

Environmental and Social Due Diligence Report

Project Number: 47083-004
January 2022

INDIA: Accelerating Infrastructure Investment Facility in India – Tranche 3 Shamlaji Expressway Private Limited (Part 27 of 34)

Prepared by India Infrastructure Finance Company Limited for the India Infrastructure Finance Company Limited and the Asian Development Bank.

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महाराष्ट्र MAHARASHTRA

2018

AL 864579

प्रधान मुद्रांक कार्यालय, मुंबई
प.सू.वि.क्र. ८००००९९

31 AUG 2018

सक्षम अधिकारी

श्रीमती. पी. एस. तळकर

SIX LANING OF SHAMLAJI TO MOTACHILODHA FROM KM 401.200 TO KM 494.410
(LENGTH 93.210 KM) SECTION OF NH-8 IN THE STATE OF GUJARAT UNDER
NHDP PHASE-V(PACKAGE-VI) ON HYBRID ANNUITY MODE PROJECT

EPC CONTRACT

THIS CONTRACT is made at Mumbai on 10th Sep 2018

BETWEEN

1. M/s. **SHAMLAJI EXPRESSWAY PRIVATE LIMITED**, (SEPL) a Company incorporated under the Companies Act, 2013 and having its registered office at Petch Area, Circuit House Road, Opp. Dak Bungalow, Nimbahera – Pin - 312601 India (the "Concessionaire"); and
2. M/s. **CHETAK ENTERPRISES LIMITED**, (CHETAK), a Company incorporated under the Companies Act, 1958 and having its registered office at Petch Area, Circuit House Road, Opp. Dak Bungalow, Nimbahera – Pin - 312601 India and Head office at 501, Naman Center, C-31, G-Block, Bandra Kurla Complex, Mumbai-400051 (the "EPC Contractor").

२/Annexure-II

मुद्रांक विक्री नोंद वही अनु. क्रमांक- / दिनांक
(Serial No. /Date)

014752

Agreement

14 SEP 2018

३. दस्ताचा प्रकार
(Nature of document)
३. दस्त नोंदणी करण्यात आहेत का ?
(Whether it is to be registered?) Yes/No
४. मिळकतीचे थोडक्यात वर्णन-
(Property Description in brief)
५. मुद्रांक विकत घेणाऱ्याचे नांव व सही
(Stamp Purchaser's Name & Signature)
६. हस्ते असल्यास त्याचे नाव, पत्ता व सही
(If through other person then Name, Address & Signature)
७. दुसऱ्या पक्षकाराचे नाव
(Name of the other Party)
८. मुद्रांक शुल्क रक्कम
(Stamp Duty Amount)
९. परवानाधारक मुद्रांक विक्रेत्याची सही व परवाना क्रमांक
तसेच मुद्रांक विक्रीचे ठिकाण / पत्ता

MAHLAJI EXPRESSWAY PRIVATE LIMITED
501, Naman Center, C-31, G-Block,
Bandra Kurla Complex, Bandra (E),
Mumbai - 400 051.

CHETAK ENTERPRISES LIMITED
501, Naman Centre, C-31, G-Block
Bandra Kurla Complex,
Mumbai - 400 051.

रवाना क्रमांक ८००००११
क विक्रीचे ठिकाण/पत्ता: सौ. कांचन हर्षद बे
ने १०, वांद्रे कोर्टासमोर, ए.के.मार्ग, वांद्रे पूर्व, मुंबई-४०
कारणासाठी त्यांनी मुद्रांक खरेदी केला आहे.
कि. खरेदी केल्यामुळे ए.के.मार्ग वांद्रे पूर्व येथील

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Contract unless the context otherwise requires:

"Affiliate" means in relation to any company, any other company, which directly or indirectly is in control of, is controlled by, or is under common control with that company.

"Appendix" means any Appendix to this Contract.

"Appointed Date" means the date on which the Concessionaire achieve the Financial close and every conditions Precedent is satisfied, in accordance with the provisions of the Concession Agreement, and such date shall be the date of commencement of the Concession Period"

"Authority" means The National Highways Authority of India, established under the National Highways Authority of India Act 1988, represented by its Chariman and having the Principle offices at G-5 & 6, Sector 10, Dwarka, New Delhi – 110 075.

"Agreement" or "Concession Agreement" means this agreement and Concession Agreement its Recitals, and the Schedules hereto and any amendments thereto made in accordance with provisions contained in the Concession Agreement.

"Applicable Laws" means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgement, decrees, injuctions, writs, and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement.

"Base Date" means the date of execution of of this Contract specified on first page.

"Bill of Quantity" or "BOQ" shall mean items forming part of the works and rates/price specified in Appendix 11 and shall have the meaning assigned thereto.


"Business Day" means any week day other than a Sunday, when banks are open for the transaction of business in the State of Himachal Pradesh.

"Competent Authority" means any agency, legislative, judicial or executive authority, department, ministry, public or statutory person, whether autonomous or not, of the Government of India, GoHP or any other subdivision or instrumentality thereof.

"Change in law" means the occurrence of any of the following after the date of bid;

- (a) The enactment of any new Indian law;
- (b) The repeal, modification or re-enactment of any existing Indian law;

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- (c) The commencement of any Indian Law which has not entered into effect until the bid date
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) Any change in the rates of any of the Taxes that have a direct effect on the Project;

"Clearances" means, as on the date of execution of this Agreement, any consent, license, approval, applicable permits, ruling, exemption or other authorization of whatsoever nature which is required to be granted by, or any registration or filing with, any Competent Authority as may be necessary in connection with the Project, as specified in the Concession Agreement Schedule – E hereto.

"Commencement Date" means the date Authority Notify the Appointee Date of the project.

"Completion Certificate" means completion certificate to be issued by the Concessionaire to the EPC Contractor upon completion of the Works in accordance with the Contract. This completion certificate shall be issued only on issue of completion certificate by the Authority or Independent Engineer.

"Concession Agreement" means the agreement dated 7th October 2016 executed between Shiv Valley Highways Private Limited (SEPL) and The National Highways Authority of India, (NHAI) (the Authority)

"Concessionaire" means M/s. SHAMLAJI EXPRESSWAY PRIVATE LIMITED, (SEPL)

"Concessionaire's Clearances" means the list of Clearances required to be obtained by the Concessionaire and specified in the Article 4 of the Concession Agreement – Sub Clause 4.1.3 (a),(b),(c),(e),(f) & (g).

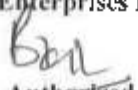
"Concessionaire's Representative" means the person from time to time as appointed as the Concessionaire's Representative under Clause 3.2.

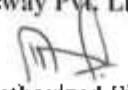
"Construction Documents" means all drawings, calculations, computer application software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature, prepared or submitted or to be prepared or submitted by the EPC Contractor after the Base Date.

"Contract" means this contract, including Appendices, Technical Requirements and Performance Standards, drawings, specifications and other relevant Documents.

"Contract Price" means the Contract Price as defined in Appendix 3, being the price of providing works and fulfilling the EPC Contractor's other obligations under the Contract.

"Control" means:

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- (A) the power (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) to appoint and/or remove all or such of the members of the board of directors of a company as are able to cast a majority of the votes capable of being cast by members of that board; or
- (B) the holding of (or possession of the beneficial interest in) shares or other securities in any company which in aggregate confer on the holders thereof in excess of 50 percent of the total voting rights exercisable at general meetings of that company.

"Cost" means all expenditure incurred whether on or off the site, including reasonable overheads reasonably allocated.

"CPI (IW)" means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India, and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (W) published for the period ending with the preceding quarter.

"Defects" means defects in the Existing Road, Project Highway and Works.

"Defects Liability period" means the period of 12 Months from the date of issue of Completion Certificate.

"Directive" means any present or future requirement, instruction, direction, order, regulation or rule of any Competent Authority which is legally binding or which should customarily be observed by a reasonable and prudent Concessionaire, designer, operator or construction EPC Contractor of facilities similar to the Project Highway and any modification, extension or replacement thereof from time to time in force.

"Dissolution" of a person includes the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administration, administrative or other receivership or dissolution of that person and any equivalent or analogous proceedings by whatever name known and in whatever jurisdiction, and any step taken (including, without limitation, the presentation of a petition or the passing of a resolution) for or with a view to any of the foregoing.

"Drawings" shall mean all the drawings, calculations and technical information of a like nature provided by the Concessionaire to the EPC Contractor under the contract and all drawings, calculations, samples, patterns, models, operation & maintenance manual and other technical information thereof annexed to this Contract or Concession Agreement or forming part of it and shall include any corrections or modifications thereof by the Competent Authority or Concessionaire.

"Employer" means The National Highways Authority of India, having the Principle offices at G-5 & 6, Sector 10, Dwarka, New Delhi – 110 075.

"Environmental Management Plan" means environmental and social management plan specified in Appendix 9

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"EPC Contractor" means M/s. Chetak Enterprises Limited (CEL) (the "EPC Contractor").

"EPC Contractor Clearances" mean all Clearances required for the provision of works and for the use of the Project Highway notified in the Article 4 of the Concession Agreement – Sub Clause 4.1.3 (d).

"EPC Contractor's Equipment" means all machinery, apparatus and other equipments (other than Temporary Works) required for the execution or completion of the Works and remedying of any defects therein.

"EPC Contractor's Representative" means the person appointed as the EPC Contractor's Representative in accordance with Clause 4.8

"Error" is defined in Clause 5.2.

"Force Majeure" shall have the meaning assigned thereto in Clause 17 of the Contract.

"GoGUJ" means the Government of Gujarat, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Gujarat, and its administrators, successors and permitted assigns.

"Good Industry Practice" means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the provisions of the NH Act, and would mean good engineering practices in the design, engineering, construction and project management and which would be expected to result in the performance of its obligations by the Concessionaire and in the operation and maintenance of the Project Highway in accordance with this agreement, Applicable Laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency.

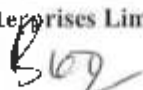
"Independent Engineer" means an engineering firm appointed as such under the Concession Agreement.

"Intellectual Property" includes:

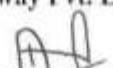
- (A) patents, trade marks, service marks, rights in designs, trade names, copyrights and topography rights, in each case whether registered or not;
- (B) Applications for registration of any of them;
- (C) Rights under licences and consents in relation to any of them; and
- (D) All forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world.

"Letter of Acceptance" or "LOA" means, the Letter of Acceptance (LOA) dated 01st Sep 2018 issued to the EPC Contractor and accepted by the EPC Contractor.

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"Liability" includes all and any claims, liabilities, costs, damages, expenses, fines and penalties.

"Maintenance Certificate" is the certificate issued under Clause 11.6.

"Maintenance Works" means:

- (A) all remedial works necessary or appropriate in terms of this Contract to remedy any Defect or Error becoming apparent at any time before the expiration of the Defects Liability Period;
- (B) Without prejudice to the generality of paragraph (A) the maintenance Works specified in Appendix 1 and in the Technical Requirements and Performance Standards to be undertaken in terms of this Contract.

"Materials" means things of all kinds (other than Plant) to be provided and incorporated in the Permanent Works by the EPC Contractor, including the supply-only items (if any), which are to be supplied by the EPC Contractor as specified in the Contract.

"Parties" means the Concessionaire and the EPC Contractor, their successors and permitted assigns.

"Permanent Works" means the permanent Works to be designed, constructed, operated and maintained in accordance with this Contract.

"Person" means any natural Person, firm, corporation, company, voluntary association, partnership, joint venture, trust, incorporated organisation, unincorporated organisation, Competent Authority or other entity, having legal capacity.

"Plant" means machinery, apparatus, equipment and instrumentation intended to form or forming part of the Permanent Works, including the supply-only items (if any), which are to be supplied by the EPC Contractor as specified in the Contract.

"Project Assets" means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of licence, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road overbridges, drainage works, traffic signals, sign boards, kilometre-stones, toll plaza[s], electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project Highway, but does not include Additional Facilities;

"Project Highway" shall have the meaning assigned to in the Concession Agreement.

"Project Site" means, the lands and the rights, in relation thereto, which are required for the Project Highway and includes the approach land on either end

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of the Project Highway and other areas on, into or through which the Project Highway or any other construction relating to the Project Highway is situated, located, passes through, sits upon or overlies,

"Provisional Certificate" shall have the meaning set forth in Clause 14.3 of Concession Agreement;

"Price Index" Shall comprise; (a) 70% (Seventy per cent) of WPI and (b) 30% (thirty per cent) of CPI (IW)

"Price index Multiple" means for every month occurring after the appointed date, the Authority shall compute the variation in Price Index occurring between the Reference Index Date preceding the Bid Date and the Reference Index Date Preceding the date of Invoice, and shall express the latter as a multiple of the former (the "Price index Multiple")

"Punch List" shall have the meaning ascribed to it in Clause 14.3 of Concession Agreement;

"Remedial Works" includes redesign, modification, repair, replacement manufacture and other works and services necessary or appropriate to remedy any Error or Defect.

"Scheduled Completion Date" means the date 720 days from Appointed Date for the work.

"Service Road" means the carriageway on either side of the Main carriageway commencing from and terminating at the specified chainages and which are further connected to the Main carriageway in order to enable the users of the Project Highway to deviate from the Main carriageway and gain access to the areas surrounding the Project Highway.

"Sub EPC Contractor" means any Person to whom any part of the Works has been subcontracted in accordance with Clause 4.10.

"Taking over Certificate" means a certificate issued under Clause 10.1.

"Taking over Requirements" means that:

- (A) Achievement of Completion Certificate/ Provisional Completion Certificate.
- (B) The Works have passed all the Tests on Completion and all certificates required in that regard under Appendix 6 have been issued;
- (C) the EPC Contractor has provided the Concessionaire's Representative with such evidence as he may have reasonably required to demonstrate that the Plant and Materials have vested in the Concessionaire; and
- (D) the EPC Contractor has provided the Concessionaire's Representative with such evidence that he may have reasonably required to demonstrate that the EPC Contractor has complied with all laws relevant to the Works and has obtained all the EPC Contractor's Clearances.

"Taxes" means any tax, income tax, corporate tax, including sales tax, stamp duty, customs and import duties, levy, impost, octroi, duty imposed and/or levied of any nature whatsoever, whether by GOI, GoGUJ or local authorities, and

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wherever and whenever charged, levied or imposed, together with any interest and penalties in relation thereto, within the Republic of India.

"Technical Requirements and Performance Standards" means the requirements and standards set out in Appendix 2.

"Temporary Works" means all temporary works of every kind (other than EPC Contractor's Equipment) required for the Works.

"Tests" means the tests which the EPC Contractor is required to carry out in accordance with this Contract specified in Appendix - 6

"Tests on Completion" means the tests on completion specified in Appendix 6.

"Time for Completion" means the period of **720 days** commencing on the Appointed Date of the Project, or as extended under Clauses 8.3 and 13.

"Toll Plaza" means the points at which Fees are collected from the Users of the Project Highway.

"Users" means users of Project Highway

"Variation" means any alteration and/or modification as to Technical Requirements and Performance Standards, and scope of Works specified in Appendix 1 and the LOA pursuant to Change of Scope Order and/or as instructed by the Concessionaire's Representative.

"Works" means the works detailed in Appendix 1 and Appendix 11 (BOQ), which are to be carried out at Lum sum price and in accordance with the Technical Requirements and Performance Standards, Construction Documents and undertaken by the EPC Contractor for the provision of the Project Highway services and things to be designed, manufactured, supplied, executed, constructed, installed, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken by the EPC Contractor for the provision of the Project Highway and the Maintenance Works.

"WPI" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

1.2 Interpretation

- (i) Unless the context otherwise requires reference in the Contract to the **"EPC Contractor"** includes reference to its Sub Contractors and their respective Affiliates, agents and employees.
- (ii) In this Agreement, unless the context otherwise requires:
 - (a) words denoting the singular shall include the plural and vice versa;
 - (b) heading and bold type face are only for convenience and shall be ignored for the purposes of interpretation;

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- (c) reference to any legislation or law or rules or to any provision thereof shall include references to any such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted including but not limited to, the implementation of this Project during the Concession Period;
- (d) references to the word "include" or "including" shall be construed without limitation;
- (e) references to this Agreement or to any other agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as the same may from time to time be amended, varied, supplemented or novated;
- (f) a reference to an Article, section, subsection, paragraph or Appendix is, unless indicated to the contrary, a reference to an Article, section, subsection, paragraph or Appendix to this Agreement; and
- (g) the Appendices to this Agreement form part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement.
- (h) The capitalised terms used herein but not defined shall have the meaning assigned thereto in the Concession Agreement.

1.3 Law

The Contract shall be construed in accordance with and governed by the laws of India.

1.4 Language

The language of the Contract is English. All correspondence, Construction Documents and other information generated in connection with the Works shall be in English. Instructions and notices to the public and staff and all other signs and information notices shall be in English and Hindi.

1.5 Severability of Terms

If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that shall not affect or impair:

- (A) the legality, validity or enforceability in that jurisdiction of any other provision of this Contract; or
- (B) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Contract.

1.6 Entire Agreement

- (A) For the purposes of this Clause 1.6, "Pre-contractual Statement" means a draft, agreement, undertaking, representation, warranty, promise,

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assurance or arrangement of any nature whatsoever, whether or not in writing, relating to this Contract made or given by a Party or any other person at any time prior to the execution of this Contract.

- (B) This Contract constitutes the whole and only agreement between the parties relating to the Project Highway and the Works.
- (C) Except to the extent repeated in this Contract, this Contract supersedes and extinguishes any pre-contractual statement.
- (D) Each Party acknowledges that in entering into this Contract it is not relying upon any pre-contractual statement, which is not set out in this Contract.
- (E) Neither Party shall have any right of action against the other Party arising out of or in connection with any pre-contractual statement (except in the case of fraud) except to the extent repeated in this Contract.
- (F) This Contract may only be varied in writing signed by each of the Parties.

1.7 Priority of Documents

The documents forming this Contract are to be taken as mutually explanatory of with one another. They have priority in the following order:

- (A) Concession Agreement Vol.I, Vol.II & Vol. III.
- (B) This Contract (including the Appendices) and addendum;
- (C) The approved Drawings and sketches;


If there is any inconsistency or discrepancy between the documents forming the Contract or between one or more requirements of any of those documents then the EPC Contractor shall identify and bring the inconsistency or discrepancy to the attention of the Concessionaire's Representative. The Concessionaire's Representative may on becoming aware of any such inconsistency or discrepancy, issue instructions resolving the inconsistency or discrepancy and directing the EPC Contractor as to how to proceed. The EPC Contractor shall comply with these instructions and directions.

The EPC Contractor acknowledges that he is aware of terms of the Project Agreements, and that he is fully aware of the consequences to the Concessionaire, which would or are likely to result from a breach by the EPC Contractor of his obligations under this Contract. The EPC Contractor assumes full responsibility for such breach.

The EPC Contractor also acknowledges the fact that the Concession Agreement between SEPL and the Authority is always binding and back to back on the EPC Contractor limited to the construction and the routine maintenance under the scope of the EPC Contractor as per this Contract, till the end of Defects Liability period and in case of any discrepancy in whatsoever matter, the clauses of Concession Agreement shall prevail over and above the Contract and the decision of the Authority or any of its representative shall be binding on all the parties hereto.

1.8 Documents on the Project Site

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The EPC Contractor shall keep on the Project Site one complete set of the documents forming the Contract, the Construction Documents, Variations, and all other documents and all other communications prepared, submitted, given or issued in connection with the Works. The Concessionaire's Representative shall have the right to custody, use and copy such documents at all reasonable times.

1.9 Modification to the Contract

In the event of any provisions of the Contract requiring to be modified after the Contract has been signed, the modifications shall be made in writing and signed by the Concessionaire and the EPC Contractor. Such modifications will not be effective until the same have been signed by both the parties. Any verbal or written arrangements for abandoning, modifying, extending, reducing or supplementing the Contract, or any of the terms thereof shall be deemed to be provisional and shall not be binding on any party unless and until the same are incorporated in a formal instrument and signed by the Concessionaire and the EPC Contractor.

1.10 Communications

- (A) Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing.
- (B) Any such notice or other communication shall be addressed as provided in paragraph (C) and, if so addressed, shall be deemed to have been duly given or made (unless it is obvious that it has not been) as follows:
 - (i) if sent by personal delivery, upon delivery at the address of the relevant Party (or, as the case may be, the Concessionaire's Representative);
 - (ii) if sent by Registered post, (5) days after dispatch; and
 - (iii) if sent by facsimile transmission, when despatched, but only if the sender's transmission report shows the entire facsimile to have been received by the recipient and only if the transmission was received in legible form.
- (C) The relevant addressee, address and facsimile numbers of the Parties and the Concessionaire's Representative for the purposes of this paragraph (C), subject to paragraph (D) are:

Concessionaire : Shamlaji Expressway Private Limited,
Addressee : Mr. Hukumi Chand Jain,
Address : Petch Area, Circuit House Road, Opp. Dak
Bunglaow, Nimbahera – 312 601
Rajasthan

EPC Contractor : M/s Chetak Enterprises Limited,
Addressee : Mr. Neeraj Vijay.
Address : 501, Naman Center, C-31, G-Block,
Bandra Kurla Complex, Mumbai-400051

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- (D) A Party and the Concessionaire's Representative may notify the other Party (and, where applicable, the Concessionaire's Representative) of a change to its name, addressee, address and facsimile number for the purposes of paragraph (C) provided that such notification shall only be effective on:
- (i) the date specified in the notification as the date on which the change is to take place; or
 - (ii) if no date is specified or the date specified is less than five days after the date on which notice is given, the date falling five days after notice of any such change has been given.

1.11 Inspection of Site and Site data.

The EPC Contractor shall be deemed to have inspected and examined the Project Site and information available in connection therewith and to have satisfied himself fully before submitting his bid about the sub-surface conditions, the hydraulic and climatic conditions, the extent and nature of work and materials necessary for the completion of the works, the means of access to the site and accommodation he may require. He shall also be deemed to have obtained all necessary information regarding risks, contingencies and all other circumstances, which may influence or affect the Contract.

The EPC Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his tender for the works and of the rates and prices stated in the Bill of Quantities, all of which shall except in so far as it is otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper execution, completion and maintenance of Works.

1.12 Instructions in Writing

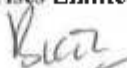
Instructions given by the Concessionaire or his representative shall be in writing, provided that if for any reason the Concessionaire considered it necessary to give any instructions orally, the EPC Contractor shall comply with such instructions. Confirmation in writing of such oral instructions given by the Concessionaire, whether before or after carrying out of the instructions shall be deemed to be instructions within the meaning of this clause. The EPC Contractor shall also be bound to carry out any instructions issued by client as confirmed in writing by the Concessionaire.

2. CLEARANCES AND LAWS

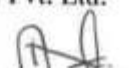
2.1 Compliance with Laws and Directives

- (A) The EPC Contractor shall in all matters arising in the performance of the Contract and the provision of the Works comply with, give all notices under, and pay all fees required by, the provisions of all and any laws or by any applicable Competent Authority.

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- (B) The EPC Contractor shall obtain all EPC Contractor Clearances in good time before they are required and ensure that they are kept in full force and effect.

2.2 Clearances

The EPC Contractor shall be responsible for obtaining the Clearances and permits as mentioned in the Appendix 4. The EPC Contractor shall make available all required information, resources, designs, Drawings and assistance that may be required for obtaining Concessionaire's Clearances.

2.3 Import Permits

Without prejudice to the generality of Clause 2.1, the EPC Contractor shall obtain:

- (A) all import permits and other licences required for the importation of any Plant, Materials and EPC Contractor's Equipment and shall pay all customs and import duties arising on such importation.
- (B) all permits and other licences required for exportation of any Plant, Materials and EPC Contractor's Equipment that the EPC Contractor desires to export, and for the exportation and re-importation of any component or piece of equipment to be exported for repairs or replacement.

3. THE CONCESSIONAIRE

The Concessionaire shall carry out the duties specified or implied in the Contract including the issue of instructions, decisions, certificates and orders as are specified in the Contract or necessary for the observance/ administration of the Contract and expeditious and timely completion of the Works.

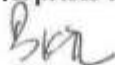
3.1 Access to the Project Site

The Concessionaire shall on and from the appointed date grant the EPC Contractor right of access to the Project Site for the purpose of carrying out of the EPC Contractor's obligations under this Contract.

If there is any delay by the Concessionaire in granting access to the Project Site in accordance with this Clause 3.1, the EPC Contractor shall use his best endeavours to reschedule the Works so as not to delay achieving the Taking over Requirements. If the Works cannot be rescheduled then the EPC Contractor shall give notice to the Concessionaire's Representative. After receipt of such notice the Concessionaire's Representative shall in accordance with Clauses 3.6 and 8.3 proceed to agree or determine any extension of time to which the EPC Contractor is entitled and shall notify the EPC Contractor accordingly, provided that the EPC Contractor shall not be entitled to any greater extension of time than is awarded to the Concessionaire under the Concession Agreement (where failure to provide access or possession arises as a result of a failure under the Concession Agreement to provide access to and possession of the Project Site).

3.2 The Concessionaire's Representative

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The Concessionaire shall appoint a representative to act under this Contract, to represent the Concessionaire. The name of the Concessionaire's Representative shall be notified to the EPC Contractor.

3.3 The Concessionaire's Representative's Duties and Authority

The Concessionaire's Representative shall carry out such duties as are specified in the Contract. The Concessionaire's Representative may exercise the authority specified in or necessarily to be implied from the Contract, and shall be the EPC Contractor's primary point of contact with the Concessionaire in relation to the Works, provided that except as expressly stated in the Contract, the Concessionaire's Representative shall have no authority to relieve the EPC Contractor of any of his duties, obligations or responsibilities under the Contract, nor to amend the Contract.

The Concessionaire's Representative shall be at liberty to object to and require the EPC Contractor to remove forthwith from the Works any person provided by the EPC Contractor who, in the opinion of the Concessionaire's Representative, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose presence on Project Site is otherwise considered by the Concessionaire's Representative to be undesirable, and such person shall not be again allowed upon the Works without the consent of the Concessionaire's Representative. Any person so removed from the Works shall be replaced as soon as possible.

Any proposal, inspection, examination, testing, consent, approval or similar act by Concessionaire's Representative (including absence of disapproval) shall not relieve the EPC Contractor from any responsibility, including responsibility for his errors, omissions, discrepancies, and non-compliance with provisions of this Contract.

3.4 The Concessionaire's Representative's Authority to Delegate

The Concessionaire's Representative may from time to time delegate any of his duties to assistants and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy has been delivered to the EPC Contractor.

Any determination, instruction, inspection, examination, testing, consent, approval or similar act by any such assistant of Concessionaire's Representative, in accordance with the delegation, shall have the same effect as though it had been an act of the Concessionaire's Representative. However any failure to disapprove any Plant, Materials, design or workmanship shall not prejudice the right of Concessionaire's Representative to reject such Plant, Materials, design or workmanship.

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3.5 Concessionaire's Representative's Authority to Inspect Books

The Concessionaire's Representative shall have authority to access, inspect, examine and audit the accounts and records relating to this Contract, maintained by the EPC Contractor and obtain copy thereof. The EPC Contractor shall afford all assistance and produce all records and books of accounts which Concessionaire's Representative may reasonably require to carry out such checks. Concessionaire's Representative may also appoint a duly qualified chartered accountant in order to enable the due discharge of his responsibilities. The Chartered Accountant so appointed shall have the same rights as Concessionaire's Representative in relation to access, inspection, examination and audit of the records and accounts maintained by EPC Contractor.

3.6 The Concessionaire's Representative to Attempt Agreement

When the Concessionaire's Representative is required to determine value, Cost or any adjustment (increase or decrease) to the Contract Price or extension of time, he shall consult with the EPC Contractor in an endeavour to reach agreement and shall determine the matter in accordance with this Contract.

If the EPC Contractor disputes the Concessionaire's Representative's determination of value, Cost or adjustment to the Contract Price, the matter shall be settled by the Concessionaire in accordance with the following provisions:

- (A) If the EPC Contractor disagrees with the value, Cost or adjustment determined by the Concessionaire's Representative he shall give notice in writing of his intention to the Concessionaire's Representative, as soon as may be reasonable and in any event within 7 days after receipt of notice of the value, Cost or adjustment and thereafter within a further period of 7 days notify the Concessionaire of such dispute.
- (B) The Concessionaire upon receipt of a notice under this Clause may require the Concessionaire's Representative to furnish to the Concessionaire all the reasons, records and documents based upon which the Concessionaire's Representative had determined the value, Cost or adjustment.
- (C) The EPC Contractor shall permit the Concessionaire to inspect all records and shall supply him with copies thereof and with all such further information as and when the Concessionaire shall so require.

The decision of the Concessionaire under this Clause shall be final and binding on the Parties for all matters relating to:

- (i) Measurements;
- (ii) Specifications and the interpretation thereof;
- (iii) Drawings and their interpretation;

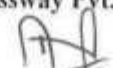
and not open to any dispute or arbitration.

The EPC Contractor shall comply with instructions given by the Concessionaire's Representative in accordance with this Contract.

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4. THE EPC CONTRACTOR

4.1 Scope of work

- a) The Construction Works shall be executed on the Site, which is described in Schedule 'A' of the Concession Agreement.
- b) The EPC Sub-Contractor shall be responsible for executing the Construction Works for the Project, as specified in Annexure 1 Part I hereto, in accordance with the provisions and requirements of this EPC Contract and the Concession Agreement. The scope of Construction Works has been elaborated in Schedule 'B' and Schedule 'C' of the Concession Agreement. The Construction Works shall be executed in accordance with the Specifications and Standards set forth in Schedule 'D' of the Concession Agreement.


For avoidance of doubt, it is clarified that, the EPC Contractor's scope of work of proposed Six- Laning of Shamlaji to Motachiloda from km 401.200 to 494.410 (length Km) section of NH-8 in the state of Gujarat as specified in Schedule-B of the Concession Agreement

4.2 General Obligations

The EPC Contractor shall carry out the Works as set out in Appendix 1 and Appendix 11 in compliance with Technical Requirements and Performance Standards, approved Construction Documents within Time for Completion and including without limitation:

- (A) shall execute the Works with the skill, care and diligence to be expected of appropriately qualified and experienced professional engineers with experience of work similar in scope and nature to that required under the Contract; and shall execute the Works using the best techniques and engineering principles and practices and Good Industry Practice. The Works shall be executed strictly as per the approved designs and Drawings;
- (B) shall obtain relevant Applicable Permits and Clearances from various agencies as stipulated in the Concession Agreement. Except where otherwise stated, the EPC Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Works.
- (C) shall carry out the Works so that the Project Highway may be fully, efficiently, economically and safely used, operated and maintained with the minimum interruption for maintenance and repair and otherwise for the purposes specified or referred to in the Contract (and the documents referred to in it);
- (D) shall carry out the Works so that the replacement of the Project Highway system components and equipment will be at reasonable cost and capable of completion within a reasonable period and so that the Concessionaire will be able to realise the benefits of upgrades to manufactured Plant and to computer hardware and software;

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- (E) shall exercise the skill, care and diligence in providing the Works to be expected of a fully qualified, competent and first class EPC Contractor experienced in providing, on a turnkey basis, Works and services similar in nature and extent to the Works;
- (F) shall provide the Works so that the Project Highway will be fit for the purpose intended and will operate in accordance with applicable laws in force;
- (G) shall provide the Works in accordance with (and so that the Project Highway will meet all applicable requirements of) the Project Agreements and the documents referred to in them;
- (H) shall be responsible for the removal of the encumbrances and utilities falling in the scope of their works if required. However necessary support shall be extended by the Concessionaire.
- (I) shall set up a testing laboratory as per MOST (Ministry of Surface Transport) requirements for Concrete and other related works in the scope of EPC Contractor, and shall made available all equipments, manpower and machinery for routine and periodic laboratory as well as field tests.
- (J) shall not cover up or put out of view any work or part of Works, without the prior approval of the Concessionaire or the Concessionaire's Representative. If any work covered up or put beyond the reach of inspection/ measurement without prior approval of the Concessionaire's Representative, the same shall be uncovered by the EPC Contractor at his own cost.
- (K) shall co-ordinate with Concessionaire, NHAI, Independent Engineer and other government agencies in order to ensure timely completion of the project.
- (M) shall provide the Works in accordance with (and so that the Project Highway will meet all applicable requirements of) the Project Agreements and the documents referred to in them;
- (N) shall operate and maintain the existing road and the Project Highway so that the Technical Requirements and the Performance Standards are met with all at the times from Appointed date until the Taking Over Date.
- (O) shall maintain the Project Highway during the Defect Liability Period so that the Technical requirements and the Performance Standards are met with all at the times as per Concession Agreement.
- (P) shall be responsible for Cutting of trees, uprooting and backfilling with required material, logging & stacking at forest yards and carry out Compensatory Afforestation if required as per the provision of the Concession Agreement.
- (Q) shall liaise with respective Govt/ NHAI for implementation of rehabilitation and resettlement Plan if required.

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- (R) shall make all necessary arrangements for accomplishing the task of physical removal of encroachments as for the provision of Concession agreement.
- (S) shall provide all assistance to the NHAI /Independent Engineer/Concessionaire as it may require for the performance of its duties and services.
- (T) shall before commencement of construction works complete all activities as defined in the Concession Agreement limited to its scope of work.
- (U) EPC Contractor warrants that:
- (i) any part of the Works undertaken or to be undertaken before the Appointed date meets or will meet all the requirements of the Contract;
 - (ii) the EPC Contractor is fully experienced in the construction, testing and commissioning of major projects similar in scope, complexity, size and technical sophistication to the Project Highway;
 - (iii) the EPC Contractor is adequately financed and has sufficient technical resources to meet his obligations under the Contract;
 - (iv) the Project Highway and all parts of it will be suitable and fit for the purpose intended (whether or not the documents in the Contract are appropriate for achieving such purpose or use).
 - (V) The EPC contractor shall be responsible for the preparation of entire Project Design for Roads, Bridges and other works in line the Concession agreement and submitted the same thorough Concessionaire to appropriate authority for the approval.

Traffic Management and Diversions

The EPC Contractor shall be responsible from Commencement Date, for operation and maintenance of the existing road and the Project Highway including all traffic management, diversion and maintenance of diversions during construction, marking and signs, lookout persons all in accordance with the Technical Requirements and the Performance Standards and all liabilities arising out of all traffic management and maintenance of the project road including the existing road.

The EPC Contractor shall plan, organise and execute the Works so that there is least disruption to the flow of traffic and minimal inconvenience to the Users. Such operations which involve road diversions or any other impediments of like nature shall only be with the consent of Concessionaire's Representative, for which adequate notice shall be given by the EPC Contractor. The EPC Contractor shall also liaise with Law and Order and other Competent Authorities before affecting the aforementioned steps excluding emergencies. In the event of emergencies the EPC Contractor shall take appropriate corrective measures and notify the Concessionaire without loss of any time and as soon as notification is practicable.

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4.3 Safety and Stability

The EPC Contractor shall be fully responsible for the adequacy, stability and safety of the Works and all Project Site operations and for all methods of construction, operation and maintenance of the Existing Road and the Project Highway, irrespective of any approval or consent by the Concessionaire's Representative.

4.4 Environmental Measures

The EPC Contractor agrees to conduct his activities in connection with the Contract in such a manner so as to comply with the Environmental Management Plan and assumes full responsibility for measures, which are required to ensure such compliance. Appendix 9 provides requirements of environmental and social management.

4.5 Superintendence

The EPC Contractor shall provide all necessary superintendence of the Works for the proper fulfilling of the EPC Contractor's obligations under this Contract. Such superintendence shall be given by competent person having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory and safe execution of the Works.

4.6 Duties and Taxes

The EPC Contractor shall pay all duties and taxes in consequence of his obligations under this Contract, including import fees and customs duties.

4.7 EPC Contractor's Representative

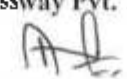
The EPC Contractor's Representative shall be the person authorised by the EPC Contractor to receive instructions, from the Concessionaire and issue instructions to the EPC Contractor's staff. If for some reason, the EPC Contractor is unable to provide the services of the named representative, then he shall notify the Concessionaire's Representative of his reasons for the inability and thereafter provide a substitute representative, who shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the Works, and shall be approved by the Concessionaire's Representative. The EPC Contractor shall when seeking approval submit the curriculum vitae of the EPC Contractor's Representative, detailing in particular the relevant project experience.

The EPC Contractor's Representative shall give his whole time to the provision of the Works. The EPC Contractor's Representative shall receive (on behalf of the EPC Contractor) all notices, instructions, consents, approvals, certificates, determinations and other communications under the Contract. Whenever the EPC Contractor's Representative is to be absent from the Project Site for a continuous period in excess of 14 days, a suitable replacement Person shall be appointed and approved in accordance with this Clause 4.8.

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The EPC Contractor's Representative may delegate, while retaining all his responsibility, any of his powers, functions and authorities to any competent Person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Concessionaire's Representative has received prior notice signed by the EPC Contractor's Representative, specifying the powers, functions and authorities being delegated or revoked.

The EPC Contractor's Representative shall appoint an assistant at the Project Site to assist him in the carrying out of his duties. He shall notify to the Concessionaire's Representative the names, duties and scope of authority of such Person. Any instructions given to any of them shall be deemed to have been given to the EPC Contractor's Representative.

The EPC Contractor's Representative and all such assistants shall be fluent in English. Also, a reasonable proportion of the EPC Contractor's superintending staff shall have a working knowledge of English.

4.8 Co-ordination of the Works.

The EPC Contractor shall be responsible for the co-ordination and proper provision of the Works, including co-ordination of other EPC Contractors or Sub-EPC Contractors. The EPC Contractor shall, upon reasonable request by the Concessionaire's Representative, co-operate with the Concessionaire in the co-ordination of the Works with the work of other EPC Contractors engaged by the Concessionaire or any other Person to whose systems the Project Highway are to be connected.

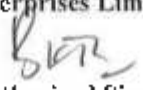
The EPC Contractor shall, in accordance with the requirements of the Concessionaire, afford all reasonable opportunities for carrying out their work to:

- (A) any other EPC Contractors employed by the Employer and their workmen,
- (B) the workmen of the Employer, and
- (C) the workmen of any duly constituted authorities who may be employed in the execution on or near the Project Site of any work not included in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works.

However, pursuant to Sub-Clause 4.9, the EPC Contractor shall, on the written request of the Concessionaire:

- (A) make available to any such other EPC Contractor, or to the Employer or any such authority, any roads or ways for the maintenance of which the EPC Contractor is responsible,
- (B) permit the use, by any such, of Temporary Works or EPC Contractor's Equipment on the Project Site, or
- (C) provide any other service of whatsoever nature.

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4.9 Sub-Contracting

The EPC Contractor shall subcontract the work in accordance with Concession Agreement. However, for the major sub-contracting the EPC Contractor shall take prior approval from the Concessionaire.

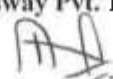
4.10 EPC Contractor's Responsibility for Subcontracts

- a) The EPC Contractor shall ensure that all subcontracts are made in writing.
- b) The EPC Contractor shall be responsible for observance by all Sub-EPC Contractors of all the provisions of this Contract. The EPC Contractor shall be responsible for the acts or defaults of any Sub-EPC Contractor, his agents or employees, as fully as if they were the acts or defaults of the EPC Contractor, his agents or employees.
- c) The EPC Contractor shall obtain, co-ordinate and submit to the Concessionaire's Representative for his information all details (including details of work to be carried out off the Project Site) from Sub Contractors. The Sub Contractor shall be responsible for the locations of their work or materials, in order to ensure that there is no conflict with the work of other Sub Contractors.
- d) All contracts and arrangements between the EPC Contractor and its Sub Contractors shall be subject to provisions which the EPC Contractor shall not waive, release or impair giving the EPC Contractor an unrestricted right to assign to the Concessionaire the relevant subcontract and all benefits, interests, rights and causes of action arising under it and provisions whereby the Concessionaire may subsequently assign the subcontract as it requires.
- e) The EPC Contractor must assign to the Concessionaire all the EPC Contractor's rights under the Subcontracts Warranties on the date which is five days after the earlier of (i) termination of the Contract or of the undertaking of the Works by the EPC Contractor and (ii) the date of the Maintenance Certificate for the Works. Before this assignment the EPC Contractor holds these rights on trust for itself and the Concessionaire.
- f) After this assignment, the EPC Contractor must inform each relevant Sub Contractor of the assignment. The EPC Contractor must also use all reasonable endeavours to procure that each Sub Contractor delivers to the Concessionaire written acknowledgment of the notice and consent to the assignment.
- g) The assignment, notice, acknowledgment and consent must all be in a form approved by the Concessionaire.
- h) "Subcontract Warranty" in this Clause 4.11 means any guarantee, warranty, covenant or similar undertaking under a subcontract for the Works.

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- i) The rights of the EPC Contractor under the Contract are personal to it. Accordingly, they are not capable of assignment or transfer. A single security interest in favour of the EPC Contractor's bankers over payments due under the Contract is not an assignment or transfer in breach of this Clause 4.10

4.11 Setting Out

The EPC Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or, if not specified, given by the Concessionaire's Representative. The EPC Contractor shall rectify, any error in the positions, levels, dimensions or alignment of the Works (whether or not the error arises because of information supplied by or on behalf of the Concessionaire or the Concessionaire's Representative). The EPC Contractor shall be wholly responsible for maintaining and checking the lines and levels. The EPC Contractor shall, for this purpose, also install permanent and temporary benchmarks and reference pillars.


If at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the EPC Contractor, on being required so to do by the Concessionaire's Representative shall at his own cost, rectify such error to the satisfaction of the Concessionaire. The checking of any setting-out or of any line or level by the Concessionaire shall not in any way relieve the EPC Contractor of his responsibility for the accuracy thereof and the EPC Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting-out the Works.

4.12 Quality Assurance

Within 15 days after Appointed Date, the EPC Contractor shall institute and comply with a quality assurance system to demonstrate compliance with the requirements of the Contract. The EPC Contractor shall submit a quality control & assurance plan as specified in Appendix-6 (Quality Control & Assurance Plan), for the approval of the Concessionaire's Representative. Such system shall be in accordance with Good Industry Practices. The quality assurance system shall also involve the maintenance of suitable records, charts, samples, photographs, etc., as approved by the Concessionaire's Representative. Compliance with the quality assurance system shall not relieve the EPC Contractor of his duties, obligations or responsibilities under the Contract. The Concessionaire's Representative shall have the right to inspect the materials, Works, records and documents, and to take measurements. The EPC Contractor shall offer full co-operation to such inspections and measurements.

Details of all periodic tests, procedures and compliance documents shall be submitted to the Concessionaire's Representative for his information before each design and execution stage is commenced. When any document is issued to the Concessionaire's Representative, it shall be accompanied by the signed quality statements for such document, in accordance with the details stated in the Contract. The Concessionaire's Representative shall be entitled to audit any aspect of the system and require corrective action to be taken, and the suggested corrective action shall be implemented by the EPC Contractor at his cost, within the time-frame notified by the Concessionaire's Representative. The EPC Contractor shall ensure prompt compliance related to rectification or

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reconstruction of Works as per instructions of the Concessionaire's Representatives.

The EPC Contractor shall ensure adhering to all requirements of technical specifications as provided in Concession Agreement and MORTH/IRC specifications and shall ensure the performance standards. In case of failure, the EPC Contractor shall rectify the defects at its own risk and cost within 15 days of intimation by Concessionaire.

4.13 Project Site Data

The EPC Contractor shall be deemed to have inspected and examined the Project Site and its surroundings and to have satisfied himself before entering into the Contract, as to:

- (A) the form and nature of the Project Site (including, inter alia, the surface and sub-surface conditions and geotechnical factors);
- (B) the hydrological and climatic conditions;
- (C) the extent and nature of the work and Plant and Materials necessary for the execution and completion of the Works and the remedying of any Defects;
- (D) the suitability and the adequacy of the Project Site for the execution of the Works;
- (E) the means of access to the Project Site and the accommodation the EPC Contractor may require;
- (F) availability of building materials, water, power;
- (G) the requirements of maintenance during construction period and defect liability period;

All other factors and circumstances affecting the EPC Contractor's rights and obligations under the Contract, the Contract Price and Time for Completion.


4.14 Matters Affecting the Execution of the Works

The EPC Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price. Unless otherwise specifically stated in the Contract, the Contract Price shall cover all his obligations under the Contract and all things necessary for the provision of the Works.

4.15 Access Routes

The EPC Contractor shall be deemed to have satisfied himself as to the suitability and availability of the access routes and service roads he chooses to use. In cases where access routes are not already available they shall be formed by the EPC Contractor. The EPC Contractor shall (as between the Parties) be responsible for the maintenance of all access routes. The EPC Contractor shall provide any signs or directions, which he may consider necessary for the

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guidance of his personnel and others. The EPC Contractor shall obtain any permission that may be required from the relevant authorities for the use of such routes, signs and directions.

4.16 Rights of Way and Facilities

The EPC Contractor shall obtain and maintain special or temporary rights-of-way required by him for access to the Project Site. The EPC Contractor shall also provide any additional facilities outside the Project Site required by him for the purposes of the Works.

4.17 Project Programmes

The EPC Contractor shall undertake the construction of the project as specified in Scheduled B and Schedule C of the Concession Agreement and in conformity with the Specifications and Standards set forth in Schedule D. The 910 days from the appointed date shall be the Scheduled date for completion of the Project (the "Scheduled Completion Date") and the EPC contractor agrees and undertakes that the Project shall be completed on or before the Scheduled Completion Date.

Accordingly the EPC Contractor shall submit a detailed programme to the Concessionaire's Representative for the completion of the works including Project Milestone within 15 days after the Base Date and shall get it approved from Concessionaire. EPC Contract is a fixed time contract and accordingly, Construction Period shall not be more than **720 days**. In case of any delays in Project Milestones; EPC Contractor shall revise the schedule with additional resource planning to meet the backlog. However in any case the completion date shall not be revised beyond the date specified in the Concession Agreement. Any delay beyond the Schedule project completion date as specified in the Concession Agreement shall attract Liquidated Damages. The programme shall include the following:

- (A) the order in which the EPC Contractor proposes to carry out the Works (including each stage of procurement, manufacture, delivery to the Project Site, construction, erection, landscaping, testing and commissioning);
- (B) the programme shall be sequenced so that the Technical Requirements and Performance Standards may be met;
- (C) all major events and activities in the production of the Construction Documents.
- (D) the particulars for the pre-construction reviews under Clause 5.3 and for any other submissions, approvals and consents specified in the Contract, and
- (E) the sequence of all tests specified in the Contract.
- (F) any other details or forms as required by Concessionaire's Representatives.

The programmes shall be developed using precedence networking techniques, showing early start, late start, early finish dates, late finish dates, critical activities

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and milestones. The EPC Contractor shall suitably modify the schedule based on the suggestions of the Concessionaire's Representative.

The EPC Contractor shall, whenever required by the Concessionaire's Representative, provide in writing, for information, a general description of the arrangements and methods, which the EPC Contractor proposes to adopt for the execution of the Works. No significant alteration to the programme, or to such arrangements and methods, shall be made before the Concessionaire's Representative has been informed of the proposed change.

The EPC Contractor shall, within the time stated in this Contract after the date of the Letter of Acceptance, provide to the Concessionaire for his information a detailed cash flow estimate, in monthly/ quarterly periods, of all payments to which the EPC Contractor will be entitled under the Contract and the EPC Contractor shall subsequently supply revised cash flow estimates, if required to do so by the Concessionaire. The EPC Contractor's fund requirement shall be in line with the cash flow estimates. The Concessionaire shall not be responsible for any delay in payment caused due to non-adhering to the cash flow estimate. The submission to and consent by the Concessionaire of such programmes or the provision of such general descriptions or cash flow estimates shall not relieve the EPC Contractor of any of his duties or responsibilities under the Contract.

If the progress of the Works does not conform to the programme, the Concessionaire's Representative may instruct the EPC Contractor to revise the programme, showing the modifications necessary to achieve completion within the Time for Completion. The EPC Contractor shall then proceed with the Works in accordance with the revised programme.

4.18 EPC Contractor's Equipment

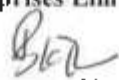
The EPC Contractor shall provide all Equipment necessary for the Works in line with the project schedule approved by the Concessionaire. All EPC Contractors' Equipment shall, when brought on to the Project Site, be deemed to be exclusively intended for the execution of the Works. Any temporary or permanent demobilization of the resources from the Project Site shall be done only after written consent of the Concessionaire's Representative. However any approval from the Concessionaire shall not absolve the responsibility of the EPC Contractor to mobilize additional resources if required for timely completion of the work.

In case of failure to match with the schedule, the EPC Contractor shall mobilize additional equipments so as necessary to cope up with the revised scheduled progress of Works. However if there is extraordinary delay in mobilizing the additional resources by EPC Contractor, Concessionaire shall arrange to mobilize the additional resources at the risk and cost of the EPC Contractor.

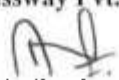
The EPC Contractor shall maintain an adequate inventory of consumables and spare parts for the EPC Contractor's Equipment and shall undertake periodic preventive maintenance as required for the relevant equipment.

The EPC Contractor shall maintain complete and accurate records of all equipment, materials, consumables and spare parts brought on to the Project Site and shall provide copies of such records to the Concessionaire upon request.

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4.19 Safety Precautions

Within 15 days after the appointed date the EPC Contractor shall provide to the Concessionaire's Representative details of his safety plans and procedures for the Works. The EPC Contractor shall comply with all safety laws relevant to the provision of the Works. The EPC Contractor shall also comply with all the obligations mentioned in the Concession Agreement during the implementation of project.

The EPC Contractor shall be responsible for the operation of machinery, use of explosives and any other work, to take all precautions necessary to ensure safety of the personnel engaged in the Works and of the public.

Explosives shall not be used by the EPC Contractor without prior permission of the Concessionaire's Representative. The EPC Contractor shall take all precautions in using the explosives and prevent damage to any nearby properties and utilities. All operations for which the explosives are used shall be at the risk and responsibility of the EPC Contractor.


The EPC Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein:

- (a) have full regard for the safety of all persons entitled to be upon the Project Site and keep the Project Site (so far as the same is under his control) and the Works (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons,
- (b) provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Concessionaire or by any duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others, and
- (c) take all responsible steps to protect the environment on and off the Project Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation.

The EPC Contractor shall send to the Concessionaire's Representative details of any accident occurring on the Project Site or otherwise affecting the Works as soon as possible after its occurrence and, in the case of a fatality or serious accident, shall notify the Concessionaire's Representative immediately. The EPC Contractor shall take such accident and emergency service actions and provide such services as may be necessary to deal with any accidents occurring on the Project Site as efficiently and expeditiously as possible and so as to protect as far as possible the health and safety of the affected persons and so as to ensure minimum interference to the safe and efficient provision of the Works and/or operation of the Project Highway.

If the EPC Contractor fails to implement the provisions of this clause 4.18, the Concessionaire may provide necessary arrangements and the cost of the same shall be recovered from the EPC Contractor's payments/ dues.

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4.20 Protection of the Environment

The EPC Contractor shall take all necessary and appropriate steps to protect the environment (both on and off the Project Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The EPC Contractor shall ensure that air emissions, surface discharges and effluent from the Project Site shall not exceed the values (if any) indicated in the Technical Requirements and Performance Standards, and the Environmental Management Plan, and shall in any case not exceed the values prescribed by applicable law.

4.21 Electricity, Water, Fuel and other Consumables

The EPC Contractor shall be solely responsible, for the supply of all electricity, water, fuel, consumables and any other services required for the purposes of the Works.

4.22 Removal of Hazardous Materials

The EPC Contractor shall in accordance with applicable law remove from the Project Site, any materials generated or released by the EPC Contractor that are toxic or similarly hazardous to the health or safety of Persons or to the environment. Completion of this removal is a pre-condition to the issue of the Taking Over Certificate.

4.23 Clearance of the Project Site

During the provision of the Works the EPC Contractor shall keep the Project Site free from all unnecessary obstructions, and shall store or dispose of any EPC Contractor's Equipment or surplus materials. The EPC Contractor shall clear away and remove from the Project Site any wreckage, rubbish or Temporary Works no longer required.

As a pre-condition to the issue of the Taking Over Certificate, the EPC Contractor shall clear away and remove from the Project Site, all EPC Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The EPC Contractor shall leave the Project Site and the Works in a clean and safe condition to the satisfaction of the Concessionaire's Representative. Except that the EPC Contractor shall be entitled to retain on the Project Site, until the date of the Maintenance Certificate, such EPC Contractor's Equipment, Materials and Temporary Works as required by him for the purpose of fulfilling his obligations under this Contract.

When the temporary Works are no longer required, the EPC Contractor shall remove the same at his own cost. In the event of failure on the part of the EPC Contractor to remove the same, the Concessionaire may get it removed and cost incurred for removal, supervision and other incidental charges shall be recovered from the EPC Contractor.

4.24 Security of the Project Site

The EPC Contractor shall be responsible for keeping unauthorised Persons off the Project Site. Authorised Persons shall be limited to the employees of the EPC

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Contractor, employees of his Sub Contractors, the Lenders or their representatives, and Persons authorised by the Concessionaire or the Concessionaire's Representative.

4.25 EPC Contractor's Operations on the Project Site

The EPC Contractor shall confine his construction operations to the Project Site. The EPC Contractor shall take all necessary precautions to keep his construction personnel and equipment within the Project Site and to keep and prohibit them from encroaching, damaging or degrading adjacent land.

4.26 Relics, Fossils, Soil, Timber, and Dismantled Materials

All gold, silver, oil, minerals, precious stones, fossils, coins, articles of value or antiquity, and structures and other relics or remains, or things of geological or archaeological interest discovered on the Project Site shall (as between the Parties) be the property of the Concessionaire. The EPC Contractor shall take reasonable precautions to prevent his personnel or other Persons from removing or damaging any such article or thing. The EPC Contractor shall immediately upon discovery of such article or thing, advise the Concessionaire's Representative, who may issue instructions for dealing with it.

The EPC Contractor shall not sell or otherwise dispose of the sand, stone, clay, aggregate, rock, or other substances or materials, timber, brush, or firewood, usufruct of horticulture, dismantled materials such as stone, brick, wood-work, steel, etc., or any other material obtained at site. As between the parties all such materials shall be the property of the Concessionaire. The Concessionaire's Representative may however permit (and subject to such conditions as it may determine) their use in the Works for the purpose of this Contract either free of cost.

5. DOCUMENTATION AND TRAINING

5.1 General Obligations

The EPC Contractor shall be fully responsible for Designing, Executing the Works as per the Design & Drawing of the Works approved by Concessionaire, including any design carried out prior to the Base Date and any design in the Technical Requirements and Performance Standards. However, any specific site information required for the purpose of modifications shall be provided by the EPC Contractor. The Concessionaire's Representative shall have authority to issue to the EPC Contractor, from time to time, such supplementary Drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and completion of the Works and the remedying of any defects therein. The EPC Contractor shall carry out and be bound by the same.

The Concessionaire shall provide only the basic drawings for the works and all the working drawings, miscellaneous drawings, and any additional site working sheets like level sheets, layer charts, locations of furnitures etc. shall be prepared by the EPC Contractor and shall get the same reviewed from Concessionaire's representative/ Consultant. In case of any discrepancy found between the drawing supplied by the Concessionaire and the site details, the EPC Contractor shall inform the Concessionaire and get the same revised, failing which any faulty work executed shall be got rectified by the EPC Contractor at his own risk and

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cost. The Concessionaire shall not be responsible for any incorrect site information received from the EPC Contractor's representative.

If any design work has been carried out by the EPC Contractor, then the design work shall be undertaken by qualified designers who are engineers or other professionals. The design of shuttering and design of mixes shall be the responsibility of the EPC Contractor. Where the Contract expressly provides that part of the Permanent Works shall be designed by the EPC Contractor, he shall submit to the Concessionaire's Representative for approval such Drawings, specifications, calculations and other information as shall be necessary to satisfy the Concessionaire as to the suitability and adequacy of that design. However, any approval by the Concessionaire's Representative shall not relieve the EPC Contractor of any of his responsibilities under the Contract. In case of any ambiguity to the meaning and intent of any portion of the specifications and Drawings or as to execution or quality of any work or material or as to measurement of the Works, the decision of the Concessionaire's Representative shall be final and binding on the EPC Contractor.

However, the Concessionaire/EPC Contractor mutually agreed to appoint Design Consultants for this project and all the Design Consultancy payments shall be borne by the EPC Contractor.

One copy of the Drawings, provided to or supplied by the EPC Contractor as aforesaid, shall be kept by the EPC Contractor on the Project Site and the same shall at all reasonable times be available for inspection and use by the Concessionaire and by any other person authorized by the Concessionaire in writing.

5.2 Errors

- (A) The EPC Contractor shall be responsible for verifying the correctness of all information received from the Concessionaire or the Concessionaire's Representative whether before or after the Commencement Date. The EPC Contractor shall also be responsible for any Errors in the documents comprising the Contract and for any Errors in the Construction Documents. The EPC Contractor must identify all such Errors and inform the Concessionaire's Representative of those identified.
- (B) The EPC Contractor shall carry out any Remedial Works necessary to correct any such Error or required as a result of any Error. The Concessionaire's Representative may instruct the EPC Contractor as to how to comply with its obligations under this paragraph.
- (C) In this Clause 5.2 "Error" means any error, omission, discrepancy, ambiguity, inaccuracy or inconsistency (including, without limitation, any failure of design or specification) in the documents comprising the Contract, the Construction Documents or in any information provided by the Concessionaire or the Concessionaire's Representative.

5.3 Construction Documents

The EPC Contractor shall prepare Construction Documents in sufficient detail to satisfy all laws and the requirements of all Competent Authority and to provide suppliers and construction personnel with sufficient instructions to execute the

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Works, and to describe the operation of the completed Works. The Concessionaire's Representative shall have the right to review and inspect the preparation of Construction Documents, wherever they are being prepared.

Each of the Construction Documents shall, when considered ready for use, be submitted to the Concessionaire's Representative for pre-construction review. In this Clause 5.3, "review period" means the period of 15 days, calculated from the date on which the Concessionaire's Representative receives a Construction Document and the EPC Contractor's notice that it is considered ready for a pre-construction review in accordance with this Clause and for use.

The Concessionaire's Representative may instruct the EPC Contractor to rectify any Construction Document that fails to comply with the Contract and resubmit it for review in accordance with this Clause 5.3.

For each part of the Works, and except to the extent that the prior consent of the Concessionaire's Representative shall have been obtained:

- (A) Construction shall not commence prior to the expiry of the review period for the Construction Documents which are relevant to the design and construction of such part;
- (B) Construction shall be in accordance with such Construction Documents; and
- (C) If the EPC Contractor wishes to modify any Construction Documents which have previously been submitted for such pre-construction review, the EPC Contractor shall immediately notify the Concessionaire's Representative, and shall subsequently submit revised documents to the Concessionaire's Representative for pre-construction review.

Notwithstanding review of the Construction Documents by the Concessionaire's Representative, or any comments in relation to, or any failure to comment on, Construction Documents it shall be the absolute responsibility of the EPC Contractor to ensure that the Construction Documents will meet all the requirements of the Contract.

5.4 Reporting Requirements

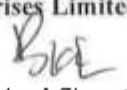
During the Construction Period, the EPC Contractor shall, no later than 7 (seven) days after the close of each month, furnish to the Concessionaire a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Concessionaire.

- 5.5 In addition to above, the EPC Contractor shall provide to the Concessionaire reports on regular basis during the construction period in the form and manner set by the Concessionaire. Samples and Test Certificates of Materials.

The EPC Contractor shall submit the following samples and relevant information to the Concessionaire's Representative/ Independent Engineer before use in the Construction of the Project Highway:

- (A) Manufacturer's standard samples of Materials;

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- (B) Samples (if any) specified as being required in the Technical Requirements and Performance Standards.
- (C) Test certificates or samples for building materials such as cement, steel, bituminous materials, or any other materials proposed to be used.

Each sample shall be labelled as to origin and intended use.

5.6 Drawings and documents

(A) Custody

All the Original Drawings shall remain in the sole custody of the Concessionaire's Representative. Two copies as agreed shall be provided to the EPC Contractor for execution. The EPC Contractor shall make at its own cost any further copies required by him. The Drawings, specifications and documents provided by the Concessionaire's Representative shall not without consent of the Concessionaire, be used or communicated to a third party by the EPC Contractor. Upon issue of Taking over Certificate, the EPC Contractor shall return to the Concessionaire all Drawings, specifications and other documents provided under the Contract.

(B) As-Built Drawings

The EPC Contractor shall prepare, and keep up-to-date, a complete set of "As-Built" records of the execution of the Works, showing the exact "As-Built" locations, sizes and details of the work as executed with cross references to all relevant specifications and data sheets. These records shall be kept on the Project Site and shall be used exclusively for the purposes of this Clause.

The EPC Contractor shall prepare and submit to the Concessionaire's Representative copy of the "As-Built Drawings". The Drawings shall be prepared as the Works proceed, and shall be submitted to the Concessionaire's Representative for his inspection. The EPC Contractor shall obtain the consent of the Concessionaire's Representative as to their size, number of copies, the referencing system, and other pertinent details including digitising and providing the same on diskettes. The submission of the As-Built Drawings shall be as per the requirements of the Concession Agreement.

5.7 EPC Contractor's Use of Concessionaire's Documents

Intellectual Property in the Technical Requirements and Performance Standards and all other documents and materials issued by the Concessionaire or the Concessionaire's Representative to the EPC Contractor shall (as between the parties) remain the property of the Concessionaire. The EPC Contractor may, at his cost, copy, use and communicate any such documents for the purposes of the Contract. They shall not, without the Concessionaire's Representative's consent, be used, copied or communicated to a third party by the EPC Contractor.

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6. STAFF AND LABOUR

6.1 Engagement of Staff and Labour

The EPC Contractor shall make his own arrangements for the engagement of all personnel and labour, local or otherwise, and for their payment, housing, feeding and transport.

The EPC Contractor shall deliver to the Concessionaire's Representative a detailed return in such form and at such intervals as the Concessionaire's Representative may prescribe, showing the details (including names, payment details and terms of appointment) of the several classes of labour employed by the EPC Contractor from time to time in connection with the Works. The EPC Contractor shall, in his returns certify that all dues of the workers or labour have been fully paid.

The Concessionaire's Representative or his nominee is entitled to witness labour payments made or to be made by the EPC Contractor. If the EPC Contractor defaults in his obligations for making any payments under the labour laws, the Concessionaire may make the relevant payments. Any sum equal to any amount paid by the Concessionaire under this Clause 6.1 shall be immediately paid by the EPC Contractor to the Concessionaire and until payment/ set off shall carry interest at 2 % over SBI-PLR per annum.

6.2 Person in the Service of Others

The EPC Contractor shall not recruit, or attempt to recruit from amongst Persons in the service of the Concessionaire.

6.3 Labour laws

The EPC Contractor shall obtain all relevant labour registrations and comply with all relevant labour laws applying to his employees, and shall duly pay them and afford to them all their legal rights. The EPC Contractor will adhere to all the requirements mentioned of prevailing Labour Laws or any other rules and regulations, which may be or come into effect. The guidelines for the same are as mentioned in Appendix-10.

7. PLANT, MATERIALS AND WORKMANSHIP

7.1 Manner of Execution

All work shall be executed in the manner set out in this Contract. Where the manner of execution is not set out in this Contract, the work shall be executed in a proper, workman like and careful manner, with properly equipped facilities and non-hazardous Materials, and in accordance with Good Industry Practices.

7.2 Inspection

The Concessionaire, Independent Engineer, NHAI and the Concessionaire's Representative shall be entitled, during manufacture, fabrication, construction or preparation at any places where work is being carried out, to inspect, examine and test the materials and workmanship, and to check the progress thereof of all

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Works under this Contract. The EPC Contractor shall give them full opportunity and support to inspect, examine, measure and test any work on the Project Site or wherever carried out. All matters relating to inspection and rejections shall be executed in the manner required to comply with the Concession Agreement and all applicable laws and permits.

The EPC Contractor shall give at least 7 days' notice to the Concessionaire's Representative whenever such work is ready, before covering up or putting out of view (including foundation Works). The Concessionaire's Representative may then carry out the inspection, examination, measurement or testing without unreasonable delay, or notify the EPC Contractor that it is considered unnecessary. If the EPC Contractor fails to give such notice, he shall, when required by the Concessionaire's Representative, uncover such work and thereafter reinstate and make good at his own cost.

7.3 Testing

All matters relating to testing shall be executed in the manner required to comply with the Concession Agreement and all Applicable Laws and Applicable Permits/Clearances. Tests including the Tests on Completion to which Appendix 6 applies shall be carried out in accordance with the terms of this Contract.

The cost of making any test shall be borne by the EPC Contractor if such test is:

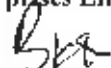
- (a) clearly intended by or provided for in the Contract, or
- (b) particularised in the Contract (in cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfil) in sufficient detail to enable the EPC Contractor to price or allow for the same in his Tender.

7.3.1 Inspection for Testing

The Concessionaire, Independent Engineer, NHA and Concessionaire's Representative shall be entitled, during manufacture, fabrication or preparation to inspect and test the materials and Plant to be supplied under the Contract. If materials or Plant are being manufactured, fabricated or prepared in workshops or places other than those of the EPC Contractor, the EPC Contractor shall obtain permission for the Concessionaire's Representative to carry out such inspection and testing in those workshops or places. Such inspection or testing shall not release the EPC Contractor from any obligation under the Contract.

The EPC Contractor shall agree with the Concessionaire's Representative on the time and place for the inspection or testing of any materials or Plant as provided in the Contract. The Concessionaire's Representative shall give the EPC Contractor not less than 24 hours notice of his intention to carry out the inspection or to attend the Tests. If the Concessionaire's Representative, or his duly authorized representative, does not attend on the date agreed, the EPC Contractor may, unless otherwise instructed by the Concessionaire's Representative, proceed with the Tests, which shall be deemed to have been made in the presence of the Concessionaire's Representative. The EPC Contractor shall forthwith forward to the Concessionaire's Representative duly

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certified copies of the test readings. If the Concessionaire's Representative has not attended the Tests, he shall accept the said readings as accurate.

7.4 Rejection

If as a result of inspection, examination or testing or otherwise, the Concessionaire's Representative decides that any part of the Works is Defective or otherwise not in accordance with this Contract, the Concessionaire's Representative may reject such part of the Works and shall notify the EPC Contractor promptly, recording in reasonable detail his reasons therefor. The EPC Contractor shall then promptly undertake the necessary Remedial Works at his own cost and ensure that the rejected part of the Works complies with this Contract. In case the EPC Contractor fails to rectify or replace the rejected work within the timeframe given by the Concessionaire, the Concessionaire shall get the same done by engaging other agency or by deploying labour, material and other resources. All such cost shall be recovered from the EPC Contractor's dues.

If the Concessionaire's Representative requires the relevant part of the Works to be re-tested, the Tests shall be repeated under the same terms and conditions. An amount equal to all costs and expenses incurred by the Concessionaire in connection with the retesting shall be due to the Concessionaire by the EPC Contractor and without prejudice to any other means of recovery may be deducted from any sum owing to the EPC Contractor and such sum until payment shall carry interest at 2 % over SBI PLR per annum.

The Concessionaire shall have authority to issue instructions from time to time, for:

- (a) the removal from the Project Site, within such time or times as may be specified in the instruction, of any materials or Plant which, in the opinion of the Concessionaire, are not in accordance with the Contract,
- (b) the substitution of proper and suitable materials or Plant, and
- (c) the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefore, of any work which, in respect of
 - i. materials, Plant or workmanship, or
 - ii. Design by the EPC Contractor or for which he is responsible, is not, in the opinion of the Concessionaire, in accordance with the Contract.

7.5 Procurement of Materials

The EPC Contractor shall use, to the extent practicable and reasonable, resources available within India. The construction material required for the project shall be procured by the EPC Contractor. The prices provided in the BOQ are inclusive of escalation and hence impact of change in material cost shall not be payable to the EPC Contractor. The EPC Contractor shall ensure availability of the material commensurate with the work programme, to maintain the progress of works at any point of time. In case of any shortfall of material affecting the progress of work and failure of EPC Contractor to procure the material in

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required quantity, Concessionaire reserves the right to arrange the same at the risk and cost of the EPC Contractor.

The EPC Contractor shall include in his purchase requirements giving request for the provision of warranties from suppliers for the period of (i) warranty offered by the manufacture or (ii) two years of operation whichever is longer. The EPC Contractor shall notify the Concessionaire of response received but shall not be obliged to accept any such quotation unless instructed to do so by the Concessionaire.

8. COMMENCEMENT, DELAYS AND SUSPENSION

8.1 Commencement of Works

The Concessionaire's Representatives shall issue a "Notice to Proceed" to the EPC Contractor in accordance with notification of Appointed date by the Authority. The EPC Contractor shall proceed with the works immediately after the receipt of notice to proceed or with effect from the appointed date as specified in Notice to Proceed.

8.2 Time for Completion of Construction

Time is of the essence in respect of the EPC Contractor's obligations under this Contract. The EPC Contractor will complete all works as required under the Concession Agreement to enable the Concessionaire to obtain the completion certificate or the provisional certificate as required under the Concession Agreement to achieve the COD within 720 days from the appointed date

The Taking Over Requirements shall be achieved within the Time for Completion.

8.3 Extension of Time for Completion of Construction

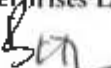
Notwithstanding any other provision of the Contract, the Time for Completion cannot be extended for any reason except as allowed and provided for in Concession Agreement and as permitted by Concessionaire due to following reasons:

- a. If any modifications are ordered by the Concessionaire or site conditions actually encountered are such that in the opinion of the Concessionaire the magnitude of the work has increased materially then such extension of the stipulated date of completion may be granted as shall appear to the Concessionaire to be reasonable.
- b. Delay is not due to the fault of EPC Contractor and the reasons are beyond the control of EPC Contractor. However, EPC Contractor will put his best efforts to minimize the delay due to the reasons not attributable to them.

The EPC Contractor shall not be entitled to an extension of the Time for Completion:

- a) if the EPC Contractor fails to use and continues to use all reasonable endeavours to prevent, avoid, overcome and minimise any delay and to proceed with the Works;

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- b) if the EPC Contractor fails to comply with the provisions of this Clause 8 or (without the consent of the Concessionaire 's Representative) fails to take the steps specified or proposed in any material submitted to the Concessionaire 's Representative under this Clause 8;
- c) if, and to the extent, the delay or circumstance causing the delay is attributable to any act, breach, omission, neglect or failure by the EPC Contractor;
- d) for any delay which is caused as a result of the Works being planned or carried out in accordance with the EPC Contractor's programme if:
 - (i) there has been an alteration to the EPC Contractor's programme (from initial programme) for which the EPC Contractor is responsible; and
 - (ii) the delay would not have arisen or could have been accommodated if the EPC Contractor's programme had not been altered.

The Concessionaire may, in its absolute discretion, by notice referring to this Clause 8, grant the EPC Contractor an extension of the Time for Completion whether prospective or retrospective, whether interim or in full and whether or not the EPC Contractor has made any claim.

8.4 Rate of Progress

If, at any time, the EPC Contractor's actual progress falls behind the approved programme referred to in Clause 4.16 or it becomes apparent that it will so fall behind; the EPC Contractor shall submit to the Concessionaire's Representative a revised programme without extending the Scheduled Completion Date and taking into account the prevailing circumstances. The EPC Contractor shall, at the same time, notify the Concessionaire's Representative of the steps being taken to expedite progress, so as to achieve completion within the Scheduled timeframe.

8.5 A. Liquidated Damages for Delay

The EPC Contractor shall construct the Project in accordance with the Project Completion Schedule (Project Mile Stone – Scheudle G of Concession Agreement). In the event, the EPC Contractor fails to achieve any Project Mile Stone within a period of 90 days from the date set forth for such Project Mile Stone unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay damages to the Concessionaire in a sum calculated at the rate of 0.1% (Zero point one per cent) of the amount of Performance Seurity for delay of each day until such Project Mile stone is achieved; provided that if any or all Project Mile Stones or the Scheduled Completion Date are extended in accordance with Provisions of Concession Agreement, the dates set forth in Scheudle 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 COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Cluase shall be refunded by the Concessionarie, but without any interest thereon.

8.5 (B) Bonus on Account of early Completion of Project.

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In the event that the Concessionaire shall achieve COD on or more than 30 thirty days prior to the Scheduled Completion Date, the Authority shall pay to the Concessionaire a bonus equal to 0.5% (Zero Point five per cent) of (60% (Sixty per cent) of the Bid Project Cost for the first 30 days by which COD shall precede the Scheduled completion Date and thereafter the said bonus shall be calculated on the pro-rata basis for each day preceding the said 30 (thirty) days period. The Bonus shall be due and payable to the Concessionaire along with first annuity payment. The EPC contractor shall be eligible for the entire bonus payment after the adjustment taxes on back to back basis as per the Concession Agreement clause 23.5.

8.6 Suspension of Work

The Concessionaire's Representative may at any time instruct the EPC Contractor in writing to suspend progress of part or all of the Works. The Concessionaire's Representative shall record reasons for ordering such suspension. During any suspension, the EPC Contractor shall:

- (A) Protect, store and secure such part or the Works against any deterioration, loss or damage;
- (B) Place no further subcontracts in relation to such part or the Works; and
- (C) use all reasonable endeavours to suspend on the most favourable terms available to the EPC Contractor all subcontracts and agreements for hire to the extent affected by the suspension and otherwise to minimise the Cost associated with the suspension, provided that unless instructed otherwise by the Concessionaire's Representative, the EPC Contractor shall during suspension maintain his staff and the EPC Contractor's Equipment on or near the Project Site, ready to proceed with the Works upon receipt of permission or instruction to do so.

8.7 Consequences of Suspension

If the EPC Contractor suffers delay and/or incurs additional Cost in following the Concessionaire's Representative's instructions under Clause 8.6, and in resumption of the relevant part of the Works or the Works, the EPC Contractor shall be entitled to an extension of time in respect of the delay and to an increase in the Contract Price in respect of the additional Cost.

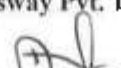
The EPC Contractor shall not be entitled for extra cost if any, incurred by him during such suspension if such suspension is on account of weather condition or requirement for execution of Works or provided for in the Contract or for less than 30 days at a time for any other reason. The EPC Contractor shall however be entitled for extension of Time for Completion of Works as the Concessionaire's Representative may consider proper having regard to the period of suspension. However, if the suspension is ordered by the Concessionaire's Representative due to any default of the EPC Contractor such as defective materials, workmanship etc. the EPC Contractor shall not be entitled to any extension or extra cost incurred.

8.8 Resumption of Work

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After receipt of permission or of an instruction to proceed, the EPC Contractor shall, after notice to the Concessionaire's Representative and together with the Concessionaire's Representative, examine the Works and the Plant and Materials affected by the suspension. The EPC Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

9. TESTS ON COMPLETION

The EPC Contractor shall comply with the requirements of Tests specified in Appendix 6 of this Contract and as specified in the Concession Agreement Schedule-I. Moreover, the EPC Contractor shall comply with the additional requirements specified by NHAI/ Independent Engineer/Concessionaire for obtaining Completion Certificate.

10. COMPLETION OF CONSTRUCTION

10.1 Taking Over Certificate

The Works shall be taken into full commercial use by the Concessionaire when the Taking Over Requirements has been met and the Taking Over Certificate has been issued.

The EPC Contractor may apply by notice to the Concessionaire's Representative for the Taking Over Certificate not earlier than 14 days before the Taking Over Requirements will, in the EPC Contractor's opinion be met. The application must be accompanied by a certificate from the EPC Contractor that, in the EPC Contractor's opinion, the Works (except the Maintenance Works) have been completed except for minor items specified in the punch list appended to the application. Each item on the snagging list shall have set beside it the date by which the EPC Contractor proposes to complete the item, which shall not be later than 60 days. The Concessionaire's Representative shall, within 28 days after the receipt of the EPC Contractor's application either:

- (A) Issue the Taking Over Certificate to the EPC Contractor, stating the date on which the Taking Over Requirements were met (or, if later, the date in the EPC Contractor's application). In addition to that Concessionaire's Representative shall ensure that the Works certified as incomplete by Independent Engineer/ NHAI shall be completed by the EPC Contractor before issuing the Taking Over Certificate. The Taking Over Certificate shall list any Remedial Works or other works to be completed after taking over by the Concessionaire and the date for completion; or
- (B) Reject the application, giving his reasons or specifying the work required to be done by the EPC Contractor to enable the Taking Over Certificate to be issued. The EPC Contractor shall then complete such work before issuing a further notice under this Clause.

10.2 Work After Taking-Over

Any Remedial Works or item noted in a Taking Over Certificate as requiring completion must be undertaken or completed by the EPC Contractor within the time stated in the Taking over Certificate. If the EPC Contractor fails to do so the

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Concessionaire may carry out the Remedial Works or complete the relevant Works. The EPC Contractor shall reimburse the Concessionaire for all Liabilities incurred by the Concessionaire alongwith interest thereon at 2% over SBIPLR per annum in connection with such rectification or completion.

11. DEFECTS LIABILITY PERIOD

11.1 Scope of Work during Defects Liability Period

EPC Contractor at his own cost shall be solely responsible for carrying out the repair and rectification of all the Works throughout the Defects Liability Period referred to in Appendix-11 and arises due to:

- (A) Defects because of Poor or bad workmanship or due to the Works not conforming to the Design and specifications
- (B) the use of materials, Plant or workmanship not in accordance with the Contract/Concession agreement,
- (C) where the EPC Contractor is responsible for the design of part of the Permanent Works, any fault in such design, or
- (D) the neglect or failure on the part of the EPC Contractor to comply with any obligation, expressed or implied, on the EPC Contractor's part under the Contract.

EPC Contractor shall also be responsible for any Non-availability of lane or Lane Closure during the Defect Liability Period due to repair or rectification of - defective Works, and penalty imposed by NHAI /Independent Engineer shall be recoverable from the EPC Contractor.

11.2 Extension of Defects Liability Period

If any obligations arising under the Defects Liability Period remain unfulfilled, or any Defects are noticed and/or notified by Concessionaire's Representative in the Works on or prior to the end of the Defects Liability Period, then the defect liability period shall be extended to such extent as would be necessary for the removal of the Defects or fulfilment of such remaining obligations.

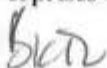
The Defects Liability Period shall be extended by a period equal to the sum of any periods during which the Project Highway or any part of it cannot be used for the purposes for which it is intended by reason of a Defect or by reason of Maintenance Works being undertaken.

11.3 Failure to Undertake Maintenance Works


If the EPC Contractor fails to undertake any Maintenance/repair & rectification works during the defects liability period within a reasonable period after the need for such works becoming apparent, the Concessionaire's Representative may fix a date on or by which such Works are to be completed and give the EPC Contractor reasonable notice of such date.

If the EPC Contractor fails to complete the Maintenance Works by such date,

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the Concessionaire may (at its sole discretion):

- (A) Carry out the work itself or through other agency, in a reasonable manner; or
- (B) Determine and certify a reasonable reduction in the Contract Price; or
- (C) if the failure to carry out the Maintenance Works is such that the Concessionaire has been deprived of substantially the whole of the benefit of the Works, terminate this Contract but without relieving the EPC Contractor of liability for breach of Contract. The Concessionaire shall then be entitled to recover all sums paid under the Contract together with the cost of dismantling the same, clearing the Project Site and returning Plant and Materials to the EPC Contractor.

11.4 Further Tests

If any Maintenance Works are such that they may affect the efficiency or performance of the Works, the Concessionaire may require the EPC Contractor to carry out repeat Tests on Completion. Appendix 6 and the Concession Agreement shall apply to such repeat Tests in the same as to the original Tests.

11.5 EPC Contractor to Search

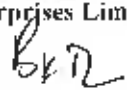
During the Defects Liability Period, the EPC Contractor shall, if required by the Concessionaire's Representative, search for the cause of any Defect.

11.6 Maintenance Certificate

The Maintenance Certificate shall be issued by the Concessionaire's Representative on completion of all Maintenance Works to the satisfaction of the Concessionaire's Representative and the same shall be issued within fourteen days of the following (Whichever is later):

- (A) A request by the EPC Contractor;
- (B) The last day of the Defects Liability Period;
- (C) The date on which the EPC Contractor has discharged all of its obligations under this Clause 11. Provided, however the Maintenance Certificate shall be issued only after site clearance. If the EPC Contractor fails to remove any EPC Contractor's equipment, surplus material, wreckage, rubbish and temporary Works, Concessionaire may sell or otherwise dispose off such items. Concessionaire shall be entitled to retain from the proceeds of such a sale, or from any other amounts due to the EPC Contractor, a sum sufficient to meet the cost incurred inclusive of interest at 2% over SBI-PLR per annum in connection with such sale or disposal. If the amounts due to the EPC Contractor are insufficient to meet the Concessionaire's cost, the outstanding balance shall be recoverable from the EPC Contractor.

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12. CONTRACT PRICE, PAYMENT AND CLAIMS

12.1 The Contract Price

The Lump Sum Contract Price shall be **Rs.1234.01 Crores** (Rupees One Thousand Two Hundred And Thirty four Crores and one lakh only). The EPC contractor shall be deemed to have satisfied themselves before entering into this agreement as to correctness and sufficiency of the Contract price to cover all their obligations under and in relation to this Agreement and all matters and things necessary for the proper execution of the works whether the same is expressly provided for in the Agreement or is to be reasonably inferred there from or necessarily incidental thereto.

The Contract Price is the Lump Sum Price quoted by the EPC Contractor for execution of all the works in accordance with Schedule B, C & D of the Concession Agreement.

The Lump Sum EPC value shall be revised from time to time in accordance with the provisions of this Concession Agreement Clause 23.2.1 to reflect the variation in Price Index occurring after the Reference Index Date preceding the Bid Date.

The Lump Sum EPC adjusted for variation between the Price Index occurring between the Reference Index Date preceding the Bid Date and the Reference Index Date immediately preceding the Appointed Date shall be deemed to be the Lump Sum EPC Cost at commencement of Construction.

For Every month occurring after the Appointed Date, the Authority shall compute the variation in Price Index occurring between the Reference Index Date Preceding the Bid Date and the Reference Index Date Preceding the date of Invoice, and shall express the latter as a multiple of the former (the "Price Index Multiple"). All Invoices to be submitted by the Concessionaire to the Authority for an in respect of the Construction Period shall be the product of the relevant proportion of the Bid Project Cost and the Price Index Multiple applicable on the date of Invoice. For the avoidance of doubt and by way of illustration, if (a) Price Index on the Reference Index Date preceding the Bid Date, say January 31, 2016 is 200 (two hundred); (b) the Invoice is submitted on October 15, 2017; and (c) the Price Index as on September 30, 2017 is 210 (two hundred and ten), then the Price Index Multiple for determination of the amount due in respect of such Invoice shall be 1.05 (one point zero five). old data

The implement of Adjusted Lump Sum EPC Cost shall be back to back with Concession Agreement which mentioned above.

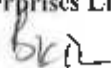
However, the rates for any extra items initiated by NHA/ Concessionaire / Independent Engineer under the change of scope shall be finalized mutually.

12.2 Rates for Items

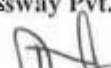
1. The value quoted in the tender shall be deemed to include except specially provided in the Contract;

- (A) All materials, labour, tools and plants, stores, centering, shuttering etc.

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- (B) Construction/ erection, maintenance and removal of all temporary Works.
 - (C) All watching, lighting, pumping and draining unless otherwise provided for
 - (D) All barriers and arrangements for safety of the property, utilities, public or employees/ workers during the execution of Works
 - (E) All sanitary and medical arrangements for labour camps
 - (F) The setting out of all Works for construction, repair and up-keep of all centrelines, benchmarks, reference pillars etc,
 - (G) Project Site clearance except specifically provided otherwise in the Contract.
 - (H) Electrical works provision of ambulance and cranes etc.
2. Nothing extra shall be payable over the quoted values, except as specifically provided in the Contract.
 3. The Lump Sum price quoted by the EPC Contractor shall subject to adjustment of Price Variation as per Concession Agreement Clause 23.2. and shall not be revised under any circumstances and for whatsoever is the reason till the completion of the entire scope of Works. All Lump Sum rates quoted in the Bill of Quantities shall be deemed to be inclusive of all types of direct and indirect taxes imposed by central/ state government and local bodies such as GST, value added tax (VAT), royalties, duties, cess, octroi and any other levies as applicable and also include all import duties. The rates shall also include all taxes, duties and other charges imposed outside the country on production, manufacture, sale and transport of the EPC Contractor's equipment, plant, materials and supplies to be used on or furnished under the Contract and on the services performed under the Contract. No additional amount shall be paid or claim be entertained on this account by the Concessionaire.
 4. The EPC Contractor shall bear the cost of all royalties, fees and other payments in respect of patents, patents right and licences or other person or corporation and shall obtain all necessary permissions and licenses. In case of any breach (whether wilfully or inadvertently) by the EPC Contractor of this provision, the EPC Contractor shall indemnify the Concessionaire, Concessionaire's Representative against all claims, proceedings, damages, costs, charges, loss and liability which they or any of them may sustain, incur or be put to any reason or in consequence directly or indirectly of such breach and against payment of any royalties, damages or other money which the Concessionaire may have to make to any persons or pay in total to the patent rights in respect of the users of any machine, instruments, process, articles matter or thing constructed, manufactured, supplied or delivered by the EPC Contractor under this Contract.

12.3 Procedure for execution of Change of Scope: -

The EPC Contractor may, notwithstanding anything to the contrary in this agreement, require the provisions of additional works and services which are not included in the Scope of the Project as contemplated in the Concession Agreement (the Change of Scope). Any such Change of Scope shall be made in accordance with the provisions of Article 16 of the Concession Agreement and the costs thereof shall be expended by the EPC Contractor and reimbursed to it

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by the Concessionaire in accordance with Clause 16.3 of the Concession Agreement.

12.4 Payment for extra items under the Change of Scope.

The payment under the change of scope shall be made to the EPC Contractor in accordance with Concession Agreement clause 16.3. All the terms and conditions are back to back with Concession agreement relevant clauses for this purpose. Nothing extra shall be paid to EPC Contractor other than the payment received by the Concessionaire from the Authority under the Change of Scope.

12.5 Measurements

All items of work shall be entered in a measurement book, level book, etc., as prescribed by Concessionaire's Representative so that a complete record of the entire Works under this Contract is available. Measurements shall be signed and dated by both Parties on the Project Site on completion of measurement forthwith. The original measurement books shall be kept in the custody of Concessionaire's Representative. All payments under this Contract shall require to be supported by measurements for assessing quantum of work, adherence to specifications, and achievement of Project milestones.

Measurements shall be taken jointly by Concessionaire's Representative or his assistant and by the EPC Contractor or his authorised representative. Before taking measurements of any work Concessionaire's Representative or his assistant shall give reasonable notice of the date of measurement to the EPC Contractor. If the EPC Contractor fails to attend or send an authorised representative for measurement on the notified date, or being present fails to countersign, Concessionaire's Representative shall record such absence or failure to countersign, and take measurements ex parte. The EPC Contractor can inspect the measurement books available with Concessionaire's Representative, and if the EPC Contractor fails to countersign or record the objection within a week from the date of measurement, then in any such event, measurements taken by Concessionaire's Representative or his assistant shall be taken to be correct measurements of the work and shall be binding and conclusive on the EPC Contractor.

The EPC Contractor shall, without any extra charge, provide assistance with every appliance, instruments and supporting Tests and any other things necessary for measurements and certification.

12.6 Running Bill:

The payments under this Contract shall be regulated by monthly bill. Any measurements taken under this contract shall be paid based on joint measurements by EPC Contractor's representative and Concessionaire's Representative. The proportionate work done for the road, bridge and other works shall be paid as per the Contract Price weightages for Highways Projects with Rigid Pavements/Flexible payments in accordance with approved billing schedule. However the payment made to the EPC Contractor shall be reconciled time to time in accordance with weightages provided in the Annexure – I of Schedule – G of the Concession Agreement.

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The EPC Contractor shall be entitled to be paid from time to time, by way of "on account" bills only for such works as in the opinion of the Concessionaire's Representative, the EPC Contractor has executed in terms of the contract. In case of any discrepancy the Concessionaire's Representative shall have the right to alter, modify, reduce or diminish the quantities or classification entered in the measurement books.

Payment shall be based on the proportionate actual progress and certified measurements by Concessionaire's representative on monthly basis.

The EPC Contractor shall pay the suppliers and sub EPC Contractors regularly. In case of default by the EPC Contractor, the Concessionaire's Representative may without any notice to the EPC Contractor, release payment directly to the suppliers/subEPC Contractors and/or petty EPC Contractors of the EPC Contractor. All such payments shall be recovered with interest @ 1.25% (including administrative charges) per month from the payments due to the EPC Contractor.

12.7 Security Deposit

Not Applicable

12.8 Mobilization Advance

The Mobilization advance shall be paid to EPC Contractor by the Concessionaire on back to back with the Concession Agreement Clause 23.8. On the request of the EPC Contractor, the Concessionaire shall at any time after expiry of 60 days from the Appointed date, make an advance payment in a sum not exceeding 10% (ten percent) of the EPC Cost. The mobilization advance shall be released to the EPC Contractor within 30 days of receipt of a request in this behalf from the EPC Contractor. The rate of Interest on the Mobilization advance shall be equal to the Bank Rate, compounded annually. The Mobilization advance shall be deducted by the Concessionaire in 4 (four) equal instalments from each of the payments to be made by the Concessionaire to the EPC Contractor and the interest shall be recovered as the 5th and final instalment upon expiry of 120 days (one hundred twenty) days commencing from the date of recovery of the 4th (fourth) instalment.

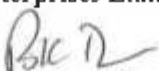
Additional Mobilization Advance: - The EPC Contractor shall be eligible for additional mobilization advance of 5% on signing of Contract Agreement and the same shall be recovered from the EPC Contractor proportionately for the completion of cumulative work between 30% to 90%.

12.9 Final Payment

The application for the Final Payment must be accompanied by a final account prepared by the EPC Contractor. The final account must give full details of:

- A) such additions to or deductions from the Contract Price as have been agreed or determined under the Contract;
- B) all payments previously made to the EPC Contractor;
- C) final bill shall include all the cumulative measurements in the format approved by PMC/ Concessionaire

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- D) And the Contract Value of all claims for additional payment to which the EPC Contractor may consider itself entitled.

The EPC Contractor is not entitled to any further payment not claimed in the final account.

The Concessionaire will pay any amount certified in the Final Bill as due to the EPC Contractor within 28 days after the submission of final bill.

The payment shall be made on physical completion of the Works as above.

12.10 Changes in Cost

If the Cost to the EPC Contractor of performing its obligations under the Contract is increased and or decreased as a result of:

- (A) Variations as initiated and/or approved by Concessionaire's Representative and NHAI.
- (B) Any event giving rise to an express entitlement to an addition to the Contract Price under any of the Clauses of this contract, provided that the EPC Contractor has complied with such Clause;

The EPC Contractor will, subject to the following provisions of this Clause 12.10, be entitled to an increase and or decrease in the Contract Price. However the variation shall be got approved from the Concessionaire /NHAI well in advance and the EPC Contractor shall prepare and submit all relevant details to the Concessionaire as and when required. Payments shall be made to EPC contractor due to variation on back to back basis with NHAI payments.

12.11 Notice of Claims

If the EPC Contractor considers that it may have grounds to claim an increase and or decrease in the Contract Price, it must (in addition to compliance with any other relevant procedure or obligation) inform the Concessionaire's Representative within 15 days after the date of the event-giving rise to the claim. The information must include details of the Clause of the Contract under which the claim is made, the circumstances in which the claim arises and details of the records of the EPC Contractor will maintain to substantiate the claim. The EPC Contractor shall furnish all relevant details and supporting documents to the Concessionaire so as to substantiate the claim to NHAI.

12.12 Contemporary Records

The EPC Contractor must maintain all contemporary records necessary to support any claim (including those specified in the information under Clause 12.3). The Concessionaire's Representative may instruct the EPC Contractor to maintain further records that may be relevant to the claim. This will not constitute an admission of liability on the part of the Concessionaire.

12.13 Inspection

The EPC Contractor must permit the Concessionaire's Representative to inspect the records maintained under Clause 12 and must supply the Concessionaire's Representative with copies of those records on request. The EPC Contractor

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must submit to the Concessionaire's Representative an account giving detailed particulars of the amount claimed and the grounds upon which the claim is based within 30 days after giving the information under Clause 12 or, if earlier, with EPC Contractor's application for the Final Certificate. Where the event giving rise to the claim has continuing effect the account will be an interim account and the EPC Contractor must, at intervals specified by the Concessionaire's Representative, submit further interim accounts specifying the accumulated amount of the claim. Where interim accounts are submitted, the EPC Contractor must submit a final account as soon as is reasonably practical and in any event not later than 30 days after the end of the effects of the relevant event.

12.14 Failure to comply

The EPC Contractor is not entitled to an increase in the Contract Price:

- (A) to the extent that the circumstances giving rise to the claim have occurred as a result of an act, breach, omission, neglect or failure of the EPC Contractor;
- (B) if the EPC Contractor fails to comply with any requirement of this Clause 12;
- (C) to the extent the EPC Contractor fails to use all reasonable endeavours to minimise the amount of the claim.

The EPC Contractor may, at any time, submit to the Concessionaire's Representative a written proposal which in the EPC Contractor's opinion will reduce the cost of carrying out the Works, or improve the efficiency or value to the Concessionaire of the Project Highway, or otherwise be of benefit to the Concessionaire. Any such proposal shall be prepared at the cost of the EPC Contractor.

12.15 Variation Procedure

The EPC Contractor shall not make any such Variation without an instruction or consent of the Concessionaire's Representative. Variation in scope may be initiated by NHAI or Concessionaire and procedure for the same shall be as follows:

- (1) Variation due to Change of Scope initiated by NHAI shall be dealt with on back to back basis with the Concession Agreement. The EPC Contractor shall provide all assistance in terms of documentation required for approval of the proposal by NHAI.

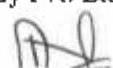
The Payment to the EPC Contractor shall be back to back as approved by NHAI.

- (2) If the Concessionaire's Representative requests a proposal, prior to instructing a Variation, the EPC Contractor shall submit as soon as practicable:
 - (A) A description of the proposed work to be performed and a programme for its execution.

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- (B) The EPC Contractor's proposal for any necessary modifications to the programme according to Clause 4.18, and
- (C) The EPC Contractor's proposal for adjustment to the Time for Completion and/or modifications to this Contract.
- (D) If there is any item under the Variation which is not part of the original item rates of the EPC Contractor's proposal, then EPC Contractor shall submit its proposal for any such new item rate for the Concessionaire's approval. However if Concessionaire feels that rate of the proposed item is not as per the prevailing rate of such item then Concessionaire and EPC Contractor shall mutually arrive at a reasonable item rate for such item.

The Concessionaire's Representative shall, as soon as practicable after receipt of such proposals, respond with approval, rejection or comments.

12.16 Agreement on Adjustments

The EPC Contractor and the Concessionaire's Representative shall endeavour to agree the adjustments to the Time for Completion, the Unit Rate, the terms for payment of any increase and or decrease in the Contract Price and the adjustments to the EPC Contractor's other obligations in relation to any proposed Variation. If they agree the Concessionaire's Representative may issue the Variation and the adjustments will be made accordingly as per Appendix-3.

If they do not agree (or if the EPC Contractor fails to make proposals under Clause 12.3) the Concessionaire's Representative may:

- (A) Refer the matter for determination under Clause 18 and, following determination, issue the Variation and the adjustments will be in accordance with the determination;
- (B) Issue the Variation. The adjustments will be determined subsequently under Clause 18;
- (C) Decide not to proceed with the Variation.

If the Concessionaire's Representative issues a Variation in circumstances where in the Concessionaire's Representative's reasonable opinion the EPC Contractor will fail by reason of act, breach, omission, neglect or failure to meet any of its obligations under Contract and the Variation is intended to mitigate the potential effects of the failure, the EPC Contractor will not be entitled to any additional payment or an extension of time or other adjustment of its obligations under the Contract.

12.17 EPC Contractor to Proceed

On receipt of a Variation, the EPC Contractor must immediately proceed to carry out the Variation as if it was specified in the Contract.

13. DEFAULT OF EPC CONTRACTOR

13.1 Notice to Correct

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If the EPC Contractor fails to carry out any of his obligations under the contract, or is not executing the Works in accordance with this Contract, the Concessionaire's Representative may give notice to the EPC Contractor requiring him to make good such failure and remedy the same within a specified reasonable time as mentioned in clause 13.2 of this contract.

13.2 Expulsion

If the EPC Contractor:

- (i) Becomes bankrupt or insolvent
- (ii) Fails to comply with a notice under Clause 13.1;
- (iii) Commits a material breach of its obligations under the Contract (including, without limitation, breach of warranty);
- (iv) Has failed to adhere to the construction requirements and/ or O&M requirements (during construction period and defects liability period) and in the reasonable estimation of the Concessionaire, such failure is likely to delay Time for Completion;
- (v) Fails to adhere to the agreed schedule of Works or fails to complete the Works within the stipulated or extended period of completion or is unlikely to complete the work due to poor record of progress;
- (vi) Has given any warranties or has made any representations under this agreement is found to be false or misleading;
- (vii) has created any Encumbrance on the project site/ project facilities in favour of any person as otherwise expressly permitted under this agreement;
- (viii) Has abandoned the project facilities;
- (ix) Has obstructed any other agency associated with this project to carry out their duties in accordance with the relevant agreements;
- (x) Has repudiated this agreement or has otherwise expressed any intention not to be bound by this agreement;
- (xi) Assigns this Contract or subcontracts the Works or any part of the Works without the required consent,
- (xii) Gives or offers to give to any Person any bribe, gift, gratuity or commission as an inducement or reward,
- (xiii) Dissolution of the EPC Contractor (or any party that is jointly and severally liable with others as the EPC Contractor) is commenced;
- (xiv) Persistently disregards instructions of the Concessionaire or contravenes any provision of this contract.

Then the Concessionaire may issue 30 days notice to the EPC Contractor to correct the default. However, if EPC Contractor has failed to remedy and continues to breach, the Concessionaire may terminate the EPC Contractor's employment under this contract and expels the EPC Contractor from the Project Site. (but without thereby voiding this Contract, or releasing the EPC Contractor from any of his obligations or liabilities under this Contract, or affecting the rights and powers conferred on the Concessionaire or the Concessionaire's Representative by this Contract up to the date of termination).

In case of termination of Concession Agreement, NHA has step in rights into this agreement at its discretion.

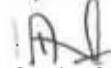
The EPC Contractor shall upon such expulsion immediately deliver all Construction Documents, and other design documents made by or for him, to

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the Concessionaire's Representative. The Concessionaire may use the Construction Documents, other design documents, EPC Contractor's Equipment, Temporary Works, Plant and Materials as it may think proper. The Concessionaire may at any time sell any unused Plant and Materials and applies the proceeds of sale in or towards the satisfaction of any sums due or which may become due to it from the EPC Contractor under this Contract. Upon completion of the Works, or at such earlier date as the Concessionaire's Representative thinks appropriate, the Concessionaire's Representative shall give notice that the EPC Contractor's Equipment and Temporary Works will be released to the EPC Contractor at or near a particular Project Site. The EPC Contractor shall remove or arrange removal of the same from such place without delay and at his cost, and if he fails to do so within the time specified in such notice the Concessionaire may sell any of the said EPC Contractor's Equipment and Temporary Works and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to it from the EPC Contractor under this Contract. The EPC Contractor shall assign the benefits of subcontracts, if any, and transfer all the warranties on plan and materials in favour of the Concessionaire for the balance warranty and extend requisite cooperation as may be required by the Concessionaire in this regard.

13.3 Valuation on date of Termination

As soon as practicable after a notice of termination under sub-clause 13.2, the Concessionaire shall proceed in association with the EPC Contractor to determine the value of the Works, goods and EPC Contractor's documents and any other sums due to the EPC Contractor for Works executed in accordance with the Construction Contract.

13.4 Payment following Termination

After a notice of termination under sub-clause 13.2 has taken effect, the Concessionaire may:

- a) Withhold further payments to the EPC Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any) and all other costs incurred by the Concessionaire have been established; and/or
- b) Recover from the EPC Contractor any losses and damages incurred by the Concessionaire and any extra costs of completing the Works. After recovering any such losses, damages and extra costs, the Concessionaire shall pay any balance to the contract towards payment of the amount determined under sub clause 13.3

If the Contract is terminated because of breach of Contract by the EPC Contractor, the Concessionaire's Representative shall issue a certificate for the value of the work done less advance payments received up to the date of the issue of the certificate, less other recoveries due in terms of the Contract, less taxes due to be deducted at source as per applicable law (the "**Termination Value**"). Additional Liquidated Damages shall not apply. If the total amount due to the Concessionaire exceeds any payment due to the EPC Contractor the difference shall be a debt payable to the Concessionaire.

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