10.2.4 It is expressly agreed that the Licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by MSRDC to terminate the Licence, upon the Termination of this Agreement for any reason whatsoever.

10.2.5 The Concessionaire hereby appoints MSRDC (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the Licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of MSRDC, and the Concessionaire consents to it being registered for this purpose.

10.2.6 It is expressly agreed that (i) trees on the Site are property of the MSRDC except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period, and (ii) mining rights do not form part of the Licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals on or under the Licensed Premises. For the avoidance of doubt, mining rights mean the right to mine any and all minerals of interest therein.

10.3 Procurement of the Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, MSRDC Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered Land, CD Works and buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and legalise use and development of the vacant and unencumbered site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by MSRDC to the Concessionaire.

The land acquisition within Right Of Way (ROW) will be done by MSRDC. The land available on the day one will be handed over to the Concessionaire and the balance land will be made available within a period of 6 (six) months from LOA.
10.3.2 Without prejudice to the provisions of Clause 10.3.1 the Parties hereto agree that or prior to the Appointed Date, MSRDC shall have granted vacant access and the Right of Way such that the Appendix shall not include more than 20% (twenty percent) of the total area of the Site required and necessary for the Project, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, MSRDC / BMC shall be liable to payment of Damages in accordance with the provisions of Clause 4.2.

10.3.3 On and after signing the memorandum and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to MSRDC and undertake its prompt removal at the Concessionaire's cost and expenses.

10.3.4 MSRDC shall make best efforts to provide and grant the Right of Way to the Concessionaire in respect of all Land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire damages in a sum calculated at the rate of Rs.5/- (Rupees Five only) per day for every 1,000 (one thousand) square meters or part thereof, commencing from 91st (ninety first) day of the Appointed Date and until such Right of Way is procured or in lieu of such payment of such sum MSRDC may decide to reduce the scope of work proportionately.

10.3.5 Upon receiving Right of Way in respect of any Land Included in the Appendix, the Concessionaire shall complete the construction works thereon within a reasonable period to be determined by the Independent Consultant in accordance with Good Industry Practice, provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction works on all Land for which Right of Way is granted within 90 (ninety) days of the Appointed Date shall be completed before the Project Completion Date. It is further agreed that the obligation of the Concessionaire to complete the affected construction works shall subsist so long as MSRDC continues to pay the Damages specified herein, and upon MSRDC ceasing to pay such damages after giving 60 (sixty) days notice thereof to the Concessionaire, the obligation of the Concessionaire to complete such works on such part of the Site shall cease forthwith.

10.3.6 The Concessionaire shall, if so required by MSRDC, procure on behalf of MSRDC, on the terms and to the extent specified by MSRDC, the additional Land required for Toll plazas or for construction of works specified in Change of Scope Order issued under Article 16, in accordance with this Agreement and upon procurement, such
Land Area shall form part of the Site and vest in MSRDC; provided that the Concessionaire may, by notice given to MSRDC no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be require MSRDC to initiate and undertake proceedings for acquisition of such Land Area under the provisions of applicable Land Acquisition Act, and MSRDC shall take all such steps as may be reasonably necessary for such Land acquisition forthwith; provided further that the cost of such area acquired under this clause 10.3.6 shall be borne by MSRDC in accordance with the Act, provided also that the Land Area to be acquired by MSRDC hereunder shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with in accordance with the provisions thereof. It is further agreed that MSRDC may, at any time after the Bld Date, suo moto acquire such land required hereunder or, if procured under the Clause 10.3.6 at its sole discretion may require to reduce the scope of work proportionately towards such payment to the Concessionaire.

10.3.7 The Concessionaire may procure at its cost and expense and on its own the land that may be required by it for Additional Facilities and MSRDC shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Concessionaire shall seek prior consent of MSRDC to connect any Additional Facility to the Project and such consent shall not be unreasonably withheld.

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the site shall be made available by MSRDC to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to MSRDC on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except in so far as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances.

10.5 Protection of Site from Encroachments

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.
10.6 Special / temporary Right of Way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

10.7 Access to MSRDC and Independent Consultant

The licence, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of MSRDC and the Independent Consultant and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.
ARTICLE 11

UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing Utilities and Roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that all existing roads, right of way or utilities on, under or above the Site are kept in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with MSRDC of the controlling body of that road, right of way or utility, and MSRDC shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire’s cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2 Shifting of Obstructing Utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of MSRDC, undertake shifting of any utility including electric lines, water pipes, gas lines, drainage lines, sewer lines and telephone cables etc, to an appropriate location or alignment within or outside the Site if and only if such utility causes a material adverse effect on the construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the Concessionaire or by the entity owning such utility, if MSRDC so directs.

The Telecommunication lines and Optical Fibre Cable (OFC) shall be shifted by the Owner of such utilities. The Concessionaire may cause the phasing and execute the work in the event when VSNL and OFC utilities are not shifted by the respective owner in a reasonable time.

11.3 New Utilities and Roads

11.3.1 The Concessionaire shall allow, subject to such conditions as MSRDC may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt it is agreed that use of the Site under this clause shall not in any manner absolve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.3.2 MSRDC may, by notice require the Concessionaire to connect any adjoining road to the Project, and the connecting portion thereof falling within the Site as shown in Typical Drawings (Vol. III) shall be constructed at MSRDC’s cost in accordance with Article 16. The maintenance of such connecting portion shall be undertaken by the

Construction of Bridges in Baranawadi On Build, Operate & Transfer (BOT) Basis including maintenance of Roads constructed under RDP Baranawadi and ASIDB Schemes

Maharashtra State Road Development Corporation Ltd.
Concessionaire in accordance with the provisions of Clause 17.1.3. It is agreed that MSRDC may decide to reduce the scope of the work proportionately towards such cost.

11.3.3 MSRDC may by notice require the Concessionaire to connect, through a paved road, any other public facility or amenity to the Project, whereupon the connecting portion thereof that falls within the Site shall be constructed and maintained by the Concessionaire upon advance payment of the cost to be made by the beneficiary entity in accordance with the amount and period as determined by the Independent Consultant. For the avoidance of doubt, any connecting road constructed prior to the Appointed Date and falling within the Site shall be maintained by the Concessionaire upon advance payment to be made by the beneficiary entity in accordance with the provisions of this Clause.

11.4 Felling of Trees

MSRDC shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by MSRDC for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the Concessionaire.

11.5 Transplantation of Trees

The Concessionaire shall transplant and maintain the trees as per the stipulations of the appropriate 'Statutory Authority'. Maintenance shall be carried out by the Concessionaire as per the norms laid down by the appropriate Statutory Authority.
ARTICLE 12

CONSTRUCTION OF THE PROJECT

12.1 Obligations Prior to Commencement of Construction

Prior to commencement of Construction works, the Concessionaire shall:

a) submit to MSRDC and the Independent Consultant its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the project in accordance with the Project Completion Schedule as set forth in Schedule-G.

b) to appoint representative duly authorized to deal with the MSRDC in respect of all matters under or arising out of or relating to this Agreement.

c) undertake, do and perform such acts, deeds and things as may be necessary or required to adhere to the Project Completion Schedule for construction of the Project and to achieve Project completion under and in accordance with this Agreement.

c) make its own arrangements for quarrying under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Maintenance during Construction Period

During the Construction Period, the Concessionaire shall maintain, at its cost the existing access to the Project so that its traffic worthiness and safety are at no time materially inferior as compared to its condition 7 (seven) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Construction works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with prior written approval of the Independent Consultant which approval shall not be unreasonably withheld for the avoidance of doubt. It is agreed that the Concessionaire shall at all time be responsible for ensuring safe operation of the Project.
12.3 Drawings

In respect of the Concessionaire's obligations with respect to the Drawings of the Project as set forth in Schedule-H, the following shall apply:

a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Independent Consultant for review.

b) By submitting the Drawings for review to the Independent Consultant, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and Consulting, including field construction criteria related thereto, are in conformity with the Specifications and Standards.

c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Consultant shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and the Standards. The Concessionaire shall not be obliged to await the observations of the Independent Consultant on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction works at its own discretion and risk.

d) If the observations of the Independent Consultant indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Consultant for review. The Independent Consultant shall give its observations, if any, within 7 (seven) days of receipt of the revised drawings.

e) No review and/or observation of the Independent Consultant and/or its failure to review and/or convey its observations on any drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Consultant or MSRDC be liable for the same in any manner.

f) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to MSRDC for review and comments, its drawings relating to alignment of the Project, finished road level, location and layout of the Toll Plaza(s) within city road network and MSRDC shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.3 shall apply mutatis mutandis to the review and comments hereunder.
9) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to MSRDC and the Independent Consultant a complete set of as-built drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to MSRDC, reflecting the Project as was actually designed and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

12.4 The Project

12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of Project as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The 15 months (455 days) from the Appointed Date shall be the scheduled date for completion of Project (the "Scheduled Project Date") and the Concessionaire agrees and undertakes that shall be completed on or before the Scheduled Project Date.

12.4.2 The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to MSRDC, it shall pay damages to MSRDC in a sum calculated at the rate of Rs. 3 lakhs for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event that Project Completion Date is achieved on or before the Scheduled Project Date, the Damages paid under this Clause 12.4.2 shall be refunded by MSRDC to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of MSRDC under this Agreement, including the right of Termination thereof.

No extension in Concession Period will be given on account of delay in construction of whatsoever nature and whatsoever reasons.

12.4.3 In the event that Project is not completed within 120 (One hundred twenty) days from the Scheduled Project Date, unless the delay is on account of reasons solely attributable to MSRDC or due to Force Majeure, MSRDC shall be entitled to terminate this Agreement.
ARTICLE 13
MONITORING OF CONSTRUCTION

13.1 Monthly Progress Reports

During the Construction period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to MSRDC and the Independent Consultant a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Consultant.

13.2 Inspection

During the Construction period, the Independent Consultant shall inspect the Project at least once a month and make a report of such inspection (the “Inspection Report”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to MSRDC and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Consultant shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction works conform to the Specifications and Standards, the Independent Consultant shall require the Concessionaire to carry out or cause to be carried out Tests, at such time and frequency and in such manner as may be specified by the Independent Consultant from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall normally comprise 10% (ten percent) of the quantity and/or number of tests prescribed by IRC and/or MORTH for the construction works undertaken by MSRDC through their contractors. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Consultant. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that the results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Consultant in this behalf. The Independent Consultant shall require the Concessionaire to carry out