



TA-7691 (BAN):

Public Private Partnership Program Operationalization

Draft Model Concession Agreement

Part II – Special Conditions – Highways

20 December 2011



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Special Conditions

SECTION 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Special Conditions, unless the context otherwise requires the following terms shall have the following meanings assigned thereto:

"Average Daily Fee" means the amount arrived at after dividing the total Realizable Fee of the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the result thereof by 5% (five per cent); provided that the Average Daily Fee for any period prior to completion of the first Accounting Year following Date of Commercial Operation shall be a simple average of the Fee collected every day during the period between Date of Commercial Operation and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Fee payable by any segment of traffic has not been realized for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Fee for such period;

"Bus" means any passenger motor vehicle with a registered carrying capacity exceeding 32 (thirty two), excluding the driver;

"Car" means and includes any mechanical vehicle being a light motor vehicle, car, jeep, van, omnibus, or three-wheeled motor vehicle with a Gross Vehicle Weight not exceeding 7,500 (seven thousand five hundred) kilograms or a registered carrying capacity not exceeding 12 (twelve), excluding the driver, but does not include a Motor Cycle, Tractor or road roller;

"Competing Road" means a road connecting the two end points of the Project and serving as an alternative route thereof, such road being an existing paved road, which has been widened by more than 2 (two) metres of paved road for at least 75% (seventy five per cent) of the total length thereof at any time after the date of this Agreement, or a new road, which is constructed after such date, as the case may be, but does not include any road connecting the aforesaid two points if the length of such road exceeds the length of the Project by 20% (twenty per cent) thereof;

"Exempted Vehicle" means a vehicle exempted from payment of Fee under and in accordance with the Fee Act;

"Fee" means the charge levied on and payable for a vehicle using the Project or a part thereof, in accordance with the Fee Act and this Agreement;

"Fee Notification" means the Notification to be issued by the Government, prior to the Appointed Date, in exercise of the powers conferred by Section 2 of the Tolls

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Act, 1851 or any subsequent amendments made thereof in respect of the levy and collection of Fee during the Concession Period, substantially in the form at Annex G;

"Fee Act" means the Tolls Act, 1851;

"Gross Vehicle Weight" or "GVW" means in respect of any vehicle the total weight of the vehicle and load certified and registered under the Applicable Laws;

"Light Commercial Vehicle" or "LCV" means any mechanical vehicle being a passenger vehicle, minibus, light goods vehicle or goods carrier with a Gross Vehicle Weight exceeding 7,500 (seven thousand five hundred) kilograms but less than 12,000 (twelve thousand) kilograms or a registered passenger carrying capacity exceeding 12 (twelve) but less than 32 (thirty two) excluding the driver, and includes a Tractor with Trailer;

"Local User" means a person using a vehicle registered for non-commercial purposes and used as such for commuting on a section of the Project, provided that (a) such vehicle is owned by a person who resides within a distance of 20 km (twenty kilometers) from the nearest Toll Plaza; (b) its use of such section of the Project does not extend beyond a Toll Plaza other than such nearest Toll Plaza; and (c) such section of the Project has no service road or alternative road; and shall include a vehicle that uses a section of the Project but does not cross a Toll Plaza;

"Ministry" means the Ministry of Communications, Government of Bangladesh;

"Medical Aid Post" shall have the meaning set forth in Section 7B ;

"Motor Cycle" means and includes any two-wheeled motor vehicle;

"Multi-axle truck" or "Heavy Truck" means a mechanical vehicle being any goods carrier, heavy construction machinery or earth moving equipment with a Gross Vehicle Weight exceeding 20,000 (twenty thousand) kilograms, but less than 60,000 (sixty thousand) kilograms, and includes a truck with three to six axles;

"Oversized Vehicle" means any mechanical vehicle having 7 (seven) or more axles or a Gross Vehicle Weight exceeding 60,000 (sixty thousand) kilograms;

"Tests" means the tests set forth in Annex H to determine the completion of the Project in accordance with the provisions of this Agreement;

"Toll Plaza" means the structures and barriers erected near each of the two ends of the Project 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; provided that such Toll Plaza(s) shall not ordinarily be located within a distance of [●] kilometers from the limits of the municipal or local area of the nearest city or town respectively, as applicable on the date of this Agreement,] and shall be situated at location(s) specified in the Bid or within a distance of 1 (one) kilometer thereof;

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"Tolling Contract" means the contract, if any, entered into by the Concessionaire with the Tolling Contractor for collection of Fee for and on behalf of the Concessionaire and matters incidental thereto;

"Tolling Contractor" means the person, if any, with whom the Concessionaire has entered into a Tolling Contract;

"Total Project Cost" means the lowest of:

- (a) the capital cost of the Project, (less Equity Support) as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion of the Project (less Equity Support); and
- (c) a sum of BDT [●] crore (Bangladesh Taka [●] crore), less Equity Support¹;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and Date of Completion, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost;

"Tractor" means a motor vehicle which is not itself constructed to carry any load other than the equipment used for the purpose of propulsion, but does not include a road roller; and "Tractor with Trailer" means a Tractor with an attached vehicle used for carrying goods;

"Traffic Aid Post" shall have the meaning set forth in Section 7A;

"Truck" means any mechanical vehicle being a goods carrier with a Gross Vehicle Weight exceeding 12,000 (twelve thousand) kilograms, but less than 20,000 (twenty thousand) kilograms;

"User" means a person who travels or intends to travel on the Project or any part thereof in/on any vehicle on payment of Fee or in accordance with the provisions of this Agreement and Applicable Laws;

¹ This amount may be indicated on the basis of project-specific cost estimates, including financing charges; and this amount shall, after bidding, be reduced by a sum equivalent to the Equity Support. In determining this amount, the estimated cost of construction shall be increased by 25% thereof to account for contingencies, risk premiums and financing costs. These costs should be reviewed and firmed up during pre-bid consultations.

SECTION 3

CONDITIONS PRECEDENT

3.1 Conditions Precedent

- (1) The Concessionaire is not required to satisfy any additional conditions under Section 3.1(a)(xi) of the General Conditions.
- (2) The Concessioneing Authority is not required to satisfy any additional conditions under Section 3.1(b)(iv) of the General Conditions.

SECTION 7

OBLIGATIONS OF THE PARTIES

7.1 Obligations and Rights of the Concessionaire

(1) Obligations of Concessionaire

In addition to any of its other obligations under this Agreement, the Concessionaire shall manage, operate, maintain and repair the Project Facilities and provide the Services, entirely at its cost, charges, expenses and risk in accordance with the provisions of this Agreement. The Concessionaire's obligations under this Section shall include but shall not be limited to the following:

(a) Branding of Project

The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identify of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Project shall be known, promoted, displayed and advertised by the name of [].

(b) Facilities for physically challenged and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Welfare, or a substitute thereof, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Project.

(c) Maintenance during Construction Period

During the Construction Phase, the Concessionaire shall maintain, at its cost, the existing lane(s) of the Project so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition 7 (seven) day prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, interrupt and divert the flow of traffic 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.

(2) Operation & Maintenance obligations of the Concessionaire

(a) O& M Obligations

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

- (i) permitting safe, smooth and uninterrupted flow of traffic on the Project during normal operating conditions;
- (ii) collecting and appropriating the Fee;
- (iii) minimising disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the country;
- (iv) carrying out periodic preventive maintenance of the Project;
- (v) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement markings, lighting, road signs and other traffic control devices;
- (vi) undertaking major maintenance such as resurfacing of pavements, repairs to structures, and repairs and refurbishment of tolling system and other equipment;
- (vii) preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- (viii) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project;
- (ix) protection of the environment and provision of equipment and materials therefore;
- (x) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
- (xi) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and
- (xii) complying with Safety Requirements in accordance with the provisions of this Agreement.

The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and

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keep the Project in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice. [For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at [●].

The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, over-passes, under-passes or other structures situated on the Site but not forming part of the carriageway.

(b) Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project conforms to the maintenance requirements set forth in Annex L (the "Maintenance Requirements").

(c) Maintenance Manual

(i) No later than 180 (one hundred and eighty) days prior to the Date of Completion, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the "Maintenance Manual") for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Concessioneing Authority and 2 (two) copies to the Independent Engineer.

(ii) Without prejudice to the provision of Section 7(2)(c)(i), the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

(d) Maintenance Programme

(i) On or before the Date of Completion and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Concessioneing Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the "Maintenance Programme") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- (A) preventive maintenance schedule;
- (B) arrangements and procedures for carrying out urgent repairs;
- (C) criteria to be adopted for deciding maintenance needs;
- (D) intervals and procedures for carrying out inspection of all elements of the Project;
- (E) intervals at which the Concessionaire shall carry out periodic maintenance;

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- (F) arrangements and procedures for carrying out safety related measures; and
- (G) intervals for major maintenance works and the scope thereof.

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

(e) Safety, vehicle breakdowns and accidents

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

(ii) The Concessionaire's responsibility for rescue operations on the Project shall be limited to an initial response to any particular incident until such time that the competent authority takes charge and shall include prompt removal of vehicles or debris or any other obstruction, which may endanger or interrupt the smooth flow of traffic. [For this purpose, it shall maintain and operate a round-the-clock vehicle rescue post with one mobile crane having the capacity to lift a truck with a Gross Vehicle Weight of 30,000 (thirty thousand) kilograms; provided that on and after the Scheduled Project Extension Date, the Concessionaire shall maintain and operate two such vehicle rescue posts, with one crane each, and such posts shall be located at each of the Toll Plaza(s).]

(f) De-commissioning due to Emergency

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

(ii) The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project and shall notify the Concessing Authority of the same without any delay.

(iii) Any decommissioning or closure of any part of the Project and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

(g) Lane closure

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

(ii) The provisions of Section 7(2)(g)(i) shall not apply to de-commissioning under Section 7(2)(f)(i) or to closure of any lane for a period not exceeding 2 (two) hours in a day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak hours when the flow of traffic is comparatively lower.

(iii) Upon receiving the permission pursuant to Section 7(2)(g)(i), the Concessionaire shall be entitled to close the designated lane for the period specified therein, and in the event of any delay in re-opening such lane, the Concessionaire shall pay Damages to the Concessioneing Authority calculated at the rate of [0.1% (zero point one per cent)] of the Average Daily Fee for every stretch of [250 (two hundred and fifty) metres], or part thereof, for each day of delay until the lane has been re-opened for traffic.

(h) Damages for breach of maintenance obligations

(i) In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Concessioneing Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Fee, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Concessioneing Authority under this Agreement, including the right of Termination thereof.

(ii) The Damages set forth in Section 7(2)(h)(i) may be assessed and specified forthwith by the Independent Engineer; provided that the Concessioneing Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

(i) Concessioneing Authority's right to take remedial measures

(i) In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Concessioneing Authority or the Independent Engineer, as the case may be, the Concessioneing Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Concessioneing Authority as Damages. For the avoidance of doubt, the right of the Concessioneing Authority under this Section 7(2)(l)(i) shall be without prejudice to its rights and remedies provided under Section 7(2)(h).

(ii) The Concessioneing Authority shall have the right, and the Concessionaire hereby expressly grants to the Concessioneing Authority the right, to recover the costs and Damages specified in Section Section 7(2)(i) directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions lo the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Concessioneing Authority under this Section 7(2)(b) and debit the same to O&M Expenses.

(J) Overriding powers of the Concessioneing Authority

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

(ii) In the event that the Concessionaire, upon notice under Section 7(2)(J)(i), fails to rectify or remove any hardship or danger within a reasonable period, the Concessioneing Authority may exercise overriding powers under this Section 7(2)(J)(ii) and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Concessioneing Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Concessioneing Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Concessioneing Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Section 7(2)(i) along with the Damages specified therein.

(K) Restoration of loss or damage to Project

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

(L) Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

(M) Excuse from performance of obligations

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

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Concessions Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project

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

(N) Barriers and diversions

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

(O) Advertising on the Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall be visible to the Users while driving on such highway; provided that this restriction shall not apply to the Toll Plaza[s], rest areas, bus shelters and telephone booths located on the Project if the advertising thereon does not, in the opinion of the Concessioneing Authority, distract the Users or violates extant guidelines of Ministry of Communication and/or the Concessioneing Authority. All advertising on the Project shall also conform to Good Industry Practice. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time, and no compensation shall be claimed on account thereof.

(P) Monitoring of Operation and Maintenance

(i) Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Concessioneing Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Users and Project which shall include the following:

- (A) death or injury to any person;
- (B) damaged or dislodged fixed equipment;
- (C) any obstruction on the Project, which results in slow down of the services being provided by the Concessionaire;
- (D) disablement of any equipment during operation;
- (E) communication failure affecting the operation of Project;
- (F) smoke or fire;
- (G) flooding of Project; and
- (H) such other relevant information as may be required by the Concessioneing Authority or the Independent Engineer.

(Q) Effect of Variation of Traffic Growth

The Concessionaire and the Concessioneing Authority acknowledge that the traffic as [on date] (the "Target Date")² is estimated to be [●] motor vehicles per day (the "Target Traffic")³, and hereby agree that the effect of variation of traffic growth and any modifications to the Concession Period shall be carried out in accordance with Annex L of this Agreement.

² The Target Date to be specified here shall be about 10 (ten) years from the date of this Agreement, but shall in no case be later than 3 years prior the date of expiry of the Concession Period for the Project.

³ The Target Traffic shall be a number based on 5% CAGR over the base traffic assumed for the Project.

(R) Redress of Public Grievances

The Concessionaire shall have the obligation to maintain a public relations office at each of the Toll Plazas where it shall keep a register (the "Complaint Register") open to public access at all times for recording of complaints by any person (the "Complainant") in the manner as stipulated under Annex M of this Agreement.

(3) Rights of Concessionaire

(a) Grant

(i) The Concessioneing Authority agrees to provide to the Concessionaire cash support by way of an outright grant equal to the sum set forth in the Bid, namely, BDT [●].

(ii) The Grant shall be disbursed to the Concessionaire by way of Equity Support in accordance with the provisions of Section 7(3)(b), and the balance remaining, if any, shall be disbursed as O&M Support in accordance with the provisions of Section 7(3)(c).

(b) Equity Support

(i) Subject to the conditions specified in this Section 7(3)(b), the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost (the "Equity Support").

(ii) The Equity Support shall not exceed (he sum specified in the Bid and as accepted by the Concessioneing Authority, but shall in no case be greater than the Equity, and shall be further restricted to a sum not exceeding 20% (twenty per cent) of the Total Project Cost. For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Section shall include Equity Support.

(iii) Equity Support shall be due and payable to the Concessionaire after it has expended the Equity, and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. The Concessioneing Authority shall disburse each tranche of the Equity Support as and when due, but no later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars.

(iv) In the event of occurrence of a Concessionaire Default, disbursement of Equity Support shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

(c) Obligation & Maintenance Support

(i) The balance of the Grant, if any, remaining after disbursement of the Equity Support shall be disbursed to the Concessionaire in accordance with Section 7(3)(c)(ii) for meeting O&M Expenses and Debt Service of the Project (the "O&M Support").

(ii) The O&M Support shall be disbursed by the Concessioneing Authority in quarterly instalments and the first such instalment shall be released within 90 (ninety) days of the Date of Completion . Each instalment shall be a sum equal to 5

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(five) per cent of the Equity Support and such instalments shall be disbursed by the Concessioning Authority until the Grant is exhausted.

(c) User Fee

(i) Collection and appropriation of Fee

- (A) On and from the Date of Completion till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the Users subject to and in accordance with this Agreement and the Tolls Act, 1851 (the "Fee Act"); provided that for ease of payment and collection, such Fee shall be rounded off to the nearest 5 (five) taka in accordance with the Fee Act; provided further that the Concessionaire may determine and collect Fee at such lower rates as it may, by public notice to the Users, specify in respect of all or any category of Users or vehicles.
- (B) The Parties acknowledge that a notification for levy and collection of Fee shall be issued by the Government under Section 2 of the Tolls Act 1851 (the "Fee Notification") within 90 (ninety) days hereof, substantially in the form set forth in Annex L
- (C) The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the Project and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Agreement.
- (D) The Concessionaire acknowledges and agrees that any User who is not liable for payment of the Fee shall be entitled to use the Project without any restrictions, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement. For the avoidance of doubt, the Concessionaire hereby acknowledges that Exempted Vehicles are not liable to payment of Fee.

(ii) Revision of Fee

- (A) The Parties hereto acknowledge and agree that the Fee shall be revised annually on July 1 subject to and in accordance with the provisions of the Fee Act; provided, however, that no revision shall be effected within a period of 6 (six) months from the date of the preceding revision of Fee.
- (B) The Parties hereto acknowledge and agree that in conformity with the Fee Act, the Fee to be levied and collected upon completion of the Project shall be revised from the expected Date of Completion.
- (C) The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Fee or other relief from the Concessioning Authority or any Government Instrumentality except in accordance with the express provisions of this Agreement.

(iii) Exemption for Local Users

The Concessionaire shall not collect any Fee from a Local User for non-commercial use of the Project, and shall issue a pass in respect thereof for commuting on a section of the Project as specified in such pass and for crossing the Toll Plaza specified therein. For carrying out the provisions of this Section 7(3)(D) , the Concessionaire shall formulate, publish and implement an appropriate scheme, and make such modifications to the scheme as may reasonably be suggested by the Concessioneing Authority or by Local Users from time to time; provided that for defraying its expenses on issuing of passes and handling of Local Users, the Concessionaire shall be entitled to charge a monthly fee of BDT [●], with reference to the base year [●], to be revised annually in accordance with the Fee Act to reflect the variation in WPI, and then rounded off to the nearest 5 (five) taka; provided further that no passes will be required or Fee collected from a vehicle that uses part of the Project and does not cross a Toll Plaza.]

(iv) Free use of service road

- (A) The Concessionaire shall not permit entry of [Local Users, Tractors, animal-drawn vehicles, three-wheelers and Motor Cycles]⁴ on the carriageway of the Project where a service road or alternative road is available provided that a Motor Cycle shall be permitted to use such carriageway upon payment of Fee. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to set up temporary or permanent Fee collection booths, entry barriers or such other restrictions on the service roads, as may reasonably be necessary for preventing evasion of Fee by vehicles which are otherwise liable to payment of Fee.
- (B) Any motorised vehicle, not being a Tractor, animal-drawn vehicle, three-wheeler, Motor Cycle or a vehicle of Local User, using the service road forming part of the Project shall be liable to payment of Fee as if it was using the Project. For the avoidance of doubt, a vehicle which is not liable to payment of Fee for use of any section of the Project shall not be required to pay Fee if it is using a service road in that section of the Project.

(v) Discounted Fee for frequent Users

- (A) The Concessionaire shall, upon request from any person, issue a return pass on payment of a sum equal to 150% (one hundred and fifty per cent) of the Fee payable for the respective vehicle if it were to undertake a single one-way trip on the Project. Such return pass shall entitle [he specified vehicle to undertake a return journey within 24 (twenty four) hours from the time of payment of Fee.

⁴ Delete if not required.

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- (B) The Concessionaire shall, upon request from any person for issue of 50 (fifty) or more one-way toll tickets, issue such tickets at a discounted rate equivalent to two-thirds of the Fee payable for the respective vehicle. Such discounted tickets shall entitle the specified vehicle to commute on the Project by using one ticket for a single one-way trip at any time during a period of one month from the date of payment of Fee.

(vi) Re-appropriation of excess Fee

- (A) In the event that the average daily traffic of motor vehicles in any Accounting Year shall have reached a level equivalent to 120% (one hundred and twenty percent) of the designed capacity (the "Traffic Cap"), the Fee levied and collected from the traffic exceeding the Traffic Cap shall, notwithstanding anything to the contrary contained in this Agreement, be deemed to be due and payable to the Concessioning Authority in accordance with the provisions of Section 7(D)(viii)(b).
- (B) If traffic in any Accounting Year exceeds the Traffic Cap, the Concessionaire shall be entitled to collect and appropriate the Realizable Fee for traffic not exceeding the Traffic Cap and for all traffic exceeding the Traffic Cap, the Concessionaire shall collect and deposit the same into the Safety Fund within 60 (sixty) days of the close of the relevant Accounting Year; provided that the balance remaining in respect of the excess traffic of the last Accounting Year of the Concession Period shall be credited to the Safety Fund within 30 (thirty) days of the Transfer Date.

(vii) Tolling Contractor

The Concessionaire may appoint a Tolling Contractor or any other person to collect the Fee for and on behalf of the Concessionaire, provided that notwithstanding such appointment, the Concessionaire shall be and remain solely liable and responsible for the collection of Fee in accordance with this Agreement and its deposit into the Escrow Account and for compliance with the provisions of this Agreement.

(viii) Fee collection points

Fee shall ordinarily be collected at the Toll Plaza[s] from vehicles crossing the Toll Plaza[s] and using the whole or part of the Project; provided that for preventing evasion of Fee by any vehicle circumventing [one or both of the Toll Plaza[s] and using the whole or part of the Project [located between such Toll Plazas], the Concessionaire shall be entitled to set up at its own risk and cost, and in consultation with the Independent Engineer, its temporary or permanent Fee collection booths, as may reasonably be necessary for preventing such evasion. For the avoidance of doubt, the Concessionaire hereby acknowledges and agrees that it shall not determine or collect Fee from Users who [only use part of the Project which is situated between the two Toll Plazas OR *only use part of the Project situated on an\ one side of the Toll Plaza*]. It is further acknowledged and agreed that the restrictions hereunder shall not extend beyond a distance of 10 (ten) kilometres from the Toll

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Plaza[s] and the provisions of this Section shall be so enforced as to minimize inconvenience to Users who are not liable to payment of Fee.

(ix) Additional charge for evasion of Fee

In the event that any vehicle uses the Project without payment of Fee due, the Concessionaire shall be entitled to determine and collect from such vehicle the Fee due and an equivalent amount towards predetermined liquidated damages for unauthorized use of the Project; provided that the determination and collection of such liquidated damages shall be at the risk and cost of the Concessionaire and the Concessions Authority shall not in any manner be liable on account thereof; provided that upon failure of the driver of such vehicle to pay Fee, the Concessionaire may prevent such vehicle from using the Project and may have such vehicle removed therefrom.

(x) Additional fee for overloaded vehicles

Without prejudice to the liability incurred under the Applicable Laws by any person driving a vehicle that is loaded in excess of the permissible limit set forth in such laws, the Concessionaire may recover Fee for such overloaded vehicle at the rate applicable to the next higher category of vehicles.

Provided that such Fee shall be levied on the basis of actual Gross Vehicle Weight as measured by a standardized static weighing machine to be installed by the Concessionaire at [each of] the Toll Plaza[s] and where no such weighing machine has been installed, the Concessionaire shall not be entitled to collect Fee for the next higher category of vehicles.

Provided further that upon detection of overloading, the Concessionaire shall prevent the vehicle from using the Project until the excess load has been removed from such vehicle and the Concessions Authority shall not be liable for any act of omission of the Concessionaire in relation to such vehicle or person driving such vehicle.

(xi) Display of Fee rates

- (A) The Concessionaire shall, one kilometre before the Toll Plaza, 500 (five hundred) metres before the Toll Plaza and 50 (fifty) metres before entry to the Toll Plaza[s], prominently display the applicable rates of Fee for information of Users approaching the Toll Plaza and shall also publish and display such other information in such manner as may be prescribed under the Fee Act.
- (B) The Concessionaire shall, from time to time, inform the Concessions Authority of the applicable Fee and the detailed calculation thereof. Such information shall be communicated at least 15 (fifteen) days prior to the revision of Fee under and in accordance with the Fee Act.
- (C) The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Fee payable under the Fee Act. In the event any excess amounts are collected by or on behalf of the Concessionaire, it shall, upon receiving a notice to this effect from the Concessions Authority, refund such excess amounts to the Concessions Authority.

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Authority along with Damages equal to 25% (twenty five percent) thereof.

7.2 Obligations of the Concessioneing Authority

In addition to any of its other obligations in this Agreement, the Concessioneing Authority shall arrange for and provide the following:

(a) Grant

- (A) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Project; and
- (B) assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Project.

(b) Approvals

The Concessioneing Authority shall promptly grant approvals/consents sought by the Concessionaire as required under this Agreement subject to the Concessionaire having complied with all Applicable Laws/requirements in this regard.

(c) Competing Facilities

The Concessioneing Authority shall procure that during the subsistence of this Agreement, neither the Concessioneing Authority nor any Government Instrumentality shall, at any time before the 10th (tenth) anniversary of the Appointed Date, construct or cause to be constructed any Competing Road; provided that the restriction herein shall not apply if the average traffic on the Project in any year exceeds 90% (ninety percent) of its designed capacity specified in this Agreement.

7.3 Utilities and Services

The Concessioneing Authority shall during the Concession Period provide access to the Concessionaire to all infrastructure facilities and utilities including water, electricity and telecommunication facilities necessary for the implementation, operations and maintenance of the Project/ Project Facilities and Services in accordance with this Agreement, at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers availing substantially equivalent facilities and utilities. Provided unless otherwise agreed to by the Concessioneing Authority:

- (a) the power made available shall be as received by the Concessioneing Authority from [•] (*Name of Electricity Board or other source*). The take off point for electricity shall be from the sub station at [•];
- (b) the water made available shall be as received by the Concessioneing Authority from [•] (*Name the Source*). The take off point for water shall be the nearest available water line;
- (c) the Concessionaire shall, at its cost, and to the satisfaction of the Concessioneing Authority, install meters to measure the consumption of power and water. The Concessioneing Authority does not warranty the

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reliability, quality and quantity of water and power and shall not be liable in any manner for the shortage in or non-supply of these utilities;

- (d) the Concessionaire may, at its cost, make alternate arrangements for power including but not limited to installation of generators, subject to obtaining Applicable Permits, if any, therefor.

7.4 Liability for shortfall in performance

In the event the Concessions Authority, whether from the review of reports submitted by the Concessionaire in accordance with the provisions of this Agreement or otherwise, observes that the Project/Project Facilities and Services do not comply with the Performance Standards or fall short of the Performance Standards, the Concessions Authority shall calculate the amount of liquidated damages payable by the Concessionaire in accordance with Part B of Annex J and demand the Concessionaire by a notice in writing to pay the same within 30 (thirty) Days and on failure of the Concessionaire to pay the same recover the amount from the Concessionaire. Provided that on receipt of the demand the Concessionaire may make a written representation to the Concessions Authority which shall be considered by the Concessions Authority on merits and the Concessions Authority may waive the liquidated damages in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessionaire. It is clarified that this provision does not prejudice the rights of the Concessions Authority upon a Concessionaire Event of Default as set out in Section 15.1 of the General Conditions including the Concessions Authority's right to terminate this Agreement which shall remain unaffected.

SECTION 7A

TRAFFIC REGULATION

7A.1 Traffic regulation by the Concessionaire

The Concessionaire shall regulate traffic on the Project in accordance with the Applicable Laws, and subject to the supervision and control of the State authorities [or a substitute thereof | empowered in this behalf under the Applicable Laws.

7A.2 Police assistance

For regulating the use of Project in accordance with the Applicable Laws and this Agreement, the Concessioneing Authority shall assist the Concessionaire in procuring police assistance from the Police Department or the Highway Patrol [or a substitute thereof]. The police assistance shall include setting up of a traffic aid post (the "Traffic Aid Post") [at each of the Toll Plazas with a mobile Police squad for round-the-clock patrolling of the Project].

7A.3 Buildings for Traffic Aid Posts

The Concessionaire shall, in accordance with the type designs prescribed for such police outpost buildings by [the Government or a substitute thereof, construct buildings not exceeding 25 (twenty five) square metres of plinth area, for each of the Traffic Aid Posts, and hand them over to the Concessioneing Authority no later than 60 (sixty) days prior to the Date of Completion]. The Traffic Aid Post[s] shall be deemed to be part of the Site and shall vest in the Concessioneing Authority.

SECTION 7B

EMERGENCY MEDICAL AID

7B.1 Medical Aid Posts

For providing emergency medical aid during the Operation Period, as set forth in this Agreement, the Concessionaire shall assist the Government [or a substitute thereof to be designated by the Concessioneing Authority] in setting up and operating a medical aid post (the "Medical Aid Post") at [each of the Toll Plazas with round-the-clock ambulance services for victims of accidents on the Project.]

7B.2 Buildings for Medical Aid Posts

The Concessionaire shall, at its cost [and in accordance with the type designs prescribed for such buildings by the Medical Department (or a substitute thereof to be designated by the Concessioneing Authority)], construct an aid post building and 2 (two) residential quarters, and hand them over to the Concessioneing Authority, no later than 30 (thirty) days prior to Scheduled Project Extension Date. The Medical Aid Post(s)] shall be deemed to be part of the Site and shall vest in the Concessioneing Authority.

7B.3 Recurring expenditure on Medical Aid Posts

[On or before Date of Commercial Operation, the Concessionaire shall provide to the Medical Department or a substitute thereof to be designated by the Concessioneing Authority one ambulance in good working condition along with chauffeurs for round-the-clock ambulance services and meet the operating costs of such ambulance including the salaries and allowances of the chauffeurs. The Concessionaire shall also reimburse to the Medical Department (or a substitute thereof to be designated by the Concessioneing Authority) the actual expenditure incurred by it in each Accounting Year on the medical equipment, and the pay and allowances of up to 2 (two) medical personnel deployed exclusively for the Medical Aid Posts and ambulance, and shall maintain the Medical Aid Post buildings in accordance with Good Industry Practice. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the Medical Department or a substitute thereof to be designated by the Concessioneing Authority.]

SECTION 7C

TRAFFIC CENSUS AND SAMPLING

7C.1 Traffic census

The Concessionaire shall install, maintain and operate electronic/computerized traffic counters at [each of] the Toll Plaza[s] and collect data relating to the number and types of vehicles using the Project. The Concessionaire shall also install, maintain and operate weighing platforms (weigh-in-motion type) for recording, on a sample basis, the weight of commercial goods vehicles using the Project. A weekly statement of such data shall be compiled and furnished forthwith by the Concessionaire to the Concessions Authority substantially in the form specified in Annex K.

7C.2 Traffic survey

The Concessions Authority may require the Concessionaire to conduct, during each year of the Concession Period, a detailed traffic survey at such frequency and on such days as the Concessions Authority may specify, provided that the cumulative period of such survey shall not exceed 14 (fourteen) days in a year. The Concessionaire shall, at its own cost, carry out or cause to be carried out, the survey in the form and manner reasonably specified by the Concessions Authority and furnish a detailed report thereof within 15 (fifteen) days of the completion of each survey. For the avoidance of doubt, the Concessions Authority may also conduct traffic surveys, in such manner as it deems fit and at its own cost, through any agency designated by it for this purpose.

7C.3 Traffic sampling

- (1) For determining the actual traffic on the Project, the Concessions Authority shall be entitled to inspect the relevant records of the Concessionaire, and may, at its own cost, undertake traffic sampling substantially in the manner set forth in Annex K at such frequency as it may deem appropriate, but in no case for less than a continuous period of 7 (seven) days. The Concessionaire shall provide such assistance as the Concessions Authority may reasonably require for such traffic sampling.
- (2) If the traffic sampling pursuant to this Section 7C.3 demonstrates that the actual traffic is more than the traffic reported by the Concessionaire, the traffic determined by the traffic sampling shall be deemed to be the traffic for purposes of this Agreement and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, Realisable Fee for any comparable period shall be calculated with reference to the traffic determined hereunder.

7C.4 Computer systems and network

The Concessionaire shall install, operate and maintain a computer system with round-the-clock connections to the networks of the Concessioneing Authority and other related entities for exchange of data and information useful or necessary for efficient and transparent regulation and management of traffic. For this purpose, it shall follow such protocol for Electronic Data Interchange (the "EDI") as the Concessioneing Authority may specify.

SECTION 9

PAYMENTS TO THE CONCESSIONING AUTHORITY

9.1 License Fee

None.

9.2 Royalty

None.

9.3 Other Payments

(1) Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Concessioning Authority by way of concession fee (the "Concession Fee") a sum of BDT [●] per annum and the Additional Concession Fee Premium specified in Section 9.3(2)

(2) Additional Concession Fee

(a) Without prejudice to the provisions of Section 9.3(1), the Concessionaire agrees to pay to the Concessioning Authority [for the [●]th year of the Concession Period commencing from the day falling after [●] days from Date of Commercial Operation, a Premium in the form of an additional Concession Fee equal to [●] % ([●] per cent)] of the total Realisable Fee during that year, due and payable on a pro rata basis for the period remaining in that year; and for each subsequent year of the Concession Period, the Premium shall be determined by increasing the proportion of Premium to the total Realisable Fee in the respective year by an additional [●] % ([●] percent) as compared to the immediately preceding year. For the avoidance of doubt and by way of illustration, the Premium for the [●]th and [●]th years shall be equal to [●]% and [●]% respectively of the total Realisable Fee for the respective years.

(b) The Premium payable under Section 9.3(2)(a) shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

(3) Determination of Concession Fee

(a) Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and undertakes that the total Realisable Fee for the purposes of computing the Concession Fee under this Section 9 shall be determined on the express understanding that the number of motor vehicles in the first year following the Date of Commercial Operation shall be deemed to be the higher of (a) the actual motor vehicles and (b) [●] motor vehicles; and that the number of motor vehicles for

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computing the Concession Fee for each subsequent year shall be deemed to be the higher of (a) the actual motor vehicles and (b) [●] % greater than the number of motor vehicles reckoned hereunder in the immediately preceding year. For the avoidance of doubt, the Parties hereto agree that for the purposes of computing the Concession Fee hereunder, the proportion of cars, buses, trucks and other vehicles to the total number of motor vehicles shall always be based on the actual proportion thereof in the relevant year.

(b) The Parties further agree that for purposes hereof, Realizable Fee shall be computed with reference to the Fee due and payable by Users and any discounts, concessions or waivers granted by the Concessionaire to any or all Users shall not be reckoned for computing the Realizable Fee hereunder. The Parties also agree that computation of motor vehicles hereunder shall be based on the traffic at the Toll Plaza, and in the event the Project has 2 (two) or more Toll Plazas, the average traffic thereof shall be computed for purposes hereof.

(4) Payment of Concession Fee

The Concession Fee shall be due and payable in monthly instalments. Within 7 (seven) days of the close of each month, the Concessionaire shall pay to the Concessioning Authority against the Concession Fee, a provisional amount calculated on the basis of total Realizable Fee of the immediately preceding month, and final settlement thereof, based on audited accounts of the Concessionaire, shall be made within 120 (one hundred and twenty) days of completion of the respective Accounting Year.

(5) Verification of Realizable Fee

(a) The Concessioning Authority may, in order to satisfy itself that the Concessionaire is reporting its Realizable Fee honestly and faithfully, depute its representatives to the Toll Plaza[s] and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary, to ascertain the actual Fee revenues.

(b) If the verification of Fee revenues pursuant to this Section 9.5 demonstrates that the Realizable Fee is more than the amount reported by the Concessionaire, the Concessioning Authority shall, for the purpose of determining the Fee revenues, be entitled to undertake traffic sampling for a continuous period of 7 (seven) days in accordance with Section 7C. The Parties hereto agree that if the average daily Fee revenue determined under this Section 9.5(b) exceeds the average daily Realizable Fee reported by the Concessionaire during the preceding month by [●]% hereof, the difference between such Fee revenue and Realizable Fee shall be multiplied by 180 (one hundred and eighty) and the product thereof shall be paid as Damages by the Concessionaire to the Concession, and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, it is agreed that seasonal variations in traffic volume shall be determined by the Independent Engineer on the basis of past trends and other relevant information, and due weightage shall be assigned to such variations in computing the Realizable Fee under this Section 9.5(b).

SECTION 15

EVENTS OF DEFAULT

15.1 The Concessionaire Event of Default

There is no additional Concessionaire Event of Default under Section 15.1(xxvii) of the General Conditions.

15.2 The Concessioneing Authority Event of Default

There is no additional Concessioneing Authority Event of Default under Section 15.2(v) of the General Conditions.

Annexes

ANNEX A

PROJECT SITE

[Description of Project Site will be included here and may take the form as below:

Part A

1. Site

The Site of the Project comprises the section of [description of Project]. The land, carriageway and structures comprising the Site are described below.

2. Land

The Site of the Project comprises the land described below:

S.No.	Chainage (In Km)		Total ROW (In m)	Remarks
	From	To		

3. Carriageway

The present carriageway of the Project is a [-lane divided carriageway with paved shoulders in its entire length].

4. Major Bridges

The Site includes the following Major Bridges:

S.No.	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

5. Railway Over Bridges

The Site includes the following Railway Over Bridges:

S.No.	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

6. Grade Separators

The Site includes the following Grade Separators:

S.No.	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

7. Minor Bridges

The Site includes the following Minor Bridges:

S.No.	Chainage (In Km)	Type of Structure	No. of Spans	Width (In m)

8. Total number of structures

The total number of structures on the Site is noted below:

- [(a) No. of Major Bridges
- (b) No. of Railway Over Bridges
- (c) No. of Grade Separators
- (d) No. of Minor Bridges
- (e) No. of Vehicular and Non Vehicular Underpasses
- (f) No. of Box Culverts
- (g) No. of Pipe Culverts
- (h) No. of Slab Culverts]

9. Bus bays and Truck Lay byes

The total number of bus bays and truck lay byes on the Project is noted below:

- [(a) No. of Bus bays on LHS
- (b) No. of Bus bays on RHS
- (c) No. of Truck lay-byes on LHS
- (d) No. of Truck lay-byes on RHS]

10. Permanent Bridge, Bye Pass or Tunnel costing BDT. 50 crore or more

The Site includes the following permanent bridge/ bypass/ tunnel which was constructed at the cost noted below:

- [(a) Bridge at km [●] to km [●] of N-[●] costing BDT [●] crore;
- (b) Bypass at km [●] to km [●] of N-[●] costing BDT [●] crore
- (c) Tunnel at km [●] to km [●] of NH-[●] costing BDT [●] crore].]

ANNEX B

PROJECTS ASSETS AND FACILITIES

Part A

[The Project Assets handed over by the Concession Authority to the Concessionaire will be identified and described here.]

Part B

Project Facilities

The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement. Such Project Facilities shall include:

- (a) toll plaza[s];
- (b) roadside furniture;
- (c) street lighting;
- (d) pedestrian facilities;
- (e) landscaping and tree plantation;
- (f) rest areas;
- (g) truck lay-bys;
- (h) bus-bays and bus shelters;
- (i) cattle crossings;
- [(j) development of site for wayside amenities;]
- [(k) traffic aid posts;]
- [(l) medical aid posts;]
- [(m) vehicle rescue posts;]
- [(n) telecom system; and]
- [(o) highway traffic management system.]

2. Project Facilities for the Project

Project Facilities forming part of the Project and to be completed on or before the Project Completion Date shall be described here and may be as follows.

3 Description of Project Facilities

Each of the Project Facilities is briefly described below: [●]

ANNEX C

PROJECT REQUIREMENTS

[This Annex will set out the key project requirements and the Construction Standards, Operations and Maintenance Standards and Safety Standards. The indicative standards and norms in this regard will be included in the annexure.]

Annexure

CONSTRUCTION STANDARDS, OPERATIONS AND MAINTENANCE STANDARDS AND SAFETY STANDARDS

Indicative and minimum standards and norms for various kinds of projects will be prescribed here to suit project requirements.

A. Construction Standards

[.....]

B. Operations and Maintenance Standards

B.1 General

The Concessionaire at its own cost promptly and diligently maintain, replace or restore any of the project facilities or part thereof which may be lost, damaged, destroyed or worn out.

The Concessionaire shall abide by the operations and maintenance plan as outlined in its tender proposal.

While carrying out the repairing, maintaining and replacing the project facilities, the Concessionaire acknowledges and accepts that it is holding and maintaining the concession or assets, project facilities in trust for eventual transfer to the Concessioning Authority on termination of the agreement and therefore, will not do any act as a result of which the value of Project Assets and Project Facilities and Services is diminished.

The Concessionaire shall, at all times during the Concession Period, at its own risk, cost, charges and expenses, performance and pay for maintenance repairs, renewals and replacement of various type of assets and equipment in the concessionaire premises and /or the project or any parts thereof, whether due to use and operations or due to deterioration of materials and /or parts, so that on the expiry or termination of Concession, the same shall except normal wear and tear be in good working condition as it were at the time of commencement of the Concession.

While carrying out the repair, maintenance and replacement of the project facilities, the Concessionaire shall carry out the work in accordance with the manufacturer's recommendations and the relevant latest Bangladeshi Standards or in its absence ISO/OISD Standards. In the event that the concessionaire, by necessity or otherwise need to follow any other country standard and it shall be equal or superior to the standard specified above.

The repairs and maintenance shall generally conform to the following specifications.

B.2 Particular Specifications

[...]

C. Safety Standards

The Concessionaire shall ensure compliance with the safety standards set out under Applicable Law/international conventions, as relevant, from time to time including:

[....]

ANNEX D

PROJECT SCHEDULE

[Project Specific – key milestones shall be specified by the Concessioneing Authority for milestone dates for completion of Construction Works including installation of equipments etc. These should be easily identifiable and measurable. Following is an example table.]

Milestone date	Activity/level of completion of project
[●] Days from Date of Award of Concession	[25% of Construction Works should have been completed]
[●] Days from Date of Award of Concession	[50% of Construction Works should have been completed]
[●] Days from Date of Award of Concession	[100% of Construction Works should have been completed]

ANNEX E

DESIGNS AND DRAWINGS

[The Concessioneing Authority to stipulate the Designs and Drawings that the Concessionaire will be expected to submit for review by the Independent Engineer as per the Project Requirements.]

ANNEX F

PERMITS AND CLEARANCES

- A. [Applicable Permits to be obtained by the Concessionaire before commencement of Construction Works.]
- B. [Such permits and clearances under Environmental Law/other Applicable Laws as will be procured by the Concessioneing Authority before the commencement of the Project, to be specified by the Concessioneing Authority.]

ANNEX G

FEE NOTIFICATION

ANNEX H

TESTS

Part A

1 Schedule for Tests

(a) The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the Project, notify the Independent Engineer and the Concessioneing Authority of its intent to subject the Project to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Concessioneing Authority detailed inventory and particulars of all works and equipment forming part of the Project.

(b) The Concessionaire shall notify the Independent Engineer of its readiness to subject the Project to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine, the date and time for each Test and notify the same to the Concessioneing Authority who may designate its representative to witness the Tests.

2 Tests

(a) Visual and physical Test: The Independent Engineer shall conduct a visual and physical check of the Project to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

(b) Test drive: The Independent Engineer shall undertake a test drive of the Project by a Car and by a fully loaded Truck to determine that the quality of service conforms to the provisions of the Agreement.

(c) Riding quality Test: Riding quality of each lane of the carriageway shall be checked with the help of a calibrated bump integrator and the maximum permissible roughness for purposes of this Test shall be [1,800 (one thousand and eight hundred)] mm for each kilometre.

(d) Pavement Composition Test: The thickness and composition of the pavement structure shall be checked on a sample basis by digging pits to determine conformity of such pavement structure with Specifications and Standards. The sample shall consist of one pit in each direction of travel to be chosen at random in each stretch of 5 (five) kilometres of the Project. The first pit for the sample shall be selected by the Independent Engineer through an open draw of lots and every fifth kilometre from such first pit shall form part of the sample for this pavement quality Test.

(e) Cross-section Test: The cross-sections of the Project shall be checked on a sample basis through physical measurement of their dimensions for determining the conformity

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thereof with Specifications and Standards. For the road portion, the sample shall consist of one spot to be selected at random in each stretch of 1 (one) kilometre of the Project. The first spot for the sample shall be selected by the Independent Engineer through an open draw of lots and the spots located at every one kilometre from such first spot shall form part of the sample. For the bridge portion, one spot shall be selected at random by the Independent Engineer in each span of the bridge.

(f) Structural Test for bridges: All major and minor bridges constructed by the Concessionaire shall be subjected to the Rebound Hammer and Ultrasonic Pulse Velocity tests, to be conducted in accordance with the procedure described in [please insert prescribed Roads and Highways testing techniques], at two spots in every span, to be chosen at random by the Independent Engineer. Bridges with a span of 15 (fifteen) metres or more shall also be subjected to load testing.

(g) Other Tests: The Independent Engineer may require the Concessionaire to carry out or cause to be carried additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

(h) Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

(i) Safety review: Safety audit of the Project shall have been undertaken by the Safety Consultant and on the basis of such audit, the Independent Engineer shall determine conformity of the Project with the provisions of this Agreement.

3 Agency for conducting Tests

All Tests set forth in this Annex shall be conducted by the Independent Engineer or such other agency or person as it may specify in consultation with the Concessions Authority.

4 Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

Part B

1 Repair/Rectification of Defects and Deficiencies

The Concessionaire shall repair and rectify the defects and deficiencies identified by the Concessions Authority within the time limit set forth herein.

Nature of defect or deficiency	Time limit for repair/rectification
ROADS	
(a) Carriageway and paved shoulders	

(i) Breach or blockade –	Temporary / restoration of traffic within 24 hours; permanent restoration within 15 days
(ii) Roughness value exceeding 2,500 mm in a stretch of 1 km (as measured by a standardised roughometer/bump integrator)	180 days
(iii) Pot holes	48 hours
(iv) Cracking in more than 5% of road surface in a stretch of 1 km	30 days
(v) Rutting exceeding 10 mm in more than 2% of road surface in a stretch of 1 km (measured with 3 m straight edge)	30 days
(vi) Bleeding/skidding	7 days
(vii) Ravelling/Stripping of bitumen surface exceeding 10 sq m	15 days
(viii) Damage to pavement edges exceeding 10 cm	15 days
(ix) Removal of debris	6 hours
Hard/earth shoulders, side slopes, drains and culverts	
(i) Variation by more than 2% in the prescribed slope of camber/cross fall	30 days
(ii) Edge drop at shoulders exceeding 40 mm	7 days
(iii) Variation by more than 15% in the prescribed side (embankment) slopes	30 days
(iv) Rain cuts/gullies in slope	7 days
(v) Damage to or silting of culverts and side drains during and immediately preceding the rainy season	7 days
(vi) Desilting of drains in urban/semi-urban areas	48 hours
(c) Road side furniture including road signs and pavement marking	
(i) Damage to shape or position poor visibility or loss of retro-reflectivity	48 hours
(d) Street lighting and telecom (ATMS)	
(i) Any major failure of the system	24 hours

(ii) Faults and minor failures	8 hours
(e) Trees and plantation	
(i) Obstruction in a minimum head-room of 5 m above carriageway or obstruction in visibility of road signs	24 hours
(ii) Deterioration in health of trees and bushes Timely watering and treatment	
(iii) Replacement of trees and bushes	90 days
(iv) Removal of vegetation affecting sight line and road structures	15 days
(f) Rest areas	
(i) Cleaning of toilets	Every 4 hours
(ii) Defects in electrical, water and sanitary installations	24 hours
(g) Toll plaza[s]	
(i) Failure of toll collection equipment or lighting	8 hours
(ii) Damage to toll plaza	7 days
(h) Other Project Facilities and Approach roads	
(i) Damage or deterioration in Approach Roads, [pedestrian facilities, truck lay-bys, bus-bays, bus- shelters, cattle crossings, Traffic Aid Posts, Medical Aid Posts and other works]	15 days
BRIDGES	
(a) Superstructure of bridges	
(i) Cracks	Temporary measures Within 48 hours ; Permanent measures Within 45 days
(ii) Spalling/scaling	15 days
(b) Foundations of bridges Scouring and/or cavitation	15 days
(c) Piers, abutments, return walls and wing	

walls of bridges	
Cracks and damages including settlement and tilting	30 days
(d) Bearings (metallic) of bridges	
(i) Deformation	15 days
(e) Joints in bridges	
(i) Loosening and malfunctioning of joints	15 days
(f) Other items relating to bridges	
(i) Deforming of pads in elastomeric bearings	7 days
(ii) Gathering of dirt in bearings and joints; or clogging of spouts, weep holes and vent-holes	3 days
(iii) Damage or deterioration in parapets - and handrails	3 days
(iv) Rain-cuts or erosion of hanks of the side - slopes of approaches	15 days
(v) Damage to wearing coat -	15 days
(vi) Damage or deterioration in approach slabs, pitching, apron, toes, floor or guide bunds	30 days
(vii) Growth of vegetation affecting the structure or obstructing the waterway	15 days

ANNEX I

SAFETY REQUIREMENTS

1 Guiding principles

1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Project, irrespective of the person(s) at fault.

1.2 Users of the Project include motorised and non-motorised vehicles as well as pedestrians and animals involved in, or associated with accidents. Vulnerable Road Users (VRU) include pedestrians as well as riders of motorised two-wheelers, bicycles and other vehicles which do not provide adequate occupant protection.

1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

1.4 Safety Requirements include measures associated with traffic management and regulation such as road signs, pavement marking, traffic control devices, roadside furniture, highway design elements, enforcement and emergency response.

2 Obligations of the Concessionaire

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Manual for Safety in Road Design, issued by the Ministry;
- (c) Relevant Standards/Guidelines of Roads and Highways Division relating to safety, road geometries, bridges, culverts, road signs, pavement marking and roadside furniture;
- (d) Provisions of this Agreement; and
- (e) Good Industry Practice.

3 Appointment of Safety Consultant

For carrying out safety audit of the Project under and in accordance with this Annex the Concessioneing Authority shall appoint from time to time, one or more qualified firms or organizations as its consultants (the "Safety Consultant"). The Safety Consultant shall employ a team comprising, without limitation, one road safety expert and one traffic planner to undertake safety audit of the Project.

4 Safety measures during Development Period

4.1 No later than 90 (ninety) days from the date of this Agreement, the Concessioneing Authority shall appoint a Safety Consultant for carrying out safety audit at the design stage

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of the Project. The Safety Consultant shall collect data on all fatal crashes and other road accidents which occurred on the Project in the preceding two years by obtaining copies of the relevant First Information Reports (FIRs) from the police stations having jurisdiction. The information contained in such FIRs shall be summarized in the form prescribed by the Roads and Highways Division/Ministry for this purpose and the data shall be analyzed for the type of victims killed or injured, impacting vehicles, location of accidents and other relevant factors.

4.2 The Concessionaire shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the "Safety Drawings"). Such design details shall include horizontal and vertical alignments; sightlines; layouts of intersections; interchanges; road cross-section; bridges and culverts; side drains; provision for parked vehicles, slow moving vehicles (tractors, bullock carts, bicycles) and pedestrians; bus bays; truck lay-bys; and other incidental or consequential information. The Safety Consultant shall review the design details and forward three copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward one copy each to the Concessioneing Authority and the Concessionaire.

4.3 The accident data and the design details shall be compiled, analyzed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Project. The safety audit shall be completed in a period of three months and a report thereof (the "Safety Report") shall be submitted to the Concessioneing Authority, in five copies. One copy each of the Safety Report shall be forwarded by the Concessioneing Authority to the Concessionaire and the Independent Engineer forthwith.

4.4 The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the design of the Project, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of Roads and Highways Division and the Ministry, Specifications and Standards, and Good Industry Practice. If the Concessionaire does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Concessioneing Authority forthwith.

4.5 Without prejudice to the provisions of Section 4.4, the Concessionaire and the Independent Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Concessioneing Authority, and no later than 15 (fifteen) days of receiving such comments, the Concessioneing Authority shall review the same along with the Safety Report and by notice direct the Concessionaire to carry out any or all of the recommendations contained therein with such modifications as the Concessioneing Authority may specify.

5 Safety measures during Construction Period

5.1 A Safety Consultant shall be appointed by the Concessioneing Authority, no later than 4 (four) months prior to the expected Project Completion Date, for carrying out a safety audit of the completed Construction Works.

5.2 The Safety Consultant shall collect and analyze the accident data for the preceding two years in the manner specified in this Annex. It shall study the Safety Report for the Development Period and inspect the Project to assess the adequacy of safety measures. The Safety Consultant shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional road safety measures, if any, that are considered essential for reducing accident hazards on the Project. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Section 4.3, 4.4 and 4.5 of this Annex.

5.3 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and road Users in accordance with the guidelines of IRC for safely in construction zones, and notify the Concessions Authority and the Independent Engineer about such arrangements.

6 Safety measures during Operation Period

6.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement,

6.2 The Concessionaire shall establish a Highway Safety Management Unit (the "HSMU") to be functional on and after Date of Commercial Operation, and designate one of its officers to be in-charge of the HSMU. Such officer shall have specialist knowledge and training in road safety and traffic engineering by having attended a course conducted by a reputed organization on the subject.

6.3 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police but where a vehicle rolled over or had to be towed away. The information so collected shall be summarized in the form prescribed by Roads and Highways Division/Ministry for this purpose. The Concessionaire shall also record the exact location of each accident on a road map. The aforesaid data shall be submitted to the Concessions Authority at the conclusion of every quarter and to the Safety Consultant as and when appointed.

6.4 The Concessionaire shall submit to the Concessions Authority before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 6.1 of this Annex for averting or minimizing such accidents in future.

6.5 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Concessions Authority. It shall review and analyze the annual report and accident data of the preceding year, and undertake an inspection of the Project. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to

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be made to the road, bridges, culverts, markings, signs, road furniture and Project Facilities, including cattle crossings and pedestrian crossings. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Section 4.3, 4.4 and 4.5 of this Annex.

ANNEX J

PERFORMANCE STANDARDS

[This Annex will prescribe project-specific minimum Performance Standards. The Performance Standards prescribed in this Annex will assess performance of the highways management for example traffic control, traffic regulation, maintenance of the highways as well as the manner in which the assessment of compliance/shortfall in compliance will be made.

These Performance Standards can, for example, be drawn from the specific design parameters as prescribed in the feasibility report and circulated to the selected bidders as well as the operational requirements and will be firmed up at the RFP stage for each project.

A. Performance Standards

[...]

B. Performance Evaluation and calculation of liquidated damages

[...]

ANNEX K

INFORMATION LIST

[List of information to be provided by the Concessionaire to the Concessioneing Authority pursuant to Section 9.4(3) of the General Conditions.]

MONTHLY FEE STATEMENT

Project:

Month:

Type of Vehicle	For corresponding month of previous year		For preceding month		For the month reported upon		
	No. of Vehicles	Fee collected (in lakh BDT.)	No. of Vehicles	Fee collected (in lakh BDT.)	Fee per Vehicle (in BDT.)	No. of Vehicles	Fee collected (in lakh BDT.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
A Car							
B LCV							
C Bus							
D Truck							
E Multi-axle Truck							
F Oversized							-

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vehicle							
G Total							

Note 1: The above statement does not include Local Users and vehicles travelling on Passes.

Note 2: Monthly Fee Statements for Passes have been prepared separately in the above format and are enclosed.

Remarks, if any:

Weekly Traffic Report

[To be stipulated]

TRAFFIC SAMPLING

Traffic sampling

The Concessioneing Authority may, in its discretion and at its own cost, undertake traffic sampling in order to determine the actual traffic on the Project. Such traffic sampling shall be undertaken through the Independent Engineer in the manner set forth below.

Manual traffic count

The Independent Engineer shall employ the required number of enumerators who shall count, classify and record all the vehicles as they pass by, and divide the survey into fixed time periods. The count stations shall be located near the Toll Plaza[s] on a straight section of the road with good visibility. The survey shall be conducted continuously for a minimum of 24 (twenty four) hours and maximum of 7 (seven) days at a time. The count period shall be 15 (fifteen) minutes with results summarised hourly.

Automatic traffic count

For automatic traffic count to be conducted on intermittent (non-continuous) basis, the Independent Engineer shall use suitable and standardised equipment to classify and record the range of vehicles passing through the Toll Plaza[s], For this purpose, the counter shall be checked with at least 100 (one hundred) vehicles, including all major vehicle types, over a range of speeds to ensure that all vehicles are being counted and classified correctly.

Variation between manual and automatic count

Average Daily Traffic (ADT) for each type of vehicle shall be determined separately by the aforesaid two methods and in the event that the number of vehicles in any category, as counted by the manual method, varies by more than 1% (one per cent) of the number of such vehicles as counted by the automatic method, the manual and automatic count of such category of vehicles shall be repeated, and in the event of any discrepancy between the two

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counts in the second enumeration, the average thereof shall be deemed to be the actual traffic. For the avoidance of doubt, it is expressly agreed that the Concessioning Authority may, in consultation with the Concessionaire, adopt modified or alternative processes of traffic sampling for improving the reliability of such sampling.

ANNEX L

EFFECT OF VARIATION OF TRAFFIC GROWTH

1 Effect of variations in traffic growth

(a) The Concessioneing Authority and the Concessionaire hereby agree that for determining the modifications to the Concession Period under this Annex L, the actual traffic on the Target Date shall be derived by computing the average of the traffic as determined by traffic sampling to be undertaken, on the date that falls one year prior to the Target Date, on the Target Date and on the first anniversary of the Target Date (the "Actual Average Traffic"). For the avoidance of doubt, it is agreed that traffic sampling shall be undertaken for a continuous period of 7 (seven) days during anytime within 15 (fifteen) days prior to the date specified herein and the average thereof shall be deemed to be the actual traffic. It is further agreed that if the Project shall have two or more Toll Plazas, the average traffic thereof shall be computed for determining the Actual Average Traffic hereunder.

(b) In the event that the Actual Average Traffic shall have fallen short of the Target Traffic by more than 2.5% (two point five per cent) thereof or exceeded the Target Traffic by more than 2.5% (two point five per cent) thereof, the Concession Period shall be deemed to be modified in accordance with Section 2 of Annex L. For the avoidance of doubt, in the event of any Dispute relating to Actual Average Traffic, the Dispute Resolution Procedure shall apply.

2 Modification in the Concession Period

(a) Subject to the provisions of Section 1(b) of Annex L, in the event Actual Average Traffic shall have fallen short of the Target Traffic, then for every 1% (one per cent) shortfall as compared to the Target Traffic, the Concession Period shall, subject to payment of Concession Fee in accordance with this Agreement, be increased by 1.5% (one point five per cent) thereof; provided that such increase in Concession Period shall not in any case exceed 20% (twenty per cent) of the Concession Period. For the avoidance of doubt, and by way of illustration, it is agreed that in the event of a shortfall of 10.6% (ten point six per cent) in Target Traffic, the Concession Period shall be increased by 15% (fifteen per cent) thereof.

(b) Subject to the provisions of Section 1(b) of Annex L, in the event Actual Average Traffic shall have exceeded the Target Traffic, then for every 1% (one per cent) excess as compared to the Target Traffic, the Concession Period shall be reduced by 0.75% (zero point seven five per cent) thereof; provided that such reduction in Concession Period shall not in any case exceed 10% (ten per cent) thereof. For the avoidance of doubt and by way of illustration, it is agreed that in the event of an excess of 8.7% (eight point seven per cent) in Target Traffic, the Concession Period shall be reduced by 6% (six per cent) thereof:

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Provided further that in lieu of a reduction in Concession Period under this Section 2(b) of Annex L, the Concessionaire may elect to pay, in addition to the Concession Fee that would be due and payable if the Concession Period were not reduced hereunder, a further premium equal to 125% (twenty five per cent)] of the Realizable Fee in the respective year(s), and upon notice given to this effect by the Concessionaire no later than 2 (two) years prior to the Transfer Date contemplated under this Section 2(b) of Annex L, the Concessioneing Authority shall waive the reduction in Concession Period hereunder and recover the Concession Fee and the aforesaid premium for the period waived hereunder.

(c) Notwithstanding anything to the contrary contained in this Agreement, if the average daily traffic of motor vehicles in any Accounting Year shall exceed the designed capacity of the Project and shall continue to exceed the designed capacity for 3 (three) Accounting Years following thereafter, an Indirect Political Event shall be deemed to have occurred and the Concessioneing Authority may in its discretion terminate this Agreement by issuing a Termination Notice and making a Termination Payment; provided that before issuing the Termination Notice, the Concessioneing Authority shall inform the Concessionaire of its intention to issue such Termination Notice and grant a period of 180 (one hundred and eighty) days for making a representation, and may, after the expiry of such period, whether or not it has received such representation, in its sole discretion issue the Termination Notice. For the avoidance of doubt, the Parties agree that an average daily traffic of [●] motor vehicles [and [●] motor vehicles] shall be deemed to be the designed capacity of the Project [and Project Extension respectively].

(d) If the Concessionaire shall have, prior to issue of a Termination Notice under Section 2(c) of Annex L, completed the construction works necessary for augmenting the capacity of the Project such that its capacity shall have increased sufficiently for carrying the then current traffic, the Indirect Political Event specified in Section 2(c) of Annex L shall be deemed to have been cured.

ANNEX M

REDRESS OF PUBLIC GRIEVANCES

1 Complaints Register

(a) The Concessionaire shall maintain the Complaint Register open to public access at all times for recording of complaints by the Complainant. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at each Toll Plazas so as to bring it to the attention of all Users.

(b) The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.

(c) Without prejudice to the provisions of Sections 1 (a) and 1(b) of Annex M, the Concessions Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

2 Redress of complaints

(a) The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redress of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.

(b) Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Concessions Authority and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Concessions Authority may, in its discretion, advise the Concessionaire to take such further action as the Concessions Authority may deem appropriate for a fair and just redress of any grievance. The Concessionaire shall consider such advice and inform the Concessions Authority of its decision thereon, and if the Concessions Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Rights Protection Act, 2009, and advise the Complainant to pursue the complaint at his own risk and cost.