“Government Instrumentality” means any department, division or sub-division of the Government or the State Government and includes any commission, board, MSRDC, agency or municipal and other local authority or statutory body [including MMRDA, MCGM] 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 or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Grant” shall have meaning set forth in clause 25.

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

“Heavy Truck” or “Multi-axle truck” means any goods carrier with a Gross Vehicle Weight exceeding 20,000 (twenty thousand) kilograms and includes a truck with three or more axles;

“IRC” means the Indian Roads Congress;

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

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

“Independent Consultant” ("Independent Engineer") Shall have the meaning set forth in Clause 23.1;

“Indirect Political Event” Shall have the meaning set forth in Clause 34.3;

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

“LOA” means the letter of acceptance referred under recital G

“Lead Financial Institution” means the Financial Institution (FI) that is funding the PPP Project, and in case there is a consortium of FIs, the FI designated as such by the consortium;

“Lenders” or “Representative” means the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising
out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

"Light Commercial Vehicle" or "LCV" means any passenger vehicle or goods carrier with a Gross Vehicle Weight exceeding 7500 (seven thousand five hundred) kilograms and includes a Tractor with Trailer but does not include a Tractor, Bus, Truck or Heavy Truck;

"Local Traffic" (Local Commercial Traffic/Local Personal Traffic): means the traffic on account of commuting by a private car between rural area and its nearest city or town by means of the Project Roads, provided (i) such private car is owned by a person who resides in such rural area, (ii) such rural area is situated within a distance of 20 (twenty) km from toll plazas and (iii) such a rural area has no alternative road connecting such city or town: For the avoidance of doubt, a road that connects such rural area to its nearest city or town shall not be deemed to be an alternative road for purposes hereof if it increases the travel distance by more than 20% (twenty per cent) of the corresponding distance on the project roads.

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

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

"Maintenance Programme" shall have the meaning ascribes to it in Clause 17.4;

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

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

"Material Breach" means a breach by either Party of any of its obligations in this Agreement which shall be deemed to have a Material Adverse Effect on the Project and which it shall have failed to cure within the Cure Period.

"Medical Aid Post" shall have the meaning set forth in Clause 21.1;

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

"MSRDC" means Maharashtra State Road Development Corporation Limited, Mumbai, a Government of Maharashtra undertaking incorporated under the Companies Act 1956.
"MSRDC Default" shall have the meaning set forth in Clause 37.2.1;

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

"Negative Grant" shall have meaning set forth in sub clause 25.4.

"Net Cash Flow" means in any Accounting Year revenue income less tax payments, O&M Expenses, Concession Fee, Negative Grant and Debt Service Payments to Senior Lenders.

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

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

"O&M" means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Toll / Fee in accordance with the provisions of this Agreement;

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

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

"O&M Expenses" means expenses incurred by or on behalf of the Concessionaire or by MSRDC, 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, Tolling Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

"O&M Inspection Report" shall have the meaning set forth in Clause 19.2;
"Operations Period" means the period commencing from appointed date (wherefrom the entrepreneur shall be entitled to collect the toll from existing toll plazas) and ending on the Transfer Date;

"PCU" shall have the meaning ascribed to a passenger car unit in the Indian Roads Congress Publication No. IRC-108, 1990 or any substitute or modification thereof and when used in this Agreement, shall include only motorized vehicles liable to payment of user charges at the Toll Plaza(s) in accordance with the Toll Fee Notification and the Exempted Vehicles specified therein, but does not include Tractors, Tractors with Trailer, Motor Cycles and non-motorised vehicles;

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

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

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

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

"Private Sector Company" means a company in which 51% or more of the subscribed and paid up equity is owned and controlled by a private entity;

"Project" means works as defined under scope of contract under clause 2 Schedule A of Volume II-A.

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

"Project Assets" means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of licence, Right of Way or otherwise;(b) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, approaches to bridges and flyovers, road over bridges, drainage works, lighting facilities, traffic signals, sign boards, Kilometre stones, toll plazas, equipment for collection of tolls or relating to regulation of traffic, electrical systems, communication systems, software for toll collection, surveillance equipment and equipment for the project, rest areas, monitoring and maintenance depots, relief centres, administrative offices, service facilities etc.;(c) The Project Facilities situated on the Site (d) all design, drawings, plans, sketches, graphs, models, construction...
information and other materials used, prepared or to be prepared by or on behalf of
Concessionaire, any books and records (including operation and maintenance
manuals, health and safety manuals and other know-how) and any intellectual
property rights; (e) all rights of the Concessionaire under the Project Agreements;
financial assets, such as receivables, security deposits, etc; (g) insurance proceeds;
and (h) Applicable Permits and authorizations relating to or in respect of the Project,
but does not include Additional Facilities;

"Project Completion" shall have the meaning ascribed thereto in Clause 14.1;

"Project Completion Schedule" means the progressive Project Milestone set forth
in Schedule 'G' for the realization of the Project Roads complete in all respects by the
Scheduled Project Completion Date.

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

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

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

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

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

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

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

"Safety Consultant" shall have the meaning set forth in Clause 18.1.2

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

"Safety Requirements" shall have the meaning set forth in Clause 18.1.1;

Construction of Bridges in Baramati - Ulewe, Kushet - Gavilganj, Operate & Transfer (BOT) Basis includes construction of
roads Constructed under IRDP Baramati and AASTO schemes

Maharashtra State Road Development Corporation Ltd.
"Scheduled Project Date" shall have the meaning set forth in Clause 12.4.1;

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

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

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

"Specification and Standards" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and construction for the Project submitted by the Concessionaire to, and expressly approved by, MSRDC;

"SPV"- "Special Purpose Vehicle" means Project Company formed under Companies Act, 1956 by Concessionaire, before entering into Concession Agreement.

"State" means the "State of Maharashtra" and "State Government" means the Government of Maharashtra;

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

"S.E. or Superintending Engineer" means Superintending Engineer of MSRDC.

"Subsistence Revenue" means the total amount of Toll / Fee revenue that is required by the Concessionaire in an Accounting Year to meet the sum of (a) O&M Expenses, subject to an annual ceiling of 3% (three per cent) of the Total Project Cost, during the first Accounting Year after the Project Completion Date, to be revised for each subsequent year to reflect the variations in WPI occurring between the Project Completion Date and commencement of such Accounting Year, and (b) Debt Service in such Accounting Year, but excluding any interest paid by MSRDC under clause 34.7.2 or 35.2;

"Substitution Agreement" shall have the meaning set forth in Clause 40.3;
“Suspension” shall have the meaning set forth in Clause 36.1;

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

“Tender Notice” shall have the meaning set forth in Recital “F”

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

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

“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 MSRDC to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from the Project Completion Date, the Concessionaire shall notify to MSRDC, the Total Project Cost as on the Project Completion Date and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to MSRDC, Equity shall be deemed to be the product arrived at by subtracting Debt Due from Total Project Cost;

“Tests” means the test set forth in Scheduled-I to determine the completion of the Project in accordance with the provisions of this Agreement;

“Toll” means the charge levied on and payable for a vehicle using the Project or part thereof, in accordance with the Fee (Toll) Notification and this Agreement;

“Toll Plaza” means the structures and barriers erected on the Project Roads for the purpose of regulating the entry and exit of vehicles in accordance with the provisions of this Agreement and shall include all adjacent Areas, buildings, equipment, and other facilities required in accordance with or incidental to the provisions of this Agreement;
“Tolling Contract” means the contract, if any, entered into by the Concessionaire with the Tolling Contractor for collection of Toll / Fee for and on behalf of the Concessionaire and matters incidental thereto;

“Tolling Contractor” means the person, if any, with whom the Concessionaire has entered into a Tolling Contract;

“Total Project Cost” for this project shall be considered as Rs. 150 Crores.;

“Tractor” means a motor vehicle which is not itself constructed to carry any load other than the equipment used for the purpose of propulsion.

“Traffic Safety Officer” shall have the meaning set forth in Clause 18.1.2;

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

“Truck” means any goods carrier with a Gross Vehicle Weight exceeding 12,000 (twelve thousand) kilograms and includes a road roller, but does not include a Heavy Truck;

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

“V.C. & M.D.” means Vice Chairman and Managing Director of MSRDC.

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

“WPI” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI and any reference to WPI shall, unless the context deems otherwise, be construed as a reference to the WPI published for the period ending with the preceding month.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires:

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

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

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

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

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

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

g) any reference to any period of time shall mean a reference to that according to Indian Standard Time.

h) any reference to day shall mean a reference to a calendar day;

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

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

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

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

m) the words importing singular shall include plural and vice versa.
n) references to any gender shall include the other and the neutral gender;

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

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

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

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

s) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Consultant shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Consultant, as the case may be, in this behalf and not otherwise;

i) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

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

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