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 Government of India  
 Ministry of Road Transport and Highways  
 (Highways Section)  
 Transport Bhawan, 1, Parliament Street, New Delhi-110001.

Dated: 10<sup>th</sup> November, 2020

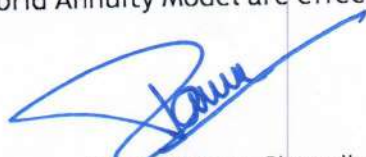
Office Memorandum

**Subject: Changes in the Model Concession Agreement (MCA) of Hybrid Annuity Model (HAM) Projects- reg.**

Reference is invited to the Inter-Ministerial Committee (IMC) meetings held on the above subject. As per the consensus/decisions arrived in the IMC meetings, revised MCA of HAM incorporating the changes along with Deviation Statement indicating the existing clauses and revised formulations thereof are attached herewith.

2. The changes in the Model Concession Agreement of the Hybrid Annuity Model are effective from the date of issue of the same.

Encl: As above

  
 (Ramandeep Chowdhary)  
 Deputy Secretary to the Government of India  
 Telephone No.23718575

To

1. DG (RD) & SS, RT&H
2. Chairman, NHAI
3. Managing Director, NHIDCL
5. Director (NIC), MORTH - for uploading the above documents on website of this Ministry.

Copy for information:

1. Department of Economic Affairs [kind attn: Shri Baldeo Purushartha, JS(IPF)]
2. Department of Financial Services (kind attn: Shri Anand Madhukar, OSD)
3. Department of Legal Affairs (kind attn: Smt. Anju Rathi Rana, JS & Legal Adviser)
4. NITI Aayog (kind attn: Shri S. K. Saha, Adviser Transport)
5. Sr. PPS to Secretary (RT&H)
6. Sr. PPS to JS(H)

Changes in HAM MCA

S. No.	Existing Clause	Proposed Clause
1	7.1 (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/ Consortium Members}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that each Consortium Member whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Proposals shall hold at least 26% (twenty six per cent) of Equity during the Construction Period and <b>two years</b> thereafter along with its Associates;	it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/ Consortium Members}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that each Consortium Member whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Proposals shall hold at least 26% (twenty six per cent) of Equity during the Construction Period and <b>six months</b> thereafter along with its Associates;
2	11.2.1 The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.	The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility (including electric lines, water pipes and telephone cables), to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works or Maintenance of the Project Highway in accordance with this Agreement, as per the scope given in Schedule B and in accordance with applicable standards and specifications of concerned utility owning entity. The cost of shifting of such, utilities indicated in Schedule-B is payable to the Concessionaire as part of Bid Project Cost. Cost of shifting utilities not included in the Schedule-B, if any, shall be treated as Change of Scope. The Authority will provide assistance to the Concessionaire for obtaining the estimates for shifting of such utilities from the entity owning such electric lines, water pipes or telephone cables, as the case may be. The Concessionaire shall execute such utility shifting works under the supervision of utility owning agency and Independent Engineer (IE) in accordance with the provision of agreement. The supervision charges only shall be paid by the Authority to the Utility Owning Entity. In the event of any delay in shifting thereof, the Concessionaire shall be responsible for failure to perform any of its





		<p>obligations here under if such failure is not as a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.</p> <p>The dismantled material/scrap of existing Utility to be shifted/dismantled shall belong to the Concessionaire who would be free to dispose-off the dismantled material as deemed fit by them.</p> <p>The work of shifting of utilities can be taken up by the Concessionaire any time after signing of the Agreement.</p>
3	<p>12.4.1 Maintenance During Construction Period</p> <p>12.4.1 During the Construction Period, the Concessionaire shall maintain, at its cost, the existing Project Highway to ensure that the road is in pothole free condition is maintained , and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, interrupt and divert the Users and other persons if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project.</p>	<p>12.4.1 Maintenance During Construction Period</p> <p>12.4.1 During the Construction Period, the Concessionaire shall maintain, at its cost, the existing Project Highway to ensure that the road is in pothole free condition is maintained , and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, interrupt and divert the Users and other persons if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. <b>Further, in case the Scheduled Completion Date gets extended due to delay attributable solely to the Authority, the Concessionaire shall be liable to maintain the Project Highway for such extended period and shall be entitled to receive reimbursement of cost of maintenance for such extended period at the rate specified in Clause 6.2.1.</b> For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project.</p>
4	<p>22.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 150 (one hundred and fifty) days from the date of this Agreement. In the event of delay in achieving the Financial Close, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred twenty) days, subject to payment of Damages to the</p>	<p>22.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close <b>for an amount not lower than either:</b></p> <ul style="list-style-type: none"> <li>i. <b>Total Project Cost; or</b></li> <li>ii. <b>10% less than (Estimated Project Cost minus 40% of Bid Project Cost).</b></li> </ul>



	<p>Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 150 (one hundred and fifty) days shall be granted only to the extent of Damages so paid. In the event of delay in achieving the Financial Close beyond 270 (two hundred and seventy) days from the date of this Agreement, the Concessionaire shall be entitled to a further period not exceeding 95 (ninety five) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 270 (two hundred and seventy) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.</p>	<p>within 150 (one hundred and fifty) days from the date of this Agreement. In the event of delay in achieving the Financial Close, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred twenty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 150 (one hundred and fifty) days shall be granted only to the extent of Damages so paid. In the event of delay in achieving the Financial Close beyond 270 (two hundred and seventy) days from the date of this Agreement, the Concessionaire shall be entitled to a further period not exceeding 95 (ninety five) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 270 (two hundred and seventy) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.</p>
5	<p>23.4 Payment during Construction Period</p> <p>Upon receiving a report from the Independent Engineer certifying the achievement of the below mentioned</p>	<p>23.4 Payment during Construction Period</p> <p>Upon receiving a report from the Independent Engineer certifying the achievement of the below mentioned Payment Milestones<sup>2</sup>, the Authority shall disburse, within 15 (fifteen) days of the receipt of each such report, an installment equal to <b>4% (four per cent)</b> of the Bid Project</p>

<sup>2</sup> Independent Engineer, during finalization of design, shall upfront decide weightages of all the items in due consultation with the Authority responsible for making payments and recommended percentage physical progress achievements based on the above decided weightages for the entire construction period. The weightages shall be fixed as per format in Annexure – I of Schedule G of this Agreement.



	<p>Payment Milestones<sup>1</sup>, the Authority shall disburse, within 15 (fifteen) days of the receipt of each such report, an installment equal to 8% (eight per cent) of the Bid Project Cost, adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of that report.</p> <p>For the purpose of this Clause 23.4, the Payment Milestone for release of payment during Construction Period shall be as under:</p> <ul style="list-style-type: none"> <li>a) I (first) Payment Milestone - On achievement of 10% Physical Progress</li> <li>b) II (second) Payment Milestone - On achievement of 30% Physical Progress</li> <li>c) III (third) Payment Milestone - On achievement of 50% Physical Progress</li> <li>d) IV (fourth) Payment Milestone - On achievement of 75% Physical Progress</li> <li>e) V (fifth) Payment Milestone - On achievement of 90% Physical Progress</li> </ul> <p>Provided that in case of Change of Scope, the Physical Progress shall be recalculated to account for the changed scope.</p>	<p>Cost, adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of that report.</p> <p>For the purpose of this Clause 23.4, the Payment Milestone for release of payment during Construction Period shall be as under:</p> <ul style="list-style-type: none"> <li>a) I (first) Payment Milestone - On achievement of 5% Physical Progress</li> <li>b) II (second) Payment Milestone - On achievement of 10% Physical Progress</li> <li>c) III (third) Payment Milestone - On achievement of 20% Physical Progress</li> <li>d) IV (fourth) Payment Milestone - On achievement of 30% Physical Progress</li> <li>e) V (fifth) Payment Milestone - On achievement of 40% Physical Progress</li> <li>f) VI (sixth) Payment Milestone - On achievement of 50% Physical Progress</li> <li>g) VII (seventh) Payment Milestone - On achievement of 60% Physical Progress</li> <li>h) VIII (eighth) Payment Milestone - On achievement of 70% Physical Progress</li> <li>i) IX (ninth) Payment Milestone - On achievement of 80% Physical Progress</li> <li>j) X (tenth) Payment Milestone - On achievement of 90% Physical Progress</li> </ul> <p>Provided that in case of Change of Scope, the Physical Progress shall be recalculated to account for the changed scope.</p>
•	<p>23.6.1 The (the "Completion Cost" shall be the summation of A, B, C, D, E, and F below:</p>	<p>23.6.1 The (the "Completion Cost" shall be the summation of A, B, C, D, E, and F below:</p>

<sup>1</sup> Independent Engineer, during finalization of design, shall upfront decide weightages of all the items in due consultation with the Authority responsible for making payments and recommended percentage physical progress achievements based on the above decided weightages for the entire construction period. The weightages shall be fixed as per format in Annexure - I of Schedule G of this Agreement.



<p>A. 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 10% Physical Progress.</p> <p>B. Another 20% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 30% Physical Progress.</p> <p>C. Another 20% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 50% Physical Progress.</p> <p>D. Another 25% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 75% Physical Progress.</p> <p>E. Another 15% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 90% Physical Progress.</p> <p>F. Another 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the COD.</p> <p>The Parties acknowledge and agree that the Authority has paid a portion of the Completion Cost as payments during Construction Period pursuant to Clause 23.4 of this Agreement. The balance Completion Cost remaining shall</p>	<p>A. 5% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 5% Physical Progress.</p> <p>B. Another 5% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 10% Physical Progress.</p> <p>C. Another 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 20% Physical Progress.</p> <p>D. Another 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 30% Physical Progress.</p> <p>E. Another 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 40% Physical Progress.</p> <p>F. Another 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 50% Physical Progress.</p> <p>G. Another 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 60% Physical Progress.</p> <p>H. Another 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 70% Physical Progress.</p>
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	be due and payable during the Operation Period in accordance with the provisions of Clause 23.6.2.	<p>I. Another 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 80% Physical Progress.</p> <p>J. Another 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of report confirming 90% Physical Progress.</p> <p>K. Another 10% of the Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the COD.</p> <p>The Parties acknowledge and agree that the Authority has paid a portion of the Completion Cost as payments during Construction Period pursuant to Clause 23.4 of this Agreement. The balance Completion Cost remaining shall be due and payable during the Operation Period in accordance with the provisions of Clause 23.6.2.</p>
6.	23.6.4 Interest shall be due and payable on the reducing balance of Completion Cost at an interest rate equal to the <b>applicable Bank Rate [plus 3% (three percent)]</b> . Such interest shall be due and payable biannually along with each installment specified in Clause 23.6.3. For the avoidance of doubt and by way of illustration, the Parties agree that interest on the Completion Cost remaining to be paid, calculated from COD and until the 180th (one hundred and eightieth) day of COD, shall be due and payable to the Concessionaire along with the first Annuity Payment and interest on <b>**3% (** per cent)</b> of the Percentage of Completion Cost remaining to be paid on	23.6.4 Interest shall be due and payable on the reducing balance of Completion Cost at an interest rate equal to the <b>average of one year MCLR of top 5 Scheduled Commercial Banks<sup>5</sup> plus 1.25 percent</b> . Such interest shall be due and payable biannually along with each installment specified in Clause 23.6.3. For the avoidance of doubt and by way of illustration, the Parties agree that interest on the Completion Cost remaining to be paid, calculated from COD and until the 180th (one hundred and eightieth) day of COD, shall be due and payable to the Concessionaire along with the first Annuity Payment and interest on <b>**6% (** per cent)</b> of the Percentage of Completion Cost remaining to be paid on COD, calculated from first Annuity payment date and until the 1st (first) anniversary of COD, shall be due and payable along with the second

<sup>3</sup> To be finalized on the basis of the outstanding Completion Cost Annuity pursuant to the payment of 1<sup>st</sup> Annuity as provided in the Annuity payment schedule in Clause 23.6.3

<sup>5</sup> The Authority shall declare the list of Top 5 Scheduled Commercial Banks on 1st September every calendar year based on the balance sheet size as declared in their annual reports,. The 1 year MCLR of the top 5 Scheduled commercial banks shall be taken at the start of every quarter.

<sup>6</sup> To be finalized on the basis of the outstanding Completion Cost Annuity pursuant to the payment of 1<sup>st</sup> Annuity as provided in the Annuity payment schedule in Clause 23.6.3



	<p>COD, calculated from first Annuity payment date and until the 1st (first) anniversary of COD, shall be due and payable along with the second Annuity Payment due and payable under this Agreement. The Parties further agree that interest shall be calculated based on the number of days a particular Bank Rate was applicable during the period of calculation. For the purpose of illustration, assuming that the balance capital cost remaining to be paid is Rs 100 crores on the 1<sup>st</sup> Annuity Payment Date, the applicable Bank Rate for the first 75 days is 8% and thereafter it is revised to 7.5% and remains unchanged till the 2<sup>nd</sup> Annuity Payment Date, the interest would be calculated as <math>((100 \times 11\% \times 75) / 365) + ((100 \times 10.5\% \times 105) / 365)</math>. For the avoidance of doubt<sup>4</sup>, the Interest would be calculated on simple interest basis and no compounding of the same would be undertaken.</p>	<p>Annuity Payment due and payable under this Agreement. The Parties further agree that interest shall be calculated based on the number of days a particular Bank Rate was applicable during the period of calculation. For the purpose of illustration, assuming that the balance capital cost remaining to be paid is Rs 100 crores on the 1<sup>st</sup> Annuity Payment Date, the applicable Bank Rate for the first 75 days is 8% and thereafter it is revised to 7.5% and remains unchanged till the 2<sup>nd</sup> Annuity Payment Date, the interest would be calculated as <math>((100 \times 11\% \times 75) / 365) + ((100 \times 10.5\% \times 105) / 365)</math>. For the avoidance of doubt<sup>7</sup>, the Interest would be calculated on simple interest basis and no compounding of the same would be undertaken.</p>
7	<p><b>23.8 Mobilization Advance</b></p> <p>The Authority shall, on request of the Concessionaire, make an advance payment in a sum not exceeding 10% (ten per cent) of the Bid Project Cost (the "<b>Mobilization Advance</b>"). This advance payment shall be made in two equal instalments. The Concessionaire may request the Authority for the first instalment of the advance payment at any time after the Appointed Date, along with furnishing a Bank Guarantee in a form satisfactory to the Authority. The Concessionaire may request the Authority for the second instalment of the advance payment at any time, after 60(sixty) days from the Appointed Date, along with furnishing a Bank Guarantee in a form satisfactory to</p>	<p><b>23.8 Mobilization Advance</b></p> <p>The Authority shall, on request of the Concessionaire, make an advance payment in a sum not exceeding 10% (ten per cent) of the Bid Project Cost (the "<b>Mobilization Advance</b>"). This advance payment shall be made in two equal instalments. The Concessionaire may request the Authority for the first instalment of the advance payment at any time after the Appointed Date, along with furnishing a Bank Guarantee in a form satisfactory to the Authority. The Concessionaire may request the Authority for the second instalment of the advance payment at any time, after 60(sixty) days from the Appointed Date, along with furnishing a Bank Guarantee in a form satisfactory to the Authority. The first and second instalments of the Mobilization Advance shall be paid by the Authority within 30 (thirty) days of receipt of the respective requests in</p>

<sup>4</sup> Assuming that the total number of days between 1<sup>st</sup> Annuity payment date and 2<sup>nd</sup> Annuity date are 180. In case the number of days are different the calculation may be appropriately changed

<sup>7</sup> Assuming that the total number of days between 1<sup>st</sup> Annuity payment date and 2<sup>nd</sup> Annuity date are 180. In case the number of days are different the calculation may be appropriately changed



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the Authority. The first and second instalments of the Mobilization Advance shall be paid by the Authority within 30 (thirty) days of receipt of the respective requests in this behalf from the Concessionaire. The rate of interest on the Mobilization Advance shall be equal to **the Bank Rate**, compounded annually. The Mobilization Advance shall be deducted by the Authority in **4 (four) equal instalments** from each of the payments to be made by the Authority to the Concessionaire in accordance with the provisions of Clause 23.4 and the interest thereon shall be recovered as **the 5<sup>th</sup> (fifth) and final instalment upon expiry of 120 (one hundred and twenty) days commencing from the date of recovery of the 4<sup>th</sup> (fourth) instalment.**

28.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount to be calculated as under:

i) Prior to COD

Payment Milestone	Basis of calculation for termination payment
1st Payment Milestone	90% Debt Due or 1.35% of Bid Project Cost , whichever is lower
2nd Payment Milestone	90% Debt Due or 9.45% of Bid Project Cost , whichever is lower
3rd Payment Milestone	90% Debt Due or 17.55% of Bid Project Cost , whichever is lower

this behalf from the Concessionaire. The rate of interest on the Mobilization Advance shall be equal to the **average of one year MCLR of top 5 Scheduled Commercial Banks<sup>8</sup> plus 1.25 percent**, compounded annually. The Mobilization Advance shall be deducted by the Authority in **8 (eight) equal instalments** from each of the payments to be made by the Authority to the Concessionaire in accordance with the provisions of Clause 23.4 and the interest thereon shall be recovered from **the 9<sup>th</sup> (ninth) and 10<sup>th</sup> (tenth) instalments.**

28.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount to be calculated as under:

i) Prior to COD

Payment Milestone	Basis of calculation for termination payment
1st Payment Milestone	90% Debt Due or 0.68% of Bid Project Cost , whichever is lower
2nd Payment Milestone	90% Debt Due or 1.35% of Bid Project Cost , whichever is lower
3rd Payment Milestone	90% Debt Due or 5.4% of Bid Project Cost , whichever is lower
4th Payment Milestone	90% Debt Due or 9.45% of Bid Project Cost , whichever is lower
5th Payment Milestone	90% Debt Due or 13.5% of Bid Project Cost , whichever is lower

<sup>8</sup> The Authority shall declare the list of Top 5 Scheduled Commercial Banks on 1st September every calendar year based on the balance sheet size as declared in their annual reports,. The 1 year MCLR of the top 5 Scheduled commercial banks shall be taken at the start of every quarter.



4th Payment Milestone	90% Debt Due or 30.38% of Bid Project Cost , whichever is lower	6 <sup>th</sup> Payment Milestone	90% Debt Due or 17.55% of Bid Project Cost , whichever is lower
5th Payment Milestone	90% Debt Due or 36.45% of Bid Project Cost , whichever is lower	7 <sup>th</sup> Payment Milestone	90% Debt Due or 21.60% of Bid Project Cost , whichever is lower
		8 <sup>th</sup> Payment Milestone	90% Debt Due or 25.65% of Bid Project Cost , whichever is lower
		9 <sup>th</sup> Payment Milestone	90% Debt Due or 29.70% of Bid Project Cost , whichever is lower
		10 <sup>th</sup> Payment Milestone	90% Debt Due or 33.75% of Bid Project Cost , whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Termination Payment, the milestone achieved would only be considered.

(ii) In case Termination occurs on or after COD, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 75% (seventy five percent) of Annuity Payments remaining unpaid for and in respect of the remaining Concession Period, including interest thereon up to the Transfer Date. Provided further the above payment so calculated above shall be reduced by Insurance Cover.

28.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

(i) In case termination occurs prior to COD:

(a) Debt Due payment calculated as per the table below less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. Further the Debt Due would be calculated as per the table provided below:

6 <sup>th</sup> Payment Milestone	90% Debt Due or 17.55% of Bid Project Cost , whichever is lower
7 <sup>th</sup> Payment Milestone	90% Debt Due or 21.60% of Bid Project Cost , whichever is lower
8 <sup>th</sup> Payment Milestone	90% Debt Due or 25.65% of Bid Project Cost , whichever is lower
9 <sup>th</sup> Payment Milestone	90% Debt Due or 29.70% of Bid Project Cost , whichever is lower
10 <sup>th</sup> Payment Milestone	90% Debt Due or 33.75% of Bid Project Cost , whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Termination Payment, the milestone achieved would only be considered.

(ii) In case Termination occurs on or after COD, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 75% (seventy five percent) of Annuity Payments remaining unpaid for and in respect of the remaining Concession Period, including interest thereon up to the Transfer Date. Provided further the above payment so calculated above shall be reduced by Insurance Cover.

28.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

(i) In case termination occurs prior to COD:

(a) Debt Due payment calculated as per the table below less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. Further the Debt Due would be calculated as per the table provided below:

Payment Milestone	Basis of calculation for termination payment
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<table><tr><th>Payment Milestone</th><th>Basis of calculation for termination payment</th></tr><tr><td>1st Payment Milestone</td><td>Debt Due or 1.50% of Bid Project Cost , whichever is lower</td></tr><tr><td>2nd Payment Milestone</td><td>Debt Due or 10.50% of Bid Project Cost , whichever is lower</td></tr><tr><td>3rd Payment Milestone</td><td>Debt Due or 19.50% of Bid Project Cost , whichever is lower</td></tr><tr><td>4th Payment Milestone</td><td>Debt Due or 33.75% of Bid Project Cost , whichever is lower</td></tr><tr><td>5th Payment Milestone</td><td>Debt Due or 40.50% of Bid Project Cost , whichever is lower</td></tr></table>	Payment Milestone	Basis of calculation for termination payment	1st Payment Milestone	Debt Due or 1.50% of Bid Project Cost , whichever is lower	2nd Payment Milestone	Debt Due or 10.50% of Bid Project Cost , whichever is lower	3rd Payment Milestone	Debt Due or 19.50% of Bid Project Cost , whichever is lower	4th Payment Milestone	Debt Due or 33.75% of Bid Project Cost , whichever is lower	5th Payment Milestone	Debt Due or 40.50% of Bid Project Cost , whichever is lower	<table><tr><td>1st Payment Milestone</td><td>Debt Due or 0.75% of Bid Project Cost , whichever is lower</td></tr><tr><td>2nd Payment Milestone</td><td>Debt Due or 1.50% of Bid Project Cost , whichever is lower</td></tr><tr><td>3rd Payment Milestone</td><td>Debt Due or 6.00% of Bid Project Cost , whichever is lower</td></tr><tr><td>4th Payment Milestone</td><td>Debt Due or 10.50% of Bid Project Cost , whichever is lower</td></tr><tr><td>5th Payment Milestone</td><td>Debt Due or 15.00% of Bid Project Cost , whichever is lower</td></tr><tr><td>6<sup>th</sup> Payment Milestone</td><td>Debt Due or 19.50% of Bid Project Cost , whichever is lower</td></tr><tr><td>7<sup>th</sup> Payment Milestone</td><td>Debt Due or 24.00% of Bid Project Cost , whichever is lower</td></tr><tr><td>8<sup>th</sup> Payment Milestone</td><td>Debt Due or 28.50% of Bid Project Cost , whichever is lower</td></tr><tr><td>9<sup>th</sup> Payment Milestone</td><td>Debt Due or 33.00% of Bid Project Cost , whichever is lower</td></tr><tr><td>10<sup>th</sup> Payment Milestone</td><td>Debt Due or 37.50% of Bid Project Cost , whichever is lower</td></tr></table>	1st Payment Milestone	Debt Due or 0.75% of Bid Project Cost , whichever is lower	2nd Payment Milestone	Debt Due or 1.50% of Bid Project Cost , whichever is lower	3rd Payment Milestone	Debt Due or 6.00% of Bid Project Cost , whichever is lower	4th Payment Milestone	Debt Due or 10.50% of Bid Project Cost , whichever is lower	5th Payment Milestone	Debt Due or 15.00% of Bid Project Cost , whichever is lower	6 <sup>th</sup> Payment Milestone	Debt Due or 19.50% of Bid Project Cost , whichever is lower	7 <sup>th</sup> Payment Milestone	Debt Due or 24.00% of Bid Project Cost , whichever is lower	8 <sup>th</sup> Payment Milestone	Debt Due or 28.50% of Bid Project Cost , whichever is lower	9 <sup>th</sup> Payment Milestone	Debt Due or 33.00% of Bid Project Cost , whichever is lower	10 <sup>th</sup> Payment Milestone	Debt Due or 37.50% of Bid Project Cost , whichever is lower
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<p>(b) 110% (one hundred and ten per cent) of the Adjusted Equity;</p> <p>(ii) In case Termination occurs on or after COD, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety percent) of Annuity Payments remaining unpaid for and in respect of the remaining Concession Period, including interest thereon up to the Transfer Date.</p>	<p>(b) 110% (one hundred and ten per cent) of the Adjusted Equity;</p> <p>(ii) In case Termination occurs on or after COD, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety percent) of Annuity Payments remaining unpaid for and in respect of the remaining Concession Period, including interest thereon up to the Transfer Date.</p>																																
31.3.2 Notwithstanding to the provisions of Clause 31.3.1 upon Termination on account of Concessionaire Default during the Construction Period, the Termination Payment shall be based on the Payment Milestone achieved which is in terms of the Physical Progress made by the Concessionaire in the Project and the Termination	31.3.2 Notwithstanding to the provisions of Clause 31.3.1 upon Termination on account of Concessionaire Default during the Construction Period, the Termination Payment shall be based on the Payment Milestone achieved which is in terms of the Physical Progress made by the Concessionaire in the Project and the Termination Payment corresponding to the achieved Payment Milestone shall be as follows:																																



Payment corresponding to the achieved Payment Milestone shall be as follows:		<b>Payment Milestone</b>	<b>Basis of calculation for termination payment</b>
		1st Payment Milestone	Nil
		2nd Payment Milestone	50% of Debt Due or 5.25% of Bid Project Cost , whichever is lower
		3rd Payment Milestone	60% Debt Due or 11.70% of Bid Project Cost , whichever is lower
		4th Payment Milestone	70% of Debt Due or 24% of Bid Project Cost , whichever is lower
		5th Payment Milestone	80% of Debt Due or 32% of Bid Project Cost , whichever is lower
For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Termination Payment, the milestone achieved would only be considered.		<b>Payment Milestone</b>	<b>Basis of calculation for termination payment</b>
		1st Payment Milestone	Nil
		2nd Payment Milestone	Nil
		3rd Payment Milestone	50% Debt Due or 3.00% of Bid Project Cost , whichever is lower
		4th Payment Milestone	55% of Debt Due or 5.78% of Bid Project Cost , whichever is lower
		5th Payment Milestone	60% of Debt Due or 9.00% of Bid Project Cost , whichever is lower
		6 <sup>th</sup> Payment Milestone	65% of Debt Due or 12.68% of Bid Project Cost , whichever is lower
		7 <sup>th</sup> Payment Milestone	70% of Debt Due or 16.80% of Bid Project Cost , whichever is lower
		8 <sup>th</sup> Payment Milestone	75% of Debt Due or 21.38% of Bid Project Cost , whichever is lower
		9 <sup>th</sup> Payment Milestone	80% of Debt Due or 26.40% of Bid Project Cost , whichever is lower
		10 <sup>th</sup> Payment Milestone	85% of Debt Due or 31.88% of Bid Project Cost , whichever is lower
For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Termination Payment, the milestone achieved would only be considered.			
31.3.3 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to: (i) In case the termination occurs prior to COD		31.3.3 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to: (i) In case the termination occurs prior to COD	



(a) Debt Due payment calculated as per the table below less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. Further the Debt Due would be calculated as per the table provided below:

Payment Milestone	Basis of calculation for termination payment
1st Payment Milestone	Debt Due or 1.50% of Bid Project Cost , whichever is lower
2nd Payment Milestone	Debt Due or 10.50% of Bid Project Cost , whichever is lower
3rd Payment Milestone	Debt Due or 19.50% of Bid Project Cost , whichever is lower
4th Payment Milestone	Debt Due or 33.75% of Bid Project Cost , whichever is lower
5th Payment Milestone	Debt Due or 40.50% of Bid Project Cost , whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Debt Due, the milestone achieved would only be considered; and  
(b) 150% (one hundred and fifty per cent) of the Adjusted Equity;

(a) Debt Due payment calculated as per the table below less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. Further the Debt Due would be calculated as per the table provided below:

Payment Milestone	Basis of calculation for termination payment
1st Payment Milestone	Debt Due or 0.75% of Bid Project Cost , whichever is lower
2nd Payment Milestone	Debt Due or 1.50% of Bid Project Cost , whichever is lower
3rd Payment Milestone	Debt Due or 6.00% of Bid Project Cost , whichever is lower
4th Payment Milestone	Debt Due or 10.50% of Bid Project Cost , whichever is lower
5th Payment Milestone	Debt Due or 15.00% of Bid Project Cost , whichever is lower
6 <sup>th</sup> Payment Milestone	Debt Due or 19.50% of Bid Project Cost , whichever is lower
7 <sup>th</sup> Payment Milestone	Debt Due or 24.00% of Bid Project Cost , whichever is lower
8 <sup>th</sup> Payment Milestone	Debt Due or 28.50% of Bid Project Cost , whichever is lower
9 <sup>th</sup> Payment Milestone	Debt Due or 33.00% of Bid Project Cost , whichever is lower
10 <sup>th</sup> Payment Milestone	Debt Due or 37.50% of Bid Project Cost , whichever is lower

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Debt Due, the milestone achieved would only be considered; and  
(b) 150% (one hundred and fifty per cent) of the Adjusted Equity;



	(ii) In case the termination occurs on or after COD, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to sum of Annuity Payments remaining unpaid for and in respect of the Concession Period, including interest thereon up to the Transfer Date.	(ii) In case the termination occurs on or after COD, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to sum of Annuity Payments remaining unpaid for and in respect of the Concession Period, including interest thereon up to the Transfer Date.
9	<p><b>38.1 Dispute resolution</b></p> <p>38.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 38.2.</p> <p>38.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.</p>	<p><b>Dispute resolution</b></p> <p>38.1.1 In the event of any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”), either Party may call upon the Independent Engineer, to mediate and assist the Parties in arriving at an amicable settlement thereof.</p> <p>38.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.</p> <p><b>38.1.3 Dispute Resolution Board (DRB)</b></p> <p>Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Dispute Resolution Board (“DRB”) in accordance with the procedure set forth in Schedule S to the Concession Agreement. The decision(s) of the Dispute Resolution Board shall be binding on both parties who shall promptly give effect to unless and until the same is revised/ modified, as hereinafter provided, in a Conciliation/ Arbitral Tribunal.</p>
10	-	<p><b>38.1.3 Dispute Resolution Board (DRB)</b></p> <p>Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Dispute Resolution</p>



		Board ("DRB") in accordance with the procedure set forth in Schedule S to the Concession Agreement. The decision(s) of the Dispute Resolution Board shall be binding on both parties who shall promptly give effect to unless and until the same is revised/ modified, as hereinafter provided, in a Conciliation/ Arbitral Tribunal.
11	<p><b>38.2 Conciliation</b></p> <p>In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the [Chairman] of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 38.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 38.3.</p>	<p><b>38.2 Conciliation</b></p> <p>If either Party is dissatisfied with any decision of the DRB, and/ or if the DRB is unable to resolve the dispute, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 38.3 but before resorting to such arbitration, the parties agree to explore conciliation by the Conciliation Committees of Independent Experts set up by the Authority in accordance with the procedure decided by the panel of such experts and notified by the Authority on its website including its subsequent amendments. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration Act. In case of failure of the conciliation process even at the level of the Conciliation Committee, either party may refer the Dispute to arbitration in accordance with the provisions of Clause 38.3.</p>
12	<p><b>38.3.5</b> This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.</p>	<p><b>38.3.5</b> This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each party shall proceed with the</p>



		performance of its respective obligations, pending resolution of Dispute in accordance with this Article.
<b>13</b>	<p>Definitions:</p> <p><b>"Change in Ownership"</b> means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/ Consortium Members}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and two years thereafter; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to completion of a period <b>two years</b> after COD, shall constitute Change in Ownership;</p>	<p><b>"Change in Ownership"</b> means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/ Consortium Members}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and two years thereafter; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to completion of a period <b>six months</b> after COD, shall constitute Change in Ownership;</p>
<b>14</b>	<p>Paragraph 9 of Annex-I to Schedule F</p> <p>The Guarantee shall cease to be in force and effect on _____<sup>16</sup> unless a demand or claim under this Guarantee is made in writing on or before the aforesaid date, the Bank shall be discharged from its liabilities hereunder.</p> <p><sup>16</sup> Initially the validity shall be 60 days after the expected date for fifth payment milestone mentioned in clause 23.4 of the Agreement.</p>	<p>Paragraph 9 of Annex-I to Schedule F</p> <p>The Guarantee shall cease to be in force and effect on _____<sup>16</sup> unless a demand or claim under this Guarantee is made in writing on or before the aforesaid date, the Bank shall be discharged from its liabilities hereunder.</p> <p><sup>16</sup> Initially the validity shall be 60 days after the expected date for tenth payment milestone mentioned in clause 23.4 of the Agreement. If the Concessionaire submits the Guarantee which has validity period which is</p>



		less than that specified herein, then the Concessionaire shall also provide an undertaking to the Authority which states that the Concessionaire shall get the validity of the Guarantee extended so that the Guarantee is valid in accordance with this footnote
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Additional Schedule:

### **Dispute Resolution Board**

#### **S: Procedure for Dispute Resolution Board**

The parties to the Concession Agreement mutually agree as follows:

- (1) The Board shall comprise of three Members having experience in the field of construction or have been involved in the Works related to construction and with the interpretation of contractual documents. One Member shall be selected by each of the Authority and the Concessionaire from the list maintained by NHAI hosted on its website ([www.nhai.gov.in](http://www.nhai.gov.in)). In the event the parties fail to select the member within 28 days of the date of the signing of Concession Agreement, in that eventuality, upon the request of either or both parties such Member shall be selected by SAROD within 14 days. The third Member shall be selected by the other two members from the same list. If the two Members selected by or on behalf of the parties fail to select the third Member within 14 days after the later of their selections, then upon the request of either or both parties such third Member shall be selected by SAROD within 14 days. The third Member shall serve as Chairman of the Board.
- (2) The Board shall be constituted when each of the three Board Members has signed a Board Member's declaration of Acceptance as required by the DRB's rules and procedures (which, along with the declaration of acceptance form, are attached as Annexure herewith).
- (3) In the event of death, disability, or resignation of any Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for any other reason, a Member fails or is unable to serve, the Chairman (or failing the action of the Chairman then either of the other Members) shall inform the Parties and such non-serving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be completed within 28 days after the event giving rise to the vacancy on the Board, failing which the replacement shall be made by SAROD in the same manner as described above. Replacement shall be considered complete when the new Member signs the Board Member's Declaration of Acceptance. Throughout any replacement process, the Members not being replaced shall continue to serve and the Board shall continue to function and its activities shall have the same force and effect as if the vacancy had not occurred, provided, however, that the Board shall not conduct a hearing nor issue a decision until the replacement is completed.
- (4) If either the Authority or the Concessionaire is dissatisfied with any decision of the Board, and/or if the Board fails to issue its decision within 56 days after receipt of all the pleadings (along with the supporting documents) of the parties by the Chairman of the Board or any extension mutually agreed upon by the Employer and the Concessionaire, in such a case,



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either the Employer or the Concessionaire may, within 28 days after his receipt of the decision, or within 28 days after the expiry of the said period, as the case may be, give notice to the other party, with a copy for information to the Independent Engineer, of his intention to refer the matter to the Conciliation Committee of Independent Experts (CCIE) of the Authority for Conciliation/amicable settlement.

- (5) It is mandatory to refer all the disputes to DRB before issuance of completion certificate and satisfactory completion of punch list items. No dispute shall be entertained after completion of aforementioned date.
- (6) If the Board has issued a decision to the Authority and the Concessionaire within the said 56 days or any extension mutually agreed upon by the Authority and the Concessionaire and no notice of intention to commence Conciliation by the Conciliation Committee of Independent Experts (CCIE) of the Authority for Conciliation/amicable settlement as to such dispute has been given by either the Authority or the Concessionaire within 28 days after the parties received such decision from the Board, the decision shall become final and binding upon the employer and Concessionaire.
- (7) Whether or not it has become final and binding upon the Authority and the Concessionaire, a decision shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the dispute to which the decision relates.
- (8) All decision of DRB which have become final and binding or till they have been reversed in subsequent conciliation/Arbitration process shall be implemented by the parties forthwith. Such implementation shall also include any relevant action of the Independent Engineer.
- (9) If during the Concession Period, the Authority and the Concessionaire are of the opinion that the Disputes Resolution Board is not performing its functions properly, the Authority and the Concessionaire may together disband the Disputes Resolution Board and reconstitute it. In that case, a new board shall be selected in accordance with the provisions applying to the selection of the original Board as specified above, except that words "within 28 days after the signing of this Concession Agreement" shall be replaced by the words "within 28 days after the date on which the notice disbanding the original Board became effective".
- (10) The Employer and the Concessionaire shall jointly sign a notice specifying that the Board shall stand disbanded with effect from the date specified in the notice. The notice shall be posted by email to each Member of the Board. A Member shall be deemed to have received the email even if he refuses to have received the same.
- (11) All other terms and conditions of the original Concession Agreement shall remain unaltered/unaffected and the parties shall remain bound by terms and conditions as contained therein.





## Annexure to Schedule [S]

**Disputes Resolution Board's Rules and Procedures**

1. Except for providing the services required hereunder, the Board Members shall not give any advice to either party or to the Independent Engineer concerning conduct of the Works. The Board Members:
  - (a) Shall have no financial interest in any party to the Contract, or the Independent Engineer, or a financial interest in the contract, except for payment for services on the Board.
  - (b) Shall have had no previous employment by, or financial ties to, any party to the Concession Agreement, or the Independent Engineer, except for fee based consulting services/advisers on other projects, and/or be Retired Government Officers (not connected in whole or part with the project), all of which must be disclosed in writing to both parties prior to appointment to the Board.
  - (c) Shall have disclosed in writing to both parties prior to appointment to the Board any and all recent or close professional or personal relationships with any director, officer, or employee of any party to the Contract, or the Independent Engineer, and any and all prior involvement in the project to which the Contract relates;
  - (d) Shall not, while Board member, be employed whether as a consultant or adviser or otherwise by either party to the Contract, or the Independent Engineer, except as a Board Member, without the prior consent of the parties and the other Board Members;
  - (e) Shall not, while a Board Member, engage in discussion or make any agreement with any party to the Contract, or with the Independent Engineer, regarding employment whether as a consultant or otherwise whether after the Contract is completed or after service as a Board Member is completed.
  - (f) Shall remain and be impartial and independent of the parties and shall disclose in writing to the Employer, the Concessionaire and one another any fact or circumstance which might be such as to cause either the Employer or the Concessionaire to question the continued existence of the impartiality and independence required of Board Members; and
  - (g) Shall be fluent in the language of the Contract.





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2. Except for its participation in the Board's activities as provided in the Concession Agreement and in this Agreement none of the Authority, the Concessionaire, and or the Independent Engineer shall solicit advice or consultation from the Board or the Board Members on matters dealing with the conduct of the Works.
3. The Concessionaire shall :
  - (a) Furnish to each Board member one copy of all documents which the Board may request including Concession Agreement, progress reports and other documents pertinent to the performance of the Concession Agreement.
  - (b) In cooperation with the Authority, coordinate the site visits of the Board, including conference facilities, and secretarial and copying service.
4. The Board shall begin its activities following the signing of a Board Member's Declaration of Acceptance by all three Board Members, and it shall terminate these activities as set forth below :
  - (a) The Board shall terminate its regular activities when either (i) issuance of completion certificate and completion of punch list items or (ii) the parties have terminated the contract and when, in either case, the Board has communicated to the parties and the Independent Engineer its decision on all disputes previously referred to it.
  - (b) Once the Board has terminated its regular activities as provided by the previous paragraph, the Board shall remain available to process any dispute referred to it by either party. In case of such a referral, Board Members shall receive payments as provided in paragraphs 7(a)(ii), (iii) and (iv).
5. Board Members shall not assign or subcontract any of their work under these Rules and Procedures.
6. The Board Members are Independent and not employees or agents of either the Authority or the Concessionaire.
7. Payments to the Board Members for their services shall be governed by the following provisions :
  - (a) Each Board Member will receive payments as follows :
    - i. A retainer fee per calendar month as specified in the schedule of fee made part of this Schedule and its revision from time to time. This retainer fee shall be considered as payment in full for :





- (A) Being available, on 7 days' notice, for all hearings, Site Visits, and other meetings of the Board.
  - (B) Being conversant with all project developments and maintaining relevant files.
  - (C) All offices and overhead expenses such as secretarial services, photocopying and office supplies (but not include telephone calls, faxes and telexes) incurred in connection with the duties as a Board Member.
- ii. A daily fee as specified in the schedule of fee in respect of fee for site visit & meeting, fee for meeting/ hearing not at site and extra charges for days (max. of 02 days for travel on each occasion) other than hearing / meeting days.
  - iii. Expenses, in addition to the above, all reasonable and necessary travel expenses (including economy class air fare, subsistence, and other direct travel expenses). Receipts for all expenses in excess of [Rs. 2000/- (Rupees Two Thousand only)] shall be provided.
  - iv. Reimbursement of any taxes that may be levied on payments made to the Board Member pursuant to this paragraph 7.
- (b) The retainer fee and other fees shall remain fixed for the period of each Board Member's term until revised by NHAI.
  - (c) Phasing out of monthly retainer fee. Beginning with the next month after the completion certificate (or, if there are more than one, the one issued last) has been issued, the Board members shall receive only one-third of the monthly retainer fee till next one year. Beginning with the next month after the Board has terminated its regular activities pursuant to paragraph 4(a) above, the Board members shall no longer receive any monthly retainer fee.
  - (d) Payments to the Board Members shall be shared equally by the Authority and the Concessionaire. The concerned Project Implementation Unit (PIU) of Authority shall pay members' invoices within 30 calendar days after receipt of such invoices and shall invoice the Concessionaire for one-half of the amounts of such invoices. The Concessionaire shall pay such invoices within 30 days' time period after receipt of such invoices.
8. Board Site Visits :
- (a) The Board shall visit the Site and meet the representatives of the Authority, the Concessionaire and the Independent Engineer at regular intervals, at times of critical construction events, at the written request of either party, and in any case not less than 6 times in any period of 12 months. The timing of Site visits shall be as agreed among the



Authority, the Concessionaire and the Board, but failing agreement shall be fixed by the Board.

- (b) Site visits shall include an informal discussion of the status of the construction of the Works. Site visits shall be attended by personnel from the Authority, the Concessionaire and the Independent Engineer.
- (c) At the conclusion of each Site visit, the Board shall prepare a report covering its activities during the visit and shall send copies to the parties and to the Independent Engineer.

9. Procedure for Dispute Referral to the Board :

- (a) If either party objects to any action or inaction of the other party or the Independent Engineer, the objecting party may file a written Notice of Dispute to the other party with a copy to the Independent Engineer stating that it is given pursuant to the Agreement and state clearly and in details the basis of the dispute.
- (b) The party receiving the Notice of Dispute will consider it and respond to it in writing within 14 days after receipt.
- (c) This response shall be final and conclusive on the subject, unless a written appeal to the response is filed with the responding party within 10 days after receiving the response and call upon Independent Engineer to mediate and assist the parties in arriving an amicable settlement thereof. Both parties are encouraged to pursue the matter further to attempt to settle the dispute.
- (d) If the Independent Engineer receiving the Notice of Dispute fails to provide a written response within 14 days after receipt of such Notice or failing mediation by Independent Engineer, either party may require such dispute to be referred to the Board, either party may refer the dispute to the Board by written Request to the Board. The Request for decision shall state clearly and in full detail the specific issues of the dispute (s) to be considered by Board and shall be addressed to the Chairman of the Board, with copies to the other Board Members, the other party, and the Independent Engineer, and it shall state that it is made pursuant to this Agreement.
- (e) When a dispute is referred to the Board, and the Board is satisfied that the dispute requires the Board's assistance, the Board decide when to conduct a hearing on the dispute. The Board may request that written documentation and arguments from both parties be submitted to each Board Member before the hearing begins. The parties shall submit insofar as possible agreed statements of the relevant facts.





- (f) During the hearing, the Concessionaire, the Authority, and the Independent Engineer shall each have ample opportunity to be heard and to offer evidence. The Board's decision for resolution of the dispute will be given in writing to the Authority, the Concessionaire and the Independent Engineer as soon as possible, and in any event not more than 56 days or any mutually extended period between the Authority and the Concessionaire. The time period of 56 days of issuance of DRB decision will reckon/start from the day of first hearing that begins after submission of complete pleadings (including supporting documents, if any) by the parties.

10. Conduct of Hearings :

- (a) Normally hearings will be conducted at the Site, but any location that would be more convenient and still provide all required facilities and access to necessary documentation may be utilized by the Board. Private session of the Board may be held at any cost effective location convenient to the Board. Video recordings of all hearings shall invariably be made.
- (b) The Authority, the Independent Engineer and the Concessionaire shall be given opportunity to have representatives at all hearings. Parties should restrain to bring any Advocate/Law Firm during DRB hearings.
- (c) During the hearings, no Board Member shall express any opinion concerning the merit of the respective arguments of the parties.
- (d) After the hearings are concluded, the Board shall meet privately to formulate its decision. The private meeting (s) of the Board shall not exceed 3 sittings. All Board deliberations shall be conducted in private, with all Members' individual views kept strictly confidential. The Board's decisions, together with an explanation of its reasoning shall be submitted in writing to both parties and to the Independent Engineer. The decision shall be based on the pertinent contract provisions, applicable laws and regulations and the facts and circumstances involved in the dispute.
- (e) The Board shall make every effort to reach a unanimous decision. If this proves impossible the majority shall decide and the dissenting Member may prepare a written minority report together with an explanation of its reasoning for submission to both parties and to the Independent Engineer.

11. In all procedural matters, including the furnishing of written documents and arguments relating to disputes, site visits and conduct of hearings, the Board shall have full and the final authority. If a unanimous decision on any such matter proves impossible, the majority shall prevail.



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12. After having been selected and where necessary approved each Board Member shall sign two copies of the following declaration and make one copy available each to the Employer and to the Concessionaire.





**"BOARD MEMBER'S DECLARATION OF ACCEPTANCE"**

WHEREAS

- (a) A Concession Agreement (the Concession) for the \_\_\_\_\_ project [fill in the name of project] has been signed on \_\_\_\_\_ [fill in date] between \_\_\_\_\_ [name of Authority] and \_\_\_\_\_ [name of Concessionaire] (the Concessionaire).;
- (b) The provisions of Agreement and Dispute Resolution Board's rules and procedure provided for establishment and operation of Dispute Resolution Board (DRB).
- (c) The undersigned has been selected to serve as a Board Member on said Board;

NOW THEREFORE, the undersigned Board Member hereby declares as follows :

- 1. I accept the selection as a Board Member and agree to serve on the Board and to be bound by the provisions of Concession Agreement and rules and procedure provided for establishment and operation of Dispute Resolution Board (DRB).
- 2. With respect to paragraph 1 of Dispute Resolution Board's Rules and Procedure. said Annex A, I declare
  - (a) that I have no financial interest of the kind referred to in subparagraph (a):
  - (b) that I have had no previous employment nor financial ties of the kind referred to in subparagraph (b); and
  - (c) that I have made to both parties any disclosures that may be required by subparagraphs (b) and (c).
- 3. I declare that I have \_\_\_\_ no. of Arbitrations (list enclosed) and \_\_\_\_ no. of DRBs (list enclosed) in progress and that I will give sufficient time for the current assignment.

BOARD MEMBER

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\_\_\_\_\_

\_\_\_\_\_ *[insert name of Board Member]*

Date : \_\_\_\_\_.





**Schedule of expenses and fees payable to the Member (s) of Dispute Resolution Board**

*The fee and other expenses payable to the Members of DRB shall be as under :-*

S. No.	PARTICULAR	AMOUNT PAYBLE
1	Retainer-ship fee, secretarial assistance and incidental charges (telephone, fax, postage etc.)	[Rs. 50,000/- per month for one package and maximum of Rs. 75,000/- per month for 2 or more packages]
2(i)	Fee for site visit or meetings at site	[Rs. 25,000/- per day]
(ii)	Fee for meetings/hearings not at site	[Rs. 10,000/- per day]
3	Traveling expenses	Economy class by air, AC first class by train and AC taxi by road
4	Lodging & Boarding	[Rs.15,000/- per day (Metro Cities) ; or Rs. 10,000/- per day (in other cities); or Rs. 5,000/- per day (own arrangement)]
5	Extra charges for days other than hearing/meeting days (travel days maximum of 2 days on each occasion)	[Rs.5,000/-]
6	Local conveyance	[Rs.2,000/-]

**Notes:**

- (i) Lodging, boarding and travelling expenses will be allowed only for those members who are residing 100 kms away from the place of meeting.
- (ii) Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad shall be considered as Metro Cities.
- (iii) The above schedule of fee and expenses shall be applicable on or after the date of issue of this circular.
- (iv) The expenses are to be shared equally by the parties i.e. Authority and Concessionaire.

