

STATE SUPPORT AGREEMENT

A 120681

THIS STATE SUPPORT AGREEMENT is entered into on this the 25<sup>th</sup> day of  
Nov., 2011.  
BETWEEN

1. **THE GOVERNOR OF THE STATE OF JAMMU & KASHMIR** acting through the Principal Secretary to Government, Public Works (R&B) Department, Jammu and Kashmir, (hereinafter referred to as the "State Government" which expression shall unless repugnant to the context or meaning thereof include its successors, assigns and permitted substitutes) of the One Part; and
2. **THE PRESIDENT OF INDIA**, represented by the Joint Secretary, Department of Road Transport and Highways, and having its principal offices at Transport Bhavan, New Delhi - 110001 (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the Other Part;

WHEREAS:

- (A) The Government of India proposes to implement an extensive programme for development of national highways through Public Private Partnerships on the terms specified in a Model Concession Agreement either by itself or through the National Highways Authority of India.
- (B) The Government or the Authority, as the case may be, proposes to enter into Concession Agreements with the Concessionaire (the "Concession Agreements") for upgrading and augmenting different sections of National Highways on build, operate and transfer (BOT) basis on the terms specified in the Model Concession Agreement (the "Projects").

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- (C) The State Government recognizes that implementation and operation of the aforesaid Projects in accordance with the Concession Agreements is necessary and required for the growth and development of the State.
- (D) The State Government acknowledges that implementation of the Projects requires continued support and grant of certain rights and authorities by the State Government to the Concessionaires, as hereinafter set forth and is an essential pre-condition for mobilization of resources therefore by the Concessionaires.

**NOW IT IS HEREBY AGREED** as follows:-

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

**"Agreement"** means this State Support Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

**"Authority"** means the Central Government or the National Highways Authority of India, as the case may be, which has executed the respective Concession Agreement;

**"Concession Agreement"** means the concession agreements referred to in the recitals;

**"Cure Period"** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default, and shall commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

**"Government Agency"** means the State Government or any department, commission, board, authority, instrumentality, agency or municipal and other local authority or statutory body including Panchayat under the control of the State Government;

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**"Local Taxes"** mean any taxes, duty, cess, fee or octroi levied or collected by any Government Agency on the whole or any part of the traffic or goods while in transit on the Project Highway;

**"Model concession Agreement"** means the Model Concession Agreement published by the government of India, Planning Commission on November 29, 2005 for Public Private Partnerships in national highways and includes any modification, replication or substitution thereof;

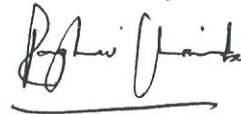
**"Parties"** means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually and included the Concessionaire who is a party to a Concession Agreement;

**"State Default"** shall have the meaning ascribed thereto in Clause 4.1;

**"State Government"** means the State Government referred to in the Recitals; and **"State Support"** means the obligations assumed and the facilities agreed to be provided by the State Government to the Concessionaire hereunder or pursuant hereto.

## 1.2 Interpretation

- 1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Model Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Model Concession Agreement.
- 1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Model Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.




## 2 STATE SUPPORT

### 2.1 Support by the State Government

With effect from the date hereof, the State Government agrees to provide State Support and undertakes to observe, comply with and perform the following:

- (a) enable continued access to the Site and Right of Way to the Concessionaire in accordance with the provisions of the respective Concession Agreements without let or hindrance from any Government Agency or persons claiming through or under it;
- (b) subject to the Concessionaire complying with Applicable Laws, assist the Concessionaire in obtaining the Applicable Permits to the extent any Government Agency is entitled to issue;
- (c) assist the Concessionaire in procuring such of the Applicable Permits as GOI can grant, in accordance with and subject to the Concessionaire complying with Applicable Laws;
- (d) enable and facilitate, subject to and in accordance with the Applicable Laws, provision of all Applicable Permits required from any municipal and other local authorities in the State for implementation and operation of the Project;
- (e) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (f) upon written request from the Concessionaire, ensure and procure the shifting of utilities in accordance with Applicable Laws and the Concession Agreement.
- (g) ensure and procure that no barriers are erected or placed on the Project Highways by any Government Agency or persons claiming through or under it except for reasons of emergency, national security or law and order;

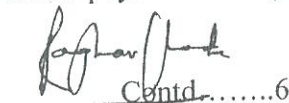


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- (h) ensure and procure that municipal and other local authorities including Panchayats do not put any barriers or other obstructions on the Project Highways and/or levy or impose any Local Taxes;
- (i) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Project Highways;
- (j) Provide the Concessionaire with Police assistance in accordance with Applicable Laws and rules thereunder for regulation of traffic, removal of trespassers and security of the Project Highway;
- (k) establish and operate traffic aid posts and mobile Police squads in accordance with the applicable policies and practices followed by the State Government;
- (l) establish and operate medical aid posts and ambulance services in accordance with the applicable policies and practices followed by the State Government;
- (m) make best efforts not to do or omit to do any act, deed or thing which may in any manner be violative of or cause the a Concessionaire to violate any of the provisions of the respective Concession Agreement;
- (n) support, cooperate with and facilitate the Authority and the Concessionaires in the implementation and operation of the Projects in accordance with the provisions of the Concession Agreement; and
- (o) observe and comply with all its obligations set forth in this Agreement.

## 2.2 Restriction on Competing Roads

The State Government agrees and undertakes that it shall not construct or cause to be constructed any Competing Road in violation of the respective Concession Agreements. For the avoidance of doubt, it is expressly agreed that the State Government may, at the beginning of each Accounting Year, by notice convey to the Authority the particulars of any Competing Road that it proposes to construct in respect of any section of a National Highway for which bids may be invited by the Authority for award of a concession, and upon receipt of such notice, the Authority shall make appropriate provision to enable the State Government to construct such road without payment of any Damages or compensation to the Concessionaire.



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**2.3 Restriction on construction of Additional Tollway**

The State Government agrees and undertakes that it shall not construct or cause to be constructed any Additional Tollway save and except as provided in the respective Concession Agreements. For the avoidance of doubt, it is expressly agreed that the State Government may, at the beginning of each Accounting Year, by notice convey to the Authority the particulars of any Additional Tollway that it proposes to construct in respect of any section of a National Highway for which bids may be invited by the Authority for award of a concession, and upon receipt of such notice, the Authority shall make appropriate provision to enable the State Government to construct such Additional Tollway without payment of any Damages or compensation to the Concessionaire.

**2.4 Restriction on Local Taxes**

“2.4(a) The State Government agrees and undertakes that it shall not levy/or impose any local tax, toll tax, or charges on to use of whole or any part of the project highways. However, the State Government shall be at liberty to levy, collect any local/other taxes other than the highway user fees”.

“2.4(b) Revenue interests of the State presently occurring at Lakhanpur and at lower Munda toll posts will not be altered in order to protect revenue interests in the State.

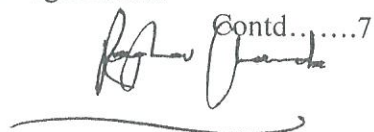
2.4(c) NHAI shall construct a toll plaza at village Wuzur near Quazigund (present Chainage 220 Km) which will be operated by both NHAI and State Government jointly after construction at Banihal – Quazigund Tunnel. The State Government will be at liberty to shift its toll post for collecting of revenue to the said plaza without any charges at any point of time.”

**2.5 Substitution of Concessionaire**

The State Government acknowledges the rights of the lenders of the respective Project Highways and of the Authority to undertake substitution of the Concessionaire by the nominated company in accordance with the Concession Agreement and it shall be deemed for the purposes of this Agreement that the nominated company shall have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution, of the Concessionaire by the nominated company.

**2.6 Right to seek specific performance**

The State Government acknowledges and agrees that the Concessionaire shall have the right to seek specific performance of this Agreement.



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**3 OBLIGATIONS OF THE AUTHORITY**

**3.1 Obligations of the Authority**

The Authority agrees and undertakes to procure that the Concessionaire shall perform, observe and comply, in all materials respects, with the following:

- (a) all Applicable Laws and Applicable Permits; and
- (b) the provisions of the respective Concession Agreement, the Project Agreements, and this Agreement.

**4 STATE DEFAULT**

**4.1 State Default**

- 4.1.1. In the event that any Government Agency commits any material breach of this Agreement and fails to cure such breach within a Cure Period of 60 (sixty) days, such breach and failure shall constitute an event of default (a "State Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Concessionaire.
- 4.1.2 Upon occurrence of a State Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.


**5 COMPENSATION AND TERMINATION PAYMENTS**

**5.1 Compensation and Termination Payments by the State Government**

- 5.1.1 Without prejudice to the generality of Clause 4.1, in the event that any act or omission of any Government Agency causes a breach of this Agreement or a State Default, as the case may be, such breach or State Default shall be deemed to be a breach of the respective Concession Agreement and shall entitle the Concessionaire to compensation, Damages or Termination Payments, as the case may be, as if such breach or State Default had occurred under the provisions of the Concession Agreement.
- 5.1.2 The compensation, Damages or Termination Payments, as the case may be, in respect of any breach of this Agreement or a State Default shall be payable by the State Government to the respective Concessionaire, and the State Government hereby agrees and covenants that it shall make such payments on its own behalf and on behalf of the Authority pursuant to the obligations set forth in the respective Concession Agreement and this Agreement.

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- 5.1.3 Payments due from the State Government under this Agreement shall be made within 60 (sixty) days of receiving a demand from the Concessionaire alongwith the necessary particulars thereof, duly certified by the Statutory Auditors. In the event of delay beyond such period, the State Government shall pay to the Concessionaire interest for the period of delay calculated at the rate of 3% (three percent) above the Bank Rate.
- 5.1.4 The State Government acknowledges and agrees that in the event of its failure to make any payments due and payable to the Concessionaire under this Agreement, the Concessionaire shall be entitled to claim and receive such payments from the Authority; on behalf of the State Government. The State Government acknowledges that disbursement of such payments by the Authority to the Concessionaire shall constitute a valid discharge of the obligations of the State Government hereunder to the extent of such payments.
- 5.1.5 The State Government acknowledges and agrees that any payments made by the Authority, on behalf of the State Government, to the Concessionaire may be recovered by the Authority from the State Government either directly or through recourse to central devolutions payable by Government of India to the State Government.
- 5.2 Compensation by the Concessionaire**
- 5.2.1 In the event of a Concessionaire being in material default of this Agreement, it shall pay to the State Government as compensation, all direct additional costs suffered or incurred by the State Government as a consequence of such material default, within 30 (thirty) days of receiving the demand supported by necessary particulars thereof duly certified by the State Government. In the event of delay beyond such period, the Concessionaire shall pay to the State Government interest for the period of delay calculated at the rate of 3% (three percent) above the Bank Rate.
- 5.2.2 In the event of the Concessionaire's failure to make any payments due and payable to the State Government in accordance with this Agreement, the State Government shall be entitled to claim and receive such payments from the Authority, on behalf of the Concessionaire.



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5.2.3 The State Government acknowledges and agrees that if any compensation or Damages have been paid by a Concessionaire to the Authority with respect to any act or omission constituting a default of the respective Concession Agreement of this Agreement, the State Government shall not demand any compensation from the Concessionaire for the same act or omission. For the avoidance of doubt, if the Damages paid by the Concessionaire to the Authority hereunder relate to any direct additional costs suffered or incurred by the State Government, the Authority shall transfer to the State Government the amount received hereunder in respect of such costs suffered or incurred by the State Government.

**6 DURATION OF THE AGREEMENT**

**6.1 Duration of the Agreement**

6.1.1 This Agreement shall come into force from the date hereof and shall continue to be in full force and effect irrevocably until termination of all the Concession Agreements for projects within the State.

6.1.2 All rights and obligations of either Party under this Agreement, including compensation, Damages and Termination Payments, shall survive termination to the extent such survival is necessary for giving effect to such rights and obligations.

**7 INDEMNITY**

**7.1 General Indemnity**

7.1.1 The Authority will indemnify, defend and hold the State Government harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Authority of any of its obligations under this Agreement or on account of failure of the Authority to comply with Applicable Laws and Applicable Permits.

7.1.2 The State Government will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the State Government to fulfill any of its obligations under this Agreement materially and adversely affecting the performance of the Authority's obligations under the Concession Agreements or this Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the State Government, its officers, servants and agents.



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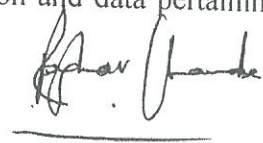

**7.2 Notice and contest of claims**

In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonable withheld or delayed. In the event that the Indemnifying party wishes to contest or disputes the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

**8 DISPUTE RESOLUTION**

**8.1 Dispute Resolution**

- 8.1.1 Any dispute, difference or controversy of whatever nature howsoever arising in connection with this Agreement between the Parties and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 8.2.
- 8.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

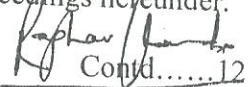


## 8.2 Conciliation

- 8.2.1 The Parties shall first seek an amicable settlement of the Disputes by conciliation in accordance with this Clause 8.2. Such conciliation shall take place in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and Rules thereunder (the "Conciliation Rules") and shall be conducted by three conciliators (or such lesser number as the Parties may agree) to be appointed according to the Conciliation Rules.
- 8.2.2 Any meetings with the conciliator pursuant to Clause 8.2.1 shall be held at Delhi and the language of conciliation proceedings shall be English.
- 8.2.3 Each of the Parties hereby gives for the purpose of the conciliation, undertakings and assurances as contained in the Conciliation Rules including as contained in the Conciliation Rules including an undertaking to promptly deposit its share of advance for payment of the costs as estimated by the conciliators.

## 8.3 Arbitration

- 8.3.1 Any Dispute that remains unresolved in accordance with the procedure specified in Clause 8.2, within 60 (sixty) days or within such period as may be extended by the Parties with mutual consent, shall be resolved by arbitration in accordance with this Clause 8.3. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Arbitration Rules") and shall be conducted by three arbitrators to be appointed according to the Arbitration Rules. The arbitration proceedings shall be held in Delhi, and the language of arbitration proceedings shall be English
- 8.3.2 The arbitrators shall issue a reasoned decision or award (the "Award") which shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the State Government undertake to carry out any Award without delay. The parties agree that such Awards may be enforced against the Concessionaire and/or the State Government, as the case may be, and their respective assets wherever situated.
- 8.3.3 This agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceedings hereunder.



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**9 MISCELLANEOUS PROVISIONS**

**9.1 Application of this Agreement**

This Agreement shall apply to all Concession Agreements which are signed by the Authority at any time after May, 1, 2009 and upon furnishing a true copy thereof by the Authority to the State Government within three months of the date of signing of the respective agreements.

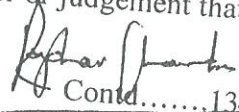
**9.2 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement

**9.3 Waiver of sovereign immunity**

The State Government unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the State Government with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any Jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or give in connection therewith)



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**9.4 Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effective and binding only if in writing and signed by the duly authorized representatives of the State Governments and the Authority.

**9.5 Waiver**

9.5.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement.

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligations thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

**9.6 No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

**9.7 Survival**

9.7.1 Termination of this Agreement

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

*Uma*

*Rud*

*[Signature]* Contd.....14

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

**9.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or declared by any court of competent jurisdiction or any other instrumentality/to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 9 of this Agreement or otherwise

**9.9 Successors and assignors**

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

**9.10 Notices**

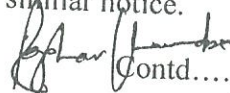
Any notice or other communication to be given by a Party to the other Party under, or in connection with the matters contemplated by this Agreement shall be in writing and shall be given by facsimile and by letter delivered by hand and be addressed to person set out opposite the corresponding signature below and a copy delivered to such other person as the Authority on the State Government, as the case may be, may from time to time designate by notice to the other Party.

**9.11 Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

**9.12 Authorized representatives**

Each of the Parties shall by notice in writing designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.



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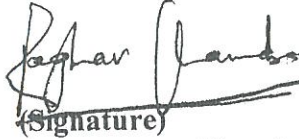
9.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

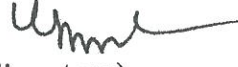
SIGNED, SEALED AND DELIVERED For and on behalf of THE PRESIDENT OF INDIA by:

SIGNED, SEALED AND DELIVERED For and on behalf of THE GOVERNOR OF J&K by:



(Signature)

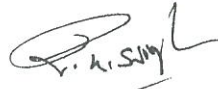
राधव चंदा/Raghav Chanda  
संयुक्त सचिव/Joint Secretary  
सड़क परिवहन और राजमार्ग मंत्रालय  
Ministry of Road Transport & Highways  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi  
Joint Secretary (Highways)  
Ministry of Road, Transport & Highways  
Parliament Street, New Delhi.  
(TeleFax No: 011-23719209)



(Signature)

श्री क.बी. अग्रवाल/ Shri K.B. Aggarwal  
Principal Secretary to Government  
Public Works (R&B) Deptt.  
Civil Secretariat, Jammu.  
(TeleFax No: 0191-2546185)

Agreed, Accepted  
And Countersigned  
For and on behalf of  
National Highways Authority of India, by:



(Signature)

(Name)

(Designation)

(Address)

आर. के. सिंह / R.K. Singh  
मुख्य महाप्रबंधक(तकनीकी) / CGM(Technical)  
भारतीय राष्ट्रीय राजमार्ग प्राधिकरण  
National Highways Authority Of India  
(सड़क परिवहन और राजमार्ग मंत्रालय)  
(Ministry of Road Transport & Highways)  
जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली-75  
G-5 & 6, Sector-10, Dwarka, New Delhi-75