Evidence of Insurance Cover

"All insurances obtained by the Concessionaire in accordance with this Article 32 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to MSRDC, notarised 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 non-renewal has been delivered by the Concessionaire to MSRDC.

Remedy for failure to insure

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

Insurer of subrogation

If insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 32 shall include a waiver of any and all rights of subrogation of recovery of the insurers there under against, inter alia, MSRDC, and its assigns, cescors, 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 person insured under any such policy or in any way connected with any loss, injury or obligation covered by such policies of insurance.

Concessionaire's waiver

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

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

Audited accounts

The Concessionaire shall maintain books of accounts recording all its receipt, including all Realizable Fees and other revenues derived/collected by it from or on account of the Project and/or its use, income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 60 (sixty) days of the close of the Accounting Year to which they pertain and such audited accounts shall form the basis of payments by either Party under this Agreement. MSRDC shall have a right to require copies of relevant extracts of books of accounts, duly certified and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

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

On or before the thirty first day of May each Year, the Concessionaire shall provide to MSRDC, for the preceding Accounting Year, a statement duly certified by its Statutory Auditors giving summarized information on (a) the traffic count for each category of vehicles using the Project and liable for payment of Fee therefore, (b) Fee charged and received, Realizable Fee and other revenues derived from the Project, and (c) such other information as MSRDC may reasonable require.

Appointment of auditors

The Concessionaire shall appoint, and have during the subsistence of this agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of Chartered Accountants (the “Panel of Chartered Accountants”), such list to be prepared substantially in accordance with the criteria set forth in Schedule-T. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
33.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to MSRDC, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

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

33.3 Certification of claims by Statutory Auditors

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

33.4 Dispute resolution

In the event of there being any difference between the finding of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the difference and if they are unable to resolve the same, such Dispute shall be resolved by MSRDC by recourse to the Dispute Resolution Procedure.
ARTICLE 34

FORCE MAJEURE

34.1 Force Majeure

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

34.2 Non-Political Event

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

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

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

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

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

34.3 Indirect Political Event

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

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

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

(c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 30 (thirty) days in an Accounting Year;

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

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

34.4 Political Event

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

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

(b) expropriation or compulsory acquisition of any Project Assets or right of the Concessionaire or of the Contractors:

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

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

Duty to report Force Majeure Event

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

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

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

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

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

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

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 35.5.1, and such other
information as the other Party may reasonably request the Affected Party to provide.

Effect of Force Majeure Event on the Concession

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

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

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

34.7 Allocation of costs arising out of Force Majeure

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

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

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

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

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

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

**Termination Notice for Force Majeure Event**

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

**Termination Payment for Force Majeure Event**

If Termination is on account of a Non-Political Event, MSRDC shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

If Termination is on account of an Indirect Political Event, MSRDC shall make a Termination Payment to the Concessionaire in an amount equal to:

1. Debt Due less Insurance Cover, provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and

2. 110% (one hundred and ten per cent) of the Equity (subscribed in cash and actually spent on the Project if such Termination occurs at any time during three years commencing from the Appointed Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the
changes in WPI during such year and the adjusted amount so arrived at shall be reduced every year by 7.5% (seven and a half per cent) per annum.

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

34.10 Dispute Resolution

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

34.11 Excuse from performance of obligations

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

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

(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure and to cure the same with due diligence. In case the Concessionaire fails to take all necessary steps to mitigate the effects of the Force Majeure Event or remedy the failure to perform, MSRDC shall not be liable to pay its portion of the Force Majeure cost under clause 34.7 or shall pay such portion of the Force Majeure Cost as it deems fit; 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.