27.6 Additional charge for evasion of Toll

In the event that any vehicle uses the Project without payment of Toll due; the Concessionaire shall, subject to Applicable Law and Applicable Permits, be entitled to determine and collect from such vehicle the Toll due and an equivalent amount towards predetermined liquidated damages for attempt to make unauthorized use of the Project; provided that the determination and collection of such Toll and liquidated damages shall be at the risk and cost of the Concessionaire and MSRDC shall not in any manner be liable on account thereof.

27.7 Display of Toll rates

27.7.1 The Concessionaire shall conspicuously display the Toll Rates at the Toll Plazas and also at a distance about 200 meters ahead of Toll Plazas on either side of Project Facility.

27.7.2 The Concessionaire shall, from time to time, inform MSRDC of the applicable Toll and detailed calculation thereof. Such information shall be communicated at least 15 (fifteen) days prior to the revision of Toll under and in accordance with the Toll Notification.

27.8 Liquidated damages for fraud in Tolling

The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Toll payable under the Toll Notification. If the Concessionaire is found overcharging toll, more than specified under this agreement, for the first time and if this fraud is confirmed to the satisfaction of MSRDC (Ltd) then the contractor shall be charged a fine equal to 100 times the respective Toll; amount for each such fraud subjected to minimum of Rs. 10,000/-. The amount of fine shall treat as recovery due from the concessionaire and shall be recovered as per provisions of the agreement. If the concessionaire is found overcharging second time, and the said fraud is confirmed to the satisfaction of MSRDC (Ltd), then the concessionaire will be charged a fine equal to 300 times the respective Toll amount for such fraud subject to minimum of Rs. 25,000/-. The fine shall be recovered as stipulated above. If the concessionaire is found overcharging third time and said fraud is confirmed to the satisfaction of MSRDC (Ltd), then the contract shall be terminated and the concessionaire shall be totally banned for quoting or participating in any of the bids of MSRDC (Ltd) in future. In case of the partnership firm or joint venture firm, all the partners shall be totally banned for quoting or participating in any of the bids of MSRDC (Ltd) in future.
27.9 Traffic Survey & Income Sharing

To ascertain the actual Toll income joint traffic survey will be conducted after completion of 5 years from COD. This traffic survey will be conducted every year twice in the month of March/October for continuous period not less than 7 days and average count will be taken as a base.

To compute yearly toll income the following procedure shall be followed:

Yearly Toll Income = Average Traffic Count of each category worked out as above (x) prevailing toll rate (x) 365 days (x) 0.85 (Discount factor for Coupons / Monthly passes) From actual Toll income worked out as above 10% will be deducted to arrive at the net toll income. If the estimated, toll income during that year considered in the cash flow submitted with the bid is less than the net toll income as arrived above then the difference will be shared equally between Contractor and MSRDC (Ltd.).

27.10 Additional Obligations

The concessionaire shall be discharged following additional obligations to full fill the agreement.

a) To provide uniform to staff working on toll stations. The colour and type shall be got approved from the Engineer in Charge.

b) To provide drinking water and toilet facilities for the road users near the toll plaza.

c) To provide sufficient area lighting near the toll plaza.

d) To provide toll plaza (s) as per requirements.

e) To arrange collection of toll efficiently in such a manner that the traffic at the said site is not unreasonably detained resulting in blocking up of traffic and there shall be no complaints from travellers about undue waste of time. In such event(s), due to high traffic volume, the concessionaire shall undertake augmentation/expansion of toll plaza(s) with necessary approval from MSRDC (Ltd.) and other competent authorities at no extra cost to MSRDC (Ltd.).

f) To use the toll station only for the purpose of collection of toll and for no other purpose whatsoever and to project, preserve and maintain it.

g) To collect and submit data of exempted vehicles in the form prescribed by the MSRDC (Ltd.) on request of the MSRDC (Ltd.).

h) Upon expiration or termination of this agreement, to handover the toll station and other allied facilities/structures to the MSRDC (Ltd.) in the same condition in which it was being used during Concession period by the Concessionaire (in operational condition) including all machinery and toll collection equipments, fixtures & fittings etc.

i) To pay MSRDC (Ltd.) cost of making good the damage caused to the said toll station forthwith on demand.

j) To permit the officers duly authorized by the MSRDC (Ltd.) on its behalf any time or times during the subsistence of this Agreement to enter upon any part of the toll station for the purpose of inspection.
k) To give all required information and allow inspection of records to the competent officer of MSRDC (Ltd.) regarding the collection of toll, if asked for at any time/times during the subsistence of this agreement.

l) To maintain all electronic and electric equipments and computers in good working condition till the entire period of agreement and calibrate the same from competent authority from time to time calibration certificates in this respect shall be submitted to MSRDC (Ltd.) every six months and shall upgrade tolling system with latest technology as suggested by MSRDC (Ltd.).

m) To replace spare parts of electrical and electronic equipments at his own cost for the equipments if supplied by the MSRDC (Ltd.).
ARTICLE 28

REVENUE SHORTFALL LOAN
(Deleted)
ARTICLE 29

EFFECT OF VARIATIONS IN TRAFFIC GROWTH
(Deleted)
ARTICLE 30

CONSTRUCTION OF ADDITIONAL TOLL WAY

(Deleted)
ARTICLE 31

ESCROW ACCOUNT

1.1 Escrow Account

1.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "Escrow Bank") in accordance with this Agreement and with the Escrow Agreement.

1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "Escrow Agreement") to be entered into amongst the Concessionaire, MSRDC, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule-S.

2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

a) all funds constituting the Financial Package;

b) all Fee and any other revenues from or in respect of the Project, including the proceeds of insurance claims;

c) all payments by MSRDC, after deduction of any outstanding Concession Fee;

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

Withdrawals during Concession Period

The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month, then appropriated proportionately in such month and retained in the Escrow Account and paid out there from in the month when due:
a. all taxes due and payable by the Concessionaire;

b. all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreement;

c. O&M Expenses in respect to the Project, subject to the ceiling, if any, set forth in the Financing Agreements;

d. O&M Expenses and other costs and expenses in respect of the Project incurred by MSRDC in accordance with the provisions of this Agreement, and certified by MSRDC as due and payable to it;

e. Monthly proportionate provision of Debt Service due in an Accounting Year;

f. Premium due and payable to MSRDC;

g. all payments and Damages certified by MSRDC as due and payable to it by the Concessionaire.

h. debt service in respect of Subordinated Debt;

i. any reserve requirements set forth in the Financing Agreements; and

j. balance, if any, in accordance with the instructions of the Concessionaire.

31.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 31.3.1, except with the prior written approval of MSRDC.

31.4 Withdrawals upon Termination

31.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appointed in the following order:

a) all taxes due and Payable by the Concessionaire;

b) outstanding Concession Fee;

c) 90% (ninety percent) of Debt Due excluding Subordinated Debt;

d) all payments and Damages certified by MSRDC as due and payable to it by Concessionaire, including repayment of Revenue Shortfall Loan;
retention and payments relating to the liability for defects and deficiencies set forth in Article 40;

outstanding Debt Service including the balance of Debt due;

incurred or accrued O&M Expenses;

outstanding Subordinated Debt;

any other payments required to be made under this Agreement; and

balance, if any accordance with the instruction of the Concessionaire;

provided that no appropriations shall be made under Sub-clause (j) of this Clause 4.1 until a Vesting Certificate has been issued by MSRDC under the provisions of Article 38.

The provision of this Article 31 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligation set forth in Clause 4.1 have been discharged.

In the date, which is two years prior to the expiry of the Concession period, a sum estimated by Independent Consultant for renewal works, shall not withstanding the contrary contained in this Agreement, be retained in the Escrow count, provided that if a Bank Guarantee of an equivalent sum in the form and tenor acceptable to MSRDC has been furnished by the Concessionaire to MSRDC, such retention shall be made. If following the second Inspection, it is agreed or determined that no renewal works are required, then within 14 days of such agreement, 50% of the sums thus retained shall be released from the Escrow count to the Concessionaire. Within 14 days after the issue of Vesting Certificate accordance with Article-38 [Divestment of Rights and Interests] of the Concession Agreement) the sums thus retained shall be released from the Escrow count to the Concessionaire.
ARTICLE 32

INSURANCE

32.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the "Insurance Cover"). These shall include, but not limited to (A) During Construction Period: (i) Contractor's All Risk, including design defect (ii) Workmen Compensation (iii) Construction Plant and Machinery (iv) Advance Loss of Profits and (v) Third Party Liability (vi) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (v) and (B) During Operation Period: (i) Standard Fire and Special Perils (ii) Business Interruption (iii) General Public Liability (iv) Construction Plant and Machinery (v) Accident (vi) Automobile (vii) Workmen Compensation, loss damage or destruction of the project facility replacement value (viii) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (vii). The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on MSRDC as a consequence of any act or omission of the Concessionaire during the Construction Period. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lender's dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues. This level shall be agreed with MSRDC within 120 days of the date of this agreement or within such time as may be decided by MSRDC, but not later than the financial close.

32.2 Notice to MSRDC

Not later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to MSRDC, in reasonable detail, information in respect of the insurance that it proposes to effect and maintain in accordance with this Article 32. Within 30 (thirty) days of receipt of such notice, MSRDC may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.