenty percent) of the performance security

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer. 19
PIU, KSHIP,
Bangalore.

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 (a) 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, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

The Concessionaire shall verify the adequacy of the design and ensure its performance. However if the Concessionaire is not able to ensure performance of the design, he shall submit for the review and comment of the Independent Engineer, revised designs, subject to the Standards and Specifications mentioned in Schedule D.

Provided that any change in design as approved by the Independent Engineer shall be within the Right of Way and the Annuity quoted in the financial bid submitted pursuant to the RfP.

For avoidance of doubt, it is agreed that any change in the Horizontal Alignment shall be within the Right of Way provided and the FRL's of the road and structures shall not be reduced/lowered than that provided in alignment plan and profile. It is agreed herein that the pavement crust thickness requirements in Schedule B are the bare minimum and any additional thickness shall be approved by the Independent Engineer before implementation.

(b) It is agreed herein that the revised designs submitted pursuant to sub-clause (a) above shall be submitted to the Independent Engineer for review and approval before implementation. Any time and cost implications arising on this account shall be at the risk and cost of the Concessionaire.

- 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;

For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

- (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 the 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 provisions of this Agreement; and
 - (i) transfer the Project Highway to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.
 - (j) review and verify the designs provided by the Authority for their adequacy, own the same and implement the Project in strict conformity of such designs.
- 5.1.5 It is expressly agreed between the Parties that the World Bank shall be authorized to inspect and audit the Site and/or accounts and records of the Concessionaire, as well as its sub-contractors including O&M Contractor, relating to the Project.
- 5.1.6 The Concessionaire shall ensure that none of its employees or sub-contractors including O&M Contractor, who may be engaged in future, shall be engaged in corrupt, fraudulent, collusive, coercive or obstructive practice, as defined under Fraud & Corruption Policies of the World Bank.
- 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 Save as provided in Clause 16.1.2, 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 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 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 CHANGE IN OWNERSHIP

- (a) Subject to sub-clause (b), in the case of a Concessionaire that has been set up by a Joint Venture, the Key Joint Venture Member shall, until the end of Concession Period, maintain an equity share capital not less than 26% (twenty six percent) of the subscribed and paid up equity of the Concessionaire and 5% (five percent) of the Total Project Cost.
- (b) Any Key Joint Venture Member, other than the Lead Member, may, with the prior written approval of the Authority, which shall not be unreasonably withheld, reduce its shareholding to below 26 % (twenty six percent) of the subscribed and paid up equity share capital of the Concessionaire and less than 5 % (five percent) of the Total Project Cost, after the date falling two years after the Commercial Operation Date, subject to:
- (i) all Joint Venture Members continuing to collectively hold at least 26% (twenty six percent) of the subscribed and paid up equity of the Concessionaire until the end of Concession Period and
- (ii) the Joint Venture Member who is to provide the O&M experience according to the Application submitted by the Joint Venture at the RFQ stage shall subscribe and continue to hold at least 5% (five percent) of the subscribed and paid up equity of the Concessionaire until the end of Concession Period.
- (c) In case the Selected Bidder is a single entity, such entity shall hold entire subscribed and paid-up share capital of the Concessionaire. However, it may, with the prior approval of

For Mysore Bellary Highway Pvt. Ltd

PIU, KSHIP

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

the Authority in writing, which shall not be unreasonably withheld, reduce its shareholding below the entire subscribed and paid-up equity of the Concessionaire, after a period of 2 (two) years from the date of commercial operation of the Project, subject to it continuing to hold at least 26% (twenty six percent) of the subscribed and paid up equity of the Concessionaire till the end of the Concession Period.

- (d) The Selected Bidder (all the Key Joint Venture Members collectively in case the Selected Bidder is a Joint Venture) shall be required to maintain a paid-up equity in the Concessionaire, equal to at least 18% the Total Project Cost till two years from the date of Commercial Operation of the Project.

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 envisaged herein.

5.7 Employment of Innovative Technologies

The Concessionaire may employ innovative techniques, not provided in IRC or MORTH standards with the approval of the Independent Engineer, in the implementation of the Project at its own cost and expenditure. Provided that any such technique or method shall only be implemented after approval from either IRC, MORTH subject to the condition that any delay in obtaining such approval shall be at the risk of Concessionaire only and it shall not be entitled to request grant of extension of time on the basis of such delay.

For Mysore Salary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 by the Concessionaire;
 - (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;
 - (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 discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements; and
 - (j) assist the Concessionaire in carrying out the shifting of utility services, if it so chooses to perform the same as per the provisions of Article 11.

For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

- (k) upon the Concessionaire paying the Concession Fee and performing the 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.

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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer 25
PIU, KSHIP,
Bangalore.

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 Joint Venture 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 of 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

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

(k) Deleted

(l) Sadbhav Engineering Limited and GKC Projects Limited Joint Venture and their Subsidiaries 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) Sadbhav Engineering Limited and GKC Projects Limited Joint Venture [each Joint Venture 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 and shall be jointly and severally liable for all obligations and liabilities of the Concessionaire relating to the Project till the occurrence of Financial Close ;

(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;

(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; and

(q) none of its employees or sub-contractors including O&M Contractor, as of this day, have been engaged in corrupt, fraudulent, collusive, coercive or obstructive practice, as defined under Fraud & Corruption Policies of the World Bank.

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;

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

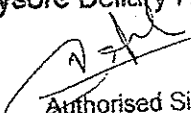
Chief Project Officer²⁷
PIU, KSHIP,
Bangalore.


- (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; and
- (j) it has good and valid right to the Site, and has power and authority to grant a licence in respect thereto to the Concessionaire

7.3 Disclosure

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

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory



Chief Project Officer
PIU, KSHIP,
Bangalore.

**ARTICLE 8
DISCLAIMER****8.1 Disclaimer**

- 8.1.1 The Concessionaire acknowledges that 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 that it shall exercise complete due diligence with respect to the information relating to any of the matters set forth in Clause 8.1.1 and hereby acknowledges that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

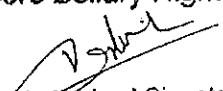

Authorized Signatory



Chief Project Officer
PIU-KSHIP,
Bangalore.

Part III

Development and Operations

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 120 (one hundred and twenty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a bank for a sum equivalent to Rs 27.99 Crores (Rupees Twenty seven Crores and ninety nine lakhs) 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.

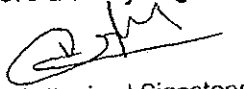
9.2 Appropriation of Performance Security


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 throughout the Construction Period and shall be released on the Commercial Operation Date, provided that 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 satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd




Chief Project Officer
PIU, KSHIP,
Bangalore.

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 Two-Laning Standard of the Project Highway as set forth in Schedule-A.

Any modification in the horizontal and vertical alignment resulting in additional land acquisition by any agency at any part and stage of the project implementation is not permitted.

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 any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

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

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

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

For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that Project Site shall be handed over to the Concessionaire in phases as given below:


- (i) 80% of the Site on or before the Appointed Date; and
- (ii) the balance Site within 6 months of the Appointed Date.

For the Avoidance of doubt, it is agreed that valid license and Right of Way with respect to the parts of the site as set forth in Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or 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 20% (twenty per cent) of the total area of the Site required and necessary for the 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.

For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 the balance 20% Site as mentioned in Clause 10.3.1 hereinabove, 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 181st (one hundred and eighty first) day of the Appointed Date as provided in Clause 10.3.1 and until such balance Right of Way is procured.

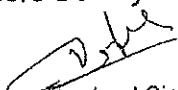
10.3.5 The Concessionaire shall complete the construction on the land included in the Appendix for which the Right of Way has been granted within 180 (one hundred and eighty) days of the Appointed Date, before Project Completion Date. However, construction on the lands for which Right of Way is granted after the period of 180 (one hundred and eighty) days from the Appointed Date shall be completed 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 due to any construction remaining incomplete on the date of Tests, on account of Right of Way not having been granted over such part of the Site. 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 for which the Right of Way is granted after 180 (one hundred and eighty) days of the Appointed Date, shall cease forthwith.

10.3.6 The Authority, shall procure the additional land required 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 date of Change of Scope Order require the Authority to initiate and undertake proceedings for acquisition of such land 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;

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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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.

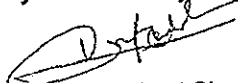
10.6 Special/temporary right of way

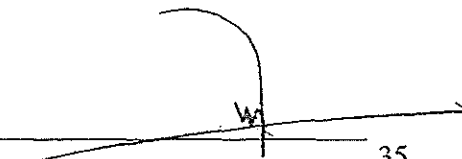
The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project Highway and the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

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorized Signatory


Chief Project Officer,
PIU, KSHIP,
Bangalore.

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

11.2.1 The shifting of utilities is undertaken by the Authority. However, if the Concessionaire encounters any unforeseen utilities including electric lines, water pipes and telephone cables etc also which causes a Material Adverse Effect on the construction, operation and maintenance of the Project Highway, the Concessionaire shall, subject to Applicable Laws and with prior approval and assistance of the Authority, undertake shifting of the same to an appropriate location or alignment within or outside the Site after notifying the Authority and the Independent Engineer. 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 given a corresponding extension of time for the completion of works.

It shall be the responsibility of the Concessionaire to shift the utilities and encumbrances which causes a Material Adverse Effect on the construction, operation and maintenance of the Project Highway arising due to the change in design proposed by the Concessionaire and prior review by the Independent Engineer. Any time and cost implications arising on this account shall be at the risk and cost of the Concessionaire.

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 entity in accordance with the amount and period as determined by the Independent Engineer. For the avoidance of doubt, any connecting road constructed prior to 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 felling and removal of trees is undertaken by the Authority. However, if the Concessionaire further identifies any trees which cause a Material Adverse Effect on the construction, operation and maintenance of the Project Highway, the Concessionaire shall, subject to Applicable Laws and with prior approval and assistance of the Authority, undertake felling and removal of the same. The cost of such felling and removal shall be borne by the Authority and in the event of any delay in felling and removing thereof, the Concessionaire shall be given a corresponding extension of time for the completion of works.

Further, it shall be the responsibility of the Concessionaire to fell and remove the trees which cause a Material Adverse Effect on the construction, operation and maintenance of the Project Highway arising due to the change in design proposed by the Concessionaire and prior review by the Independent Engineer. In the event of removal of trees thereof, the Concessionaire shall not be entitled for any corresponding extension of time and cost for the completion of works.

For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd



Chief Project Officer
PIU, KSHIP,
Bangalore.

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 construction methodology together with Drawings, quality assurance procedures, the procurement, engineering construction time schedule and deviation in designs, if any, 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 and the Independent Engineer 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;
- (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 and
- (e) Prepare a Construction Zone Safety Checklist relating to the Construction Works and submit to the Independent Engineer such checklist for review and concurrence. Failure of the Independent Engineer to review the Construction Zone Safety Checklist and convey its concurrence shall not relieve the Concessionaire of its safety zone obligations and liabilities under this Agreement.
- (f) Prepare an updated Environmental Management Plan including the action plan and checklist and submit to the Independent Engineer for review and concurrence. Failure of the Independent Engineer to review the Environmental Management Plan and convey its concurrence shall not relieve the Concessionaire of its obligations and liabilities under this Agreement.

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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

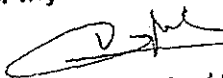
Chief Project Officer
PIU, KSHIP,
Bangalore.


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 copies each of all Drawings to the Independent Engineer for review;
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Specifications and Standards;
- (c) 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;
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;
- (f) 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 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;
- (g) 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; and

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Independent Signatory


Chief Project Officer³⁹
PIU, KSHIP,
Bangalore.

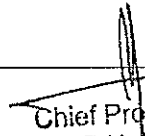
- (h) In the event that the Concessionaire intends to change the design of the Project Highway as provided by the Authority, the Concessionaire shall prepare such revised Drawings and submit the same to the Independent Engineer for review and comments. For the avoidance of doubt, it is agreed that the procedure to be followed in relation to the revised drawings shall be same as provided hereinabove.

12.4 Two-Laning Standard of the Project Highway

- 12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of Two - Laning Standard as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D and Schedule-L. The 911th (Nine hundred and eleventh) day from the Appointed Date shall be the scheduled date for completion of Two-Laning Standard (the "Scheduled Two-Laning Standard Date") and the Concessionaire agrees and undertakes that Two-Laning Standard shall be completed on or before the Scheduled Two-Laning Standard 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 Two-Laning Standard 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 Two-Laning Standard 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 Two-Laning Standard is not completed within 270 (two hundred and seventy) days from the Scheduled Two-Laning Standard 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 a review of the Construction Zone Safety Checklist 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 and the Construction Zone Safety Checklist. 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 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.

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd

41
Chief Project Officer
PIU, KSHIP,
Bangalore.

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 Two-Laning Standard is not likely to be achieved by the Scheduled Two-Laning Standard 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 Two-Laning Standard 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 Two-Laning Standard 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 or any other electronic storage format, 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 close of each quarter.

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer
PIU, KSHIP,
Bangalore.

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 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 and with the concurrence of the Authority in writing, 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

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

43
Chief Project Officer
PIU, KSHIP,
Bangalore.

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. 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. The Independent Engineer shall issue the Provisional Certificate with the concurrence of the Authority in writing, only after all the defects and deficiencies have been rectified.

- 14.5.2 In the event that the Authority and the Independent Engineer fail to concur over issuance of the Provisional Certificate under Clause 14.5.1 or Clause 14.3, then either party may refer such matter for resolution to the Dispute Review Board in accordance with Clause 44.3.

14.6 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as 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

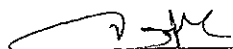
15.1 Commercial Operation Date (COD)

Two-Laning Standard 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 Two-Laning Standard 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



Authorized Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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 7 (seven) days of receipt of such notice forward the same to the Independent Engineer for its confirmation and certification. The Independent Engineer shall intimate its confirmation and certification with respect to such Change of Scope suggested by the Concessionaire, to the Authority within 10 (ten) days of forwarding the notice by the Authority.

16.1.3 The Authority shall, within 15 (fifteen) days of receipt of confirmation and certification by the Independent Engineer, 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 and after such Change of Scope has been certified by the Independent Engineer, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "Change of Scope Notice").

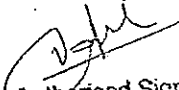
16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:

- (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. The costs of such Change of Scope shall be determined based on the National Highways current Schedule of Rates¹. For the items not envisaged in the National Highways current Schedule of Rates, such items shall be determined using the latest version of the MORTH Standard Data Book², using the material, labour, and machinery unit costs specified in the said National Highways current Schedule of Rates and as applicable to the works assigned by the Authority to its contractors along with the proposed

¹ The National Highways Current Schedule of Rates is available at office of Chief Engineer National Highways K.R Circle Bangalore

² The Morth Standard Data Book is available for sale at Secretary IRC Junnagar house New Delhi 110011

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory

46

Chief Project Officer,
PIU, KSHIP,
Bangalore.

premium/discount on such rates; provided however, that if the current National Highways Schedule of Rates and latest MORTH Standard Data Book for any item is not available, the rate for the same shall be as per the prevailing market rate; provided further 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 may, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "Change of Scope Order") requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 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. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.

For Mysore District Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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 Two-Laning Standard or violates the environment and safety requirements under the Agreement ; 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 Two-Laning Standard 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 only if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 2 (two) 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 Government to undertake works - DELETED**16.6 Reduction in Scope of the Project**

16.6.1 If the Concessionaire shall have not been able 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 such of the sum saved there from, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. It is clarified that any such reduction in Scope of Project and the sum saved there from, as determined by the Authority shall be subject to certification by the Independent Engineer.

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.

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 cooperating with 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 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

49
Chief Project Officer
PIU, KSHIP,
Bangalore.

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 Two- Laning Standard 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 measures;
- (g) intervals for major maintenance works and the scope thereof; and
- (h) lane closure schedule for each type of maintenance (length and time).

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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 obstruction 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 at its cost and expenses 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 decommissioning 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 decommissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project Highway.

17.7 Lane closure

17.7.1 The Concessionaire shall not close any lane of the Project Highway for undertaking maintenance or repair works except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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 0.15% (zero point one five per cent) of the Average Daily Annuity Fee 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 Fee, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof. Such Damages shall be recovered by the Authority in accordance with Article 28.3 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 and concurrence of the Independent Engineer to this effect, 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 necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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 of traffic from, or closing down of approach roads to the Project Highway that may cause a Material Adverse Effect on the flow of traffic to and from the Project Highway.

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 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.

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer
PIU, KSHIP,
Bangalore.

54

ARTICLE 18

ENVIRONMENT, HEALTH AND SAFETY REQUIREMENTS**18.1 Safety Requirements**

18.1.1 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 Environment, Health and safety requirements set forth in Schedule-L (the "Safety Requirements") including the Construction Zone Safety Checklist and Road Users Safety Checklist and shall comply with the Safety Requirements in accordance with the Specifications and Standards set forth in Schedules-D and L. The Concessionaire shall develop, implement and administer an "Environmental Management Plan" covering the activities required for the Construction and Operation of the Project Highway shall comply with the "Environmental Requirements" set forth in Schedule-L.


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 and Environmental Requirements

All costs and expenses arising out of or relating to Safety Requirements and/or Environmental 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.

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd


Chief Project Officer
PIU, KSHIP,
Bangalore.

55

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 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU KSHIP,
Bangalore.

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. However, all the costs and expenses related to procurement of such police assistance shall be borne by the Concessionaire.

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 each of the Traffic Aid Posts, and hand them over to the Authority not later than 30 (thirty) days prior to the Scheduled Two-Laning Standard Date. Traffic aid posts locations shall be selected in due consultation with the Independent Engineer. The Traffic Aid Post[s] 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 Two-Laning Standard 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. During the Operation Period, the Concessionaire shall also reimburse to the State Police Department or a substitute thereof the actual expenditure incurred in each Accounting Year on the pay, allowances and equipment of up to 5 (five) police personnel deployed for the traffic aid posts, and shall maintain the Traffic Aid Post buildings in accordance with Good Industry Practice. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State Police Department or a substitute thereof.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 21

EMERGENCY MEDICAL AID**21.1 Medical Aid Posts**

For providing emergency medical aid during the Operation Period, as set forth in this Agreement, the Concessionaire shall assist the State Government or a substitute thereof to be designated by the Authority in setting up and operating a medical aid post (the "Medical Aid Post") along the Project Highway with round the-clock ambulance services for victims of accidents on the Project Highway.

21.2 Buildings for Medical Aid Posts

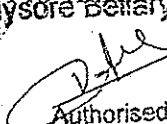
The Concessionaire shall, at its cost and in accordance with the type of designs prescribed for such buildings by the State Medical Department (or a substitute thereof to be designated by the Authority), construct an aid post building and 2 (two) residential quarters along the Project Highway, and hand them over to the Authority, not later than 30 (thirty) days prior to Scheduled Two-Laning Standard Date.

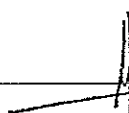
21.3 Recurring expenditure on Medical Aid Posts

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 Medical Aid Posts and ambulance, and shall maintain the Medical Aid Post buildings in accordance with Good Industry Practice. 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.

For ~~Mysore Bellary~~ Highway Pvt. Ltd

PIU-KSHIP


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 22
TRAFFIC SAMPLING


22.1 Traffic sampling


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.

22.2 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 23

INDEPENDENT ENGINEER**23.1 Appointment of Independent Engineer**

The Authority shall appoint a consulting engineering firm in accordance with the selection criteria and procedure 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 42 months. On expiry of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted.

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

In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period, Construction Period and Operation Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses shall be borne equally by the Authority and the Concessionaire in accordance with the provision of the agreement.

23.4 Termination of appointment

23.4.1 If the Authority 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 concessionaire. Following delivery of such representation, 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 Authority retains the right to terminate the services of Independent Engineer and, 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 another Independent Engineer not later than 45 days after such termination, 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 another Independent Engineer not later than 45 days after such termination, in accordance with Clause 23.1.

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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.

PIU-KSHIP


For Mysore Bellary Highway Pvt. Ltd


Chief Project Officer 61
PIU, KSHIP,
Bangalore.

Part IV Financial Covenants

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorized Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 24
FINANCIAL CLOSE

24.1 Financial Close

24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 120 (one hundred and twenty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (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 120 (one hundred and twenty) 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 Bid Security.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



Authorized Signatory

63
Chief Project Officer
PIU, KSHIP,
Bangalore.

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 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.

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer,
PIU, KSHIP,
Bangalore.

ARTICLE 26
CONCESSION FEE

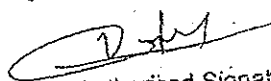
26.1 Concession Fee

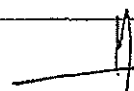
26.1.1 In consideration of the grant of Concession under this Agreement, the Concession Fee payable by the Concessionaire to the Authority shall be Re.1.00 (Rupee One) per year during the term of this Agreement.

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 due and payable.

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 27

LUMP SUM PAYMENT, ANNUITY**27.1 Annuity**

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.71.15 Crores (Rupees Seventy One Crores and Fifteen Lakhs 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 Annuity payments shall not exceed 2 (two) per year and such Annuity payments shall not exceed 15 (fifteen) over the Concession Period and will commence only after achieving COD.

27.2.2

(i) The first Annuity Payment Date shall be the date:

- (a) Six months after COD, in case COD is achieved on Scheduled Two-Lane Standard date.
- (b) Six months after Scheduled Two-Lane Standard date, In case COD is achieved before Scheduled Two-Lane Standard date.

(ii) In case COD is achieved after Scheduled two lane date, the first Annuity Payment Date shall be next Annuity Payment date provided in schedule M which falls after the COD.

For avoidance of doubt it is agreed that the first Annuity Payment shall be the product of Average daily Annuity and the number of days between the COD and the first Annuity Payment date. Each Annuity payment period shall be deemed to be a period of 6 (six) calendar months from the preceding Annuity Payment date.

27.2.3 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.

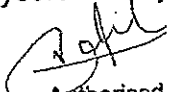
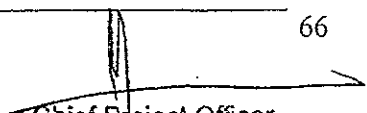
27.3 Submission of invoice, adjustment and certification

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.

PIU-KSHIP

66

For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory
Chief Project Officer
PIU, KSHIP,
Bangalore.

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.

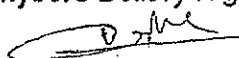
27.5 Lumpsum Payment

The Concessionaire shall be entitled to receive Specified fixed lumpsum payments (hereinafter the "Lumpsum Payment"), during the Construction Period in Five installments as below:

	Lumpsum Payment (during construction period)					
	First Installment	Second Installment	Third Installment	Fourth Installment	Fifth Installment	Total
WAP 1	Rs 23.921 Crs	Rs 59.802 Crs	Rs 35.882 Crs	Rs 59.802 Crs	Rs 59.802 Crs	Rs 239.209 Crs

The First installment of the Lumpsum Payment will be made to the Concessionaire upon completion of 10percent of the project road length as per the Road Cross Sections indicated in

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

schedule B in the minimum continuous stretches of 5 Kms and certification of Independent Engineer to that effect

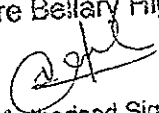
The Second installment of the Lumpsum Payment will be made to the Concessionaire upon the completion of 35 percent of the project road length as per the Road Cross Sections indicated in schedule B in minimum continuous stretches of 10 Kms and certification by the Independent Engineer to that effect and 35 percent drawdown on equity required for project implementation and submission by the Concessionaire to the Independent Engineer of a certificate by the Statutory Auditor of the Concessionaire to such effect; and Receipt of Certificate from the Escrow Bank to that effect.


The Third installment of the Lumpsum Payment will be made to the Concessionaire upon the completion of 50 percent of the project road length as per the Road Cross Sections indicated in schedule B in minimum continuous stretches of 10 Kms and certification by the Independent Engineer to that effect and 50 percent drawdown on equity required for project implementation and submission by the Concessionaire to the Independent Engineer of a certificate by the Statutory Auditor of the Concessionaire to such effect; and Receipt of Certificate from the Escrow Bank to that effect.

The Fourth installment of the Lumpsum Payment will be made to the Concessionaire upon the completion of 75 percent of the project road length as per the Road Cross Sections indicated in schedule B in minimum continuous stretches of 10 Kms and certification by the Independent Engineer to that effect and 75 percent drawdown on equity required for project implementation and submission by the Concessionaire to the Independent Engineer of a certificate by the Statutory Auditor of the Concessionaire to such effect; and Receipt of Certificate from the Escrow Bank to that effect.

The Fifth installment of the Lumpsum Payment will be given on COD

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 Two-Laning Standard Date then 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 Two-Laning Standard Date, as certified by the Independent Engineer.

28.1.3 DELETED

28.2 Reduction in Annuity on account of delayed Project Completion

28.2.1 In case the Concessionaire achieves COD after to the Scheduled Two-Laning Standard Date then 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 Two-Laning Standard Date.

28.2.3 The number of days by which COD exceeded the Scheduled Two-Laning Standard 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 28.2.3 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

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 the 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.
- 28.4.4 It is clarified that reduction in Annuity of Concessionaire under this clause, for Actual Lane Availability being below Assured Lane Availability shall not include the Damages for breach of maintenance obligations under Clause 17.8.

28.5 Reduction in Annuity on account of non-adherence to Environmental Management and mitigation measures as per the EMP and statutory requirements

- 28.5.1 If in an Annuity Payment Period, the Concessionaire fails to implement the Project Highway in accordance with the EMP and the statutory requirements as provided in Schedule L, then it shall be liable for payment of Damages in accordance with following Article 28.5.2. 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.
- 28.5.2 In the event that the Concessionaire fails to adhere to EMP and statutory requirements and fails to cure within a reasonable period as instructed by the Independent Engineer, 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 percent) of Average Daily Annuity Fee, and (b) 0.1% (zero point one percent) 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 this Clause.

ARTICLE 29

CAPACITY AUGMENTATION**29.1 Capacity Augmentation**

- 29.1.1 The Authority may, following a detailed traffic study conducted by it, at any time after [6th] anniversary of the COD decide to augment/ increase the capacity of the Project Highway (the "Capacity Augmentation") in a manner found most appropriate by the Authority in its sole discretion with a view to provide the desired level of service (LOS 'C' as per IRC 64 guidelines) to the Users of the Project Highway.
- 29.1.2 Notwithstanding anything contrary contained in this Agreement, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award such work of Capacity Augmentation to any person on the basis of open competitive bidding.
- 29.1.3 In case the Concessionaire (i) chooses not to submit its proposal for Capacity Augmentation or (ii) is not the preferred bidder, Authority shall be entitled to terminate this Agreement upon payment to the Concessionaire of the Termination Payment specified under 29.1.4.
- 29.1.4 The Termination Payment referred to in preceding Clause above shall be, in an amount equal to:
- (a) Debt Due 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 not be deducted from the Debt Due; and
 - (b) 110% (one hundred and ten percent) of the Adjusted Equity.

ARTICLE 30

FRAUD AND CORRUPTION

30. FRAUD AND CORRUPTION

30.1 As per the World Bank's policy on Fraud and Corruption, the Borrowers (including beneficiaries of Bank loans), as well as Bidders, suppliers, contractors, Concessionaires and their agents (whether declared or not), personnel, subcontractors, sub-consultants, service providers or suppliers under Bank-financed contracts, are required to observe the highest standard of ethics during the procurement and execution of such contracts³. In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice"⁴ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) "fraudulent practice"⁵ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) "collusive practice"⁶ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iv) "coercive practice"⁷ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (v) "obstructive practice" is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights.

³ In this context, any action taken by an Applicant, bidder, supplier, contractor, Concessionaire or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees to influence the procurement process or contract execution for undue advantage is improper.

⁴ "another party" refers to a public official acting in relation to the procurement process or contract execution. In this context, "public official" includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

⁵ a "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

⁶ "parties" refer to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁷ a "party" refers to a participant in the procurement process or contract execution.

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

- (b) will reject a proposal for award if it determines that the Concessionaire has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the Project in question;
- (c) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the World Bank to remedy the situation;
- (d) will sanction an entity or individual, at any time, in accordance with prevailing Bank's sanctions procedures⁸, including by publicly declaring such entity or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated⁹ sub-contractor, consultant, manufacturer or supplier, or service provider, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and

30.2 The Concessionaire agrees to adhere to and abide by Fraud and Corrupt Practice policies of the World Bank.

⁸ A firm or an individual may be declared ineligible to be awarded a Bank-financed contract upon completion of the Bank's sanctions proceedings as per its sanctions procedures, including inter alia: (i) temporary suspension or early temporary suspension in connection with an ongoing sanctions proceedings; (ii) cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks; and (iii) the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption.

⁹ A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has: (i) either been included by the bidder in its qualification application or bid because it brings specific and critical experience and knowhow that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

For Mysore Bellary Highway Pvt. Ltd

PIU, KSHIP

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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.
- 31.1.3 The Concessionaire will be required to maintain a 'Safety Fund' as a sub-account of the Escrow Account in the manner detailed out in the Escrow Agreement. The Safety Fund shall be transferred to the Authority by the Concessionaire on the Commercial Operation Date.

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) Premium due and payable to the Government- 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.

For PIU, KSHIP
Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 32

INSURANCE

32.1 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"). For the avoidance of doubt, as a minimum, the Concessionaire shall maintain the insurances set forth below in the sums and with the deductibles and other conditions specified in the Concession Agreement. The identity of the insurers and the form of the policies shall be subject to the prior approval of the Authority who shall not unreasonably withhold such approval. The Concessionaire shall submit appropriate certificates of insurance demonstrating that the Concessionaire has met its obligations pursuant to this Article 32 to the Authority no later than the Appointed Date.

Cargo Insurance During Transport

Covering loss or damage, occurring while in transit from the Concessionaire's or Subcontractor's works or stores until arrival at the Site, to the Plant and Equipment, Concessionaire's Equipment (Design-Build) and Concessionaire's Equipment (Operations), including spare parts there for;]

Project Highway All Risks Insurance

Covering physical loss or damage to the equipment and works on the Site occurring prior to the Completion of the Concession Period;

Third Party Liability Insurance

Covering bodily injury or death suffered by Third Parties, including the Authority's personnel, and loss of or damage to property occurring in connection with the Project Highway;

Professional Liability Insurance

Covering loss or damage by reason of professional negligence in the design, construction and operation of the Site and works;

Automobile Liability Insurance

Covering use of all vehicles used by the Concessionaire or its Subcontractors, whether or not owned by them, in connection with the Services and execution of the Contract;

Workers' Compensation

In accordance with the requirements of the Applicable Law; and

Employer's Liability

In accordance with the requirements of the Applicable Law.

32.2 The Authority shall be named as co-insured under all insurance policies taken out by the Concessionaire, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Concessionaire's Subcontractors shall be named as co-insured under all insurance policies taken out by the Concessionaire pursuant to Article 32, [except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances]. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Agreement shall be waived under such policies.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer
PIU, KSHIP,
Bangalore.

32.3 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 and copies of insurance policies in respect of such insurance.

32.3.1 The Concessionaire shall ensure that, where applicable, the Subcontractors take out and maintain in effect adequate insurance policies for their employees and vehicles and for work executed by them under the Agreement, unless such Subcontractors are covered by the policies taken out by the Concessionaire.

32.3.2 If the Concessionaire fails to take out or maintain in effect the insurances referred to in Article 32.1, the Authority may take out and maintain in effect any such insurances and may from time to time deduct from any amount due to the Concessionaire under the Agreement any premium that the Authority shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Concessionaire.

32.3.3 When each insurance premium has been paid, the Concessionaire shall submit a copy of receipts to the Authority and shall notify the Authority's Representative that it has done so within 15 days of payment of such premium.

32.3.4 The Concessionaire shall comply with the conditions stipulated in each of the insurance policies. The Concessionaire shall make no material alteration to the terms of any insurance without the prior approval of the Authority. If an insurer makes, or purports to make, any such alteration, the Concessionaire shall notify the Authority immediately.

32.3.5 Unless otherwise provided in the Agreement, the Concessionaire shall prepare and conduct all and any claims made under the policies effected by it pursuant to this Article 32, and all monies payable by any insurers shall be paid to the Concessionaire. The Authority shall give to the Concessionaire all such reasonable assistance as may be required by the Concessionaire. With respect to insurance claims in which the Authority's interest is involved, the Concessionaire shall not give any release or make any compromise with the insurer without the prior consent of the Authority.

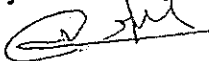
32.3.6 Nothing in this article 32 limits the obligations, liabilities or responsibilities of the Concessionaire, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Concessionaire.

32.3.7 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.

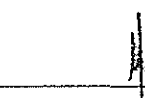
32.4 The Concessionaire shall take out and maintain the following insurance policies in the specified sums and with the specified deductibles as set out below:

- (a) Cargo Insurance During Transport: Equipment/ Machinery Invoice value.
- (b) Installation All Risks Insurance: Total Project Cost
- (c) Third Party Liability Insurance: Minimum Rs 20,00,000/- per occurrence, with the number of occurrences unlimited.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd.



Authorised Signatory

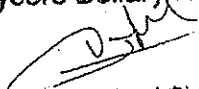

Chief Project Officer
PIU, KSHIP,
Bangalore.

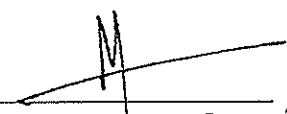
- (d) Professional Liability Insurance: Minimum Rs.10 Crores per occurrence, with the number of occurrences unlimited.
- (e) Automobile Liability Insurance: Value at market rates of vehicles
- (f) Worker's Compensation: In accordance with the requirements of the Applicable Law of India
- (g) Authority's Liability: In accordance with the requirements of the Applicable Law of India

32.5 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 in the Financing Agreements.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorized Signatory


Chief Project Officer. 78
PIU, KSHIP,
Bangalore.

ARTICLE 33
ACCOUNTS AND AUDIT

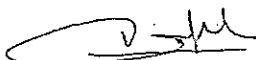
33.1 Audited accounts

- 33.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Annuities and other revenues derived/collected by it from or on account of the Project Highway and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts 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 Within the time period specified under Clause 33.1.1, 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, (c) such other information as the Authority may reasonably require.
- 33.1.4 It is expressly agreed between the Parties that the World Bank shall be authorized to inspect and audit the Site and/or accounts and records of the Concessionaire, as well as its sub-contractors including O&M Contractor, relating to the Project.

33.2 Appointment of auditors

- 33.2.1 Authority and the Concessionaire by mutual agreement shall select a one reputable firm registered with the Institute of Chartered Accountants of India empanelled with the Comptroller and Auditor General of India (the "Panel of Chartered Accountants"), in accordance with the criteria set forth in Schedule-T. However, if the Concessionaire already has a Statutory Auditor appointed in accordance with the Companies Act, 1956, it shall submit to the Authority the details of such Statutory Auditors. The Authority may, at its discretion either accept the appointment of existing Statutory Auditors or require the Concessionaire to replace its existing Statutory Auditors with another Statutory Auditors which shall be a firm chosen by it from the Panel of Chartered Accountants. 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from 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.


33.3 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, 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.

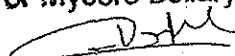
PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

Part V
Force Majeure and Termination

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

81

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 judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

34.3 Indirect Political Event

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

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer
PIU, KSHIP,
Bangalore.

- (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:

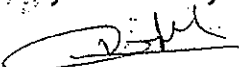
- (a) Change in Law, only if consequences thereof cannot be dealt with under in accordance with the provisions of Article 41 and its effect, in financial terms, exceeds the sum specified in Clause 41.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights 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 and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

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:

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd



Authorized Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

- (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 Upon the occurrence of any Force Majeure Event after the Appointed Date but 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.

34.6.3 It is agreed that no extension in Concession Period shall be granted in case of Force Majeure Event occurs after the COD

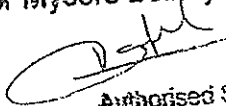
34.7 Allocation of costs arising out of Force Majeure

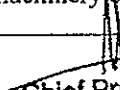
34.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

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; provided that the Concessionaire's liability in such a case would be limited to the damages of the physical assets like plant and machinery owned by it.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

- (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 on account of Damages under the Agreement 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.

Notwithstanding anything hereinabove, the Authority will continue to make the Annuity payments to the Concessionaire during the subsistence of Force Majeure Event subject to the fact that in case the Force Majeure event results in partial lane closure below the Assured Lane Availability, the Concessionaire shall be entitled to reduced Annuity in accordance with Clause 28.4. However, in case the Force Majeure event results in total Lane Closure except De-commissioning due to emergency under Clause 17.6, the Concessionaire shall not be eligible to receive any Annuity during such period of closure.

- 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) days 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 the Debt Due 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:

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorized Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

(a) Debt Due 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 not be deducted from the Debt Due; and

(b) 110% (one hundred and ten percent) of the Adjusted Equity.

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 -DELETED**35.5 Compensation to be in addition**

Compensation payable under this Article 35 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorized Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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 copied to the Independent Engineer, setting out the applicable Concessionaire Default, , 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.

36.4 Substitution of Concessionaire

At 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, 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer
PIU, KSHIP,
Bangalore.

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.

For Mysore Bellary Highway Pvt. Ltd.

PIU-KSHIP

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

89

ARTICLE 37
TERMINATION

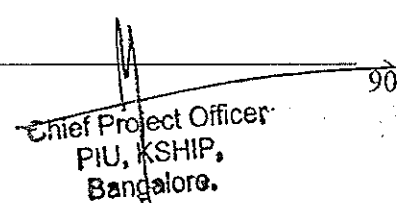
37.1 Termination for Concessionaire Default

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 material breach of the Maintenance Requirements or health, environment and safety requirements as the case may be;
- (h) the Concessionaire has failed to make any material 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;

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

- (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 of Ownership has occurred in breach of this Agreement
- (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, wound-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 reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (iii) 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 written statement which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

(v) the Concessionaire has failed to fulfill 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, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "Authority Default") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- (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.

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer
PIU KSHIP,
Bangalore.

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 90% (ninety per cent) of the Debt Due 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 not be deducted from the Debt Due. 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:

(a) Debt due 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 not be deducted from the Debt Due; and

(b) 120% (One hundred and twenty per cent) of the Adjusted Equity.

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;

For Mysore Bellary Highway Pvt. Ltd

PIU-KSHIP

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.


(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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 39 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 38.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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 this Article 38, the Dispute Resolution Procedure shall apply.

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, 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 enjoy 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



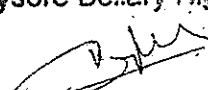
Authorized Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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.Crores) 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 to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer
PIU, KSHIP,
Bangalore.

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.

For Mysore Bellary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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, 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 Article 42, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd.



Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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, authorizing 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 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).

For Mysore Bellary Highway Pvt. Ltd



Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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 include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, 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.

For ~~Mysore~~ Bellary Highway Pvt. Ltd



Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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

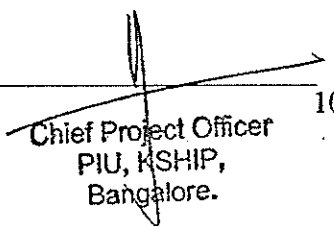
The Concessionaire shall not be liable to pay any property taxes for the Site.

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 all or any part of the Project Highway.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 through mediation in accordance with 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.

Unless the Contract has already been abandoned, repudiated or terminated, the Concessionaire shall continue to proceed with the Works/ perform its obligations in accordance with this Agreement during the resolution of the Dispute.

44.2 Mediation and Amicable Settlement

In the event of any Dispute between the Parties, either Party shall call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer the dispute shall be referred to the Dispute Review Board in accordance with the provisions of Clause 44.3.

44.3 Dispute Review Board

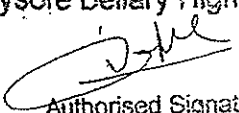
44.3.1 (a) The Parties shall appoint a Dispute Review Board comprising of three (3) suitably qualified persons (the "DRB Members") each of whom shall be fluent in English with a professional experience in the matters with respect to contractual obligations in construction and operation of highways, by the Appointed Date, wherein each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.


(b) The terms of the remuneration of each of the three members, including the remuneration of any expert whom the Dispute Review Board consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration. The other terms and conditions of the appointment shall be substantially in the form appended to this Agreement as General Terms and Conditions of appointment (Schedule - N) and shall be appended to the appointment letter.

(c) If at any time the Parties so agree, they may jointly refer a matter to the Dispute Review Board for it to give its opinion. Neither Party shall consult the Dispute Review Board on any matter for an opinion without the agreement of the other Party.

(d) If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the DRB Members are appointed within 42 days of such death, disability, resignation or termination.

PTU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

(e) The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Authority or the Concessionaire acting alone. Unless otherwise agreed by both Parties, the appointment of the Dispute Review Board (including each member) shall expire on termination of this Agreement.

44.3.3 (a) If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Agreement, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Independent Engineer, either Party may refer the dispute in writing to the Dispute Review Board for its decision, with copies to the other Party and the Independent Engineer. Such reference shall state that it is given under this Clause.

(b) The Dispute Review Board shall be deemed to have received such reference on the date when it is received by the chairman of the Dispute Review Board. Both Parties shall promptly make available to the Dispute Review Board all such additional information, further access to the Site, and appropriate facilities, as the Dispute Review Board may require for the purposes of making a decision on such dispute. The Dispute Review Board shall be deemed to be not acting as arbitrators.

(c) Within 84 days after receiving such reference, or within such other period not exceeding 30 days as may be proposed by the Dispute Review Board and approved by both Parties, the Dispute Review Board shall give its decision, which shall be reasoned and shall state that it is given under this Clause 44.3. The decision shall be binding on both Parties, who shall promptly give effect to it, provided that the Concessionaire shall continue to proceed with the Works/ perform its obligations in accordance with this Agreement.


44.3.4 (a) If either Party is dissatisfied with the Dispute Review Board's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the Dispute Review Board fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

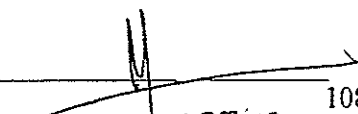
(b) In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. If the Dispute Review Board has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the Dispute Review Board's decision, then the decision shall become final and binding upon both Parties.

44. 4 Arbitration

44.4.1 Any Dispute which is not resolved in the manner provided in Clause 44.2 and in respect of which the Dispute Review Board's decision (if any) has not become final and binding, shall be finally decided by reference to arbitration by an arbitration panel appointed in accordance with Clause 44.4.

For ^{PIU-KSHIP} Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

44.4.2 (a) The arbitration panel shall be constituted with three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected.

(b) The arbitration panel may retain the services of financial and technical consultants, if it so deems appropriate.

(c) The arbitration panel shall endeavour to make an award on any Dispute referred to it within a period of ninety (90) Days from the date of its first meeting. However such period may be extended by mutual agreement of the parties to the dispute or as the arbitration panel deems fit.

(d) The costs and expenses of the arbitration panel shall be equally shared between the arbitrating Parties; provided however that the arbitration panel shall be entitled to decide on the costs of the arbitration procedure.

44.4.3 (a) Where the Concessionaire is controlled by shareholder(s) incorporated outside India, arbitration shall be international commercial arbitration with proceedings administered by the Singapore International Arbitration Centre (SIAC) in accordance with UNCITRAL arbitration rules, the place of arbitration shall be Singapore and the arbitration shall be conducted in English. In relation to arbitration proceedings under this article 44.4.4(a), the Parties hereby expressly exclude the application of Part I of the Arbitration and Conciliation Act, 1996, and

(b) Where the Concessionaire is controlled by shareholder(s) incorporated in India, arbitration shall be with conducted in accordance with the Arbitration and Conciliation Act, 1996. For arbitration proceedings under article 44.4.4(b), the venue of arbitration shall be Bangalore only and the arbitration proceedings shall be conducted in English language. The arbitration panel shall have the powers to pass such interim orders to the extent permissible under the Arbitration and Conciliation Act, 1996.

44.4.4 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Independent Engineer, and any decision of the Dispute Review Board, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Independent Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

44.4.5 Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the Dispute Review Board to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the Dispute Review Board shall be admissible in evidence in the arbitration.

44.4.6 Arbitration may be commenced at any time during the Concession Period. The obligations of the Parties, the Independent Engineer and the Dispute Review Board shall not be altered by reason of any arbitration being conducted during the progress of the Works.

44.4.7 In the event that a Party fails to comply with a final and binding Dispute Review Board decision, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration.

For Mysore Battery Highway Pvt. Ltd



Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

- 44.4.8 The arbitrators shall make a reasoned award (the "Award"). Any 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.
- 44.4.9 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.
- 44.4.10 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd.

Authorised Signatory

Chief Project Officer
PIU-KSHIP,
Bangalore.

110

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 its project office and Concessionaire's Registered Office. The Concessionaire shall prominently display at appropriate places 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

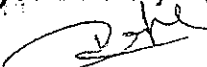
The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project Highway, free of charge, during normal business hours on all working days, at the Concessionaire's Project Office except the documents of the Concessionaire required to be maintained at the Registered Office under the Companies Act, 1956. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

45.3 Notwithstanding the provisions of Article 45.1 and 45.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.*Explanation:*

The expression 'Protected Documents' shall mean such of the Specified Documents or documents referred to in Articles 45.1 and 45.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd



Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 46

REDRESSAL OF PUBLIC GRIEVANCES

46.1 Complaints Register

46.1.1 The Concessionaire shall maintain a public relations office at its Site office to be located along the Project Highway and easily accessible to the Users of the Project Highway, 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 appropriate places 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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer
PIU, KSHIP,
Bangalore.

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 Bangalore 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-DELETED**47.4 Depreciation**

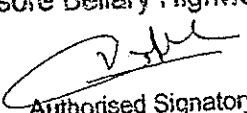
47.4.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in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


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

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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 and the Independent Engineer shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Subclause (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

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

- (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 be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

For Mysore Seelary Highway Pvt. Ltd

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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 Bangalore 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 Bangalore 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.

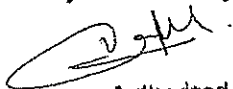
47.16 Language

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.

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



Authorized Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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 0.83% (zero point eight three 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 duration, if any, for which the Concession Period is extended, but the revision on account 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;

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer 117
PIU, KSHIP,
Bangalore.

"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.

"Annuity Payment Period" shall have the meaning ascribed to it in Clause 27.2.2.

"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;

"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 agreements, 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 authorized 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 of first Annuity to be paid to the Concessionaire divided by 180 (one hundred and eighty) days;

"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;

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer
PIU, KSHIP,
Bangalore.

"Bid" means the documents in their entirety comprised in the bid submitted by the Sadbhav Engineering Limited and GKC Projects Limited Joint Venture in response to the Tender Notice in accordance with the provisions thereof;

"Bid Security" means the security provided by the Sadbhav Engineering Limited and GKC Projects Limited Joint Venture to the Authority along with the Bid in a sum of Rs.11.20 crore (Rupees Eleven crores and twenty lakhs), in accordance with the Tender Notice, and which is to remain in force until substituted by the Performance Security;

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

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

- (a) the enactment of any new Applicable Law;
- (b) the repeal, modification or re-enactment of any existing Applicable Law;
- (c) the commencement of any Applicable 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 judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

"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;

"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;

"Construction Zone Safety Checklist" shall mean the checklist regarding construction zone safety, as provided under Schedule L.

"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:

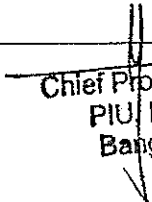
- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "principal") but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date,;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Subclause (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 pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority 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;

provided further that the Lumpsum Payments shall not be included in the principal, for determining the amount as provided in sub-clause (a) above;

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU KSHIP,
Bangalore.

"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;

"Environmental Requirements" means all the environmental management measures which are included in the Clearance issued under the EIA notification as well as Consent/Authorization under the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 or the Environment (Protection) Act, 1985, issued by the respective statutory bodies for activities to be undertaken for the development, construction, and operation of the Project Highway.

"Environmental Management Plan" means the plan prepared by the Concessionaire as described in Schedule L, in order to ensure compliance with Environmental Requirements.

"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, but excludes a condition or situation resulting from a Force Majeure Event;

"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;

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorized Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

"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;

"Estimated Construction Cost" shall mean the cost of the construction works as estimated and provided in the RFP exclusive of the financing costs, physical and price contingencies;

"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 fulfillment 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;

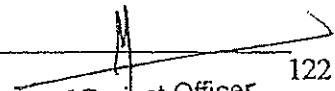
"Financial Package" means the financing package indicating the total capital cost of Two-Laning Standard and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and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

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

"Two-Laning Standard" or "Two-Lane Standard" means the construction and completion of all works included in or constituting a Two-Lane Standard 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 Karnataka;

"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 and applicable, as determined by the Independent Engineer, 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 applicable, as determined by the Independent Engineer, and payable in relation to such act or event;

"Joint Venture" shall have the meaning set forth in Recital (C);

"Joint Venture Member" means a company specified in Recital (C) as a member of the Joint Venture;

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer¹²³
PIU, KSHIP,
Bangalore.

"Key Joint Venture Member" means a Joint Venture Member, who has at the date of this Agreement an equity share of not less than 26% (twenty six percent) of the subscribed and paid up equity of the Concessionaire;

"Lead Member" means a Joint Venture Member, who has been provided irrevocable authority through a power of attorney executed in its favour by each of the other Joint Venture Members, to conduct all business for and on behalf of the Joint Venture during the execution of the Project.;

"LOA" or "Letter of Award" means the letter of award 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;

"MORTH" means the Ministry of Shipping, 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;

"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 or incidental to such operation and maintenance, and provision of services and facilities, in accordance with the provisions of this Agreement;

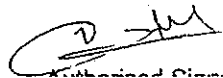
"O&M Contract" means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

"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, 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

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd



Authorized Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

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;

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

"PCU" shall have the meaning 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 over the Site in the form of licence, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road overbridges, drainage works, traffic signals, sign boards, kilometer stones, 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 Two-Laning Standard 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 SH-33 & SH-3 from Malavalli to Pavagada (approx length 193.344 Kms) which includes additional length of

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd

Chief Project Officer
PIU, KSHIP,
Bangalore.

0.976 Km from NH-209 to Malavalli in the State of Karnataka on DBFOMT Annuity Basis 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 Bangalore by the State Bank of India;

"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, easement, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project Highway in accordance with this Agreement;

"Road Users Safety Checklist" shall mean the checklist regarding road users' safety, as provided in Schedule L.

"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;

"Scheduled Two-Laning Standard Date" shall have the meaning set forth in Clause 12.4.1;

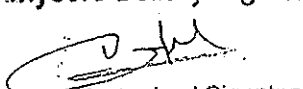
"Scope of the Project" shall have the meaning set forth in Clause 2.1;


"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 *parri passu* charge on the assets, rights, title and interests of the Concessionaire;

"Site" shall have the meaning set forth in Clause 10.1;

PIU-KSHIP

For Mysore Bellary Highway Pvt. Ltd




Chief Project Officer
PIU, KSHIP,
Bangalore.

"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 State of Karnataka and **"State Government"** means the Government of Karnataka;

"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;

"Subsidiary" shall be determined by law, contract or otherwise, according to controlling ownership of the assets of the subsidiary, policy direction and operational management by either Party or a member of the Joint Venture.

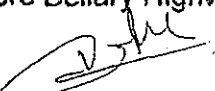
"Substitution Agreement" shall have the meaning set forth in Clause 40.3;

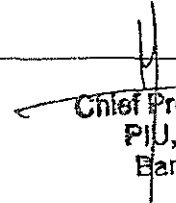
"Suspension" shall have the meaning set forth in Clause 36.1;

"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';

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

"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 due would be less any Lumpsum Payment, to the extent that it has already been paid to the concessionaire. Further 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 amount arrived at by subtracting Debt Due from Total Project Cost;

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

"Total Project Cost" means the lowest of:

- (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 Two-Laning Standard of the Project Highway; and
- (c) a sum of Rs. 559.75 crore (Rupees Five hundred fifty nine crores and seventy five lakhs),;

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; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount herein before specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost;

"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;

"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

PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd



Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

"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
GOVERNOR OF KARNATAKA
THROUGH THE CHIEF PROJECT OFFICER,
PIU-KSHIP
by:

(Signature) (P. Manivannan IAS)
(Name) Chief Project Officer
(Designation) P.I.U., K.S.H.I.P.,
K.R. Circle, Bangalore - 1.

In the presence of:

1. *Devayan Dey*
(DEVAYAN DEY)
PRICEWATERHOUSECOOPERS.

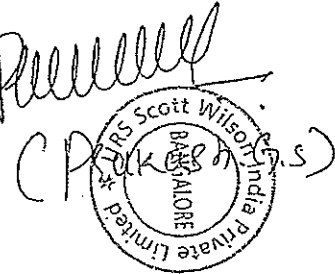
SIGNED, SEALED AND
DELIVERED

For and on behalf of
CONCESSIONAIRE by:

V. S. R.
MYSORE-BELLARY HIGHWAY PVT. LTD.

(Signature) AUTHORISED SIGNATORY
(Name) Vikram R. Patel.
(Designation) Director

2. *Prakash*



PIU-KSHIP
For Mysore Bellary Highway Pvt. Ltd

[Signature]
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

Tele: 2212 6758/59/60/61

Fax: 22229666

e-mail: piukship@gmail.com

GOVERNMENT OF KARNATAKA

KARNATAKA STATE HIGHWAYS IMPROVEMENT PROJECT

(Public Works, Ports & Inland Water Transport Department)

No. PIU:KSHIP/WB/DBFOMT /WAP1/AE10/2014-15

O/o the Project Implementation Unit,

Karnataka State Highways

Improvement Project

K R Circle,

Bangalore - 560 001.

Date: 06-01-2015

8 JAN 2015

To,
Vikram Patel,
The Director,
M/s Mysore-Bellary Highway Private Ltd,
"Sadbhav House",
Opposite Law Garden Police Chowki,
Ellisbridge, Ahmedabad-380006.

Sir,

Sub: Contract Package WAP1; DBFOMT of SH from Malavalli to Pavagada.
Reg. Financial Close for the Contract.

Ref: Supplementary Agreement no. PIU/KSHIP/DBFOMT/Annuity/SA/WAP1/2014-15/ 154 Dated:12-12-2014.

With reference to above, this is to state that the financial close for the Contract WAP1 stands achieved on **12th December, 2014.**

In this regard, please find attached the following documents for your reference and record.

- Signed Escrow agreement (2 nos. original),
- Signed Substitution agreement (2 nos. original) and
- Signed Supplementary agreement (one xerox copy).

Yours Sincerely

Chief Project Officer
PIU, KSHIP,

Copy to:

1. The Project Director, PIU, KSHIP for information and necessary action.
2. The Superintending Engineer, PIU, KSHIP for information and necessary action.
3. The Joint Controller of Accounts, PIU, KSHIP for information along with copy of the Supplementary, Substitution and Escrow Agreements.
4. The Executive Engineer, KSHIP Division, Tumkur for information
5. The Transaction Advisor, M/s PwC, Bangalore for information.
- ✓ 6. Deputy Team Leader, Independent Engineer, M/s Lea Associates South Asia Ltd, Tumkur along with copy of the Supplementary, Substitution and Escrow Agreements for information and n/a.



सत्यमेव जयते

INDIA NON JUDICIAL Government of Karnataka

e-Stamp

Certificate No. : IN-KA75357406665108M
Certificate Issued Date : 09-Dec-2014 04:10 PM
Account Reference : NONACC (BK)/ kakscub08/ BANGALORE4/ KA-BA
Unique Doc. Reference : SUBIN-KAKAKSCUB0802607099468611M
Purchased by : MYSORE BELLARY HIGHWAY PVT LTD
Description of Document : Article 12 Bond
Description : AGREEMENT
Consideration Price (Rs.) : 0
(Zero)
First Party : CPO KSHIP BANGALORE
Second Party : MYSORE BELLARY HIGHWAY PVT LTD
Stamp Duty Paid By : MYSORE BELLARY HIGHWAY PVT LTD
Stamp Duty Amount(Rs.) : 500
(Five Hundred only)



For Karnataka State Co-Operative Urban Banks Federation Ltd.
Authorised Signatory

Agreement no: PIU/KSHIP/DBFOMT/Annexity
SA/WAP-1/2014-15/154 Dt: 12/12/2014

-----Please write or type below this line-----

SUPPLEMENTARY AGREEMENT

THIS SUPPLEMENTARY AGREEMENT (the "Agreement") is entered into on this the 12th day of December, 2014

BETWEEN

THE GOVERNOR OF KARNATAKA represented by THE CHIEF PROJECT OFFICER, Project Implementation Unit, Karnataka State Highway Improvement Project, and having its principal office at First floor, PWD Annexe Building, KR Circle, Bengaluru - 560 001 (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.
For Mysore-Bellary Highway Private Limited

AND

Mysore Bellary Highway Private Limited (MBHPL) a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Sadbhav House, opp. Law Garden Police chowki, Ellisbridge. Ahmedabad - 380 006, Gujarat, 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.

WHEREAS:

(A) The Authority has entered into a Concession Agreement dated 24th day of March, 2014 with the Concessionaire for Design, Build, Finance, Operate, Maintain and Transfer (DBFOMT) of Existing State Highway (SH - 3 & 33 from Malavalli to Pavagada Approximate Length of 193.344Km) in the State of Karnataka on DBFOMT Annuity Basis which includes additional length of 0.976Km from NH-209 to Malavalli ("Project") (hereinafter referred to as "Concession Agreement").

(B) AND WHEREAS, the said Concession Agreement envisaged fulfillment of Condition Precedent under Article 4 of Concession Agreement, within 120 days of signing of the Concession Agreement and thereafter declaring Financial Closure.

(C) AND WHEREAS, the said Concession Agreement required the Concessionaire to have procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions to have been satisfied in full and such Applicable Permits to be in full force and effect as part of Condition Precedent as on the Appointed Date

(D) AND WHEREAS, the Concessionaire has requested waiver of certain required Applicable Permits under Schedule E vide letter dated 09-12-2014 as the same is envisaged to be requiring more time for procurement.


(E) AND WHEREAS, the said Concession Agreement in accordance with clause 10.3.1 required the project site to be handed over to the Concessionaire in phases and in the manner mentioned in the clause, which includes 80% of the Site on or before the Appointed Date.

(F) AND WHEREAS, such inspection has been completed and it is agreed by both parties that 80% of Site has been handed over as per clause 10.3.1 of Concession Agreement which is encumbrance and hindrance free.

(G) AND WHEREAS, clause 4.1.4 mentions that the Conditions Precedent to be satisfied by the Authority and the Concessionaire shall be deemed to be fulfilled only after the Dispute Review Board under Article 44.3 has been constituted.

(H) AND WHEREAS, constitution of Dispute Review Board is pending, and therefore, both the parties have mutually agreed to constitute the Dispute Review Board within three months from Appointed Date.

For Mysore-Bellary Highway Private Limited


Chief Project Officer . . .
P.J.U., K.S.H.I.P.,

ದಸ್ತಾವೇಜು ಹಾಕಲು ಬಳಸಬೇಕಾದ
ಆದೇಶಸಂಖ್ಯೆ: ಕರ್ನಾಟಕ ಸರ್ಕಾರ 2003
ದಿನಾಂಕ 09-05-2003ರ ಪ್ರಕಾರ ಮುದ್ರಿಸಲಾಗಿದೆ

ಕರ್ನಾಟಕ ಸರ್ಕಾರ
Government of Karnataka

ದಸ್ತಾವೇಜು ಹಾಕು
Document Sheet

ನೋಂದಣಿ ಹಾಗೂ ಮುದ್ರಾಂಕ ಇಲಾಖೆ
Registration and Stamps Department

ಬೆಲೆ : ರೂ. 2/-

ಈ ಹಾಕೆಯನ್ನು ಯಾವುದೇ ದಸ್ತಾವೇಜಿಗೆ ಉಪಯೋಗಿಸಬಹುದು
This sheet can be used for any document

ದಸ್ತಾವೇಜು ಪರಿಶೀಲಿಸಿದ ದಿನಾಂಕ
Date of execution

ಪಾವತಿಸಿದ ಒಟ್ಟು ಮುದ್ರಾಂಕ ಶುಲ್ಕ ರೂ.
Total stamp duty paid Rs.

(I) AND WHEREAS, now in view of the benefit of project and public, the parties are desirous of amending certain provisions of the Concession Agreement by entering into this Supplementary Agreement.


NOW THEREFORE, the parties have mutually agreed as follows:

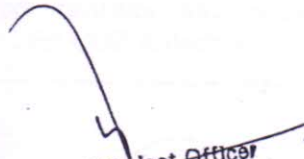
1. That the parties, for the purpose of declaring Financial Closure only, agree to waive off the requirement of procurement of the following Applicable Permits under Schedule E
 - a. Permission for new quarries from Department of Mines and Geology, State Pollution Control Board, land conversion from State Revenue Department and District Administration. If mining area comes under forest land, permission from State Forest Department to be obtained in full within 3 months from signing of this Supplementary Agreement to the satisfaction of Independent Engineer.
 - b. Permission of Village Panchayat and Pollution Control Board for and installation of crushers is obtained in full within 3 month from signing of this Supplementary Agreement to the satisfaction of Independent Engineer

subject to the condition that:-

- a. The concessionaire procures the above permits, in line with applicable laws, within the period indicated above, and is duly verified and approved by Independent Engineer. For delay beyond the period indicated, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (Zero point two per cent) of the Performance Security for each day's delay until such permits are procured and are in full force and effect, subject to a maximum of 20% (twenty percent) of the performance security.
- b. The legitimacy and sufficiency of the alternate temporary arrangements made for the purpose of executing the project until such permits are procured, is responsibility of the concessionaire. In event of invalid/illegitimate arrangement, Authority will have the right to take appropriate actions in accordance with the provisions of Concession Agreement.

For Mysore-Bellary Highway Private Limited


Authorized Signatory.


Chief Project Officer
P.I.U., K.S.H.I.P.,
K. R. Circle, Bangalore - 1.

- c. The concessionaire shall have the sole responsibility of obtaining such applicable permits as included under Schedule E of the Concession Agreement. The Authority will have no liability for any direct or indirect implication of not obtaining such permit at any point and the Concessionaire agrees to indemnify the Authority against all such direct or indirect implication. Any material adverse effect on the project or project completion schedule arising out of direct or indirect consequence of such waiver shall be attributable to the Concessionaire, and the Authority reserves the right to take appropriate action under the provisions of Concession Agreement.

2. That the parties agree to amend clause 4.1.4 in the manner as mentioned below:

The Concessionaire and Authority undertakes to constitute Dispute Review Board under article 44.3 within 3 months of Appointed Date.

3. That the parties agree to amend Schedule G of Concession Agreement in the manner as mentioned below:

Project Completion Schedule

During the Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Two-Laning Date (the "Project Completion Schedule") Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

Milestone	Progress Achieved	Period
1	Pre-Construction Activities: including site survey, sub-soil investigations and submission of designs and drawings, and installation and Mobilization of Equipment and Personnel and establishing site installations.	9 months from the signing of the Agreement.
2	The Concessionaire shall complete 10 (ten) percent of the project road length, as per the Road cross sections indicated in schedule B in minimum continuous stretches of 5 Kms, (excluding earthen/RCC drains, if any)	3 months from the Appointed Date
3	The Concessionaire shall complete 35(thirty five) percent of the project road length as per the Road cross sections indicated in schedule B in minimum continuous stretches of 10 Kms (excluding earthen/RCC drains, if any)	8 months from the Appointed Date
4	The Concessionaire shall complete 50(fifty) percent of the project road length as per the Road cross sections indicated in schedule B in minimum continuous stretches of 10 Kms, including all earthen/RCC drains not completed under Milestone 2 & 3.	15 months from the Appointed Date
5	The Concessionaire shall complete 75 (seventy five) of the project road length as per the Road cross sections indicated in schedule B in minimum continuous stretches of 10 Kms.	23months from the Appointed Date
6	The Concessionaire shall have completed the construction of the Project Highway and all the project facilities and pond enhancement, if any (ref Schedule- C) and the COD is declared.	30months from the Appointed Date

ಕರ್ನಾಟಕ ಸರ್ಕಾರ
Government of Karnataka

ದಸ್ತಾವೇಜು ಹಾಳೆ
Document Sheet



ನೋಂದಣಿ ಹಾಗೂ ಮುದ್ರಾಂಕ ಇಲಾಖೆ
Registration and Stamps Department

ಬೆಲೆ: ರೂ. 2/-

ಈ ಹಾಳೆಯನ್ನು ಯಾವುದೇ ದಸ್ತಾವೇಜಿಗೆ ಉಪಯೋಗಿಸಬಹುದು
This sheet can be used for any document

ದಸ್ತಾವೇಜು ಯಾವುದಕ್ಕೆ ದಿನಾಂಕ
Date of execution

ಪಾವತಿಸಿದ ಒಟ್ಟು ಮುದ್ರಾಂಕ ಶುಲ್ಕ ರೂ.
Total stamp duty paid Rs.

Site Handing-over Schedule

Malavaali-Maddur- Huliurdurga- Kunigal – Tumkur- Koratagere-Madhugiri-Pavagada
(Approx Length – 193.344Km)

Stretch	Site	Handing Over
The stretches in possession of the Authority and is free from land acquisition and encumbrances	The Authority shall give the Concessionaire a minimum 80% of the site free from land acquisition and encumbrances.	On or before the Appointed Date
Balance stretches/locations where land acquisition / encumbrance clearance is involved	The Authority shall hand over to the Concessionaire the balance site, free from land acquisition and encumbrances	Within 8 months of the Appointed Date

4. That the parties agree to amend article 27.5 of the Concession Agreement in the manner as mentioned below:

The Concessionaire shall be entitled to receive **Specified fixed lumpsum payments** (hereinafter the "Lumpsum Payment"), during the Construction Period in Five installments as below:

	Lumpsum Payment (during construction period)					
	First Installment	Second Installment	Third Installment	Fourth Installment	Fifth Installment	Total
WAP 1	Rs 23.921 Crs	Rs 59.802 Crs	Rs 35.882 Crs	Rs 59.802 Crs	Rs 59.802 Crs	Rs 239.209 Crs

The First installment of the Lumpsum Payment will be made to the Concessionaire upon completion of 10 percent of the project road length as per the Road Cross Sections indicated in schedule B (excluding earthen/RCC drains if any) in the minimum continuous stretches of 5 Kms and certification of Independent Engineer to that effect.

For Mysore-Bellary Highway Private Limited

Authorized Signatory

Chief Project Officer
P.I.U., K.S.H.I.P.,
K. R. Circle, Bangalore - 1,

The Second installment of the Lumpsum Payment will be made to the Concessionaire upon the completion of 35 percent of the project road length as per the Road Cross Sections indicated in schedule B (excluding earthen/RCC drains if any) in minimum continuous stretches of 10 Kms and certification by the Independent Engineer to that effect and 35 percent drawdown on equity required for project implementation and submission by the Concessionaire to the Independent Engineer of a certificate by the Statutory Auditor of the Concessionaire to such effect; and Receipt of Certificate from the Escrow Bank to that effect.

The Third installment of the Lumpsum Payment will be made to the Concessionaire upon the completion of 50 percent of the project road length as per the Road Cross Sections indicated in schedule B (including all earthen/RCC drains not completed under works completed for claiming first and second installment) in minimum continuous stretches of 10 Kms and certification by the Independent Engineer to that effect and 50 percent drawdown on equity required for project implementation and submission by the Concessionaire to the Independent Engineer of a certificate by the Statutory Auditor of the Concessionaire to such effect; and Receipt of Certificate from the Escrow Bank to that effect.

The Fourth installment of the Lumpsum Payment will be made to the Concessionaire upon the completion of 75 percent of the project road length as per the Road Cross Sections indicated in schedule B in minimum continuous stretches of 10 Kms and certification by the Independent Engineer to that effect and 75 percent drawdown on equity required for project implementation and submission by the Concessionaire to the Independent Engineer of a certificate by the Statutory Auditor of the Concessionaire to such effect; and Receipt of Certificate from the Escrow Bank to that effect.

The Fifth installment of the Lumpsum Payment will be given on COD

5. That the parties agree to amend article 10.3.1 of the Concession Agreement in the manner as mentioned below:

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 free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Supplementary Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that Project Site shall be handed over to the Concessionaire in phases as given below:

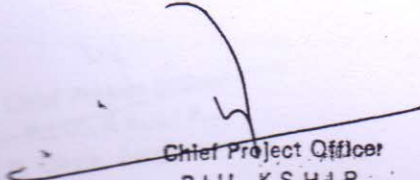
- (i) 80% of the Site on or before the Appointed Date; and
- (ii) the balance Site within 8 months of the Appointed Date.

For the Avoidance of doubt, it is agreed that valid license and Right of Way with respect to the parts of the site as set forth in Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

For Mysore-Bellary Highway Private Limited



Authorized Signatory



Chief Project Officer

P.I.U., K.S.H.P.,

K. R. Circle, Bangalore - 2,

7

ಕರ್ನಾಟಕ ಸರ್ಕಾರ
Government of Karnataka

ದಾಖಲೆ ಹಾಕಿ
Document Sheet

ನೋಂದಣಿ ಹಾಗೂ ಮುದ್ರಾಂಕ ಇಲಾಖೆ
Registration and Stamps Department

ಚಲಿ : ರೂ. 2/-

ಈ ಹಾಕೆಯನ್ನು ಯಾವುದೇ ದಾಖಲೆಗೆ ಉಪಯೋಗಿಸಬಹುದು
This sheet can be used for any document

ದಾಖಲೆ ಮಾಡಿದ ದಿನಾಂಕ
Date of execution

ಪಾವತಿಸಿದ ಒಟ್ಟು ಮುದ್ರಾಂಕ ಶುಲ್ಕ ರೂ.
Total stamp duty paid Rs.

6. That the parties agree to amend article 10.3.5 of the Concession Agreement in the manner as mentioned below:

The Concessionaire shall complete the construction on the land included in the Appendix for which the Right of Way has been granted within 240 (Two hundred and Forty) days of the Appointed Date, before Project Completion Date. However, construction on the lands for which Right of Way is granted after the period of 240 (Two hundred and Forty) days from the Appointed Date shall be completed 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 due to any construction remaining incomplete on the date of Tests, on account of Right of Way not having been granted over such part of the Site. 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 for which the Right of Way is granted after 240 (two hundred and forty) days of the Appointed Date, shall cease forthwith.

7. That the parties agree to amend Clause 24.1.1 of the Concession Agreement to the extent that the parties hereby agrees and undertakes that it shall achieve Financial Close within 270 (two hundred and seventy) days from the date of Concession Agreement, subject to the terms and conditions of Concession Agreement and as amended under this Supplementary Agreement.

8. That the parties agree to waive off any damages to be paid by either party on account of waivers and amendments agreed upon in this Supplementary Agreement. The Concessionaire disclaims any right to cost or time claims from the Authority on account of provisions agreed under this Supplementary Agreement.

9. The Right of Way containing Vacant and unencumbered land already handed over by the Authority and received by the Concessionaire is attached at Annexure - I and the Appendix specifying details of those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire is attached.

For Mysore-Bellary Highway Private Limited

[Signature]

Authorized Signatory

[Signature]
Chief Project Officer

P.t.U., K.S.H.I.P.,

K. R. Circle, Bangalore - 1,

10. For avoidance of doubt, it is further clarified that provisions of Article 28 under Concession Agreement remain applicable.

11. That all other conditions and provisions of the Concession Agreement, not specifically amended under this Supplementary Agreement, shall remain unchanged.

12. That this Supplementary Agreement shall be deemed to be an integral part of the Concession Agreement as if the parties had signed the same at the time of signing the Concession Agreement.

13. That the parties further agree that signing of this Supplementary Agreement shall be construed as declaration of Financial Closure/Appointed Date for the said Project under the Concession Agreement.

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

Chief Project Officer
For and on behalf of
P.I.U., K.S.H.I.P.,
K. R. Circle, Bangalore
GOVERNOR OF KARNATAKA

SIGNED, SEALED AND
DELIVERED
For Mysore Bellary Highway Private Limited

12/12/13
For and on behalf of
Authorized Signatory
Mysore Bellary Highway Private
Limited by:

THROUGH THE CHIEF PROJECT OFFICER,

PIU-KSHIP

by:

(Signature)

(Name)

(Designation)

(Signature)

(Name)

(Designation)

Basavaraj G. Horli
Sr. Vice President

In the presence of:

1.

K. P. Shivalakumar
SE - PIU - KSHIP

2.

Annexure-1 (1/2)

Memorandum of the Site Inventory (As per Clause 10.3.1)

Date of Joint Inspection: 03' December, 2014

S.No	Link	Chainage		Length in "Kms"	Remarks
		From	To		
1	63A	0+000	0+976	0.976	NH-209 to Malavalli
2	63A	2+500	22+803	20.303	
3	63B	0+000	4+000	4.000	
4	63B	4+600	23+640	19.040	
5	63C	1+440	10+000	8.560	
6	63C	13+000	21+000	8.000	
7	63D	1+000	15+000	14.000	
8	63D	17+700	19+500	1.800	
9	63D	22+100	28+800	6.700	
10	63D	29+900	35+017	5.117	
11	63E	0+000	2+080	2.080	
12	63E	2+100	4+800	2.700	
13	63E	4+960	12+800	7.840	
14	63E	13+220	14+820	1.600	
15	63E	14+900	17+780	2.880	
16	63E	17+900	21+900	4.000	
17	63E	27+240	27+897	0.657	
18	64F	2+600	4+700	2.100	
19	64F	4+980	13+160	8.180	
20	64F	13+400	14+900	1.500	
21	64G	2+550	4+040	1.490	
22	64G	4+600	7+050	2.450	
23	64G	7+940	11+000	3.060	
24	64G	12+060	13+020	0.960	
25	64G	13+350	16+360	3.010	
26	64G	16+680	19+120	2.440	
27	64G	19+680	28+570	8.890	
28	64G	42+270	50+400	8.130	
29	64G	52+000	54+230	2.230	
		Total Length in "Kms"		154.863	
		Total Project Length in "Kms"		193.344	
		Total Site handover in %age		80.09%	

SIGNED, SEALED AND DELIVERED

For and on behalf of
Karnataka State Highways Improvement
Project (KSHIP-II)

by:

Signature: [Signature]

Name : Executive Engineer

Title : KSHIP Division,
TUMKUR

Date : 09-12-2014

In the presence of:

Signature of Witness: [Signature]

SIGNED, SEALED AND DELIVERED

For and on behalf of
M/s Mysore Bellary Highway Private
Limited

by:

Signature: [Signature]

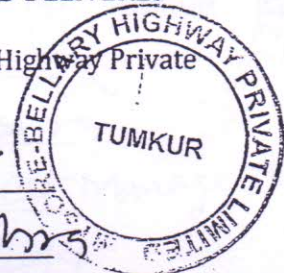
Name : J. P. MISHRA

Title : Chief Project Manager

Date : 09-12-2014

In the presence of:

Signature of Witness: [Signature]



(7/2)

Appendix (As per Clause 10.3.1)

For the following chainages vacant access and Right of Way has not been granted to the concessionaire as on 03rd December, 2014

S.No	Link	Chainage		Length in "Kms"	Remarks
		From	To		
1	63A	0+000	2+500	2.500	
2	63B	4+000	4+600	0.600	
3	63B	23+640	27+531	3.891	
4	63C	10+000	13+000	3.000	
5	63C	21+000	22+553	1.553	
	63D	0+000	1+000	1.000	
6	63D	15+000	17+700	2.700	
7	63D	19+500	22+100	2.600	
8	63D	28+800	29+900	1.100	
9	63E	2+080	2+100	0.020	
10	63E	4+800	4+960	0.160	
11	63E	12+800	13+220	0.420	
12	63E	14+820	14+900	0.080	
13	63E	17+780	17+900	0.120	
14	63E	21+900	27+240	5.340	
15	64F	4+700	4+980	0.280	
16	64F	13+160	13+400	0.240	
17	64F	14+900	22+627	7.727	
18	64G	4+040	4+600	0.560	
19	64G	7+050	7+940	0.890	
20	64G	11+000	12+060	1.060	
21	64G	13+020	13+350	0.330	
22	64G	16+360	16+680	0.320	
23	64G	19+120	19+680	0.560	
24	64G	50+400	51+830	1.430	
Total Length in "Kms"				38.481	
Total Project Length in "Kms"				193.344	
Total Vacant Access and Right of Way has not been granted in %age				19.90%	

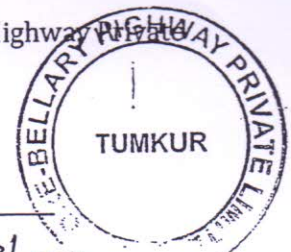
SIGNED, SEALED AND DELIVERED
For and on behalf of
Karnataka State Highways Improvement
Project (KSHIP-II)
by:

Signature: AS, 2/12Name : Executive EngineerTitle : KSHIP Division,Title : TUMKUR.Date : 09-12-2014

In the presence of:

Signature of Witness: PrakashName of Witness : Assistant Executive Engineer
KSHIP Division
Tumkur

SIGNED, SEALED AND DELIVERED
For and on behalf of
M/s Mysore Bellary Highway Private
Limited
by:

Signature: JDName : J. P. M BhrsTitle : Chief Project ManagerDate : 09-12-2014Signature of Witness: Sh. A. D.Name of Witness : C. B. G. Hoodi



Government of Karnataka

**Public Works, Ports & Inland Water Transport Department
Project Implementation Unit**

Karnataka State Highways Improvement Project-II



UPGRADING AND MAINTENANCE OF STATE HIGHWAYS UNDER DESIGN, BUILD, FINANCE, OPERATE, MAINTAIN AND TRANSFER (DBFOMT) ON ANNUITY BASIS

(Package No. WAP2)

**Design, Build, Finance, Operate, Maintain and Transfer (DBFOMT) of
Existing State Highway (SH18) from Mudhol - Nippani – MH Border
(Approx Length 107.937) in the State of Karnataka on DBFOMT
Annuity Basis**

CONCESSION AGREEMENT

March 2014

Project Implementation Unit,
Karnataka State Highways Improvement Project
1st Floor, PWD Annex building,
KR Circle, Bangalore 560 001
Telephone: + 91 80 2212 6758/59/61
Facsimile number: + 91 80 2222 9666/22230510
Electronic mail address: piukship@gmail.com

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

A. hopalankar
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore,

Contents

PART I PRELIMINARY	8
ARTICLE 1.....	11
DEFINITIONS AND INTERPRETATION.....	11
1.1 DEFINITIONS	11
1.2 INTERPRETATION	11
1.3 MEASUREMENTS AND ARITHMETIC CONVENTIONS	13
1.4 PRIORITY OF AGREEMENTS AND ERRORS/DISCREPANCIES.....	13
PART II.....	14
THE CONCESSION	14
ARTICLE 2.....	15
SCOPE OF THE PROJECT	15
2.1 SCOPE OF THE PROJECT	15
ARTICLE 3.....	16
GRANT OF CONCESSION.....	16
3.1 THE CONCESSION	16
ARTICLE 4.....	17
CONDITIONS PRECEDENT.....	17
4.1 CONDITIONS PRECEDENT.....	17
4.2 DAMAGES FOR DELAY BY THE AUTHORITY	18
4.3 Damages for delay by the Concessionaire.....	18
ARTICLE 5.....	20
OBLIGATIONS OF THE CONCESSIONAIRE	20
5.1 OBLIGATIONS OF THE CONCESSIONAIRE.....	20
5.2 OBLIGATIONS RELATING TO PROJECT AGREEMENTS	21
5.3 CHANGE IN OWNERSHIP	22
5.4 EMPLOYMENT OF FOREIGN NATIONALS	23
5.5 EMPLOYMENT OF TRAINED PERSONNEL	23
5.6 SOLE PURPOSE OF THE CONCESSIONAIRE.....	23
5.7 EMPLOYMENT OF INNOVATIVE TECHNOLOGIES	23
ARTICLE 6.....	24
OBLIGATIONS OF THE AUTHORITY	24
6.1 OBLIGATIONS OF THE AUTHORITY	24
6.2 MAINTENANCE OBLIGATIONS PRIOR TO APPOINTED DATE	25
ARTICLE 7.....	26
REPRESENTATIONS AND WARRANTIES.....	26
7.1 REPRESENTATIONS AND WARRANTIES OF THE CONCESSIONAIRE.....	26
7.2 REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY	27
7.3 DISCLOSURE	28
ARTICLE 8.....	29
DISCLAIMER.....	29

8.1	DISCLAIMER	29
PART III		30
DEVELOPMENT AND OPERATIONS.....		30
ARTICLE 9.....		31
PERFORMANCE SECURITY		31
9.1	PERFORMANCE SECURITY	31
9.2	APPROPRIATION OF PERFORMANCE SECURITY	31
9.3	RELEASE OF PERFORMANCE SECURITY	31
ARTICLE 10.....		32
RIGHT OF WAY		32
10.1	THE SITE.....	32
10.2	LICENCE, ACCESS AND RIGHT OF WAY	32
10.3	PROCUREMENT OF THE SITE	33
10.4	SITE TO BE FREE FROM ENCUMBRANCES	35
10.5	PROTECTION OF SITE FROM ENCROACHMENTS	35
10.6	SPECIAL/TEMPORARY RIGHT OF WAY	35
10.7	ACCESS TO THE AUTHORITY AND INDEPENDENT ENGINEER.....	35
ARTICLE 11.....		36
UTILITIES, ASSOCIATED ROADS AND TREES.....		36
11.1	EXISTING UTILITIES AND ROADS	36
11.2	SHIFTING OF OBSTRUCTING UTILITIES.....	36
11.3	NEW UTILITIES AND ROADS	36
11.4	FELLING OF TREES	37
ARTICLE 12.....		38
CONSTRUCTION OF THE PROJECT HIGHWAY		38
12.1	OBLIGATIONS PRIOR TO COMMENCEMENT OF CONSTRUCTION.....	38
12.2	MAINTENANCE DURING CONSTRUCTION PERIOD	38
12.3	DRAWINGS	39
12.4	TWO-LANING STANDARD OF THE PROJECT HIGHWAY.....	40
ARTICLE 13.....		41
MONITORING OF CONSTRUCTION		41
13.1	MONTHLY PROGRESS REPORTS	41
13.2	INSPECTION	41
13.3	TESTS	41
13.4	DELAYS DURING CONSTRUCTION.....	42
13.5	SUSPENSION OF UNSAFE CONSTRUCTION WORKS.....	42
13.6	VIDEO RECORDING	42
ARTICLE 14.....		43
COMPLETION CERTIFICATE		43
14.1	TESTS	43
14.2	COMPLETION CERTIFICATE	43
14.3	PROVISIONAL CERTIFICATE.....	43
14.4	COMPLETION OF PUNCH LIST ITEMS	43
14.5	WITHHOLDING OF PROVISIONAL CERTIFICATE.....	44
14.6	RESCHEDULING OF TESTS.....	44
ARTICLE 15.....		45
ENTRY INTO COMMERCIAL SERVICE		45

A. Ho Palan
 Authorised Signatory

W
 Chief Project Officer
 PIU, KSHIP,
 Bangalore.

WAP-2 Mudhol – Nippani - MH Border	Concession Agreement
15.1 COMMERCIAL OPERATION DATE (COD)	45
15.2 DAMAGES FOR DELAY	45
ARTICLE 16.....	46
CHANGE OF SCOPE	46
16.1 CHANGE OF SCOPE	46
16.2 PROCEDURE FOR CHANGE OF SCOPE	46
16.3 PAYMENT FOR CHANGE OF SCOPE	47
16.4 RESTRICTION ON CERTAIN WORKS	48
16.5 POWER OF THE GOVERNMENT TO UNDERTAKE WORKS - DELETED	48
16.6 REDUCTION IN SCOPE OF THE PROJECT	48
ARTICLE 17.....	49
OPERATION AND MAINTENANCE.....	49
17.1 O&M OBLIGATIONS OF THE CONCESSIONAIRE	49
17.2 MAINTENANCE REQUIREMENTS	50
17.3 MAINTENANCE MANUAL	50
17.4 MAINTENANCE PROGRAMME	50
17.5 SAFETY, VEHICLE BREAKDOWNS AND ACCIDENTS	51
17.6 DE-COMMISSIONING DUE TO EMERGENCY	51
17.7 LANE CLOSURE	51
17.8 DAMAGES FOR BREACH OF MAINTENANCE OBLIGATIONS	52
17.9 AUTHORITY'S RIGHT TO TAKE REMEDIAL MEASURES	52
17.10 OVERRIDING POWERS OF THE AUTHORITY	53
17.11 RESTORATION OF LOSS OR DAMAGE TO PROJECT HIGHWAY	53
17.12 MODIFICATIONS TO THE PROJECT HIGHWAY	53
17.13 EXCUSE FROM PERFORMANCE OF OBLIGATIONS	54
17.14 BARRIERS AND DIVERSIONS	54
17.15 ADVERTISING ON THE SITE.....	54
ARTICLE 18.....	55
ENVIRONMENT, HEALTH AND SAFETY REQUIREMENTS	55
18.1 SAFETY REQUIREMENTS	55
ARTICLE 19.....	56
MONITORING OF OPERATION AND MAINTENANCE.....	56
19.1 MONTHLY STATUS REPORTS	56
19.2 INSPECTION	56
19.3 TESTS	56
19.4 REMEDIAL MEASURES	56
ARTICLE 20.....	57
TRAFFIC REGULATION.....	57
20.1 TRAFFIC REGULATION BY THE CONCESSIONAIRE	57
20.2 POLICE ASSISTANCE.....	57
20.4 RECURRING EXPENDITURE ON POLICE ASSISTANCE	57
ARTICLE 21.....	58
EMERGENCY MEDICAL AID.....	58
21.1 MEDICAL AID POSTS	58
21.2 BUILDINGS FOR MEDICAL AID POSTS.....	58
21.3 RECURRING EXPENDITURE ON MEDICAL AID POSTS	58
ARTICLE 22.....	59
TRAFFIC SAMPLING.....	59

22.1	TRAFFIC SAMPLING.....	59
22.2	COMPUTER SYSTEMS AND NETWORK	59
ARTICLE 23.....		60
INDEPENDENT ENGINEER.....		60
23.1	APPOINTMENT OF INDEPENDENT ENGINEER	60
23.2	DUTIES AND FUNCTIONS	60
23.3	REMUNERATION	60
23.4	TERMINATION OF APPOINTMENT.....	60
23.5	AUTHORISED SIGNATORIES.....	61
23.6	DISPUTE RESOLUTION.....	61
PART IV		62
FINANCIAL COVENANTS		62
ARTICLE 24.....		63
FINANCIAL CLOSE.....		63
24.1	FINANCIAL CLOSE	63
24.2	TERMINATION DUE TO FAILURE TO ACHIEVE FINANCIAL CLOSE.....	63
ARTICLE 25.....		64
LEVY AND COLLECTION OF FEE.....		64
25.1	CONCESSIONAIRE'S OBLIGATION.....	64
25.2	AUTHORITY'S RIGHTS	64
ARTICLE 26.....		65
CONCESSION FEE.....		65
26.1	CONCESSION FEE.....	65
ARTICLE 27.....		66
LUMP SUM PAYMENT, ANNUITY		66
27.1	ANNUITY	66
27.2	PAYMENT OF ANNUITY	66
27.3	SUBMISSION OF INVOICE, ADJUSTMENT AND CERTIFICATION.....	66
27.4	MODE OF PAYMENT.....	67
27.5	LUMP SUM PAYMENT	67
ARTICLE 28.....		69
BONUS AND REDUCTION IN ANNUITY		69
28.1	BONUS IN ANNUITY ON ACCOUNT OF EARLY PROJECT COMPLETION.....	69
28.2	REDUCTION IN ANNUITY ON ACCOUNT OF DELAYED PROJECT COMPLETION.....	69
28.3	REDUCTION IN ANNUITY ON ACCOUNT OF NON ADHERENCE TO MAINTENANCE REQUIREMENTS.....	69
28.4	REDUCTION IN ANNUITY ON ACCOUNT OF NON-PROVISION OF ASSURED LANE AVAILABILITY	70
28.5	REDUCTION IN ANNUITY ON ACCOUNT OF NON-ADHERENCE TO ENVIRONMENTAL MANAGEMENT AND MITIGATION MEASURES AS PER THE EMP AND STATUTORY REQUIREMENTS.....	70
ARTICLE 29.....		71
CAPACITY AUGMENTATION		71
29.1	CAPACITY AUGMENTATION.....	71
ARTICLE 30.....		72
FRAUD AND CORRUPTION		72
30.	FRAUD AND CORRUPTION	72

ARTICLE 31	74
ESCROW ACCOUNT	74
31.1 ESCROW ACCOUNT.....	74
31.2 DEPOSITS INTO ESCROW ACCOUNT	74
31.3 WITHDRAWALS DURING CONCESSION PERIOD	74
31.4 WITHDRAWALS UPON TERMINATION.....	75
ARTICLE 32	76
32.5 APPLICATION OF INSURANCE PROCEEDS	78
ARTICLE 33	79
ACCOUNTS AND AUDIT	79
33.1 AUDITED ACCOUNTS.....	79
33.2 APPOINTMENT OF AUDITORS	79
33.3 CERTIFICATION OF CLAIMS BY STATUTORY AUDITORS	80
33.4 DISPUTE RESOLUTION	80
PART V	81
FORCE MAJEURE AND TERMINATION	81
ARTICLE 34	82
FORCE MAJEURE	82
34.1 FORCE MAJEURE	82
34.2 NON-POLITICAL EVENT.....	82
34.3 INDIRECT POLITICAL EVENT.....	82
34.4 POLITICAL EVENT.....	83
34.5 DUTY TO REPORT FORCE MAJEURE EVENT	83
34.6 EFFECT OF FORCE MAJEURE EVENT ON THE CONCESSION	84
34.7 ALLOCATION OF COSTS ARISING OUT OF FORCE MAJEURE	84
34.8 TERMINATION NOTICE FOR FORCE MAJEURE EVENT	85
34.9 TERMINATION PAYMENT FOR FORCE MAJEURE EVENT.....	85
34.10 DISPUTE RESOLUTION	86
34.11 EXCUSE FROM PERFORMANCE OF OBLIGATIONS	86
ARTICLE 35	87
COMPENSATION FOR BREACH OF AGREEMENT	87
35.1 COMPENSATION FOR DEFAULT BY THE CONCESSIONAIRE.....	87
35.2 COMPENSATION FOR DEFAULT BY THE AUTHORITY	87
35.3 EXTENSION OF CONCESSION PERIOD	87
35.4 COMPENSATION FOR COMPETING ROADS -DELETED	87
35.5 COMPENSATION TO BE IN ADDITION	87
ARTICLE 36	88
SUSPENSION OF CONCESSIONAIRE'S RIGHTS	88
36.1 SUSPENSION UPON CONCESSIONAIRE DEFAULT	88
36.2 AUTHORITY TO ACT ON BEHALF OF CONCESSIONAIRE.....	88
36.3 REVOCATION OF SUSPENSION.....	88
36.4 SUBSTITUTION OF CONCESSIONAIRE	88
36.5 TERMINATION.....	89
ARTICLE 37	90
TERMINATION	90
37.1 TERMINATION FOR CONCESSIONAIRE DEFAULT	90
37.2 TERMINATION FOR AUTHORITY DEFAULT	92

37.3	TERMINATION PAYMENT	93
37.4	OTHER RIGHTS AND OBLIGATIONS OF THE AUTHORITY	93
37.5	SURVIVAL OF RIGHTS	94
ARTICLE 38.....		95
DIVESTMENT OF RIGHTS AND INTEREST		95
38.1	DIVESTMENT REQUIREMENTS	95
38.2	INSPECTION AND CURE	95
38.3	VESTING CERTIFICATE	96
38.4	ADDITIONAL FACILITIES.....	96
38.5	DIVESTMENT COSTS ETC.....	96
ARTICLE 39.....		97
DEFECTS LIABILITY AFTER TERMINATION.....		97
39.1	LIABILITY FOR DEFECTS AFTER TERMINATION	97
39.2	RETENTION IN ESCROW ACCOUNT	97
PART VI		98
OTHER PROVISIONS.....		98
ARTICLE 40.....		99
ASSIGNMENT AND CHARGES.....		99
40.1	RESTRICTIONS ON ASSIGNMENT AND CHARGES	99
40.2	PERMITTED ASSIGNMENT AND CHARGES	99
40.3	SUBSTITUTION AGREEMENT	99
40.4	ASSIGNMENT BY THE AUTHORITY	100
ARTICLE 41.....		101
CHANGE IN LAW		101
41.1	INCREASE IN COSTS	101
41.2	REDUCTION IN COSTS	101
41.3	PROTECTION OF NPV	102
41.4	RESTRICTION ON CASH COMPENSATION.....	102
ARTICLE 42.....		103
LIABILITY AND INDEMNITY		103
42.1	GENERAL INDEMNITY	103
42.2	INDEMNITY BY THE CONCESSIONAIRE	103
42.3	NOTICE AND CONTEST OF CLAIMS.....	104
42.4	DEFENCE OF CLAIMS.....	104
42.5	NO CONSEQUENTIAL CLAIMS	105
42.6	SURVIVAL ON TERMINATION	105
ARTICLE 43.....		106
RIGHTS AND TITLE OVER THE SITE.....		106
43.1	LICENSEE RIGHTS	106
43.2	ACCESS RIGHTS OF THE AUTHORITY AND OTHERS.....	106
43.3	PROPERTY TAXES	106
43.4	RESTRICTION ON SUB-LETTING.....	106
ARTICLE 44.....		107
DISPUTE RESOLUTION.....		107
44.1	DISPUTE RESOLUTION.....	107
44.2	MEDIATION AND AMICABLE SETTLEMENT	107

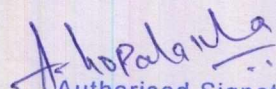
A. hopalawla
 Authorised Signatory


[Signature]
 Chief Project Officer
 PIU, KSHIP,
 Bangalore.

WAP-2 Mudhol – Nippani - MH Border	Concession Agreement
44.3 DISPUTE REVIEW BOARD	107
44.4 ARBITRATION	108
ARTICLE 45.....	111
DISCLOSURE.....	111
45.1 DISCLOSURE OF SPECIFIED DOCUMENTS	111
45.2 DISCLOSURE OF DOCUMENTS RELATING TO SAFETY.....	111
ARTICLE 46.....	112
REDRESSAL OF PUBLIC GRIEVANCES.....	112
46.1 COMPLAINTS REGISTER.....	112
46.2 REDRESSAL OF COMPLAINTS	112
ARTICLE 47.....	113
MISCELLANEOUS.....	113
47.1 GOVERNING LAW AND JURISDICTION.....	113
47.2 WAIVER OF IMMUNITY	113
47.4 DEPRECIATION	113
47.5 DELAYED PAYMENTS.....	113
47.6 WAIVER.....	114
47.7 LIABILITY FOR REVIEW OF DOCUMENTS AND DRAWINGS.....	114
47.8 EXCLUSION OF IMPLIED WARRANTIES ETC.....	114
47.9 SURVIVAL.....	114
47.10 ENTIRE AGREEMENT	115
47.11 SEVERABILITY.....	115
47.12 NO PARTNERSHIP	115
47.13 THIRD PARTIES	115
47.14 SUCCESSORS AND ASSIGNS	115
47.15 NOTICES	116
47.16 LANGUAGE.....	116
47.17 COUNTERPARTS	116
ARTICLE 48.....	117
DEFINITIONS	117
48.1 DEFINITIONS.....	117

Part I Preliminary

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

ಈ ದಸ್ತಾವೇಜು ಹಾಳೆಯನ್ನು ಕರ್ನಾಟಕ ಸರ್ಕಾರದ
ಆದೇಶ ಸಂಖ್ಯೆ ಕರ್ 152 ಮುನೋಮು 2003
ದಿನಾಂಕ 09-05-2003ರ ಪ್ರಕಾರ ಮುದ್ರಿಸಲಾಗಿದೆ



ಕರ್ನಾಟಕ ಸರ್ಕಾರ

DEPT. OF STAMP & REGISTRATION

178246

MAR 11 2014

11:35

Document Sheet

STAMP DUTY

KARNATAKA

ಬೆಲೆ : ರೂ. 2/-

ನೋ



ನೋಂದಣಿ ಹಾಗೂ ಮುದ್ರಾಂಕ ಇಲಾಖೆ
Registration and Stamps Department

ಈ ಹಾಳೆಯನ್ನು ಯಾವುದೇ ದಸ್ತಾವೇಜಿಗೆ ಉಪಯೋಗಿಸಬಹುದು
This sheet can be used for any document

ದಸ್ತಾವೇಜನ್ನು ಬರೆದುಕೊಟ್ಟ ದಿನಾಂಕ
Date of execution

ಪಾವತಿಸಿದ ಒಟ್ಟು ಮುದ್ರಾಂಕ ಶುಲ್ಕ ರೂ.
Total stamp duty paid Rs.



ASHOKA GVR MUDHOL NIPANI ROADS LIMITED

CONCESSION AGREEMENT

NO. PIU/KSHIP/DBFOMT - Annuity / WAP-2/2013-14/147/14-3-2014

THIS CONCESSION AGREEMENT (the "Agreement") is entered into on this the 14th day of March, 2014

BETWEEN

1. THE GOVERNOR OF KARNATAKA represented by THE CHIEF PROJECT OFFICER, Project Implementation Unit, Karnataka State Highway Improvement Project, and having its principal office at First floor, PWD Annexe Building, KR Circle, Bengaluru - 560 001 (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. Ashoka GVR Mudhol Nipani Roads Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 206, 2nd Floor, 79, Daryaganj, New Delhi - 110002, (hereinafter referred to as the "Concessionaire" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

(A) The Government of Karnataka had entrusted to the Authority on the Design, Build, Finance, Operate, Maintain and Transfer (DBFOMT) of Existing State Highway (SH18) from Mudhol - Nippani - MH Border (Approx Length 107.937 kms) in the State of Karnataka.

(B) The Authority had resolved to augment the existing road on Design, Build, Finance, Operate, Maintain and Transfer (DBFOMT) of Existing State Highway (SH18) from Mudhol - Nippani - MH Border (Approx Length 107.937 kms) in the State of Karnataka in accordance with the terms and conditions set forth in this Agreement.

(C) The Authority had accordingly invited proposals by its Invitation for Qualification (the "RFQ") No. RFQ/2010-11 dated 17-02-2011 (the "Tender Notice") for qualification of bidders for Design, Build, Finance, Operate, Maintain and Transfer (DBFOMT) on Annuity basis of the above referred section of SH - 18 and had prequalified certain bidders including, inter alia, the Ashoka Buildcon Limited and GVR Infra Projects Limited (collectively the "Joint Venture" and each member individually referred to as a "Joint Venture Member") with Ashoka Buildcon Limited as its Lead Member.

Chief Project Officer
PIU, KSHIP,

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

f. hopale
Authorised Signatory

ಈ ದಸ್ತಾವೇಜು ಹಾಳೆಯನ್ನು ಕರ್ನಾಟಕ ಸರ್ಕಾರದ
ಆದೇಶ ಸಂಖ್ಯೆ ಕಂಇ 152 ಮುನೋಮು 2003
ದಿನಾಂಕ 09-05-2003ರ ಪ್ರಕಾರ ಮುದ್ರಿಸಲಾಗಿದೆ

ಕರ್ನಾಟಕ ಸರ್ಕಾರ
Government of Karnataka

DEPT. OF STAMP & REGISTRATION INDIA

ನೋಂದಣಿ ಹಾಗೂ ಮುದ್ರಾಂಕ ಇಲಾಖೆ
Registration and Stamps Department

STAMP DUTY KARNATAKA
ಬೆಲೆ : ರೂ. 2/-

ಈ ಹಾಳೆಯನ್ನು ಯಾವುದೇ ದಸ್ತಾವೇಜಿಗೆ ಉಪಯೋಗಿಸಬಹುದು
This sheet can be used for any document

ದಸ್ತಾವೇಜನ್ನು ಬರೆದುಕೊಟ್ಟ ದಿನಾಂಕ
Date of execution

ಪಾವತಿಸಿದ ಒಟ್ಟು ಮುದ್ರಾಂಕ ಶುಲ್ಕ ರೂ.
Total stamp duty paid Rs.

0000500 PB6944



GVR MUDHOL NIPANI ROADS LIMITED

(D) The Authority had prescribed the technical and commercial terms and conditions, and invited bids, through a Request for Proposal dated 13-07-2012 ("the RfP"), from the prequalified bidders pursuant to the Tender Notice for undertaking the Project.

(E) After evaluation of the bids received, the Authority had accepted the bid of Joint Venture comprising Ashoka Buildcon Limited and GVR Infra Projects Limited (the "Selected Bidder") and issued its Letter of Award No. PIU/KSHIP/DBFOMT/WAP2/LOA/2013-14/4217 dated 1st February 2014 (hereinafter called the "LOA") to the Ashoka Buildcon Limited and GVR Infra Projects Limited Joint Venture requiring, inter alia, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue thereof.

(F) The Ashoka Buildcon Limited, and GVR Infra Projects Limited Joint Venture 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 Joint Venture 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 12th March 2014, the Concessionaire has also joined in the said request of the Joint Venture to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Joint Venture 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 Joint Venture for the purposes hereof

(H) The Authority has agreed to the said request of the Joint Venture and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOMT (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:

Chief Project Engineer
PIU, KSHIP,

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

A. H. P. S. S. S.
Authorised Signatory

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;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Bangalore are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

- (k) 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;
- (l) 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;
- (m) the words importing singular shall include plural and vice versa;
- (n) references to any gender shall include the other and the neutral gender;
- (o) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (p) “**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;
- (q) 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;
- (r) 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;
- (s) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (t) 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;
- (u) 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
- (v) 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**”).

For ASHOKA GVR MUDHOL NIPANI ROADS LTD

PIU-KSHIP

A. Hopalappa
Authorised Signatory

[Signature]
Chief Project Officer 12
PIU, KSHIP,
Bangalore.

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

(b) all other agreements and documents forming part hereof; i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) 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;

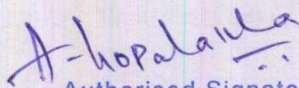
(d) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;

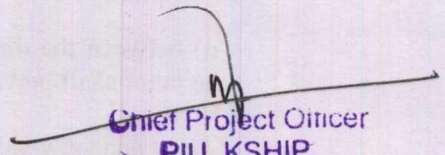
(e) between any value written in numerals and that in words, the latter shall prevail : and

(f) between any two Schedules, the Schedules relevant to the issue shall prevail

Part II The Concession

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

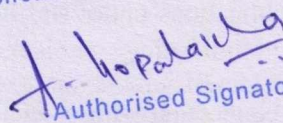
ARTICLE 2
SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean, 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 and Schedule-L;
- (b) operation and maintenance of the Project Highway in accordance with the provisions of this Agreement; and
- (c) performance and fulfillment 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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorized Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

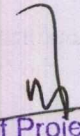
ARTICLE 3
GRANT OF CONCESSION

3.1 The Concession

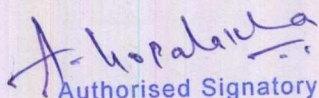
3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority during the subsistence of this Agreement to construct, operate and maintain the Project (the “**Concession**”) for a period of 10 (ten) 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) to allow and cooperate with 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 fulfill 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.


Chief Project Officer
PIU, KSHIP,
Bangalore.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory

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 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) 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;
- (c) procured all Applicable Permits relating to environmental protection and conservation of the Site

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 (b) and/ or Sub-clause (c) 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.

Notwithstanding the above, the Concessionaire may, upon providing the Performance Security under Article 9 to the Authority within 60 days from date of this Agreement, at any time after the said period of 60 days, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth above within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein

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:

- (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;

PIU-KSHIP

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

A. ho Palakula
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

- (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 Joint Venture Members, their respective confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (l) and (m) of Article 7.1 and Article 5.3 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; and
- (i) procured and furnished copies of all the insurances mentioned in Article 32 of this Agreement to the Authority.

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 Apart from 4.1.2 and 4.1.3, the Conditions Precedent to be satisfied by the Authority and the Concessionaire shall be deemed to be fulfilled only after the Dispute Review Board under Article 44.3 has been constituted.
- 4.1.5 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.
- 4.1.6 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

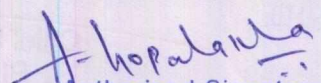
In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay 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's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

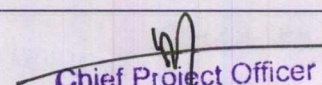
4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 120 (one hundred and twenty) days from the date of this agreement, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (Zero point two per cent)

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

WAP-2 Mudhol – Nippani - MH Border

Concession Agreement

of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the performance security

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

A. Hopalawla
Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 5**OBLIGATIONS OF THE CONCESSIONAIRE****5.1 Obligations of the Concessionaire**

- 5.1.1 (a) 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, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

The Concessionaire shall verify the adequacy of the design and ensure its performance. However if the Concessionaire is not able to ensure performance of the design, he shall submit for the review and comment of the Independent Engineer, revised designs, subject to the Standards and Specifications mentioned in Schedule D.

Provided that any change in design as approved by the Independent Engineer shall be within the Right of Way and the Annuity quoted in the financial bid submitted pursuant to the RfP.

For avoidance of doubt, it is agreed that any change in the Horizontal Alignment shall be within the Right of Way provided and the FRL's of the road and structures shall not be reduced/lowered than that provided in alignment plan and profile. It is agreed herein that the pavement crust thickness requirements in Schedule B are the bare minimum and any additional thickness shall be approved by the Independent Engineer before implementation.

(b) It is agreed herein that the revised designs submitted pursuant to sub-clause (a) above shall be submitted to the Independent Engineer for review and approval before implementation. Any time and cost implications arising on this account shall be at the risk and cost of the Concessionaire.

- 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;

PIU-KSHIP

For ASHOKA GVR MUDHOL NIPANI ROADS LTD

A. Hopalankar
Authorised Signatory

m
Chief Project Officer
PIU, KSHIP,
Bangalore.

20

- (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 the 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 provisions of this Agreement; and
 - (i) transfer the Project Highway to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.
 - (j) review and verify the designs provided by the Authority for their adequacy, own the same and implement the Project in strict conformity of such designs.
- 5.1.5 It is expressly agreed between the Parties that the World Bank shall be authorized to inspect and audit the Site and/or accounts and records of the Concessionaire, as well as its sub-contractors including O&M Contractor, relating to the Project.
- 5.1.6 The Concessionaire shall ensure that none of its employees or sub-contractors including O&M Contractor, who may be engaged in future, shall be engaged in corrupt, fraudulent, collusive, coercive or obstructive practice, as defined under Fraud & Corruption Policies of the World Bank.
- 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 Save as provided in Clause 16.1.2, 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 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 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 CHANGE IN OWNERSHIP

- (a) Subject to sub-clause (b), in the case of a Concessionaire that has been set up by a Joint Venture, the Key Joint Venture Member shall, until the end of Concession Period, maintain an equity share capital not less than 26% (twenty six percent) of the subscribed and paid up equity of the Concessionaire and 5% (five percent) of the Total Project Cost.
- (b) Any Key Joint Venture Member, other than the Lead Member, may, with the prior written approval of the Authority, which shall not be unreasonably withheld, reduce its shareholding to below 26 % (twenty six percent) of the subscribed and paid up equity share capital of the Concessionaire and less than 5 % (five percent) of the Total Project Cost, after the date falling two years after the Commercial Operation Date, subject to:
- (i) all Joint Venture Members continuing to collectively hold at least 26% (twenty six percent) of the subscribed and paid up equity of the Concessionaire until the end of Concession Period and
- (ii) the Joint Venture Member who is to provide the O&M experience according to the Application submitted by the Joint Venture at the RFQ stage shall subscribe and continue to hold at least 5% (five percent) of the subscribed and paid up equity of the Concessionaire until the end of Concession Period.
- (c) In case the Selected Bidder is a single entity, such entity shall hold entire subscribed and paid-up share capital of the Concessionaire. However, it may, with the prior approval of the Authority in writing, which shall not be unreasonably withheld, reduce its

A. Kopalappa
Authorized Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

shareholding below the entire subscribed and paid-up equity of the Concessionaire, after a period of 2 (two) years from the date of commercial operation of the Project, subject to it continuing to hold at least 26% (twenty six percent) of the subscribed and paid up equity of the Concessionaire till the end of the Concession Period.

- (d) The Selected Bidder (all the Key Joint Venture Members collectively in case the Selected Bidder is a Joint Venture) shall be required to maintain a paid-up equity in the Concessionaire, equal to at least 18% the Total Project Cost till two years from the date of Commercial Operation of the Project.

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.

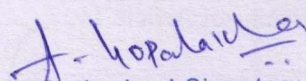
5.6 Sole purpose of the Concessionaire

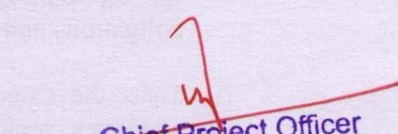
The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its Subsidiaries shall not, except with the previous written consent of the Authority, be or become directly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

5.7 Employment of Innovative Technologies

The Concessionaire may employ innovative techniques, not provided in IRC or MORTH standards with the approval of the Independent Engineer, in the implementation of the Project at its own cost and expenditure. Provided that any such technique or method shall only be implemented after approval from either IRC, MORTH subject to the condition that any delay in obtaining such approval shall be at the risk of Concessionaire only and it shall not be entitled to request grant of extension of time on the basis of such delay.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 by the Concessionaire;
 - (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;
 - (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 discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements; and
 - (j) assist the Concessionaire in carrying out the shifting of utility services, if it so chooses to perform the same as per the provisions of Article 11.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP

A. Kopalappa
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

- (k) upon the Concessionaire paying the Concession Fee and performing the 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.

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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

A. Kopalappa
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

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 Joint Venture 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 of 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

PIU-KSHIP

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

[Signature]
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

(k) Deleted

(l) Ashoka Buildcon Limited, and GVR Infra Projects Limited and their Subsidiaries 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) Ashoka Buildcon Limited, and GVR Infra Projects Limited [each Joint Venture 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 and shall be jointly and severally liable for all obligations and liabilities of the Concessionaire relating to the Project till the occurrence of Financial Close ;

(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;

(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; and

(q) none of its employees or sub-contractors including O&M Contractor, as of this day, have been engaged in corrupt, fraudulent, collusive, coercive or obstructive practice, as defined under Fraud & Corruption Policies of the World Bank.

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;

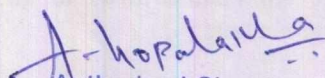
(b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;

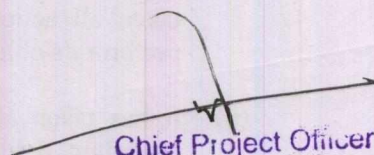
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) there are no actions, suits or proceedings pending or, to its knowledge, 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; and
- (j) it has good and valid right to the Site, and has power and authority to grant a licence in respect thereto to the Concessionaire

7.3 Disclosure

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

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory

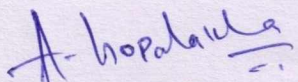

Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 8
DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that 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 that it shall exercise complete due diligence with respect to the information relating to any of the matters set forth in Clause 8.1.1 and hereby acknowledges that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

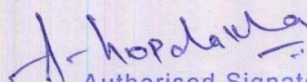

Authorised Signatory



Chief Project Officer
PIU, KSHIP,
Bangalore.

Part III

Development and Operations

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 120 (one hundred and twenty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a bank for a sum equivalent to Rs 15.88 Crores (Rupees Fifteen Crores and eighty eight lakhs) 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.

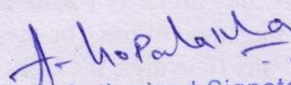
9.2 Appropriation of Performance Security


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 throughout the Construction Period and shall be released on the Commercial Operation Date, provided that 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 satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 Two-Laning Standard of the Project Highway as set forth in Schedule-A.

Any modification in the horizontal and vertical alignment resulting in additional land acquisition by any agency at any part and stage of the project implementation is not permitted.

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 any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

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

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

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

PIU-KSHIP

FOR ASHOKA GVR MUDHOL NIPANI ROADS LTD.

A. K. K. K.
Authorised Signatory

W
Chief Project Officer
PIU, KSHIP,
Bangalore

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 free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that Project Site shall be handed over to the Concessionaire in phases as given below:

- (i) 80% of the Site on or before the Appointed Date; and
- (ii) the balance Site within 6 months of the Appointed Date.

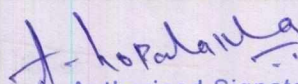
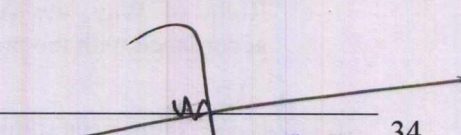
For the Avoidance of doubt, it is agreed that valid license and Right of Way with respect to the parts of the site as set forth in Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or 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 20% (twenty per cent) of the total area of the Site required and necessary for the 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 the balance 20% Site as mentioned in Clause 10.3.1 hereinabove, 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 181st (one hundred and eighty first) day of the Appointed Date as provided in Clause 10.3.1 and until such balance Right of Way is procured.
- 10.3.5 The Concessionaire shall complete the construction on the land included in the Appendix for which the Right of Way has been granted within 180 (one hundred and eighty) days of the Appointed Date, before Project Completion Date. However, construction on the lands for which Right of Way is granted after the period of 180 (one hundred and eighty) days from the Appointed Date shall be completed 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 due to any construction remaining incomplete on the date of Tests, on account of Right of Way not having been granted over such part of the Site. 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 for which the Right of Way is granted after 180 (one hundred and eighty) days of the Appointed Date, shall cease forthwith.
- 10.3.6 The Authority, shall procure the additional land required 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 date of Change of Scope Order require the Authority to initiate and undertake proceedings for acquisition of such land 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;
- 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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP


Authorised Signatory
Chief Project Officer
PIU, KSHIP,
Bangalore.

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.

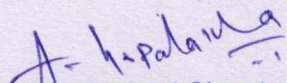
10.6 Special/temporary right of way

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 exercise of their rights and performance of their obligations under this Agreement.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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

11.2.1 The shifting of utilities is undertaken by the Authority. However, if the Concessionaire encounters any unforeseen utilities including electric lines, water pipes and telephone cables etc also which causes a Material Adverse Effect on the construction, operation and maintenance of the Project Highway, the Concessionaire shall, subject to Applicable Laws and with prior approval and assistance of the Authority, undertake shifting of the same to an appropriate location or alignment within or outside the Site after notifying the Authority and the Independent Engineer. 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 given a corresponding extension of time for the completion of works.

It shall be the responsibility of the Concessionaire to shift the utilities and encumbrances which causes a Material Adverse Effect on the construction, operation and maintenance of the Project Highway arising due to the change in design proposed by the Concessionaire and prior review by the Independent Engineer. Any time and cost implications arising on this account shall be at the risk and cost of the Concessionaire.

11.3 New utilities and roads

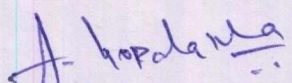
11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the 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.

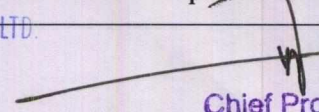
11.3.2 The Authority may, by notice require the Concessionaire to connect any adjoining road to the Project Highway, and the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at the Authority's cost in accordance with Article 16. The maintenance of such connecting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

PIU-KSHIP

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

cost to be made by the beneficiary entity in accordance with the amount and period as determined by the Independent Engineer. For the avoidance of doubt, any connecting road constructed prior to 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.

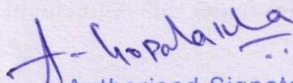
11.4 Felling of trees

The felling and removal of trees is undertaken by the Authority. However, if the Concessionaire further identifies any trees which cause a Material Adverse Effect on the construction, operation and maintenance of the Project Highway, the Concessionaire shall, subject to Applicable Laws and with prior approval and assistance of the Authority, undertake felling and removal of the same. The cost of such felling and removal shall be borne by the Authority and in the event of any delay in felling and removing thereof, the Concessionaire shall be given a corresponding extension of time for the completion of works.

Further, it shall be the responsibility of the Concessionaire to fell and remove the trees which cause a Material Adverse Effect on the construction, operation and maintenance of the Project Highway arising due to the change in design proposed by the Concessionaire and prior review by the Independent Engineer. In the event of removal of trees thereof, the Concessionaire shall not be entitled for any corresponding extension of time and cost for the completion of works.

For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 12

CONSTRUCTION OF THE PROJECT HIGHWAY**12.1 Obligations prior to commencement of construction**

Prior to commencement of Construction Works, the Concessionaire shall:

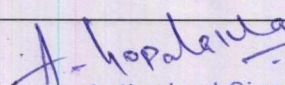
- (a) submit to the Authority and the Independent Engineer its construction methodology together with Drawings, quality assurance procedures, the procurement, engineering construction time schedule and deviation in designs, if any, for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;
- (b) appoint its representative duly authorised to deal with the Authority and the Independent Engineer 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;
- (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 and
- (e) Prepare a Construction Zone Safety Checklist relating to the Construction Works and submit to the Independent Engineer such checklist for review and concurrence. Failure of the Independent Engineer to review the Construction Zone Safety Checklist and convey its concurrence shall not relieve the Concessionaire of its safety zone obligations and liabilities under this Agreement.
- (f) Prepare an updated Environmental Management Plan including the action plan and checklist and submit to the Independent Engineer for review and concurrence. Failure of the Independent Engineer to review the Environmental Management Plan and convey its concurrence shall not relieve the Concessionaire of its obligations and liabilities under this Agreement.

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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore

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 copies each of all Drawings to the Independent Engineer for review;
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Specifications and Standards;
- (c) 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;
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;
- (f) 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 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;
- (g) 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; and

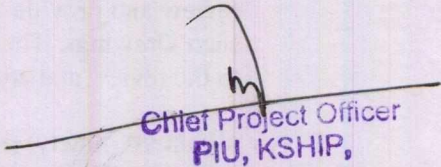
- (h) In the event that the Concessionaire intends to change the design of the Project Highway as provided by the Authority, the Concessionaire shall prepare such revised Drawings and submit the same to the Independent Engineer for review and comments. For the avoidance of doubt, it is agreed that the procedure to be followed in relation to the revised drawings shall be same as provided hereinabove.

12.4 Two-Laning Standard of the Project Highway

- 12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of Two - Laning Standard as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D and Schedule-L. The 731st (Seven hundred and thirty first) day from the Appointed Date shall be the scheduled date for completion of Two-Laning Standard (the “**Scheduled Two-Laning Standard Date**”) and the Concessionaire agrees and undertakes that Two-Laning Standard shall be completed on or before the Scheduled Two-Laning Standard 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 Two-Laning Standard 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 Two-Laning Standard 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 Two-Laning Standard is not completed within 270 (two hundred and seventy) days from the Scheduled Two-Laning Standard 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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 a review of the Construction Zone Safety Checklist 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 and the Construction Zone Safety Checklist. 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 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 Two-Laning Standard is not likely to be achieved by the Scheduled Two-Laning Standard 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.

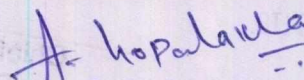
13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly 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 Two-Laning Standard 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 Two-Laning Standard 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 or any other electronic storage format, 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 close of each quarter.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 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 and with the concurrence of the Authority in writing, 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

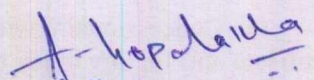
- 14.5.1 If the Independent Engineer determines that the Project Highway or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority 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. 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. The Independent Engineer shall issue the Provisional Certificate with the concurrence of the Authority in writing, only after all the defects and deficiencies have been rectified.

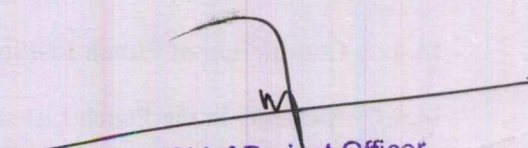
- 14.5.2 In the event that the Authority and the Independent Engineer fail to concur over issuance of the Provisional Certificate under Clause 14.5.1 or Clause 14.3, then either party may refer such matter for resolution to the Dispute Review Board in accordance with Clause 44.3.

14.6 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as 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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 15

ENTRY INTO COMMERCIAL SERVICE**15.1 Commercial Operation Date (COD)**

Two-Laning Standard 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 Two-Laning Standard 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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

A. K. K. K.
Authorised Signatory

M
Chief Project Officer
PIU, KSHIP,
Bangalore.

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 7 (seven) days of receipt of such notice forward the same to the Independent Engineer for its confirmation and certification. The Independent Engineer shall intimate its confirmation and certification with respect to such Change of Scope suggested by the Concessionaire, to the Authority within 10 (ten) days of forwarding the notice by the Authority.
- 16.1.3 The Authority shall, within 15 (fifteen) days of receipt of confirmation and certification by the Independent Engineer, 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 and after such Change of Scope has been certified by the Independent Engineer, 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. The costs of such Change of Scope shall be determined based on the National Highways current Schedule of Rates¹. For the items not envisaged in the National Highways current Schedule of Rates, such items shall be determined using the latest version of the MORTH Standard Data Book², using the material, labour, and machinery unit costs specified in the said National Highways current Schedule of Rates and as applicable to the works assigned by the Authority to its contractors along with the proposed

¹ The National Highways Current Schedule of Rates is available at office of Chief Engineer National Highways K.R Circle Bangalore

² The Morth Standard Data Book is available for sale at Secretary IRC Jumnaagar house New Delhi 110011

A. Kopalappa
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

premium/discount on such rates; provided however, that if the current National Highways Schedule of Rates and latest MORTH Standard Data Book for any item is not available, the rate for the same shall be as per the prevailing market rate; provided further 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 may, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 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. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five percent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

16.4 Restriction on certain works

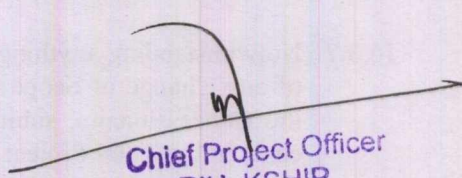
16.4.1 Notwithstanding anything to the contrary contained in this Article 16, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of Two-Laning Standard or violates the environment and safety requirements under the Agreement ; 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 Two-Laning Standard 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 only if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 2 (two) 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.

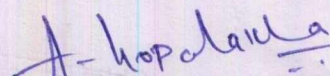
16.5 Power of the Government to undertake works - DELETED**16.6 Reduction in Scope of the Project**

16.6.1 If the Concessionaire shall have not been able 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 such of the sum saved there from, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. It is clarified that any such reduction in Scope of Project and the sum saved there from, as determined by the Authority shall be subject to certification by the Independent Engineer.

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.


Chief Project Officer
PIU, KSHIP,
Bangalore.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD


Authorised Signatory

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 cooperating with 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 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 Two- Laning Standard 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 measures;
- (g) intervals for major maintenance works and the scope thereof; and
- (h) lane closure schedule for each type of maintenance (length and time).

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 obstruction 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 at its cost and expenses 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 decommissioning 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 decommissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project Highway.

17.7 Lane closure

- 17.7.1 The Concessionaire shall not close any lane of the Project Highway for undertaking maintenance or repair works except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made 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 0.15% (zero point one five per cent) of the Average Daily Annuity Fee 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 Fee, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof. Such Damages shall be recovered by the Authority in accordance with Article 28.3 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

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP

A. hopalau
Authorised Signatory

W
Chief Project Officer
PIU, KSHIP,
Bangalore.

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 and concurrence of the Independent Engineer to this effect, 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 necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding 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:

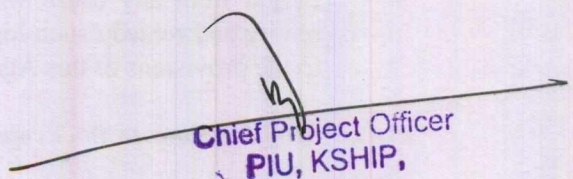
- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Project Highway except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions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

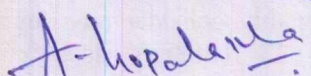
The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Project Highway except for reasons of Emergency, national security, law and order or collection of inter-state taxes. The Authority shall also make best endeavours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

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 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.


Chief Project Officer
PIU, KSHIP,
Bangalore.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory

ARTICLE 18

ENVIRONMENT, HEALTH AND SAFETY REQUIREMENTS**18.1 Safety Requirements**

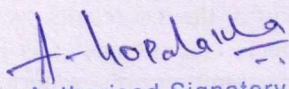
18.1.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Highway, and shall comply with the Environment, Health and safety requirements set forth in Schedule-L (the “**Safety Requirements**”) including the Construction Zone Safety Checklist and Road Users Safety Checklist and shall comply with the Safety Requirements in accordance with the Specifications and Standards set forth in Schedules-D and L. The Concessionaire shall develop, implement and administer an “**Environmental Management Plan**” covering the activities required for the Construction and Operation of the Project Highway shall comply with the “**Environmental Requirements**” set forth in Schedule-L.

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 and Environmental Requirements

All costs and expenses arising out of or relating to Safety Requirements and/or Environmental 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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP

A. Kopalappa
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

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. However, all the costs and expenses related to procurement of such police assistance shall be borne by the Concessionaire.

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 each of the Traffic Aid Posts, and hand them over to the Authority not later than 30 (thirty) days prior to the Scheduled Two-Laning Standard Date. Traffic aid posts locations shall be selected in due consultation with the Independent Engineer. The Traffic Aid Post[s] 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 Two-Laning Standard 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. During the Operation Period, the Concessionaire shall also reimburse to the State Police Department or a substitute thereof the actual expenditure incurred in each Accounting Year on the pay, allowances and equipment of up to 5 (five) police personnel deployed for the traffic aid posts, and shall maintain the Traffic Aid Post buildings in accordance with Good Industry Practice. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State Police Department or a substitute thereof.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 21

EMERGENCY MEDICAL AID**21.1 Medical Aid Posts**

For providing emergency medical aid during the Operation Period, as set forth in this Agreement, the Concessionaire shall assist the State Government or a substitute thereof to be designated by the Authority in setting up and operating a medical aid post (the “**Medical Aid Post**”) along the Project Highway with round the-clock ambulance services for victims of accidents on the Project Highway.

21.2 Buildings for Medical Aid Posts

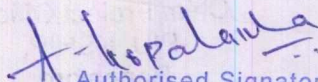
The Concessionaire shall, at its cost and in accordance with the type of designs prescribed for such buildings by the State Medical Department (or a substitute thereof to be designated by the Authority), construct an aid post building and 2 (two) residential quarters along the Project Highway, and hand them over to the Authority, not later than 30 (thirty) days prior to Scheduled Two-Laning Standard Date.

21.3 Recurring expenditure on Medical Aid Posts

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 Medical Aid Posts and ambulance, and shall maintain the Medical Aid Post buildings in accordance with Good Industry Practice. 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.

Chief Project Officer
PIU, KSHIP,
Bangalore.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory

ARTICLE 22
TRAFFIC SAMPLING

22.1 Traffic sampling

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.

22.2 Computer systems and network

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

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

A. K. Palanika
Authorised Signatory

m
Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 23
INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm in accordance with the selection criteria and procedure 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 36 months. On expiry of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted.

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

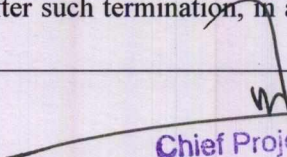
In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period, Construction Period and Operation Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses shall be borne equally by the Authority and the Concessionaire in accordance with the provision of the agreement.

23.4 Termination of appointment

23.4.1 If the Authority 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 concessionaire. Following delivery of such representation, 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 Authority retains the right to terminate the services of Independent Engineer and, 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 another Independent Engineer not later than 45 days after such termination, 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 another Independent Engineer not later than 45 days after such termination, in accordance with Clause 23.1.


A. Kopalappa
Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore

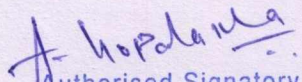
23.5 Authorised signatories

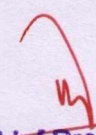
The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall 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.

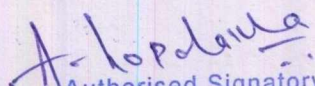
For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

Part IV Financial Covenants

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 24
FINANCIAL CLOSE

24.1 Financial Close

24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 120 (one hundred and twenty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (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 120 (one hundred and twenty) 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.

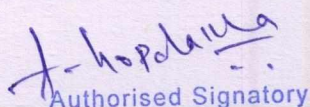
24.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, 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.

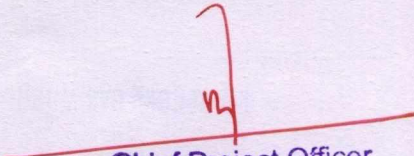
24.2 Termination due to failure to achieve Financial Close

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 Bid Security.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 25

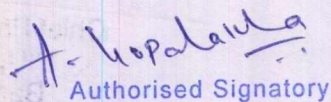
LEVY AND COLLECTION OF FEE**25.1 Concessionaire's obligation**

- 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 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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD

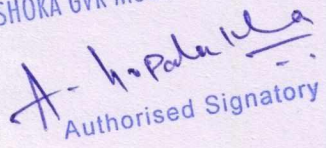

Authorized Signatory
Chief Project Officer
PIU, KSHIP,
Bangalore.

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 due and payable.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 27

LUMPSUM PAYMENT, ANNUITY**27.1 Annuity**

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. 39.49 Crores (Rupees Thirty Nine Crores and Forty Nine Lacs) (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 Annuity payments shall not exceed 2 (two) per year and such Annuity payments shall not exceed 16 (sixteen) over the Concession Period and will commence only after achieving COD.

27.2.2

(i) The first Annuity Payment Date shall be the date:

- (a) Six months after COD, in case COD is achieved on Scheduled Two-Lane Standard date.
- (b) Six months after Scheduled Two-Lane Standard date, In case COD is achieved before Scheduled Two- Lane Standard date.

(ii) In case COD is achieved after Scheduled two lane date, the first Annuity Payment Date shall be next Annuity Payment date provided in schedule M which falls after the COD.

For avoidance of doubt it is agreed that the first Annuity Payment shall be the product of Average daily Annuity and the number of days between the COD and the first Annuity Payment date. Each Annuity payment period shall be deemed to be a period of 6 (six) calendar months from the preceding Annuity Payment date.

27.2.3 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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD

PIU-KSHIP

A. Kopalappa
Authorised Signatory

W
Chief Project Officer
PIU, KSHIP,
Bangalore.

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.

27.5 Lumpsum Payment

The Concessionaire shall be entitled to receive **Specified fixed lumpsum payments** (hereinafter the "**Lumpsum Payment**"), during the Construction Period in Five installments as below:

	Lumpsum Payment (during construction period)					
	First Installment	Second Installment	Third Installment	Fourth Installment	Fifth Installment	Total
WAP 2	Rs 13.596 Crs	Rs 33.990 Crs	Rs 20.394 Crs	Rs 33.990 Crs	Rs 33.990 Crs	Rs 135.96 Crs

PIU-KSHIP

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

A. Kopalappa
Authorised Signatory

[Signature]
Chief Project Officer 67
PIU, KSHIP,
Bangalore.

The **First installment** of the Lumpsum Payment will be made to the Concessionaire upon completion of 10 percent of the project road length as per the Road Cross Sections indicated in schedule B in the minimum continuous stretches of 5 Kms and certification of Independent Engineer to that effect

The Second installment of the Lumpsum Payment will be made to the Concessionaire upon the completion of 35 percent of the project road length as per the Road Cross Sections indicated in schedule B in minimum continuous stretches of 10 Kms and certification by the Independent Engineer to that effect and 35 percent drawdown on equity required for project implementation and submission by the Concessionaire to the Independent Engineer of a certificate by the Statutory Auditor of the Concessionaire to such effect; and Receipt of Certificate from the Escrow Bank to that effect.

The Third installment of the Lumpsum Payment will be made to the Concessionaire upon the completion of 50 percent of the project road length as per the Road Cross Sections indicated in schedule B in minimum continuous stretches of 10 Kms and certification by the Independent Engineer to that effect and 50 percent drawdown on equity required for project implementation and submission by the Concessionaire to the Independent Engineer of a certificate by the Statutory Auditor of the Concessionaire to such effect; and Receipt of Certificate from the Escrow Bank to that effect.

The Fourth installment of the Lumpsum Payment will be made to the Concessionaire upon the completion of 75 percent of the project road length as per the Road Cross Sections indicated in schedule B in minimum continuous stretches of 10 Kms and certification by the Independent Engineer to that effect and 75 percent drawdown on equity required for project implementation and submission by the Concessionaire to the Independent Engineer of a certificate by the Statutory Auditor of the Concessionaire to such effect; and Receipt of Certificate from the Escrow Bank to that effect.

The Fifth installment of the Lumpsum Payment will be given on COD

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 Two-Laning Standard Date then 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 Two-Laning Standard Date, as certified by the Independent Engineer.

28.1.3 DELETED

28.2 Reduction in Annuity on account of delayed Project Completion

28.2.1 In case the Concessionaire achieves COD after to the Scheduled Two-Laning Standard Date then 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 Two-Laning Standard Date.

28.2.3 The number of days by which COD exceeded the Scheduled Two-Laning Standard 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;

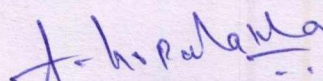
(ii) All Force Majeure Event; and


(iii) Authority Event of Default

28.2.4 The number of days of delays caused due to the reasons provided in the Clause 28.2.3 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

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.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

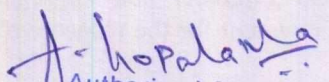
28.4 Reduction in Annuity on account of non-provision of assured lane availability

- 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 the 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.
- 28.4.4 It is clarified that reduction in Annuity of Concessionaire under this clause, for Actual Lane Availability being below Assured Lane Availability shall not include the Damages for breach of maintenance obligations under Clause 17.8.

28.5 Reduction in Annuity on account of non-adherence to Environmental Management and mitigation measures as per the EMP and statutory requirements

- 28.5.1 If in an Annuity Payment Period, the Concessionaire fails to implement the Project Highway in accordance with the EMP and the statutory requirements as provided in Schedule L, then it shall be liable for payment of Damages in accordance with following Article 28.5.2. 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.
- 28.5.2 In the event that the Concessionaire fails to adhere to EMP and statutory requirements and fails to cure within a reasonable period as instructed by the Independent Engineer, 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 percent) of Average Daily Annuity Fee, and (b) 0.1% (zero point one percent) 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 this Clause.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD


Authorised Signatory
Chief Project Officer
PIU, KSHIP,
Bangalore.

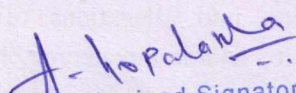

ARTICLE 29

CAPACITY AUGMENTATION

29.1 Capacity Augmentation

- 29.1.1 The Authority may, following a detailed traffic study conducted by it, at any time after [6th] anniversary of the COD decide to augment/ increase the capacity of the Project Highway (the "Capacity Augmentation") in a manner found most appropriate by the Authority in its sole discretion with a view to provide the desired level of service (LOS 'C' as per IRC 64 guidelines) to the Users of the Project Highway.
- 29.1.2 Notwithstanding anything contrary contained in this Agreement, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award such work of Capacity Augmentation to any person on the basis of open competitive bidding.
- 29.1.3 In case the Concessionaire (i) chooses not to submit its proposal for Capacity Augmentation or (ii) is not the preferred bidder, Authority shall be entitled to terminate this Agreement upon payment to the Concessionaire of the Termination Payment specified under 29.1.4.
- 29.1.4 The Termination Payment referred to in preceding Clause above shall be, in an amount equal to:
- (a) Debt Due 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 not be deducted from the Debt Due; and
 - (b) 110% (one hundred and ten percent) of the Adjusted Equity.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory
Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 30

FRAUD AND CORRUPTION

30. FRAUD AND CORRUPTION

30.1 As per the World Bank's policy on Fraud and Corruption, the Borrowers (including beneficiaries of Bank loans), as well as Bidders, suppliers, contractors, Concessionaires and their agents (whether declared or not), personnel, subcontractors, sub-consultants, service providers or suppliers under Bank-financed contracts, are required to observe the highest standard of ethics during the procurement and execution of such contracts³. In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- (i) "corrupt practice"⁴ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) "fraudulent practice"⁵ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) "collusive practice"⁶ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iv) "coercive practice"⁷ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (v) "obstructive practice" is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights.

³ In this context, any action taken by an Applicant, bidder, supplier, contractor, Concessionaire or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees to influence the procurement process or contract execution for undue advantage is improper.

⁴ "another party" refers to a public official acting in relation to the procurement process or contract execution. In this context, "public official" includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

⁵ a "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

⁶ "parties" refer to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁷ a "party" refers to a participant in the procurement process or contract execution.

- (b) will reject a proposal for award if it determines that the Concessionaire has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the Project in question;
- (c) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the World Bank to remedy the situation;
- (d) will sanction an entity or individual, at any time, in accordance with prevailing Bank's sanctions procedures⁸, including by publicly declaring such entity or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated⁹ sub-contractor, consultant, manufacturer or supplier, or service provider, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and

30.2 The Concessionaire agrees to adhere to and abide by Fraud and Corrupt Practice policies of the World Bank.

⁸ A firm or an individual may be declared ineligible to be awarded a Bank-financed contract upon completion of the Bank's sanctions proceedings as per its sanctions procedures, including inter alia: (i) temporary suspension or early temporary suspension in connection with an ongoing sanctions proceedings; (ii) cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks; and (iii) the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption.

⁹ A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has : (i) either been included by the bidder in its qualification application or bid because it brings specific and critical experience and knowhow that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

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.
- 31.1.3 The Concessionaire will be required to maintain a ‘Safety Fund’ as a sub-account of the Escrow Account in the manner detailed out in the Escrow Agreement. The Safety Fund shall be transferred to the Authority by the Concessionaire on the Commercial Operation Date.

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;

PIU-KSHIP

A. K. K. K.
Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

- (g) Premium due and payable to the Government- 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

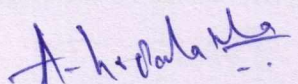
31.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (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:

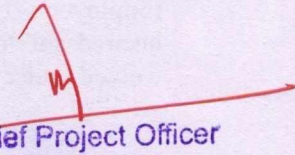
Provided that no appropriations shall be made under Sub-clause (j) of this Clause 31.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 38.

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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorized Signatory

PIU-KSHIP


Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 32

INSURANCE

- 32.1 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"). For the avoidance of doubt, as a minimum, the Concessionaire shall maintain the insurances set forth below in the sums and with the deductibles and other conditions specified in the Concession Agreement. The identity of the insurers and the form of the policies shall be subject to the prior approval of the Authority who shall not unreasonably withhold such approval. The Concessionaire shall submit appropriate certificates of insurance demonstrating that the Concessionaire has met its obligations pursuant to this Article 32 to the Authority no later than the Appointed Date.

Cargo Insurance During Transport

Covering loss or damage, occurring while in transit from the Concessionaire's or Subcontractor's works or stores until arrival at the Site, to the Plant and Equipment, Concessionaire's Equipment (Design-Build) and Concessionaire's Equipment (Operations), including spare parts there for;]

Project Highway All Risks Insurance

Covering physical loss or damage to the equipment and works on the Site occurring prior to the Completion of the Concession Period;

Third Party Liability Insurance

Covering bodily injury or death suffered by Third Parties, including the Authority's personnel, and loss of or damage to property occurring in connection with the Project Highway;

Professional Liability Insurance

Covering loss or damage by reason of professional negligence in the design, construction and operation of the Site and works;

Automobile Liability Insurance

Covering use of all vehicles used by the Concessionaire or its Subcontractors, whether or not owned by them, in connection with the Services and execution of the Contract;

Workers' Compensation

In accordance with the requirements of the Applicable Law; and

Employer's Liability

In accordance with the requirements of the Applicable Law.

- 32.2 The Authority shall be named as co-insured under all insurance policies taken out by the Concessionaire, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Concessionaire's Subcontractors shall be named as co-insured under all insurance policies taken out by the Concessionaire pursuant to Article 32, [except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances]. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Agreement shall be waived under such policies.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP

A. Kopalappa
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

32.3 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 and copies of insurance policies in respect of such insurance.

32.3.1 The Concessionaire shall ensure that, where applicable, the Subcontractors take out and maintain in effect adequate insurance policies for their employees and vehicles and for work executed by them under the Agreement, unless such Subcontractors are covered by the policies taken out by the Concessionaire.

32.3.2 If the Concessionaire fails to take out or maintain in effect the insurances referred to in Article 32.1, the Authority may take out and maintain in effect any such insurances and may from time to time deduct from any amount due to the Concessionaire under the Agreement any premium that the Authority shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Concessionaire.

32.3.3 When each insurance premium has been paid, the Concessionaire shall submit a copy of receipts to the Authority and shall notify the Authority's Representative that it has done so within 15 days of payment of such premium.

32.3.4 The Concessionaire shall comply with the conditions stipulated in each of the insurance policies. The Concessionaire shall make no material alteration to the terms of any insurance without the prior approval of the Authority. If an insurer makes, or purports to make, any such alteration, the Concessionaire shall notify the Authority immediately.

32.3.5 Unless otherwise provided in the Agreement, the Concessionaire shall prepare and conduct all and any claims made under the policies effected by it pursuant to this Article 32, and all monies payable by any insurers shall be paid to the Concessionaire. The Authority shall give to the Concessionaire all such reasonable assistance as may be required by the Concessionaire. With respect to insurance claims in which the Authority's interest is involved, the Concessionaire shall not give any release or make any compromise with the insurer without the prior consent of the Authority.

32.3.6 Nothing in this article 32 limits the obligations, liabilities or responsibilities of the Concessionaire, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Concessionaire.

32.3.7 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.


32.4 The Concessionaire shall take out and maintain the following insurance policies in the specified sums and with the specified deductibles as set out below:

- (a) Cargo Insurance During Transport: Equipment/ Machinery Invoice value.
- (b) Installation All Risks Insurance: Total Project Cost
- (c) Third Party Liability Insurance: Minimum Rs 20,00,000/- per occurrence, with the number of occurrences unlimited.

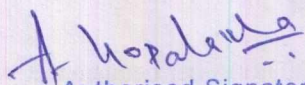
- (d) Professional Liability Insurance: Minimum Rs 10 Crores per occurrence, with the number of occurrences unlimited.
- (e) Automobile Liability Insurance: Value at market rates of vehicles
- (f) Worker's Compensation: In accordance with the requirements of the Applicable Law of India
- (g) Authority's Liability: In accordance with the requirements of the Applicable Law of India

32.5 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 in the Financing Agreements.


Chief Project Officer
PIU, KSHIP,
Bangalore.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory

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/collected by it from or on account of the Project Highway and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts 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 Within the time period specified under Clause 33.1.1, 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, (c) such other information as the Authority may reasonably require.
- 33.1.4 It is expressly agreed between the Parties that the World Bank shall be authorized to inspect and audit the Site and/or accounts and records of the Concessionaire, as well as its sub-contractors including O&M Contractor, relating to the Project.

33.2 Appointment of auditors

- 33.2.1 Authority and the Concessionaire by mutual agreement shall select a one reputable firm registered with the Institute of Chartered Accountants of India empanelled with the Comptroller and Auditor General of India (the "**Panel of Chartered Accountants**"), in accordance with the criteria set forth in Schedule-T. However, if the Concessionaire already has a Statutory Auditor appointed in accordance with the Companies Act, 1956, it shall submit to the Authority the details of such Statutory Auditors. The Authority may, at its discretion either accept the appointment of existing Statutory Auditors or require the Concessionaire to replace its existing Statutory Auditors with another Statutory Auditors which shall be a firm chosen by it from the Panel of Chartered Accountants. 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.

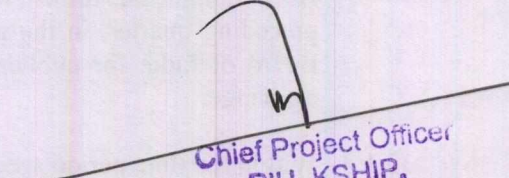
33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “Additional Auditors”) from the Panel of Chartered Accountants to audit and verify all those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

33.3 Certification of claims by Statutory Auditors

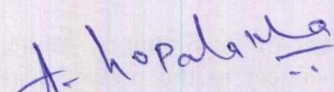
Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, 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, 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.

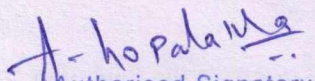

Chief Project Officer
PIU, KSHIP,
Bangalore.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory

Part V Force Majeure and Termination

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

34.3 Indirect Political Event

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

A. Kopalanda
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

- (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.

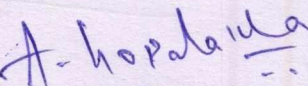
34.4 Political Event

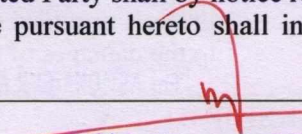
A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under 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 and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

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:


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

- (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 Upon the occurrence of any Force Majeure Event after the Appointed Date but 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.

34.6.3 It is agreed that no extension in Concession Period shall be granted in case of Force Majeure Event occurs after the COD

34.7 Allocation of costs arising out of Force Majeure

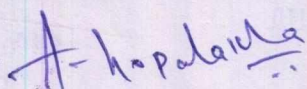
34.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.


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; provided that the Concessionaire's liability in such a case would be limited to the damages of the physical assets like plant and machinery owned by it.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

- (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 on account of Damages under the Agreement 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.

Notwithstanding anything hereinabove, the Authority will continue to make the Annuity payments to the Concessionaire during the subsistence of Force Majeure Event subject to the fact that in case the Force Majeure event results in partial lane closure below the Assured Lane Availability, the Concessionaire shall be entitled to reduced Annuity in accordance with Clause 28.4. However, in case the Force Majeure event results in total Lane Closure except De-commissioning due to emergency under Clause 17.6, the Concessionaire shall not be eligible to receive any Annuity during such period of closure.

- 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) days 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 the Debt Due 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:

(a) Debt Due 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 not be deducted from the Debt Due; and

(b) 110% (one hundred and ten percent) of the Adjusted Equity.

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.

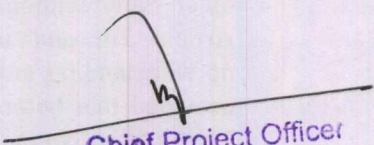
34.10 Dispute resolution

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.

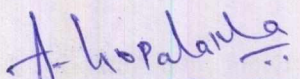
34.11 Excuse from performance of obligations

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.


Chief Project Officer
PIU, KSHIP,
Bangalore.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory

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 -DELETED**35.5 Compensation to be in addition**

Compensation payable under this Article 35 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

f. h. Palani
Authorised Signatory

m
Chief Project Officer
PIU, KSHIP,
Bangalore.

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 copied to the Independent Engineer, setting out the applicable Concessionaire Default, , 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.

36.4 Substitution of Concessionaire

At 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, 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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP

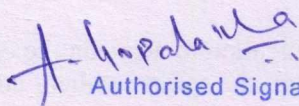
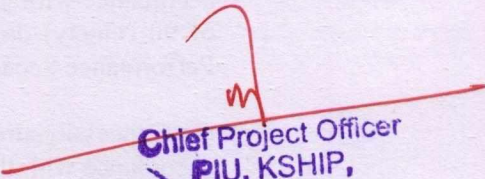
A. K. Palamra
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorized Signatory
Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 37
TERMINATION

37.1 Termination 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 material breach of the Maintenance Requirements or health, environment and safety requirements as the case may be;
- (h) the Concessionaire has failed to make any material 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;

PIU-KSHIP

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

[Signature]
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore,

- (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 of Ownership has occurred in breach of this Agreement
- (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, wound-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 reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (iii) 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 written 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 fulfill 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, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "Authority Default") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- (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:

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.
PIU-KSHIP

A. K. K. K.
Authorised Signatory

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

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 90% (ninety per cent) of the Debt Due 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 not be deducted from the Debt Due. 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:

(a) Debt due 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 not be deducted from the Debt Due; and

(b) 120% (One hundred and twenty per cent) of the Adjusted Equity.

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;

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP

Authorised Signatory

Authorised Signatory

Chief Project Officer
PIU, KSHIP,
Bangalore.

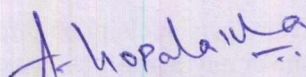
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 38.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the 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.


Chief Project Officer
PIU, KSHIP,
Bangalore.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory

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 tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 39 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 38.

38.3 Vesting Certificate

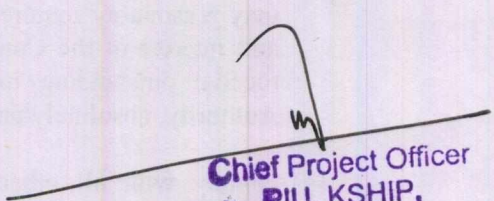
The divestment of all rights, title and interest in the Project Highway shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-U (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

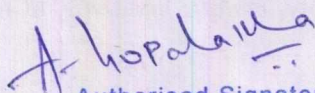
Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities shall continue to vest in the Concessionaire upon and after Termination.

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 this Article 38, the Dispute Resolution Procedure shall apply.


Chief Project Officer
PIU, KSHIP,
Bangalore.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory

ARTICLE 39

DEFECTS LIABILITY AFTER TERMINATION**39.1 Liability for defects after Termination**

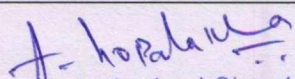
The Concessionaire shall be responsible for all defects and deficiencies in the Project Highway for a period of 120 (One hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer 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 or 39.2.2, as the case may be, shall be dispensed with.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

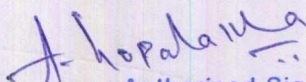
PIU-KSHIP

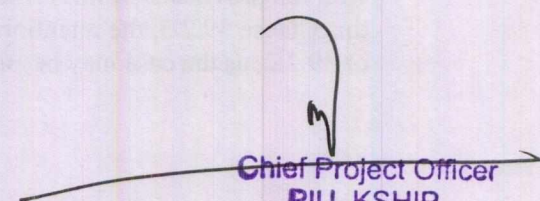

Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

Part VI Other Provisions

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.
For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory
Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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, 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 enjoy 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.

PIU-KSHIP

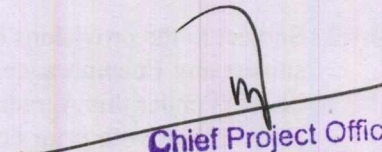
For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

A. ho Palam
Authorised Signatory

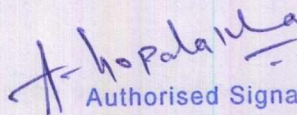
W
Chief Project Officer
PIU, KSHIP,
Bangalore.

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.


Chief Project Officer
PIU, KSHIP,
Bangalore.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory

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. Crores) 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 to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

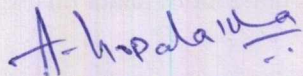
41.3 Protection of NPV

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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.



Authorised Signatory



Chief Project Officer
PIU, KSHIP,
Bangalore.

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, 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 Article 42, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used

A. Hopabalu
Authorised Signatory

W
Chief Project Officer
PIU, KSHIP,
Bangalore.

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, authorizing 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 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).

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP

A. Hopaluma
Authorised Signatory

W
Chief Project Officer
PIU, KSHIP,
Bangalore.

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.

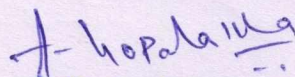
42.5 No consequential claims

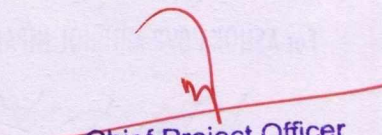
Notwithstanding anything to the contrary contained in this Article 42, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in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

42.6 Survival on Termination

The provisions of this Article 42 shall survive Termination.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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.

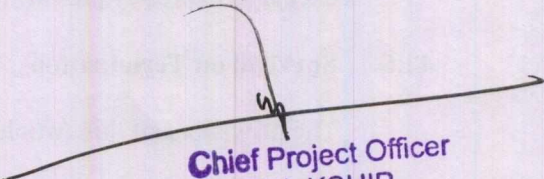
43.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility or road.

43.3 Property taxes

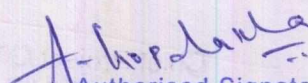
The Concessionaire shall not be liable to pay any property taxes for the Site.

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 all or any part of the Project Highway.


Chief Project Officer
PIU, KSHIP,
Bangalore.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory

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 through mediation in accordance with 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.

Unless the Contract has already been abandoned, repudiated or terminated, the Concessionaire shall continue to proceed with the Works/ perform its obligations in accordance with this Agreement during the resolution of the Dispute.

44.2 Mediation and Amicable Settlement

In the event of any Dispute between the Parties, either Party shall call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer the dispute shall be referred to the Dispute Review Board in accordance with the provisions of Clause 44.3.

44.3 Dispute Review Board

44.3.1 (a) The Parties shall appoint a Dispute Review Board comprising of three (3) suitably qualified persons (the “**DRB Members**”) each of whom shall be fluent in English with a professional experience in the matters with respect to contractual obligations in construction and operation of highways, by the Appointed Date, wherein each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

(b) The terms of the remuneration of each of the three members, including the remuneration of any expert whom the Dispute Review Board consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration. The other terms and conditions of the appointment shall be substantially in the form appended to this Agreement as General Terms and Conditions of appointment (Schedule - N) and shall be appended to the appointment letter.

(c) If at any time the Parties so agree, they may jointly refer a matter to the Dispute Review Board for it to give its opinion. Neither Party shall consult the Dispute Review Board on any matter for an opinion without the agreement of the other Party.

(d) If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the DRB Members are appointed within 42 days of such death, disability, resignation or termination.

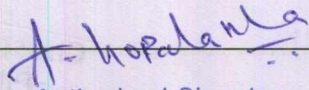
- (e) The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Authority or the Concessionaire acting alone. Unless otherwise agreed by both Parties, the appointment of the Dispute Review Board (including each member) shall expire on termination of this Agreement.
- 44.3.3 (a) If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Agreement, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Independent Engineer, either Party may refer the dispute in writing to the Dispute Review Board for its decision, with copies to the other Party and the Independent Engineer. Such reference shall state that it is given under this Clause.
- (b) The Dispute Review Board shall be deemed to have received such reference on the date when it is received by the chairman of the Dispute Review Board. Both Parties shall promptly make available to the Dispute Review Board all such additional information, further access to the Site, and appropriate facilities, as the Dispute Review Board may require for the purposes of making a decision on such dispute. The Dispute Review Board shall be deemed to be not acting as arbitrators.
- (c) Within 84 days after receiving such reference, or within such other period not exceeding 30 days as may be proposed by the Dispute Review Board and approved by both Parties, the Dispute Review Board shall give its decision, which shall be reasoned and shall state that it is given under this Clause 44.3. The decision shall be binding on both Parties, who shall promptly give effect to it, provided that the Concessionaire shall continue to proceed with the Works/ perform its obligations in accordance with this Agreement.
- 44.3.4 (a) If either Party is dissatisfied with the Dispute Review Board's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the Dispute Review Board fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.
- (b) In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. If the Dispute Review Board has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the Dispute Review Board's decision, then the decision shall become final and binding upon both Parties.


44. 4 Arbitration

- 44.4.1 Any Dispute which is not resolved in the manner provided in Clause 44.2 and in respect of which the Dispute Review Board's decision (if any) has not become final and binding, shall be finally decided by reference to arbitration by an arbitration panel appointed in accordance with Clause 44.4.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

108

44.4.2 (a) The arbitration panel shall be constituted with three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected.

(b) The arbitration panel may retain the services of financial and technical consultants, if it so deems appropriate.

(c) The arbitration panel shall endeavour to make an award on any Dispute referred to it within a period of ninety (90) Days from the date of its first meeting. However such period may be extended by mutual agreement of the parties to the dispute or as the arbitration panel deems fit.

(d) The costs and expenses of the arbitration panel shall be equally shared between the arbitrating Parties; provided however that the arbitration panel shall be entitled to decide on the costs of the arbitration procedure.

44.4.3 (a) Where the Concessionaire is controlled by shareholder(s) incorporated outside India, arbitration shall be international commercial arbitration with proceedings administered by the Singapore International Arbitration Centre (SIAC) in accordance with UNCITRAL arbitration rules, the place of arbitration shall be Singapore and the arbitration shall be conducted in English. In relation to arbitration proceedings under this article 44.4.4(a), the Parties hereby expressly exclude the application of Part I of the Arbitration and Conciliation Act, 1996, and

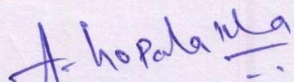
(b) Where the Concessionaire is controlled by shareholder(s) incorporated in India, arbitration shall be with conducted in accordance with the Arbitration and Conciliation Act, 1996. For arbitration proceedings under article 44.4.4(b), the venue of arbitration shall be Bangalore only and the arbitration proceedings shall be conducted in English language. The arbitration panel shall have the powers to pass such interim orders to the extent permissible under the Arbitration and Conciliation Act, 1996.

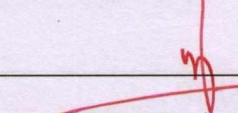
44.4.4 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Independent Engineer, and any decision of the Dispute Review Board, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Independent Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

44.4.5 Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the Dispute Review Board to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the Dispute Review Board shall be admissible in evidence in the arbitration.

44.4.6 Arbitration may be commenced at any time during the Concession Period. The obligations of the Parties, the Independent Engineer and the Dispute Review Board shall not be altered by reason of any arbitration being conducted during the progress of the Works.

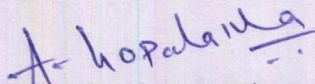
44.4.7 In the event that a Party fails to comply with a final and binding Dispute Review Board decision, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

- 44.4.8 The arbitrators shall make a reasoned award (the “Award”). Any 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.
- 44.4.9 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.
- 44.4.10 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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 its project office and Concessionaire’s Registered Office. The Concessionaire shall prominently display at appropriate places 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.

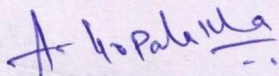
45.2 Disclosure of Documents relating to safety

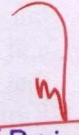
The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project Highway, free of charge, during normal business hours on all working days, at the Concessionaire’s Project Office except the documents of the Concessionaire required to be maintained at the Registered Office under the Companies Act, 1956. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

45.3 Notwithstanding the provisions of Article 45.1 and 45.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.*Explanation:*

The expression ‘Protected Documents’ shall mean such of the Specified Documents or documents referred to in Articles 45.1 and 45.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

ARTICLE 46

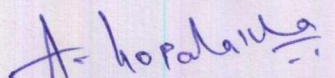
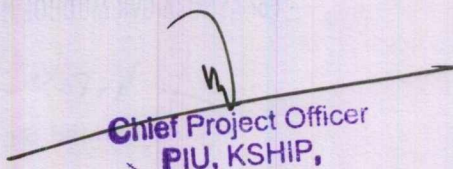
REDRESSAL OF PUBLIC GRIEVANCES**46.1 Complaints Register**

- 46.1.1 The Concessionaire shall maintain a public relations office at its Site office to be located along the Project Highway and easily accessible to the Users of the Project Highway, 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 appropriate places 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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory
Chief Project Officer
PIU, KSHIP,
Bangalore.

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 Bangalore 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-DELETED**47.4 Depreciation**

47.4.1 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 in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

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

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 and the Independent Engineer 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

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP

A. K. Kopalappa
Authorised Signatory

W
Chief Project Officer
PIU, KSHIP,
Bangalore.

- (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 be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

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 Bangalore 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 Bangalore 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.

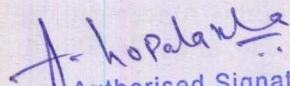
47.16 Language

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.

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

“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.

“Annuity Payment Period” shall have the meaning ascribed to it in Clause 27.2.2.

“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;

“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;

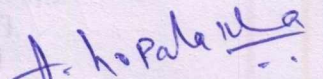
“Authority Contractor” means such person or persons as may be authorised in writing by the Authority to act on its behalf under any of Authority’s agreements, including this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations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

“Authority Representative” means such person or persons as may be authorized 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 of first Annuity to be paid to the Concessionaire divided by 180 (one hundred and eighty) days;

“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;


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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 0.83% (zero point eight three 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 duration, if any, for which the Concession Period is extended, but the revision on account 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;

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP

A. Kopalappa
Authorised Signatory

[Signature]
Chief Project Officer
PIU, KSHIP,
Bangalore.

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

"Bid Security" means the security provided by the Concessionaire/Joint Venture to the Authority along with the Bid in a sum of Rs.6.35 crore (Rupees Six crores and thirty five lakhs), in accordance with the Tender Notice, and which is to remain in force until substituted by the Performance Security;

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

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

- (a) the enactment of any new Applicable Law;
- (b) the repeal, modification or re-enactment of any existing Applicable Law;
- (c) the commencement of any Applicable 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 judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

"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;

"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;

"Construction Zone Safety Checklist" shall mean the checklist regarding construction zone safety, as provided under Schedule L.

“**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;

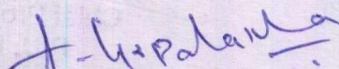
“**Debt Due**” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

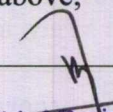
- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date,;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Subclause (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 pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority 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;

provided further that the Lumpsum Payments shall not be included in the principal, for determining the amount as provided in sub-clause (a) above;

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.
PIU-KSHIP


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

"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;

"Environmental Requirements" means all the environmental management measures which are included in the Clearance issued under the EIA notification as well as Consent/Authorization under the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 or the Environment (Protection) Act, 1985, issued by the respective statutory bodies for activities to be undertaken for the development, construction, and operation of the Project Highway.

"Environmental Management Plan" means the plan prepared by the Concessionaire as described in Schedule L, in order to ensure compliance with Environmental Requirements.

"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, but excludes a condition or situation resulting from a Force Majeure Event;

"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;

PIU-KSHIP
For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

A. Kopalappa
Authorised Signatory

[Signature]
Chief Project Officer 121
PIU, KSHIP,
Bangalore.

"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;

"Estimated Construction Cost" shall mean the cost of the construction works as estimated and provided in the RFP exclusive of the financing costs, physical and price contingencies;

"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 fulfillment 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;

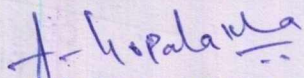
"Financial Package" means the financing package indicating the total capital cost of Two-Laning Standard and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and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

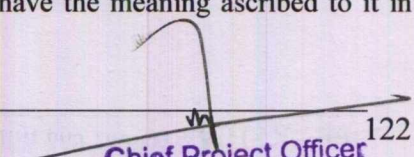
"Financing Agreements" means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures,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

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

“Two-Laning Standard” or **“Two-Lane Standard”** means the construction and completion of all works included in or constituting a Two-Lane Standard 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 Karnataka;

“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 and applicable, as determined by the Independent Engineer, 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 applicable, as determined by the Independent Engineer, and payable in relation to such act or event;

“Joint Venture” shall have the meaning set forth in Recital (C);

“Joint Venture Member” means a company specified in Recital (C) as a member of the Joint Venture;

“Key Joint Venture Member” means a Joint Venture Member, who has at the date of this Agreement an equity share of not less than 26% (twenty six percent) of the subscribed and paid up equity of the Concessionaire;

“Lead Member” means a Joint Venture Member, who has been provided irrevocable authority through a power of attorney executed in its favour by each of the other Joint Venture Members, to conduct all business for and on behalf of the Joint Venture during the execution of the Project.;

“LOA” or “Letter of Award” means the letter of award 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;

“MORTH” means the Ministry of Shipping, 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;

“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 or 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;

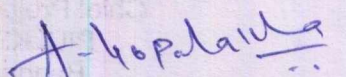
“O&M Contractor” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

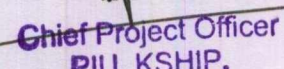
“O&M Expenses” means expenses incurred by or on behalf of the Concessionaire, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees 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

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP

124


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

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;

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

“PCU” shall have the meaning 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 over the Site in the form of licence, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road overbridges, drainage works, traffic signals, sign boards, kilometer stones, 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 Two-Laning Standard 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 of Design, Build, Finance, Operate, Maintain and Transfer (DBFOMT) of Existing State Highway

(SH18) from Mudhol - Nippani – MH Border(Approx Length 107.937) in the State of Karnataka on DBFOMT Annuity Basis 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 Bangalore by the State Bank of India;

“**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, easement, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project Highway in accordance with this Agreement;

“**Road Users Safety Checklist**” shall mean the checklist regarding road users’ safety, as provided in Schedule L.

“**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;

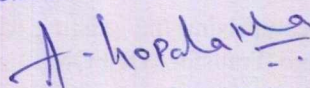
“**Scheduled Two-Laning Standard Date**” shall have the meaning set forth in Clause 12.4.1;

“**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 *parri passu* charge on the assets, rights, title and interests of the Concessionaire;

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

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory

PIU-KSHIP


Chief Project Officer
PIU, KSHIP,
Bangalore.

126

"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 State of Karnataka and **"State Government"** means the Government of Karnataka;

"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;

"Subsidiary" shall be determined by law, contract or otherwise, according to controlling ownership of the assets of the subsidiary, policy direction and operational management by either Party or a member of the Joint Venture.

"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 due would be less any Lumpsum Payment, to the extent that it has already been paid to the concessionaire. Further 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 amount arrived at by subtracting Debt Due from Total Project Cost;

“Tests” means the tests set forth in Schedule-I to determine the completion of Two-Laning Standard in accordance with the provisions of this Agreement

“Total Project Cost” means the lowest of:

- (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 Two-Laning Standard of the Project Highway; and
- (c) a sum of Rs. 317.60 crore (Rupees three hundred seventeen crores and Sixty lakhs);

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; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount herein before specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost;

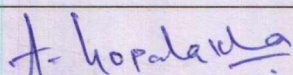
“Transfer Date” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“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

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.

PIU-KSHIP


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.

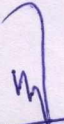
128

"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
GOVERNOR OF KARNATAKA
THROUGH THE CHIEF PROJECT OFFICER,
PIU-KSHIP
by:


(Signature)

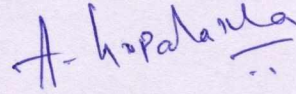
(Name)

(Designation)

(P. Manivannan IAS)
Chief Project Officer
P.I.U., K.S.H.I.P.,
K.R. Circle, Bangalore - 1.

SIGNED, SEALED AND
DELIVERED

For and on behalf of
CONCESSIONAIRE by:



(Signature)

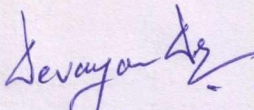
(Name)

(Designation)

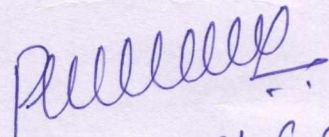
A. GOPALAKRISHNA
AVP, GVRINPRA
PROJECTS LTD.

In the presence of:

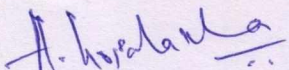
1.

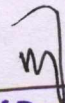

(DEVAYAN DEY)

2.


(PREMKASH G.S.)

For ASHOKA GVR MUDHOL NIPANI ROADS LTD.


Authorised Signatory


Chief Project Officer
PIU, KSHIP,
Bangalore.