

Environmental and Social Due Diligence Report

Project Number: 47083-004
September 2021

INDIA: Accelerating Infrastructure Investment Facility in India – Tranche 3

Ashoka Ankleshwar Manubar Expressway Private Limited (Part 17 of 24)

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

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EPC AGREEMENT

Project

Construction of Eight Lane Vadodara Kim Expressway from Km 279.00 to Km 292.00 (Ankleshwar to Manubar section of Vadodara Mumbai Expressway) in the State of Gujarat under NHDP Phase -VI on Hybrid Annuity mode

Between

ASHOKA ANKLESHWAR MANUBAR EXPRESSWAY PRIVATE LIMITED
(Project Company / Concessionaire)

And

ASHOKA BUILDCON LIMITED
(EPC Contractor)

Project Company

EPC Contractor

EPC AGREEMENT

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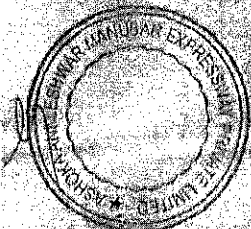
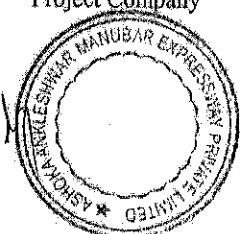
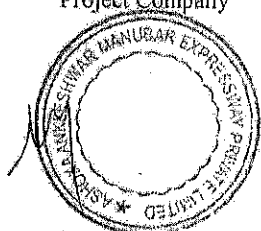


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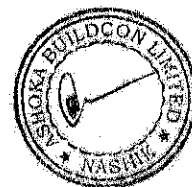
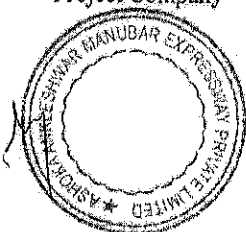
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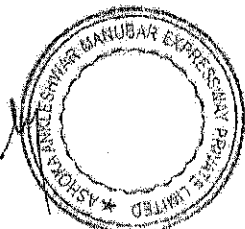
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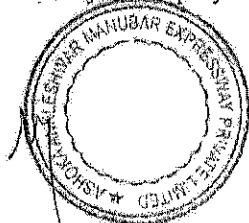
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Project Company

EPC Contractor



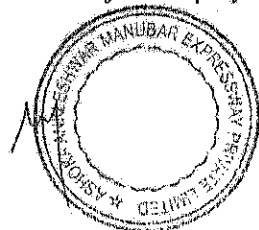
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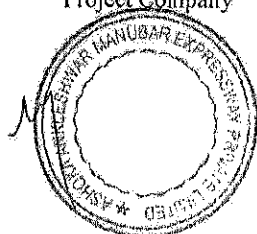
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Project Company

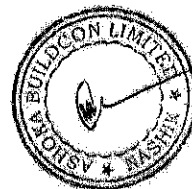
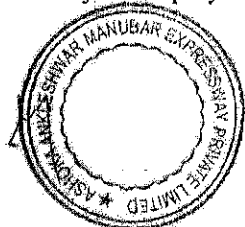
EPC Contractor



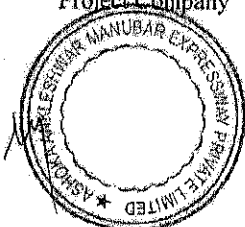
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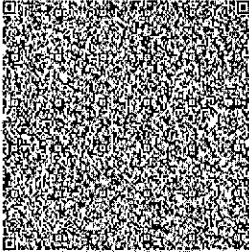
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Account Reference	: IMPACC (IV)/ dl971203/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL97120384359216804612Q
Purchased by	: ASHOKA ANKLESHWAR MANUBAR EXPRESSWAY PVT LTD
Description of Document	: Article 5 General Agreement
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: ASHOKA ANKLESHWAR MANUBAR EXPRESSWAY PVT LTD
Second Party	: ASHOKA BUILDCON LIMITED
Stamp Duty Paid By	: ASHOKA ANKLESHWAR MANUBAR EXPRESSWAY PVT LTD
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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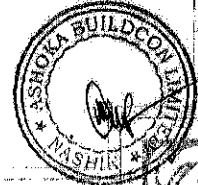
EPC AGREEMENT

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION (EPC) AGREEMENT is entered into on this the 03rd day of August 2018, at Delhi, India, BETWEEN,

Project Company

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EPC Contractor



1. The authenticity of this Stamp Certificate should be verified at "www.shclsestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

1. **M/s. Ashoka Ankleshwar Manubar Expressway Private Limited**, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 402, 4th Floor, City Centre, Plot No.5 Sector 12, Dwarka, New Delhi, 110 075 hereinafter referred to as the "Project Company" (which expression shall include its successors and assigns) of the first part; **AND**
2. **M/s. Ashoka Buildcon Limited**, an existing Company within the meaning of section 3 of the Companies Act 1956 and having its registered office Ashoka House, Ashoka Marg, Nashik- 422011, Maharashtra, hereinafter referred to as the "EPC Contractor" (which expression shall include its successors and permitted assigns) of the second part;

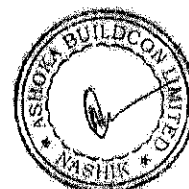
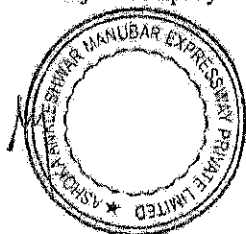
Each of the parties mentioned above, are hereinafter collectively referred to as the "**Parties**" and individually as a "**Party**".

WHEREAS -

- A. The Government of India had entrusted to the Authority the development, maintenance and management of Eight Lane Vadodara Kim Expressway including the section from Km. 279+000 to Km. 292+000 from Ankleshwar to Manubar section of Vadodara Mumbai Expressway, in the State of Gujarat On Hybrid Annuity Mode.
- B. The Authority had resolved to augment the existing road from km existing road from km 279+000 to km 292+000 (approximately 13.00 km) on the section of Eight Lane Vadodara Kim Expressway (hereinafter called the "Vadodara Kim Expressway" in the State of Gujarat on Hybrid Annuity Mode in accordance with the terms and conditions to be set forth in a Concession Agreement to be entered into.
- C. The Authority had accordingly invited proposals by its Notice/ Request for Proposal dated 05.03.2018 (the "Request for Proposal" or "RFP") for short listing of bidders for construction, operation and maintenance of the above referred section of Vadodara Kim Expressway on Hybrid Annuity Mode and had shortlisted certain bidders including, inter alia, the {the selected bidder M/s Ashoka Concessions Limited having its Registered Office at S. No. 113/2, 5th Floor, Ashoka Business Enclave, Wadala Road, Nashik- 422009, Maharashtra}.
- D. Authority, in discharge of its functions, envisaged under section 16 of the NHAI Act, is keen to implement the aforesaid project envisaging 8 laning of Ankleshwar to Manubar section; and
- E. By an agreement dated, 11.05.2018 and referred to herein as the "Concession Agreement", the Authority has awarded to the Project Company a concession to undertake the investigation, design, engineering, procurement of equipment and materials; construction, financing, operation and maintenance of the Project Highway including Project Facilities.
- F. The EPC Contractor has represented and warranted (and continues to represent and warrant) that it has the experience, expertise, capability and know-how to ensure that the Project Highway and Project Facilities are

Project Company

EPC Contractor



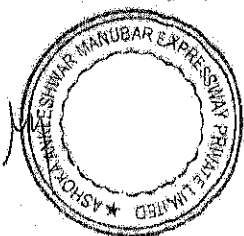
executed and completed in accordance with the terms of the Agreement in a safe and environmentally responsible manner.

- G. Relying upon the representations and warranties of the EPC Contractor, the Project Company hereby appoints the EPC Contractor to execute the Works comprising the Project Highway and Project Facilities, and the EPC Contractor agrees to carry out and complete all the Works and remedy any defects therein, on the terms and conditions of the Agreement (as defined hereinafter).
- H. The EPC Contractor acknowledges that in addition to the obligations under the Agreement, the Works would also have to comply with the provisions of the Concession Agreement and directions from the Authority in this respect and that it is of paramount importance that the EPC Contractor undertakes the Works such that the Project Company is not in breach of any such obligations under the Concession Agreement pertaining to the Project Facilities.
- I. The EPC Contractor also acknowledges that the Project Highway is an operating road and users would continue to use the same during the performance of executing the Project Facilities. The EPC Contractor acknowledges that it will construct the Project Facilities in a manner so as to minimize any inconvenience to users and enable the Project Company to meet Concession Agreement requirements during such performance.
- J. Proposals were submitted by the EPC Contractor to the Project Company for the design and execution of the Works on a fixed price lump sum turnkey basis; and
- K. The Project Company and the EPC Contractor have reached an agreement as set out in this Agreement to design and execute the Works on a fixed price lump sum turnkey basis.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

Project Company

EPC Contractor



ARTICLE 1

1. Definitions and Interpretation

- 1.1 In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them:

"Accounting Year" means the financial year commencing from 01st April of any calendar year and ending on 31st March of the following calendar year.

"Additional Facilities" means the facilities which the Project Company may provide or procure for the benefit of the users of the Project and which are (i) in addition to the Project Facilities, and (ii) not situated on the Site.

"Advance Payment" means the amounts specified in Article 39.4 to enable the EPC Contractor to mobilize the materials, equipment and resources to perform its obligations under this Agreement.

"Advance Payment Guarantee" means the guarantee to be procured and submitted by the EPC Contractor to the Project Company in accordance with Article 39.3 and in the form set out in Schedule I for the Advance Payment.

"Affected Party" shall have the meaning ascribed to it in Article 43.1

"Agreement" means this EPC agreement including Schedules hereto as of the date hereof and includes any amendment hereto made in accordance with the provisions hereof.

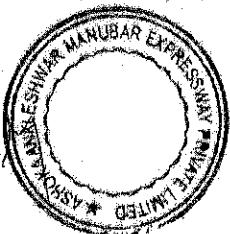
"Agreement Date" means date of signing of this Agreement between Project Company and EPC Contractor, which shall be within 45 days of signing of Concession Agreement between Project Company and the Authority.

"Applicable Laws" means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made there under, and judgements, decrees, injunctions, 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.

"Applicable Permits" means all applicable clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions under or pursuant to any of the Applicable Laws, required to be obtained and maintained by the EPC Contractor, in order to implement the Project and to

Project Company

EPC Contractor



provide the Project Facilities in accordance with and during subsistence of this Agreement as described in Schedule E.

"Appointed Date" means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been either satisfied or waived, prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be.

"Arbitration Act" means the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time.

"AUTHORITY" means the Government entity "National Highways Authority of India" that has awarded the Concession to the Project Company.

"Bid Project Cost" means Project Company and Authority has agree expressly that the cost of construction of the Project, as on the Bid Date to due and payable by the Authority to the Project Company shall be deemed to be Rs. 1687.00 Crores [As per LOA and Clause no. 23.1 of CA]

"Business Day" means a day other than a Sunday or a public holiday on which banks are open for domestic business in the State of Karnataka.

"Certificate of Payment" means the certificate referred to as such in Article 39.2.

"Change of Scope" shall have the meaning ascribed to it in Article 33.

"Change in law" means the occurrence of any of the following after the date of Bid submission to Authority by the Project Company i.e.:

- (i) the enactment of any new Indian law.
- (ii) the repeal, modification or re-enactment of any existing Indian law;
- (iii) the commencement of any Indian law which has not entered into effect until the date Bid Date (i.e. 05.03.2018);
- (iv) a change in the interpretation or application of any Indian law by 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 this Agreement;
- (v) any change in the rates of any of the Taxes that have a direct effect on the Project.



However, it is clarified for the avoidance of doubt that the reimbursement of any financial implications due to Change in Law will be capped to the extent of the amount actually received by the Project Company from AUTHORITY, for the portion applicable to the EPC Contractor after adjusting for statutory payments or taxes, if any.

"COD" has same meaning as given terms of Concession Agreement executed by Project Company and Authority.

"Completion Certificate" means the certificate to be issued by the Project Company certifying Completion of the Works by the EPC Contractor under Article 31.

"Completion of the Works" shall have the meaning ascribed to it in Article 27.2 and "Complete" "Completed" and "Completion" shall be construed accordingly.

"Concession Agreement" means agreement dated 11.05.2018, signed between the Project Company and AUTHORITY for the Project Highway.

"Concessionaire" means the Project Company and its successors and substitutes and assigns expressly approved in writing by AUTHORITY

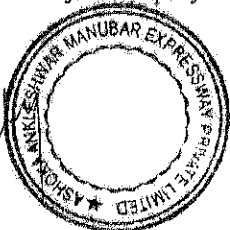
"Concession" means the right to investigate, study, design, engineer, procure finance, construct, operate, maintain the Project Highway, Project Facilities and to exercise and/or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set out in the Concession Agreement.

"Construction Period" means the period starting from the Appointed Date and ending on the COD

"Construction Requirements" means the requirements as to construction of the Project on the Site set forth in Schedule A and as specified/provided in Schedules B and C and in conformity with the specifications and standards set forth in Schedule D and all works and things necessary to complete the Project for use of the traffic and other users thereof in accordance with this Agreement and the Concession Agreement.

"Contract Price" means the sum stated in Article 10.1 as payable to the EPC Contractor for the design and execution of the Works in accordance with the provisions of this Agreement.

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the party responsible or such breach or default and upon failing of which the Agreement may be terminated by the other party and shall:



- (a) Commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Project Company requires any reasonable action by the Project Company that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval.

"Data" means all of the drawings, designs, design information, descriptions, calculations, schedules, specifications, plans, samples, patterns, models, mock-ups, computer software drawings and all other information and documents including all eye readable or computer or other machine readable data relating to the design and Execution of the Works.

"Defect" shall mean any settlement, deformation, collapse, cracks in relation to pavement, shoulders and/or structures including flyovers, ROB, RUBs, VUPs, PUPs/CUPs, Grade separators, toll plaza structures etc., wayside amenities, other Project Facilities, and shall also cover failure of protection works or pitching, failure of RE walls, failure/defects in bearings and expansion joints, formation of potholes, rutting, raveling, except when these have arisen as a consequence of accidents or force majeure events such as flooding and earth quakes only. In case the scope of work includes design and implementation of toll collection systems and highway traffic management systems, the defects shall cover the infirmities/deficiencies associated with its hardware, software and peripherals including the system design and architecture as per standard industry practices.

"Defects Liability Period" is as set forth in Article 32.1

"Delay Event" means any event or circumstance, the reasonably foreseeable effect of which is to cause the Completion of the Works to be extended beyond the Scheduled Completion Date.

"Design Requirements" means the design requirements of the Project as set for the in Schedule D.

"Design Review Meeting" has the meaning ascribed to it at Article 12.13

"Dispute" shall have the meaning ascribed thereto in Article 45.1.1

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set for the in Article 46.

"Drawings" means the drawings, designs, calculations and documents pertaining to the Project as prescribed by the Project Company and/or stipulated under the terms of the Concession Agreement and



as may be required by the AUTHORITY / Independent Engineer / Safety Consultant and as prepared by the EPC Contractor.

"Emergency" means a condition or situation that is likely to endanger the security of the individuals or road safety as per Good Industry Practice, on or about the Project Site and/or the Project Facilities including safety of users thereof or which poses an immediate threat of material damage to any of the Project Site and/or the Project Facilities.

"Encumbrance" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, and any physical encumbrances and encroachments on the Site where applicable herein and shall further include any matters delaying and/or otherwise affecting progress of the Works to be completed hereunder in connection of the Project.

"EPC Contractor Defect" means a defect in the design, workmanship or material in the Works arising as a result of the negligence, default, omission, breach of statutory duty or breach of the Agreement of the EPC Contractor.

"EPC Contractor's Equipment" means all appliances and machinery of whatsoever nature (other than non-movable Temporary Works) brought to the Project Site for the Execution of the Works, but does not include materials or other things intended to form or forming part of the Permanent Works.

"Event of Default" shall have the meaning ascribed thereto in Article 44.1.

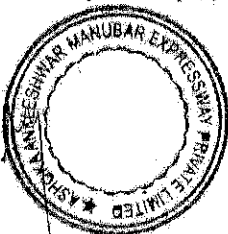
"Execution of the Works" or **"Execution / Executed"** means the design, construction, testing, commissioning and completion of the Project in accordance with the Project Requirements during the Construction Period.

"Existing Road" means the lengths of the existing section of Expressway from Km. 279+000 – Km 292+000 in terms of Concession Agreement.

"Financial Close" means the fulfilment of all conditions precedent to the initial availability of funds under the Concession Agreement in accordance with the term thereof.

"Force Majeure" or **"Force Majeure Event"** shall have the meaning ascribed thereto in Article 43.

"Force Majeure Period" means, the period commencing from the date of occurrence of a Force Majeure Event and ending on (i) the date on which the Affected Party, acting in accordance with the Good Industry



Practice, resumes or should have resumed such of its obligations the performance of which was excused in terms of Article 43.11 or (ii) the Termination Date, as applicable.

"General Milestone Event" means the completion of a specific activity, which reflects the progress in the design, and Execution of the Works or the occurrence of an event in each case as identified as such in Schedule H.

"Good Industry Practice" means the exercise of the highest degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would be expected from a skilled and experienced Person engaged in the construction, operation and maintenance or supervision or monitoring thereof or any of them of a project of the type similar to that of the Project and shall further include such meaning as given to the term in and under the terms of the Concession Agreement.

"GOI" means the Government of India.

"Government Agency" means GOI, GOA or any ministry, department, commission, board, Authority, instrumentality or agency, under the control of GOI or GOA having jurisdiction over all or any part of the Project Highway or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

"GoG" means the Government of the State of Gujarat.

"Independent Engineer" means a reputed Person being a firm, company or a body corporate appointed by AUTHORITY and the Project Company to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Schedule O.

"Insurance Proceeds" means the proceeds of the insurance policies taken by the Parties in terms of Article 14 or otherwise.

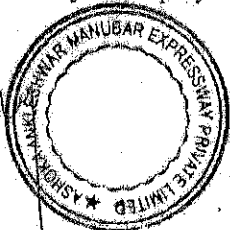
"Latent Defect" means any EPC Contractor Defect existing in the Works at the date of issue of the Provisional Certificate or the Completion Certificate (whichever is the earlier), which becomes apparent to the Project Company before the expiry of the Defects Liability Period

"Liquidated Damages" means the amount of damages for delay specified in and payable to the Project Company by the EPC Contractor, in accordance with Article 30.

"LOA" means the Letter of Acceptance issued by the Project Company to the EPC Contractor.

Project Company

EPC Contractor



"Maintenance Manual" means the repair and maintenance manual prepared in consultation with the Independent Engineer for the regular and periodic maintenance of Site and / or completed Project Facilities and complies with specifications, standards and minimum maintenance requirements set forth in Schedule L.

"Material Adverse Effect" means the material adverse effect of any act or event, on the ability of either Party to perform any of its obligations under and in accordance with, the provisions of this Agreement and/or which act or event causes a material financial burden or loss to either Party.

"Material Breach" means a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

"New Road" means the lengths of road of the Expressway in the state of Gujarat Km. 279+000 to Km 292+000 to be constructed by the EPC Contractor as per clause 1.7, in terms of provision of Concession Agreement.

"Authority Representative" means such person or persons as may be authorised in writing by AUTHORITY to act on its behalf under the Concession Agreement and shall include any person or persons having Authority to exercise any rights or perform and fulfill any obligations of AUTHORITY under the Concession Agreement.

"Notice to Proceed" means the notice to be issued by the Project Company to the EPC Contractor pursuant to Article 3.

"O&M Agreement" means the contract, between the O&M Contractor and the Project Company for the operation and maintenance of the Project Highway.

"O&M Contractor" means the contractor, if appointed by the Project Company and its successors and permitted assigns or any such substitute as may be appointed by the Project Company for the time being in accordance with the Concession Agreement and/or the O&M Agreement.

"O&M Requirements" means the requirements as to operation and maintenance of the Project Road during the Construction Period set forth in Schedule L.

"Owners' Engineer/ Project Management Consultant" means a reputed Consultancy firm, company or a corporate body appointed by the Project Company or an in-house team formed by the Project Company for the purposes of the Agreement to review of EPC Contractors Design Engineering to match Project Requirements, prepare monthly progress reports, Traffic reports etc and perform, carry out the duties, responsibilities, services and activities set forth in Schedule N.



"Parties" means the Project Company and the EPC Contractor and **"Party"** means any one of those Parties.

"PCU" shall have the meaning ascribed to a passenger car unit in the Indian Roads Congress Publication No. IRC-64, 1990 or any substitute or modification thereof, and when used in this Agreement, shall include only motorised vehicles liable to payment of user charges at the Toll Plaza in accordance with the Fee Rules and the Exempted Vehicles specified therein, but does not include Tractors, Tractors with Trailer, Motor Cycles and non-motorised vehicles.

"Performance Guarantee" means the guarantee(s) to be procured in accordance with Article 1.5.6 and in the forms set out in Schedule F.

"Permanent Works" or "Works" means the permanent works to be Executed (including without limitation, all permanent structures and all work intended to form a continuing function after completion and any other work contractually required to be left in situ) in accordance with the Agreement.

"Person" means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or Government Agency or any other legal entity.

"Project Company's Representative" means the person(s) duly authorized by the Project Company to deal with the Parties to the Agreement with regard to the issues arising out of and contained in this Agreement.

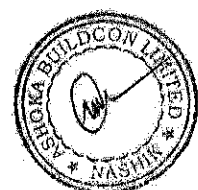
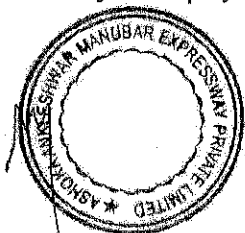
"Project Agreements" has same meaning as given terms of Concession Agreement executed by Project Company and Authority.

"Project Documents" has same meaning as given terms of Concession Agreement executed by Project Company and Authority.

"Project Assets" has same meaning as given terms of Concession Agreement executed by Project Company and Authority.

"Project Facilities" means all the amenities and facilities situated or to be situated on the Site, as described in Schedule 'C' of the Concession Agreement, and shall be executed by the EPC Contractor.

"Project Requirements" means collectively those required under the Concession Agreement, the Design Requirements and the Construction Requirements or any of the above as the context may admit or require.



"Project Highway" means the Site comprising the existing road comprising Expressway from km 279+000 to Km 292+000 and all Project Assets, and its subsequent development and augmentation in accordance with the provisions of the Concession Agreement.

"Project Site Safety Plan" means the plan submitted by the EPC Contractor in accordance with Article 16.5.

"Provisional Certificate" means the certificate that may be issued by the Project Company, pending completion of the Punch List items in accordance with Article 27 & 31.

"Punch List" shall have the meaning ascribed thereto in Article 31.3.

"RBI" means the Reserve Bank of India as constituted and existing under the Reserve Bank of India Act, 1946 including any statutory modification or replacement thereof, and its successors etc.

"Related Works" means works other than the Works, performed or undertaken by the Project Company - or suppliers of the Project Company or by public or private utilities or statutory or other relevant authorities either concurrently or sequentially with the Works at, on, over or adjacent to the Project Site in connection with or related to the Project and which may be connected to, associated with, ancillary to or otherwise related to or relevant to the Works.

"Replacement Contractors" means any company, which in relation to the EPC Contractor is its holding company or its subsidiary, or any other company, which the Project Company may so approve. The terms "Holding Company" and "Subsidiary" shall have the meaning attributed to them under the Companies Act 1956 and amendment thereof.

"Right of Way" means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project Highway in accordance with this Agreement

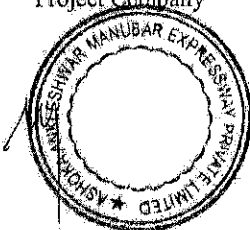
"Rs." or "Rupees" refers to the lawful currency of the Republic of India.

"Site" means the real estate particulars required for execution of Project Highway as set out in Schedule A on which the Project is to be implemented in accordance with the Project Requirements.

"Scheduled Completion Date" means the date that is 910 days from the Appointed Date as per the milestones mutually agreed and set forth in Schedule H.

"Scope of the Works" shall have the meaning as per cl. 1.7

Project Company



EPC Contractor



"Site Office" means the site office required by the Project Company's Engineers / engineers.

"Steering Committee" means the committee constituted by the Parties hereto, which shall consist of 2 members each from Project Company and EPC Contractor.

"Subcontract" means a subcontract awarded to a Subcontractor.

"Subcontractor" means any person or persons to whom a part of the Works has been subcontracted and the permitted legal successors in title to such person, but not any assignee of such person.

"Substitution Agreement" means the agreement substantially in the form set out at Schedules of the Concession Agreement to be entered into between AUTHORITY, the Lenders and the Project Company.

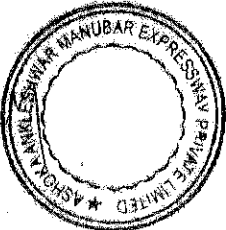
"Supplier" means any person or persons other than the EPC Contractor to whom the supply of any goods or materials has been subcontracted and where applicable, the permitted legal successors in title of such person but not any assignee of such person.

"Taxes" means any Indian taxes GST, on Sales tax, excise duties, octroi tax, customs duties, value added tax, sales tax, labour cess, local taxes and any impost of like nature (whether Central, State or local) charged, levied or imposed on the goods, materials, equipment and services incorporated in and forming part of the Project Highway charged, levied or imposed by any Government Instrumentality, on the construction and maintenance thereof of the Project and on the Project Assets, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income.

The Contract Price shall be inclusive of all taxes, levies, Royalty, Seigniorage, Cess charges/ Labour Cess, Insurance (which includes CAR policy) and duties etc. The Project Company shall have no liability for corporate or personal income taxes. For any increase in costs on account of Change in Law, the Project Company shall reimburse to the Contractor the amount it receives from the AUTHORITY on this count, only after actually receiving the same from the AUTHORITY and accounting for any taxes, etc.

"Temporary Works" means all works required in or about the Execution of the Works other than Permanent Works and EPC Contractor's Equipment.

"Termination" means early termination of the EPC Contractor's employment under this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course.



"Termination Date" means the date specified in the Termination Notice as the date on which Termination occurs.

"Termination Notice" means the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

"Termination Payment" means the amount payable by the Project Company to the EPC Contractor under this Agreement upon Termination for the actual work done and determined and certified by the Project Company.

"Tests" means the tests to be carried out in accordance with the Schedule J and such other tests prescribed under the Concession Agreement and/or otherwise required by the Authority / Project Company.

"Toll Plaza" means the structures and barriers erected on the Project Highway for the purpose of regulating the entry and exit of vehicles in accordance with the provisions of this Agreement and shall include all land, buildings, equipment, and other facilities required in accordance with or incidental to the provisions of this Agreement.

"Uninsurable" means in relation to a risk that insurance is not available in India in respect of that risk.

"User" means the users of the Project Highway or any part thereof in/on any vehicle and the Project Facilities.

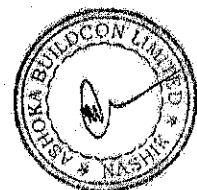
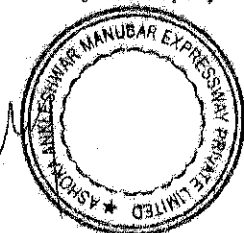
1.2 Interpretation

In this Agreement, unless the context otherwise requires,

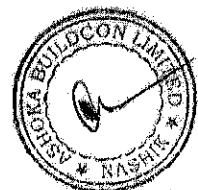
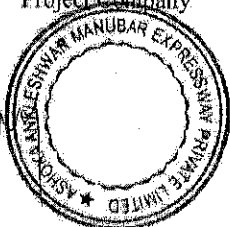
- 1.2.1 any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- 1.2.2 reference to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law in any State or Union Territory forming part of the Union of India which are in force at the date of signing this Agreement;
- 1.2.3 the words importing singular shall include plural and vice versa;
- 1.2.4 the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

Project Company

EPC Contractor



- 1.2.5 the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases
- 1.2.6 reference to "design and Execution" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and all other activities incidental to the design and Execution;
- 1.2.7 any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- 1.2.8 any reference to day shall mean a reference to a calendar day;
- 1.2.9 any reference to month shall mean a reference to a calendar month;
- 1.2.10 the Schedules to this Agreement form an integral 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. Terms defined in the Schedules shall have the same meaning throughout the Agreement;
- 1.2.11 any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed instrument, license or other document as amended, varied, supplemented, modified or suspended at time of such reference;
- 1.2.12 references to Recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be reference to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- 1.2.13 any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Project Company's Representatives shall be valid and effectual only if it is in writing under the hands of duly authorized Representative of such Party or the Project Company's Representative, as the case may be, in this behalf and not otherwise;
- 1.2.14 unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "untill" a specified day or date shall include both such days or dates.



1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of a 5 or above being rounded up.

1.4 Ambiguities and Discrepancies

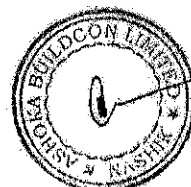
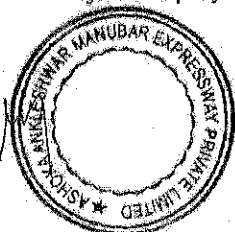
1.4.1 The EPC Contractor has examined the documents comprising this Agreement and the Concession Agreement, Project Documents and is of the opinion that there are no ambiguities, discrepancies, inconsistencies, divergence or design or construction impracticalities within and between such documents and that such documents are sufficient in all respects for the purposes of the design and Execution of the Works. If, notwithstanding the EPC Contractor's examination, ambiguities, discrepancies, inconsistencies, divergence or design or construction impracticalities within this Agreement come to the attention of either Party, that Party shall forthwith notify the other Party and which notification shall be accompanied by its proposals for overcoming the ambiguity, discrepancy, inconsistency, divergence, design or construction impracticality (as the case may be) based upon the following:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.
- (g) Concession Agreement to prevail over this Agreement for purpose of Technical & Construction Requirements except where the specific designs/ drawings/ specifications were handed over to the EPC Contractor by the Project Company.

1.4.2 Notwithstanding anything to the contrary contained in this EPC Agreement; the provisions of the Concession Agreement, shall have an overriding effect over the provisions of this EPC Agreement and in the event of any conflict/inconsistency between the provisions contained in

Project Company

EPC Contractor



the Concession Agreement and the provisions contained in this EPC Agreement, the provisions contained in the Concession Agreement shall prevail.

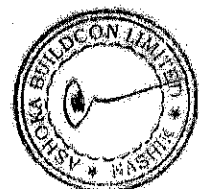
- 1.4.3 Notwithstanding anything to the contrary contained in this EPC Agreement, in case of any inconsistency between the provisions of the Escrow Agreement and the provisions contained in this EPC Agreement, the provisions contained in the Escrow Agreement shall prevail over the provisions contained in this EPC Agreement to the extent of such inconsistency.

1.5 Documents

- 1.5.1 The EPC Contractor acknowledges that the Project Company has supplied the EPC Contractor with copies of the Project Documents. The EPC Contractor shall be deemed to have full and actual knowledge of the Project Documents related to the scope of work as defined in Clause 1.7 (including, on receipt of notice thereof, any modification, variation, addition, consolidations or amendment thereof) and of the obligations, risks liabilities assumed by the Project Company there under.
- 1.5.2 The EPC Contractor shall, in accordance with the terms of this Agreement, perform and assume as part of its obligations under this Agreement, the Project Company obligations and risks under the Project Documents insofar as the same relate to the design and Execution of the Works.
- 1.5.3 The EPC Contractor undertakes that it will not do anything or fail to do anything which would:
- (a) cause, contribute to otherwise give rise to any breach by the Project Company of any of its obligations pursuant to the Project Documents;
 - (b) cause, contribute to or otherwise give rise to any liability on the part of the Project Company in connection with the Project Documents or pursuant to any Applicable Laws or Applicable Permits;
 - (c) Prejudice or lead to the diminution or loss of any other rights, entitlements or other benefits of the Project Company under the Project Documents or pursuant to any Applicable Laws or Applicable Permits.
- 1.5.4 Deleted
- 1.5.5 Subject to the terms and conditions of this Agreement, the EPC Contractor must perform its obligations under and observe all the terms of the Project Documents to which it is a party and not:
- (a) terminate or permit the termination of any Project Document to which it is a party; or
 - (b) make or agree to any arrangement or amendment to or variation of any Project Document to which it is party; or

Project Company

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- (c) enter into any agreement or document which would materially affect the interpretation or application of any of the Project Documents;

unless the relevant document or proposed course of action has been submitted to the Project Company and the Project Company Representative and there has been no objection by the Project company, as confirmed in writing.

- 1.5.6 The EPC Contractor shall furnish a Bank Guarantee as per Article 7, in the form specified in Schedule F.
- 1.5.7 The EPC Contractor shall design and Execute the Works as the EPC Contractor is required to perform in accordance with the requirements of this Agreement so that no act or omission of it in relation thereto shall constitute, cause or contribute to any breach by the Project Company of any of its obligations under the Concession Agreement.
- 1.5.8 Nothing herein shall be construed as creating any privity of contract between the EPC Contractor and the AUTHORITY.

1.6 Condition Precedent

This Agreement shall become legally binding and in force only upon the occurrence of Financial Close, save for the provisions of this Article 1.6 and Article 1.1 (Definitions), Article 5 (Confidentiality), Article 39 (Advance Payment), Article 45 (Dispute Resolution Procedure) and Article 47.4 (Governing Law and Jurisdiction) which shall be legally binding and in force immediately upon the execution of this Agreement. In addition to the foregoing, the EPC Contractor shall undertake and commence all design and relevant pre-construction activities prior to occurrence of the Financial Closure, as may be required by the Project Company.

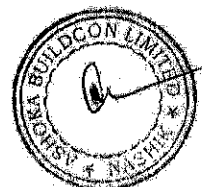
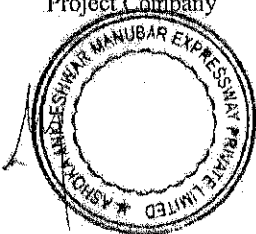
1.7 Scope of the Works

The Works shall be executed on the Site, as described in Schedule "A" of this Agreement. The Scope of the Works shall include design and execution by the EPC Contractor of all design, engineering, procurement, construction, completion and maintenance (during the Construction Period) as described in the Project Documents.

The scope of work to be executed by the EPC Contractor entails the construction of 8 lane road from km 279+000 to Km 292+000 on Vadodara Kim Expressway on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D of this Agreement. Without prejudice to the foregoing, the scope of work shall further include the maintenance of all the project facilities and existing assets during the Construction Period. The scope of work also includes rehabilitations of the existing structures as mentioned in Schedule A.

Project Company

EPC Contractor



The scope shall specifically include detailed engineering incorporating value engineering for the scope under this Agreement and obtaining required approvals for the same. The EPC Contractor will be responsible for all pre-construction activities including tree cutting, encroachment removal wherever feasible, relocation of obstructing religious structures, graveyards and any other sensitive receptors for the Project.

The EPC Contractor further agrees and undertakes to take up the various pre-construction activities as applicable, on a need basis and on mutually agreeable terms and conditions.

Tree cutting:

The EPC contractor shall Collect details, prepare drawings, procure relevant permissions, cut and stack trees as required by the Project Company and shall further assist the Project Company in following up with AUTHORITY for approvals.

Land Acquisition:

The EPC Contractor shall be responsible for coordinating with the Project Company and / or the AUTHORITY for taking over the possession of the Site and for all land acquisition issues related to the Project Highway. The EPC Contractor shall make all necessary efforts to facilitate the acquisition of land required for the purpose of the Project Highway. It is expressly agreed between the Parties that the EPC Contractor acknowledges that he shall not be entitled for any extension of Time for Completion/Milestones and / or additional cost due to any delay in the possession of Site due to land acquisition issues or otherwise. Notwithstanding the aforesaid in this regard, if any extension of Time for Completion and / or payment shall be received by the Project Company from the AUTHORITY, on account of any delay in possession of Site and / or land acquisition issues, the same shall be passed on to the EPC Contractor by the Project Company after making due adjustments for tax.

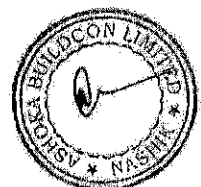
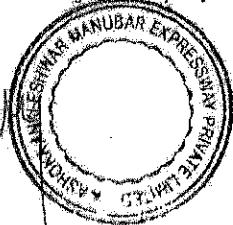
The EPC Contractor shall facilitate the land acquisition process by preparing the proposals for acquiring additional land for the Project Highway as per approved plan and profile and also assist Project Company and the AUTHORITY in preparing land acquisition plan. It shall also provide necessary data required by the Project Company in pursuing matter with AUTHORITY & Survey and Land Acquisition Officer (SLAO). It shall conduct surveys & identify mistakes/shortcomings in the prevailing / current land acquisition process to be done & submit the data to the Project Company for further action & also assist Project Company in scrutinizing survey reports as & when required by the Project Company.

Removal of social structures:

The EPC Contractor shall conduct surveys of religious structures obstructing highway works, liaise with the concerned Authority of the religious structure for shifting of temples & Graveyards to new location. It shall also construct new structure in proportion to the existing one, if required. EPC Contractor shall not bear expenses towards acquiring/purchasing land for construction of new structure. It shall bear

Project Company

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ceremonial expenses for shifting of idols & also provide machinery for demolition & disposal of old structures.

The EPC Contractor shall conduct survey & provide list of obstructions to be removed, provide manpower & machinery for removal of structures and also assist Project Company as & when required.

The EPC Contractor shall execute well filling by gravel/granular material as approved & ensure proper compaction of back filled material using water for settlement.

Utility Shifting:

The EPC Contractor shall liaise with all concerned authorities, conduct survey for all utilities & collect data and submit it to Project Company. It shall get estimates done as per site condition with the concerned authorities and execute utility shifting. It shall get shut down provisions/ permissions for connection to the facility & obtain final commissioning certificate, handing over & taking over certificate. The responsibility of handing over the retrievable material handing over will be that of the EPC Contractor.

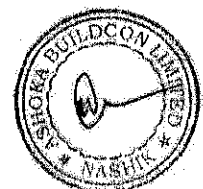
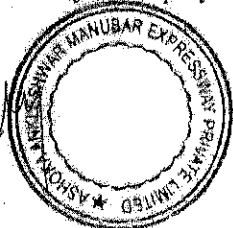
The EPC Contractor shall, subject to Applicable Laws and with the assistance of the Project Company and / or Authority, arrange for shifting of any utility including electric lines, water pipes and telephone cables etc., to an appropriate location or alignment within or outside the Site if and only if such utility causes a material adverse effect on the construction, operation or maintenance of the Project Highway. The utility shifting shall be carried out in such a manner that would enable the EPC Contractor to complete the Works within the Time for Completion. The cost of utility shifting, shall be initially borne by the EPC Contractor and later reimbursed by Project Company, only after the receipt of payments from the AUTHORITY after making due adjustments on account of applicable taxes.

Obtaining approvals for utility shifting from the concerned authorities shall be the responsibility of the EPC Contractor. It is expressly agreed between the Parties that the EPC Contractor acknowledges that he shall not be entitled for any extension of Time for Completion/Milestones and / or additional cost due to any delay in shifting of the utilities. Notwithstanding the above, if any extension of Time for Completion/Milestones shall be received by the Project Company from the AUTHORITY, on account of any utility shifting, the same shall be passed on to the EPC Contractor by the Project Company. The payment, stated herein above, shall be passed on to the EPC Contractor only in case the Work of Utility shifting is carried out by him.

The EPC Contractor shall ensure that all existing roads, right of way or utilities on, under or above the Site are kept in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the Authority of the controlling body of that road, right of way or utility, and the Project Company shall through the AUTHORITY, upon written request from the EPC Contractor, initiate and undertake legal proceedings for acquisition of any right of way necessary for such diversion.

Project Company

EPC Contractor



The Project Company shall give necessary Authorizations to EPC Contractor for liaising with and on behalf of the Project Company.

Maintenance of the Existing Road, traffic management, Safety and Environmental management and obtaining requisite permits and licenses for the portion of works under this Agreement during Construction Period, as per standards/requirements set out in this Agreement/ Concession Agreement/ Best Practices/industry Norms, as the case may be, shall form part of the Scope of Works.

It shall also include the performance and fulfillment of other obligations by the EPC Contractor under this Agreement.

The scope further includes detailed engineering incorporating value engineering for the scope under this Agreement and obtaining required approvals / Consents for the same. The EPC Contractor will be responsible for all pre-construction activities including:

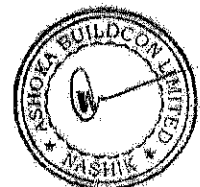
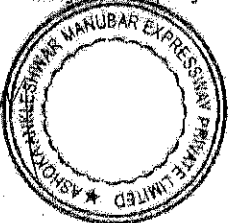
- facilitation for expeditious land acquisition,
- tree cutting,
- encroachment removal wherever feasible,
- facilitation, obtaining approvals, permissions etc., and shifting/ diversion/ removal of utilities as per project requirement,
- relocation of obstructing religious structures, graveyards and any other sensitive receptors for the Project.

The EPC Contractor shall undertake its obligations at its own cost and risk.

Without prejudice to the foregoing, the scope of work to be undertaken by the EPC Contractor under the terms hereof, shall further include any and all matters as are provided in the Concession Agreement and not specifically covered hereunder and shall hereby deemed to be a integral part of this Agreement and the EPC Contractor hereby agrees that the scope of work (and any part thereof) awarded by the Authority under the Concession Agreement to the Project Company shall, unless otherwise specified to the contrary in this Agreement, be *mutatis mutandis* be applicable to the EPC Contractor on back to back basis, as awarded by the Project Company to the EPC Contractor under the terms hereof.

Project Company

EPC Contractor



ARTICLE 2

2 THE PROJECT COMPANY

a) Project company's Representative

The Project Company may designate/appoint a Representative(s) (the "**Project Company's Representative**") who shall be acquainted with the Project and shall have the Authority and responsibility to act on behalf of the Project Company under this Agreement, and agree upon procedures for co-ordinating Project Company's obligations with those of EPC Contractor. In this event, it shall give notice to the EPC Contractor of the name and address of the Project Company's Representative.

b) Project Company's Representative Authority to Delegate

The Project Company's Representative may from time to time delegate any of its functions to assistants, and may at any time revoke such delegation. Such assistants shall have no Authority to issue any instructions or decisions to the EPC Contractor which may lead to an entitlement to additional payment or compensation and/or relief from payment of any monies due to the Project Company under this Agreement and/or relief from termination of its employment or the performance of its obligations under this Agreement.

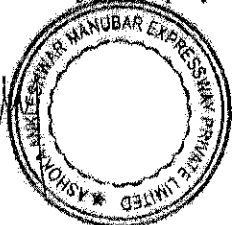
2.2 The Independent Engineer

The EPC Contractor acknowledges that under the Concession Agreement an Independent Engineer is appointed to review Data and to monitor compliance with the Project Requirements. The EPC Contractor shall ensure that the Works are designed and executed in such a manner and at such times in accordance with the provisions of the Concession Agreement. The Project Company has provided the EPC Contractor with a copy of the Independent Engineer's appointment and scope of work and the EPC Contractor shall be deemed to have knowledge of such appointment and scope of work as set out in Schedule O.

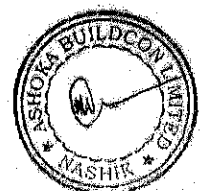
2.3 Owner's Engineer/Project Management Consultant

The EPC Contractor acknowledges that pursuant to the terms of this Agreement, the Project Company shall appoint the Owner's Engineer/Project Management Consultant at its own cost. The Project Company shall notify the EPC Contractor of the identity of the Owner's Engineer and the EPC Contractor shall be deemed to have knowledge of such appointment and scope of work as set out in Schedule N.

Project Company



EPC Contractor



ARTICLE 3

3 THE NOTICE TO PROCEED

3.1 The Notice to Proceed

The Project Company's Representative shall issue to the EPC Contractor a Notice to proceed on achieving Financial Closure.

3.2 Conditions prior to the issue of the Notice to Proceed

The following shall be conditions prior to the issue of the Notice to Proceed by the Project Company to the EPC Contractor:

- 3.2.1 the Project Company having received such evidence as it may reasonably require from the EPC Contractor that it has the requisite Organization and that it has designated and appointed suitable officer/ Representatives as it may deem appropriate to supervise the Project, to deal with the Independent Engineer, the AUTHORITY, the Project Company as appropriate;
- 3.2.2 The Project Company having received the Performance Guarantee.
- 3.2.3 the Project Company having received the Advance Payment Guarantee for the first installment of the Advance Payment;
- 3.2.4 the Project Company is made available a detailed construction programme in line with Schedule H prior to start of construction and in any case within 15 days of signing of this EPC Contract.
- 3.2.5 the commencement of engineering and pre-construction works such as site office establishment and other related activities by the EPC Contractor at their own cost/ time for which there shall not be any amounts payable separately for this account before the Financial Close.
- 3.2.6 the Project Company having received such evidence of compliance with the provisions of Article 14 (Insurance) as it may reasonably require; and
- 3.2.7 there being no Dispute which remains the subject of the Dispute Resolution Procedure, the resolution of which may give rise to the premature termination of this Agreement.
- 3.2.8 The Project Company shall handover vacant possession of the complete Site as per the ROW details provided in the Concession Agreement to the EPC Contractor as & when AUTHORITY hands over the Site to the Project Company as per Concession Agreement provisions.

Project Company

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3.2.9 The Project Company shall have received the EPC Contract Billing Break-up and Cash Flow Statements from the EPC Contractor.

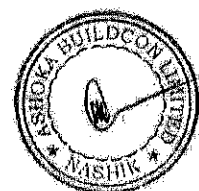
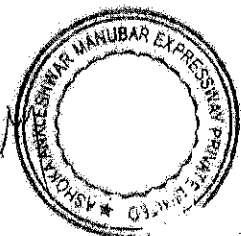
3.2.10 Any other conditions prescribed by Authority to the Project Company and as are provided under the Concession Agreement and covered within the scope of work of the EPC Contractor under the terms hereof.

3.3 Issue of the Notice to Proceed

3.3.1 The EPC Contractor shall provide the Project Company with written evidence that all the conditions in Article 3.2 have been fulfilled.

3.3.2 Upon the Project Company's Representative satisfying himself that the EPC Contractor's written evidence or notice has been properly given pursuant to Article 3.3.1, he shall issue the Notice to Proceed.

3.3.3 In the event that no notice pursuant to Article 3.3.1 has been properly given by the Project Company till 3 months from the Appointed Date, or such later date as may be mutually agreed by the Parties, the Project Company may after giving 5 days notice in writing to the EPC Contractor, terminate this Agreement and compensate the EPC Contractor for all costs incurred by them till that date, provided that such costs are adequately accounted for by the EPC Contractor to the satisfaction of the Project Company and shall not include any costs which are not to be reimbursed to the EPC Contractor under the terms hereof in the event the Agreement was not terminated in accordance with the foregoing.



ARTICLE 4

4 SITE

4.1 CONDITION OF THE PROJECT SITE

Information from the Project Company

The Project Company shall have made available to the EPC Contractor prior to the date of issue of the Notice to Proceed available data and general conditions relating to the Project Site as shall have been obtained by or on behalf of the Project Company from investigations undertaken relevant to the Works and/or the Project Site.

4.2 EPC Contractor to inspect

Without prejudice to Article 4.1 and without limitation to any other provision of this Agreement, the EPC Contractor shall be deemed prior to executing this Agreement, to have, and hereby warrants that it has:

4.2.1 inspected and examined the Project Site as to:

- (a) the nature of the climatic, hydrological, ecological, (including without limitation all hazards and the potential or any contamination of the Project Site or the sub-soil by any noxious or hazardous substances) sub-soil and general conditions of the Project Site;
- (b) the form and nature of the Project Site (excluding all over & underground Encumbrances like trees, utilities etc), and its adequacy for the purposes of the design and Execution of the Works;
- (c) the risk of injury or damage to property adjacent to the Project Site and to occupiers of such property;
- (d) the extent and nature of the design, work, plant and materials necessary for the design and Execution of the Works;
- (e) the means of communication with and access to the Project Site, the accommodation it may require and the adequacy of the rights of access set out in the Concession Agreement for those purposes;
- (f) the possibility of interference by persons (other than the AUTHORITY and the Project Company) with access to or use of or possession of the Project Site;

Project Company

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- (g) the precautions and the times and methods of working necessary to prevent any nuisance, whether public or private, being caused to any third parties;
- (h) the nature and extent of any restrictions upon access, possession or use of the Project Site as may be contained in the Concession Agreement;
- (i) conditions affecting shipping and transportation of goods, plant and materials to the Project Site;
- (j) availability and quality of labour, water and electrical power for the Works;
- (k) local laws, regulations and customs and any laws; and

4.2.2 examined, checked and satisfied itself as to the adequacy, correctness and suitability of all data made available to the EPC Contractor by or on behalf of the Project Company prior to the execution of this Agreement and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances which may influence or affect such of the Project Requirements and the Works as are relevant to the work to be performed by the EPC Contractor and any other factors which would affect its decision to enter into this Agreement or the terms on which it would do so.

4.3 Claims

No claim by the EPC Contractor for additional payment or compensation or any extension of time to the Scheduled Completion Date will be allowed on the ground of any misunderstanding or misapprehension in respect of the matters referred to in this Article 4 or on the ground that incorrect or insufficient information was given to it by any person, whether or not in the employment of the Project Company or any agent or representative of the Project Company, the Independent Engineer or the AUTHORITY nor, subject to the express provisions of this Agreement, shall the EPC Contractor be relieved from any liability, risk or obligations imposed on or undertaken by him under or in relation to the Agreement on any such ground or on the ground that the EPC Contractor did not or could not foresee any matter which may in fact affect or have affected the design and Execution of the Works.

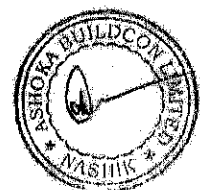
4.4 Handover of the Project Site

Handing Over of the Project Site: The Project Company shall handover the Site as per the Concession Agreement provisions, to the EPC Contractor as and when AUTHORITY hands over the Site to the Project Company. It is agreed that the construction of Works on all land which has been handed over by the Project Company on or prior to [182 (One Hundred and Eighty Two) days] from the Appointed Date shall be completed on or before the Scheduled Completion Date (SCD).

The EPC Contractor shall have the right to enter upon, occupy and use the Project Site for the purpose of the design and Execution of the Works subject to:

Project Company

EPC Contractor



- (a) any rights of public passage or access existing over any part of the Project Site from time to time;
- (b) the rights and obligations of persons or Authority under any Applicable Laws and pursuant to any Applicable Permits;
- (c) the right of Users to use the Project Road or of the public to use any other road or highway;
- (d) and without prejudice to Article 4.11 the rights of access for the authorized Representatives of AUTHORITY, the Project Company, the Project Company's Representative, the Independent Engineer and any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their Authority and upon reasonable notice, the EPC Contractor shall provide to such persons assistance reasonably required to carry out their respective duties and functions.

Provided that the EPC Contractor shall only have possession, use and access to the Project Site to the same (and no greater) extent as the Project Company has been granted under the Concession Agreement and upon the same terms as granted there under.

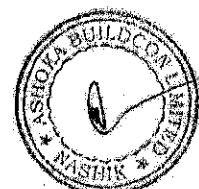
4.5 Rights of use of the Project Site

- 4.5.1 The EPC Contractor shall not part with or create any Encumbrance on the whole or any part of the Project Site.
- 4.5.2 The EPC Contractor shall not without the prior written consent or approval of the Project Company use the Project Site for any purpose other than for the purpose of the design and Execution of the Works.
- 4.5.3 The EPC Contractor shall allow access to and use of the Project Site and/or the Project Facilities for laying/installing telegraph lines, electric lines or for such other public purposes as the Project Company may require.

Provided that if such access or use results in a Material Adverse Effect, the EPC Contractor shall use its best endeavor to ensure that the impact thereof upon the design and Execution of the Works is minimized. In the event of any physical damage to the Project Site and/or the Project Facilities on account thereof, the EPC Contractor shall provide all information and assistance as the Project Company may reasonably require for seeking compensation or damages from such user of the Site as per Applicable Laws, and the EPC Contractor is entitled to such compensation/damages pertaining to its portion accordingly.

Project Company

EPC Contractor



4.6 Peaceful Possession

Subject to complying with the terms and conditions of this Agreement, the EPC Contractor shall remain in peaceful possession and enjoyment of the Site during the Construction Period. In the event the EPC Contractor is obstructed by any person claiming any right, title or interest in or over the Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any person claiming to have any interest in and/or charge on the Site and/or the Completed Project Facilities or any part thereof, the Project Company shall, use reasonable endeavors to procure that land and hand it over to the EPC Contractor.

4.7 Clearances

The EPC Contractor shall be responsible for all the clearances listed in Schedule E and / or any other clearances, permits and permissions required as per applicable Laws and necessary for design and execution of Works. The EPC Contractor shall obtain Applicable Permits in such sequence as is consistent with the Project Requirements. It is hereby clarified for the avoidance of doubt that the inability of the EPC Contractor to obtain the aforesaid clearances, permits or permissions on time for any reason, shall not affect the obligation of the EPC Contractor to complete the Project Works and /or achieve any General Milestone Event as per the schedule and the timelines in accordance with the provisions hereunder and the EPC Contractor shall be liable for all delays caused in this regard, in accordance with the provisions hereof.

4.8 Access to the Project Site during the Operations Period

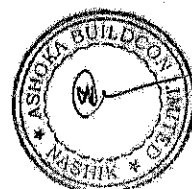
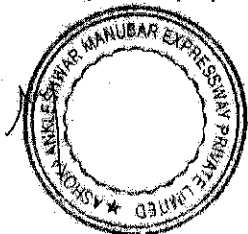
The EPC Contractor acknowledges that access to the Project Site after the COD shall be subject to coordination with the O&M Contractor and the Project Company. The EPC Contractor shall give reasonable notice of his requirements for access and shall comply with all requirements and conditions for such access as may be imposed by the O&M Contractor or the Project Company. In the event of any dispute relating to the access to the site after COD, which prevents EPC Contractor from fulfilling his obligations as provided in this Agreement, it shall be the responsibility of the Project Company to resolve such matters expeditiously so as to enable the EPC Contractor to fulfill his obligations under the terms hereof.

4.9 Additional Access

The EPC Contractor shall obtain at its costs and charges special or temporary right of access, occupation or use of any property that may be required by it in connection with the design and Execution of the Works. The Project Company shall provide reasonable assistance to the EPC Contractor in any dealings with AUTHORITY which the EPC Contractor may have in connection with the provision of such rights. The

Project Company

EPC Contractor



EPC Contractor shall obtain at its costs such facilities as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

4.10 Right of Access and Provision of Site Office to the Project Company, the Independent Engineer, Owner's Engineer and the AUTHORITY

The EPC Contractor shall procure that:

- a) subject to compliance with all relevant safety procedures, which shall include any relevant health and safety plans for the construction of the Project Facilities, the EPC Contractor's site rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the EPC Contractor, the Project Company, the Independent Engineer and the AUTHORITY shall have unrestricted access at all reasonable times during normal working hours to:
 - (i) view the Works at the Project Site. No restrictions shall apply to the right of access for the Project Company, the Independent Engineer, the AUTHORITY and their staff and visitors to the office and other facilities provided at the Project Site for their use; and
 - (ii) Subject to obtaining the consent of the relevant manufacturer or supplier (which the EPC Contractor agrees to use all reasonable endeavors to obtain), visit any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for use in the Works for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Works;

The costs of such visits shall be borne by the Project Company and are not in the scope of the EPC contractor.

The Project Company, the Independent Engineer, and the AUTHORITY shall have such rights of access to the Project Site and Project Facilities whilst under the possession or control of the EPC Contractor in an emergency as any of them (acting reasonably) considered suitable in the circumstances and for the purposes of attending any progress meetings and site meetings that each is entitled to attend.

4.11 Watch and Ward

The EPC Contractor shall be fully responsible for the presence on or around or entry to or around their Site office & their other site establishments.

Project Company



EPC Contractor



ARTICLE 5

5 CONFIDENTIALITY

The EPC Contractor shall treat as private and confidential this Agreement and everything contained therein or pertaining thereto or to the Works and shall only reveal or disclose the same to the extent that it is required to do so by law or as is necessary to enable it to design and Execute the Works or to carry out its obligations under or in relation to the Agreement. In particular, but without limiting the generality of the foregoing:

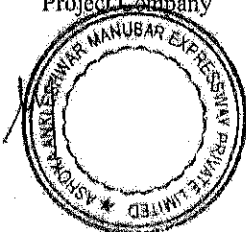
- 5.1 the EPC Contractor shall take all steps to ensure that photographs of Project Site are taken for the express purpose of complying with the Project Requirements only;
- 5.2 the EPC Contractor shall not publish any information, drawing or photograph without the written consent of Project Company's Representative;
- 5.3 if the EPC Contractor receives enquiry(s) from press, radio or television bodies or Representatives or other persons associated with the news media concerning the Works or this Agreement it shall refer them to the Project Company.
- 5.4 the EPC Contractor shall not use Project Site for any advertising except to the extent provided in the Concession Agreement.
- 5.5 the EPC Contractor shall use its best efforts to procure that its employees, representatives and agents and all subcontractors and suppliers, their employees, representatives and agents comply with this Article 5.
- 5.6 Use of Data following Completion

The EPC Contractor shall permit, and shall procure that all Subcontractors and Suppliers permit the Project Company, without any payment whatsoever, whether royalties or otherwise, to use following Completion of the Works and without limitation in time and notwithstanding any termination of the EPC Contractor's employment, or entry and expulsion by the Project Company, or termination, completion or abandonment of the Agreement and / or any Subcontract and/or the Works or any part thereof, all Data and any other documents of whatsoever nature (including, but without limiting the generality of the foregoing, computer software and data and documents relating to the programming of electronic equipment) contained in or produced pursuant to or in connection with this Agreement and/or the Works:

- 5.6.1 for the Execution dismantling, reassembling, adjustment and upkeep of the Works including without limitation for the manufacture whether by the Project Company or others of any parts

Project Company

EPC Contractor



equivalent, identical or similar to any items of plant or any other materials forming part of the Works as spare parts or replacement parts or extra parts provided that the same are for use in or in connection with the Project, and

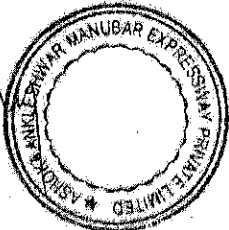
- 5.6.2 In relation to or in any connection with Works or proposed Works other than those in sub-article 5.6.1 above but with which the Project will be physically linked, including without limitation for the manufacture of parts equivalent, similar or identical to elements of any plant, provided that the Project Company shall have first given the EPC Contractor the opportunity to supply such parts at a price and on terms no less favorable to the Project Company than those which the Project Company can obtain elsewhere.

Further, the EPC Contractor shall permit and shall procure, in relation to any elements of plant designed or to be designed and / or to be supplied by them, that all Subcontractors and Suppliers permit the Project Company to use any part or item forming part of the Works as a sample for the purpose of manufacture envisaged in sub-articles 5.6.1 and 5.6.2 of this Article 5.6.

Project Company

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EPC Contractor



ARTICLE 6

6 PATENT RIGHTS, ROYALTIES, ETC

6.1 EPC Contractor to Indemnify

The EPC Contractor shall fully indemnify the Project Company from and against any and all damages which the Project Company may hereafter suffer, or pay by reason of any demands, all claims, suits or proceedings, for or on account of infringement of any domestic or foreign patent rights, letters patent, registered design, copyright, trademark, or trade-name or industrial property right, or other intellectual property rights, proprietary or confidentiality rights with respect to any materials, information, design or process used by the EPC Contractor or by the EPC Contractor's Sub-Contractors thereof or in performing the EPC Contractors obligations or in any way incorporated in or related to the EPC Contractors Scope of Work. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the EPC Contractor shall make every reasonable effort, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the EPC Contractor shall promptly make every reasonable effort to secure for AUTHORITY a license, at no cost to AUTHORITY, authorizing continued use of the infringing work. If the EPC Contractor is unable to secure such license within a reasonable time, the EPC Contractor shall, at its own expense and without impairing the specifications and standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.

6.2 Claims in Respect of Patent Rights :

In the event of any claim being made or action brought against the Project Company arising out of the matters referred to in this Article 6, the EPC Contractor shall be notified thereof and may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise there from, provided that the EPC Contractor shall indemnify the Project Company for losses arising in this regard. The Project Company shall not, unless and until the EPC Contractor shall have failed to take over the conduct of the negotiations or litigation or refused to admit that it is liable to indemnify the Project Company in respect thereof or failed to provide security as hereinafter provided, make any admission which might be prejudicial thereto. The conduct by the EPC Contractor of such negotiations or litigation shall be conditional upon the EPC Contractor having first given to the Project Company such reasonable security as shall be from time to time be required by the Project Company to cover the amount ascertained or agreed or estimated by the Project Company, as the case may be, of any compensation, damages, expenses and costs for which the Project Company may become liable. The Project Company shall, at the request of the EPC Contractor, afford all reasonable assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable expenses incurred in so doing.

Project Company

EPC Contractor



ARTICLE 7

7 SECURITY TO BE PROVIDED BY THE EPC CONTRACTOR

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the EPC Contractor shall have the following obligations:

7.1 Performance Guarantee

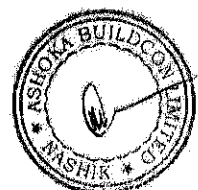
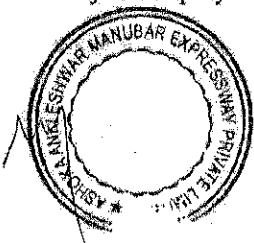
7.1.1 The EPC Contractor shall procure & submit Performance Guarantee to the Project Company, in the form of corporate guarantee / letter of comfort (as mutually agreed) for an amount of Rs. 84.35 Crs and the same shall be released to the EPC Contractor after release of Performance Security submitted by Project Company to the Authority.

Where the EPC Contractor's employment under this Agreement is terminated due to any event other than EPC Contractor Event of Default, the Performance Guarantee shall, subject to the Project Company's right to receive amounts, if any, due from the EPC Contractor under this Agreement, be duly discharged and released to the EPC Contractor.

None of the provisions contained herein shall absolve the Project Company of its obligations under the provisions of the Concession Agreement.

Project Company

EPC Contractor



ARTICLE 8

8 THE EPC CONTRACTOR

8.1 General Obligations

8.1.1 Subject to and in accordance with the terms and conditions of this Agreement, the EPC Contractor shall to the satisfaction of the Project Company, with due care and diligence, design and Execute the Works as is required under the Project Requirements and carry out its other obligations under and/or in relation to or reasonably to be inferred from the Agreement and provide all personnel and labour, including the supervision thereof, materials, offices, workshops, tools, machinery, equipment and all other resources and things, whether of a temporary or permanent nature, required in or for such design and Execution and for carrying out such obligations.

The EPC Contractor acknowledges that prior to the execution of this Agreement, the EPC Contractor has, after a complete and careful due diligence/examination, made an independent evaluation of all the requirements, including but not limited to the Specifications and Standards, Site and has determined to the EPC Contractor's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the EPC Contractor in the course of performance of its obligations hereunder.

The EPC Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Project Company shall not be liable for the same in any manner whatsoever to the EPC Contractor

8.1.2 The EPC Contractor shall assume full responsibility for the proper and timely design and Execution of the Works in accordance with this Agreement.

8.1.3 No change in the composition of the EPC Contractor, which would affect the performance of the obligations of the EPC Contractor under this Agreement, shall be permitted without the prior written consent of the Project Company.

8.1.4 The EPC Contractor will confirm on Notice to Proceed that it has satisfied itself that the Project clearances have been procured by the AUTHORITY/Project Company as per applicable Laws. The EPC Contractor shall be responsible for itself and all consultants, subcontractors and suppliers for ensuring full compliance with the terms and conditions subject to which these clearances have been issued.

8.1.5 The EPC Contractor shall obtain and maintain with the reasonable assistance of the Project Company, all Applicable Permits related to construction in such sequence as is consistent with the

Project Company

EPC Contractor

