w) Terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein and the terms and words defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to MSRDC and/or the Independent Consultant shall be provided free of cost and in three copies, and if MSRDC and/or the Independent Consultant is required to return any such documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 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.

1.2.4 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

1.4.1 This Agreement, and all other agreements and documents forming part of 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 shall, in the event of any conflict between them, be in the following order:
- this Agreement, and
- all other agreements and documents forming part hereof.

1.4.2 In case of ambiguities or discrepancies within this Agreement, the following shall apply:
- 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.
- between the Clauses of this agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail.

Signed on behalf of the Government of India by the Director General, Ministry of Road Transport & Highways,

Mumbai, Maharashtra:

[Signature]

MDA

Ministry of Roads & Transport

[Stamp]

Nagarik State Road Development Corporation Ltd.
c) between the written description on the drawings and the specifications or standards the latter shall prevail;

d) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and

e) between any value written in numerals and that in words, the latter shall prevail.
ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The Scope of the Project (the "Scope of the Project") shall mean and include, during the Concession Period;

2.1.1 The Project shall be executed on the Site, which is described in Schedule 'A' of this Agreement. The scope of the Project shall include performance and execution by the Concessionaire of all design, engineering, financing, procurement, construction, completion, operation and maintenance of the Project Roads as described in Schedule 'B' and Schedule 'C' of this Agreement. It shall include improvement, O&M and Toll collection in accordance with the Specifications and Standards set forth in Schedule 'D' and operation and maintenance thereof in accordance with Schedule 'L'. It shall also include the performance and fulfilment of other obligations by the Concessionaire under this Agreement.

2.1.2 Performance and fulfilment of all other obligations of the Concessionaire 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 Concessionaire under this Agreement.
ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, MSRDC hereby grants to the Concessionaire various rights/approval for the concession period including the exclusive right, licence and authority during the subsistence of this Agreement to construct, operate and maintain the Project (as detailed in Schedule E) and to collect toll as per the toll notification and conditions of contract. The toll collection rights shall be for a period from as defined elsewhere date till the date of termination. In addition to toll rights till transfer date, the concessionaire shall be entitled for the lease rights for the period of 90 years for commercial exploitation of the land admeasuring 8.4 hectares as specified under this agreement.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as they case may be) the Concessionaire to:

a) Right of Way, access and licence to the Site to the extent conferred by the provisions of this Agreement;

b) design, finance and construct the Project;

c) manage, operate and maintain the Project and regulate the use thereof either by itself or through third parties;

d) demand, collect and appropriate Fee (Toll) from vehicles and persons liable for payment of Fee/Toll for using the Project or any part thereof and refuse entry of any vehicle if the Fee/Toll due is not paid.

e) refuse entry of any vehicles to the Project if any vehicle has more than standard axles and stipulated by the Independent Consultant.

f) perform and fulfill all of the Concessionaire's obligations under and in accordance with this Agreement;

g) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement.

h) not assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession therewith, save and except as expressly permitted by this Agreement or the Substitution Agreement.
ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 10, 24, 34, 44, and 47, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "Conditions Precedent").

4.1.2 The Concessionaire may, upon providing the Performance Security to MSRDC in accordance with Article 9, within 30 (thirty) days from the date of this Agreement or on an earlier day acceptable to MSRDC, by notice require MSRDC to satisfy any or all of the Conditions precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period as may be specified therein, and the obligations of MSRDC hereunder shall be deemed to have been performed when MSRDC shall have:

(a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1; provided that the conditions set forth in Clause 10.3.2 shall be satisfied on or prior to the Appointed Date;

(b) hand over to the Concessionaire the land (already in possession of MSRDC) admeasuring 8.4 hectares on lease for commercial exploitation, as specified in Schedule-V, for a period of 99 years.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

(a) procured execution of the Escrow Agreement;

(b) procured execution of the Substitution Agreement;

(c) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect;

(d) provided Performance Security to MSRDC, form SPV and sign the Concession Agreement;

(e) executed the Financing Agreements and delivered to MSRDC 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
(f) delivered to MSRDC 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in M S Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

(g) delivered to MSRDC from the [consortium members, their respective] confirmation, in original, of the correctness of their representations and warranties set forth in sub-clauses (k), (l) and (m) of clause 7.1 of this Agreement; and

(h) delivered to MSRDC a legal opinion from his legal counsel with respect to BMC and MSRDC (the Implementing Party) to enter into this Agreement and the enforceability of the provisions thereof:

(i) The concessionaire has paid the first instalment of "THE UPFRONT PAYMENT" and furnished the Bank Guarantees against successive instalments as per clause 9.4, of Article 9 of concession Agreement, to MSRDC.

The stages of upfront payments are as given below

First Installment of Rs. 10.00 crore (Ten Crore ) to be paid to MSRDC within 90 days from LOA and not exceeding 30 days from date of agreement whichever is earlier.

Second installment of Rs. 10.00 crore (Ten Crore ) to be paid to MSRDC within 240 days from LOA and not exceeding 180 days from date of agreement whichever is earlier

Third installment of Rs. 20.00 crore (Twenty Crore ) to be paid to MSRDC within 400 days from LOA and not exceeding 340 days from date of agreement whichever is earlier

Forth and final installment of Rs. 25.00 crore (Twenty Five Crore ) to be paid to MSRDC within 780 days from LOA and not exceeding 700 days from date of agreement whichever is earlier

Provided that upon request in writing by the Concessionaire, MSRDC may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3.

4.1.4 Each party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable co-
operation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by MSRDC

In the event that (i) MSRDC does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof in this Agreement, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, MSRDC shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.01% (zero point zero one per cent) of the Bid Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 1% (One percent) of the Bid Security, alternatively or MSRDC/BMC may decide to reduce the scope of work proportionally in lieu of such payment.
ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its cost and expense procure finance for and undertake the design, consulting, procurement, construction, operation and maintenance of the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

5.1.3 Without prejudice to Clause 5.1.1 and 5.1.2 above, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.

5.1.4 Without prejudice to Clauses 5.1.1, 5.1.2 and 5.1.3 above, the Concessionaire shall, at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the following:

(a) make, or cause to be made, necessary applications to the relevant Governmental Agencies with such particulars and details, as may be required for obtaining all Applicable Permits (other than those set forth in Clause 4.1.2 above) and obtain 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 and systems used or incorporated into the Project;

(c) perform and fulfill its obligations under the Financing Agreements;

(d) ensure and procure that his competent Design Consultant complies with all applicable (latest) design standards and gets proof checked from the competent Design Engineer approved by MSRDC/IC, for the components of the work as specified in Schedule-B.

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

Maharashtra State Road Development Corporation Ltd.
(e) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;

(f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;

(g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

(h) support, co-operate with and facilitate MSRDC in the implementation and operation of the Project in accordance with the provisions of this agreement; and

(i) transfer the Project to MSRDC/IC upon termination / fulfilment of this Agreement, in accordance with the provisions thereof.

(j) The payment towards fees of Independent Consultant shall be paid as yearly upfront by the Concessionaire to MSRDC in advance.

(k) Concessionaire shall pay Rs 1 lakh per month for the entire concession period towards administrative expenses of MSRDC. The payment in this regard shall be made by the concessionaire as yearly upfront in advance.

5.2. Obligations Relating to Project Agreements

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

2.2 The Concessionaire shall submit to MSRDC/IC the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and MSRDC/IC shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to MSRDC/IC a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of MSRDC/IC to review and/or comment hereunder shall
not be construed or deemed as acceptance of any such agreement or document by MSRDC/JC.

5.2.3 The Concessionaire shall not make any replacement or amendments to any of the Financing Agreements without the prior written consent of MSRDC/JC if such replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on MSRDC/JC, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against MSRDC/JC.

5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle MSRDC/JC to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension.

5.3 Obligations Relating to Change in Ownership

The Concessionaire shall not undertake or permit any change in Ownership, except with the prior written approval of MSRDC/JC.

5.4 Sole Purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of MSRDC/JC be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.5 General Obligations

The Concessionaire shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation or substitution of any of its obligations elsewhere set out in this Agreement, the following:

1. Inspect, investigate, study, design, construct, finance, operate, monitor, maintain and transfer the Project Assets/Project Facility in accordance with the provisions of this Agreement, Good Industry Practice and Applicable Laws and handover the Project at the end of the Concession Period or upon termination of this Agreement in accordance with the terms and conditions of this Agreement;

2. Undertake the design, construction and financing of the Project in accordance with this Agreement including but not limited to Schedule-D Specifications.