ARTICLE 35
COMPENSATION FOR BREACH OF AGREEMENT

1 Compensation for default by the Concessionaire

In the event of any default on the part of Concessionaire, to pay the instalments of upfront payment on due dates or concessionaire being in material default or breach of this Agreement, it shall pay to MSRDC by way of compensation, all direct costs suffered or incurred by MSRDC as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof. Under these circumstances MSRDC will have a right to encash the all BGs as provided by Concessionaire including the right of withdrawal of toll rights and reversal of lease rights of the land as provided to concessionaire under this agreement, provided that no compensation shall be payable under this Clause 35.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement.

2 Compensation for default by MSRDC

In the event of MSRDC being in material default or breach of this Agreement at any time after the Appointed Date and such default is cured before Termination, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default either in one lump sum within 30 (thirty) days of receiving the demand or at MSRDC’s option in three equal semi-annual instalments with interest @ SBI-PLR per annum in which case the first semi-annual instalment shall be made within 30 (thirty) days as referred hereinabove. Provided that no such compensation shall be payable for any breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material default but shall not include loss of Fee revenues or debt repayment obligations, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

Extension of Concession Period

In the event that a material default or breach of this Agreement set forth in Clause 35.2, MSRDC at its sole discretion may, in lieu of payment of compensation under Clause 35.2, extend the Concession Period proportionately.

Compensation to be in addition

Compensation payable under this Article 35 shall be, in addition to, and not in substitution for, or derogation of, Termination Payment, if any.
ARTICLE 36

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

36.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, MSRDC shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Fee, and other revenues pursuant hereto, and (ii) exercise such rights itself or authorize any other person to exercise the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by MSRDC to the Concessionaire and may extend up to a period not exceeding 120 (one hundred and twenty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, MSRDC shall extend the aforesaid period of 120 (one hundred twenty) days by a further period not exceeding 60 (sixty) days.

36.2 MSRDC to act on behalf of Concessionaire

36.2.1 During the period of Suspension MSRDC shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. MSRDC shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remediating and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 31.3.

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

36.3 Revocation of Suspension

36.3.1 In the event that MSRDC shall have rectified or removed the cause of Suspension within a period not exceeding 60 (sixty) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.
Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 60 (sixty) days from the date of Suspension, MSRDC shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative thereunder, MSRDC shall withhold Termination for a period not exceeding 120 (one hundred and twenty) days from the date of Suspension, and any extension thereof under Clause 36.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

Termination

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

Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 120 (one hundred and twenty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 36.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by MSRDC upon occurrence of a Concessionaire Default.
ARTICLE 37

TERMINATION

37.1 Termination for Concessionaire Default

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

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

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

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

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

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

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

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

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

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

Construction of Bridges in Baramati City On Build, Operate, Transfer (BOT) Basis including maintenance of roads constructed under IRDP Baramati and ASIDE Project

Maharashtra State Road Development Corporation

Vol-II/Page 1
upon occurrence of a Financial Default, the Lenders’ Representative has by notice required MSRDC to undertake Suspension in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified in the Substitution Agreement;

a) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

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

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

d) A Change in Ownership has occurred in breach of the provisions of Clause 5.3 and the Concessionaire does not suo-moto cures such default within 90 days of its occurrence;

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

f) an execution / attachment levied on any of the assets / equipment of the Concessionaire has caused a Material Adverse Effect and allows it to be continued for a period of 45 days;

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

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

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

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

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

(iii) each of the Project Agreements remains in full force and effect;

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

(u) the Concessionaire commits a material default in complying with any other provision of this Agreement.

(v) an event of default of the Concessionaire under any of the financing documents has occurred or any of the Senior Lenders has recalled its loan under any of the financing documents.

(w) the Concessionaire fails to achieve Financial Close in accordance with the provisions of Article 24.

(x) any representation made or warranties given by the Concessionaire under this agreement are found to be false or misleading.

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

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

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

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

Termination for MSRDC Default

In the event that any of the defaults specified below shall have occurred, and MSRDC 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, MSRDC shall be deemed to be in default of this Agreement ("MSRDC Default") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

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

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

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

d) the State commits a material default in complying with the provisions of the State Support Agreement if such default has a Material Adverse Effect on the Concessionaire and the breach continues for a period of 90 (ninety) days from the date of notice given in this behalf by the Concessionaire to MSRDC.
this Agreement, by issuing a Termination Notice to MSRDC; provided that before
issuing the Termination Notice, the Concessionaire shall by a notice inform MSRDC
of its intention to issue the Termination Notice and grant 15 (fifteen) days to MSRDC
to make a representation, and may after the expiry of such 15 (fifteen) days, whether
or not it is in receipt of such representation, issue the Termination Notice.

37.3 Termination Payment

37.3.1 Upon Termination on account of a Concessionaire Default during the Operation
Period, MSRDC shall pay to the Concessionaire, by way of Termination Payment, an
amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover,
provided that if any insurance claims forming part of the Insurance Cover are not
admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be
included in the computation of Debt Due. For the avoidance of doubt the
Concessionaire hereby acknowledges that no Termination Payment shall be due or
payable on account of a Concessionaire Default occurring prior to the Project
Completion Date.

37.3.2 Upon Termination on account of an MSRDC Default, MSRDC shall pay to the
Concessionaire, by way of Termination Payment, an amount equal to:

(a) Debt Due; and

(b) 150% (one hundred and fifty 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.

Termination Payment shall become due and payable to the Concessionaire within 60
(sixty) days of a demand being made by the Concessionaire to MSRDC with the
necessary particulars, and if MSRDC fails to disperse the full termination payment
within 180 (one hundred and eighty) days, MSRDC shall pay interest at a rate equal
to SBI PLR on the amount of Termination Payment remaining unpaid. For the
avoidance of doubt, it is expressly agreed that Termination Payment shall constitute
full discharge by MSRDC of its payment obligations in respect thereof hereunder.
Any demand for Termination Payment shall be made not later than 21 (twenty one)
days after the Termination of this Agreement.

37.4 Other rights and obligations of MSRDC

Upon Termination for any reason whatsoever, MSRDC shall:

Construction of Bridges in Baramati City On Build, Operate & Transfer (BOT) Basis in Kothegaon, maintenance of roads constructed under IRDP Baramati and ASIDE Scheme.

Maharashtra State Road Development Corporation Ltd.
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 Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;

(d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 39.1; and

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

Take possession and control of all agreements entered in by Concessionaire with the Users of Space in the Commercial plot sub leased to Concessionaire along with space not allotted/outs right sold on leasehold.

Survival of rights

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

38.1 Divestment Requirements

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

(a) notify to MSRDC 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, save and except to the extent set forth in the Substitution Agreement;

(c) cure all Project Assets, including the road, bridges, structures and equipment, of all defects and deficiencies so that the Project is compliant with the Standards and Specifications, Maintenance Requirements set forth in this document; 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 except Inspection Vehicle which shall not be more than 2 years old by make.

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

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

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

* Project— Project refers to position of work after achieving COD of Project as per definition