ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligation of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

a) permitting safe, smooth and uninterrupted flow of traffic on the Project during normal operating conditions;

b) collecting and appropriating the Toll / Fee;

c) minimising disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;

d) carrying out periodic preventive maintenance of the Project;

e) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement marking, lighting, road signs and other traffic control devices;

f) undertaking major maintenance such as resurfacing of pavements, repairs to structure, and repairs and refurbishment of tolling systems and other equipment;

g) preventing with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;

h) providing adequate security arrangements to safeguard all the project assets fixed as well as mobile;

i) preventing with the assistance of the concerned law enforcement agencies, any encroachments on the Project; including the Refuge Areas, Toll Plazas and Dispersal areas;

j) maintaining a public relations unit to interface with and attend to suggestion from the users, government agencies, media and other agencies.
k) Complying with Safety Requirements in accordance with Article 18.

17.1.2 The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition and in conformity with the Applicable Laws, Applicable Permits and Goods Industry Practice.

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, connectors, interchanges, refuge lanes or other structures situated on the Site but not forming part of the carriageway.

17.1.4 The Concessionaire shall be responsible for development and maintenance of cross roads at junctions to minimum 50 meters on both sides in accordance with the good industry practice.

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project, conforms to the maintenance requirements set forth in Schedule-K (the “Maintenance Requirements”).

17.3 Maintenance Manual

Not later than 30 (Thirty) days from the date of signing the concession agreement the Concessionaire shall, in consultation with the Independent Consultant/ MSRDC evolve an inspection, maintenance and repair manual (the “Maintenance Manual”) for the regular and preventive maintenance of the Project in conformity with the Maintenance Requirement, Safety Requirements and Goods Industry Practice, and shall provide 5 (five) copies thereof to MSRDC and 2(two) copies to the Independent Consultant. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, mutatis mutandis, to such revision.

17.4 Maintenance Programme

Not later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operating Period, the Concessionaire shall provide to MSRDC and the Independent Consultant, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “Maintenance Programme”) to comply with the maintenance Requirements, Maintenance Manual and Safety Requirements.
Such Maintenance Programme shall include:

a) preventive maintenance schedule;
b) arrangements and procedures for carrying out urgent repairs;
c) criteria to be adopted for deciding maintenance needs;
d) intervals and procedures for carrying out inspection of all elements of the Project;
e) intervals at which the Concessionaire shall carry out periodic Maintenance;
f) arrangement and procedures for carrying out safety related measures; and
g) intervals for major maintenance works and the scope thereof.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Consultant shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenances Requirements, Maintenance Manual and Safety Requirements.

17.5 Safety, vehicle breakdowns and accidents

17.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe condition, lane closures, diversion, vehicle breakdowns and accidents, it shall follow the relevant operating procedure including the setting up of temporary traffic cones and lights, and removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.5.2 The Concessionaire's responsibility for rescue operation on the Project shall be limited to prompt removal of vehicles or debris or any other obstruction, which may endanger or interrupt the smooth flow or traffic.

17.6 De-commissioning due to Emergency

17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure to traffic of the whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project to traffic for so long as such Emergency and consequences thereof warrant, provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to MSRDC without any delay, and the Concessionaire...
shall diligently carry out and abide by any reasonable directions that MSRDC may give for dealing with such Emergency.

17.6.2 The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist.

17.7 Lane closure

17.7.1 The Concessionaire shall not close any lane of the Project for undertaking maintenance or repair works except with the prior written approval of the Independent Consultant. Such approval shall be sought by the Concessionaire through a written request to be made at least 7 (seven) days before the proposed closure of lane and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Consultant shall grant permission with such modifications as it may deem necessary and a copy of such permission, and with such modifications as it may deem necessary and a copy of such permission shall be sent to the MSRDC.

17.7.2 The provision of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or closure of any lane for a period not exceeding 2 (two) hours in a day at any time of the day and 8 (six) hours in a day at a time specified by the Independent Consultant as off-peak hours when the flow of traffic is comparatively lower.

17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated lane for the period specified therein, and in event of any delay in re-opening such lane, the Concessionaire shall pay Damages to MSRDC calculated at the rate of Rs.10,000 (Rs. Ten thousand) per day for every stretch of 100’ (One hundred) meters, or part thereof, for each day of delay until the lane has been re-opened for traffic. These damages of Rs. 10,000 per day shall be applicable in the first Operational year and shall be increased by a 6% in each subsequent operational years. Provided, however, that these provisions shall not apply to emergency decommissioning under cl.17.6.

17.8 Damages for breach of maintenance obligations

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and MSRDC shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the highest of (a) Rs.25000/- (Rs. Twenty five Thousand only) per day and (b) 0.1% (Zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Consultant. Recovery of such Damages shall be...
without prejudice to the rights of MSRDC under this Agreement, including the right of Termination thereof.

17.8.2 The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by the Independent Consultant; provided that MSRDC may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.8.3 The response times for various maintenance activities are stipulated under Project Asset Deliverables and Tolerance Criteria of Schedule L. If the Concessionaire fails / defaults twice in a month, he will attract one (1) penalty point. Every such penalty point will lead to a reduction in the Concession Period by one day.

17.8.4 MSRDC at its sole discretion may require to curtail the Concession period proportionately if the project roads are not maintained as per the requirements set forth in this Agreement.

17.8.5 The Concessionaire will be given the bonus by the way of incentive if he maintains the project as per the requirements set forth in this Agreement. The package of Bonus whether one time or periodical will be at the sole discretion of MSRDC, if he does the repair and maintenance work weekly and above the general level of acceptance of such work.

17.9 MSRDC's right to take remedial measures

17.9.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from MSRDC or the Independent Consultant, as the case may be, MSRDC shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover such cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to MSRDC as Damages.

17.9.2 MSRDC shall have the right, and the Concessionaire hereby expressly grants to MSRDC the right, to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow...
Account in accordance with the instructions of MSRDC under this Clause 17.9.2 and debit the same to O&M Expenses.

17.10 Overriding powers of the MSRDC

17.10.1 If in the reasonable opinion of MSRDC, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, MSRDC may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, MSRDC may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by MSRDC shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by MSRDC in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and MSRDC shall be entitled to recover them from the Concessionaire in accordance with the Provisions of Clause 17.9 along with the Damages specified therein.

17.11 Restoration of loss or damage to Project

Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the Provisions of this Agreement.

17.12 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project to operate in conformity with the maintenance Requirements and Good Industry Practice; provided that the Concessionaire shall notify the Independent Consultant of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Consultant may make within 15 (fifteen) days of receiving the Concessionaire for the duration thereof:

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

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17.13 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available to traffic on account of any of the following for the duration thereof:

a) an event of Force Majeure;

b) measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

c) compliance with a request from MSRDC or the direction of any Government Instrumentality, the effect of which is to close all or any part of the Project.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project open to traffic provided they can be operated safely.

17.14 Barriers and Diversions

MSRDC shall procure that during the Operation Period, no barriers erected or placed by any Government Instrumentality on the Project except for reasons of Emergency, national security, law and order or collection of inter-state taxes. The MSRDC shall also make best endeavors to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions of traffic from, or closing down of approach roads to the Project that may cause a material adverse effect on the flow of traffic to and from the Project.

17.15 Advertising on the Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site except advertisement on Bus shelters, street light poles and over head gantries at specified locations only. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time, and no compensation shall be claimed on account thereof.
18.1 Safety Requirements

18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in Scheduled-L (the “Safety Requirements”).

18.1.2 MSRDC shall appoint an experienced and qualified firm or organisation (the “Safety Consultant”) for carrying out safety audit of the Project in accordance with the Safety Requirement, and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, work, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Articles 16. Costs and expenses on the Project and services not covered hitherto before and arising out of Safety Requirements shall be borne out of a dedicated safety fund (the “Safety Fund”) to be managed and operated by MSRDC or a substitute thereof.
ARTICLE 19

MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

During Operation 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 stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirement, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Consultant.

19.2 Inspection

The Independent Consultant shall inspect the Project at least once a month. It shall make a report of such inspection (the "O&M Inspection Report") stating in reasonable detail the effects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to MSRDC and the Concessionaire within 7 (seven) days of such inspection.

19.3 Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Consultant shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The cost of such test shall be borne by the Concessionaire. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Consultant and furnish the results of such tests forthwith to the Independent Consultant.

19.4 Remedial measures

The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Independent Consultant and MSRDC within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress report of the repair works once every week until such works are completed in conformity with this Agreement.
19.4.2 The Independent Consultant shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project conforms to the Maintenance requirement. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, MSRDC shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8

19.5 Monthly Toll Statement

During the Operation Period, the Concessionaire shall furnish to MSRDC, within 7 (seven) days of completion of each month, a statement of Toll substantially in the form set forth in Schedule-M (the “Monthly Toll Collection Statement”).