Inspection and Cure

Not earlier than 90 (ninety) days before Transfer Date but not later than 30 (thirty) days before the Transfer Date or in the event of earlier Termination of the agreement, the Independent Consultant shall verify, in the presence of a representative of the Concessionaire, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 40 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 39.

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 MSRDC shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-U (the "Vesting Certificate"), which will have the effect of constituting evidence of divestment by the Concessionaire of all its rights, title and interest in the Project, and their vesting in MSRDC, or person nominated by MSRDC in this regard 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 MSRDC or its nominee on, in the respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

Notwithstanding anything to the contrary contained in this agreement, any termination Payments made by MSRDC into the Escrow Account shall not be withdrawn there from for any purpose whatsoever until vesting certificate has been issued by MSRDC under this Article. Provided however the aforesaid restriction shall not apply to withdrawals from the Escrow Account in favour of the Senior Lenders to the extent of Debt Due and payments for complying with Divestment Requirements under this agreement.

Notwithstanding anything to the contrary contained in this agreement, the Concessionaire operate and maintain the Project till MSRDC or its nominee takes over the possession of the Project. All the Toll / Fee collected by the Concessionaire or its contractor after the Termination Notice shall be deposited in the Escrow account.

Additional Facilities

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

38.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of MSRDC upon Termination, including but not limited to stamp duties payable on any deeds or documents executed by the Concessionaire in connection with such divestment.

38.5.2 In the event of any dispute relating to matters covered by and under this Article 38, the Dispute Resolution Procedure shall apply.
ARTICLE 39
DEFECTS LIABILITY AFTER TERMINATION

Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 3 (three) years after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Consultant in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by MSRDC in this behalf, MSRDC shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by MSRDC hereunder shall be reimbursed by the Concessionaire to MSRDC within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, MSRDC shall be entitled to recover the same from the Escrow Account.

Retention in Escrow Account

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 38.2.3, a sum equal to 5% (five per cent) of the total Realisable Fee for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions for Clause 38.1.

Without prejudice to the provisions of Clause 38.2.1, the Independent Consultant shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 38.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Consultant shall be retained in the Escrow Account for the period specified by it.

The Concessionaire may, for the performance of its obligations under this Article 39, provide to MSRDC a guarantee from a Bank for a sum equivalent to the amount specified under Clause 39.2.1 or 39.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule F (the "Performance Security"), to be modified, mutatis mutandis, for this purpose, and MSRDC shall, upon the completion of the Project, without prejudice to its rights under this Agreement, return the guarantee to the Concessionaire as per the terms specified therein.
without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Security for undertaking the repairs or rectification at the Concessionaire’s risk and cost in accordance with the provisions of this Article 39. Upon furnishing of a Performance Security under this Clause 39.2.3, the retention of funds in the Escrow Account in terms of Clause 39.2.1 or 39.2.2, as the case may be, shall be dispensed with.
ARTICLE 40
ASSIGNMENT AND CHARGES

Restrictions on assignment and charges

Subject to Clauses 40.2 and 40.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of MSRDC, which consent MSRDC shall be entitled to decline without assigning any reason.

Subject to the provisions of Clause 40.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of MSRDC, which consent MSRDC shall be entitled to decline without assigning any reason.

Permitted assignment and charges

The restraints set forth in Clause 40.1 shall not apply to:

a) Liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;

b) mortgages / pledges / hypothecation of goods / assets other than Project Assets, and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and / or for working capital arrangements for the Project;

c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and

d) Liens or encumbrances required by any Applicable Law.

Commercial spaces/spaces allotted in commercial plot in Jalochi.
40.3 Substitution Agreement

40.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire in accordance with the agreement for substitution of the Concessionaire (the "Substitution Agreement") to be entered into amongst the Concessionaire, MSRDC and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-V.

40.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, MSRDC shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

40.4 Assignment by MSRDC

Notwithstanding anything to the contrary contained in this Agreement, MSRDC may, assign any of its rights and benefits and / or obligations under this Agreement, pursuant to any direction of the GOM or by operation of law or in the course of its own business.
ARTICLE 41

CHANGE IN LAW

Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 50 (Rupee Fifty) Million the Concessionaire may so notify MSRDC in writing within 15 days of event of such Change in Law and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached as aforesaid by the Parties within 90 (ninety) days of the meeting pursuant to as specified in Clause 41.1, the Concessionaire may, by notice in writing require MSRDC to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid. MSRDC shall within 15 (fifteen) days of such notice, assess the change in the financial position of the Concessionaire as a result of such Change of Law and after such assessment it shall quantify the quantum of financial assistance required to be given to the Concessionaire so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law and decide at its sole option, either to compensate the Concessionaire by way of reimbursement of such financial assistance or by way of extension to the Concession Period and depending upon its decision, MSRDC shall either make payment of such financial assistance or grant an extension of Concession Period within 30 (thirty) days of such decision. In case of any delay beyond the said period of 30 (thirty) days by MSRDC, the Concessionaire shall be entitled to interest on the financial assistance at SBI PLR at annum which shall be granted to it in accordance with the procedure laid down in a Clause. MSRDC as its sole discretion, may also require to extend the Concession period proportionately towards such payment. In case of any dispute regarding the quantum of financial assistance or the period of extension to the Concession Period, the same shall be finally settled in accordance with the Dispute Resolution procedure.
41.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds Rs. 50 (Fifty) Million, MSRDC may so notify the Concessionaire within 15 of such event of Change in Law and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by MSRDC, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed agreement:

Provided that if no agreement is reached as aforesaid by the Parties within 90 (ninety) days of the meeting pursuant to this Clause 41.1, MSRDC may by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by MSRDC representative. The Concessionaire shall make such payment within 30 (thirty) days of receiving such notice or with interest @ SBI-PLR per annum if the payment is delayed beyond such 30 (thirty) days. If the Concessionaire shall dispute such claim of MSRDC, the same shall be finally settled in accordance with the Dispute Resolution Procedure. The Concessionaire may at its sole discretion opt to grant reduction in Concession Period in lieu of such payment and such decision will be conveyed by the Concessionaire within 30 days of the notice by MSRDC as provided herein.

41.3 Protection of NPV

Pursuant to the provisions of Clauses 41.1 and 41.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

41.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 41 shall be restricted to the effect of Change in Law during the respective
Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than two years from the close of such Accounting Year.

No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, MSRDC shall not be liable to reimburse to the Concessionaire any sums on account of any Change in Taxes if the same are recoverable from the users of the Project or if the aggregate financial effect of such changes in any Accounting Year is less than or equal to Rs. 50 (Fifty) Million only.
ARTICLE 42

LIABILITY AND INDEMNITY

42.1 General indemnity

42.1.1 The Concessionaire will indemnify, defend, save and hold harmless MSRDC and its officers, servants, agents, consultants, Government Instrumentalities and Government owned and / or controlled entities / enterprises, ("MSRDC Indemnified Persons") against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of MSRDC Indemnified Persons.

42.1.2 MSRDC will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and / or the rights of MSRDC in the land comprised in the Site, and / or (ii) breach by MSRDC of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and / or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and / or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

42.2 Indemnity by the Concessionaire

42.2.1 Without limiting the generality of Clause 42.1, the Concessionaire shall fully indemnify, hold harmless and defend MSRDC and MSRDC Indemnified Persons from and against any and all loss and / or damages arising out of or with respect to:

(a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

(b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or