



IMPLEMENTATION AGREEMENT

BETWEEN

DME Development Limited

SECTOR-10, DWARKA NEW DELHI-110075

&

NATIONAL HIGHWAYS AUTHORITY OF INDIA

SECTOR-10, DWARKA NEW DELHI-110075

For

DEVELOPMENT, CONSTRUCTION, OPERATION, MAINTENANCE OF

DELHI MUMBAI EXPRESSWAY (DME)

ON

DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER (DBFOT) MODE

GOVERNMENT OF INDIA

DATE: 05.02.2021

PLACE: NEW DELHI



Table of Contents

Contents	Page no.
PART I: Preliminary	4
1 Definitions and Interpretation	7
PART II: Scope of the Project	19
2 Scope of the Project	20
3 Obligations of the DME SPV	21
4 Obligations of the Implementing Agency	22
5 Representations and Warranties	30
6 Disclaimer	32
PART III: Construction and Maintenance	33
7 Performance Security	34
8 Right of Way	36
9 Utilities and Trees	40
10 Design and Construction of the Project Highway	42
11 Monitoring of Construction	45
12 Completion Certificate	48
13 Change of Scope	50
14 Operation and Maintenance	53
14A Safety Requirements	59
15 Monitoring of Operation and Maintenance	60
16 Entry into Commercial Service	62
16A Traffic Regulation	63
17 Defects Liability	65
18 Change in Law	66
Part IV Financial Covenants	68
19 Payment of Project Cost	69
20 Insurance	72
Part-V: Force Majeure and Termination	74
21 Force Majeure	75
22 Suspension of Implementing Agency's Rights	80
23 Termination	82
23A Divestment of Rights And Interest	87
Part VI Other Provisions	90
24 Assignment and Charges	91
25 Liability And Indemnity	92
25A Rights and Title over The Site	96
26 Dispute Resolution	97
27 Miscellaneous	99
Schedules	109
A Site of the Project	110
Annex-I: Existing Contracts	116
B Development of the Project	128
C Project Facilities	129
D Specifications and Standards	130
E Maintenance Requirements	131
Annex- I: Repair/Rectification of Defects and Deficiencies	133
F Applicable Permits	134
G Format of Bank Guarantee	135





I	Drawings	146
	Annex I: List of Drawings	147
J	Project Completion Schedule	148
K	Tests on Completion	150
L	Completion Certificate	152
	Annex I: Provisional Certificate	152
	Annex II: Completion Certificate	154
M	Vesting Certificate	155
N	Concession Agreement	157



Part I: Preliminary





INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

सत्यमेव जयते

Certificate No. : IN-DL41193506534438T
Certificate Issued Date : 04-Feb-2021 12:33 PM
Account Reference : IMPACC (IV)/ dl1012803/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL101280384588399022212T
Purchased by : DME DEVELOPMENT LTD
Description of Document : Article 5 General Agreement
Property Description : Not Applicable
Consideration Price (Rs.) : 0
(Zero)
First Party : DME DEVELOPMENT LTD
Second Party : Not Applicable
Stamp Duty Paid By : DME DEVELOPMENT LTD
Stamp Duty Amount(Rs.) : 150
(One Hundred And Fifty only)



Please write or type below this line

This stamp paper forms an integral part of the Implementation Agreement dated February 5, 2021.



Statutory Alert:

1. The authenticity of this stamp certificate should be verified at 'www.shclstamp.com' or using e-Stamp Mobile App of Stock Holding.
2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
3. The basis of checking the legitimacy is on the users of the certificate.
4. In case of any discrepancy please inform the Competent Authority.

Implementation Agreement

THIS AGREEMENT is entered into on this the 5th day of February, 2021 ("**Effective Date**")

Between

DME DEVELOPMENT LIMITED, a company incorporated under the provisions of the Companies Act, 2013 with CIN U45202DL2020GOI368878 represented by its Director and having its registered office at G-5 & 6, Sector-10, Dwarka, New Delhi- 110075 (hereinafter referred to as the "**DME-SPV**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the First Part;

And

THE NATIONAL HIGHWAYS AUTHORITY OF INDIA, established under the National Highways Authority of India Act 1988, represented by its General Manager, Technical- Bharatmala Division and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075 (hereinafter referred to as the "**Authority**" or "**Implementing Agency**" or "**Implementation Agency**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the Other Part.

WHEREAS:

- A. The Government of India had entrusted to the Authority the development, operation maintenance and management of Delhi - Mumbai Expressway (Approx.1312 Km)
- B. The Authority has resolved to develop the Delhi - Mumbai Expressway in two Phases comprising of section from Delhi to Vadodara from Km.0.000 to Km.844.382 ("Phase I") and Vadodara to Mumbai from Km. 355.00 to Km. 26.582 of Main Expressway and Km. 0.00 to KM. 79.783 of SPUR of Vadodara Mumbai Expressway ("Phase II") by eight laning and SPUR to Delhi from Km. 0.000 to Km. 59.063 Km by six laning, on Engineering, Procurement Construction (the "EPC") basis for Phase I and design, build, finance, operate and transfer (the "DBFOT") Annuity basis for the remaining section.
- C. The Authority had further entrusted to the Concessionaire, a Special Purpose Vehicle, which is a 100% owned entity of the Authority, with financing, development, operation, maintenance and management of the Project (as defined hereinafter) in accordance with the terms and conditions to be set forth in the Concession Agreement dated 5th February, 2021 ("**Concession Agreement**"). The Project shall be fully financed by the Concessionaire. In consideration of the development of the Project by way of Concession granted by the Authority under the Concession Agreement, the Concessionaire shall be entitled to demand and collect Annuity Payments from the Authority in the manner as stipulated in the Concession Agreement. The Concession Agreement is annexed as Schedule N to this Agreement.
- D. Since the Authority has relevant experience and expertise in execution/implementation of



similar projects, DME-SPV is desirous of appointing the Authority as the Implementing Agency for the Development, Operation, Maintenance and management of the Project, and accordingly this Implementation Agreement is being signed by the aforesaid parties.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, the DME-SPV hereby covenants to pay the Implementing Agency, in consideration of the obligations specified herein, the Operation and Maintenance Cost or such other sum as may become payable under the provisions of the Agreement at the times and in the manner specified by the Agreement and intending to be legally bound hereby, the Parties agree as follows:



Article 1

Definitions and Interpretations

1.1 Definitions

- (i) The words and expressions beginning with capital letters and defined in this Agreement 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. The words and expressions beginning with capital letters in this Agreement or Schedule and not defined therein but defined in the Concession Agreement shall have, unless repugnant to the context, have the meaning respectively assigned to them in the Concession Agreement.

- (ii) 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;

“**Affected Party**” shall have the meaning set forth in Clause 21.1;

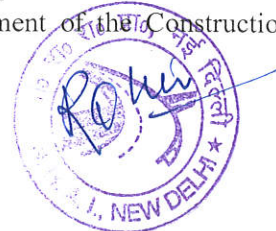
“**Affiliate**” means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of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

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

“**Applicable Laws**” means all laws, brought into force and effect by the 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**” shall mean the date declared as “Appointed Date” under the Concession Agreement and shall be the date of commencement of the Construction



Period under this Agreement;

"Arbitration Act" means the Arbitration and Conciliation Act, 1996, with all its subsequent amendments;

"Bank" means a bank incorporated in India and recognized by the Reserve Bank of India;

"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;

"Change in Law" means the occurrence of any of the following after the Effective Date:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not come into effect until the Effective Date; or
- (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 Effective Date.
- (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 Article 13;

"Change of Scope Notice" shall have the meaning set forth in Clause 13.2 (i);

"Change of Scope Order" shall have the meaning set forth in Clause 13.2.3;

"Completion Certificate" shall have the meaning set forth in Clause 12.2;

"Construction" or "Construction Works" shall have the meaning set forth in Clause 1.2 (f);

"Construction Period" means the period of 1095 (one thousand and ninety-five) days commencing from the Appointed Date and ending on the date of the Completion Certificate;

"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 default by the Implementing Agency requires any reasonable action by the Implementing Agency that must be approved by the DME-SPV hereunder, the applicable Cure Period shall be extended by the period taken by the DME-SPV to accord their approval;

"Damages" shall have the meaning set forth in paragraph (w) of Clause 1.2;

"Defect" means any defect or deficiency in Construction of the Works or any part thereof, which does not conform with the Specifications and Standards, and in the case of Maintenance, means any Defect or deficiency which is specified in Schedule-E;

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

"Dispute" shall have the meaning set forth in Clause 26.1;

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 26;

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

"DME-SPV Default" shall have the meaning set forth in Clause 23.2;

"DME-SPV Representative" means such person or persons as may be authorised in writing by the DME-SPV 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 DME-SPV under this Agreement;

"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-I, and shall include 'as built' drawings of the Project Highway;

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

"Encumbrances" means, in relation to the Project Highway, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss to 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 9.1;

"EPC" means engineering, procurement and construction;



“Existing Contracts” shall mean the contracts existing on the Effective Date, executed with third party concessionaires / contractors (as the case may be) in respect of identified sections of the Project Highway on either EPC or HAM basis, and as detailed out in Annex I of Schedule A as may be revised, updated, replaced and supplemented from time to time and suffixed on the basis of the EPC Contracts awarded by the Authority.

“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Clause 21.1;

“GOI” or “Government” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced contractor 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 Implementing Agency in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

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

“IRC” means the Indian Roads Congress;

“Implementing Agency” or “Implementation Agency” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Implementing Agency Default” shall have the meaning set forth in Clause 23.1;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 25;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 25;

“Indirect Political Event” shall have the meaning set forth in Clause 21.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurance taken out by the Implementing Agency pursuant to Article 20, and includes all insurances required to be taken out by the Implementing Agency under Clauses 20.1 and 20.9 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;



“Intellectual Property” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semiconductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Maintenance” means the maintenance of the Project Highway as set forth in Article 14 for the period specified therein;

“Maintenance Manual” shall have the meaning ascribed to it in Clause 14.3.1;

“Maintenance Period” shall have the meaning set forth in Clause 14.1;

“Maintenance Requirements” shall have the meaning set forth in Clause 14.2;

“Manual” shall mean the Manual of Standards and Specifications for Project Highways;

“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;

“Materials” comprise of all the supplies used by the Implementing Agency used in the Works or for the maintenance of the Project Highway;

“Mobilization Advance” shall have the meaning set forth in Clause 19.5;

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

“Non-Political Event” shall have the meaning set forth in Clause 21.2;

“Operation Period” means the operation and maintenance period of 17 (seventeen) years commencing from COD and ending on the Termination Date;

“O&M” means the operation and maintenance of the Project 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 Implementing Agency 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 Implementing Agency has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Implementing Agency;



“O&M Expenses” means expenses incurred by or on behalf of the Implementing Agency or by the DME-SPV, 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) premium for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“O&M Inspection Report” shall have the meaning set forth in Clause 15.2;

“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 Article 7;

“Physical Progress” shall mean the physical construction of the Project completed by the Implementing Agency and shall be measured as per the assessment done by the DME-SPV.

“Plant” means the apparatus and machinery intended to form or forming part of the works of the Works;

“Political Event” shall have the meaning set forth in Clause 21.4;

“Programme” shall have the meaning set forth in Clause 10.1 (iii);

“Price Index” shall comprise:

- (a) 70% (seventy per cent) of WPI; and
- (b) 30% (thirty per cent) of CPI (IW),

Which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

“Price Index Multiple” shall have the meaning set forth in 19.2.2;

“Project” means construction, operation and maintenance of eight lane access controlled Delhi - Mumbai Expressway in two Phases comprising of section from Delhi to Vadodara from Km.0.000 to Km.844.382 ("Phase I") and Vadodara to Mumbai from Km. 355.00 to Km. 26.582 of Main Expressway and Km. 0.00 to Km. 79.783 of SPUR of Vadodara Mumbai Expressway ("Phase II") by eight laning and SPUR to Delhi from Km. 0.000 to Km. 59.063 Km by six laning, on Engineering, Procurement Construction (the “EPC”) basis for Phase I and design, build, finance, operate and transfer (the “DBFOT”) Annuity basis for the remaining section; this includes the sections awarded to third party concessionaires/ contractors (as the case may be) under Existing Contracts, all Project Assets, and its subsequent development and augmentation in accordance with this 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 license, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road over bridges, drainage works, traffic signals, sign boards, kilometer-stones, toll plaza(s), electrical systems, communication systems, rest areas, relief centers, maintenance depots and administrative offices; (c) Project Facilities situated on the Site; (d) financial assets, such as receivables, security deposits etc.; (e) insurance proceeds; and (f) Applicable Permits and authorizations relating to or in respect of the Project;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule-J for completion of the Project Highway on or before the Scheduled Completion Date;

“Project Cost” shall have the meaning set forth in Clause 19.1;

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

“Project Highway” means the Site comprising of section from Delhi to Vadodara from Km.0.000 to Km.844.382 ("Phase I") and Vadodara to Mumbai from Km. 355.00 to Km. 26.582 of Main Expressway and Km. 0.00 to KM. 79.783 of SPUR of Vadodara Mumbai Expressway ("Phase II") by eight laning and SPUR to Delhi from Km. 0.000 to Km. 59.063 Km by six laning, on Engineering, Procurement Construction (the "EPC") basis for Phase I and design, build, finance, operate and transfer (the "DBFOT") Annuity basis for the remaining section; this includes the sections awarded to third party concessionaires/ contractors (as the case may be) under Existing Contracts, all Project Assets, and its subsequent development and augmentation in accordance with this Agreement ;

“Project Milestone” means the project milestone set forth in Schedule-J;

“Project Milestone-I” shall have the meaning set forth in Schedule-J;

“Project Milestone-II” shall have the meaning set forth in Schedule-J;

“Project Milestone-III” shall have the meaning set forth in Schedule-J;

“Re.”, “Rs.” or “Rupees” or “Indian Rupees” or “INR” means the lawful currency of the Republic of India;

“Reference Index Date” means, in respect of the specified date or month, as the case may be, that last day of the preceding month with reference to which the Price Index or any constituent thereof is revised and in the event such revision has not been notified, the last such Price Index or any constituent thereof shall be adopted provisionally and used until the Price Index or such constituent thereof is revised and notified;

“Right of Way” means and refers to the total land required and acquired for the project, both in its width and length, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction and maintenance



of the Project Highway in accordance with this Agreement;

“**Safety Consultant**” shall have the meaning set forth in Clause 14A.1;

“**Safety Requirements**” shall have the meaning as set forth in Clause 14A.1;

“**Scheduled Completion Date**” shall be the date set forth in Clause 10.3;

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

“**Section**” means a part of the Project Highway;

“**Site**” shall have the meaning set forth in Clause 8.1;

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

“**Stage Payment Statement**” shall have the meaning set forth in Clause 19.3.2.;

“**Structures**” means an elevated road or a flyover, as the case may be;

“**Sub-contractor**” means any person or persons to whom a part of the Works or the Maintenance has been subcontracted by the Implementing Agency and the permitted legal successors in title to such person, but not an assignee to such person;

“**Suspension**” shall have the meaning set forth in Article 22;

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

“**Termination**” means the expiry or termination of this Agreement;

“**Termination Date**” means the date of Termination;

“**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 either Party to the other upon Termination in accordance with Article 23;

“**Tests**” means the tests set forth in Schedule-K to determine the completion of Works in accordance with the provisions of this Agreement;



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

“Valuation of Unpaid works” shall have the meaning set forth in Clause 23.5;

“Vesting Certificate” shall have the meaning set forth in Clause 23A.4;

“Works” means all works including survey and investigation, design, engineering, procurement, construction, Plant, Materials, maintenance, temporary works and other things necessary to complete the Project Highway in accordance with this Agreement; and

“WPI” means the wholesale price index for various commodities as published by the Ministry of Commerce and 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.

1.2 Interpretation

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



- (g) references to “development” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto during the Construction Period, and “develop” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian standard time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Delhi are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (q) “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, 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 Clause shall not operate so as to increase liabilities or obligations of the DME-SPV hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement form an integral part of this



Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

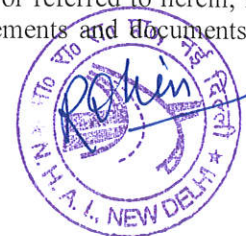
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
 - (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the "Damages"); and
 - (x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended for the reasons specified in the Agreement, such extended time shall also be of the essence.
- (ii) Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Implementing Agency to the DME-SPV shall be provided free of cost and in three copies, and if the DME-SPV is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain two copies thereof.
 - (iii) 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.
 - (iv) 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

- (i) This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
 - (a) this Agreement; and
 - (b) all other agreements and documents forming part hereof or referred to herein; i.e. this Agreement at (a) above shall prevail over the agreements and documents at



(b).

Provided that in case of any conflict between the obligations of the Implementing Agency under this Agreement and the corresponding obligations of the Concessionaire under the Concession Agreement, the same shall be resolved in the manner as provided in Clause 2.2.

- (ii) Subject to the provisions of Clause 1.4 (i), in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
 - (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
 - (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
 - (f) between any value written in numerals and that in words, the latter shall prevail.

1.5 Joint and several liability

- (i) If the Implementing Agency has formed a Joint Venture of two or more persons for implementing the Project:
- (a) these persons shall, without prejudice to the provisions of this Agreement or any other agreement, be deemed to be jointly and severally liable to the DME-SPV for the performance of the Agreement; and
 - (b) the Implementing Agency shall ensure that no change in the composition of the Joint Venture is effected without the prior consent of the DME-SPV.
- (ii) Without prejudice to the joint and several liability of all the members of the Joint Venture, the Lead Member shall represent all the members of the Joint Venture and shall always be liable and responsible for discharging the functions and obligations of the Implementing Agency. The Implementing Agency shall ensure that each member of the Joint Venture shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement and the DME-SPV shall be entitled to rely upon any such action, decision or communication of the Lead Member. The DME-SPV shall have the right to release payments solely to the Lead Member and shall not in any manner be responsible or be held liable for the inter se allocation of payments among members of the Joint venture.



Part II
Scope of Project



Article 2

Scope of the Project

2.1 Scope of the Project

Under this Agreement, the scope of the Project (the “**Scope of the Project**”) shall mean and include:

- (a) construction of the Project as per chainage and other details as provided in Schedule-A and Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;
- (b) operation and maintenance of-the Project in accordance with the provisions of this Agreement;
- (c) performance and fulfillment of all due obligations entrusted to the DME-SPV under the Concession Agreement in connection with the Project Highway forming part of the respective Existing Contracts, details whereof are annexed and tabulated in detailed out in Schedule A, Annex I, under and in accordance with the terms of the Existing Contracts; and
- (d) performance and fulfilment of all other obligations of the Implementing Agency 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 Implementing Agency under this Agreement.

- 2.2 Notwithstanding anything contained in this Agreement, the Parties agree that the obligations of the DME-SPV (Concessionaire) in respect of the design, construction, operation, maintenance and management of the Project under the Concession Agreement are being sub-contracted to the Implementing Agency under this Agreement and in the event of any conflict between the obligations of the Implementing Agency under this Agreement and the corresponding obligations of the DME-SPV (Concessionaire) under the Concession Agreement, the related terms of the Concession Agreement relevant to the issue under consideration shall prevail.



Article 3

Obligations of the DME-SPV

3.1 Obligations of the DME-SPV

- (i) The DME-SPV shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- (ii) The DME-SPV shall be responsible for the correctness of the Scope of the Project, Project Facilities, Specifications and Standards and the criteria for testing of the completed Works.
- (iii) The DME-SPV agrees to provide support to the Implementation Agency 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 Implementation Agency, and subject to the Implementation Agency complying with Applicable Laws, provide reasonable support to the Implementation Agency in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project;
 - (b) upon written request from the Implementation Agency, provide reasonable assistance to the Implementation Agency in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable than those generally available to commercial customers receiving substantially equivalent services;
 - (c) procure that no barriers that would have a Material Adverse Effect on the works are erected or placed on or about the Project Highway by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
 - (d) not do or omit to do any act, deed or thing which may in any manner violate any provisions of this Agreement;
 - (e) support, cooperate with and facilitate the Implementation Agency in the implementation of the Project in accordance with the provisions of this Agreement; and
 - (f) upon written request from the Implementation Agency and subject to the provisions of Clause 4.3, provide reasonable assistance to the Implementing Agency and any expatriate personnel of the Implementing Agency or its Sub-contractors to obtain the applicable visas and the requisite work permits for the purposes of discharge by the Implementing Agency or its Sub-contractors of their obligations under this Agreement and the agreements with the Sub-contractors.



Article 4

Obligations of the Implementing Agency

4.1 Obligations of the Implementing Agency

- (i) Subject to and on the terms and conditions of this Agreement, the Implementing Agency shall undertake the design, engineering, procurement, construction, operation and maintenance of the Project Highway and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- (ii) The Implementing Agency shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- (iii) Subject to the provisions of Clauses 4.1 (i) and 4.1 (ii), the Implementing Agency shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- (iv) The Implementing Agency shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
 - (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits set forth in Schedule-F 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, know-how and systems used or incorporated into the Project Highway;
 - (c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;
 - (d) ensure and procure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Implementing Agency's obligations under this Agreement;
 - (e) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
 - (f) support, cooperate with and facilitate the DME-SPV in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (g) ensure that the Implementing Agency and its Sub-contractors comply with the safety and welfare measures for labour in accordance with the Applicable Laws and Good Industry Practice;
 - (h) keep, on Site, a copy of this Agreement, publications named in this Agreement,



the Drawings, Documents relating to the Project, and Change of Scope orders and other communications given under this Agreement. DME-SPV and its authorised personnel shall have the right of access to all these documents at all reasonable times;

- (i) cooperate with other contractors employed by the DME-SPV and personnel of any public authority; and
 - (j) not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the DME-SPV.
- (v) The Implementing Agency shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works. The Implementing Agency shall provide all necessary superintendence of the Works for the proper fulfilling of the Implementing Agency's obligations under the Agreement. Such superintendence shall be given by competent person having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory and safe execution of the Works.
- (vi) Upon the request of the DME-SPV, the Implementing Agency shall provide the Documents of the Implementing Agency specified in the Agreement, and all Implementing Agency's personnel; Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for the execution, completion of Works and remedying defects.
- (vii) The Implementing Agency shall perform the Works in conformity with the Project requirements and other requirements and Specifications and Standards prescribed under or pursuant to the Agreement.
- (viii) The Implementing Agency shall carry out such work incidental and contingent to the original Scope of the Project to comply with Good Industry Practices.
- (ix) The Implementing Agency shall maintain required staff and necessary Implementing Agency's equipment and materials within the reach of the Site during the Defects Liability Period so that any defects arising are promptly attended.
- (x) **Maintenance obligations prior to the Appointed Date**
- (a) During the Development Period, the Implementing Agency shall maintain the Project Highway under the Existing Contracts, in such a manner so as to ensure that the road is in pothole free condition and also to ensure that the quality of service and safety are maintained and in the event of any material deterioration or damage other than normal wear and tear, the Implementing Agency shall undertake repair thereof. It is deemed that the Implementing Agency has made necessary provisions for inclusion of costs related to maintenance during the Development Period. Provided that in case Appointed Date is not achieved and the Agreement is terminated prior to achievement of Appointed Date, the



Implementing Agency shall be reimbursed the cost of maintenance during Development Period by the DME-SPV after due certification by the authorized representative of the DME-SPV. For the purpose of such reimbursement, the lump sum per kilometer rate of reimbursement for a period of 1 (one) year would be Nil and shall be paid on a pro-rata basis for the period concerned. For the avoidance of doubt, the Implementing Agency would be reimbursed the cost of maintenance only in case of termination prior to Appointed Date and only if it maintains the Project as envisaged in this Clause 4.1.

- (b) In case of failure of the Implementing Agency to undertake maintenance or repair of the Project, the DME-SPV shall undertake maintenance or repair of the Project Highway at the cost and expense of the Implementing Agency and recover the said cost from the Performance Security. For the avoidance of doubt, the Implementing Agency shall undertake repairs only for ensuring safe operation of the Project Highway and in the event of excessive deterioration or damage caused due to unforeseen events such as floods or torrential rain the DME-SPV shall undertake special repairs at its own cost and expense.
- (c) During the Development Period, the Implementing Agency shall protect the Project Highway 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 Implementing Agency to place or create any Encumbrance, or security interest over all or any part of the Project Highway or under this Agreement, save and except as otherwise expressly set forth in this Agreement. Further, the Implementing Agency shall perform its obligations in a manner that Highway or an alternative thereof are open to traffic at all times during the Development Period.

4.2 Obligations relating to sub-contracts and any other agreements

- (i) The Implementation Agency may carry out Works directly under its own supervision and through its own personnel and equipment or sub-contract whole or any part of Works under the Agreement. The Implementation Agency may also enter into contracts for the supply and installation of Materials, Plant, equipment, road furniture, safety devices and labour, as the case may be, for such Works. The Parties further agree that all obligations and liabilities under this Agreement for the entire project Highway shall at all times remain with the Implementation Agency.
- (ii) It is expressly agreed that the Implementation Agency shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the agreements with its Sub-contractors or any other agreement that may be entered into by the Implementation Agency, and no default under any such agreement shall excuse the Implementation Agency from its obligations or liability under this Agreement.

4.3 Employment of foreign nationals

The Implementation Agency acknowledges, agrees and undertakes that employment of foreign personnel by the Implementation Agency and/or its Sub-contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/ residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall always rest with the Implementation



Agency. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Implementation Agency or any of its Sub- contractors or their sub-contractors shall not constitute a Force Majeure Event, and shall not in any manner excuse the Implementation Agency from the performance and discharge it of its obligations and liabilities under this Agreement, and the Implementation Agency's liabilities hereunder shall remain unaffected by such failure, refusal or inability.

4.4 Implementation Agency's personnel

- (i) The Implementation Agency shall ensure that the personnel engaged by it or by its Sub-contractors in the performance of its obligations under this Agreement are at all times appropriately and adequately qualified, skilled and experienced in their respective functions in conformity with Good Industry Practice.
- (ii) The DME-SPV may, for reasons to be specified in writing, direct the Implementation Agency to remove any member of the Implementation Agency's or Sub-contractor's personnel. Provided that any such direction issued by the DME-SPV shall specify the reasons for the removal of such person.
- (iii) The Implementation Agency shall on receiving such a direction from the DME-SPV order for the removal of such person or persons with immediate effect. It shall be the duty of the Implementation Agency to ensure that such persons are evicted from the Site within 10 (ten) days of any such direction being issued in pursuance of Clause 4.4 (ii). The Implementation Agency shall further ensure that such persons have no further connection with the Works or Maintenance under this Agreement. The Implementation Agency shall then appoint (or cause to be appointed) a replacement.

4.5 Branding of Project Highway

The Project shall be known, promoted, displayed and advertised by the name of Delhi Mumbai Expressway.

4.6 Implementation Agency's care of the Works

The Implementation Agency shall bear full risk in, and take full responsibility for, the care of the Works, and of the Materials, goods and equipment, road furniture and safety devices for incorporation therein, from the Appointed Date until the date of Completion Certificate, save and except to the extent that any such loss or damage shall have arisen from any wilful default or gross neglect of the DME-SPV.

4.7 Electricity, water and other services

The Implementation Agency shall be responsible for procuring of all utilities as may be required, including without limitation, adequate power, water and other services.

4.8 Unforeseeable difficulties

Except as otherwise stated in the Agreement:



- (a) the Implementation Agency accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Works;
- (b) the Project Cost shall not be adjusted to take account of any unforeseen difficulties or costs; and
- (c) the Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.

4.9 Co-ordination of the Works

4.9.1 The Implementation Agency acknowledges that in addition to the Agreement, it is also aware of terms of the other project contracts and other agreements the DME-SPV has negotiated and entered into for performance of its obligations under the Agreement (copies of other contracts and other agreements are made available to the Implementation Agency from time to time) and that the Implementation Agency is fully aware of the consequences to the DME-SPV which would or are likely to result from a breach by the Implementation Agency of its obligations under the Agreement. In the event the actions of the Implementation Agency result in the breach by the DME-SPV of any or all of the other project contracts and such breach imposes any liability on the DME-SPV, the Implementation Agency shall: (a) undertake all steps as may be possible to mitigate or neutralize the liability that has arisen, and (b) indemnify the DME-SPV against any such liability and compensate the DME-SPV to that extent.

4.9.2 The Implementation Agency shall be responsible for the co-ordination and proper provision of the Works, including co-ordination of other contractors or Sub-contractors for the Project. The Implementation Agency shall co-operate with the DME-SPV in the co-ordination of the Works with the works under the other Project contracts. The Implementation Agency shall provide all reasonable support for carrying out their work to:

- (a) any other contractors employed by the DME-SPV;
- (b) the workmen of the DME-SPV;
- (c) the workmen of any Governmental Instrumentality who may be employed in the execution of work on or near the Site; and
- (d) such other persons as is required in the opinion of the DME-SPV for successful completion of the Project.

4.10 Environmental Measures

The Implementation Agency shall procure all the Applicable Permits relating to environmental protection, and conservation in respect land forming part of the Right of Way under Article 8 prior to the Appointed Date. The Implementation Agency agrees to conduct its activities in connection with the Agreement in such a manner so as to comply with the environmental requirements which includes, *inter alia*, all the conditions required to be satisfied under the environmental clearances and applicable law, and assumes full responsibility for measures which are required to be taken to ensure such compliance.



4.11 Site Data

- (i) The Implementation Agency shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before entering into the Agreement in all material respects including but not limited to:
- (a) the form and nature of the Site (including, inter-alia, the surface and sub- surface conditions and geo-technical factors);
 - (b) the hydrological and climatic conditions;
 - (c) the extent and nature of the works already completed and Materials necessary for the execution and completion of the Works and the remedying of any defects that includes already executed part also.
 - (d) the suitability and the adequacy of the Site for the execution of the Works;
 - (e) the means of access to the Site and the accommodation the Implementation Agency may require;
 - (f) arranging permits as required as per the Agreement.
 - (g) the requirements of operation, maintenance and management; and
 - (h) all other factors and circumstances affecting the Implementation Agency's rights and obligations under the Agreement, the Project Cost and time for completion of the Project.

4.12 Sufficiency of Project Cost

The Implementation Agency shall have satisfied itself as to the correctness and sufficiency of the Project Cost.

4.13 Clearance of the Site

During the provision of the Works, and as a pre-condition to the issue of the Vesting Certificate, the Implementation Agency shall clear away and remove from the Site, all Implementation Agency's equipment, surplus material, wreckage, rubbish and temporary Works, and shall keep the Site free from all unnecessary obstructions, and shall not store or dispose of any Implementation Agency's equipment or surplus materials on the Site. The Implementation Agency shall promptly clear away and remove from the Site any wreckage, rubbish or temporary Works no longer required and leave the Site and the Works in a clean and safe condition to the sole satisfaction of the DME-SPV.

4.14 Facilities for differently abled and elderly persons

The Implementation Agency shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the differently abled and for elderly persons using the Project.



4.15 Obligations in respect of Existing Contracts

The Implementing Agency shall perform and fulfill all obligations entrusted to the DME-SPV under Clause 3.1.2(f) of the Concession Agreement, in respect of the Existing Contracts under and in accordance with the terms of the Existing Contracts. For the avoidance of doubt, it is clarified and agreed between the Parties that the Implementing Agency's obligations in respect of the Existing Contracts shall be limited to performing and fulfilling the DME-SPV's obligations as mentioned hereinabove. Accordingly, all references to the Implementing Agency's obligations in respect of the design, construction, operation, maintenance and management of the "Project" or "Project Highway" throughout this Agreement shall be construed to be in respect of the remaining stretches of the Project Highway that are not part of the Existing Contracts.



Article 5
Representations and Warranties

5.1 Representations and warranties of the Implementation Agency

- (i) The Implementation Agency represents and warrants to the DME-SPV 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/or 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) 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 against it in accordance with the terms hereof;
 - (d) 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;
 - (e) the execution, delivery and performance of this Agreement will not conflict with, or result in the breach of, or constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association 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;
 - (f) 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;
 - (g) 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;
 - (h) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
 - (i) no representation or warranty by it contained herein or in any other document furnished by it to the DME-SPV or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement



of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

- (j) nothing contained in this Agreement shall create any contractual relationship or obligation between the DME-SPV and any Sub- contractors, designers, consultants or agents of the Implementation Agency;
 - (k) it has the requisite knowledge, expertise, technical know-how, experience, resources, infrastructure, licenses, patents, copy rights, for designing, supplying/procuring the goods and materials, and for providing the installation and construction, operation and maintenance services required for completing the construction and thereafter operating and maintaining of the Project Facilities.
- (ii) If at any time during the Defects Liability Period any item of the Works or Project Facilities or any part thereof, do not conform to the DME-SPV requirements and Specifications and Standards, on being so notified by the DME-SPV, the Implementation Agency shall promptly rectify/remedy such nonconformity to the satisfaction of the DME-SPV solely at the Implementation Agency's expense; failing which the DME-SPV may reject or revoke the Vesting Certificate, and the DME-SPV may proceed to correct the Implementation Agency's nonconforming Work by the most expeditious means available, the costs of which shall be to the Implementation Agency's account .
- (iii) No criminal proceedings instituted against any of the employees or Directors of the Implementation Agency.
- (iv) Till date the services of the Implementation Agency has not been terminated by any person for any breach or non-performance or negligence by the Implementation Agency.

5.2 Representations and warranties of the DME-SPV

The DME-SPV represents and warrants to the Implementation Agency that:

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



- (h) it has good and valid right to the Site and has the power and authority to grant the Right of Way in respect thereof to the Implementation Agency

5.3 Disclosure

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



Article 6

Disclaimer

6.1 Disclaimer

- (i) The Implementation Agency acknowledges that prior to the execution of this Agreement, the Implementation Agency has, after a complete and careful examination, made an independent evaluation Scope of the Project, Specifications and Standards of design, construction and maintenance of the Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes, suitability and availability of access routes to the Site and all information provided by the DME-SPV 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 3.1 and Clause 5.2, the DME-SPV makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Implementation Agency confirms that it shall have no claim whatsoever against the DME-SPV in this regard.
- (ii) The Implementation Agency acknowledges and hereby accepts to have satisfied itself as to the correctness and sufficiency of the Project Cost.
- (iii) The Implementation Agency acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 6.1 (i) above and hereby acknowledges and agrees that the DME-SPV shall not be liable for the same in any manner whatsoever to the Implementation Agency, or any person claiming through or under any of them, and shall not lead to any adjustment of Project Cost or Scheduled Completion Date.
- (iv) The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 6.1 (i) above shall not vitiate this Agreement, or render it voidable.
- (v) In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 6.1 (i) above, that Party shall immediately notify the other Party, specifying the mistake or error.
- (vi) Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Implementation Agency; and the DME-SPV shall not be liable in any manner for such risks or the consequences thereof.



Part III
Construction and Maintenance



Article 7

Performance Security

7.1 Performance Security

- (i) The DME SPV, may require the Implementation Agency to furnish to the DME-SPV an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 1615 crore (Rupees One Thousand Six Hundred and Fifteen crore) within 30 (thirty) days of the Effective Date, in the form set forth in Schedule-G(the “Performance Security”)
- (ii) Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Implementation Agency at the request of the DME SPV within a period of 30(thirty) days from the date of this Agreement, the DME-SPV shall be entitled for Damages from the Implementation Agency at the rate of Rs. 1,00,000 (Rupees One Lakh only) for each week of delay subject to a maximum of 10% of the value of Performance Security and upon reaching such limit, the DME-SPV may, in its sole discretion terminate the Agreement whereupon all rights, privileges, claims and entitlements of the Implementation Agency under or arising out of this Agreement shall be deemed to have been waived, and to have ceased forthwith.

7.2 Appropriation of Performance Security

- (i) Upon occurrence of a Implementing Agency’s Default, the DME-SPV 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 Implementing Agency’s Default.
- (ii) Upon such encashment and appropriation from the Performance Security, the Implementation Agency shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, failing which the DME-SPV shall be entitled to terminate this Agreement in accordance with Article 23. Provided that upon appropriation on account of Implementing Agency’s Default the Implementation Agency shall replenish the Performance Security and upon such replenishment or furnishing of a fresh Performance Security, the Implementation Agency shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Implementation Agency Default, and in the event of the Implementation Agency not curing its default within such Cure Period, the DME-SPV shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 23.

7.3 Release of Performance Security

- (i) The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall be released earlier upon the Implementing Agency expending on Project construction an aggregate sum that is not less than 30% (thirty per cent) of the



Project Cost; provided, however, that the Performance Security shall not be released and shall be kept alive by the Implementing Agency if the Implementing Agency is in breach of this Agreement. Upon request made by the Implementing Agency for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 7.3, the DME-SPV shall release the Performance Security forthwith.

7.4 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Implementing Agency to the DME-SPV, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Implementing Agency.

In the event the Performance Security is not required to be furnished by the Implementing Agency under the provisions of this Article 7, then the DME-SPV shall have the right, to recover the costs and Damages specified under this Agreement from any monies due to the Implementation Agency in accordance with the provisions of this Agreement.



Article 8

Right of Way

8.1 The Site

The site of the Project Highway (the “**Site**”) shall comprise the site described in Schedule-A in respect of which the Right of Way shall be provided by the DME-SPV to the Implementation Agency. 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 the Project as set forth in Schedule-A. The DME-SPV shall be responsible for acquiring and providing Right of Way on the Site in accordance with the alignment finalised by the DME-SPV, free from all encroachments and encumbrances, and free access thereto for the execution of this Agreement

8.2 Procurement of the Site

- 8.2.1 The DME-SPV Representative and the Implementation Agency shall, jointly 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 (hereinafter referred to as the “**Handover Memorandum**”). The Handover 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 Implementation Agency. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, be deemed to constitute a valid license and Right of Way to the Implementation Agency for free and unrestricted use and development of the vacant and unencumbered Site during the Construction Period and thereafter during the Operation Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid license and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Implementation Agency upon vacant access thereto being provided by the DME-SPV to the Implementation Agency.
- 8.2.2 Without prejudice to the provisions of Clause 8.2.1, the Parties hereto agree that on or prior to the Appointed Date, the DME-SPV shall have granted vacant access and Right of Way such that the Appendix shall not include land which shall in any manner prevent the Implementation Agency from undertaking construction of the Project to the extent of at least 80% (eighty per cent) of the length thereof. For the avoidance of doubt, the DME-SPV acknowledges and agrees that the Appendix shall not include any land which may prevent the construction of any critical element of the Project without which the Completion Certificate or Provisional Certificate, as the case may be, may not be granted. The DME-SPV further acknowledges and agrees that prior to the Appointed Date, it shall have procured issuance of the statutory notification under Applicable Laws for vesting of all land comprising the Project in the Government and has taken possession of at least 80% (eighty per cent) of the length thereof, save and except stray plots of land which the Parties mutually agree to exclude from such vesting



prior to the Appointed Date. The Parties also acknowledge and agree that the conditions specified in this Clause 8.2.2 shall not be modified or waived by either Party. Provided that the obligation of the DME-SPV under the provisions of this Article 8, to provide land for 80% (eighty per cent) of the Site prior to the Appointed Date shall mean and imply provision of land that shall enable the Implementing Agency to undertake construction on at least 80% (eighty per cent) of the length of the relevant section of the Project Highway being constructed under the respective phase.

- 8.2.3 On and after signing the memorandum referred to in Clause 8.2.1, and until the Termination Date, the Implementation Agency 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 Implementation Agency shall report such encroachment or occupation forthwith to the DME-SPV and undertake its removal at its cost and expenses.
- 8.2.4 The DME-SPV shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Implementing Agency in respect of all land included in the Appendix or the relevant section of the Project Highway being constructed under the respective phase, as the case may be, which is included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Implementing Agency, it shall pay to the Implementation Agency Damages in a sum calculated at the rate of Re. 1 (Rupee one) per day for every 10 (ten) square meters or part thereof, commencing from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured or 146 (one hundred and forty six) days from the Appointed Date whichever is earlier. The Damages payable in terms of this clause shall be the sole remedy available to the Implementation Agency and the DME-SPV shall not be liable for any consequential loss or damage to the Implementation Agency. In the event, the DME-SPV is unable to provide the remaining Site within 180 (one hundred and eighty days) from the Appointed Date, the remaining Site of the Project Highway shall be removed from the scope of the work under the provision of Change of Scope. It is clarified and agreed between the Parties that, the obligations of the DME-SPV under the provisions of this Article 10 shall apply only in respect of the relevant section of the Project Highway being constructed under the respective phase.
- 8.2.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Implementation Agency shall complete the Construction Works thereon within a reasonable period to be determined by the DME-SPV in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Implementation Agency or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 146 (one hundred and forty six) days of the Appointed Date shall be completed on or before the Scheduled Completion Date. It is further agreed that the obligation of the Implementation Agency to complete the affected Construction Works shall subsist so long as the DME-SPV continues to pay the Damages specified herein, and upon the DME-SPV ceasing to pay such Damages



after giving 60 (sixty) days' notice thereof to the Implementation Agency, the obligation of the DME-SPV to complete such works on such part of the Site shall cease forthwith. It is also expressly agreed that completion of the respective Construction Works within the time determined by the DME-SPV hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 10.3(ii).

8.2.6 The Implementing Agency shall discharge its obligations to procure the additional land required for construction of works specified in Change of Scope Order issued under Article 16, in accordance with the provisions of the Concession Agreement

8.2.7 The Parties expressly agree that the obligation of the DME-SPV to provide land for 80% (eighty per cent) of the Site shall mean and imply provision of land that shall enable the Implementation Agency to undertake construction on at least 80% (eighty per cent) of the length of the (a) Project; or (b) in the event of phase wise construction, at least 80% (eighty per cent) of the length of the relevant section of the Project Highway being constructed under the respective phase exclusive of the Right of Way where no Construction Works are to take place.

8.3 Site to be free from Encumbrances

Subject to the provisions of Clause 8.3, the Site shall be made available by the DME-SPV to the Implementation Agency pursuant hereto free from all Encumbrances and occupations and without the Implementation Agency being required to make any payment to the DME-SPV on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Construction Period and Operation 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 Site shall not be deemed to be Encumbrances. It is further agreed that the Implementation Agency accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

8.4 Protection of Site from Encumbrances

During the Construction Period and Operation Period, the Implementation Agency 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 Implementation Agency 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 Implementation Agency therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

8.5 Special/temporary Right of Way

The Implementation Agency 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 Implementation Agency shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.



8.6 Access to the DME-SPV and its contractors

The sub-license, Right of Way and right to the Site granted to the Implementation Agency hereunder shall always be subject to the right of access of the DME-SPV and their contractors, employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

8.7 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Implementation Agency under this Agreement and the Implementation Agency hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the DME-SPV or the concerned Government Instrumentality. The Implementation Agency shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the DME-SPV forthwith of the discovery thereof and comply with such instructions as the DME-SPV or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Implementing Agency hereunder shall be reimbursed by the DME-SPV. It is also agreed that the DME-SPV shall procure that the instructions hereunder are issued by the concerned Government - Instrumentality within a reasonable period so as to enable the Implementation Agency to continue its Construction Works with such modifications as may be deemed necessary.

8.8 Land for wayside amenities

- 8.8.1 The additional land earmarked for this purpose in Schedule-A shall be utilized by the Implementation Agency for provision of wayside amenities which may include public toilets, rest areas, cafeteria, motels, medical facilities and other facilities or amenities for Users of the Project Highway.
- 8.8.2 The Implementation Agency may procure additional land at its own cost and expense for construction and operation of additional facilities and the DME-SPV shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Parties agree that any land acquired by the Implementation Agency under this Clause shall be retained by it after the Termination Date and the DME-SPV shall have no right or lien on such land at any time during or after the Construction Period and Operation Period. The Parties further agree that the Implementation Agency shall seek prior consent of the DME-SPV to connect any additional facility to the Project and such consent shall not be unreasonably withheld.



Article 9

Utilities and Trees

9.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, it shall be the responsibility of the Implementation Agency to ensure that the respective entities owning the existing roads, Right of Way, level crossings, structures, or utilities on, under or above the Site are enabled by it to keep them in continuous satisfactory use, if necessary, by providing suitable temporary diversions with the authority of the controlling body of that road, Right of Way or utility

9.2 Shifting of obstructing utilities

The Implementation Agency shall, in accordance with Applicable Laws and with assistance of the DME-SPV, undertake the work of shifting of any utility (including electric lines, water pipes, gas pipelines and telephone cables) to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works or Maintenance of the Project Highway in accordance with this Agreement, as per the scope given in Schedule B and in accordance with applicable standards and specifications of concerned utility owning entity. The cost of shifting of such, utilities indicated in Schedule-B is payable to the Implementing Agency as part of Project Cost. Cost of shifting utilities not included in the Schedule-B, if any, shall be treated as Change of Scope. The DME-SPV will provide assistance to the Implementation Agency for obtaining the estimates for shifting of such utilities from the entity owning such electric lines, water pipes or telephone cables, as the case may be. The Implementation Agency shall execute such utility shifting works under the supervision of utility owning agency in accordance with the provision of agreement. The supervision charges only shall be paid by the DME-SPV to the Utility Owning Entity. In the event of any delay in shifting thereof, the Implementation Agency shall be responsible for failure to perform any of its obligations here under if such failure is not as a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be. The dismantled material/scrap of existing Utility to be shifted/dismantled shall belong to the Implementation Agency who would be free to dispose-off the dismantled material as deemed fit by them. The work of shifting of utilities can be taken up by the Implementation Agency any time after signing of the Agreement.

9.3 New utilities and roads

The Implementation Agency shall allow, subject to such conditions as the DME-SPV 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 Implementation Agency, 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 9.3 shall not in any manner relieve the Implementation Agency of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.



9.4 Felling of trees

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



Article 10
Design and Construction of the Project Highway

10.1 Obligations prior to commencement of Works

In addition to its obligations of maintaining the Project Highway during the Development Period, prior to commencement of Construction Works, the Implementing Agency shall:

- (a) submit to the DME-SPV its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-J;
- (b) Appoint its representative duly authorized to deal with the DME-SPV 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, Applicable Laws and Applicable Permits; and
- (d) Make its own arrangements for quarrying and procurement of materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits.

10.2 Design and Drawings

In respect of the Implementing Agency's obligations relating to the Drawings of the Project as set forth in Schedule-I, the following shall apply:

- (i) The Implementing Agency shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the DME-SPV for review.
- (ii) By submitting the Drawings for review to the DME-SPV, the Implementing Agency shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- (iii) Within 15 (fifteen) days of the receipt of the Drawings, the DME-SPV shall review the same and convey its observations to the Implementing Agency with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Implementing Agency shall not be obliged to await the observations of the DME-SPV 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.
- (iv) If the aforesaid observations of the DME-SPV 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 Implementing Agency and resubmitted to the DME-SPV for review. The DME-SPV shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.



- (v) No review and/or observation of the DME-SPV and/or its failure to review and/or convey its observations on any Drawings shall relieve the Implementing Agency of its obligations and liabilities under this Agreement in any manner nor shall the DME-SPV be liable for the same in any manner.
- (vi) Without prejudice to the foregoing provisions of this Clause 10.2, the Implementing Agency shall submit to the DME-SPV for review and comments, its Drawings relating to alignment of the Project, finished road level and general arrangement drawings of major bridges, flyovers and grade separators, and the DME-SPV 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 10.2 shall apply mutatis mutandis to the review and comments hereunder.
- (vii) Within 90 (ninety) days of COD, the Implementing Agency shall furnish to the DME-SPV a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the DME-SPV, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

10.3 Construction of the Project Highway

- (i) The Implementation Agency shall construct the Project Highway as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The Implementation Agency shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. The **1095th (One Thousand and Ninety Five) day** from the Appointed Date shall be the scheduled completion date (the **"Scheduled Completion Date"**) and the Implementation Agency agrees and undertakes that the Construction shall be completed on or before the Scheduled Completion Date, including any extension thereof.
- (ii) The Implementation Agency shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule-J. In the event that the Implementation Agency fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule-J, unless such failure has occurred due to Force Majeure or for reasons attributable to the DME-SPV, it shall pay Damages to the DME-SPV in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-J shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-J has been amended as above; provided further that in the event COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 10.3(ii) shall be refunded by the DME-SPV to the Implementation Agency, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 10.3(ii) shall be without prejudice to the rights of



the DME-SPV under this Agreement, including the right of Termination thereof.

- (iii) In the event that the Project is not completed, and COD does not occur within 270 (two hundred and seventy) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the DME-SPV or due to Force Majeure, the DME-SPV shall be entitled to terminate this Agreement.

10.4 Maintenance during Construction Period

- (i) During the Construction Period, the Implementation Agency shall maintain, at its cost, the existing Project Highway to ensure that the road is in pothole free condition is maintained, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Implementation Agency may, at its cost, interrupt and divert the Users and other persons 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 Implementation Agency only with the prior written approval of the DME-SPV which approval shall not be unreasonably withheld. Further, in case the Scheduled Completion Date gets extended due to delay attributable solely to the DME-SPV, the Implementation Agency shall be liable to maintain the Project Highway for such extended period and shall be entitled, to receive reimbursement of cost of maintenance for such extended period at the rate specified in Clause 4.1(x) For the avoidance of doubt, it is agreed that the Implementation Agency shall at all times be responsible for ensuring safe operation of the Project.
- (ii) In the event of default by the Implementation Agency in discharging the obligations specified in Clause 12.4.1, the DME-SPV may levy and recover Damages equal to 0.2% (zero point two per cent) of the Performance Security for each day of default hereunder.
- (iii) The Parties expressly agree that pursuant to the provisions of Clause 10.3(i), the Implementation Agency shall, about 7 (seven) days prior to the date of this Agreement and with prior notice to the DME-SPV and alongwith the DME-SPV's Representative, undertake video recording of the condition and status of the Project, which recording shall be compiled into a 3 (three)-hour digital video disc or any substitute thereof, and shall provide 3 (three) copies of such recording to the DME-SPV within 2 (two) days of the date of this Agreement. The DME-SPV may, in its discretion, undertake another video recording in the presence of the Implementation Agency's representative, within 7 (seven) days of the date of this Agreement, and substitute its video recording for the video recording undertaken by the Implementation Agency. The Parties further agree that such video recording shall constitute evidence of the status and condition of the Project as on the date of such recording.



Article 11

Monitoring of Construction

11.1 Monthly progress reports

During the Construction Period, the Implementing Agency shall, no later than 7 (Seven) days after the close of each month, furnish to the DME-SPV a monthly report on the physical and financial progress of the Works and shall promptly give such other relevant information as may be required by the DME-SPV.

11.2 Inspection

During the Construction Period, the DME-SPV shall inspect the Project 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 Project Completion Schedule, Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Implementation Agency within 7 (seven) days of such inspection and upon receipt thereof, the Implementation Agency shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the DME-SPV shall not relieve or absolve the Implementation Agency of its obligations and liabilities hereunder in any manner whatsoever.

11.3 Tests

- (i) For determining that the Construction Works conform to the Specifications and Standards, the DME-SPV shall require the Implementing Agency 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 DME-SPV from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests required by Good Industry Practice for the construction works undertaken by the DME-SPV through their contractors. The Implementing Agency shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the DME-SPV and furnish the results thereof to the DME-SPV. One half of the costs incurred on such tests, and to the extent determined by the DME-SPV as reasonable, shall be reimbursed by the DME-SPV to the Implementing Agency. Provided, however, that the DME-SPV may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the Implementing Agency for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Implementing Agency shall cooperate with, and provide the necessary assistance to, the DME-SPV for discharging its functions hereunder. 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 Implementing Agency.
- (ii) In the event that results of any tests conducted under this Clause 11.3 establish any defects or deficiencies in the Construction Works, the Implementing Agency shall carry out remedial measures and furnish a report to the DME-SPV in this behalf. The DME-SPV



shall require the Implementing Agency 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 11.3 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 11.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Implementing Agency 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 Implementing Agency to the DME-SPV forthwith.

11.4 Delays during construction

Without prejudice to the provisions of Clause 10.3 (ii), in the event the Implementing Agency does not achieve any of the Project Milestones or the DME-SPV shall have reasonably determined that the rate of progress of Construction Works is such that completion of the Project Highway is not likely to be achieved by the end of the Scheduled Completion Date, it shall notify the same to the Implementing Agency, and the Implementing Agency shall, within 15 (fifteen) days of such notice, by a communication inform the DME-SPV in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

11.5 Suspension of unsafe Construction Works

- (i) The DME-SPV may by notice require the Implementing Agency to suspend forthwith the whole or any part of the Works if, in its reasonable opinion, such work threatens the safety of the Users and pedestrians or in any other situation of emergency.
- (ii) The Implementing Agency shall, pursuant to the notice under Clause 11.5 (i), suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the DME-SPV and thereupon carry out remedial measures to secure the safety of suspended works, the Users and pedestrians. The Implementing Agency may by notice require the DME-SPV to inspect such remedial measures forthwith and after undertaking such inspection, the DME-SPV shall either revoke such suspension or instruct the Implementing Agency to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the DME-SPV, and the procedure set forth in this Clause 11.7 shall be repeated until the suspension hereunder is revoked.
- (iii) Subject to the provisions of Clause 21.6, all reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Implementing Agency; provided that if the suspension has occurred as a result of any breach of this Agreement by the DME-SPV, the Preservation Costs shall be borne by the DME-SPV.
- (iv) If suspension of Construction Works is for reasons not attributable to the Implementing Agency, the DME-SPV shall determine any extension of the dates set forth in the Project Completion Schedule to which the Implementing Agency is reasonably entitled and shall notify the Implementing Agency accordingly.



11.6 Video recording

During the Construction Period, the Implementing Agency shall provide to the DME-SPV for every calendar quarter, a video recording, which will be compiled into a 3 (three)- hour compact disc or digital video disc, as the case may be, covering the status and progress of Works in that quarter. The first such video recording shall be provided to the DME-SPV within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter. Such video recording shall be carried out alongwith the authorized representative of the DME-SPV. Notwithstanding anything to the contrary contained in this document, the Implementing Agency shall also develop a Project specific website which shall be accessible to the public and upload the time stamp pictures of the development of Project Highway each week.



Article 12 Completion Certificate

12.1 Tests on Completion

- 12.1.1 No later than 30 (thirty) days prior to the likely completion of the Project or the relevant part(s) of the Project Highway, as the case may be, the Implementing Agency shall notify the DME-SPV of its intent to subject the Project or the relevant part(s) of the Project Highway, as the case may be, to Tests. The date and time of each of the Tests shall be determined by the DME-SPV in consultation with the Implementing Agency. The Implementing Agency shall provide such assistance as the DME-SPV may reasonably require for conducting the Tests.
- 12.1.2 All Tests shall be conducted in accordance with Schedule-K at the cost and expense of the Implementing Agency. The DME-SPV shall observe, monitor and review the results of the Tests to determine compliance of the Project Highway or part(s) thereof as the case may be, with Specifications and Standards and if it is reasonably anticipated or determined by the DME-SPV during the course of any Test that the performance of the Project 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 Implementing Agency to remedy and rectify the defects or deficiencies. Upon completion of each Test, the DME-SPV shall provide to the Implementing Agency copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the DME-SPV may require the Implementing Agency to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project or part(s) thereof as the case may be, with Specifications and Standards.

12.2 Completion Certificate

Upon completion of Construction Works and the DME-SPV determining the Tests to be successful, it shall forthwith issue to the Implementing Agency a certificate substantially in the form set forth in Schedule-L (the “**Completion Certificate**”).

12.3 Provisional Certificate

- 12.3.1 Subject to the provisions of Clause 12.3.2, the DME-SPV may, at the request of the Implementing Agency, issue a provisional certificate of completion, substantially in the form set forth in Schedule-L (the “**Provisional Certificate**”) if the Tests are successful and the Project or part(s) thereof as the case may be, 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 DME-SPV and the Implementing Agency (the “**Punch List**”); provided that the DME-SPV shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the DME-SPV; provided further that the Punch List shall also include the cost of completion for each of the outstanding items.
- 12.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Implementing Agency to this effect, be issued for operating part of the Project, if the Implementing Agency has completed construction of 100% (Hundred per cent) of



the Site made available to the Implementing Agency up to 180 days from the Appointed Date. Upon issue of such Provisional Certificate, the provisions of Article 16 shall apply to such completed part, and the rights and obligations of the Implementing Agency for and in respect of such completed part of the Project shall be construed accordingly.

12.4 Completion of Punch List items

12.4.1 All items in the Punch List shall be completed by the Implementing Agency 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 DME-SPV or due to Force Majeure, the DME-SPV shall be entitled to recover Damages from the Implementing Agency 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 DME-SPV. Subject to payment of such Damages, the Implementing Agency 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 DME-SPV or due to Force Majeure, the completion date thereof shall be determined by the DME-SPV 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 12.4.1.

12.4.2 Upon completion of all Punch List items, the DME-SPV shall issue the Completion Certificate. Failure of the Implementing Agency to complete all the Punch List items within the time set forth in Clause 12.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the DME-SPV, shall entitle the DME-SPV to terminate this Agreement.

12.5 Withholding of Provisional or Completion Certificate

12.5.1 If the DME-SPV determines that the Project 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 Implementing Agency. The DME-SPV shall notify the Implementing Agency of the defects and deficiencies in the Project or any part(s) thereof as the case may be, and withhold the issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Implementing Agency shall remedy and rectify such defects or deficiencies and thereupon fresh Tests shall be undertaken in accordance with this Article 12. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

12.6 Rescheduling of Tests

If the DME-SPV 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 Implementing Agency shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.



Article 13
Change of Scope

13.1 Change of Scope

- 13.1.1 The DME-SPV may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the **"Change of Scope"**). Any such Change of Scope shall be made in accordance with the provisions of this Article 13 and the costs thereof shall be expended by the Implementation Agency and reimbursed to it by the DME-SPV in accordance with Clause 13.3.
- 13.1.2 If the Implementation Agency 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 DME-SPV to consider such Change of Scope. The DME-SPV shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 13 or inform the Implementation Agency in writing of its reasons for not accepting such Change of Scope, which decision of the DME-SPV shall be final and binding.
- 13.1.3 Any works or services which are provided under and in accordance with this Article 13 shall form part of the Project and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

13.2 Procedure for Change of Scope

- 13.2.1 In the event of the DME-SPV determining that a Change of Scope is necessary, it shall issue to the Implementation Agency a notice specifying in reasonable detail the works and services contemplated thereunder (the **"Change of Scope Notice"**).
- 13.2.2 Upon receipt of a Change of Scope Notice, the Implementation Agency shall, with due diligence, provide to the DME-SPV such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the DME-SPV to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Implementation Agency in providing such information shall be reimbursed by the DME-SPV to the extent such cost is determined by it to be reasonable.
- 13.2.3 Upon receipt of information set forth in Clause 13.2.2, if the DME-SPV decides to proceed with the Change of Scope, it shall convey its preferred option to the Implementation Agency, and the Parties shall, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the DME-SPV shall issue an order (the **"Change of Scope Order"**) requiring the Implementation Agency to proceed with the performance thereof. In the event that the Parties are unable to agree, the



DME-SPV may, by issuing a Change of Scope Order, require the Implementation Agency to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 13.5.

- 13.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Implementation Agency under this Article 13.

13.3 Payment for Change of Scope

Within 7 (seven) days of issuing a Change of Scope Order, the DME-SPV shall make an advance payment to the Implementation Agency 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 as assessed by it as reasonable. The Implementation Agency shall, after commencement of work, present to the DME-SPV 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 DME-SPV to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the DME-SPV shall disburse to the Implementation Agency such amounts as are determined by it 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.

13.4 Restrictions on certain works

- 13.4.1 Notwithstanding anything to the contrary contained in this Article 13, but subject to the provisions of Clause 13.4.2, the DME-SPV shall not require the Implementation Agency to undertake any works or services if such works or services are likely to delay completion of the Project by the Scheduled Completion Date; provided that in the event that the DME-SPV 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 Change of Scope Order shall not be reckoned for purposes of determining completion of the Project and issuing the Provisional Certificate.
- 13.4.2 Notwithstanding anything to the contrary contained in this Article 13, the Implementation Agency shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of the Project Cost at any time during the term of the Agreement.

13.5 Power of the DME-SPV to undertake works

- 13.5.1 Notwithstanding anything to the contrary contained in Clauses 13.1.1 and 13.3, the DME-SPV may, after giving notice to the Implementation Agency and considering its reply thereto, award any works or services, contemplated under Clause 13.1.1, to any person on the basis of open competitive bidding; provided that the Implementation Agency shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the DME-SPV, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Implementation Agency shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Implementation Agency shall provide



access, assistance and cooperation to the person who undertakes the works or services hereunder.¹

- 13.5.2 The works undertaken in accordance with this Clause 13.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 13.5.

13.6 Reduction in Scope of the Project

- 13.6.1 If the Implementation Agency shall have failed to complete any Construction Works on account of Force Majeure or for reasons attributable to the DME-SPV or under the provision of Clause 8.2.4 of this Agreement, the DME-SPV shall follow the following process for calculation of total cost of reduced Scope

- I. The DME-SPV, shall assess the civil cost of the reduced Scope, as per the schedule of rates applicable on the Effective Date.
- II. The civil cost of the reduced Scope shall be multiplied by the **1.12** to arrive at the estimated cost of reduced Scope.
- III. The estimated cost of reduced Scope shall be the total cost of reduced scope.

On or before a Project Milestone immediately succeeding the date of finalization of such reduction in scope, the Project Cost shall be reduced by the total cost of reduced scope and all payments made or to be made to the Implementation Agency shall be suitably adjusted and recoveries, if any, shall be made from the payment to be released on that Project Milestone immediately succeeding the date of finalization of reduction in scope.

For the avoidance of doubt, it is agreed that upon the reduction of scope and revision of Project Cost, all references to Project Cost would mean the revised Project Cost and all the payments would be calculated as per the revised Project Cost.

- 13.6.2 For determining the obligations of the Implementation Agency under this Clause 13.6, the provisions of Clauses 13.1, 13.2 and 13.4 shall apply mutatis mutandis, and upon issue of Change of Scope Order by the DME-SPV hereunder, the Implementation Agency shall pay forthwith the sum specified therein.

¹ The DME-SPV shall transfer 75% (seventy five per cent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Implementing Agency.



Article 14

OPERATION AND MAINTENANCE

14.1 O&M obligations of the Implementing Agency

14.1.1 During the Operation Period, the Implementing Agency shall operate and maintain the Project 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 to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Implementing Agency hereunder shall include:

- (a) Procuring and ensuring safe, smooth and uninterrupted use of the Project, including prevention of loss or damage thereto, during normal operating conditions;
- (b) Minimizing disruption in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (c) Carrying out periodic preventive maintenance of the Project;
- (d) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, markings, lighting, signage and other control devices;
- (e) Undertaking major maintenance such as resurfacing, repairs to structures, and repairs and refurbishment of system and equipment;
- (f) Preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- (g) Preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorized entry to the Project;
- (h) Protection of the environment and provision of equipment and materials thereof;
- (i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project and for providing safe, smooth and uninterrupted use of the Project;
- (j) Maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and
- (k) Complying with Safety Requirements in accordance with Article 14A.

14.1.1 The Implementing Agency shall remove promptly from the Project 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 in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice. For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at location identified by DME-SPV.

14.1.2 The Implementing Agency shall maintain, in conformity with Good Industry Practice, all



stretches of approach roads.

14.2 Maintenance Requirements

The Implementing Agency shall procure that at all times during the Operation Period; the Project conforms to the maintenance requirements set forth in Schedule-E (the **Maintenance Requirements**”).

14.3 Maintenance Manual

- 14.3.1 No later than 90 (ninety) days prior to the Scheduled Completion Date, the Implementing Agency shall, in consultation with the DME SPV, evolve a repair and maintenance manual (the **“Maintenance Manual”**) for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the DME-SPV. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause shall apply, mutatis mutandis, to such revision.
- 14.3.2 Without prejudice to the provision of Clause 14.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of The Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

14.4 Maintenance Program

- 14.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Implementing Agency shall provide to the DME-SPV, its proposed annual program of preventive, urgent and other scheduled maintenance (the **“Maintenance Program”**) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Program 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;
 - e. Intervals at which the Implementing Agency shall carry out periodic maintenance;
 - f. Arrangements and procedures for carrying out safety related measures; and
 - g. Intervals for major maintenance works and the scopethereof.
- 14.4.2 Within 15 (fifteen) days of receipt of the Maintenance Program, the DME-SPV shall review the same and convey its comments to the Implementing Agency with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.
- 14.4.3 The Implementing Agency may modify the Maintenance Program as may be reasonable in the circumstances, and the procedure specified in Clauses 14.4.1 and 14.4.2 shall apply mutatis mutandis to such modifications.



14.5 Safety, breakdowns and accidents

- 14.5.1 The Implementing Agency shall ensure safe conditions for the Users, and in the event of unsafe conditions, closures, diversions, breakdowns and accidents, it shall follow the relevant operating procedures including the setting up of temporary 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.
- 14.5.2 The Implementing Agency's responsibility for rescue operations on the Project shall be limited to an initial response to any particular incident until such time as the competent authority takes charge and shall include prompt removal of vehicles or debris or any other obstruction, which may endanger or interrupt the use of the Project. For this purpose, it shall maintain and operate a round-the-clock rescue post with equipment in accordance with Good Industry Practice.

14.6 De-commissioning due to Emergency

- 14.6.1 If, in the reasonable opinion of the Implementing Agency, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Project, the Implementing Agency shall be entitled to de-commission and close the whole or any part of the Project for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Implementing Agency to the DME-SPV without any delay, and the Implementing Agency shall diligently carry out and abide by any reasonable directions that the DME-SPV may give for dealing with such Emergency.
- 14.6.2 The Implementing Agency shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Implementing Agency to re-commission the Project and shall notify the DME-SPV of the same without any delay.
- 14.6.3 Any decommissioning or closure of any part of the Project and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

14.7 Project closure

- 14.7.1 Save and except as provided in Clause 14.6, the Implementing Agency shall not close any part of the Project for undertaking maintenance or repair works not forming part of the Maintenance Program, except with the prior written approval of the DME-SPV. Such approval shall be sought by the Implementing Agency through a written request to be made to the DME-SPV, at least 7 (seven) days before the proposed closure and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the DME-SPV shall grant permission with such modifications as it may deem reasonable and necessary in conformity with the Maintenance Manual and Maintenance Program.
- 14.7.2 The provisions of Clause 14.7.1 shall not apply to de-commissioning under Clause 14.6.1 or to any closure 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 DME-SPV as off-peak hours when usage of the Project is comparatively lower.
- 14.7.3 Upon receiving the permission pursuant to Clause 14.7.1, the Implementing Agency shall be entitled to close the designated part of the Project for the period specified therein, and in the event of any delay in re-opening such part, the Implementing Agency shall pay Damages to the



DME-SPV calculated at the rate of 0.5 % (zero point Five per cent) of the Performance Security, for each day of delay until that part of the Project has been re-opened for use.

14.8 Damages for breach of maintenance obligations

- 14.8.1 In the event that the Implementation Agency 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 DME-SPV 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) 2% (two per cent) of the Performance Security, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the DME-SPV. Recovery of such Damages shall be without prejudice to the rights of the DME-SPV under this Agreement, including the right of Termination thereof.
- 14.8.2 The DME-SPV may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Implementation Agency is otherwise in compliance with its obligations hereunder. The Implementation Agency shall pay such Damages forthwith and, in the event, that it contests such Damages, the Dispute Resolution Procedure shall apply.

14.9 DME-SPV's right to take remedial measures

- 14.9.1 In the event the Implementation Agency does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Program, 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 DME-SPV, the DME-SPV 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 Implementation Agency, and to recover its cost from the Implementation Agency. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Implementation Agency to the DME-SPV as Damages. For the avoidance of doubt, the right of the DME-SPV under this Clause 14.9.1 shall be without prejudice to its rights and remedies provided under Clause 14.8.
- 14.9.2 The DME-SPV shall have the right, to recover the costs and Damages specified in Clause 14.9.1 from the Performance Security in case it is furnished by the Implementing Agency or from any monies due to the Implementation Agency.

14.10 Overriding powers of the DME-SPV

- 14.10.1 If in the reasonable opinion of the DME-SPV, the Implementation Agency 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 DME-SPV may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Implementation Agency to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 14.10.2 In the event that the Implementation Agency, upon notice under Clause 14.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the DME-SPV may exercise overriding powers under this Clause 14.10.2 and take over the performance of any or all the obligations of the Implementation Agency 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 DME-SPV 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 DME-SPV in



discharge of its obligations hereunder shall be recovered from the Implementation Agency in accordance with the provisions of Clause 14.9 along with the Damages specified therein.

14.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 21.3, the DME-SPV may take over the performance of any or all the obligations of the Implementation Agency to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Implementation Agency as may be deemed necessary; provided that the exercise of such overriding powers by the DME-SPV 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 DME-SPV. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 21. It is also agreed that the Implementation Agency shall comply with such instructions as the DME-SPV may issue in pursuance of the provisions of this Clause 14.10, and shall provide assistance and cooperation to the DME-SPV, on a best effort basis, for performance of its obligations hereunder.

14.11 Restoration of loss or damage to the Project

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

14.12 Modifications to the Project

The Implementation Agency shall not carry out any material modifications to the Project, save and except where such modifications are necessary for the Project to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Implementation Agency shall notify the DME-SPV 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 DME-SPV may make within 15 (fifteen) days of receiving the Implementation Agency's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirements, Specifications and Standards, Applicable Laws and the provisions of this Agreement.

14.13 Excuse from performance of obligations

The Implementation Agency shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available to Users 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 except when unsafe conditions occurred because of failure of the Implementation Agency to perform its obligations under this Agreement; or
- (c) compliance with a request from the DME-SPV or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project:

Provided, that any such non-availability and particulars thereof shall be notified by the Implementation Agency to the DME-SPV without any delay;



Provided further that the Implementation Agency shall keep all unaffected parts of the Project open to Users, provided they can be operated safely.

14.14 Installation and operation of CCTV

The Implementation Agency shall install and operate a closed-circuit television system to monitor such parts of the Project as may be necessary and expedient for a safe, secure and smooth operation thereof.



ARTICLE 14A
SAFETY REQUIREMENTS

14A.1 Safety Requirements

- (1) The Implementation Agency shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Implementation Agency shall develop, implement and administer a surveillance and safety program for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in Schedule-H (the “**Safety Requirements**”).
- (2) The DME-SPV may appoint an experienced and qualified firm or organization (the “**Safety Consultant**”) for carrying out safety audit of the Project in accordance with the Safety Requirements and shall take all other actions necessary for securing compliance with the Safety Requirements.

14A.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Implementation Agency 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 and funded in accordance with the provisions of Article 13.



Article 15

MONITORING OF OPERATION AND MAINTENANCE

15.1 Monthly status reports

- 15.1.1 During the Operation Period, the Implementation Agency shall, no later than 7 (seven) days after the close of each month, furnish to the DME-SPV a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Program and Safety Requirements, and shall promptly give such other relevant information as may be required by the DME-SPV. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.
- 15.1.2 During the Operation Period, the Implementation Agency shall, no later than 10 (ten) days after the close of each month, furnish a monthly management report which shall include a summary of:
- (a) key performance indicators achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
 - (b) key operational hurdles and deliverables in the succeeding month along with strategies for addressing the same and for otherwise improving the Project's operational performance; and
 - (c) key financial parameters for the month,*as benchmarked against the monthly budget and the reasons for shortfall, if any, and proposals to remedy the same.

15.2 Inspection

The DME-SPV shall inspect the Project 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 Program and Safety Requirements, and send a copy thereof to the Implementation Agency within 7 (seven) days of such inspection.

15.3 Tests

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

15.4 Remedial measures

- 15.4.1 The Implementation Agency 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 15.3 and furnish a report in respect thereof to the DME-SPV 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 Implementation Agency shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 15.4.2 The DME-SPV shall require the Implementation Agency to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into



compliance with the Maintenance Requirements and the procedure set forth in this Clause 15.4 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Implementation Agency in conformity with the provisions of this Agreement, the DME-SPV shall be entitled to recover Damages from the Implementation Agency under and in accordance with the provisions of Clause 14.8.

15.5 Reports of unusual occurrence

The Implementation Agency shall, prior to the close of each day, send to the DME-SPV, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Users and the Project. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 15.5, accidents and unusual occurrences on the Project shall include:

- (a) Death or injury to any person;
- (b) Damaged or dislodged fixed equipment;
- (c) Any damage or obstruction on the Project, which results in slow down of the services being provided by the Implementation Agency;
- (d) Disablement of any equipment during operation;
- (e) Communication failure affecting the operation of the Project;
- (f) Smoke or fire;
- (g) Flooding of the Project; and
- (h) Such other relevant information as may be required by the DME-SPV.



Article 16

ENTRY INTO COMMERCIAL SERVICE

16.1 Commercial Operation Date (COD)

The Project or relevant part(s) of the Project Highway, as the case may be, 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 12 in respect thereof, and accordingly the commercial operation date shall be the date on which such Completion Certificate or the Provisional Certificate is issued for the entire Project Highway or its part(s) as the case may be (the “COD”).

16.2 Damages for delay

Subject to the provisions of Clause 10.3, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the DME-SPV or due to Force Majeure, the Implementing Agency shall pay Damages to the DME-SPV in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until COD is achieved. Upon failure of the Implementing Agency to pay the said Damages, the same shall be paid along with interest of Bank Rate plus 3% and shall be deducted from any further amount due and payable to the Implementing Agency.



Article 16A

Traffic Regulation

(1) Traffic regulation by the Implementing Agency

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

(2) Police assistance

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

(3) Buildings for Traffic Aid Posts

The Implementing Agency shall, in accordance with the type designs prescribed for such police outpost buildings by the State Government or a substitute thereof, construct at its own cost and expense, buildings not exceeding 25 (twenty five) square meters of plinth area, for each of the Traffic Aid Posts, and hand them over to the DME-SPV no later than 60 (sixty) days prior to the Scheduled Completion Date. The Traffic Aid Post shall be deemed to be part of the Site and shall vest in the DME-SPV.

(4) Medical Aid Posts

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

(5) Buildings for Medical Aid Posts

The Implementing Agency shall, at its cost and in accordance with the type designs prescribed for such buildings by the State Medical Department (or a substitute thereof to be designated by the DME-SPV), construct an aid post building and 2 (two) residential quarters, and hand them over to the DME-SPV, no later than 30 (thirty) days prior to Scheduled Completion Date. The Medical Aid Post shall be deemed to be part of the Site and shall vest in the DME-SPV.

(6) Computer systems and network

The Implementing Agency shall install, operate and maintain a computer system with round-the-clock connections to the networks of the DME-SPV 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 DME-SPV may specify.

(7) Recurring expenditure on Police assistance



The Implementing Agency 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 sub-clause (2) above and shall meet the operating costs of such vehicle including the salaries and allowances of the chauffeurs.

(8) Recurring expenditure on Medical Aid Posts

On or before COD, the Implementing Agency shall provide to the State Medical Department or a substitute thereof to be designated by the DME-SPV one ambulance in good working condition along with chauffeurs for round-the-clock ambulance services as set forth in sub-clause (4) above and meet the operating costs of such ambulance including the salaries and allowances of the chauffeurs. The Implementing Agency shall also reimburse to the State Medical Department (or a substitute thereof to be designated by the DME-SPV) 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 Implementing Agency shall not be liable for any other expenditure incurred by the State Medical Department or a substitute thereof to be designated by the DME-SPV.



Article 17

Defects Liability

17.1 Liability for defects after Termination

The Implementation Agency shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination (“**Defects Liability Period**”), and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the DME-SPV in the Project during the aforesaid period. In the event that the Implementation Agency fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the DME-SPV in this behalf, the DME-SPV shall be entitled to get the same repaired or rectified at the Implementation Agency’s risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the DME-SPV hereunder shall be reimbursed by the Implementation Agency to the DME-SPV within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the DME-SPV shall be entitled to recover the same from the Performance Guarantee provided hereunder. For the avoidance of doubt, the provisions of this Article 17 shall not apply if Termination occurs prior to COD.

17.2 Performance Guarantee

- 17.2.1 The Implementation Agency may, for the performance of its obligations under this Article 17, provide to the DME-SPV a guarantee from a Bank for a sum equivalent to the amount determined under Clause 33.2.3 of the Concession Agreement , and for the period specified therein, substantially in the form set forth in Schedule-G (the “**Performance Guarantee**”), to be modified, mutatis mutandis, for this purpose, and the DME-SPV 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 Implementation Agency’s risk and cost in accordance with the provisions of this Article 17.



Article 18
Change in law

18.1 Increase in Costs

If as a result of Change in Law, the Implementing Agency suffers an increase in costs, the aggregate financial effect of which exceeds the higher of Rs. 3.81 Cr. (Rupees three crores and eighty-one lakhs only) or 2% (two per cent) of the sum equivalent to the total Annuity Payments in any Accounting Year under the Concession Agreement, the Implementing Agency may so notify the DME-SPV and propose amendments to this Agreement so as to place the Implementing Agency in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Implementing Agency, the Parties shall meet, as soon as reasonably practicable as 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 Implementing Agency may by notice require the DME-SPV to pay an amount that would place the Implementing Agency 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 DME-SPV shall pay the amount specified therein; provided that if the DME-SPV shall dispute such claim of the Implementing Agency, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 18.1 shall be restricted to changes in law directly affecting the Implementing Agency's costs of performing its obligations under this Agreement.

18.2 Reduction in costs

If as a result of Change in Law, the Implementing Agency benefits from a reduction in costs, the aggregate financial effect of which exceeds the higher of Rs. 3.81 Cr. (Rupees three crores and eighty-one lakhs only) or 2% (two per cent) of the sum equivalent to the total Annuity Payments in any Accounting Year under the Concession Agreement, the DME-SPV may so notify the Implementing Agency and propose amendments to this Agreement so as to place the Implementing Agency in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the DME-SPV, the Parties shall meet, as soon as reasonably practicable as 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 DME-SPV may by notice require the Implementing Agency to pay an amount that would place the Implementing Agency 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 Implementing Agency shall pay the amount specified therein to the DME-SPV; provided that if the Implementing Agency shall dispute such claim of the DME-SPV, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 18.2 shall be restricted to changes in law directly



affecting the Implementing Agency's costs of performing its obligations under this Agreement.

18.3 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 18 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.



Part IV

Financial Covenants



Article 19

PAYMENT OF PROJECT COST

19.1 Project Cost

The Parties expressly agree that the cost of construction of the Project, as on the Effective Date, which is due and payable by the DME-SPV to the Implementing Agency, shall be deemed to be Rs 53,849 Crore (Rupees Fifty Three Thousand Eight Hundred and Forty Nine Crore) (“**Project Cost**”). The Parties further agree that the Project Cost specified hereinabove for payment to the Implementing Agency shall be inclusive of the cost of construction, interest during construction, working capital, physical contingencies and all other costs, expenses and charges for and in respect of construction of the Project, save and except any additional costs arising on account of variation in Price Index, Change of Scope, Change in Law, Force Majeure or breach of this Agreement, which costs shall be due and payable to the Implementing Agency in accordance with the provisions of the Agreement. For the avoidance of doubt, the Project Cost specified herein represents the amount due and payable by the DME-SPV to the Implementing Agency.

19.2 Adjusted Project Cost

19.2.1 The Project Cost specified in Clause 19.1 shall be revised from time to time in accordance with the provisions of this Clause 19.2 to reflect the variation in Price Index occurring after the Reference Index Date immediately preceding the Effective Date.

19.2.1 The Project Cost adjusted for variation between the Price Index occurring between the Reference Index Date preceding the Effective Date and the Reference Index Date immediately preceding the Appointed Date shall be deemed to be the Project Cost at commencement of Construction.

19.2.2 For every month occurring after the Appointed Date, the DME-SPV shall compute the variation in Price Index occurring between the Reference Index Date preceding the Effective Date and the Reference Index Date preceding the date of Invoice and shall express the latter as a multiple of the former (the “**Price Index Multiple**”). All Invoices to be submitted by the Implementing Agency to the DME-SPV for and in respect of the Construction Period shall be the product of the relevant proportion of the Project Cost and the Price Index Multiple applicable on the date of Invoice. For the avoidance of doubt and by way of illustration, if (a) the Price Index on the Reference Index Date preceding the Effective Date, say January 31, 2016, is 200 (two hundred); (b) the Invoice is submitted on October 15, 2017; and (c) the Price Index as on September 30, 2017 is 210 (two hundred and ten), then the Price Index Multiple for determination of the amount due in respect of such Invoice shall be 1.05 (one point zero five).

19.3 Payment during Construction Period

19.3.1 The Project Cost adjusted for the Price Index Multiple, shall be due and payable to the Implementing Agency in accordance with the project milestones defined under the Existing Contracts.

19.3.2 Upon completion of the relevant Project Milestone, the Implementing Agency shall submit a statement (“**Stage Payment Statement**”), in 2 copies, by the 7th (seventh) day of the Project Milestone completion date to the DME-SPV, showing the amount calculated in accordance with Clause 19.3 to which the Implementing Agency considers itself entitled



for completion of the relevant Project Milestone along with necessary particulars demonstrating the Physical Progress achieved against the said Project Milestone. The Stage Payment Statement shall be accompanied with the progress reports and any other supporting documents. The Implementing Agency shall not submit any claim for payment of incomplete stages of work.

Within 10 (ten) days of receipt of the Stage Payment Statement from the Implementing Agency pursuant to Clause 19.3, the DME-SPV shall certify/ assess the actual status of completion of the relevant Project Milestone and the amount due and payable to the Implementing Agency against the said Project Milestone. Thereafter, the DME-SPV shall disburse, within 15 (fifteen) days of such assessment, the payment against the said Project Milestone as per Clause 19.3, adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of that report.

19.4 Bonus on early completion

In the event that the Implementing Agency shall achieve COD on or more than 30 (thirty) days prior to the Scheduled Completion Date, the DME-SPV shall pay to the Implementing Agency a bonus equal to 0.5% (Zero point five per cent) of 60 % (Sixty per cent) of the Project Cost for the first 30 (thirty) days by which COD shall precede the Scheduled Completion Date and thereafter the said bonus shall be calculated on the pro-rata basis for each day preceding the said 30 (thirty) days period. The Bonus shall be due and payable to the Implementing Agency along with the next due payment from the DME-SPV to the Implementing Agency.

19.5 Mobilization Advance

The DME-SPV shall, on request of the Implementing Agency, make an advance payment in a sum not exceeding 10% (ten per cent) of the Project Cost (the "Mobilization Advance"). This advance payment shall be made in two equal instalments. The Implementing Agency may request the DME-SPV for the first instalment of the advance payment at any time after the Appointed Date, along with furnishing a Bank Guarantee in the format set forth in Schedule G. The Implementing Agency may request the DME-SPV for the second instalment of the advance payment at any time, after 60(sixty) days from the Appointed Date, along with furnishing a Bank Guarantee in a form satisfactory to the DME-SPV. The first and second instalments of the Mobilization Advance shall be paid by the DME-SPV within 30 (thirty) days of receipt of the respective requests in this behalf from the Implementing Agency. The rate of interest on the Mobilization Advance shall be equal to the average of one year MCLR of top 5 Scheduled Commercial Banks plus 1.25 percent, compounded annually. The proportionate amount against the relevant instalment of the Mobilization Advance paid by the DME-SPV to the Implementing Agency and the interest thereon shall be deducted by the DME-SPV from the next due payment to be made by the DME-SPV to the Implementing Agency in accordance with the provisions of this Agreement.

19.6 Treatment of incomplete works

19.6.1 The Parties acknowledge and agree that in the event COD occurs upon issuance of a Provisional Certificate, the works remaining incomplete shall be completed by the Implementing Agency in accordance with the provisions of this Agreement and thereupon, the Completion Certificate shall be issued forthwith.



19.6.2 In the event the DME-SPV determines that any incomplete works referred to in Clause 19.6.1 are not required to be completed for any reason, it shall modify the Scope of the Project in accordance with the provisions of Article 13.

19.7 Payment of Additional Fee

DME-SPV may in addition to the costs specified hereinabove in this Article 19, pay to the Implementing Agency an additional fee in respect of the Project for the quantum and in the manner, as may be agreed between the Parties.



Article 20

Insurance

20.1 Insurance during Construction Period and the Operation Period

The Implementing Agency 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 Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Implementing Agency shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the DME-SPV as a consequence of any act or omission of the Implementing Agency during the Construction Period. The Implementing Agency shall procure that in each insurance policy, the DME-SPV shall be a co-insured.

20.2 Insurance Cover

Without prejudice to the provisions contained in Clause 20.1, the Implementing Agency shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

- 20.2.1 Loss, damage or destruction of the Project Assets, including assets handed over by the DME-SPV to the Implementing Agency, at replacement value;
- 20.2.2 Comprehensive third-party liability insurance including injury to or death of personnel of the DME-SPV or others caused by the Project;
- 20.2.3 The Implementing Agency's general liability arising out of this Agreement;
- 20.2.4 Liability to third parties for goods or property damage;
- 20.2.5 Workmen's compensation insurance; and
- 20.2.6 any other insurance that may be necessary to protect the Implementing Agency and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items(a) to (e) above.

20.3 Notices to the DME-SPV

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Implementing Agency shall by notice furnish to the DME-SPV, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 20. Within 30 (thirty) days of receipt of such notice, the DME-SPV may require the Implementing Agency to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

20.4 Evidence of Insurance Cover

All insurances obtained by the Implementing Agency in accordance with this Article 20 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Implementing Agency shall furnish to the DME-SPV, notarized true copies of the certificate(s) of insurance,



copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or nonrenewal has been delivered by the Implementing Agency to the DME-SPV.

20.5 Remedy for failure to insure

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

20.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Implementing Agency pursuant to this Article 20 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the DME-SPV, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

20.7 Implementing Agency's waiver

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

20.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Implementing Agency and it shall, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project.

20.9 Compliance with conditions of insurance policies

The Implementing Agency expressly acknowledges and undertakes to fully indemnify the DME-SPV from and against all losses and claims arising from the Implementing Agency's failure to comply with conditions imposed by the insurance policies affected in accordance with this Agreement.



Part V

Force Majeure and Termination



Article 21

Force Majeure

21.1 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 21.2, 21.3 and 21.4 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.

21.2 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 Implementing Agency, Sub-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 21.3;
- (c) any failure or delay of a Sub-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 Implementing Agency by or on behalf of such contractor;
- (d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Implementing Agency in any proceedings for reasons other than (i) failure of the Implementing Agency 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 DME-SPV;
- (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.

21.3 Indirect Political Event

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



- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) 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;
- (d) any civil commotion, boycott or political agitation which prevents construction of the Project Highway by the Implementing Agency for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) any failure or delay of a Sub-contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Implementing Agency by or on behalf of such contractor;
- (f) any Indirect Political Event that causes a Non-Political Event; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

21.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 18 and its effect, in financial terms, exceeds the sum specified in Clause 18.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Implementing Agency or of the Sub-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 Implementing Agency or any of the Sub-contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Implementing Agency's or any Sub-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 Sub-contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Implementing Agency by or on behalf of such contractor; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

21.5 Duty to report Force Majeure Event



- (i) Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:
 - (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 21 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.
- (ii) The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- (iii) 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 21.5 (i), and such other information as the other Party may reasonably request the Affected Party to provide.

21.6 Effect of Force Majeure Event on the Agreement

- (i) 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.
- (ii) Upon the occurrence of any Force Majeure after the Appointed Date, the costs incurred and attributable to such event and directly relating to this Agreement (the "**Force Majeure costs**") shall be allocated and paid as follows:
 - (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
 - (b) upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Implementing Agency, and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the DME-SPV to the Implementing Agency for the Force Majeure events; and
 - (c) upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the DME-SPV to the Implementing Agency.



- (d) For the avoidance of doubt, Force Majeure costs may include 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 any costs which are expressly covered under any provision of this Agreement or debt repayment obligations, if any, of the Implementing Agency.

Save and except as expressly provided in this Article 21, 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.

- (iii) Upon the occurrence of any Force Majeure Event during the Construction Period, the Project Completion Schedule for and in respect of the affected Works shall be extended on a day for day basis for such period as performance of the Implementing Agency's obligations is affected on account of the Force Majeure Event or its subsisting effects.

21.7 Termination Notice for Force Majeure Event

- (i) 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 21, 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.

21.8 Termination Payment for Force Majeure Event

- (i) In the event of this Agreement being terminated on account of a Non-Political Event, the Termination Payment shall be an amount equal to the sum payable under Clause 23.6.

Provided that in the event Termination occurs during the Maintenance Period, the DME-SPV shall only determine the value of Works associated with Maintenance.

- (ii) If Termination is on account of an Indirect Political Event, the Termination Payment shall include:
- (a) any sums due and payable under Clause 23.6; and
 - (b) the reasonable cost, as determined by the DME-SPV, of the Plant and Materials procured by the Implementing Agency and transferred to the DME-SPV for use in Construction or Maintenance, only if such Plant and Materials are in conformity with the Specifications and Standards;

Provided that in the event Termination occurs during the Maintenance Period, the DME-SPV shall only determine the value of Works associated with Maintenance.



- (iii) If Termination is on account of a Political Event, the DME-SPV shall make a Termination Payment to the Implementing Agency in an amount that would be payable under Clause 23.6 (ii) as if it were an DME-SPV Default.

21.9 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided 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.

21.10 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 22

SUSPENSION OF IMPLEMENTING AGENCY'S RIGHTS

22.1 Suspension upon Implementing Agency Default

Upon occurrence of a Implementing Agency Default, the DME-SPV shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Implementing Agency under this Agreement, and pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the DME-SPV to the Implementing Agency 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 Implementing Agency, the DME-SPV shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

22.2 DME-SPV to act on behalf of Implementing Agency

During the period of Suspension hereunder, all rights and liabilities vested in the Implementing Agency in accordance with the provisions of this Agreement shall continue to vest in the Implementing Agency and all things done or actions taken, including expenditure incurred by the DME-SPV for discharging the obligations of the Implementing Agency under and in accordance with this Agreement, shall be deemed to have been done or taken for and on behalf of the Implementing Agency and the Implementing Agency undertakes to indemnify the DME-SPV for all costs incurred during such period. The Implementing Agency hereby licenses and sub-licenses respectively, the DME-SPV or any other person authorized by it under Clause 22.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Implementing Agency with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Implementing Agency in performing its obligations under the Agreement.

22.3 Revocation of Suspension

22.3.1 In the event that the DME-SPV 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 Implementing Agency under this Agreement. For the avoidance of doubt, the Parties expressly agree that the DME-SPV may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

22.3.2 Upon the Implementing Agency having cured the Implementing Agency Default within a period not exceeding 90 (ninety) days from the date of Suspension, the DME-SPV shall revoke the Suspension forthwith and restore all rights of the Implementing Agency under this Agreement.

22.4 Termination

22.4.1 At any time during the period of Suspension under this Article 22, the Implementing Agency may by notice require the DME-SPV to revoke the Suspension and issue a



Termination Notice. The DME-SPV shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 22 as if it is a Implementing Agency Default under Clause 22.1.

- 22.4.2 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 22.1, the 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 DME-SPV upon occurrence of a Implementing Agency Default.



Article 23

Termination

23.1 Termination for Implementing Agency's Default

- (i) Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Implementing Agency 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 Implementing Agency shall be deemed to be in default of this Agreement (the "**Implementing Agency Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the DME-SPV 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 7.2 and the Implementing Agency fails to provide, extend or replenish if required by the DME SPV, the Performance Security within a Cure Period of 15 (fifteen) days in accordance with this Agreement;
 - (b) after the replenishment or furnishing of fresh Performance Security in accordance with Clause 7.2, the Implementing Agency fails to cure, within a Cure Period of 120 (one hundred and twenty) days, the Implementing Agency Default for which the whole or part of the Performance Security was appropriated;
 - (c) the Implementing Agency does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-J, subject to any time extension, and continues to be in default for 120 (one hundred and twenty) days;
 - (d) the Implementing Agency abandons or manifests intention to abandon the construction or Maintenance of the Project Highway without the prior written consent of the DME-SPV;
 - (e) COD does not occur within the period specified in Clause 10.3(iii);
 - (f) the Punch List items have not been completed within the period set forth in Clause 12.4.1;
 - (g) the Implementing Agency is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
 - (h) the Implementing Agency has failed to make any payment to the DME-SPV within the period specified in this Agreement;
 - (i) the Implementing Agency fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the DME-SPV;
 - (j) the Implementing Agency creates any Encumbrance in breach of this Agreement;
 - (k) the Implementing Agency repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
 - (l) the Implementing Agency subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works or the Maintenance without the



prior approval of the DME-SPV;

- (m) an execution levied on any of the assets of the Implementing Agency has caused a Material Adverse Effect;
 - (n) the Implementing Agency is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Implementing Agency or for the whole or material part of its assets that has a material bearing on the Project;
 - (o) the Implementing Agency 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 DME-SPV, a Material Adverse Effect;
 - (p) a resolution for winding up of the Implementing Agency is passed, or any petition for winding up of the Implementing Agency 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 Implementing Agency is ordered to be wound up by a 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 Implementing Agency are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Implementing Agency under this Agreement 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;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Implementing Agency as at the Appointed Date.
 - (q) any representation or warranty of the Implementing Agency herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Implementing Agency is at any time hereafter found to be in breach thereof;
 - (r) the Implementing Agency submits to the DME-SPV any statement, notice or other document, in written or electronic form, which has a material effect on the DME-SPV's rights, obligations or interests and which is false in material particulars;
 - (s) the Implementing Agency has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
 - (t) the Implementing Agency issues a Termination Notice in violation of this Agreement;
 - (u) the Implementing Agency commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the DME-SPV;
- (ii) Without prejudice to any other rights or remedies which the DME-SPV may have under this Agreement, upon occurrence of a Implementing Agency Default, the DME-SPV shall be entitled to terminate this Agreement by issuing a Termination Notice to the Implementing Agency; provided that before issuing the Termination Notice, the DME-SPV



shall by a notice inform the Implementing Agency of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Implementing Agency 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.

23.2 Termination for DME-SPV Default

- (i) In the event that any of the defaults specified below shall have occurred, and the DME-SPV 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 DME-SPV shall be deemed to be in default of this Agreement (the “**DME-SPV Default**”) unless the default has occurred as a result of any breach of this Agreement by the Implementing Agency or due to Force Majeure. The defaults referred to herein shall include:
 - (a) the DME-SPV commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Implementing Agency;
 - (b) the DME-SPV has failed to make payment of any amount due and payable to the Implementing Agency within the period specified in this Agreement;
 - (c) the DME-SPV repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement;
- (ii) Without prejudice to any other right or remedy which the Implementing Agency may have under this Agreement, upon occurrence of an DME-SPV Default, the Implementing Agency shall be entitled to terminate this Agreement by issuing a Termination Notice to the DME-SPV; provided that before issuing the Termination Notice, the Implementing Agency shall by a notice inform the DME-SPV of its intention to issue the Termination Notice and grant 15 (fifteen) days to the DME-SPV 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.

23.3 Termination for DME-SPV's convenience

Notwithstanding anything stated hereinabove, the DME-SPV may terminate this Agreement for convenience. The termination shall take effect 30 (thirty) days from the date of notice provided to the Implementing Agency.

23.4 Requirements after Termination

Upon Termination of this Agreement in accordance with the terms of this Article 23, the Implementing Agency shall comply with and conform to the following:

- (a) deliver all relevant records, reports, Intellectual Property and other licences pertaining to the Works, Maintenance, other design documents;
- (b) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws; and



- (c) comply with all other divestment requirements as detailed in Article 23A.

23.5 Valuation of Unpaid Works

- (i) Within a period of 45 (forty-five) days after Termination under Clause 23.1, 23.2 or 23.3, as the case may be, has taken effect, the DME-SPV shall proceed to determine as follows the valuation of unpaid Works (the “**Valuation of Unpaid Works**”):
- (a) value of the completed stage of the Works, less payments already made;
 - (b) reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards; and
 - (c) value of Maintenance, if any, for completed months, less payments already made, and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement; and (ii) all taxes due to be deducted at source.
- (ii) The Valuation of Unpaid Works shall be communicated to the Implementing Agency, within a period of 30 (thirty) days from the date of Termination.

23.6 Termination Payment

23.6.1 Upon Termination on account of a Implementing Agency Default under Clause 23.1, the DME-SPV shall:

- (a) encash and appropriate the Performance Security if any, or claim the amount stipulated in Clause 7.1, as agreed pre-determined compensation to the DME-SPV for any losses, delays and cost of completing the Works and Maintenance, if any. The DME SPV shall be entitled to recover such damages from any monies due to the Implementation Agency.;
- (b) encash and appropriate the Bank Guarantee, if any, for and in respect of the outstanding Mobilization Advance and interest thereon; and
- (c) pay to the Implementing Agency, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

23.6.2 Upon Termination on account of an DME-SPV Default under Clause 23.2 or for DME-SPV's convenience under Clause 23.3, the DME-SPV shall:

- (a) return, forthwith, the Performance Security, if any;
- (b) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Mobilization Advance; and
- (c) pay to the Implementing Agency, by way of Termination Payment, an amount equal to:
 - i. Valuation of Unpaid Works; and
 - ii. the reasonable cost of temporary works, as determined by it.



23.6.3 Termination Payment shall become due and payable to the Implementing Agency within 15 (fifteen) days of a demand being made by the Implementing Agency to the DME-SPV with the necessary particulars, and in the event of any delay, the DME-SPV shall pay interest at a rate equal to 3% (three per cent) above the daily average 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 DME-SPV of its payment obligations in respect thereof hereunder.

23.6.4 The Implementing Agency expressly agrees that Termination Payment under this Article 23 shall constitute a full and final settlement of all claims of the Implementing Agency on account of Termination of this Agreement for any reason whatsoever and that the Implementing Agency or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

23.7 Other rights and obligations of the Parties:

Upon Termination for any reason whatsoever, the DME-SPV shall:

- (i) Be deemed to have taken possession and control of the Project 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 Implementing Agency and any person claiming through or under the Implementing Agency from entering upon the Site or any part of the Project; and
- (iv) Require the Implementing Agency to comply with the Divestment Requirements set forth in Clause 23A.

23.8 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 23.6.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.



Article 23A
DIVESTMENT OF RIGHTS AND INTEREST

23A.1 Divestment Requirements

- (1) Upon Termination, the Implementing Agency shall comply with and conform to the following Divestment Requirements:
- (a) Notify to the DME-SPV forthwith the location and particulars of all Project Assets;
 - (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances;
 - (c) cure all Project Assets, including the road, bridges, structures and equipment, of all defects and deficiencies so that the Project 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 and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmers and manuals pertaining thereto, and complete 'as built' Drawings as on the Termination Date. For the avoidance of doubt, the Implementing Agency represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the DME-SPV free of any Encumbrance;
 - (e) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
 - (f) execute such deeds of conveyance, documents and other writings as the DME-SPV may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Implementing Agency in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the DME-SPV, absolutely unto the DME-SPV 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 Implementing Agency in the Project, free from all Encumbrances, absolutely unto the DME-SPV or to its nominee.
- (2) Subject to the exercise by the DME-SPV of its rights under this Agreement to perform or procure the performance by a third party of any of the obligations of the Implementing Agency, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

23A.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the DME-SPV shall verify, after



giving due notice to the Implementing Agency specifying the time, date and place of such verification and/or inspection, compliance by the Implementing Agency with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Implementing Agency's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Implementing Agency at its cost and the provisions of Article 17 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 23A.

23A.3 Cooperation and assistance on transfer of Project

- (1) The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.
- (2) The Parties shall provide to each other, 9 (nine) months prior to the Termination Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Termination Date. The Implementing Agency shall further provide such reasonable advice and assistance as the DME-SPV, its Implementing Agency or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Termination Date.
- (3) The DME-SPV shall have the option to purchase or hire from the Implementing Agency at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 23A.1(1) and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

23A.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the DME-SPV shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-M (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Implementing Agency of all of its rights, title and interest in the Project, and their vesting in the DME-SPV 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 DME-SPV or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Implementing Agency.

23A.5 Divestment costs etc.

- (1) The Implementing Agency shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Implementing Agency in the Project Assets in favor of the DME-SPV upon Termination, save and except that all stamp duties payable on



any deeds or Documents executed by the Implementing Agency in connection with such Divestment shall be borne by the DME-SPV.

- (2) In the event of any Dispute relating to matters covered by and under this Article 23A, the Dispute Resolution Procedure shall apply.



Part VI
Other Provisions



Article 24

Assignment and Charges

24.1 Restrictions on assignment and charges

This Agreement shall not be assigned by the Implementing Agency to any person, save and except with the prior consent in writing of the DME-SPV, which consent the DME-SPV shall be entitled to decline without assigning any reason.

The Implementing Agency 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, except with prior consent in writing of DME-SPV, which consent the DME-SPV shall be entitled to decline without assigning any reason.

24.2 Hypothecation of Materials or Plant

Notwithstanding the provisions of Clause 24.1, the Implementing Agency may pledge or hypothecate to its lenders, any Materials or Plant prior to their incorporation in the Works. Further, the Implementing Agency may, by written notice to the DME-SPV, assign its right to receive payments under this Agreement either absolutely or by way of charge, to any person providing financing to the Implementing Agency in connection with the performance of the Implementing Agency's obligations under this Agreement. The Implementing Agency acknowledges that any such assignment by the Implementing Agency shall not relieve the Implementing Agency from any obligations, duty or responsibility under this Agreement.



Article 25

Liability and Indemnity

25.1 General indemnity

- (i) The Implementing Agency will indemnify, defend, save and hold harmless the DME-SPV and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**DME-SPV 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, whether arising out of any breach by the Implementing Agency of any of its obligations under this Agreement or from any negligence under the Agreement, including any errors or deficiencies in the design documents, or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the DME-SPV Indemnified Persons.
- (ii) The DME-SPV shall indemnify, defend, save and hold harmless the Implementation Agency against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the DME-SPV in the land comprised in the Site, and/or (b) breach by the DME-SPV of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Implementing Agency 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 Implementing Agency, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Implementation Agency.

25.2 Indemnity by the Implementing Agency

- (i) Without limiting the generality of Clause 25.1, the Implementing Agency shall fully indemnify, hold harmless and defend the DME-SPV and the DME-SPV Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
 - (a) failure of the Implementing Agency to comply with Applicable Laws and Applicable Permits;
 - (b) payment of taxes required to be made by the Implementing Agency in respect of the income or other taxes of the Sub-contractors, suppliers and representatives; or
 - (c) non-payment of amounts due because of Materials or services furnished to the Implementing Agency or any of its Sub-contractors which are payable by the Implementing Agency or any of its Sub-contractors.

Without limiting the generality of the provisions of this Article 25, the Implementing Agency shall fully indemnify, hold harmless and defend the DME-SPV Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the DME-SPV Indemnified Persons may hereafter suffer, or pay by



reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Implementing Agency or by the Sub-contractors in performing the Implementing Agency'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 Implementing Agency 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 Implementing Agency shall promptly make every reasonable effort to secure for the DME-SPV a licence, at no cost to the DME-SPV, authorising continued use of the infringing work. If the Implementing Agency is unable to secure such licence within a reasonable time, the Implementing Agency 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.

25.3 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 25 (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. If 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.

25.4 Defence of claims

- (i) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and 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 25, 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.



- (ii) If the Indemnifying Party has exercised its rights under Clause 25.3, 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).
- (iii) If the Indemnifying Party exercises its rights under Clause 25.3, 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 25.4 (iii) 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.

25.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 25, 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.

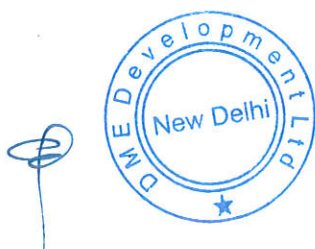
- 25.6** The DME-SPV shall indemnify, defend, save and hold harmless the Implementing Agency against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the DME-SPV in the land comprised in the Site, and/or (b) breach by the DME-SPV of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Implementing Agency 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 Implementing Agency, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Implementing Agency.

25.7 Survival on Termination

The provisions of this Article 25 shall survive Termination.



ARTICLE 25A
RIGHTS AND TITLE OVER THE SITE

25A.1 Licensee rights

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

25A.2 Access rights of the DME-SPV and others

- (1) The Implementing Agency shall allow free access to the Site at all times for the authorized representatives and vehicles of the DME-SPV and/or its contractors, and for the persons and vehicles duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their DME-SPV, and upon reasonable notice, the Implementing Agency shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.
- (2) The Implementing Agency shall, for the purpose of operation and maintenance of any utility or road specified in Article 9, allow free access to the Site at all times for the authorized persons and vehicles of the controlling body of such utility or road.

25A.3 Taxes

All taxes payable by the Implementing Agency under Applicable Laws for use of the Site shall be paid by it and shall not be reimbursed or payable by the DME-SPV. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of license comprising this Agreement shall be paid by the DME-SPV. Provided, however, that the DME-SPV may require the Implementing Agency to pay such stamp duties, which shall be reimbursed by the DME-SPV to the Implementing Agency within 15 (fifteen) days of receiving the demand thereof.

25A.4 Restriction on sub-letting

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



Article 26

Dispute Resolution

26.1 Dispute Resolution

- (i) In the event of 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**"), either Party may call upon such person as the Parties may mutually agree upon (the "**Conciliator**"), to mediate and assist the Parties in arriving at an amicable settlement thereof.
- (ii) 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.
- (iii) Dispute Resolution Board (DRB)

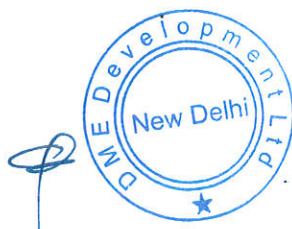
Failing mediation by the Conciliator or without the intervention of the Conciliator, either Party may require such Dispute to be referred to the Dispute Resolution Board ("**DRB**") constituted under and in accordance with, the procedure set forth in Schedule S to the Concession Agreement. The decision(s) of the Dispute Resolution Board shall be binding on both parties who shall promptly give effect to unless and until the same is revised/ modified, as hereinafter provided, in a Conciliation/ Arbitral Tribunal.

26.2 Conciliation

If either Party is dissatisfied with any decision of the DRB, and/ or if the DRB is unable to resolve the dispute, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3 but before resorting to such arbitration, the parties agree to explore conciliation by the Conciliation Committees of Independent Experts set up by the Authority in accordance with the procedure decided by the panel of such experts and notified by the Authority on its website including its subsequent amendments. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration Act. In case of failure of the conciliation process even at the level of the Conciliation Committee, either party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3.

26.3 Arbitration

- 26.3.1 Any dispute which remains unresolved between the parties through the mechanisms available/ prescribed in the Agreement, irrespective of any claim value, shall be finally decided by reference to arbitration by an arbitral tribunal. Such arbitration shall be held in accordance with the Rules of Society for Affordable Redressal of Disputes ("**SAROD**"), New Delhi (the "**Rules**"), or such other rules as may be mutually agreed



by the Parties and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the Delhi and the language of arbitration proceedings shall be English.

- 26.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 26.3.3 The Arbitral Tribunal shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Implementing Agency and the DME-SPV agree and undertake to carry out such Award without delay.
- 26.3.4 The Implementing Agency and the DME-SPV agree that an Award may be enforced against the Implementing Agency and/or the DME-SPV, as the case may be, and their respective assets wherever situated.
- 26.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each Party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.

26.4 Adjudication by Regulatory Authority, Tribunal or Commission

In the event of constitution of a statutory regulatory authority, tribunal or commission, as the case may be, with powers to adjudicate upon disputes between the Implementing Agency and the DME-SPV, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 26.3, be adjudicated upon by such regulatory authority, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or court of competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.



Article 27

Miscellaneous

27.1 Disclosure

(1) Disclosure of Specified Documents

The Implementing Agency shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Maintenance Program, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the **"Specified Documents"**), free of charge, during normal business hours on all working days at the Site and the Implementing Agency's Registered Office. The Implementing Agency shall prominently display at the Site, public notices stating the availability of the Specified Documents for such inspection and shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

(2) Disclosure of Documents relating to safety

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

(3) Notwithstanding the provisions of Clause 27.1(1) and Clause 27.1(2), the DME-SPV shall be entitled to direct the Implementing Agency, 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 Clause 27.1(1) and Clause 27.1(2), or portions thereof, the disclosure of which the DME-SPV is entitled to withhold under the provisions of the Right to Information Act, 2005.

27.2 Redressal of Public Grievances

27.2.1 Complaints Register

- (1) The Implementing Agency shall maintain a public relations office at the Site 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 Implementing Agency at each the Site so as to bring it to the attention of all Users.
- (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 Implementing Agency. Immediately after a complaint is registered, the Implementing Agency shall give a receipt to the Complainant stating the date and complaint number.
- (3) Without prejudice to the provisions of Clauses 27.2.1(1) and Clause 27.2.1(2), the DME-SPV may, in consultation with the Implementing Agency, specify the procedure for making complaints in electronic form and for responses thereto.



(4) Redressal of complaints

- i The Implementing Agency shall inspect the Complaint Register every day and take prompt and reasonable action for redressed 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 Implementing Agency to the Complainant under a certificate of posting.
- ii Within 7 (seven) days of the close of each month, the Implementing Agency shall send to the DME-SPV 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 DME-SPV may, in its discretion, advise the Implementing Agency to take such further action as the DME-SPV may deem appropriate for a fair and just redressal of any grievance. The Implementing Agency shall consider such advice and inform the DME-SPV of its decision thereon, and if the DME-SPV is of the opinion that the Complainant is entitled to further relief, the DME-SPV may advise the Complainant to seek appropriate remedy under the Consumer Protection Act, 1986, at his own risk and cost.

27.3 Governing law and jurisdiction

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

27.4 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 judgment 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 judgment that may be made or given in connection therewith).



27.5 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 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, 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 4% (four per cent) above the daily average Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof. 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.

27.6 Waiver

- (i) 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.
- (ii) 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.

27.7 Liability for review of Documents and Drawings:

Except to the extent expressly provided in this Agreement:

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

27.8 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.



27.9 Survival:

(i) Termination shall:

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

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

27.10 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.

27.11 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.

27.12 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.

27.13 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.



27.14 Successors and assigns

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

27.15 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:

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

Name: Mr. Rohin Kumar Gupta
Designation: General Manager, Technical- Bharatmala Division, National Highways
Authority of India
Address: G-5 & 6, Sector-10, Dwarka, New Delhi- 110075
Email: rohingupta@nhai.org

- 27.15.2 in the case of the DME-SPV, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the DME-SPV Representative or such other person as the DME-SPV may from time to time designate by notice to the Implementing Agency; provided that if the Implementing Agency does not have an office in Delhi it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier to the following:

Attention: Mr. S.Q. Ahmad
Designation: Director, DME Development Limited
Address: G-5 & 6, Sector-10, Dwarka, New Delhi- 110075
Email: sqahmad@nhai.org

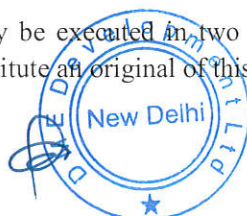
- 27.15.3 any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

27.16 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.

27.17 Counterparts

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



27.18 Confidentiality

The Parties shall treat the details of this Agreement as private and confidential, except to the extent necessary to carry out obligations under it or to comply with Applicable Laws. The Implementing Agency shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of the DME-SPV.

27.19 Copyright and Intellectual Property rights

- (i) As between the Parties, the Implementing Agency shall retain the copyright and other Intellectual Property rights in the Implementing Agency's documents and other design documents made by (or on behalf of) the Implementing Agency. The Implementing Agency shall be deemed (by signing this Agreement) to give to the DME-SPV a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Implementing Agency's documents, including making and using modifications of them. This licence shall:
 - (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works;
 - (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Implementing Agency's documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works; and
 - (c) in the case of Implementing Agency's documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by this Agreement, including replacements of any computers supplied by the Implementing Agency.
- (ii) The Implementing Agency's documents and other design documents made by (or on behalf of) the Implementing Agency shall not, without the Implementing Agency's consent, be used, copied or communicated to a third party by (or on behalf of) the DME-SPV for purposes other than those permitted under this Clause 27.19.
- (iii) As between the Parties, the DME-SPV shall retain the copyright and other intellectual property rights in this Agreement and other documents made by (or on behalf of) the DME-SPV. The Implementing Agency may, at its cost, copy, use, and obtain communication of these documents for the purposes of this Agreement. They shall not, without the DME-SPV's consent, be copied, used or communicated to a third party by the Implementing Agency, except as necessary for the purposes of the contract.

27.20 Limitation of Liability

- (i) Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Agreement, save and except as provided under Articles 23 and 25.
- (ii) The total liability of one Party to the other Party under and in accordance with the



provisions of this Agreement, save and except as provided in Articles 23 and 25, shall not exceed the Project Cost. For the avoidance of doubt, this Clause shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

27.21 Care and Supply of Documents

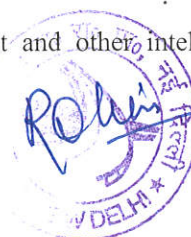
- (i) Each of the Implementing Agency's documents shall be in the custody and care of the Implementing Agency, unless and until taken over by the DME-SPV. Unless otherwise stated in the Agreement, the Implementing Agency shall supply to the DME-SPV 2 (two) copies of each of the Implementing Agency's documents.
- (ii) The Implementing Agency shall keep, on the Site, a copy of the Agreement, publication named in the DME-SPV's requirements, the Implementing Agency's documents, and variations and other communications given under the Agreement. The DME-SPV's personnel shall have the right of access to all these documents at all reasonable times.
- (iii) If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other party of such error or defect.

27.22 DME-SPV's Use of Implementing Agency's Documents.

- (i) As between the Parties, the Implementing Agency shall retain the copyright and other Intellectual Property rights in the Implementing Agency's Documents and other design documents made by (or on behalf of) the Implementing Agency.
- (ii) The Implementing Agency hereby gives to the DME-SPV a non-terminable transferable nonexclusive royalty-free license to copy, use and communicate the Implementing Agency's Documents, including making and using modifications of them. This license shall:
 - (a) apply through out the actual or intended working life (whichever is longer) of the relevant parts of the Works,
 - (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Implementing Agency's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
 - (c) in the case of Implementing Agency's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Implementing Agency, including replacements of any computers supplied by the Implementing Agency.
- (iii) The Implementing Agency's Documents and other design documents made by or on behalf of the Implementing Agency shall not, without the Implementing Agency's consent, be used, copied or communicated to a third party by (or on behalf of) the DME-SPV for purposes other than those permitted under this Sub-Clause.

27.23 Implementing Agency's use of DME-SPV's Documents

As between the Parties, the DME-SPV shall retain the copyright and other intellectual



property rights in the DME-SPV's requirements and other Documents made by (or on behalf of) the DME-SPV. The Implementing Agency may, at its cost copy, use, and obtain communication of these documents for the purpose of the Agreement. They shall not without the DME-SPV's consent, be copied, used or communicating to a third party by the Implementing Agency, except as necessary for the purposes of the Agreement.

27.24 Access to the Site by Others

The Implementing Agency shall, at all times, afford access to the Site to the authorized representatives of the DME-SPV, and anyone else authorized by the DME-SPV to access the site and to the persons duly authorized by any Governmental Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Highway and to investigate any matter within their authority and upon reasonable notice, the Implementing Agency shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the construction, operation and maintenance of the Project Highway consistent with the purpose for which such persons have gained such access to the Site.

27.25 Term

This Agreement shall come into force and effect from the date first hereinabove written and shall, unless terminated earlier in accordance with the provisions of this Agreement, be co-terminus with the Concession Agreement.

27.26 Amendments

The Agreement may not be supplemented, amended, modified or changed except by an instrument in writing signed by the Implementing Agency and the DME-SPV and expressed to be a supplement, modification or change to the Agreement.

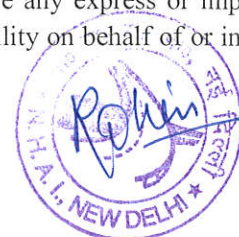
27.27 Representation and Bribes

The Implementing Agency represents and warrants to the DME-SPV that:

- (a) No representation or warranty by the Implementing Agency contained herein or in any other document furnished by it to the DME-SPV, or to any Governmental Instrumentality in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (b) It warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Implementing Agency, to any person by way of fees, commission or otherwise for securing or entering into the Implementing Agency for influencing or attempting to influence any officer or employee of the DME-SPV or GOI in connection therewith.

27.28 No Agency

The Agreement does not constitute either Party as the agent, partner or legal representative of the other for any purposes whatsoever, and neither Party shall have any express or implied right or authority to assume or to create any obligation or responsibility on behalf of or in the name of the other Party.



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

SIGNED, SEALED AND DELIVERED For and on behalf of THE IMPLEMENTING AGENCY by:

Rohin

(Signature)

Name: Mr. Rohin Kumar Gupta

Designation: General Manager,
Technical- Bharatmala Division,
National Highways Authority of India

Address: G-5 & 6, Sector-10, Dwarka,
New Delhi- 110075

Email: rohingupta@nhai.org

THE COMMON SEAL OF DME SPV

has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the 3rd day of February 2021 herunto affixed in the presence of Mr. S.Q. Ahmad, Director, who has signed these

Presents in token thereof and, Company Secretary/Authorized Officer who has countersigned the same in token thereof:

(Signature)

Name: Mr. S.Q. Ahmad

Designation: Director, DME Development Limited

Address: G-5 & 6, Sector-10, Dwarka, New Delhi- 110075

Email: sqahmad@nhai.org

In the presence of:

1.

Anush Sharada
ANUSH SHARADA
MANAGER (T)

2.

Rupesh Srivastava
Rupesh Kumar Srivastava
Manager (T) BM

1.

Rafik Khan
RAFIK KHAN
DGM (F), NHAI

2.

Seema
(Seema Mahtab)
DGM (F&A)





Schedules



Schedule-A

(See Clauses 2.1 and 8.1)

Site of the Project

- The Site of the Project shall be aggregate of all Sites as defined in respective EPC contracts / HAM Concession Agreements of following Project Packages.

EPC Packages

#	State	Package	Package Name	Length (km)
1	Haryana	Package 1	Construction of Eight Lane dividend carriageway starting at Sohna – Gurugram Road (NH248A) near Alipur village and ends at Ch. 18+461 before KMP Expressway (Ch. 0+000 to Ch. 18+461) Section of Delhi – Vadodara Greenfield Alignment (NH-148) on EPC Mode under Bharatmala Pariyojana	18.5
2	Haryana	Package 2	Construction of Eight Lane dividend carriageway starting at KMP and ends at Ch. 47+000 Expressway (Ch. 18+461 to 47+000) Section of Delhi – Vadodara Greenfield Alignment (NH-148) on EPC Mode under Bharatmala Pariyojana	28.5
3	Haryana	Package 3	Construction of Eight Lane Expressway starting at Ch. 47+000 near Khanpur Ghati and ends at Haryana – Rajasthan Border (Km 47+000 to Km 78+800) Section of Delhi – Vadodara Green field Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	31.8
4	Rajasthan	Package 4	Construction of Eight lane Carriageway starting at Haryana – Rajasthan border and ends at Junction with SH44 (Km 78+900 to Km 115+700) Section of Delhi – Vadodara Green field Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	36.8
5	Rajasthan	Package 5	Construction of Eight lane carriageway starting near Junction at SH44 to Junction with Keshopura Road (KM 115+700 to Km 151+840) section of Delhi- Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	36.14
6	Rajasthan	Package 6	Construction of Eight Lane Carriageway starting at Junction with Keshopura Road to Junction with NH-11 (Km 151+840 to Km 183+000) section of Delhi- Vadodara Green Field Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	31.2
7	Rajasthan	Package 7	Construction of Eight Lane access Controlled Expressway starting near Junction with NH-111 to start of RoB near Junction with NH-11A (Ch. 183.00 214.260) Section of Delhi – Vadodara Greenfield Alignment (NH-148N) on EPC mode Under Bharatmala Pariyojana	31.3
8	Rajasthan	Package 8	Construction of Eight Lane access Controlled Expressway starting near Start of RoB near junction with NH-11A to Junction with MDR-1 (Baonli-Jhalai road) (Ch. 214.260 - Ch. 247.31) Section of Delhi –	33.1



#	State	Package	Package Name	Length (km)
			Vadodara Greenfield Alignment (NH-148N) on EPC mode Under Bharatmala Pariyojana	
9	Rajasthan	Package 9	Construction of Eight Lane access Controlled Expressway start near Junction with MDR-1 (Baonli-Jhalai road) to End of Interchange on NH-166 near village Mui (Ch. 247.310 to Ch. 292.950) Section of Delhi – Vadodara Greenfield Alignment (NH-148N) on EPC mode Under Bharatmala Pariyojana	45.6
10	Rajasthan	Package 10	Construction of Eight Lane Carriageway starting at the end approach of interchange on NH-552 (Tonk-Sawai Madhopur) near village Mui and ending at Hardevganj village near Indergarh (Ch. 292.950 to Ch. 319.400) section of Delhi-Vadodara Access Controlled Greenfield Alignment (NH 148N) under Bharatmala Pariyojana	26.5
11	Rajasthan	Package 11	Construction of Eight Lane access controlled Expressway from Hardeoganj village near Indergarh to Major Bridge on Mej river (Ch. 319.400 – Ch. 331.030) section of Delhi - Vadodara Green field Alignment (NH-148N) under Bharatmala Pariyojana on EPC Mode	11.6
12	Rajasthan	Package 12	Construction of Eight Lane Carriageway starting near Major Bridge on Mej River to Junction with SH-37A (Ch. 331.030 - 359.170) section of Delhi – Vadodara Access Controlled Green field Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	28.1
13	Rajasthan	Package 13	Construction of Eight Lane access controlled Expressway starting near Junction with SH-37A to Junction with NH-76 (Ch. 359.170 - 388.420) section of Delhi - Vadodara Green field Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	29.3
14	Rajasthan	Package 14	Construction of Eight Lane Carriageway starting near junction with NH-76 to Junction with NH-12 near village Ummedpura (Ch. 388.420 to Ch. 419.000) section of Delhi- Vadodara Access Controlled Greenfield Alignment (NH 148N) under Bharatmala Pariyojana on EPC mode	30.6
15	Rajasthan	Package 15	Construction of Eight Lane access controlled Expressway starting near Junction with NH-12 near village Ummedpura to Major bridge over Takli river near Nayagaon Jageer village (Ch. 419.000 – 427.300) section of Delhi - Vadodara Green field Alignment (NH-148N) under Bharatmala Pariyojana on EPC Mode	8.3
16	Rajasthan	Package 16	Construction of Eight Lane Carriageway starting from Major bridge over Takli river near Nayagaon Jageer village to Rajasthan/MP Border (Ch. 427.300 to Ch. 452.425) section of Delhi – Vadodara Access Controlled Green Field Alignment (NH-148N) under Bharatmala Pariyojana on EPC Mode	25.1
17	Madhya Pradesh	Package 17	Construction of Eight lane access Controlled Expressway carriageway from Rajasthan/MP Border to Jodmi Village of Mandsaur district (CH. 452+420 to 484+420; design. Ch. 0+000 to Ch. 32+000) Section of Delhi – Vadodara Greenfield Alignment (NH-148N) on	32.0



#	State	Package	Package Name	Length (km)
			EPC Mode under Bharatmala Pariyojana	
18	Madhya Pradesh	Package 18	Construction of Eight lane access Controlled Expressway carriageway from Jodmi Village to Bani village of Mandsaur district (CH. 484+420 to 517+420; design. Ch. 32+000 to Ch. 65+000) Section of Delhi – Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	33.0
19	Madhya Pradesh	Package 19	Construction of Eight lane access Controlled Expressway carriageway from Bani village to Bardawadi village of Mandsaur district (Ch. 517+420 to Ch.546+920; design. Ch. 65+000 to Ch. 94+500) Section of Delhi – Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	29.5
20	Madhya Pradesh	Package 20	Construction of Eight Lane access-controlled Expressway carriageway from Bardawadi village of Mandsaur district to Kamliya village of Ratlam district(Ch. 546.920 to 572.220 design Ch.94.500 to Ch.119.800) section of Delhi-Vadodara Greenfield Alignment on EPC Mode under BMP in the State of MP	25.3
21	Madhya Pradesh	Package 21	Construction of Eight Lane access-controlled Expressway carriageway from Kamliya to Kandarwasa of Ratlam (Ch. 572.220 to 602.420 design Ch.119.800 to Ch.150.000) Delhi-Vadodara on EPC Mode under Bharatmala Pariyojana	30.2
22	Madhya Pradesh	Package 22	Construction of Eight Lane access-controlled Expressway carriageway from Kandarwasa village to Bawadi village (Near Shivgarh) of Ratlam district (Ch.602+420 to 627+420; design Ch.150+000 to Ch.175+000) section of Delhi-Vadodara Greenfield Alignment (NH-148N) under Bharatmala Pariyojana on EPC Mode	25.0
23	Madhya Pradesh	Package 23	Construction of Eight Lane access-controlled Expressway carriageway from Bawadi village (Near Shivgarh) of Ratlam District to Ranni village of Jhabua District (Ch.627.420 to 652.720 design Ch.175.000 to 200.300) section of Delhi-Vadodara on EPC Mode under Bharatmala Pariyojana	25.3
24	Madhya Pradesh	Package 24	Construction of Eight Lane access-controlled Expressway carriageway from Ranni to Miyati of Jhabua district (Ch.652.720 to 674.420 design Ch.200.300 to 221.700) section of Delhi-Vadodara on EPC Mode under Bharatmala Pariyojana in the State of Madhya	21.7
25	Madhya Pradesh	Package 25	Construction of Eight Lane access-controlled Expressway carriageway from Miyati Village to MP-Gujarat Border (Ch.673.770 to 696.920; design Ch.221.700 to 244.500) section of Delhi-Vadodara on EPC Mode under Bharatmala Pariyojana	23.2
26	Gujarat	Package 26	Construction of Eight Lane access-controlled expressway starting from MP/Gujarat Border near Chhayan village and ending after Bridge Over Hadaf River near Hathiyavan village in Dahod district (Ch.	32.8



#	State	Package	Package Name	Length (km)
			696+920 to 729+755) section of Delhi – Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	
27	Gujarat	Package 27	Construction of Eight Lane access-controlled expressway starting after the end of Bridge over Hadaf River near Hathiyan village in Dahod district and ending at junction with SH-152 near Matariya Vadi village in Panchmahal district (Ch.729+700 to 756+052) section of Delhi – Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	26.4
28	Gujarat	Package 28	Construction of Eight Lane access-controlled expressway starting from Junction with SH-152 near Matariya Vadi Village and ending at Junction with NH-47 near Bhamaiya Village in Panchmahal District (ch. 756+052 to 781+282) section of Delhi – Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	25.2
29	Gujarat	Package 29	Construction of Eight Lane access-controlled expressway starting from Junction with NH-47 near Bhamaiya village and ending at Junction with SH-175 in Baletiya village in Panchmahal district (Ch. 780+920 to 803+420; design Ch. 328+500 to Ch. 351+000) section of Delhi – Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	22.5
30	Gujarat	Package 30	Construction of Eight Lane access-controlled expressway from junction with SH-175 near Baletiya village of Panchmahal district to junction with SH-63 near Pratap Nagar village of Vadodara district (Ch. 803+420 to 824+920; design Ch. 351+000 to Ch. 372+500) section of Delhi – Vadodara Greenfield Alignment (NH148N) on EPC Mode under Bharatmala Pariyojana	21.5
31	Gujarat	Package 31	Construction of Eight Lane access-controlled expressway starting from junction with SH-63 near Pratap Nagar village and ending at junction with NE-1 near Dodka village of Vadodara District (Ch. 824+920 to Ch. 844+382; Design Ch. 372+500 to Ch.391+962) section of Delhi -Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	19.5



HAM Packages

#	State	Package	Package Name	Length (km)
1.	NCT of Delhi	SPUR TO Delhi Package 1	6 Lane Access Control from DND Maharani Bagh to Junction with Jaipur Pushta road of NH 148 NA 0.00 KM to 9 Km	9
2.	NCT of Delhi	SPUR TO Delhi Package 2	Jaipur Pushta Road to Junction with Sector 62/65 on Faridabad Vallabgarh Bypass of NH 148 NA including SPUR to NH 19, 9.00 Km to 33 Km	25.3
3.	NCT of Delhi	SPUR TO Delhi Package 3	6 Lane Access Control, from Sector 62/65 on Faridabad Vallabgarh Bypass to Junction near KMP Expressway, 33.00 km to 59.063 Km	26
4.	Gujarat	Package 1	Vadodara Kim Expressway from Km 355.00 to Km 378.70 (Padra to Vadodara Section of Vadodara Mumbai Expressway)	23.7
5.	Gujarat	Package 2	Vadodara Kim Expressway from Km 323.00 to Km 355.70 (Sanpa to Padra Section of Vadodara Mumbai Expressway)	32.7
6.	Gujarat	Package 3	Vadodara Kim Expressway from Km 292.00 to Km 323.00 (Manubar to Sanpa Section of Vadodara Mumbai Expressway)	31.0
7.	Gujarat	Package 4	Vadodara Kim Expressway from Km 279.00 to km 292.00 (Ankeslwar to Manubar Section of Vadodara Mumbai Expressway)	13.0
8.	Gujarat	Package 5	Vadodara Kim Expressway from Km 254.430 to km 279.000 (Kim to Ankeslwar Section of Vadodara Mumbai Expressway)	24.57
9.	Gujarat	Package 6	Vadodara Mumbai Expressway (Ena -Kim) (Phase IB - Pkg VI) [Km 217.500 to Km 254.430]	36.9
10.	Gujarat	Package 7	Vadodara Mumbai Expressway (Gandeva to Ena) (Phase IB - Pkg VII) [Km 190.00 to Km 217.500]	27.5
11.	Gujarat	Package 8	Vadodara Mumbai Expressway (Jujwa to Gandeva) (Phase IB - Pkg VIII) [Km 154.600 to Km 190.000]-LOA to be issued	35.4
12.	Gujarat	Package 9	Vadodara Mumbai Expressway (Karvad to Jujwa) (Phase IB - Pkg IX) [Km 128.000 to Km 154.600]-financial bid not opened yet	26.6
13.	Gujarat	Package 10	Vadodara Mumbai Expressway (Talsari to Karvad) (Phase IB - Pkg X) [Km 103.400 to Km 128.000]	24.6
14.	Maharashtra	Package 11	Gangad to Talsari Section of Vadodara Mumbai Expressway- 77.002 – 103.400 km Pkg 11	
15.	Maharashtra	Package 12	Masvan- Gangad Section of Vadodara Mumbai Expressway- 50.700 k. – 77 km- Pkg 12	26.3
16.	Maharashtra	Package 13	26.582 to 50.700 of Main Expressway and Km.0 to Km 3 of SPUR- Pkg 13- Shirsad To Masvan Section of Vadodara Mumbai Expressway-	27.118
17.	Maharashtra	Package 14 (Spur to JNPT)	KM. 3 to 20.200 SPUR of Vadodara Mumbai Expressway Shirsad – Akkoli Section - Spur - Pkg 14	17.2
18.	Maharashtra	Package 15 (Spur to JNPT)	Akkoli- Amne Section SPUR of Vadodara Mumbai Expressway- 20.200 to 43.00 Km - Spur - Pkg 15	22.8
19.	Maharashtra	Package 16 (Spur to JNPT)	Amne – Bhoj Section - SPUR of Vadodara Mumbai Expressway-43 to 69.800 km - Spur - Pkg 16	26.8



#	State	Package	Package Name	Length (km)
20.	Maharashtra	Package 17 (Spur to JNPT)	Bhoj – Morbe Section SPUR of Vadodara Mumbai Expressway 69.800 to 79.783 Km- Spur - Pkg 17	9.983



Schedule A: Annex I
EXISTING CONTRACTS

The details of sections awarded by the Authority to third party concessionaires/ contractors (as the case may be) under Existing Contracts, as on the Effective Date, are mentioned hereinbelow. This list shall be revised, updated and supplemented with the contracts that shall be awarded by the Authority from time to time and the provisions of this Agreement in respect of Existing Contracts shall apply mutandis to such additional contracts which are added to this Annex from time to time.

I. EPC Packages

#	State	Package	Package Name	Length (km)	Name of Contractor	Name & Address of Authorized signatory of Contractor	Civil Cost (in Crore)
1	Haryana	Package 1	Construction of Eight Lane dividend carriageway starting at Sohna - Gurugram Road (NH248A) near Alipur village and ends at Ch. 18+461 before KMP Expressway (Ch. 0+000 to Ch. 18+461) Section of Delhi - Vadodara Greenfield Alignment (NH-148) on EPC Mode under Bharatmala Pariyojana	18.5	M/s Apco Infratech Pvt. Ltd	Mr. D. Dilly Babu M/s Apco Infratech Pvt. Ltd. 4 th Floor, Universal Trade Tower, Sohna Road, Sector-49, Gurugram - 122101 (Haryana)	1217.216
2	Haryana	Package 2	Construction of Eight Lane dividend carriageway starting at KMP and ends at Ch. 47+000 Expressway (Ch. 18+461 to 47+000) Section of Delhi - Vadodara Greenfield Alignment (NH-148) on EPC Mode under Bharatmala Pariyojana	28.5	M/s Apco Infratech Pvt. Ltd.	Mr. D. Dilly Babu M/s Apco Infratech Pvt. Ltd., 4 th Floor, Universal Trade Tower, Sohna Road, Sector-49, Gurugram - 122101 (Haryana)	1094.00
3	Haryana	Package 3	Construction of Eight Lane Expressway starting at Ch. 47+000 near Khanpur Ghati and ends at Haryana - Rajasthan Border (Km 47+000 to Km 78+800) Section of Delhi - Vadodara	31.8	M/s CDS Infra Projects Ltd	Mr. Roopak Agarwal Office: B - 94, Okhla Phase - II, New Delhi - 110020	780.88



			Green field Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana				
4	Rajasthan	Package 4	Construction of Eight lane Carriageway starting at Haryana – Rajasthan border and ends at Junction with SH44 (Km 78+900 to Km 115+700) Section of Delhi – Vadodara Green field Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	36.8	M/s HG Infra Engineering Ltd.	Mr. Harendra Singh M/s HG Infra Engineering Ltd. 3 rd Floor, Sheel Mohar Plaza, A-1, Tilak Marg, C-Scheme Jaipur 302001 (Rajasthan)	997.11
5	Rajasthan	Package 5	Construction of Eight lane carriageway starting near Junction at SH44 to Junction with Kehsopura Road (KM 115+700 to Km 151+840) section of Delhi- Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	36.14	M/s Buildcon Ltd.	KCC Pvt. Mr. Shivraj Kundu Block-C, Unit No.501,601 & 701, Nirvana Courtyard, Nirvana Country, Sector-50, Gurugram-122018	947.00
6	Rajasthan	Package 6	Construction of Eight Lane Carriageway starting at Junction with Keshopura Road to Junction with NH-11 (Km 151+840 to Km 183+000) section of Delhi- Vadodara Green Field Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	31.2	M/s Buildcon Ltd.	KCC Pvt. Mr. Shivraj Kundu Block-C, Unit No.501,601 & 701, Nirvana Courtyard, Nirvana Country, Sector-50, Gurugram-122018	931.00
7	Rajasthan	Package 7	Construction of Eight Lane access Controlled Expressway starting near Junction with NH-111 to start of RoB near Junction with NH-11A (Ch. 183.00 214.260) Section of Delhi – Vadodara Greenfield Alignment (NH-148N) on EPC mode	31.3	M/s Gawar Construction Ltd.	Mr. Inderjeet Godara M/s Gawar Construction Ltd. DSS-378, Sector 16-17, Hisar 125005 (Haryana)	946.00



			Under Bharatmala Pariyojana				
8	Rajasthan	Package 8	Construction of Eight Lane access Controlled Expressway starting near Start of RoB near junction with NH-11A to Junction with MDR-1 (Baonli-Jhalai road) (Ch. 214.260 - Ch. 247.31) Section of Delhi - Vadodara Greenfield Alignment (NH-148N) on EPC mode Under Bharatmala Pariyojana	33.1	M/s HG Infra Engineering Ltd.	Mr. Hitesh Parmuwal M/s HG Infra Engineering Ltd. 14, Panchwati Colony, Ratanada, Jodhpur (Rajasthan)- 342001	880.11
9	Rajasthan	Package 9	Construction of Eight Lane access Controlled Expressway start near Junction with MDR-1 (Baonli-Jhalai road) to End of Interchange on NH-166 near village Mui (Ch. 247.310 to Ch. 292.950) Section of Delhi - Vadodara Greenfield Alignment (NH-148N) on EPC mode Under Bharatmala Pariyojana	45.6	M/s HG Infra Engineering Ltd.	Mr. Hitesh Parmuwal M/s HG Infra Engineering Ltd. 14, Panchwati Colony, Ratanada, Jodhpur (Rajasthan)- 342001	1258.11
10	Rajasthan	Package 10	Construction of Eight Lane Carriageway starting at the end approach of interchange on NH-552 (Tonk-Sawai Madhopur) near village Mui and ending at Hardevganj village near Indergarh (Ch. 292.950 to Ch. 319.400) section of Delhi-Vadodara Access Controlled Greenfield Alignment (NH 148N) under Bharatmala Pariyojana	26.5	M/s Dhaya Maju Infrastructure (Asia) Sdn. Berhad - M/s Crescent EPC Projects and Technical Services Limited Joint Venture	Mr. Lalit Arora M/s Dhaya Maju Infrastructure (Asia) Sdn. Berhad - M/s Crescent EPC Projects and Technical Services Limited Joint Venture 204, 2 nd Floor, Manjeera Trinity Corporate, JNTU-Hi tech City Road, Kukatpally, Hyderabad- 500072	905.32
11	Rajasthan	Package 11	Construction of Eight Lane access controlled Expressway from	11.6	M/s Larsen & Toubro Ltd.	Mr. Manish Samtani	887.55



			Hardeoganj village near Indergarh to Major Bridge on Mej river (Ch. 319.400 – Ch. 331.030) section of Delhi - Vadodara Green field Alignment (NH-148N) under Bharatmala Pariyojana on EPC Mode			M/s Larsen & Toubro Ltd. L&T House, Narottam Moraji Marg Ballard Estate, Mumbai-400001	
12	Rajasthan	Package 12	Construction of Eight Lane Carriageway starting near Major Bridge on Mej River to Junction with SH-37A (Ch. 331.030 – 359.170) section of Delhi – Vadodara Access Controlled Green field Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	28.1	M/s G R Infraprojects Limited	Mr. Ramesh Chandra Jain M/s G R Infraprojects Ltd. GR House, Hiren Magri Sector 11, Udaipur (Raj). - 313002	1071.27
13	Rajasthan	Package 13	Construction of Eight Lane access controlled Expressway starting near Junction with SH-37A to Junction with NH-76 (Ch. 359.170 – 388.420) section of Delhi – Vadodara Green field Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	29.3	M/s CDS Infra Projects Limited	Mr. Abhijit Tripathy M/s CDS Infra Projects Limited B-94, Okhla Phase –II, New Delhi - 110020	939.88
14	Rajasthan	Package 14	Construction of Eight Lane Carriageway starting near junction with NH-76 to Junction with NH-12 near village Ummedpura (Ch. 388.420 to Ch. 419.000) section of Delhi- Vadodara Access Controlled Greenfield Alignment (NH 148N) under Bharatmala Pariyojana on EPC mode	30.6	M/s Dhaya Maju Infrastructure (Asia) Sdn. Berhad – M/s Crescent EPC Projects and Technical Services Limited Joint Venture	Mr. Lalit Arora M/s Dhaya Maju Infrastructure (Asia) Sdn. Berhad – M/s Crescent EPC Projects and Technical Services Limited Joint Venture 204. 2nd Floor, Manjeera Trinity Corporate, JNTU-Hi tech City Road, Kukatpally, Hyderabad-	786



						500072	
15	Rajasthan	Package 15	Construction of Eight Lane access controlled Expressway starting near Junction with NH-12 near village Ummedpura to Major bridge over Takli river near Nayagaon Jageer village (Ch. 419.000 – 427.300) section of Delhi - Vadodara Green field Alignment (NH-148N) under Bharatmala Pariyojana on EPC Mode	8.3	M/s Dilip Buildcon Limited – M/s “ALTIS HOLDING” CORPORATION (DBL AHC JV)	M/s Dilip Buildcon Limited – M/s “ALTIS HOLDING” CORPORATION (DBL AHC JV) Plot No.5, Inside Govind Narayan Singh Gate, Chuna Bhatti, Kolar Road, Bhopal – 462016 (M.P.)	1000.08
16	Rajasthan	Package 16	Construction of Eight Lane Carriageway starting from Major bridge over Takli river near Nayagaon Jageer village to Rajasthan/MP Border (Ch. 427.300 to Ch. 452.425) section of Delhi – Vadodara Access Controlled Green Field Alignment (NH-148N) under Bharatmala Pariyojana on EPC Mode	25.1	M/s Dineshchandra R. Agrawal Infracon Private Limited	Mr. Hardik Agrawal M/s Dineshchandra R. Agrawal Infracon Private Limited 401, The Grand Mall S.M Road, Ambawadi Ahmedabad, Gujarat-380015	613.79
17	Madhya Pradesh	Package 17	Construction of Eight lane access Controlled Expressway carriageway from Rajasthan/MP Border to Jodmi Village of Mandsaur district (CH. 452+420 to 484+420; design. Ch. 0+000 to Ch. 32+000) Section of Delhi – Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	32.0	M/s JiangXi Construction Engineering (Group) Corporation Ltd. - MKC Infrastructure Ltd. (JV)	Mr. Arunkumar Manjibhai Bambhania M/s JiangXi Construction Engineering (Group) Corporation Ltd. - MKC Infrastructure Ltd. (JV) M/s MKC Infrastructure Ltd. (JV) “MKC House”, 10 Shiv Nagar, Anjar Ringh Road, Opp. Gulab Mill, Anjar- Kutch,	884.00



18	Madhya Pradesh	Package 18	Construction of Eight lane access Controlled Expressway carriageway from Jodmi Village to Bani village of Mandsaur district (CH. 484+420 to 517+420; design. Ch. 32+000 to Ch. 65+000) Section of Delhi - Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	33.0	M/s GR Infra Projects Ltd.	Gujarat-370110 Mr. Ramesh Chandra Jain M/s G R Infraprojects Ltd. GR House, Hiren Magri Sector 11, Udaipur (Raj). - 313002	1094.97
19	Madhya Pradesh	Package 19	Construction of Eight lane access Controlled Expressway carriageway from Bani village to Bardawadi village of Mandsaur district (Ch. 517+420 to Ch. 546+920; design. Ch. 65+000 to Ch. 94+500) Section of Delhi - Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	29.5	M/s JiangXi Construction Engineering (Group) Corporation Ltd. - MKC Infrastructure Ltd. (JV)	Mr. Arunkumar Manjibhai Bambhania M/s JiangXi Construction Engineering (Group) Corporation Ltd. - MKC Infrastructure Ltd. (JV) M/s MKC Infrastructure Ltd. (JV) "MKC House", 10 Shiv Nagar, Anjar Ringh Road, Opp. Gulab Mill, Anjar- Kutch, Gujarat-370110	840.00
20	Madhya Pradesh	Package 20	Construction of Eight Lane access-controlled Expressway carriageway from Bardawadi village of Mandsaur district to Kamliya village of Ratlam district (Ch. 546.920 to 572.220 design Ch. 94.500 to Ch. 119.800) section of Delhi-Vadodara Greenfield Alignment on EPC Mode under BMP in the State of MP	25.3	M/s GHV (India) Pvt. Ltd.	Mr. Ayoob Shaikh M/s GHV (India) Pvt. Ltd. 1 st Floor, AML Centre 1, 8 Mahal Industries Area, Mahakali Caves Road, Andheri (East), Mumbai-400093	743.8893



21	Madhya Pradesh	Package 21	Construction of Eight Lane access-controlled Expressway carriageway from Kamliya to Kandarwasa of Ratlam (Ch. 572.220 to 602.420 design Ch.119.800 to Ch.150.000) Delhi-Vadodara on EPC Mode under Bharatmala Pariyojana	30.2	M/s G R Infraprojects Ltd.	Mr. Ramesh Chandra Jain M/s G R Infraprojects Ltd. GR House, Hiren Magri Sector 11, Udaipur (Raj). - 313002	990.97
22	Madhya Pradesh	Package 22	Construction of Eight Lane access-controlled Expressway carriageway from Kandarwasa village to Bawadi village (Near Shivgarh) of Ratlam district (Ch.602+420 to 627+420; design Ch.150+000 to Ch.175+000) section of Delhi-Vadodara Greenfield Alignment (NH-148N) under Bharatmala Pariyojana on EPC Mode	25.0	M/s Larsen And Toubro Limited	Mr. Manish Samtani M/s Larsen & Toubro Ltd. L&T House, Narottam Moraji Marg Ballard Estate, Mumbai-400001	993.007
23	Madhya Pradesh	Package 23	Construction of Eight Lane access-controlled Expressway carriageway from Bawadi village (Near Shivgarh) of Ratlam District to Ranni village of Jhabua District (Ch.627.420 to 652.720 design Ch.175.000 to 200.300) section of Delhi-Vadodara on EPC Mode under Bharatmala Pariyojana	25.3	M/s G R Infra Projects Ltd.	Mr. Ramesh Chandra Jain M/s G R Infraprojects Ltd. GR House, Hiren Magri Sector 11, Udaipur (Raj). - 313002	847.00
24	Madhya Pradesh	Package 24	Construction of Eight Lane access-controlled Expressway carriageway from Ranni to Miyati of Jhabua district (Ch.652.720 to 674.420 design Ch.200.300 to	21.7	M/s GR Infraprojects Ltd.	Mr. Ramesh Chandra Jain M/s G R Infraprojects Ltd. GR House, Hiren Magri Sector 11, Udaipur (Raj). -	847.00



			221.700) section of Delhi-Vadodara on EPC Mode under Bharatmala Pariyojana in the State of Madhya			313002	
25	Madhya Pradesh	Package 25	Construction of Eight Lane access-controlled Expressway carriageway from Miyati Village to MP-Gujarat Border (Ch.673.770 to 696.920; design Ch.221.700 to 244.500) section of Delhi-Vadodara on EPC Mode under Bharatmala Pariyojana	23.2	M/s G R Infraprojects Ltd.	Mr. Ramesh Chandra Jain M/s G R Infraprojects Ltd. GR House, Hiren Magri Sector 11, Udaipur (Raj). 313002	996.27
26	Gujarat	Package 29	Construction of Eight Lane access-controlled expressway starting from Junction with NH-47 near Bhamaiya village and ending at Junction with SH-175 in Baletiya village in Panchmahal district (Ch. 780+920 to 803+420; design Ch. 328+500 to Ch. 351+000) section of Delhi - Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	22.5	M/s PNC Infratech Limited	Mr. Yogesh Kumar Jain M/s PNC Infratech Limited NBCC Plaza, Tower II, 4 th Floor, Pushp Vihar, Sector-V, Saket, New Delhi-110017	758.40
27	Gujarat	Package 30	Construction of Eight Lane access-controlled expressway from junction with SH-175 near Baletiya village of Panchmahal district to junction with SH-63 near Pratap Nagar village of Vadodara district (Ch. 803+420 to 824+920; design Ch. 351+000 to Ch. 372+500) section of Delhi - Vadodara Greenfield Alignment (NH148N) on EPC	21.5	M/s Patel Infrastructure Limited	Mr. Arvind V Patel M/s Patel Infrastructure Limited "Patel House", Beside Prakruti Resort Channi Road, Chhani, Vadodara Gujarat - 391740	850.79



			Mode under Bharatmala Pariyojana				
28	Gujarat	Package 31	Construction of Eight Lane access-controlled expressway starting from junction with SH-63 near Pratap Nagar village and ending at junction with NE-1 near Dodka village of Vadodara District (Ch. 824+920 to Ch. 844+382; Design Ch. 372+500 to Ch.391+962) section of Delhi - Vadodara Greenfield Alignment (NH-148N) on EPC Mode under Bharatmala Pariyojana	19.5	M/s PNC Infratech Limited	Mr. Yogesh Kumar Jain M/s PNC Infratech Limited NBCC Plaza, Tower II, 4 th Floor, Pushp Vihar, Sector-V, Saket, New Delhi-110017	789.40



HAM Packages

#	State	Package	Package Name	Length (km)	Name of Concessionaire	Name & Address of Authorized signatory of Concessionaire	Civil Cost
1.	NCT of Delhi	SPUR TO Delhi Package 1	6 Lane Access Control from DND Maharani Bagh to Junction with Jaipur Pushta road of NH 148 NA 0.00 KM to 9 Km	9	Dinesh Chandra Yamuna Infra Pvt Ltd.	Hardik Agarwal, 401-403, The Grand Mall, Opposite SBI Zonal SM Road, Ambawadi, Ahmedabad	1836 Cr
2.	NCT of Delhi	SPUR TO Delhi Package 2	Jaipur Pushta Road to Junction with Sector 62/65 on Faridabad Vallabgarh Bypass of NH 148 NA including SPUR to NH 19, 9.00 Km to 33 Km	25.3	Dinesh Chandra Vaishno Devi Infra Pvt Ltd.	Hardik Agarwal, 401-403, The Grand Mall, Opposite SBI Zonal SM Road, Ambawadi, Ahmedabad	1729 Cr
3.	NCT of Delhi	SPUR TO Delhi Package 3	6 Lane Access Control, from Sector 62/65 on Faridabad Vallabgarh Bypass to Junction near KMP Expressway, 33.00 km to 59.063 Km	26	Dinesh Chandra Giriraj Infra Pvt Ltd.	Hardik Agarwal, 401-403, The Grand Mall, Opposite SBI Zonal SM Road, Ambawadi, Ahmedabad	898 Cr
4.	Gujarat	Package 1	Vadodara Kim Expressway from Km 355.00 to Km 378.70 (Padra to Vadodara Section of Vadodara Mumbai Expressway)	23.7	M/s VKI Expressway Pvt. Ltd	Mr. Amitabh Murarka M/s IRB Infrastructure Developers Limited, IRB Complex, Chandivali Farm Chandivali Village, Andheri (East), Mumbai-400072	2043 Cr
5.	Gujarat	Package 2	Vadodara Kim Expressway from Km 323.00 to Km 355.70 (Sanpa to Padra Section of Vadodara Mumbai Expressway)	32.7	M/s IRCON Vadodara Kim Expressway Ltd.	Mr. Ashok Kumar Goyal M/s IRCON International Ltd. C-4, District Centre	1865 Cr



#	State	Package	Package Name	Length (km)	Name of Concessionaire	Name & Address of Authorized signatory of Concessionaire	Civil Cost
						Saket, New Delhi	
6.	Gujarat	Package 3	Vadodara Kim Expressway from Km 292.00 to Km 323.00 (Manubar to Sanpa Section of Vadodara Mumbai Expressway)	31.0	M/s Patel Vadodara- Kim Expressway Pvt. Ltd.	Mr. Arvind Vitalbhai Patel M/s Patel Infrastructure Limited Patel House Beside Prakruti Resort, Chhani Road, Chhani Vadodara- 391740 Gujarat, India	1712 Cr
7.	Gujarat	Package 4	Vadodara Kim Expressway from Km 279.00 to km 292.00 (Ankeshwar to Manubar Section of Vadodara Mumbai Expressway)	13.0	M/s Ashoka Ankleshwar Manubar Expressway Pvt. Ltd.	Col. Mohammed Shafique Alam M/s Ashoka Concessions Ltd. S. No. 113/2, 5th Floor, Ashoka Business EnclaveWadala Road, Nashik - 422009	1687 Cr
8.	Gujarat	Package 5	Vadodara Kim Expressway from Km 254.430 to km 279.000 (Kim to Ankeshwar Section of Vadodara Mumbai Expressway)	24.57	M/s Sadhbhav Kim Expressway Pvt. Ltd.	Mr. Jignasu Dixit M/s Sadhbhav Kim Engineering Private Ltd. Sadhbhav House, Opp. Law Garden Police Chowki Ellisbridge, Ahmedabad Gujarat-380006	1404 Cr
9.	Gujarat	Package 6	Vadodara Mumbai Expressway (Ena - Kim) (Phase IB - Pkg VI) [Km 217.500 to Km 254.430]	36.9	GR Ena-Kim Expressway Pvt. Ltd.	Sunil Kumar Agarwal, GR House, HiranMagri, Sector 11, Udaipur Rajasthan	2187 Cr



#	State	Package	Package Name	Length (km)	Name of Concessionaire	Name & Address of Authorized signatory of Concessionaire	Civil Cost
						313001	
10.	Gujarat	Package 7	Vadodara Mumbai Expressway (Gandeva to Ena) (Phase IB - Pkg VII) [Km 190.00 to Km 217.500]	27.5	VM7 Expressway Pvt Ltd.	Ramdas Menon, Office no. 1101/11 th floor, Hiranandini Knowledge Park, technology Street, Powai, Mumbai	1755 Cr.
11.	Maharashtra	Package 11	Gangad to Talsari Section of Vadodara Mumbai Expressway- 77.002 - 103.400 km Pkg 11		RKC Infrabuilt (Gangad to Talsari) Road projects Pvt Ltd.	Parth Nimeshbhai Shah, 302, 4 th floor, Panchdhara Comlex, Near The grand Bhagwati, SG Highway, Ahmedabad, Gujarat	1260 Cr
12.	Maharashtra	Package 12	Masvan- Gangad Section of Vadodara Mumbai Expressway- 50.700 k. - 77 km- Pkg 12	26.3	Montecarlo Vadodara Mumbai Expressway Pvt. Ltd.	Vipul Patel, Montecarlo House, Sindhu bhavan road, Bodakdev Ahemdabad Gujarat	1549.02 Cr
13.	Maharashtra	Package 13	26.582 to 50.700 of Main Expressway and Km.0 to Km 3 of SPUR- Pkg 13- Shirsad To Masvan Section of Vadodara Mumbai Expressway-	27.118	GR Shirsad Masvan Expressway Pvt Ltd.	Sunil Kumar Agarwal, GR House, HiranMagri, Sector 11, Udaipur Rajasthan 313001	2747 Cr



Schedule - B: DEVELOPMENT OF PROJECT

(See Clause 2.1)

1. The details for development of the Project shall be as per the scope of the work as defined in Schedule B of the respective EPC Contracts/ HAM Concession Agreements of the Project Packages as mentioned in Schedule A.



Schedule - C

(See Clause 2.1)

Project Facilities

1. The details of the Project Facilities of the Project shall be as per the details of the Project Facilities as defined in Schedule C of the respective EPC Contracts/ HAM Concession Agreements of the Project Packages as mentioned in Schedule A.



Schedule - D

(See Clause 2.1)

Specifications and Standards

1. The applicable Specifications and Standards of the Project shall be as per the Specifications and Standards defined in the respective EPC Contracts/ HAM Concession Agreements of Project Packages as mentioned in Schedule A.



Schedule - E

(See Clause 14.2)

Maintenance Requirements

1 Maintenance Requirements

- 1.1 The Implementing Agency shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Implementing Agency shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-E (the “**Maintenance Requirements**”).
- 1.2 The Implementing Agency shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-E within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the DME-SPV shall be entitled to recover Damages as set forth in Clause 14.8 of the Agreement, without prejudice to the rights of the DME-SPV under the Agreement, including Termination thereof.

2. Repair/rectification of defects and deficiencies

- 2.1 The obligations of the Implementing Agency in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule - E within the time limit set forth therein.
- 2.2 The Implementing Agency shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3 Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule-E, the Implementing Agency shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the DME-SPV.
- 3.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule-E, the DME-SPV may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Implementing Agency in accordance with Good Industry Practice and within the time limit specified by the DME-SPV.

4 Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-E, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Implementing Agency shall be entitled to apply to the DME-SPV for additional time with reasons thereof in conformity the Good Industry Practice. Such additional time shall be determined by the DME-SPV and conveyed to the Implementing Agency.



5 ***Emergency repairs/restoration***

Notwithstanding anything to the contrary contained in this Schedule-E, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Implementing Agency shall promptly take all reasonable measures for eliminating or minimizing such danger.

6 ***Daily Inspection by the Implementing Agency***

The Implementing Agency shall, through its engineer, undertake a daily visual inspection of the Project and maintain a record thereof in a register to be kept in such form and manner as the DME-SPV may specify. Such record shall be kept in safe custody of the Implementing Agency and shall be open to inspection by the DME-SPV and its contractors at any time during office hours.

7 ***Divestment Requirements***

All defects and deficiencies specified in this Schedule-E shall be repaired and rectified by the Implementing Agency so that the Project conforms to the Maintenance Requirements on the Termination Date.

8 ***Display of Schedule - E***

The Implementing Agency shall display copy of this Schedule –E at the site along with a complaint register as mentioned in Clause 27.2 of the Agreement.



SCHEDULE-E

ANNEX – I

Repair/Rectification of Defects and Deficiencies

Obligations related to Repair/ Rectification of Defects and Deficiencies shall be as per the related provisions of respective EPC Contracts/ HAM Concession Agreements of Project Packages as mentioned in Schedule A.



Schedule – F

(See Clause 4.1 (iv)(a))

Applicable Permits

1. Applicable Permits

- 1.1 The respective EPC Contractors/ HAM Concessionaires, shall obtain, on or before the Appointed Date, as required under Applicable Laws, the Applicable Permits as defined in the relevant Schedule of the respective EPC Contracts/ HAM Concession Agreements of the Project Packages as mentioned in Schedule A.



Schedule – G

(See Clauses 7.1 and 17.2)

Annex-I

Form of Bank Guarantee

[Performance Security/ Performance Guarantee]²

The Director,
DME DEVELOPMENT LIMITED
New Delhi

WHEREAS:

(A) The General Manager, Technical- Bharatmala Division, National Highways Authority of India (NHAI) (the “**Implementing Agency**”) and the Director, DME Development Limited (the “**DME-SPV**”) have entered into an Implementation Agreement dated 5th February, 2021 (the “**Agreement**”) whereby the DME- SPV has agreed to the Implementing Agency undertaking Construction of section from Delhi to Vadodara from Km.0.000 to Km.844.382 ("Phase I") and Vadodara to Mumbai from Km. 355.00 to Km. 26.582 of Main Expressway and Km. 0.00 to KM. 79.783 of SPUR of Vadodara Mumbai Expressway ("Phase II") by eight laning and SPUR to Delhi from Km. 0.000 to Km. 59.063 Km by six laning, on Engineering, Procurement Construction (the “EPC”) basis for Phase I and design, build, finance, operate and transfer (the “DBFOT”) Annuity basis for the remaining section, subject to and in accordance with the provisions of the Agreement.

(B) The DME SPV requires the Implementing Agency to furnish a Performance Security to the DME- SPV in a sum of Rs. ***** cr. (Rupees ***** crore) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).

(C) We, through our Branch at (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Implementing Agency’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the DME- SPV, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Implementing Agency, such sum or sums upto an aggregate sum of the Guarantee Amount as the DME- SPV shall claim, without the DME- SPV being required to



prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the DME- SPV, under the hand of an Officer not below the rank of Director, in the DME- SPV, that the Implementing Agency has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the DME- SPV shall be the sole judge as to whether the Implementing Agency is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Implementing Agency is in default shall be final, and binding on the Bank, notwithstanding any differences between the DME- SPV and the Implementing Agency, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Implementing Agency for any reason whatsoever. In order to give effect to this Guarantee, the DME- SPV shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Implementing Agency and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
3. It shall not be necessary, and the Bank hereby waives any necessity, for the DME-SPV to proceed against the Implementing Agency before presenting to the Bank its demand under this Guarantee.
4. The DME- SPV shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Implementing Agency contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the DME- SPV against the Implementing Agency, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the DME- SPV, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the DME- SPV of the liberty with reference to the matters aforesaid or by reason of time being given to the Implementing Agency or any other forbearance, indulgence, act or omission on the part of the DME- SPV or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
5. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the DME-SPV in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Implementing Agency under the Agreement.
6. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the earlier of the 1st (first) anniversary of the Appointed Date or compliance of the conditions specified in paragraph 7 below and unless a demand or claim in writing is made by the DME-SPV on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the DME-



SPV under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

7. The Performance Security shall cease to be in force and effect when the Implementing Agency shall have expended on Project construction an aggregate sum not less than 30% (thirty per cent) of the Project cost which is deemed to be Rs. 16,155 cr. (Rupees Sixteen Thousand One Hundred and Fifty Five crore) for the purposes of this Guarantee, and provided the Implementing Agency is not in breach of this Agreement. Upon request made by the Implementing Agency for release of the Performance Security alongwith the particulars required hereunder, duly certified by a statutory auditor of the Implementing Agency, the DME-SPV shall release the Performance Security forthwith.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the DME-SPV in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the DME-SPV that the envelope was so posted shall be conclusive.
10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months or until it is released earlier by the DME-SPV pursuant to the provisions of the Agreement.
11. This guarantee shall also be operable at our branch at New Delhi, from whom, confirmation regarding the issue of this guarantee or extension/renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
12. The guarantor/ bank hereby confirms that it is on the SFMS (Structured Financial Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of the DME-SPV having following details:

Name of Beneficiary	:	DME DEVELOPMENT LIMITED
Bank	:	[***]
Account Number	:	[***]
IFSC Code	:	[***]



Signed and sealed this day of, 20..... at

SIGNED, SEALED AND
DELIVERED

For and on behalf

of The BANK by:

(Signature, Designation, Number, Address)

Notes:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.



Annex – II

(Schedule - G)

(See Clause 19.5)

Format for Guarantee for Mobilization Advance

The Director,
DME Development Limited
New Delhi

WHEREAS:

- (A) The General Manager, Technical- Bharatmala Division, National Highways Authority of India (NHAI) (the “**Implementing Agency**”) and the Director, DME Development Limited (the “**DME-SPV**”) have entered into an Implementation Agreement dated 5th February, 2021 (the “**Agreement**”) whereby the DME- SPV has agreed to the Implementing Agency undertaking Construction of section from Delhi to Vadodara from Km.0.000 to Km.844.382 ("Phase I") and Vadodara to Mumbai from Km. 355.00 to Km. 26.582 of Main Expressway and Km. 0.00 to KM. 79.783 of SPUR of Vadodara Mumbai Expressway ("Phase II") by eight laning and SPUR to Delhi from Km. 0.000 to Km. 59.063 Km by six laning, on Engineering, Procurement Construction (the “EPC”) basis for Phase I and design, build, finance, operate and transfer (the “DBFOT”) Annuity basis for the remaining section, subject to and in accordance with the provisions of the Agreement.
- (B) In accordance with Clause 19.5 of the Agreement, the DME- SPV shall make to the Implementing Agency an interest bearing (@ Bank Rate) advance payment (herein after called “**Mobilization Advance**”) not exceeding 10% (ten per cent) of the Project Cost; and that the Mobilization Advance shall be made in [one/two]³ instalment(s) subject to the Implementing Agency furnishing an irrevocable and unconditional guarantee by a scheduled bank for an amount equivalent to 110% (one hundred and ten percent) of such instalment to remain effective till the complete and full payment of the instalment of the Mobilization Advance as security for compliance with its obligations in accordance with the Agreement. The amount of {first/second}⁴ instalment of the Mobilization Advance is Rs. ____ Cr. (Rupees.....) Crore) and the amount of this Guarantee is Rs. ---- Cr. (Rupees---- crore) (the “**Guarantee Amount**”)⁵.
- (C) We, through our branch at(the “**Bank**”) have agreed to furnish this bank guarantee (hereinafter called the “**Guarantee**”) for the Guarantee Amount.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

³ Please strike out whichever is not applicable as per Clause 23.8 of the Agreement.

⁴ Please delete in case of mobilization advance is to be made in one/single instalment.

⁵ The Guarantee amount should be equivalent to 110% of the value of the applicable instalment



1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful repayment on time of the aforesaid instalment of Mobilization Advance under and in accordance with the Agreement, and agrees and undertakes to pay to the DME- SPV, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Implementing Agency, such sum or sums upto an aggregate sum of the Guarantee Amount as the DME- SPV shall claim, without the DME- SPV being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the DME- SPV, under the hand of an Officer not below the rank of Director, that the Implementing Agency has committed default in the due and faithful performance of all or any of its obligations for the repayment of the instalment of the Mobilization Advance under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that DME- SPV shall be the sole judge as to whether the Implementing Agency is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Implementing Agency is in default shall be final, and binding on the Bank, notwithstanding any differences between the DME- SPV and the Implementing Agency, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Implementing Agency for any reason whatsoever.
3. The Bank further also agrees that the DME- SPV at its option shall be entitled to in enforce this Guarantee against the Bank as principal debtor, in the first instance without proceeding against the Implementing Agency and notwithstanding any security or other guarantee that the DME- SPV may have in relation to the Implementing Agency's liability.
4. In order to give effect to this Guarantee, the DME- SPV shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Implementing Agency and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
5. It shall not be necessary, and the Bank hereby waives any necessity, for the DME-SPV to proceed against the Implementing Agency before presenting to the Bank its demand under this Guarantee.
6. The DME- SPV shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Mobilization Advance or to extend the time or period of its repayment or to postpone for any time, and from time to time, any of the rights and powers exercisable by the DME- SPV against the Implementing Agency, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the DME- SPV, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the DME- SPV of the liberty with reference to the matters aforesaid or by reason of time being given to the Implementing Agency or any other forbearance, indulgence, act or omission on the part of the DME- SPV or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.



7. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the DME- SPV in respect of or relating to the Mobilization Advance.
8. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 9 below and unless a demand or claim in writing is made by the DME- SPV on the Bank under this Guarantee all rights of the DME- SPV under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
9. The Guarantee shall cease to be in force and effect on ___⁶ unless a demand or claim under this Guarantee is made in writing on or before the aforesaid date, the Bank shall be discharged from its liabilities hereunder.
10. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the DME- SPV in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
11. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the DME- SPV that the envelope was so posted shall be conclusive.
12. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 9 above or until it is released earlier by the DME- SPV pursuant to the provisions of the Agreement.
13. This guarantee shall be operable at ourBranch at New Delhi, from whom, confirmation regarding the issue of this guarantee or extension/renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
14. The guarantor/bank hereby confirms that it is on the SFMS (Structural Finance Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of the DME- SPV, details of which is as under:

Name of Beneficiary	:	DME Development Limited
Bank	:	***
Account Number	:	***
IFSC Code	:	***

⁶ Initially the validity shall be 60 days after the expected date for the third project milestone mentioned in Schedule J of the Agreement. If the Implementation Agency submits the Guarantee which has validity period which is less than that specified herein, then the Implementation Agency shall also provide an undertaking to the Authority which states that the Implementation Agency shall get the validity of the Guarantee extended so that the Guarantee is valid in accordance with this footnote



Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:
SIGNED, SEALED AND
DELIVERED

For and on behalf

of The BANK by:

(Signature, Designation, Number, Address)

Notes:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.



SCHEDULE - H

SAFETY REQUIREMENTS

(See Clause 14A.1)

1. Guiding principles

1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.

1.2 Users of the Project include motorized and non-motorized vehicles as well as pedestrians and animals involved in or associated with accidents. Vulnerable Road Users (VRU) include pedestrians as well as riders of motorized two-wheelers, bicycles and other vehicles which do not provide adequate occupant protection.

1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

1.4 Safety Requirements include measures associated with traffic management and regulation such as road signs, pavement marking, traffic control devices, roadside furniture, highway design elements, enforcement and emergency response.

2. Obligations of the Implementing Agency

The Implementing Agency shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Manual for Safety in Road Design, issued by MoRTH;
- (c) Relevant Standards/Guidelines of IRC relating to safety, road geometries, bridges, culverts, road signs, pavement marking and roadside furniture;
- (d) Provisions of this Agreement; and
- (e) Good Industry Practice.

3. Appointment of Safety Consultant

For carrying out safety audit of the Project under and in accordance with this Schedule-L, the DME-SPV may appoint from time to time, one or more qualified firms or organizations as its consultants (the "Safety Consultant"). The Safety Consultant shall employ a team comprising, without limitation, one road safety expert and one traffic planner to undertake safety audit of the Project.

4 Safety measures during Development Period

4.1 No later than 90 (ninety) days from the date of this Agreement, the DME-SPV may appoint a Safety Consultant for carrying out safety audit at the design stage of the Project. The Safety Consultant shall collect data on all fatal crashes and other road accidents which occurred on the Project in the preceding two years by obtaining copies of the relevant First Information Reports (FIRs) from the police stations having jurisdiction. The information contained in such FIRs shall be summarized in the form prescribed by the DME-SPV for this purpose and the data shall be analyzed for the type of victims killed or injured, impacting vehicles, location of accidents and other relevant factors.

4.2 The Implementing Agency shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the "Safety Drawings"). Such design details shall include horizontal and vertical alignments; sightlines; layouts



of intersections; interchanges; road cross-section; bridges and culverts; side drains; provision for parked vehicles, slow moving vehicles (tractors, bullock carts, bicycles) and pedestrians; bus bays; truck lay-bys; and other incidental or consequential information. The Safety Consultant shall review the design details and forward 3 (three) copies of the Safety Drawings with its recommendations, if any, to the DME-SPV and the Implementing Agency.

4.3 The accident data and the design details shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Project. The safety audit shall be completed in a period of three months and a report thereof (the "Safety Report") shall be submitted to the DME-SPV, in 5 (five) copies. One copy each of the Safety Report shall be forwarded by the DME-SPV to the Implementing Agency.

4.4 The Implementing Agency shall endeavor to incorporate the recommendations of the Safety Report in the design of the Project, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of the DME-SPV, Specifications and Standards, and Good Industry Practice. If the Implementing Agency does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the DME-SPV forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Implementing Agency shall make a report thereon and seek the instructions of the DME-SPV for funding such works in accordance with the provisions of Article 14A.

4.5 Without prejudice to the provisions of Paragraph 4.4, the Implementing Agency shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the DME-SPV, and no later than 15 (fifteen) days of receiving such comments, the DME-SPV shall review the same along with the Safety Report and by notice direct the Implementing Agency to carry out any or all of the recommendations contained therein with such modifications as the DME-SPV may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 14A.

5 Safety measures during Construction Period

5.1 A Safety Consultant may be appointed by the DME-SPV, no later than 4 (four) months prior to the expected COD, for carrying out a safety audit of the completed Construction Works.

5.2 The Safety Consultant shall collect and analyses the accident data for the preceding two years in the manner specified in Paragraph 4.1 of this Schedule- H. It shall study the Safety Report for the Development Period and inspect the Project to assess the adequacy of safety measures. The Safety Consultant shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional road safety measures, if any, that are considered essential for reducing accident hazards on the Project. Such recommendations shall be processed, mutatis mutandis, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-H

5.3 The Implementing Agency shall make adequate arrangements during the Construction Period for the safety of workers and road Users in accordance with the guidelines of IRC for safety in construction zones and notify the DME-SPV about such arrangements.

6 Safety measures during Operation Period

6.1 The Implementing Agency shall develop, implement and administer a surveillance and safety program for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.

6.2 The Implementing Agency shall establish a Highway Safety Management Unit (the "HSMU") to be functional on and after COD, and designate one of its officers to be in-charge of the HSMU. Such officer shall have specialist knowledge and training in road safety and traffic engineering by having attended a course conducted by a reputed organization on the subject.



6.3 The Implementing Agency shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Project. In addition, the Implementing Agency shall also collect data for all cases of accidents not recorded by the Police but where a vehicle rolled over or had to be towed away. The information so collected shall be summarized in the form prescribed by the DME-SPV for this purpose. The Implementing Agency shall also record the exact location of each accident on a road map. The aforesaid data shall be submitted to the DME-SPV at the conclusion of every quarter and to the Safety Consultant as and when appointed.

6.4 The Implementing Agency shall submit to the DME-SPV before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Implementing Agency pursuant to the provisions of Paragraph 6.1 of this Schedule-H for averting or minimizing such accidents in future.

6.5 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the DME-SPV. It shall review and analyses the annual report and accident data of the preceding year and undertake an inspection of the Project. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made to the road, bridges, culverts, markings, signs, road furniture and Project Facilities, including cattle crossings and pedestrian crossings. Such recommendations shall be processed, mutatis mutandis, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-H.

7. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-H, shall be met in accordance with Article 14A, and in particular, the remuneration of the Safety Consultant if appointed, safety audit, and costs incidental thereto, shall be met by the Implementing Agency.



Schedule - I

(See Clause 10.2)

Drawings

1. Drawings

In compliance of the obligations set forth in Clause 10.2 of this Agreement, the Implementing Agency shall furnish to the DME-SPV free of cost, all Drawings listed in Annex-I of this Schedule-I.

2. Additional Drawings

If the DME-SPV determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Implementing Agency to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Implementing Agency shall promptly prepare and furnish such drawings to the DME-SPV, as if such drawings formed part of Annex-I of this Schedule-I.



Annex – I

(Schedule - I)

List of Drawings

The List of Drawings of the Project shall be the aggregate of all related drawings of respective EPC Contracts/ HAM Concession Agreements of Project Packages as mentioned in Schedule A.



Schedule - J

(See Clause 10.3 (ii))

Project Completion Schedule

1 *Project Completion Schedule*

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

2 *Project Milestone-I*

- 2.1 Prior to the occurrence of Project Milestone-I, the Implementation Agency shall have expended not less than 20% (twenty per cent) of the total capital cost for the Project.
- 2.2 Prior to the occurrence of Project Milestone –I, the Implementation Agency shall have commenced construction of the Project and achieved 20% Physical Progress.

3 *Project Milestone-II*

- 3.1 Prior to the occurrence of Project Milestone-II, the Implementation Agency shall have expended not less than 35% (thirty-five per cent)] of the total capital cost for the Project. Provided, however, that at least 70% (seventy per cent) of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.
- 3.2 Prior to the occurrence of Project Milestone –II, the Implementation Agency shall have commenced construction of the Project and achieved 35% Physical Progress

4 *Project Milestone-III*

- 4.1 Prior to the occurrence of Project Milestone-III, the Implementation Agency shall have commenced construction of all Project Facilities and expended not less than 75% (seventy-five per cent) of the total capital cost for the Project.
- 4.2 Prior to the occurrence of Project Milestone –III, the Implementation Agency shall have commenced construction of the Project and achieved 75% Physical Progress

5 *Scheduled Completion Date*

- 5.1 The Scheduled Completion Date shall be the **1095th (One Thousand and Ninety-Five) day** from the Appointed Date.
- 5.2 On or before the Scheduled Completion Date, the Implementation Agency shall have completed the Project in accordance with this Agreement.
- 5.3 Notwithstanding anything contained in this Schedule J or other provisions of this Agreement, the Parties agree and understand that the timelines for completion of the relevant Project Milestones mentioned in para 2, 3 and 4 hereinabove shall be



notified by the DME SPV in accordance with the project completion timelines defined under the Existing Contracts

6 *Extension of period*

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.



Schedule - K

(See Clause 12.1.2)

Tests on Completion

1. Schedule for Tests

- 1.1 The Implementing Agency shall, no later than 30 (thirty) days prior to the likely completion of the Project or the relevant part(s) of the Project Highway, notify the DME-SPV of its intent to subject the Project or the relevant part(s) of the Project Highway to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the DME-SPV detailed inventory and particulars of all works and equipment forming part of the Project or the relevant part(s) of the Project Highway.
- 1.2 Upon receipt of such notice, the DME-SPV shall, in consultation with the Implementing Agency, determine the date and time for each Test. The DME-SPV shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 12 and this Schedule- K.

2 Tests

- 2.1 In pursuance of the provisions of Article 12 of this Agreement, the DME-SPV shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.
- 2.2 Visual and physical Test: The DME-SPV shall conduct a visual and physical check of the Project or part(s) thereof to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.3 Test drive: The DME-SPV shall undertake a test drive of the Project by a Car and by a fully loaded Truck to determine that the quality of service conforms to the provisions of the Agreement.
- 2.4 Riding quality Test: Riding quality of each lane of the carriageway shall be checked with the help of a calibrated bump integrator and the maximum permissible roughness for purposes of this Test shall be 1,800 (one thousand and eight hundred) mm for each kilometer.
- 2.5 Pavement Composition Test: The thickness and composition of the pavement structure shall be checked on a sample basis by digging pits to determine conformity of such pavement structure with Specifications and Standards. The sample shall consist of one pit in each direction of travel to be chosen at random in each stretch of 5 (five) kilometers of the Project or part(s) thereof. The first pit for the sample shall be selected by the DME-SPV through an open draw of lots and every fifth kilometer from such first pit shall form part of the sample for this pavement quality Test.
- 2.6 Cross-section Test: The cross-sections of the Project or part(s) thereof shall be checked on a sample basis through physical measurement of their dimensions for determining the conformity thereof with Specifications and Standards. For the road portion, the sample shall consist of one spot to be selected at random in each stretch of 1(one) kilometer of the Project or part(s) thereof. The first spot for the sample shall be selected by the DME-SPV through an open draw of lots and the spots



located at every one kilometer from such first spot shall form part of the sample. For the bridge portion, one spot shall be selected at random by the DME-SPV in each span of the bridge.

- 2.7 Structural Test for bridges: All major and minor bridges, including over bridges, underpasses and flyovers, constructed by the Implementing Agency shall be subjected to the Rebound Hammer and Ultrasonic Pulse Velocity tests, to be conducted in accordance with the procedure described in Special Report No. 17: 1996 of the IRC Highway Research Board on Non-destructive Testing Techniques, at two spots in every span, to be chosen at random by the DME-SPV. Bridges with a span of 15 (fifteen) meters or more shall also be subjected to load testing.
- 2.8 Other Tests: The DME-SPV may require the Implementing Agency to carry out or cause to be carried additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project or part(s) thereof with Specifications and Standards.
- 2.9 Environmental audit: The DME-SPV shall carry out a check to determine conformity of the Project or part(s) thereof with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.10 Safety review: Safety audit of the Project or part(s) thereof shall have been undertaken by the Safety Consultant as set forth in Schedule-K, and on the basis of such audit, the DME-SPV shall determine conformity of the Project or part(s) thereof with the provisions of this Agreement.

3 Agency for conducting Tests

All Tests set forth in this Schedule-K shall be conducted by the DME-SPV or such other agency or person as it may specify.

4 Completion/Provisional Certificate

Upon successful completion of Tests, the DME-SPV shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 12.

5 Tests during construction

Without prejudice to the provisions of this Schedule-K, tests during construction shall be conducted in accordance with the provisions of Clause 11.3.



Schedule - L

(See Clause 12.3)

PROVISIONAL CERTIFICATE

- 1 In accordance with the Implementation Agreement dated 5th February, 2021 (the "Agreement"), for development and operation of the undertaking Construction of section from Delhi to Vadodara from Km.0.000 to Km.844.382 ("Phase I") and Vadodara to Mumbai from Km. 355.00 to Km. 26.582 of Main Expressway and Km. 0.00 to Km. 79.783 of SPUR of Vadodara Mumbai Expressway ("Phase II") by eight laning and SPUR to Delhi from Km. 0.000 to Km. 59.063 Km by six laning, on Engineering, Procurement Construction (the "EPC") basis for Phase I and design, build, finance, operate and transfer (the "DBFOT") Annuity basis for the remaining section through.....(Name of Implementation Agency), it is hereby certified that the Tests specified in Schedule-K of the Agreement have been undertaken for the Project/section.....⁷ of the Project to determine compliance thereof with the provisions of the Agreement.
- 2 Construction Works forming part of the Project/section⁸ of the Project that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Implementation Agency has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the DME-SPV or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Implementation Agency,]⁹ the DME SPV is satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project/section.....¹⁰ of the Project, pending completion thereof.
- 3 In view of the foregoing, the DME SPV is satisfied that the Project/section¹¹ of the Project can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project/section¹² of the Project is hereby provisionally declared fit for entry into commercial operation on this the day of 20..

⁷ Specify the relevant part/ section of the Project Highway for which the certificate is being issued

⁸ Specify the relevant part/ section of the Project Highway for which the certificate is being issued

⁹ May be struck out if not applicable. Also strike out other parts which are not applicable

¹⁰ Specify the relevant part/ section of the Project Highway for which the certificate is being issued

¹¹ Specify the relevant part/ section of the Project Highway for which the certificate is being issued

¹² Specify the relevant part/ section of the Project Highway for which the certificate is being issued



ACCEPTED, SIGNED, SEALED	ACCEPTED, SIGNED, SEALED
DELIVERED	DELIVERED
FOR AND ON BEHALF OF	FOR AND ON BEHALF OF
IMPLEMENTING AGENCY by:	DME-SPV by:
(Signature)	(Signature)
(Name and Designation)	(Name and Designation)
(Address)	(Address)



Completion Certificate
(See Clause 12.2)

- 1 In accordance with the Implementation Agreement dated 5th February, 2021 (the “Agreement”), for Construction of section from Delhi to Vadodara from Km.0.000 to Km.844.382 ("Phase I") and Vadodara to Mumbai from Km. 355.00 to Km. 26.582 of Main Expressway and Km. 0.00 to Km. 79.783 of SPUR of Vadodara Mumbai Expressway ("Phase II") by eight laning and SPUR to Delhi from Km. 0.000 to Km. 59.063 Km by six laning, on Engineering, Procurement Construction (the “EPC”) basis for Phase I and design, build, finance, operate and transfer (the “DBFOT”) Annuity basis for the remaining section (the “Project Highway”) through (Name of Implementing Agency), hereby certify that the Tests in accordance with Article 12 AND Schedule- K of the Agreement have been successfully undertaken to determine compliance of the Project Highway/ section¹³ with the provisions of the Agreement, and the DME SPV is satisfied that the Project Highway/ section¹⁴ can be safely and reliably placed in service of the Users thereof.

It is certified that, in terms of the aforesaid Agreement, all works forming part of Project Highway/ section¹⁵ have been completed, and the Project Highway is hereby declared fit for entry into operation on this the day of 20... , Scheduled Completed Date for which was the day of20.....

SIGNED, SEALED AND
DELIVERED

For and on behalf of the DME-SPV by:

(Signature)

(Name)

(Designation) (Address)

¹³ Specify the relevant part/ section of the Project Highway for which the certificate is being issued

¹⁴ Specify the relevant part/ section of the Project Highway for which the certificate is being issued

¹⁵ Specify the relevant part/ section of the Project Highway for which the certificate is being issued



Schedule - M

(See Clause 23A.4)

Vesting Certificate

- 1 The Director, DME Development Limited (the “DME-SPV”) refers to the Implementation Agreement dated 5th February, 2021 (the “Agreement”) entered into between the DME-SPV and the National Highway Authority of India (NHAI) (the “Implementing Agency”) for undertaking Construction of section from Delhi to Vadodara from Km.0.000 to Km.844.382 ("Phase I") and Vadodara to Mumbai from Km. 355.00 to Km. 26.582 of Main Expressway and Km. 0.00 to Km. 79.783 of SPUR of Vadodara Mumbai Expressway ("Phase II") by eight laning and SPUR to Delhi from Km. 0.000 to Km. 59.063 Km by six laning, on Engineering, Procurement Construction (the “EPC”) basis for Phase I and design, build, finance, operate and transfer (the “DBFOT”) Annuity basis for the remaining section (the “Project”) on design, build, operate and transfer basis, subject to and in accordance with the provisions of the Agreement.
- 2 The DME-SPV hereby acknowledges compliance and fulfillment by the Implementing Agency of the Divestment Requirements set forth in Clause 23A of the Agreement on the basis that upon issue of this Vesting Certificate, the DME-SPV shall be deemed to have acquired, and all title and interest of the Implementing Agency in or about the Project shall be deemed to have vested unto the DME-SPV, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Implementing Agency to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Implementing Agency in any manner of the same.

Signed this..... day of....., 20.....
At.....

AGREED, ACCEPTED AND SIGNED

For and on behalf of
IMPLEMENTING AGENCY by:

SIGNED, SEALED AND DELIVERED
for and on behalf of
DME-SPV by:



Signature:

Name:

Designation:

Address:

Signature:

Name:

Designation:

Address:

In the presence of:

1.

2.



Schedule - N
CONCESSION AGREEMENT



