

Draft Copy

**Model Concession Agreement
For
Railway Annuity Projects**

**Ministry of Railways
Government of India**

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P R E A M B L E

Need for Annuity Model:

Railways had hitherto been undertaking construction projects through the conventional item rate contracts where the Government provides the detailed design as well as the estimates of quantities for different items of work (Bill of Quantities). Payments to the contractor are made on the basis of measurements of the work done in respect of each item. Experience in railway projects shows that item rate contracts are prone to excessive time and cost overruns due to delays in design and drawing, variation in items and quantities and inadequate fund provisions as allocation of construction risks are largely to the Authority. Considerable time of Project Engineers is consumed in dealing with variations in quantities, introduction of Non-Schedule Items and variation in contract price.

The growing requirements of the economy will necessitate faster expansion of the freight network through new capacity creation which would require additional funds. Keeping in view the limited availability of funds, it has been decided to adopt the Annuity mode of contracting for construction of financially viable railway projects.

Model Concession Agreement:

The Model document is based on the philosophy of assigning the responsibility for investigations, design, construction and financing to the contractor for a lump sum price determined through competitive bidding. The objective is to ensure implementation of the project to specified standards with a fair degree of certainty relating to costs and time while transferring the construction risks to the Concessionaire.

This Model Concession Agreement provides a framework that specifies the allocation of risks and rewards, equity of obligations between Government and the Concessionaire, precision and predictability of costs, force majeure, termination and dispute resolution, apart from transparent and fair procedures.

The Concessionaire also has full freedom to plan the construction schedule for efficient use of its manpower, equipment and other resource and plan the financing of the project accordingly.

Technical parameters:

The Model Concession Agreement specifies the required design standards and allows the Concessionaire to design and construct the project using best practices to achieve quality, efficiency and economy.

Only the core requirements of design and construction of the railway project that have a bearing on the quality and safety of assets are to be specified and enough room would be left for the Concessionaire to add value. This would provide the requisite flexibility to the Concessionaire in evolving and adopting the efficient designs without compromising on the quality and safety.

Concession period:

The concession period is determined on a project-specific basis depending on the volume of construction work involved and may be fixed in the range of 15 to 20 years. The Concessionaire shall be liable to pay Damages at the rate of 0.05 per cent for each day of delay beyond the specified date of completion, subject to the total amount of Damages not exceeding 10 per cent of the total annuity amount. However, the Concessionaire shall be entitled to time extension arising out of delays on account of change of scope and force majeure or delays caused by or attributable to the Authority.

Selection of Concessionaire:

Selection of the Concessionaire will be based on open competitive bidding. All project parameters such as the concession period, price adjustments and technical parameters are to be clearly stated upfront, and short-listed bidders will be required to specify only the lump sum price or a fixed annuity for pre-specified period for the railway project. The bidder who seeks the lowest payment should win the concession.

Risk allocation:

Projects risks such as soil conditions and weather or commercial and technical risks relating to design and construction have been assigned to the Concessionaire. The Government accepts its liability to pay damages to the Concessionaire for any delays in handing over the land, approvals from road authorities for road over-bridges/under-bridges at level crossings, environment clearances, shifting of utilities and approvals in respect of engineering scale plan, signalling interlocking plan and route control chart.

Design and Construction:

The Model Concession Agreement specifies the dates on which different sections of the land will be handed over to the Concessionaire. It defines the scope of the railway project with precision and predictability to enable the Concessionaire to determine its costs and obligations.

The Concessionaire shall carry out survey and investigations and also develop designs and drawings in conformity with the specifications and standards laid down in the Agreement. Government's engineer shall review the design and drawings to ensure that these conform to the scope of the project, design standards and specifications. The Model agreement also stipulates provisions for quality control and quality assurance.

Monitoring and Supervision:

Monitoring and supervision of construction are proposed to be undertaken through railway engineer to be designated as 'Authority's Engineer'. He would be assisted by requisite organizational support for day-to-day interaction between the Authority and the Concessionaire. The Authority's Engineer will act as a single window for coordination with the Concessionaire.

The Agreement provides for the schedule indicating the timeline within which Authority will ensure the clearances of design proposals submitted by the contractor. Any comment by the Authority on the design proposals submitted by the Concessionaire will be communicated in totality once in a time-bound manner as indicated in the schedule. The Concessionaire will be free to proceed with construction after the expiry of specified period in case no remarks/clearances are given by the Authority.

Milestone based construction:

A provision has been made for damages which the Contractor shall pay to Government for not achieving the prescribed milestones. Government will pay bonus to the Contractor for completion of the project before the scheduled completion date.

Defects liability period:

A defects liability period of two years has been specified in the Agreement in order to provide additional comfort to the Government.

Operation and Maintenance:

The operation and maintenance of rail system will be the responsibility of Indian Railways (IR), i.e. IR will manage stations, signals, level crossing gates etc., including train operations and section control.

Termination dispute resolution:

In the event the Government terminates the Agreement on account of any of the specified defaults of the Concessionaire, the Agreement allows the Government to forfeit the performance security of the Concessionaire. Similarly, defaults by the Authority are proposed to qualify for adequate compensatory payments to the Concessionaire. The Agreement also addresses issues relating to dispute resolution and provides a mechanism for the same.

Part I
Preliminary

CONCESSION AGREEMENT

THIS AGREEMENT¹ is entered into on this the day of, 20.....

BETWEEN

1 [The President of India, represented by ***, *** Railway, [Delhi], and having its principal offices at *****, [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 One Part;

AND

2 {.....}² means the selected bidder³ having its registered office at, (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the Other Part.

WHEREAS:

- (A) The Authority has the responsibility to develop, operate and maintain the Indian Railways in the territorial jurisdiction of the ****⁴ Railway zone⁵.
- (B) The Authority had resolved to [undertake the construction of new railway line between **** and **** in the **** Railway zone] (the Project) on Annuity basis in accordance with the terms and conditions to be set forth in an agreement to be entered into.
- (C) The Authority had accordingly invited proposals by its Request for Qualification No. *** dated *** (the “**Request for Qualification**” or “**RFQ**”) for short listing of bidders for the above referred railway line and had shortlisted certain bidders including, inter alia, the selected bidder.

¹ Serially numbered footnotes in this Agreement are for guidance of the Authority and should be omitted from the draft Agreement forming part of Bid Documents. Footnotes marked \$ shall be retained in the draft Agreement.

² All provisions enclosed in curly parenthesis shall be retained in the Bid Documents and shall be modified as required after the selected bidder has been identified.

³ Refers to the single entity or the lead member of the consortium/joint venture, which is the selected bidder under the RFP.

⁴ All asterisks in this Agreement should be substituted by project-specific particulars in the draft Agreement forming part of the Bid Documents.

⁵ All project-specific provisions in this Model Concession Agreement have been enclosed in square parenthesis and may be modified, as necessary, before issuing the draft Agreement forming part of Bid Documents.

- (D) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “**Request for Proposals**” or “**RFP**”) from the bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (E) After evaluation of the bids received, the Authority had accepted the bid of the selected bidder and issued its Letter of Acceptance No. *** dated *** (hereinafter called the “**LOA**”) to the selected bidder for financing and construction of the above railway line at the contract price specified hereinafter, requiring the selected bidder to inter alia:
 - (i) deliver to the Authority a legal opinion from the legal counsel of the selected bidder with respect to the authority of the selected bidder to enter into this Agreement and the enforceability of the provisions thereof, within 10 (ten) days of the date of issue of LOA; and
 - (ii) execute this Agreement within 15 (fifteen) days of the date of issue of LOA.
- (F) The Contractor has fulfilled the requirements specified in Recital (E) above.
- (G) The Authority has accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on Annuity basis, subject to and on the terms and conditions set forth hereinafter;

Now, therefore, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 29) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, survey and investigation, design, developing, engineering, procurement, supply of plant, materials, equipment, labour, delivery, transportation, installation, processing, fabrication, testing, and commissioning of the Railway Project, including maintenance during the Construction Period, removing of

defects, if any, and other activities incidental to the construction and “**construct**” or “**build**” shall be construed accordingly;

- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto during the Construction Period, and “develop” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian standard time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in the State are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing “from” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (q) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Authority's Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Authority's Engineer, as the case may be, in this behalf and not otherwise;
 - (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (v) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
 - (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and
 - (x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended for the reasons specified in the Agreement, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Contractor to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements and errors/discrepancies

- 1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein,

i.e. this Agreement at (a) above shall prevail over the agreements and documents at (b).

- 1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

{1.5 Joint and several liability

1.5.1 If the Concessionaire has formed a Consortium of two or more persons for implementing the Project:

- (a) these persons shall, without prejudice to the provisions of this Agreement, be deemed to be jointly and severally liable to the Authority for the performance of the Agreement; and
- (b) the Concessionaire shall ensure that no change in the composition of the Consortium is effected without the prior consent of the Authority.

1.5.2 Without prejudice to the joint and several liability of all the members of the Consortium, the Lead Member shall represent all the members of the Consortium and shall at all times be liable and responsible for discharging the functions and obligations of the Concessionaire. The Concessionaire shall ensure that each member of the Consortium shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement and the Authority shall be entitled to rely upon any such action, decision or communication of the Lead Member. The Authority shall have the right to release payments solely to the Lead Member and shall not in any manner be responsible or liable for the *inter se* allocation of payments among members of the Consortium. }[§]

[§] This Clause 1.5 may be omitted if the Concessionaire is not a Consortium. Even if the Concessionaire is a Consortium, the Authority may, at its discretion, delete this provision.

Part II
The Concession

ARTICLE 2
SCOPE OF THE PROJECT

2.1 Scope of the Project

Under this Agreement, the scope of the Project (the “**Scope of the Project**”) shall mean and include:

- (a) construction of the Railway Project on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D; and
- (b) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to finance, construct and maintain the Project during the Construction Period and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- (a) Right of Way, access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (b) finance and construct the Project;
 - (c) manage and maintain the Project during the construction period;
 - (d) Ownership of the Project assets created by the Concessionaire shall remain with the Concessionaire till the entire Annuity payment or Termination payment is made by the Authority, in terms of provision of this Agreement;
 - (e) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
 - (f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
 - (g) neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

ARTICLE 4

OBLIGATIONS OF THE CONCESSIONAIRE

4.1 Obligations of the Concessionaire

- 4.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the survey, investigation, design, engineering, procurement, and construction of the Railway Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 4.1.2 The Concessionaire shall provide to the Authority Performance Security as per Clause 8.1.1.
- 4.1.3 The Concessionaire within a period of 180 days from the date of this Agreement shall provide to the Authority:
- (a) ESCROW Agreement, duly executed;
 - (b) Substitution Agreement, duly executed;
 - (c) Three (03) copies of Financing Agreements duly attested by a Director of the Concessionaire; and
 - (d) Three (03) copies of the Financial Package duly attested by a Director of the Concessionaire.
- 4.1.4 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 4.1.5 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 4.1.6 The Concessionaire shall remedy any and all loss or damage to the Railway Project, occurring on or after the Appointed Date and until the date of Provisional Certificate, with respect to the Works completed prior to the issuance of the Provisional Certificate and/or Completion Certificate, with respect to the Works referred to in the Punch List, at its own cost, save and except to the extent that any such loss or damage shall have arisen from any default of the Authority or on account of a Force Majeure Event in which case the provisions of Article 22 shall apply.
- 4.1.7 The Concessionaire shall remedy any and all loss or damage to the Railway Project during the Defects Liability Period at its own cost, to the extent that such loss or damage shall have arisen out of the reasons specified in Clause 16.

4.1.8 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits set forth in Schedule-E and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
- (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for Materials, methods, processes, know-how and systems used or incorporated into the Railway Project;
- (c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;
- (d) ensure and procure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Contractor's obligations under this Agreement;
- (e) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
- (f) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (g) ensure that the Concessionaire and its Sub-contractors comply with the safety and welfare measures for labour in accordance with Applicable Laws and Good Industry Practice;
- (h) keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, Change of Scope Orders and other communications sent under this Agreement, and provide access to all these documents at all reasonable times to the Authority's Engineer and its authorised personnel;
- (i) cooperate with other contractors employed by the Authority and with personnel of any other public authority; and
- (j) not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all the existing facilities within the Right of Way, irrespective of whether they are public or in the possession of the Authority or of others.

- 4.1.9 The Concessionaire shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.

4.2 Obligations relating to Project Agreements

- 4.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 4.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall be Authority be liable for the same in any manner whatsoever.
- 4.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 4.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the

Project Agreements, procure and deliver to the Authority an acknowledgement and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

4.3 Obligations relating to sub-contracts and any other agreements

- 4.3.1 The Concessionaire shall not sub-contract Works comprising more than 70% (seventy per cent) of the Contract Price and shall carry out Works for at least 30% (thirty per cent) of the total Contract Price directly under its own supervision and through its own personnel. The Parties expressly agree that for the purposes of computing the value of sub-contracts under this Clause 4.3.1, the Contract Price shall exclude any sub-contract for the procurement of goods and equipment like [rails, sleepers and track fittings, signalling and telecommunication equipment]. The Parties agree that all obligations and liabilities under this Agreement for the entire Railway Project shall at all times remain with the Concessionaire. {The Parties agree that the obligations of the Concessionaire to carry out Works equal to at least 30% (thirty per cent) of the Contract Price shall be discharged solely by the Lead Member.}[§]
- 4.3.2 In the event any sub-contract for Works, or the aggregate of such sub-contracts with any Sub-contractor, exceeds 5% (five per cent) of the Contract Price, the Contractor shall communicate the name and particulars, including the relevant experience of the sub-contractor, to the Authority prior to entering into any such sub-contract. Provided, however, that in any event the Contractor shall communicate the name and particulars to the Authority for any sub-contract for signalling and/ or telecom including the relevant experience prior to entering into any such sub-contract. The Authority shall examine the particulars of the sub-contractor from the national security and public interest perspective and may require the Contractor, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor, not to proceed with the sub-contract, and the Contractor shall comply therewith.
- 4.3.3 Without prejudice to the provisions of Clause 4.3.2, in the event any sub-contract referred to in Clause 4.3.2 relates to a sub-contractor who has, over the preceding 3 (three) years, not undertaken at least one work of a similar nature with a contract value exceeding 40% (forty per cent) of the value of the sub-contract to be awarded hereunder and received payments in respect thereof for an amount equal to at least 80% (eighty per cent) of such contract, the Authority may, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor, require the Contractor not to proceed with such sub-contract, and the Contractor shall comply therewith.

[§] May be deleted if the Contractor is not a Consortium.

- 4.3.4 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the agreements with its Sub-contractors or any other agreement that may be entered into by the Concessionaire, and no default under any such agreement shall excuse the Concessionaire from its obligations or liability hereunder.

4.4 Employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its Sub-contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its Sub-contractors or their sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

4.5 Concessionaire's personnel

- 4.5.1 The Concessionaire shall ensure and procure that the personnel engaged by it or by its Sub-contractors for performance of its obligations under this Agreement are at all times appropriately qualified, skilled and experienced in their respective functions including in conformity with Applicable Laws including the Indian Railway General and Subsidiary Rules, [the Indian Electricity Rules], and Good Industry Practice.
- 4.5.2 The Authority's Engineer may, for reasons to be specified in writing, direct the Concessionaire to remove any member of the Contractor's or Sub-contractor's personnel from the Railway Project. Provided that any such direction issued by the Authority's Engineer shall specify the reasons for the removal of such person.
- 4.5.3 The Concessionaire shall, on receiving a direction from the Authority's Engineer under the provisions of Clause 4.5.2, ensure and procure the removal of such person or persons from the Railway Project with immediate effect. The Concessionaire shall further ensure that such persons have no further connection with the Railway Project.

4.6 Advertisement on Railway Project

The Concessionaire shall not use the Railway Project or any part thereof in any manner for branding or advertising purposes including for advertising any commercial product or services or companies.

4.7 Concessionaire's care of the Works

The Concessionaire shall bear full risk in and take full responsibility for the care of Works, and of Materials, goods and equipment for incorporation therein, on and from the Appointed Date and until the date of Provisional Certificate, with respect to the Works completed prior to the issuance of the Provisional Certificate and/or Completion Certificate, with respect to the Works referred to in the Punch List, save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Authority.

4.8 Electricity, water and other services

The Concessionaire shall be responsible for procuring of all power, water and other services that it may require for the Railway Project.

4.9 Unforeseeable difficulties

Except as otherwise specified in the Agreement:

- (a) the Concessionaire accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Works;
- (b) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
- (c) the Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.

For the purposes of this Clause, unforeseeable difficulties include physical conditions like man-made or natural physical conditions including sub-surface and hydrological conditions which the Concessionaire encounters at the Site during execution of the Works.

4.10 Training of Authority's personnel

4.10.1 The Concessionaire shall provide and complete the training to the personnel of the Authority in diagnostic, trouble shooting, repairing, operation and maintenance of the signalling and telecommunication equipment. The number of persons to be trained shall not exceed [6 (six)] and the period of training shall be for a period of ** (**) weeks. The training shall be completed before the issuance of the Provisional Certificate/ Completion Certificate.

4.10.2 The Concessionaire shall provide training to the personnel of the Authority in SCADA. The number of persons to be trained shall not exceed [6 (six)] and the period of training shall be at least [** (**)] weeks. The training shall be completed before the issuance of the Provisional Certificate/ Completion Certificate.]⁶

4.11 Safety at work site

The Concessionaire and its sub-contractors shall follow the safety instructions and take all safety measures for workmen and vehicles plying in the work area in accordance with Applicable Laws, Good Industry Practice and the provisions of this Agreement.

4.12 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment or waiver of any or all of conditions set forth in Clause 4.1.3 within the period specified in that Clause, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 5.1.3 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to a maximum amount equal to the Bid Security and upon reaching such maximum, the Authority may, in its sole discretion and subject to the provisions of Clause 8.2, terminate the Agreement. Provided further that in the event of delay by the Authority in procuring fulfilment of the Conditions specified in Clause 5.1.3, no Damages shall be due or payable by the Concessionaire under this Clause 4.2 until the date on which the Authority shall have procured fulfilment of the Conditions specified in Clause 5.1.3.

⁶ Delete it if not applicable.

ARTICLE 5

OBLIGATIONS OF THE AUTHORITY

5.1 Obligations of the Authority

5.1.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 The Authority shall be responsible for the correctness of the Scope of the Project, Project Facilities, Specifications and Standards and the criteria for Testing of the completed Works.

5.1.3 The Authority shall, upon receiving the Performance Security under Clause 7.1.1, provide to the Concessionaire:

(a) the Right of Way in accordance with the provisions of Clauses 9.2 and 9.3 on no less than 90% (ninety per cent) of the total length of the Railway Project;

(b) all environmental and forest clearances as required under Clause 5.3;⁷ and

[(c) approval of the general arrangement drawings (the “GAD”) from road authorities to enable the Concessionaire to construct road over-bridges and under-bridges at level crossings on the Railway Project in accordance with the Specifications and Standards, and subject to the terms and conditions specified in such approval, within a period of 60 (sixty) days from the Appointed Date.]⁸

5.1.4 In the event that (i) the Authority does not procure fulfilment of any or all of the obligations set forth in Clause 5.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Contractor or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in a sum calculated in accordance with the provisions of Clause 9.3 of this Agreement and Time Extension in accordance with the provisions of Clause 11.4.

[For the avoidance of doubt, the Parties agree that the Damages for delay in approval of GAD by the road authorities for a particular railway over-bridge or a railway under-bridge shall be deemed to be equal to the Damages payable under the provisions of Clause 9.3 for delay in providing Right of Way for a length of 1 (one) kilometre for each such railway over-bridge or railway line under-bridge, as the case may be.]

⁷ Clause 5.1.3(b) may be suitably modified in the event that all the environmental clearances for the Project Railway have been received or are not required. It should be clearly stated that all the environmental clearances for the Project Railway have been received; or such environmental clearances for the Project Railway are not required.

⁸ Clause (c) may be omitted if the Project does not include a road over-bridge/under-bridge.

- 5.1.5 Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree that the aggregate Damages payable under Clauses 5.1.4, 5.4.3, 9.3 and 10.2 shall not exceed 2.5% (two point five per cent) of the Contract Price. For the avoidance of doubt, the Damages payable by the Authority under the aforesaid Clauses shall not be additive if they arise concurrently from more than one cause but relate to the same part of the Railway Project.
- 5.1.6 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project;
 - (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable than those generally available to commercial customers receiving substantially equivalent services;
 - (c) procure that no barriers that would have a material adverse effect on Works are erected or placed on or about the Railway Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;
 - (d) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (e) support, cooperate with and facilitate the Concessionaire in the implementation of the Project in accordance with the provisions of this Agreement; and
 - (f) upon written request from the Concessionaire and subject to the provisions of Clause 3.3, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Sub-contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Sub-contractors of their obligations under this Agreement and the agreements with the Sub-contractors.

5.2 Maintenance and operation of the existing facilities

The Authority shall undertake the maintenance of the facilities existing prior to the Appointed Date including railway lines, bridges, structures, electrical, signalling and communications works within the Right of Way.

5.3 Environmental and Forest Clearances

The Authority represents and warrants that the environmental and forest clearances required for construction of the Project have been procured by the Authority prior to the Bid Due Date, save and except for sections of the Railway Project which do not exceed 10% (ten per cent) of the total length thereof. The Authority agrees and undertakes that the environmental and forest clearances for such sections, if any, shall be procured by the Authority no later than 60 (sixty) days from the Appointed Date. In the event of any delay beyond such 60 (sixty) days, the Concessionaire shall be entitled to Time Extension for the period of such delay in accordance with the provisions of Clause 11.4 of this Agreement and shall also be entitled to Damages calculated as if the Right of Way for and in respect of such sections of the Railway Project has not been provided in accordance with the provisions of Clause 9.2 and as a consequence thereof, the Concessionaire shall be entitled to Damages under and in accordance with the provisions of Clause 9.3. For the avoidance of doubt, the present status of environmental and forest clearances is specified in Schedule-A.⁹

5.4 Machinery and equipment

5.4.1 The Authority shall upon receiving a request from the Concessionaire, provide the machinery and equipment specified in Schedule-N on payment of hire charges at the monthly rates specified therein. The Parties agree that the monthly rate for each machine or equipment shall be equal to 2% (two per cent) of the cost of such machine or equipment, as published in the latest pink book of the Ministry of Railways and shall be inclusive of fuel and all other operating charges, which shall be converted into daily rates taking a month comprising 25 (twenty five) working days. The Parties also agree that if the cost of any machine or equipment has not been published in the latest pink book, then the last purchase price thereof, as per the records of the Ministry of Railways, shall be applicable for determining the charges for such machine or equipment. The Parties further agree that for each machinery or equipment:

- (a) The charges shall be payable for a day even if a machine or equipment is used for less than 8 (eight) hours, so long as it has been placed at the disposal of the Contractor and has not been withdrawn;
- (b) the daily rates shall be computed for a shift of 8 (eight) hours taken as one day. By way of illustration, if the machinery or equipment is used for 16 (sixteen) hours on any day, the charges payable shall be equal to twice the daily rate; and

⁹ Clause 5.3 may be suitably modified in the event that all the environmental/forest clearances for the Project Railway have been received or are not required. It should be clearly stated that all the environmental/forest clearances for the Railway Project has been received; or such environmental/forest clearances for the Railway Project are not required.

[(c) for any machinery or equipment which can be used only during the period of a Power Block or Traffic Block, no payment shall be due or payable for the day on which such block is not provided to the Concessionaire.]

5.4.2 The Concessionaire shall by notice of at least three weeks convey to the Authority particulars of the machinery and equipment required for each day of the following one month.

5.4.3 In the event that the Authority does not provide any machinery and equipment at the designated time in pursuance of the provisions of Clause 5.4.1, the Concessionaire shall be entitled to Damages in an amount equal twice the rates specified in Schedule-N. Provided further that the Concessionaire shall be entitled to Time Extension in accordance with the provisions of Clause 11.4 if the number of days for which the machinery has not been provided continuously exceeds 7 (seven) and/ or the total number of days of not providing the machinery exceed 15 (fifteen) days in a period of 03 months.¹⁰

[5.5 Electricity transmission lines

The Authority shall procure the Applicable Permits and right of way for the erection, installation, and energisation of the transmission lines required for operating the Railway Project.]¹¹

5.6 Disconnection for modification of existing signalling and telecommunication works

The Concessionaire shall upon completion and testing of a particular subsystem for modification in the existing signalling and telecommunication system at railway stations, level crossing gates and interlocked sections, inform the Authority's Engineer by notice of at least one week of its readiness for commissioning and the Authority's Engineer shall obtain the requisite approvals from the Authority for the required disconnections within a period of 10 (ten) days of the notice. The Concessionaire shall ensure that there is no interruption/ disturbance to operational circuits in such cases of modification of signalling and telecom systems.

[5.7 Provision of Power Blocks and Traffic Blocks

5.7.1 The Authority shall provide Power Block or Traffic Block or both to enable the Concessionaire to undertake the construction of overhead equipment, or such other work as may be determined by the Authority's Engineer.

5.7.2 The Concessionaire shall, in consultation with the Authority's Engineer, submit a weekly programme of Blocks, commencing from Monday, with a notice of at least 1 (one) week and the Authority's Engineer shall convey the approved weekly programme to the Concessionaire no less than 3 (three) days prior to the start of such week.

¹⁰ Delete if not applicable.

¹¹ Delete if not applicable.

- 5.7.3 The minimum period for which a Power Block or Traffic Block shall be provided to the Concessionaire shall not be less than 2 (two) hours, period being counted from the time the track is placed at the disposal of the Concessionaire and until it is cleared by the Concessionaire. Provided, however, that a Power Block or Traffic Block, as the case may be, of shorter duration may be provided with mutual consent of the Parties.
- 5.7.4 The aggregate period of Power Block and Traffic Block to be provided to the Concessionaire during the Construction Period is specified in Schedule-M. The Concessionaire shall organise its work so as to complete all Construction Works within such aggregate period.
- 5.7.5 In the event of any change in the schedule of Power Block or Traffic Block or both, as the case may be, the Authority shall inform the Concessionaire by a notice of not less than 24 (twenty four) hours. Provided, however, that no such notice shall be required in case of a breakdown, accident, law and order disturbance, natural calamity or any other unusual occurrence or Emergency.
- 5.7.6 In the event a Power Block or Traffic Block, as the case may be, is not provided for any day in accordance with the confirmed programme, the Concessionaire shall be compensated by providing an additional Power Block or Traffic Block of equal time during the same week or the following week. The Parties expressly agree that in the event of any default in providing such additional blocks for compensating the Concessionaire, the Authority shall pay to the Concessionaire Damages at the rate of Rs.1,000 (Rupees one thousand) per day for each hour which has not been provided as required hereunder and until such hour is provided during any of the 6 (six) following weeks.
- 5.7.7 The Concessionaire shall be entitled to undertake the Construction Works within the aggregate period specified in Schedule-M. Provided, however, that in the event the aggregate period utilised by the Contractor exceeds the period specified in Schedule-M, the Contractor shall pay to the Authority hourly charges at the rate specified therein.]

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

6.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding

order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (j) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (k) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (l) all information provided by the {selected bidder/ members of the Consortium} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (m) nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and any Sub-contractors, designers, consultants or agents of the Contractor.

6.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;

- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) it has good and valid right to the Site and has the power and authority to grant the Right of Way in respect thereof to the Concessionaire; and
- (h) it shall have procured, as on the Appointed Date, Right of Way and environment clearances such that the Concessionaire can commence construction forthwith on 90% (ninety per cent) of the total length of the Railway Project.

6.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

ARTICLE 7
DISCLAIMER

7.1 Disclaimer

- 7.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes, suitability and availability of access routes to the Site and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 5.1.2 and Clause 6.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 7.1.2 The Concessionaire acknowledges and hereby accepts to have satisfied itself as to the correctness and sufficiency of the Contract Price.
- 7.1.3 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 7.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price.
- 7.1.4 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 7.1.1 above shall not vitiate this Agreement, or render it voidable.
- 7.1.5 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 7.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error.
- 7.1.6 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire; and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III
Construction

ARTICLE 8

PERFORMANCE SECURITY

8.1 Performance Security

- 8.1.1 The Concessionaire shall, for the performance of its obligations hereunder, provide to the Authority, within 15 (fifteen) days of the date of this Agreement, an irrevocable and unconditional guarantee, for an amount equal to 5% (five per cent)¹² of the Contract Price, from a Bank in the form set forth in Annex-I of Schedule-F (the “**Performance Security**”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security, the Authority shall release the Bid Security to the Concessionaire.
- 8.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the Concessionaire to provide the Performance Security in accordance with the provisions of Clause 8.1.1 and within the time specified therein or such extended period as may be provided by the Authority, in accordance with the provisions of Clause 8.1.3, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 8.1.3 In the event the Concessionaire fails to provide the Performance Security within 15 (fifteen) days of the date of this Agreement, it may seek extension of time for a period not exceeding a further 15 (fifteen) days on payment of Damages for such extended period in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Contract Price for each day until the Performance Security is provided.

8.2 Appropriation of Performance Security

- 8.2.1 Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it as Damages for the Concessionaire Default.
- 8.2.2 Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall,

¹² The Authority may, in its discretion, increase the Performance Security under Clause 8.1 from 5% (five per cent) to 7.5% (seven point five per cent) for complex projects.

within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate the Agreement in accordance with Article 24. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 24.

8.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 30% (thirty per cent) of the Contract Price; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 8.3, the Authority shall release the Performance Security forthwith.

8.4 Deemed Performance Security

The Parties expressly agree that upon release of the Performance Security in accordance with the provisions of Clause 8.3, a substitute Performance Security for a like amount shall be deemed to be created under this Clause 8.4, as if it is a Performance Security under Clause 8.1 for and in respect of the Defect Liability Period (the “**Deemed Performance Security**”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 20.3, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and on all amounts due and payable by the Authority to the Concessionaire, and the Authority shall be entitled to enforce the Deemed Performance Security through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable by it to the Concessionaire in accordance with the provisions of Clause 8.5. For extended Defect Liability Period, as specified in Clause 16.1.2, the value of Deemed Performance Security shall be taken as 2% (two per cent) of the Contract Price. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of Concessionaire Default shall be liable to appropriation hereunder.

8.5 Appropriation of Deemed Performance Security

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to

appropriate the relevant amounts from the Deemed Performance Security as Damages for Concessionaire Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

ARTICLE 9
RIGHT OF WAY

9.1 The Site

The site of the Railway Project (the “**Site**”) shall comprise the site described in Schedule-A in respect of which the Right of Way shall be provided by the Authority to the Concessionaire. The Authority shall be responsible for:

- (a) acquiring and providing Right of Way on the Site in accordance with the [alignment, electrification sectioning diagram] finalised by the Authority, free from all encroachments and encumbrances, and free access thereto for the execution of this Agreement; and
- (b) obtaining environment clearance and forest clearance for the Railway Project.

9.2 Procurement of the Site

9.2.1 The Authority Representative and the Concessionaire shall, within 15 (fifteen) days of providing the Performance Security by the Concessionaire in accordance with the provisions of Clause 8.1, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road/ railway works, trees and any other immovable property on or attached to the Site. Subject to the provisions of Clause 9.2.3, such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been given to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid evidence of giving the Right of Way to the Concessionaire for discharging its obligations under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

For the avoidance of doubt, the Parties agree that subject to the provisions of Clauses 9.2.2 and 9.2.3, whenever the Authority is ready to provide Right of Way for any part or parts of the Site included in the Appendix, it shall by notice inform the Concessionaire, of the proposed date and time when the Authority Representative and the Concessionaire shall inspect the specified parts of the Site, and prepare a memorandum which shall be deemed to constitute a valid evidence of giving such Right of Way to the Concessionaire in accordance with the provisions of this Clause 9.2.1.

9.2.2 Notwithstanding anything to the contrary contained in this Clause 9.2, the Authority shall specify the parts of the Site, if any, for which Right of Way shall be provided to the Concessionaire on the dates specified in Schedule-A. Such parts shall also be included in the Appendix prepared in pursuance of Clause 9.2.1. For the avoidance of doubt, the Parties expressly agree that the

Appendix shall in no event contain Sections of the Railway Project the cumulative length of which exceeds 10% (ten per cent) of the total length of the Railway Project.

- 9.2.3 The Authority shall provide the Right of Way to the Concessionaire, in respect of the land included in the Appendix, by the date specified in Schedule-A for each part of the Site referred to therein, but in no case later than 180 (one hundred and eighty) days of the Appointed Date, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire, Damages in a sum calculated in accordance with Clause 9.3.

9.3 Damages for delay in handing over the Site

- 9.3.1 In the event the Right of Way to any part of the Site is not provided by the Authority on or before the date(s) specified in Clause 9.2 for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, the Authority shall pay Damages to the Concessionaire in a sum calculated in accordance with the following formula for and in respect of those parts of the Site to which the Right of Way has not been provided:

Amount of Damages in Rs. per day per metre = $0.10 \times C \times 1/L \times 1/N$

Where

C = the Contract Price; L = length of the Railway Project in metres; and N = Completion period in days (Appointed Date to Scheduled Completion Date)

In the event that any Damages are due and payable to the Concessionaire under the provisions of this Clause 9.3.1 for delay in providing the Right of Way, the Concessionaire shall, subject to the provisions of Clause 11.4, be entitled to Time Extension equal to the period for which the Damages have become due and payable under this Clause 9.3.1, save and except that:

- (a) if any delays involve time overlaps, the overlaps shall not be additive; and
- (b) such Time Extension shall be restricted only to the Works which are affected by the delay in providing the Right of Way.

For the avoidance of doubt, the Parties expressly agree that the Damages specified hereunder and the Time Extension specified in Clause 11.4 shall be restricted only to failure of the Authority to provide the Right of Way for and in respect of the width of the Site required for Works in accordance with the Good Industry Practice.

- 9.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire expressly agrees that Works on all parts of the Site for which Right of Way is granted within 180 (one hundred and eighty) days of the Appointed Date, or with respect to the parts of the Site provided in Schedule-A, no later than the date(s) specified therein, as the case may be, shall be

completed before the Scheduled Completion Date and shall not qualify for any Time Extension under the provisions of Clause 9.3.1.

- 9.3.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority may at any time withdraw any part of the Right of Way and the Works forming part of this Agreement, subject to such Works not exceeding an aggregate value, equal to 10% (ten per cent) of the Contract Price.

Provided that if Right of Way has not been provided within 240 (two hundred and forty) days of the Appointed Date, for commencing construction on any part of the Site included in the Appendix, the affected Works shall be deemed to be withdrawn under the provisions of this Clause 9.3.3 unless the Parties agree to the contrary, and such Works shall not be computed for the purposes of the aforesaid ceiling of 10% (ten per cent) of the Contract Price hereunder. For the avoidance of doubt, the Parties agree that such deemed withdrawal of Works hereunder shall be without prejudice to the Concessionaire's entitlement to Damages under Clauses 5.1.4, 9.3 and 10.2.

- 9.3.4 In the event of withdrawal of Works under Clause 9.3.3, including deemed withdrawal of Works, the Contract Price shall be reduced by an amount equal to 90% (ninety per cent) of the value of the Works withdrawn and the Concessionaire shall not be entitled to any other compensation or Damages for the withdrawal of Works, including their deemed withdrawal, save and except for Damages as provided under Clause 5.3.

Provided that if any Works are withdrawn after commencement of the Construction of such Works, the Authority shall pay to the Concessionaire 110% (one hundred and ten per cent) of the fair value of the work done, as assessed by the Authority's Engineer:

9.4 Site to be free from Encumbrances

Subject to the provisions of Clause 9.2, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Project Completion Schedule. For the avoidance of doubt, it is agreed that the existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that, unless otherwise specified in this Agreement, the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

9.5 Protection of Site from encroachments

On and after signing the memorandum and/or subsequent memorandum referred to in Clause 9.2.1, and until the issue of the Provisional Certificate, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place. During the Construction Period, the Concessionaire shall protect the Site from any

and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Sub-contractor or other person claiming through or under the Agreement to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. In the event of any encroachment or occupation on any part of the Site, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expenses.

9.6 Special/temporary Right of Way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Railway Project and the performance of its obligations under this Agreement.

9.7 Access to the Authority and the Authority's Engineer

9.7.1 The Right of Way given to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Authority's Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

9.7.2 The Concessionaire shall ensure, subject to all relevant safety procedures, that the Authority has unrestricted access to the Site during any Emergency.

9.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of this Agreement with the Concessionaire for the Works, and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

ARTICLE 10
UTILITIES AND TREES

10.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way, level crossings, structures, or utilities on, under or above the Site are enabled by it to keep them in continuous satisfactory use, if necessary, by providing suitable temporary diversions with the authority of the controlling body of that road, right of way or utility.

10.2 Shifting of obstructing utilities

10.2.1 The Concessionaire shall, in accordance with Applicable Laws and with assistance of the Authority, cause shifting of any utility (including electric lines, water pipes and telephone cables) to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works in accordance with this Agreement. The actual cost of such shifting, as approved and communicated by the entity owning the utility, shall be paid by the Concessionaire and reimbursed by the Authority to the Concessionaire. In the event of any delay in such shifting by the entity owning the utility beyond a period of 180 (one hundred and eighty) days from the date of notice by the Concessionaire to the entity owning the utility and to the Authority, the Concessionaire shall be entitled to Damages in a sum calculated in accordance with the formula specified in Clause 9.3.1 for the period of delay, and to Time Extension in accordance with Clause 11.4 for and in respect of the part(s) of the Works affected by such delay; provided that if the delays involve any time overlaps, the overlaps shall not be additive.

10.2.2 For the existing utilities owned by Railways, where the shifting thereof can take place only after certain works for its shifting have been completed by the Concessionaire, the Authority shall, undertake and complete its shifting within 180 (one hundred and eighty) days after the Concessionaire has notified the Authority of the completion of the works. In the event of delay in shifting the utility, beyond the aforesaid period of 180 (one hundred and eighty) days, the Concessionaire shall be entitled to Damages for the period of delay in accordance with the provisions of this Clause 10.2.1.

10.3 New utilities

10.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 10.3 shall not in any manner relieve the Concessionaire of its obligation to construct and maintain the Railway Project in accordance with this

Agreement and any damage caused by such use shall be restored forthwith at the cost of the Authority.

- 10.3.2 In the event the construction of any Works is affected by a new utility or works undertaken in accordance with this Clause 10.3, the Concessionaire shall be entitled to a reasonable Time Extension as determined by the Authority's Engineer.

10.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a Material Adverse Effect on the construction of the Railway Project. The cost of such felling and of the compensatory plantation of trees, if any, shall be borne by the Authority. In the event of any delay in felling thereof for reasons beyond the control of the Concessionaire; it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. The Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate. For the avoidance of doubt, the Parties agree that if any felling of trees hereunder is in a forest area, the Applicable Permit thereof shall be procured by the Authority within the time specified in the Agreement; and for any period of delay in providing the Applicable Permits, the Concessionaire shall be entitled to Damages and Time Extension as provided under Clause 10.2.1.

ARTICLE 11

DESIGN AND CONSTRUCTION OF THE RAILWAY PROJECT

11.1 Obligations prior to commencement of Works

11.1.1 Within 20 (twenty) days of the Appointed Date, the Concessionaire shall:

- (a) appoint its representative, duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (b) appoint a design director (the “**Design Director**”) who will head the Concessionaire’s design unit and shall be responsible for surveys, investigations, collection of data, and preparation of preliminary and detailed designs;
- (c) undertake and perform all such acts, deeds and things as may be necessary or required before commencement of Works under and in accordance with this Agreement, Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying and procurement of materials needed for the Railway Project under and in accordance with Applicable Laws and Applicable Permits.

11.1.2 The Authority shall, within 15 (fifteen) days of the date of this Agreement, appoint a railway engineer (the “**Authority’s Engineer**”) to discharge the functions and duties specified in this Agreement, and shall notify to the Concessionaire the name, address and the date of appointment of the Authority’s Engineer forthwith.

11.1.3 Within 30 (thirty) days of the Appointed Date, the Concessionaire shall submit to the Authority and the Authority’s Engineer a programme (the “**Programme**”) for construction of Works, developed using networking techniques and giving the following details:

Part I Concessionaire’s organisation for the Project, the project execution plan indicating arrangements for design and construction i.e. engagement of design consultants, project phasing and sub-contracting etc., environmental management plan, Quality Assurance Plan including design quality plan, traffic management and safety plan covering safety of users and workers during construction, Concessionaire’s key personnel, and equipment.

Part II Programme for completion of all stages of construction and Project Milestones of the Works as specified in Project Completion Schedule set forth in Schedule-H. The Programme shall include:

- (a) the order in which the Concessionaire intends to carry out the

Works, including the anticipated timing of design and stages of Works;

- (b) the periods for reviews under Clause 11.2; and
- (c) the sequence and timing of inspections and tests specified in this Agreement.

The Concessionaire shall submit a revised programme whenever the previous programme is inconsistent with the actual progress or with the Contractor's obligations.

Provided, however, that the Authority may, within a period of 15 (fifteen) days of receipt of the Programme, convey its comments to the Concessionaire stating the modifications, if any, required for compliance with the provisions of this Agreement, and the Concessionaire shall carry out such modifications, to the extent required for conforming with the provisions of this Agreement.

11.2 Design and Drawings

11.2.1 Design and Drawings shall be developed in conformity with the Specifications and Standards set forth in Schedule-D. In the event, the Concessionaire requires any relaxation in design standards due to restricted Right of Way in any section, the alternative design criteria for such section shall be provided for review of the Authority's Engineer.

11.2.2 The Concessionaire shall appoint a proof check consultant (the "**Proof Consultant**") after proposing to the Authority a panel of 3 (three) names of qualified and experienced firms from whom the Authority may choose 1 (one) to be the Proof Consultant. Provided, however, that if the panel is not acceptable to the Authority and the reasons for the same are furnished to the Concessionaire, the Concessionaire shall propose to the Authority a revised panel of 3 (three) names for obtaining the consent of the Authority. The Concessionaire shall also obtain the consent of the Authority for two key personnel of the Proof Consultant who shall have adequate experience and qualifications with respect to the main elements of the Railway Project. The Authority shall, within 15 (fifteen) days of receiving a proposal from the Concessionaire hereunder, convey its decision, with reasons, to the Concessionaire, and if no such decision is conveyed within the said period, the Concessionaire may proceed with engaging of the Proof Consultant. For the avoidance of doubt, the Parties agree that no firm or person having any conflict of interest shall be engaged hereunder. The Parties further agree that any assignments completed at least three years prior to the appointment hereunder shall not be reckoned for the purposes of conflict of interest.

11.2.3 The Proof Consultant shall:

- (a) evolve a systems approach with the Design Director so as to minimise the time required for final designs and construction drawings; and

- (b) proof check the detailed calculations, drawings and designs, which have been approved by the Design Director.

11.2.4 In respect of the engineering scale plan, signalling interlocking plan and route control chart of station yards, the following shall apply:

- (a) Engineering scale plan:

- (i) The Concessionaire shall prepare and submit to the Authority's Engineer engineering scale plan within a period of 2 (two) months from the Appointed Date in accordance with Good Industry Practice;
- (ii) The Authority's Engineer shall review the engineering scale plan within two weeks and submit it along with its suggested additions and revisions to the Authority for its approval; and
- (iii) The Authority shall communicate the engineering scale plan as approved by it within a period not exceeding 4 (four) months from the date of submission of the engineering scale plan by the Concessionaire. Such period of four months shall exclude any time that is taken by the Concessionaire in providing clarifications or modifications in response to any communication from the Authority.

- (b) Signalling interlocking plan and route control chart

- (i) The Concessionaire shall prepare and submit to the Authority's Engineer signalling interlocking plan and route control chart within a period of 2 (two) months from the date of receipt of the approved engineering scale plan under this Clause 11.2.4;
- (ii) The Authority's Engineer shall review the signalling interlocking plan route control chart within two weeks and submit it with its comments to the Authority for its approval; and
- (iii) The Authority shall communicate the signalling interlocking plan and route control chart as approved by it within a period not exceeding 4 (four) months from the date of submission of the signalling interlocking plan route control chart by the Concessionaire. Such period of four months shall exclude any time that is taken by the Concessionaire in providing clarifications or modifications in response to any communication from the Authority.

11.2.5 In the event of delay by the Concessionaire in submitting the engineering scale plan, signalling interlocking plan or route control chart, as the case may be, within the period specified in Clause 11.2.4 for any reason other than Force Majeure or breach of this Agreement by the Authority, the

Concessionaire shall pay Damages to the Authority in a sum equal to 0.2% (zero point two per cent) of the Performance Security for each day of delay.

- 11.2.6 In the event of delay by the Authority in providing to the Concessionaire the approved engineering scale plan, signalling interlocking plan or route control chart, as the case may be, within the period specified in Clause 11.2.4 for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, the Authority shall pay Damages to the Concessionaire in a sum equal to 0.2% (zero point two per cent) of the Performance Security for each day of delay, and shall also grant Time Extension in accordance with the provisions of Clause 11.4.
- 11.2.7 In respect of the Concessionaire's obligations with respect to the design and Drawings of the Railway Project as set forth in Schedule-G, the following shall apply:
- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of the design and Drawings, duly certified by the Proof Consultant, to the Authority's Engineer for review. Provided, however, that in respect of Important Bridges, Major Bridges, Structures, railway stations and yards, the Authority's Engineer may require additional drawings for its review in accordance with Good Industry Practice;
 - (b) by submitting the Drawings for review to the Authority's Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards and the Applicable Laws;
 - (c) within 30 (thirty) days of the receipt of the Drawings, the Authority's Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Authority's Engineer on the Drawings submitted pursuant hereto beyond the said period of 30 (thirty) days and may begin or continue Works at its own discretion and risk; Provided, however, that in case of Important Bridges, Major Bridges, Structures, interlocking and telecom switching equipment and any other specified item the aforesaid period of 30 (thirty) days may be extended as per the time limit as indicated in Annexure-II of Schedule-D;
 - (d) if the aforesaid observations of the Authority's Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire in conformity with the provisions of this Agreement and resubmitted to the Authority's Engineer for review.

The Authority's Engineer shall give its observations, if any, within 10 (ten) days of receipt of the revised Drawings. If the Concessionaire disputes any decision, direction or determination of the Authority's Engineer hereunder, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure;

- (e) no review and/or observation of the Authority's Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority's Engineer or the Authority be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Drawings, they shall, along with the affected Works, be corrected at the Concessionaire's cost, notwithstanding any review under this Article 11;
- (f) the Concessionaire shall be responsible for delays in submitting the Drawings, as set forth in Schedule-G, caused by reason of delays in surveys and field investigations, and shall not be entitled to seek any relief in respect thereof from the Authority; and
- (g) the Concessionaire warrants that its designers, including any third parties engaged by it, shall have the required experience and capability in accordance with Good Industry Practice and it shall indemnify the Authority against any damage, expense, liability, loss or claim, which the Authority might incur, sustain or be subject to arising from any breach of the Concessionaire's design responsibility and/or warranty as set out in this Clause.

11.2.8 Any cost or delay in construction arising from review by the Authority's Engineer shall be borne by the Concessionaire.

11.2.9 Works shall be executed in accordance with the Drawings provided by the Concessionaire in accordance with the provisions of this Clause 11.2 and the observations of the Authority's Engineer thereon as communicated pursuant to the provisions of Clause 11.2.7. Such Drawings shall not be amended or altered without prior written notice to the Authority's Engineer. If a Party becomes aware of an error or defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or defect.

11.2.10 Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Authority's Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, including an as-built survey illustrating the layout of the Railway Project and setback lines, if any, of the buildings and structures forming part of Project Facilities, and shall hand them over to the Authority against receipt thereof.

11.3 Construction of the Railway Project

- 11.3.1 The Concessionaire shall undertake construction of the Railway Project as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The Concessionaire shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. For works involving existing yards, the non-interlocking programme for each year shall be drawn by the Authority's Engineer and provided to the Concessionaire. The Concessionaire and the Authority's Engineer, within a period of 30 days, will discuss the same and issue a jointly agreed NI programme. The execution of work during the non-interlocking period will be the responsibility of the Concessionaire. The work during non-interlocking period in yards will be executed directly under the supervision of Railways, however, the timely completion of NI working will be the responsibility of the Concessionaire. The [900th (nine hundredth) day] from the Appointed Date shall be the scheduled completion date (the "**Scheduled Completion Date**") and the Concessionaire agrees and undertakes that the construction shall be completed on or before the Scheduled Completion Date, including any extension thereof.
- 11.3.2 The Concessionaire shall construct the Railway Project in accordance with the Project Completion Schedule set forth in Schedule-H. In the event that the Concessionaire fails to achieve any Project Milestone or the Scheduled Completion Date within a period of 30 (thirty) days from the date set forth in Schedule-H, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Contract Price for delay of each day reckoned from the date specified in Schedule-H and until such Project Milestone is achieved or the Works are completed; provided that if the period for any or all Project Milestones or the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-H shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-H has been amended as above; provided further that in the event the Works are completed within or before the Scheduled Completion Date including any Time Extension, the Damages paid under this Clause 11.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 11.3.2 shall be without prejudice to the rights of the Authority under this Agreement including the right of Termination thereof. The Parties further agree that Time Extension hereunder shall only be reckoned for and in respect of the affected Works as specified in Clause 11.4.2.
- 11.3.3 The Authority shall notify the Concessionaire of its decision to impose Damages in pursuance of the provisions of this Clause 11.3. Provided, however, that no deduction on account of Damages shall be effected by the Authority without taking into consideration the representation, if any, made by the Concessionaire within 20 (twenty) days of such notice. The Parties

expressly agree that the total amount of Damages under Clause 11.3.2 shall not exceed 10% (ten per cent) of the Contract Price.

11.4 Extension of time for completion

11.4.1 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Concessionaire shall be entitled to extension of time in the Project Completion Schedule (the “**Time Extension**”) to the extent that completion of any Project Milestone is or will be delayed by any of the following, namely:

- (a) delay in providing the Right of Way, [approval of GAD by road authorities,] environmental/ forest clearances, or approved engineering scale plan, signalling interlocking plan and route control chart in accordance with the provisions of this Agreement;
- (b) Change of Scope, unless an adjustment to the Scheduled Completion Date has been agreed under Article 14;
- (c) occurrence of a Force Majeure Event;
- (d) any delay, impediment or prevention caused by or attributable to the Authority, the Authority’s personnel or the Authority’s other contractors on the Site; and
- (e) any other cause or delay which entitles the Concessionaire to Time Extension in accordance with the provisions of this Agreement.

11.4.2 The Concessionaire shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Clause 11.4.1, inform the Authority’s Engineer by notice in writing, with a copy to the Authority, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Concessionaire became aware, or should have become aware, of the occurrence of such an event or circumstance.

Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Works which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Works which are not affected thereby.

11.4.3 In the event of the failure of the Concessionaire to issue to the Authority’s Engineer a notice in accordance with the provisions of Clause 11.4.2 within the time specified therein, the Concessionaire shall not be entitled to any Time Extension and shall forfeit its right for any such claims in future. For the avoidance of doubt, in the event of failure of the Concessionaire to issue notice as specified in this Clause 11.4.3, the Authority shall be discharged from all liability in connection with the claim.

11.4.4 The Authority's Engineer shall, on receipt of a claim in accordance with the provisions of Clause 11.4.2, examine the claim expeditiously within the time frame specified herein. In the event the Authority's Engineer requires any clarifications to examine the claim, the Authority's Engineer shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Concessionaire shall, on the receipt of the communication of the Authority's Engineer requesting for clarification, furnish the same to the Authority's Engineer within 10 (ten) days thereof. The Authority's Engineer shall, within a period of 30 (thirty) days from the date of receipt of such clarifications, forward in writing to the Concessionaire its determination of Time Extension. For the avoidance of doubt, the Parties agree that the Authority's Engineer shall, in accordance with the provisions of this Agreement, notify the Concessionaire of the aforesaid Time Extension no later than 60 (sixty) days from the date of receipt of the Concessionaire's claim for Time Extension or the date of receipt of the clarification from the Concessionaire, as the case may be.

Provided that when determining each extension of time under this Clause 11.4, the Authority's Engineer shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

11.4.5 If the event or circumstance giving rise to the notice has a continuing effect:

- (a) the detailed claim shall be considered as interim;
- (b) the Concessionaire shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Authority's Engineer may reasonably require; and
- (c) the Concessionaire shall send a final claim within 30 (thirty) days after the effect of the event or the circumstance ceases.

Upon receipt of the claim hereunder, the Authority's Engineer shall examine and determine the same in accordance with the provisions of Clause 11.4.4 within a period of 60 (sixty) days of the receipt thereof.

11.5 Incomplete Works

In the event the Concessionaire fails to complete the Works in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the Concessionaire shall endeavour to complete the balance work expeditiously and shall pay Damages to the Authority in accordance with the provisions of Clause 11.3.2 for delay of each day until the Works are completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Authority under this Agreement including the right to termination under Clause 24.1.

11.6 Equipment specific Maintenance Manual

No later than 90 (ninety) days prior to the Project Completion Date, the Concessionaire shall, in consultation with the Authority's Engineer, evolve an equipment specific maintenance manual for equipment based on a new technology not currently in use in the Railways (the "**Maintenance Manual**") for the regular operation and maintenance of such equipment in conformity with safety requirements, Good Industry Practice and manufacturer's manuals and instructions and shall provide 10 (ten) hard copies and 2 (two) compact discs thereof to the Authority's Engineer.

ARTICLE 12

QUALITY ASSURANCE, MONITORING AND SUPERVISION

12.1 Quality of Materials and workmanship

12.1.1 The Concessionaire shall ensure that the Construction, Materials and workmanship are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice.

12.1.2 The Concessionaire warrants that all Materials shall be new, unused, not reconditioned and in conformity with Specification and Standards, Applicable Laws and Good Industry Practice, and that the Concessionaire shall not use any materials which are generally recognised as being deleterious under Good Industry Practice.

12.2 Quality control system

12.2.1 The Concessionaire shall establish a quality control mechanism to ensure compliance with the provisions of this Agreement (the “**Quality Assurance Plan**” or “**QAP**”) in accordance with ISO-9001.

12.2.2 The Concessionaire shall, within 30 (thirty) days of the Appointed Date, submit to the Authority’s Engineer its Quality Assurance Plan which shall include the following:

- (a) organisation, duties and responsibilities, procedures, inspections and documentation;
- (b) quality control mechanism including sampling and testing of Materials, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and proforma for testing and calibration in accordance with the Specifications and Standards and Good Industry Practice; and
- (c) internal quality audit system.

The Authority’s Engineer shall convey its comments to the Concessionaire within a period of 21 (twenty-one) days of receipt of the QAP stating the modifications, if any, required, and the Concessionaire shall incorporate those in the QAP to the extent required for conforming with the provisions of this Clause 12.2.

12.2.3 The Concessionaire shall procure all documents, apparatus and instruments, fuel, consumables, water, electricity, labour, Materials, samples, and qualified personnel as are necessary for examining and testing the Project Assets, Materials and workmanship in accordance with the Quality Assurance Plan.

12.2.4 The cost of testing of Construction, Materials and workmanship under this Article 12 shall be borne by the Concessionaire.

12.3 Methodology

The Concessionaire shall, at least 15 (fifteen) days prior to the commencement of any construction activity, submit to the Authority's Engineer for review the method statement proposed to be adopted for executing the Work, giving details of inspection checklist, quality parameters, equipment to be deployed, traffic management and measures for ensuring safety. The Authority's Engineer shall complete the review and convey its comments, if any, to the Concessionaire within a period of 10 (ten) days from the date of receipt of the proposed method statement from the Concessionaire.

12.4 Inspection and technical audit by the Authority

The Authority or any representative authorised by the Authority in this behalf may inspect and review the progress and quality of the construction of Works and issue appropriate directions to the Authority's Engineer and the Concessionaire for taking remedial action in the event the Works are not in accordance with the provisions of this Agreement.

12.5 External technical audit

At any time during construction, the Authority may appoint an external technical auditor to conduct an audit of the quality of the Works. The findings of the audit, to the extent accepted by the Authority, shall be notified to the Concessionaire and the Authority's Engineer for taking remedial action in accordance with this Agreement. The Concessionaire shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder. Notwithstanding anything contained in this Clause 12.5, the external technical audit shall not affect any obligations of the Concessionaire or the Authority's Engineer under this Agreement.

12.6 Inspection of construction records

The Authority shall have the right to inspect the records of the Concessionaire relating to the Works.

12.7 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 10 (ten) days after the close of each month, furnish to the Authority and the Authority's Engineer a monthly report on the progress of Works and shall promptly give such other relevant information as may be required by the Authority's Engineer.

12.8 Inspection

12.8.1 The Authority's Engineer and its authorised representative shall at all times:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained for use in the Works; and
- (b) during production, manufacture and construction at the Site and at the place of production, be entitled to examine, inspect, measure and test the Materials and workmanship, and to check the progress of manufacture of Materials.

12.8.2 The Concessionaire shall give the Authority's Engineer and its authorised agents access, facilities and safety equipment for carrying out their obligations under this Agreement.

12.8.3 The Authority's Engineer shall submit a monthly inspection report (the "**Inspection Report**") to the Authority and the Concessionaire bringing out the results of inspections and the remedial action taken by the Concessionaire in respect of Defects or deficiencies. For the avoidance of doubt, such inspection or submission of Inspection Report by the Authority's Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities under this Agreement in any manner whatsoever.

12.9 Samples

The Concessionaire shall submit the following samples of Materials and relevant information to the Authority's Engineer for review:

- (a) manufacturer's test reports and standard samples of manufactured Materials; and
- (b) samples of such other Materials as the Authority's Engineer may require.

12.10 Tests

12.10.1 For determining that the Works conform to the Specifications and Standards, the Authority's Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as specified in this Agreement, and in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out all the tests in accordance with the Agreement and furnish the results thereof to the Authority's Engineer. Of the total tests for each category or type to be undertaken by the Concessionaire under the provisions of this Agreement and Good Industry Practice, the Authority's Engineer shall (a) carry out or cause to be carried out, test checks equal to about 10% (ten per cent) of the number of the tests required to be undertaken by the Concessionaire; and (b) witness or participate in at least 10% (ten per cent) of the number of such tests conducted or caused to be conducted by the Concessionaire.

12.10.2 In the event that results of any tests conducted under this Clause 12.10 establish any Defects or deficiencies in the Works, the Concessionaire shall carry out remedial measures and furnish a report to the Authority's Engineer

in this behalf. The Authority's Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Works into compliance with the Specifications and Standards, and the procedure shall be repeated until such Works conform to the Specifications and Standards. For the avoidance of doubt, the cost of such tests and the remedial measures in pursuance thereof shall be solely borne by the Concessionaire.

12.11 Examination of work before covering up

In respect of the work which the Authority's Engineer is entitled to examine, inspect, measure or test before it is covered up or put out of view or any part of the work is placed thereon, the Concessionaire shall give notice to the Authority's Engineer whenever any such work is ready and before it is covered up. The Authority's Engineer shall then either carry out the examination, inspection or testing without unreasonable delay, or promptly give notice to the Concessionaire that the Authority's Engineer does not require to do so. Provided, however, that if any work is of a continuous nature where it is not possible or prudent to keep it uncovered or incomplete, the Concessionaire shall notify the schedule of carrying out such work to give sufficient opportunity, not being less than 3 (three) business days' notice, to the Authority's Engineer to conduct its inspection, measurement or test while the work is continuing. Provided further that in the event the Concessionaire receives no response from the Authority's Engineer within a period of 3 (three) business days from the date on which the Concessionaire's notice hereunder is delivered to the Authority's Engineer, the Concessionaire shall be entitled to assume that the Authority's Engineer would not undertake the said inspection.

12.12 Rejection

- 11.12.1 If, as a result of an examination, inspection, measurement or testing, any Plant, Material, design or workmanship is found to be defective or otherwise not in accordance with the provisions of this Agreement, the Authority's Engineer may reject such Plant, Material, design or workmanship by giving notice to the Concessionaire, with reasons. The Concessionaire shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of this Agreement.
- 12.12.2 If the Authority's Engineer requires the Plant, Material, design or workmanship to be retested, the tests shall be repeated on the same terms and conditions, as applicable in each case. If the rejection and retesting cause the Authority to incur any additional costs, such costs shall be recoverable by the Authority from the Concessionaire and may be deducted by the Authority from any monies due to be paid to the Concessionaire.
- 12.12.3 The Concessionaire shall not be entitled to any extension of time on account of rectifying any Defect or retesting as specified in this Clause 12.12.
- 12.12.4 No examination, inspection, measurement or testing of any Plant, Material, design or workmanship by the Authority's Engineer or its failure to convey

its observations or to examine, inspect, measure or test shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner.

12.13 Remedial work

12.13.1 Notwithstanding any previous test or certification, the Authority's Engineer may instruct the Concessionaire to:

- (a) remove from the Site and replace any Plant or Materials which are not in accordance with the provisions of this Agreement;
- (b) remove and re-execute any work which is not in accordance with the provisions of this Agreement and the Specification and Standards; and
- (c) execute any work which is urgently required for the safety of the Railway Project, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work which is required on account of a Force Majeure Event, the provisions of Clause 22.6 shall apply.

12.13.2 If the Concessionaire fails to comply with the instructions issued by the Authority's Engineer under Clause 12.13.1, within the time specified in the Authority's Engineer's notice or as mutually agreed, the Authority's Engineer may advise the Authority to have the work executed by another agency. The cost so incurred by the Authority for undertaking such work shall, without prejudice to the rights of the Authority to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Concessionaire and may be deducted by the Authority from any monies due to be paid to the Concessionaire.

12.14 Delays during construction

Without prejudice to the provisions of Clause 11.3.2, in the event the Concessionaire does not achieve any of the Project Milestones within the time period stipulated in Schedule-H or the Authority's Engineer shall have reasonably determined that the rate of progress of Works is such that Completion of the Railway Project is not likely to be achieved by the end of the Scheduled Completion Date, it may notify the same to the Concessionaire, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Authority's Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

12.15 Quality control records and Documents

The Concessionaire shall hand over to the Authority's Engineer a copy of all its quality control records and documents before the Completion Certificate is issued pursuant to Clause 13.2.

12.16 Video recording

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering the status and progress of Works in that quarter. The video recording shall be provided to the Authority no later than 15 (fifteen) days after the close of each quarter after the Appointed Date.

12.17 Suspension of unsafe Construction Works

12.17.1 Upon recommendation of the Authority's Engineer to this effect, or on its own volition in cases of emergency or urgency, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the Authority's Engineer or the Authority, as the case may be, such work threatens the safety of the Users and or other persons on or about the Railway Project.

12.17.2 The Concessionaire shall, pursuant to the notice under Clause 12.17.1, suspend the Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works, the Users, other persons and vehicles on or about the Railway Project including pedestrians. The Concessionaire may by notice require the Authority's Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Authority's Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 11.17 shall be repeated until the suspension hereunder is revoked.

12.17.3 Subject to the provisions of Clause 22.6, all reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

12.17.4 If suspension of Works is for reasons not attributable to the Concessionaire, the Authority's Engineer shall determine any Time Extension to which the Concessionaire is reasonably entitled.

ARTICLE 13

COMPLETION CERTIFICATE

13.1 Tests on completion

13.1.1 No later than 30 (thirty) days prior to the likely completion of the Railway Project, the Concessionaire shall prepare and submit to the Authority's Engineer the documents required for seeking approval of the Commissioner of Railway Safety in accordance with the provisions of the Railways Opening for Public Carriage of Passenger Rules, the Indian Railway Permanent Way Manual or the Indian Railways Manual of A.C. Traction, as the case may be, and notify the Authority's Engineer of its intent to subject the Railway Project to Tests. After ensuring and procuring that the documents required to be submitted to the Commissioner for Railway Safety meet the requirements of Applicable Laws, the Authority's Engineer shall, in consultation with the Concessionaire, determine the date and time of each of the Tests, and inform the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Authority's Engineer may reasonably require for conducting the Tests. For avoidance of doubts, the parties agree that in the event of the Concessionaire and the Authority's Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by giving not less than 10 (ten) days' notice to the Authority's Engineer.

13.1.2 All Tests shall be conducted in accordance with Schedule-I at the cost and expense of the Concessionaire; provided, however, that the trial running on railway track shall be undertaken at the cost and expense of the Authority. The Authority's Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Railway Project with Specifications and Standards and if it is reasonably anticipated or determined by the Authority's Engineer during the course of any Test that the performance of the Railway Project or Section or any part thereof, does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify any Defect or deficiency. Upon completion of each Test, the Authority's Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, the Parties expressly agree that the Authority's Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Railway Project thereof with the Specifications and Standards.

13.2 Provisional Certificate

13.2.1 Upon completion of Tests, the Authority's Engineer shall satisfy itself that the Tests have been successful and the Railway Project is fit for opening to traffic. Upon such determination, the Authority's Engineer shall issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-J (the "**Provisional Certificate**"). The Authority's Engineer may issue a Provisional Certificate even if certain works forming

part of the Railway Project are not yet completed and in such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Authority's Engineer and the Concessionaire (the "**Punch List**"). For the avoidance of doubt and by way of illustration, the Punch List may include [fencing, tree plantation, rest areas, ***].

- 13.2.2 Upon issuance of the Provisional Certificate, the Authority's Engineer shall forward to the Authority (i) copies of all Test data including Test results, and (ii) the documents submitted by the Concessionaire for seeking approval of the Commissioner of Railway Safety in accordance with the provisions of the Railways Opening for Public Carriage of Passenger Rules, the Indian Railway Permanent Way Manual/ or the Indian Railways Manual of A.C. Traction, as the case may be, for obtaining authorisation from the Commissioner for Railway Safety.
- 13.2.3 The Concessionaire shall assist the Authority during inspection and tests to be conducted by the Commissioner of Railway Safety for determining compliance of the Railway Project with Applicable Laws and the provisions of this Agreement.
- 13.2.4 The Defects Liability Period for the Railway Project shall commence from the date of issue of the Provisional Certificate.
- 13.2.5 The Parties hereto expressly agree that the Authority's Engineer may, upon request of the Authority to this effect, issue a Provisional Certificate for part of the Railway Project and the provisions of Clauses 13.1 and 13.2 shall apply *mutatis mutandis* to such Provisional Certificate.
- 13.2.6 The risk of loss or damage to any Materials, Plant or Works in the Railway Project or part thereof, as the case may be, and the care and custody thereof shall pass from the Concessionaire to the Authority upon issuance of Provisional Certificate for the Railway Project or part thereof.

13.3 Completion of Punch List items

All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issuance of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Authority's Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item in the Punch List is delayed for reasons attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Authority's Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the

date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 13.3.

13.4 Completion Certificate

13.4.1 Upon completion of all items in the Punch List and issuance of authorisation by the Commissioner of Railway Safety, the Authority's Engineer shall issue forthwith to the Concessionaire and the Authority a completion certificate substantially in the form set forth in Schedule-J (the "**Completion Certificate**") separately for and in respect of each Provisional Certificate issued.

13.4.2 Upon receiving the Completion Certificate, the Concessionaire shall remove its equipment, materials, debris and temporary works from the Site within a period of 15 (fifteen) days thereof, failing which the Authority may remove or cause to be removed, such equipment, materials, debris and temporary works and recover from the Concessionaire an amount equal to 120% (one hundred and twenty per cent) of the actual cost of removal incurred by the Authority.

13.5 Rescheduling of Tests

If the Authority's Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

13.6 Commercial Operation Date (COD)

13.6.1 The Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of this Article 13, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the "COD"). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Annuity Payments [and Fee] in accordance with the provisions of this Agreement.

13.6.2 In the event of delay in issuance of authorisation by the Commissioner of Railway Safety beyond a period of 90 (ninety) days from the date of issue of the Provisional Certificate, the Concessionaire shall be entitled to damages for delay at a rate equal to 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

13.6.3 Subject to the provisions of Clause 11.3, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum

calculated at the rate of 0.1 (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 14
CHANGE OF SCOPE

14.1 Change of Scope

14.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the Concessionaire to make modifications or alterations to the Works (“**Change of Scope**”) before the issue of the Completion Certificate either by giving an instruction or by requesting the Concessionaire to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this Article 14.

14.1.2 Change of Scope shall mean:

- (a) change in specifications of any item of Works;
- (b) omission of any work from the Scope of the Project except under Clause 9.3.3; provided that, subject to Clause 14.5, the Authority shall not omit any work under this Clause in order to get it executed by any other entity; or
- (c) any additional work, Plant, Materials or services which are not included in the Scope of the Project, including any associated Tests on completion of construction.

14.2 Procedure for Change of Scope

14.2.1 In the event of the Authority determining that a Change of Scope is necessary, it may direct the Authority’s Engineer to issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).

14.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority and the Authority’s Engineer such information as is necessary, together with preliminary documentation in support of:

- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including the following details:
 - (i) break down of the quantities, unit rates and cost for different items of work;
 - (ii) proposed design for the Change of Scope; and

- (iii) proposed modifications, if any, to the Project Completion Schedule of the Railway Project.

For the avoidance of doubt, the Parties expressly agree that, subject to the provisions of Clause 14.4.2, the Contract Price shall be increased or decreased, as the case may be, on account of Change of Scope.

- 14.2.3 The Concessionaire's quotation of costs for the Change of Scope shall be determined as follows:

The cost of work shall be derived on the basis of applicable schedule of rates for the relevant zone of the Railways, and such rates shall be indexed with reference to the WPI once every year at the commencement of the financial year, with the base being the month and year of the publication of the said schedule of rates; provided, however, that for any item not included in the schedule of rates, the prevailing market rates as determined in accordance with Good Industry Practice by the Authority's Engineer shall apply.

- 14.2.4 Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may:

- (a) issue a Change of Scope Order requiring the Concessionaire to proceed with the performance thereof at the rates and conditions approved by the Authority till the matter is resolved in accordance with Article 27; or
- (b) proceed in accordance with Clause 14.5.

- 14.2.5 The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 14.

14.3 Payment for Change of Scope

Payment for Change of Scope shall be made in accordance with the payment schedule specified in the Change of Scope Order.

14.4 Restrictions on Change of Scope

- 14.4.1 No Change of Scope shall be executed unless the Authority has issued the Change of Scope Order save and except any Works necessary for meeting any Emergency.
- 14.4.2 Unless the Parties mutually agree to the contrary, the total value of all Change of Scope Orders shall not exceed 10% (ten per cent) of the Contract Price.
- 14.4.3 Notwithstanding anything to the contrary in this Article 14, no change arising from any default of the Concessionaire in the performance of its

obligations under this Agreement shall be deemed to be Change of Scope, and shall not result in any adjustment of the Contract Price or the Project Completion Schedule.

14.5 Power of the Authority to undertake works

14.5.1 In the event the Parties are unable to agree to the proposed Change of Scope Orders in accordance with Clause 14.2, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding from amongst bidders who are pre-qualified for undertaking the additional work; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority[§], and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide assistance and cooperation to the person who undertakes the works or services hereunder, but shall not be responsible for rectification of any Defects and/or maintenance of works carried out by other agencies.

14.5.2 The works undertaken in accordance with this Clause 14.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises disruption to the Project. The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 14.5.

[§] The Authority shall transfer 75% (seventy five per cent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Contractor.

ARTICLE 15
TRAFFIC REGULATION

15.1 Traffic regulation by the Concessionaire

- 15.1.1 The Concessionaire shall take all the required measures and make arrangements for the safety of any persons and vehicles on or about the Site during the construction of the Railway Project or a Section thereof in accordance with Good Industry Practice, and Applicable Laws. It shall provide, erect and maintain all such barricades, signs, markings, flags, and lights as may be required by Good Industry Practice for the safety of the traffic using any public roads or access along or across the Section under construction.
- 15.1.2 All works shall be carried out in a manner creating least interference to traffic passing along or across the Railway Project or a Section thereof. The Concessionaire shall ensure that proper passage is provided for the traffic. Where it is not possible or safe to allow traffic on the existing road or passage, a temporary diversion of proper specifications shall be constructed by the Concessionaire at its own cost. The Concessionaire shall take prior approval of the Authority's Engineer for any proposed arrangement for traffic regulation during Construction, which approval shall not be unreasonably withheld.
- 15.1.3 In the event any construction work is required to be executed in close proximity of an existing operating system of Railways, the Concessionaire shall make arrangements for the safety of such system in accordance with the provisions of the 'Compendium of Instructions on Safety at work Sites' issued by the Authority and Good Industry Practice.

ARTICLE 16
DEFECTS LIABILITY

16.1 Defects Liability Period

16.1.1 The Concessionaire shall be responsible for all the Defects and deficiencies, except usual wear and tear in the Railway Project or any part thereof, till the expiry of a period of 2 (two) years commencing from the date of Provisional Certificate or expiry of a period 18 (eighteen) months from the date of Completion Certificate, whichever is later (the “**Defects Liability Period**”).

[16.1.2 Without prejudice to the provisions of Clause 16.1.1, the Defects Liability Period for and in respect of any Structure or Important Bridge specified in Schedule B, or interlocking and telecom switching equipment comprising a new technology shall be deemed to be extended by a further period of 2 (two) year after the expiry of the Defects Liability Period specified in Clause 16.1.1.]

16.2 Remedy and rectification of Defects and deficiencies

16.2.1 Without prejudice to the provisions of Clause 16.2.2, the Concessionaire shall repair or rectify all Defects and deficiencies observed by the Authority’s Engineer during the Defects Liability Period within a period of 15 (fifteen) days from the date of notice issued by the Authority’s Engineer in this behalf, or within such reasonable period as may be determined by the Authority’s Engineer at the request of the Concessionaire, in accordance with Good Industry Practice.

16.2.2 During a period of 2 (two) months from the date of issuance of Completion Certificate, the Concessionaire shall retain sufficient staff and spares at Project for procuring prompt replacement, installation or re-installation of any defective parts of (a) the SCADA system; and (b) traction sub-stations and switching posts.

16.3 Cost of remedying Defects

For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of Clause 16.2, including any additional tests, shall be carried out by the Concessionaire at its own risk and cost, to the extent that such rectification or repair is attributable to:

- (a) the design of the Project;
- (b) Works, Plant, Materials or workmanship not being in accordance with this Agreement and the Specifications and Standards;
- (c) improper maintenance during construction of the Railway Project by the Concessionaire; or

- (d) failure by the Concessionaire to comply with any other obligation under this Agreement.

16.4 Concessionaire's failure to rectify Defects

In the event that the Concessionaire fails to repair or rectify such Defect or deficiency within the period specified in Clause 16.2, the Authority shall be entitled to get the same repaired, rectified or remedied at the Concessionaire's cost so as to make the Railway Project conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Authority and the Concessionaire, be determined by the Authority's Engineer. The cost so determined, and an amount equal to 20% (twenty per cent) of such cost as Damages, shall be recoverable by the Authority from the Concessionaire and may be deducted by the Authority from any monies due to the Concessionaire.

16.5 Concessionaire to search cause

16.5.1 The Authority's Engineer may instruct the Concessionaire to examine the cause of any Defect in the Works or part thereof before the expiry of the Defects Liability Period.

16.5.2 In the event any Defect identified under Clause 16.5.1 is attributable to the Concessionaire, the Concessionaire shall rectify such Defect within the period specified by the Authority's Engineer, and shall bear the cost of the examination and rectification of such Defect.

16.5.3 In the event such Defect is not attributable to the Concessionaire, the Authority's Engineer shall, after due consultation with the Authority and the Concessionaire, determine the costs incurred by the Concessionaire on such examination and notify the same to the Concessionaire, with a copy to the Authority, and the Concessionaire shall be entitled to payment of such costs by the Authority.

16.6 Extension of Defects Liability Period

16.6.1 The Defects Liability Period shall be deemed to be extended till the identified Defects under Clause 16.2 have been remedied.

16.6.2 Any Materials or Works with Defects identified under Clause 16.2 and replaced or repaired during the Defects Liability Period or the extended Defects Liability Period, as the case may be, would be further warranted for a period of twelve (12) months from the date of completion of such repair or replacement.

16.6.3 The Concessionaire shall upon termination or expiry of this Agreement or upon expiry of the Defects Liability Period, assign any outstanding benefit in respect of any subcontract or any warranty, to the Authority or to such other person as the Authority may direct.

ARTICLE 17

AUTHORITY'S ENGINEER

17.1 Appointment of the Authority's Engineer

- 17.1.1 The Authority shall appoint a railway engineer, to be the engineer under this Agreement (the "Authority's Engineer").
- 17.1.2 The appointment of the Authority's Engineer shall be made no later than 15 (fifteen) days from the date of this Agreement. The Authority shall notify the appointment or replacement of the Authority's Engineer to the Concessionaire.
- 17.1.3 The staff of the Authority's Engineer shall include suitably qualified engineers and other professionals who are competent to assist the Authority's Engineer to carry out its duties.

17.2 Duties and functions of the Authority's Engineer

- 17.2.1 The Authority's Engineer shall perform its duties and discharge its functions in accordance with the provisions of this Agreement, and substantially in accordance with the duties and responsibilities set forth in Annex 1 of Schedule-K, but subject to obtaining prior written approval of the Authority before determining:
- (a) any Time Extension;
 - (b) any additional cost to be paid by the Authority to the Concessionaire;
 - (c) the Termination Payment;
 - (d) providing Power Block or Traffic Block to the Concessionaire;
 - (e) approval of engineering scale plan, and signalling plan and route control chart;
 - (f) approval of disconnections for modification of signalling and telecom works, or
 - (g) any other matter which is not specified in (a) to (f) above and which creates an obligation or liability on either Party for a sum exceeding Rs.5,000,000 (Rupees fifty lakh).
- 17.2.2 No decision or communication of the Authority's Engineer shall be effective or valid unless it is accompanied by an attested true copy of the approval of the Authority for and in respect of any matter specified in Clause 17.2.1.
- 17.2.3 The Authority's Engineer shall submit regular periodic reports, at least once every month, to the Authority in respect of its duties and functions assigned to him for the project. Such reports shall be submitted by the Authority's Engineer within 10 (ten) days of the beginning of every month.

17.2.4 A true copy of all communications sent by the Authority to the Authority's Engineer and by the Authority's Engineer to the Authority shall be sent forthwith by the Authority's Engineer to the Concessionaire.

17.2.5 A true copy of all communications sent by the Authority's Engineer to the Concessionaire and by the Concessionaire to the Authority's Engineer shall be sent forthwith by the Authority's Engineer to the Authority.

17.3 Authorised signatories

The Authority's Engineer will designate and notify to the Concessionaire up to 2 (two) persons under him to sign for and on behalf of the Authority's Engineer, and any communication or document required to be signed by the Authority's Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Authority's Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

17.4 Instructions of the Authority's Engineer

17.4.1 The Authority's Engineer may issue to the Concessionaire instructions for remedying any Defect. The Concessionaire shall take such instructions from the Authority's Engineer only.

17.4.2 The instructions issued by the Authority's Engineer shall be in writing. However, if the Authority's Engineer issues any oral instructions to the Concessionaire, it shall confirm in writing the oral instructions within 2 (two) working days of issuing them.

17.4.3 In case the Concessionaire does not receive the confirmation of the oral instructions within the time specified in Clause 17.4.2, the Concessionaire shall seek the written confirmation of the oral instructions from the Authority's Engineer and shall obtain acknowledgement from the Authority's Engineer of the communication seeking written confirmation. In case of failure of the Authority's Engineer to reply to the Concessionaire within 2 (two) days of the receipt of the communication from the Concessionaire, the Concessionaire may not carry out the instruction.

17.5 Determination by the Authority's Engineer

17.5.1 The Authority's Engineer shall consult with each Party in an endeavour to reach agreement wherever this Agreement provides for the determination of any matter by the Authority's Engineer. If such agreement is not achieved, the Authority's Engineer shall make a fair determination in accordance with this Agreement having due regard to all relevant circumstances. The Authority's Engineer shall give notice to both the Parties of each such agreement or determination, with supporting particulars.

17.5.2 Each Party shall give effect to each agreement or determination made by the Authority's Engineer in accordance with the provisions of this Agreement. Provided, however, that if any Party disputes any instruction, decision,

direction or determination of the Authority's Engineer, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

17.6 Remuneration of the Authority's Engineer

The remuneration, cost and expenses of the Authority's Engineer shall be borne by the Authority.

17.7 Replacement of the Authority's Engineer

17.7.1 The Authority may, in its discretion, replace the Authority's Engineer at any time, but only upon appointment of another Authority's Engineer in accordance with Clause 17.1.

17.7.2 If the Concessionaire has reasons to believe that the Authority's Engineer is not discharging its duties and functions in accordance with the provisions of this Agreement, it may make a written representation to the Authority and seek replacement of the Authority's Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Authority's Engineer and make best efforts for an amicable resolution of the Dispute. In the event that the Authority's Engineer is to be replaced, the Authority shall appoint forthwith another Authority's Engineer in accordance with Clause 17.1. However, the decision of the Authority in this regard will be final.

17.8 Interim Arrangement

In the event that the Authority has not appointed an Authority's Engineer, or the Authority's Engineer so appointed has relinquished its functions, the Authority may, in the interim, designate and authorise any person to discharge the functions of the Authority's Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Authority's Engineer, and such functions shall be discharged as and when an Authority's Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 17.8 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

Part IV
Financial Covenants

ARTICLE 18
FINANCIAL CLOSE

18.1 Financial Close

- 18.1.1 The concessionaire shall at its cost, expenses and risk make such a financing arrangement as would be necessary to finance the cost of the project to meet project requirements and other obligations under this Agreement, in a timely manner.
- 18.1.2 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close, within a period of 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 185 (one hundred and eighty five) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred as a result of any default or delay by the Authority in procuring satisfaction of the Conditions specified in Clause 5.1.3 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.12.
- 18.1.3 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 02 (two) days prior to the Financial Close, 03 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 03 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

ARTICLE 19

PAYMENTS [(OPTION – A)]

19.1 Contract Price

19.1.1 The parties expressly agree that the cost of construction of the Project, which is due and payable by the Authority to the Concessionaire, shall be deemed to be Rs. ***** (Rupees *****) (the “**Contract Price**”)[‡]. Project cost shall be the amount specified in the Bid of the selected bidder. The Project Cost specified hereinabove for payment to the Concessionaire shall be inclusive of the cost of construction, interest during construction, escalation during construction, working capital, physical contingencies and other costs, expenses and charges for and in respect of construction of the Project, save and except any additional costs arising on account of Change of Scope, Change in Law, Force Majeure or Breach of this Agreement, which costs shall be due and payable to the Concessionaire in accordance with the provisions of the Agreement.

19.1.2 Unless otherwise stated in this Agreement, the Project Cost covers all the Concessionaire’s obligations for the works under this Agreement and all things necessary for the Construction and the remedying of any Defects in the Railway Project during Defect Liability Period.

19.1.3 All payments under this Agreement shall be made in Indian Rupees.

19.2 Bonus on early completion

In the event that the Project Completion Date occurs prior to the Scheduled Completion Date, the Concessionaire shall be entitled to receive a payment of bonus equivalent to 0.03% (zero point zero three per cent) of the **Contract Price** for each day by which the Project Completion Date precedes the Scheduled Completion Date, but subject to a maximum of 3% (three per cent) of the Project Cost. Provided, however, that the payment of bonus, if any, shall be made only after the issue of the Completion Certificate. For the avoidance of doubt, the Parties agree that for the purpose of determining the bonus payable hereunder, the Project Cost shall always be deemed to be the amount specified in Clause 19.1.1, and shall exclude any revision thereof for any reason. The bonus will be paid along with first Annuity Payment instalment.

19.3 Annuity Payments during Payback Period

19.3.1 Project Cost duly incorporating all the variation in the cost due to Change of Scope, Change in Law, Force Majeure or Breach of this Agreement shall be deemed to be the cost of the Project as on COD (the “**Completion Cost**”).

[‡] Contract Price shall be the amount specified in the Bid of the selected bidder.

The Parties agree that 100% (hundred per cent) of the Completion cost shall be due and payable during the Payback Period in accordance with the provisions of Clause 19.3.2.

- 19.3.2 The Completion Cost to be paid in pursuance of the provisions of Clause 19.3.1 shall be due and payable in 60 (sixty) quarterly instalments over a period of about [15(fifteen)*] years commencing from COD, along with interest thereon (the “**Annuity Payments**”). The 1st (first) instalment of Annuity Payments shall become due on the last day of the quarter following the quarter in which COD lies. The subsequent instalments shall become due on completion of each of the successive quarter. The quarters will always be taken as commencing from 1st of April, July, October and January months of a calendar year. For avoidance of doubt and by way of illustration, if COD of Project is on 15th April (i.e., COD occurring is in Quarter April – June), then the first instalment of Annuity payment shall be due on 30th September. Similarly, if the COD of Project is on 30th June (i.e., COD occurring in Quarter April – June), the first instalment of Annuity payment shall still be due on 30th September. The Concessionaire will submit a Statement of Payment due to the Authority for each quarter. The amount of each instalment shall be payable within 15 days of its due date or the date on which payment due statement is received from the Concessionaire, whichever is later.
- 19.3.3 Interest shall be due and payable on the reducing balance of Completion Cost at a rate equal to the applicable Bank Rate (as notified through monetary policy of RBI from time to time) plus 2% (two per cent). Such interest shall be due and payable quarterly along with each instalment specified in Clause 19.3.2. The Parties further agree that interest shall be calculated on the basis of Bank rate applicable on the date instalment of Annuity payment is due.

19.4 Change in Law

- 19.4.1 If as a result of Change in Law, the Concessionaire suffers any additional costs in the execution of the Works or in relation to the performance of its other obligations under this Agreement, the Concessionaire shall, within 15 (fifteen) days from the date it becomes reasonably aware of such addition in costs, notify the Authority with a copy to the Authority’s Engineer of such additional costs due to Change in Law.
- 19.4.2 If as a result of Change in Law, the Concessionaire benefits from any reduction in costs for the execution of this Agreement or in accordance with the provisions of this Agreement, either Party shall, within 15 (fifteen) days from the date it becomes reasonably aware of such reduction in costs, notify the other Party with a copy to the Authority’s Engineer of such reduction in costs due to Change in Law.
- 19.4.3 The Authority’s Engineer shall, within 15 (fifteen) days from the date of receipt of notice from the Contractor or the Authority, as the case may be, determine any addition or reduction to the Contract Price, as the case may be, due to the Change in Law.

19.5 Treatment of incomplete works

- 19.5.1 The parties acknowledge and agree that in the event COD occurs upon issuance of a Provisional Certificate, the Annuity Payments specified in this Article 19 shall be made as if all works comprising the Project have been completed. The works remaining incomplete shall be completed by the Concessionaire in accordance with the provisions of this Agreement and thereupon, the Completion Certificate shall be issued forthwith.
- 19.5.2 In the event the Authority determines that any incomplete works referred to in Clause 19.4.1 are not required to be completed for any reason, it shall modify the Scope of the Project in accordance with the provisions of Article 13 and the Completion Cost and Annuity Payments shall be reduced to reflect the sums saved by the Concessionaire on account of such Change of Scope.

ARTICLE 19
PAYMENTS [(OPTION – B)]

19.1 Contract Price

19.1.1 The parties expressly agree that cost of construction of the project which is due and payable by the Authority to the Concessionaire, shall be paid in [60(sixty)] quarterly installments each equal to Rs. ***** (Rupees ******) (**Annuity Payment**). The parties further agree that the Annuity Payment and number of installments specified herein above for payment to the Concessionaire shall be inclusive of the cost of construction, interest during construction, escalation during construction, working capital, physical contingencies and other costs, expenses and charges for and in respect of construction of the Project, save and except any additional costs arising on account of Change of Scope, Change in Law, Force Majeure or Breach of this Agreement, which costs shall be due and payable to the Concessionaire in accordance with the provisions of the Agreement.

19.1.2 Unless otherwise stated in this Agreement, the Annuity Payment covers all the Concessionaire's obligations for the works under this Agreement and all things necessary for the Construction and the remedying of any Defects in the Railway Project during Defect Liability Period.

19.1.3 All payments under this Agreement shall be made in Indian Rupees.

19.2 Bonus on early completion

In the event that the Project Completion Date occurs prior to the Scheduled Completion Date, the Concessionaire shall be entitled to receive a payment of bonus equivalent to 0.03% (zero point zero three per cent) of the Annuity Payment as specified in Clause 19.1.1 for each day by which the Project Completion Date precedes the Scheduled Completion Date, but subject to a maximum of 3% (three per cent) of the Annuity Payment. Provided, however, that the payment of bonus, if any, shall be made only after the issue of the Completion Certificate. The bonus will be paid along with Annuity Payments as specified in Clause 19.3.1.

19.3 Annuity Payments during Payback Period:

19.3.1 The Annuity Payment as quoted by the Concessionaire in the Bid and subsequently agreed upon by the parties shall be due and payable in [60 (sixty)*] quarterly instalments over a period of about [15(fifteen)**] years commencing from COD. The 1st (first) instalment of Annuity Payments shall become due on the last day of the quarter following the quarter in which COD lies. The subsequent instalments shall become due on completion of each of the successive quarter. The quarters will always be taken as commencing from 1st of April, July, October and January months of a calendar year. For avoidance of doubt and by way of illustration, if COD of Project is on 15th April (i.e., COD occurring is in Quarter April – June), then

the first instalment of Annuity payment shall be due on 30th September. Similarly, if the COD of Project is on 30th June (i.e., COD occurring in Quarter April – June), the first instalment of Annuity payment shall still be due on 30th September. The Concessionaire will submit a Statement of Payment due to the authority for each quarter. The amount of each instalment shall be payable within 15 days of its due date or the date on which payment due statement is received from the Concessionaire, whichever is later.

19.4 Change in Law

19.4.1 If as a result of Change in Law, the Concessionaire suffers any additional costs in the execution of the Works or in relation to the performance of its other obligations under this Agreement, the Concessionaire shall, within 15 (fifteen) days from the date it becomes reasonably aware of such addition in costs, notify the Authority with a copy to the Authority's Engineer of such additional costs due to Change in Law.

19.4.2 If as a result of Change in Law, the Concessionaire benefits from any reduction in costs for the execution of this Agreement or in accordance with the provisions of this Agreement, either Party shall, within 15 (fifteen) days from the date it becomes reasonably aware of such reduction in costs, notify the other Party with a copy to the Authority's Engineer of such reduction in costs due to Change in Law.

19.4.3 The Authority's Engineer shall, within 15 (fifteen) days from the date of receipt of notice from the Contractor or the Authority, as the case may be, determine any addition or reduction to the Contract Price, as the case may be, due to the Change in Law.

19.5 Payment of Change of Scope Order

19.5.1 The parties agree that for any Change of Scope in the work, the procedure shall be followed as per Article 14 of this agreement. Payments or Deduction as the case may be, shall be as mentioned in clause 19.4.2.

19.5.2 Payment or Deduction as per Change of Scope order will be equally distributed in [60 (sixty)*] instalments and will be adjusted with the Annuity payments specified in Clause 19.3.1.

19.5.3 Interest shall be due and payable/deductible on the reducing balance of the value of Change of Scope order at a rate equal to the applicable Bank Rate (as notified through monetary policy of RBI from time to time) plus 2% (two per cent). Such interest shall be due and payable/deductible quarterly along with each Annuity instalment specified in Clause 19.4.2. The interest shall be calculated on the basis of Bank rate applicable on the date instalment of Annuity payment is due as per Clause 19.3.1. For avoidance of doubt, a sample calculation sheet is placed at Schedule-Q.

19.6 Treatment of Incomplete works

- 19.6.1 The parties acknowledge and agree that in the event COD occurs upon issuance of a Provisional Certificate, the Annuity Payments specified in this Article 19 shall be made as if all works comprising the Project have been completed. The works remaining incomplete shall be completed by the Concessionaire in accordance with the provisions of this Agreement and thereupon, the Completion Certificate shall be issued forthwith.
- 19.6.2 In the event the Authority determines that any incomplete works referred to in Clause 19.5.1 are not required to be completed for any reason, it shall modify the Scope of the Project in accordance with the provisions of Article 14 and the Annuity Payments shall be reduced to reflect the sums saved by the Concessionaire on account of such Change of Scope as per Clause 19.4.3.

ARTICLE 20
ESCROW ACCOUNT

20.1 Escrow Account

20.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.

20.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule-O.

20.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all funds constituting the Financial Package;
- (b) all fees in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all annuity payments by the Authority.

Provided that the Senior Lenders may make direct disbursements to the Concessionaire in accordance with the express provisions contained in this behalf in the Financing Agreements.

20.3 Withdrawals during Concession Period

20.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

- (c) any amounts due and payable to the Authority;
- (d) monthly proportionate provision of Debt Service due in an Accounting Year;
- (e) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (f) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (g) any reserve requirements set forth in the Financing Agreements; and
- (h) balance, if any, in accordance with the instructions of the Concessionaire.

20.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 20.3.1, except with the prior written approval of the Authority.

20.4 Withdrawals upon Termination

20.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding payments due to the Authority;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 16;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) any other payments required to be made under this Agreement; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire:

20.4.2 The provisions of this Article 20 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 20.4.1 have been discharged.

ARTICLE 21
INSURANCE

21.1 Insurance for Works

21.1.1 The Concessionaire shall effect and maintain at its own cost the insurances specified in Schedule-N and as per the requirements of Applicable Laws.

21.1.2 Subject to the provisions of Clause 22.6, the Concessionaire shall, in accordance with the provisions of this Agreement, be liable to bear the cost of any loss or damage that does not fall within the scope of this Article 21 or cannot be recovered from the insurers.

21.1.3 Subject to the exceptions specified in Clause 21.1.4 below, the Concessionaire shall fully indemnify, hold harmless and defend the Authority from and against any and all losses, damages, costs, charges and/or claims with respect to:

- (a) the death of or injury to any person; or
- (b) the loss of or damage to any property;

that may arise out of or in consequence of any breach by the Concessionaire of this Agreement during the execution of the Works or the remedying of any Defects therein.

21.1.4 Notwithstanding anything stated above in Clause 21.1.3, the Authority shall fully indemnify the Concessionaire from and against any and all losses, damages, costs, charges, proceedings and/or claims arising out of or with respect to

- (a) the use or occupation of land or any part thereof by the Authority;
- (b) the damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any Defects therein, in accordance with this Agreement; and
- (c) the death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Authority, its agents, servants or other contractors, not being employed by the Contractor.

Provided, that in the event of any injury or damage as a result of the contributory negligence of the Concessionaire, the Authority shall be liable to indemnify the Concessionaire from and against any and all losses, damages, costs, charges, proceedings and/or claims to the extent proportionate to the liability of the Authority, its servants or agents or other contractors not associated with the Concessionaire in such injury or damage.

21.1.5 Without prejudice to the obligations of the parties as specified under Clauses 21.1.3 and 21.1.4, the Concessionaire shall maintain or effect such third party insurances as may be required under Applicable Laws.

21.1.6 The Concessionaire shall provide to the Authority, within 30 days of the Appointed Date, evidence of professional liability insurance maintained by its Design Director and/or consultants to cover the risk of professional negligence in the design of Works. The professional liability cover shall be for a sum of not less than [3% (three per cent)] of the Contract Price and shall be maintained until the end of the Defects Liability Period.

21.2 Notice to the Authority

No later than 15 (fifteen) days after the date of this Agreement, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 21. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

21.3 Evidence of Insurance Cover

21.3.1 All insurances obtained by the Concessionaire in accordance with this Article 21 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 10 (ten) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority. The Concessionaire shall act in accordance with the directions of the Authority. Provided that the Concessionaire shall produce to the Authority the insurance policies in force and the receipts for payment of the current premia.

21.3.2 The Concessionaire shall procure and ensure the adequacy of the insurances at all times in accordance with the provisions of this Agreement.

21.4 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Contractor.

21.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 21 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, Affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

21.6 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

21.7 Cross liabilities

Any such insurance maintained or effected in pursuance of this Article 21 shall include a cross liability clause such that the insurance shall apply to the Concessionaire and to the Authority as separately insured.

21.8 Accident or injury to workmen

Notwithstanding anything contained in this Agreement, it is hereby expressly agreed between the Parties that the Authority shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Concessionaire or Sub-contractor, save and except as for death or injury resulting from any act, omission or default of the Authority, its agents or servants. The Concessionaire shall indemnify and keep indemnified the Authority from and against all such claims, proceedings, damages, costs, charges, and expenses whatsoever in respect of the above save and except for those acts, omissions or defaults for which the Authority shall be liable.

21.9 Insurance against accident to workmen

The Concessionaire shall effect and maintain during the Agreement such insurances as may be required to insure the Concessionaire's personnel and any other persons employed by it on the Railway Project from and against any liability incurred in pursuance of this Article 21 Provided that for the purposes of this Clause 21.9, the Concessionaire's personnel/any person employed by the Concessionaire shall include the Sub-contractor and its

personnel. Provided further that in respect of any persons employed by any Sub-contractor, the Concessionaire's obligations to insure as aforesaid under this Clause 21.9 shall be discharged if the Sub-contractor shall have insured against any liability in respect of such persons in such manner that the Authority is indemnified under the policy. The Concessionaire shall require such Sub-contractor to produce before the Authority, when required, such policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the Authority.

21.10 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 20.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

21.11 Compliance with policy conditions

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

Part V
Force Majeure and Termination

ARTICLE 22

FORCE MAJEURE

22.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 22.2, 22.3 and 22.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

22.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Sub-contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Railway Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 22.3;
- (c) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or (v) breach of its obligations by the Concessionaire under its sub-contracts;

- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

22.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 10 (ten) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents construction of the Railway Project by the Concessionaire for an aggregate period exceeding 10 (ten) days in an Accounting Year;
- (d) failure of the Authority to permit the Concessionaire to continue with its Construction Works, with or without modifications, in the event of stoppage of such work after discovery of any geological or archaeological finds;
- (e) any failure or delay of a Sub-contractor to the extent caused by any Indirect Political Event;
- (f) any Indirect Political Event that causes a Non-Political Event; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

22.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 19.4;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Sub-Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence,

permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Sub-contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Sub-contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

22.5 Duty to report Force Majeure Event

22.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 22 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

22.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 10 (ten) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

22.5.3 For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 22.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

22.6 Effect of Force Majeure Event on the Agreement

22.6.1 Upon the occurrence of any Force Majeure

- (a) prior to the Appointed Date, both Parties shall bear their respective Force Majeure costs. In such case, the date for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.
- (b) after the Appointed Date, the costs incurred and attributable to such event and directly relating to this Agreement (the “**Force Majeure costs**”) shall be allocated and paid as follows:
 - (i) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
 - (ii) upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire for the Force Majeure events; and
 - (iii) upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure costs may include costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, if any, of the Concessionaire.

22.6.2 Save and except as expressly provided in this Article 22, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

22.6.3 Upon the occurrence of any Force Majeure Event during the Construction Period, the Project Completion Schedule for and in respect of the affected Works shall be extended on a day for day basis for such period as performance of the Concessionaire’s obligations is affected on account of the Force Majeure Event or its subsisting effects, as may be determined by the Authority’s Engineer.

22.6.4 Force Majeure costs for any event which results in any offsetting compensation being payable to the Concessionaire by or on behalf of its sub-contractors shall be reduced by such amounts that are payable to the Concessionaire by its Sub-contractors.

22.7 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 60 (sixty) days or more within a continuous period of 120 (one hundred and twenty) days, either

Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 22, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

22.8 Termination Payment for Force Majeure Event

22.8.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

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

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity;

provided that in the event such Termination occurs after COD, such Termination Payment shall in no case be less than the sum of Annuity Payments remaining unpaid for and in respect of the Concession Period, including interest thereon upto the Transfer Date.

22.8.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 24.4.3 as if it were an Authority Default.

22.9 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/ or excuse on account of such Force Majeure Event.

22.10 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall

be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 23

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

23.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend carrying out of the Works or any part thereof, and (b) carry out such Works itself or authorise any other person to exercise or perform the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice.

23.2 Authority to act on behalf of Concessionaire

During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 23.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Railway Project and its design, engineering, construction and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

23.3 Revocation of Suspension

23.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 60 (sixty) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

23.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 60 (sixty) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

23.4 Termination

- 23.4.1 At any time during the period of Suspension under this Article 23, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 24 as if it is a Concessionaire Default under Clause 24.1.
- 23.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 24
TERMINATION

24.1 Termination for Concessionaire Default

24.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) The Concessionaire fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 8.2, the Concessionaire fails to cure, within a Cure Period of 30 (thirty) days, the Concessionaire Default for which the whole or part of the Performance Security was appropriated;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-H, subject to any Time Extension, and continues to be in default for 45 (forty five) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction of the Railway Project without the prior written consent of the Authority;
- (e) the Concessionaire fails to proceed with the Works in accordance with the provisions of Clause 11.1 or stops Works for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the Authority’s Engineer;
- (f) the Project Completion Date does not occur within the period specified in Schedule-H for the Scheduled Completion Date, or any extension thereof;
- (g) failure to complete the Punch List items within the periods stipulated therefor in Clause 13.3;
- (h) the Concessionaire fails to rectify any Defect, the non rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Authority’s Engineer;
- (i) the Concessionaire subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works without the prior approval of the Authority;

- (j) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (k) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (l) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (m) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (n) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect ;
- (o) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Project;
- (p) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (q) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date;
- (r) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false or the Concessionaire is at any time hereafter found to be in breach thereof;

- (s) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (t) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (u) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement; or
- (v) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Authority.

24.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 24.1.3.

24.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 24.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 90 (ninety) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 90 (ninety) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 90 (ninety) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

24.2 Termination for Authority Default

24.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the “**Authority Default**”) unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make payment of any amount due and payable to the Concessionaire within the period specified in this Agreement;
- (c) the Authority has failed to provide, within a period of 180 (one hundred and eighty) days from the Appointed Date, the environmental clearances and forest clearances required for construction of the Railway Project;
- (d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or

24.2.2 Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

24.3 Requirements after Termination

Upon Termination of this Agreement in accordance with the provisions of this Article 24, the Concessionaire shall comply with and conform to the following:

- (a) deliver to the Authority all Plant and Materials which shall have become the property of the Authority under this Article 24;
- (b) deliver all relevant records, reports, Intellectual Property and other licences pertaining to the Works, other design documents and in case

of Termination occurring after the Provisional Certificate has been issued, the “**as built**” Drawings for the Works;

- (c) transfer and/or deliver all Applicable Permits to the Authority to the extent permissible under Applicable Laws; and
- (d) vacate the Site within 15 (fifteen) days.

24.4 Termination Payment

24.4.1 Upon Termination on account of Concessionaire Default during the Construction Period, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 40% (forty per cent) of the Contract Price and in the event of expenditure exceeding such 40% (forty per cent) and forming part of Debt Due, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due, which shall apply in respect of the expenditure exceeding such 40% (forty per cent). For the avoidance of doubt and by way of illustration, the Parties agree that if the total expenditure incurred prior to Termination is 90% (ninety per cent) of the Contract Price, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty per cent) of the Contract Price and the Termination Payment due and payable in such event shall not exceed 45% (forty five per cent) of the Contract Price. The Parties further agree that for the purposes of this Clause 24.4.1, Contract Price shall mean the amount specified in the definition of Contract Price in Clause 19.1.1 and 29.1. The Parties also agree that for determining the Termination Payment under this Clause 24.4.1, the expenditure comprising the latest Project Milestone shall also be reckoned.

24.4.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) Debt Due; and
- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity;

24.4.3 Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

24.4.4 The Concessionaire expressly agrees that Termination Payment under this Article 24 shall constitute a full and final settlement of all claims of the

Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

24.5 Certain limitations on Termination Payment

24.5.1 Termination Payment due and payable under this Agreement shall be computed with reference to the Debt Due and Adjusted Equity, as the case may be, in accordance with the provisions of this Agreement. The Parties further agree that the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 70% (seventy per cent) of the Contract Price.

24.5.2 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause 24.5.2 shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of project cost i.e. Contract Price and any borrowings in excess thereof shall not qualify for computation of Termination Payment.

24.6 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Project forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Sub-contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums

claimed by such Sub-contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Sub-contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

24.7 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or Agreement. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

Part VI
Other Provisions

ARTICLE 25

ASSIGNMENT AND CHARGES

25.1 Restrictions on assignment and charges

25.1.1 Subject to Clause 25.2 and 25.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

25.1.2 Subject to the provisions of Clause 25.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

25.2 Permitted assignment and charges

The restraints set forth in Clause 25.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

25.3 Substitution Agreement

25.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-P.

25.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

25.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 26

LIABILITY AND INDEMNITY

26.1 General indemnity

The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Contractor of any of its obligations under this Agreement or from any negligence under the Agreement, including any errors or deficiencies in the design documents, or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

26.2 Indemnity by the Concessionaire

26.2.1 Without limiting the generality of Clause 26.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Sub-contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of Materials or services furnished to the Concessionaire or any of its Sub-contractors which are payable by the Concessionaire or any of its Sub-contractors.

26.2.2 Without limiting the generality of the provisions of this Article 26, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Sub-contractors in performing the Concessionaire’s obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a

satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Railway Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

26.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Agreement (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

26.4 Defence of claims

- 26.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Agreement, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 26.4.2 If the Indemnifying Party has exercised its rights under Clause 26.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the

Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

26.4.3 If the Indemnifying Party exercises its rights under Clause 26.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 26.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

26.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 26, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

26.6 Survival on Termination

The provisions of this Article 26 shall survive Termination.

ARTICLE 27

DISPUTE RESOLUTION

27.1 Dispute Resolution

27.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 27.2.

27.1.2 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.

27.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon an officer of the Authority, not below the rank of Chief Administrative Officer/Const., or such other person as the Parties may mutually agree upon (the “**Conciliator**”) to conciliate and assist the Parties in arriving at an amicable settlement thereof. Failing conciliation by the Conciliator or without the intervention of the Conciliator, either Party may require such Dispute to be referred to the General Manager of the zonal railway and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) business days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) business day period or the Dispute is not amicably settled within 15 (fifteen) business days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) business days of the notice in writing referred to in Clause 27.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 27.3.

27.3 Arbitration

27.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 27.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 27.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The place of such arbitration shall be the capital of the State and the language of arbitration proceedings shall be English.

- 27.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 27.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 27 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 27.3.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
- 27.3.5 In the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.

27.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 27.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 28
MISCELLANEOUS

28.1 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 exclusive jurisdiction over matters arising out of or relating to this Agreement.

28.2 Waiver of immunity

Each Party 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 Party 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 judgement 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 given in connection therewith).

28.3 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to Bank Rate plus 3% (three per cent), save and except as otherwise specified in this Agreement. All interest payment under this Agreement shall, save and except as otherwise specified, be calculated at quarterly rests, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

28.4 Waiver

28.4.1 Waiver, including partial or conditional 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 authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

28.4.2 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 obligation 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.

28.5 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Authority's Engineer of any Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction of the Railway Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

28.6 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

28.7 Survival

28.7.1 Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, 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, 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.

28.7.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

28.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Qualification or Request for Proposals and bid submissions, as the case may be, shall be deemed to form part of this Agreement and treated as such.

28.9 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is 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 the Dispute Resolution Procedure set forth under this Agreement or otherwise.

28.10 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

28.11 Third parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

28.12 Successors and assigns

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

28.13 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside [Delhi] may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the person as the Concessionaire may from time to time designate by notice to the Authority;

[*****]

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the [Head of the Authority] with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in [Delhi] , it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

28.14 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

28.15 Counterparts

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

28.16 Confidentiality

The Parties shall treat the details of this Agreement as private and confidential, except to the extent necessary to carry out obligations under it or to comply with Applicable Laws. The Concessionaire shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous consent of the Authority.

28.17 Copyright and Intellectual Property rights

28.17.1 As between the Parties, the Concessionaire shall retain the copyright and other Intellectual Property rights in the Concessionaire's Documents and other design documents made by (or on behalf of) the Concessionaire. The Concessionaire shall be deemed (by signing this Agreement) to give to the Authority a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Concessionaire's Documents, including making and using modifications of them. This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Concessionaire's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Concessionaire's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by this Agreement, including replacements of any computers supplied by the Concessionaire:

28.17.2 The Concessionaire's Documents and other design documents made by (or on behalf of) the Concessionaire shall not, without the Concessionaire's consent, be used, copied or communicated to a third party by (or on behalf of) the Authority for purposes other than those permitted under this Clause 28.17.

28.17.3As between the Parties, the Authority shall retain the copyright and other Intellectual Property rights in this Agreement and other documents made by (or on behalf of) the Authority. The Concessionaire may, at its cost, copy, use, and obtain communication of these documents for the purposes of this Agreement. They shall not, without the Authority's consent, be copied, used or communicated to a third party by the Concessionaire, except as necessary for the purposes of the contract.

28.18 Limitation of Liability

28.18.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Agreement.

28.18.2 The total liability of one Party to the other Party under and in accordance with the provisions of this Agreement, save and except as provided in Articles 24 and 26, shall not exceed the Contract Price. For the avoidance of doubt, this Clause shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

ARTICLE 29
DEFINITIONS

29.1 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:

“**Accounting Year**” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“**Adjusted Equity**” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “**Reference Date**”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 2nd (second) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

“**Affected Party**” shall have the meaning as set forth in Clause 22.1;

“**Affiliate**” means, in relation to either Party {and/or Members}, a person who controls, is controlled by, or is under the common control with such Party {or Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Agreement**” means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“**Annuity Payments**” shall have the meaning as set forth in Clause 19.1.1;

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government(s) including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“**Applicable Permits**” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction of the Railway Project during the subsistence of this Agreement;

“**Appointed Date**” means that date which is later of:

- (a) the 15th day of the date of this Agreement,
- (b) the date on which the Concessionaire has delivered the Performance Security in accordance with the provisions of Article 8;
- (c) the date on which the Authority has provided the Right of Way on at least 90% (ninety per cent) of the total length of the Railway Project in conformity with the provisions of Clause ____; and
- (d) the date on which all Authority has provided to the Concessionaire the environmental and forest clearances for sections of the Railway Project comprising 90% of the length thereof in accordance with the provisions of Clause 5.3;

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“**Authority**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Authority Default**” shall have the meaning as set forth in Clause 24;

“**Authority’s Engineer**” shall have the meaning as set forth in Clause 17.1;

“**Authority Representative**” means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs.1,000 crore (Rupees one thousand crore) or any other bank acceptable to the

Senior Lenders but does not include a bank in which any Senior Lender has an interest;

“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Base Date**” means the last date of that calendar month, which date precedes the Bid Due Date by at least 28 (twenty eight) days;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the selected bidder/Consortium in response to the Request for Proposals in accordance with the provisions thereof;

“**Bid Security**” means the bid security provided by the Concessionaire to the Authority in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“**COD or Commercial Operation Date**” shall have the meaning as set forth in Clause 13.6;

“**Change in Law**” means the occurrence of any of the following after the Base Date:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the Base Date;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Base Date; or
- (e) any change in the rates of any of the Taxes or royalties that have a direct effect on the Project;

“**Change of Scope**” shall have the meaning as set forth in Article 14;

“**Change of Scope Notice**” shall have the meaning as set forth in Clause 14.2.1;

“**Change of Scope Order**” shall have the meaning as set forth in Clause 14.2.4;

“**Completion Certificate**” shall have the meaning as set forth in Clause 13.4;

“**Concessionaire**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Concessionaire Default**” shall have the meaning as set forth in Clause 24.1;

{“**Consortium**” means the consortium of entities which have formed a joint venture for implementation of this Project;}[§]

“**Construction**” shall have the meaning as set forth in Clause 1.2.1 (f);

“**Construction Period**” means the period commencing from the Appointed Date and ending on the date of the Completion Certificate;

“**Contract Price**” means the amount as specified in Clause 19.1.1; [where Annuity is the bidding parameter, Contract Price shall be calculated as (Annuity Installment × Nos. of Installments/1.5)]

“**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:

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

“**Damages**” shall have the meaning as set forth in paragraph (w) of Clause 1.2.1;

“**Debt Due**” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the total project cost i.e. Contract Price (the “principal”);
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the COD but excluding (i) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (ii) any pre-payment

[§] This definition may be omitted if the Contractor is not a Consortium.

charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and

- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the total project cost i.e. Contract Price;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

provided further that the Debt Due, on or after COD, shall in no case exceed 70% (seventy per cent) of the Contract Price;

“Debt Service” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;

“Defect” means any defect or deficiency in Construction of the Works or any part thereof, which does not conform with the Specifications and Standards;

“Defects Liability Period” shall have the meaning as set forth in Clause 16.1;

“Dispute” shall have the meaning as set forth in Clause 27.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Article 27;

“Drawings” means all of the drawings, calculations and documents pertaining to the Railway Project as set forth in Schedule-G, and shall include ‘as built’ drawings of the Railway Project;

“Document” or “Documentation” means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Emergency” means a condition or situation that is likely to endanger the safety or security of the individuals on or about the Railway Project, including Users thereof, or which poses an immediate threat of material damage to the Works or any of the Project Assets;

“Encumbrances” means, in relation to the Railway Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Railway Project, where applicable herein but excluding utilities referred to in Clause 10.1;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Contract Price, and for the purposes of this Agreement shall include convertible instruments

or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component.

“Escrow Account” means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“Escrow Agreement” shall have the meaning as set forth in Clause 20.1.2;

“Escrow Bank” shall have the meaning as set forth in Clause 20.1.1;

“Escrow Default” shall have the meaning as set forth in Schedule-O;

“Financial Close” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“Financial Default” shall have the meaning as set forth in Schedule-P;

“Financial Package” means the financing package indicating the total capital cost of the Project and the means of financing thereof, as approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

“Financing Agreement” means the agreement executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the total project cost (Contract Price), and includes amendments or modifications made in accordance with Clause 5.2.3;

“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Clause 22.1;

[**“GAD” or “General Arrangement Drawings”** shall have the meaning as set forth in Clause 5.1.3 (c);]

“GOI” or “Government” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced Concessionaire engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government Instrumentality” means any department, division or sub-division of the Government or the State Government and includes any commission, board,

authority, agency or municipal and other local authority or statutory body, including panchayat, under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Railway Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“**Important Bridge**” means a bridge having a linear waterway of 300 metres or a total water way of 1000 sqm or more;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 26;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 26;

“**Indirect Political Event**” shall have the meaning as set forth in Clause 22.3;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 21, and includes all insurances required to be taken out by the Concessionaire under Clauses 21.1 and 21.9 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“**Intellectual Property**” means all patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

{“**Lead Member**” shall, in the case of a consortium, mean the member of such consortium who shall have the authority to bind the Concessionaire and each member of the Consortium; and shall be deemed to be the Concessionaire for the purposes of this Agreement;}⁵

“**LOA**” or “**Letter of Acceptance**” means the letter of acceptance referred to in Recital (E);

“**Lenders’ Representative**” means the person duly authorized by the Senior Lender to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“**Maintenance Manual**” shall have the meaning ascribed to it in Clause 11.6;

“**Major Bridge**” means a bridge having a linear waterway of 18 metres or more or which has a clear opening of 12 metres or more in spans;

⁵ This definition may be omitted if the Contractor is not a Consortium.

“**Manuals**” shall mean the manuals specified in Schedule-D;

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

“**Materials**” are all the supplies used by the Concessionaire for incorporation in the Works or for the maintenance of the Railway Project;

“**Non-Political Event**” shall have the meaning as set forth in Clause 22.2;

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the parties to this Agreement individually;

“**Performance Security**” shall have the meaning as set forth in Clause 8.1;

“**Plant**” means the apparatus and machinery intended to form or forming part of the Works;

“**Political Event**” shall have the meaning as set forth in Clause 22.4;

“**Power Block**” means the length of the railway line between two railway stations, on which the overhead equipment (OHE) is de-energised and earthed to enable the Concessionaire to execute construction or maintenance works;

“**Programme**” shall have the meaning as set forth in Clause 11.1.3;

“**Project**” means the construction and maintenance of the Railway Project in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“**Project Agreements**” means this Agreement, the Financing Agreements, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of upto Rs.25 crore (twenty five crore)[§];

“**Project Assets**” means all physical and other assets relating to (a) tangible assets such as civil works and equipment including [foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road over-bridges, drainage works, traffic signals, sign boards, kilometre-stones, electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices]; and (b) Project Facilities situated on the Site;

[§] This may be fixed at the higher of; (a) 2% (two per cent) of Contract Price; and (b) Rs.25 (twenty five) crore.

“Project Completion Date” means the date on which the last Provisional Certificate is issued;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule-H for completion of the Railway Project on or before the Scheduled Completion Date;

“Project Facilities” means all the amenities and facilities to be constructed on the Site, as described in Schedule-C;

“Project Milestone” means the project milestone set forth in Schedule-H and includes the Scheduled Completion Date;

“Proof Consultant” shall have the meaning as set forth in Clause 11.2.2;

“Provisional Certificate” shall have the meaning as set forth in Clause 13.2;

“Punch List” shall have the meaning as set forth in Clause 13.2.1;

“RBI” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

“Quality Assurance Plan” or **“QAP”** shall have the meaning as set forth in Clause 12.2.1;

“Railway Project” means the Works specified in this Agreement on the railway line from *** to *** having a length of *** kms in *** Zone;

“Re.”, **“Rs.”** or **“Rupees”** or **“Indian Rupees”** means the lawful currency of the Republic of India;

“Request for Proposals” or **“RFP”** shall have the meaning as set forth in Recital ‘D’;

“Request for Qualification” or **“RFQ”** shall have the meaning as set forth in Recital ‘C’;

“Right of Way” means the constructive possession of the Site free from encroachments and encumbrances, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction of the Railway Project in accordance with this Agreement;

“Scheduled Completion Date” shall be the date as set forth in Clause 11.3.1;

“Scope of the Project” shall have the meaning as set forth in Clause 2.1;

“Senior Lenders” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of

the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

“**Section**” means the portion of the railway line between two block stations;

“**Site**” shall have the meaning as set forth in Clause 9.1;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Railway Project, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Railway Project submitted by the Concessionaire to, and expressly approved by, the Authority;

“**Structures**” means an elevated railway line or a flyover, as the case may be;

“**Sub-contractor**” means any person or persons to whom a part of the Works has been subcontracted by the Concessionaire and the permitted legal successors in title to such person, but not an assignee to such person;

“**Subordinated Debt**” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six) month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire’s shareholders, it shall for the purpose of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“**Suspension**” shall have the meaning as set forth in Article 23;

“**Taxes**” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, Materials, equipment and services incorporated in and forming part of the Railway Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Termination**” means the expiry or termination of this Agreement;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“**Termination Payment**” means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;

“**Terms of Reference**” or “**TOR**” shall have the meaning as set forth in Clause 17.2.1;

“**Tests**” means the tests set forth in Schedule-J to determine the completion of Works in accordance with the provisions of this Agreement;

“**Time Extension**” shall have the meaning as set forth in Clause 11.4.1;

“**Traffic Block**” means the length of railway line between two railway stations, on which traffic is blocked with or without OHE being de-energised to enable construction or maintenance works to be undertaken.

“**Transfer Date**” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“**User**” means a person who travels or intends to travel on the Railway Project or any part thereof on any train or vehicle;

“**Works**” means all works including survey and investigation, design, engineering, procurement, construction, Plant, Materials, temporary works and other things necessary to complete the Railway Project in accordance with this Agreement; and

“**WPI**” means the wholesale price index for various commodities as published by the Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND

SIGNED, SEALED AND

DELIVERED

DELIVERED

For and on behalf of

For and on behalf of

[...***, *** Railway] by:

THE CONCESSIONAIRE by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

In the presence of:

- 1.
- 2.

{ COUNTERSIGNED and accepted by:

Name and particulars of other members of the Consortium }

Schedules

SCHEDULE - A
(See Clauses 2.1 and 9.1)
SITE OF THE PROJECT

1 The Site

- 1.1 Site of the Railway Project shall include the land, buildings, structures and track works as described in Annex-I of this Schedule-A.
- 1.2 The dates of handing over Right of Way to the Concessionaire are specified in Annex-II of this Schedule-A.
- 1.3 An inventory of the Site including the land, buildings, structures, track works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority's Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 9.2.1 of this Agreement.
- 1.4 The alignment plans of the Railway Project are specified in Annex-III.
- 1.5 The status of the environment clearances and forest clearances obtained or awaited is given in Annex IV.

Annex - I
(Schedule-A)

Site¹⁶

[Note: Through suitable drawings and description in words, the land, buildings, structures and track works comprising the Site shall be specified briefly but precisely in this Annex-I.]

[For new railway line]

1. Site

The Site of the Railway Project comprises the section commencing from km *** to km *** i.e. the *** - *** section in the State of *** in the **** Railway zone. The land and other structures comprising the Site are described below:

2. Route Length

The route length of the Railway Project comprises the section as described below:

S. No	Name of location From	Name of location To	Start Chainage (km)	End Chainage (km)	Length (km)	Remarks

3. Land

The Site of the Railway Project comprises the land described below:

S. No	Name of location From	Name of location To	Start chainage (km)	End chainage (km)	Land width (m)	Remarks

**4. Details of existing structures and facilities on adjoining railway track
(For doubling or 3rd line projects or electrification)**

¹⁶ The contents of this Annexure-I may be suitably modified to reflect project specific requirements.

4.1 Permanent Way

Details of the Permanent Way on the Right of Way are:

S. No.	No. of railway line	km from	km to	Route km	Minimum and Maximum Implantation (if electrified)	Remarks
	Double line					
	Single Line					

4.2 Important Bridges

The Site includes the following Important Bridges:

S. No.	Bridge No. and location (km)	Type of Structure			No. of Spans with span length (m)	Width (m)
		Foundat ion	Sub-structu re	Superstru cture		

4.3 Major Bridges

The Site includes the following Major Bridges:

S. No.	Bridge No. and location (km)	Type of Structure			No. of Spans with span length (m)	Width (m)
		Foundat ion	Sub-structu re	Superstruc ture		

4.4 Minor Bridges/culverts

The Site includes the following Minor Bridges and culverts:

S. No.	Bridge No. and location (km)	Type of Structure			No. of Spans with span length (m)	Width of the bridge (m)
		Foundat ion	Sub-struct ure	Superstruc ture		

4.5 Tunnels

S. No.	Block Section	km from	km to	Remarks

4.6 Railway Flyovers

The Site includes the following Railway Fly Over:

S. No.	Block Section	Bridge No and location (Km)	Type of Structure			Span (Nos. length) ×	Width (m)
			Found ⁿ	Sub-structure	Super-structure		

4.7 Road under-bridges (RUB) / road over-bridges (ROB)

The Site includes the following RUB (Road under railway line)/ ROB (road over railway line):

S. No.	Block Section	Bridge No. and location (km)	Type of Structure		Span (Nos. × length)	Width (m)/ height (m)	ROB/ RUB
			Found ⁿ	Super-structure			

4.8 Railway level crossings

The Site includes the following railway level crossings:

S. No.	Block Section	Chainage	LC No	TVUs	L C Classification	Remarks

4.9 Railway stations on Railway Project

The Site includes the following railway stations

S. No.	Station	C.L. km	Nos. of Lines	Station Building Area	Nos. of P.F. & Length	Remarks (Whether Jn. Station)

4.10 Railway yards

The Site includes the following railway yards:

Sr. No.	Name of Yard	Number of Lines	Remarks

4.11 Foot over bridges on Railway Project

The Site includes the following foot over bridges:

S. No.	Station Block Section	Chainage	Span/Nos. of Track	Remarks

4.12 Transmission lines crossing the Right of Way

The Site includes the following transmission lines crossing the Right of Way:

S.No.	Block Section	Chainage	HT/LT (Specify KV)	OH/UG	Height above RL/ Depth below RL

4.13 Underground power line crossing the Right of Way

The Site includes the following Underground Power Line Crossings

Sr. No.	Location	System Voltage	Distance of Structure from centre of Track	Remarks

4.14 Signalling infrastructure

The Site includes the following signalling infrastructure:

S.No.	Station	Standard of Interlocking	Existing Signalling System (RRI/TBM Rly etc.)	Type of Signals (Single distant/ double distant/ colour light etc.)	Remarks

4.15 Telecommunication infrastructure

The Site includes the following telecommunication infrastructure:

S.No.	Station	Control Phone	DOT	Any other Communication	Availability of OFC

4.16 [Any Other Structures]

[Provide details of other structures Feeding Post, Sub Station, SP, SSP etc., if any.]

Annex - II
(Schedule-A)

Dates for providing Right of Way

The following are complete details of the Right of Way showing the dates on which the Authority shall provide the different sections of the Right of Way to the Concessionaire:

Sl. No	From km to km	Length (km)	Width (m)	Date of providing Right of Way
1	2	3	4	5
Part A:				
Right of Way being 90% (ninety per cent) of the length of the Project, under Clauses 5.1.3 read with Clauses 9.2 and 9.3 of the Agreement				Within 15 (fifteen) days of the signing of the Agreement, or the date of receiving the Performance Security from the Concessionaire, whichever is later.
(i) Full Right of Way (full width) a) Section b) Section c) Section				
(ii) Part Right of Way (part width) a) Section b) Section c) Section				
	Total length	*** km		

Sl. No	From km to km	Length (km)	Width (m)	Date of providing Right of Way
Part B				
Balance of the Right of Way not covered in Part A above.				
(iii) Balance Right of Way a) Section b) Section c) Section				
Total length		***** km		

For Electrification Work*

[The dates on which the Authority shall provide the Right of Way to the Concessionaire on different sections of the Site are specified below:

Sl. No	From km to km	Length (km)	Width (m)	Date of Providing Right of way
1	2	3	4	5
For OHE work (a) Section (b) Section (c) Section				
For Sub-Station work (a) (b)				

For Switching Posts (a) (b)				
For Signalling work (a) Station.... (b) Station....				
Site for Service Buildings, Tower Wagon Sheds, Quarters (a) (b)				

* Details to be provided for electrification works only.

Annex - III
(Schedule-A)

Alignment Plans

The proposed alignment plan of the Railway Project Line is attached. This is based on survey conducted by the Authority. The Concessionaire may modify the plan and profile of the alignment so as to get the best fit designed alignment within the Right of Way boundaries.

[For Railway Electrification]*

The proposed sectioning arrangement of the Railway Electrification Project is attached.

* Delete it if not required.

Annex - IV
(Schedule-A)

Environment Clearances and Forest Clearances

1. Environment clearances*

(a) The following environment clearances have been obtained:

(b) The following environment clearances are awaited:

2. Forest clearances

(a) The following forest clearances have been obtained:

(b) The following forest clearances are awaited:

* If environmental is not required, it may be clearly stated.

SCHEDULE - B

(See Clause 2.1)

Development of the Railway Project

1 Development of the Railway Project

Development of the Railway Project shall include design and construction of the Railway Project as described in Annex 1 to this Schedule-B and in Schedule-C.

2 Specifications and Standards

The Railway Project shall be designed and constructed in conformity with the Specifications and Standards specified in Schedule-D.

Annex - I
(Schedule-B)

Description of Railway Project¹⁷

Description of Railway Project

[Note: Description of the Project shall be given by the Authority in detail together with explanatory drawings (where necessary) to explain the Authority's requirements precisely in order to avoid subsequent changes in the Scope of the Project. The particulars that must be specified in this Schedule-B are listed below as per the requirements of the Technical Specifications and Standards for construction and maintenance of Permanent Works, signalling and telecommunication works and overhead equipment. If any standards, specifications or details are not given in the concerned manuals, the minimum design/construction requirements shall be specified in this Schedule. In addition to these particulars, all other essential project specific details, as required, should be provided in order to define the Scope of the Project clearly and precisely.]

1. Construction of Civil and Track Works

1.1 Operational Requirements

1.1.1 The Permanent Way shall be [single line/ double line] and designed to permit the Authority to operate satisfactorily at a maximum design speed of *** km/h. All the bridges and formation shall be constructed for *** loading standard. Track shall be constructed for an axle load of ***.

1.2 Alignment

1.2.1 The alignment of the Railway Project shall be as per the alignment plans given in Schedule A, Annex III. The Concessionaire is required to review and revalidate it with respect to his own design. The Concessionaire is permitted to modify the plan and profile so as to get the best fit designed alignment of the Railway Project within the Right of Way boundaries set by the Authority.

1.3 Geometric design and general features

1.3.1 Geometric design, gradients, curves and all other general features of the Railway Project shall be in accordance with provisions of the Indian Railway Permanent Way Manual.

1.3.2 The formation level at various chainages along the alignment is indicated in the project sheets. These shall be verified and corrected by the Concessionaire in the final alignment design in conformity with the Specification and Standards specified in the Permanent Way Manual.

¹⁷ The contents of this Annexure-I may be suitably modified to reflect project specific requirements.

1.4 Bridges

1.4.1 All bridges shall be designed and constructed in accordance with the design standards and specifications as per codes and manuals specified in Schedule-D.

1.4.2 All bridges shall be designed for the following minimum recurrence interval of floods:

a) For Important and Major Bridges: 1 in 100 years

b) For Minor Bridges: 1 in 50 years

1.4.3 Width and cross-sections features of bridges:

[Attach typical cross-section]

[Provide details if any bridge is to be designed to carry utility services]

1.4.4 Minimum size of RCC box shall be in accordance with the Specifications and Standards.

1.4.5 Important Bridges shall be constructed at the following locations:

[Attach GAD]

S. No.	Bridge No	Proposed Location	Waterway (m)	Height above bed-level (m)

1.4.6 Major Bridges shall be constructed at the following locations:

S. No.	Bridge No	Proposed Location	Waterway (m)	Height above bed-level (m)

1.4.7 Minor Bridges shall be constructed at the following locations:

S. No.	Bridge No	Proposed	Waterway	Height above
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		Location	(m)	bed-level (m)

1.4.8 RCC Box/ Pipe Culvert

RCC Box/ pipe culverts will be constructed at the following locations:

S. No.	Location (km)	Type of culvert	Waterway (m)	Length of barrel (m)

1.4.9 Railway flyovers

Railway Fly Overs shall be provided at the following crossings as per GAD attached:

S. No.	Bridge No	Crossing (Chainage)	Length (m)	Salient particulars

1.4.10 Road under bridges (RUB)

Road under-bridges (RUB) shall be provided at the following crossings as per GAD attached

S. No.	Bridge No	Crossing (Chainage)	Length of bridge (m)	Remarks

1.4.11 Road over bridges (ROB)

Road over bridges (ROB) shall be provided at the following crossings as per GAD attached:

S. No.	Bridge No	Location (Chainage)	Length of bridge (m)	Length of approach roads	Remarks

1.5 Track

1.5.1 The track layout shall be based on the provisions contained in the Indian Railways Permanent Way Manual [and specify other manuals, if any].

1.5.2 The final designs of the track layouts, including horizontal and vertical alignment, station yard layouts, LWR plans etc shall be reviewed by the Authority’s Engineer in accordance with the provisions of the Agreement.

1.6 Railway level crossings

The railway level crossings shall be provided at following locations:

S. No.	Chainage	LC No.	Class	Road Width

1.7 Track layouts in station yards

Station yards shall be constructed as per the final engineering scale plans.

[Site details showing the station yard drawings for all stations to be enclosed.]

1.8 Building Works:

All items of building works shall conform to specification of works of concerned zonal railway. The building work shall include electrical internal wiring with allied work, system electrical power supply arrangement with transformer/main distribution supply, sanitary fittings, sewerage system, water supply arrangement (bore wells, pump house, water tanks) and internal fittings, approach roads, street lighting, boundary wall, fencing, site levelling, landscape elements, water harvesting and other works incidental to buildings. Building works shall be deemed to include railway stations, staff quarters, service buildings, buildings required for installation of equipment for signalling, telecommunication and electrification works, and facilities along the railway line.

1.8.1 Railway stations

Railway stations shall be constructed at the following locations:
[Provide preliminary drawings and other details to explain the Authority's requirements]

S. No.	Name of Station	Centre line chainage	Nos. of platform and their individual length and width (m)	Minimum width of platform (m)	Nos. of foot over bridge with width (m)
(1)	(2)	(3)	(4)	(5)	(6)
Nos. of stairs on each platform	Lifts/ Escalators	PF Shelter (Nos.)*L*B	Washable Apron	Watering Line	Parking (Sq. Metre)
(7)	(8)	(9)	(10)	(11)	(12)

1.8.2 Service buildings

Service buildings shall be constructed at each station as follows:

[Provide preliminary drawings and other details to explain the Authority's requirements]

S. No.	Station	Service building	Area at ground floor level

1.8.3 Staff quarters

Construction and development of staff colony comprising of following types of staff quarters at each station:

[Provide preliminary drawings and other details to explain the Authority's requirements]

S. No.	Station	Type	Single/Multi-storey	No.	Remarks

1.8.4 Out-door power supply, distribution, and lighting works

[Provide details]

1.8.5 Water supply and distribution

Construction of bore wells, pump house, overhead tanks, etc

[Provide details]

1.8.6 Drainage system

Efficient drainage system for disposal of water from the buildings and for drainage of the area shall be provided.

[Provide details]

1.8.7 Sewerage system

Construction of sewerage system

[Provide details]

1.9 Pedestrian Bridges

Foot over bridges for pedestrians crossing railway track/station shall be constructed at as follows:

S. No.	Station/ Block Section	Length	Width	No. of staircase

1.10 Service roads/ internal roads/approach roads and footpaths

Service roads/ internal colony roads/approach roads and footpaths shall be constructed at the locations and for the lengths and widths indicated below:

S. No.	Road/Footpath	Location From km to km	Length (km)	Width	Remarks

1.11 Boundary walls, boundary pillars

[Provide details]

1.12 Signage information boards and posts

All signage, information boards and posts shall be provided which include train Indication Board (TIB), Coach guidance system (CGS), utility boards (such as cloak room, parcel, waiting rooms etc.) etc. in accordance with Good Industry Practice.

[Specify requirements and relevant specifications and standards]

1.13 Drainage along the railway line

Drainage system including surface and subsurface drains for the Railway Project shall be provided in accordance with the [specify relevant clauses and name of the manual]

1.14 Embankment/slope protection works

Requirement of retaining walls, boulder pitching, geo grid, turfing etc. shall be specified.

1.15 Supply of Materials and stores

Requirement of store depot/maintenance depot for permanent way, signalling, electrification etc. shall be as follows:

[Provide details of inventory for civil and track works for stores]

S. No.	Particulars	Quantity	Nos.

1.16 Compulsory afforestation and tree plantation

[Refer to the relevant orders of the Government Instrumentality and provide details of number of trees which are required to be planted by the Contractor as compensatory afforestation. Refer to the relevant paragraphs of the Manuals and state its provisions for tree plantation.]

1.17 Any other requirements:

[Specify with relevant details to explain the Authority’s requirements]

1.18 Change of Scope

The length of structures and bridges specified hereinabove shall be treated as an approximate assessment. The actual lengths as required on the basis of detailed investigations shall be determined by the Concessionaire in accordance with the Specifications and Standards. Any variations in the lengths specified in this Schedule-B shall not constitute a Change of Scope, save and except any variations in the length arising out of a Change of Scope expressly undertaken in accordance with the provisions of Article 13.

2. Signalling and telecommunication

2.1 Signalling works

2.1.1 All signalling works including Survey, design, supply, installation, testing and commissioning shall be executed in accordance with the provisions of the Indian Railway Signal Engineering Manual.

2.1.2 Signalling works at wayside stations

The details of signalling works at wayside stations are:

S N	Description of work	Details of wayside stations								
		Name of station	No of Lines	Std. of interlocking	Type of Signalling	Type of block working	Type of train detection system	Type of point operation & locking arrangement	Type of lifting & barrier locking arrangement	Details of siding
1	Survey, design, supply, installation, testing, manuals for new technology equipment installed each place, supply of completion drawings, and commissioning	i. ii. iii. iv.								

	at wayside stations									
2	<p>Inventory. Supply of signalling spares:</p> <p>2.1 Electronic Interlocking or Relay Interlocking equipment</p> <p>2.2 Power supply system</p> <p>2.3 Data logger system</p> <p>2.4 Axle counter system</p> <p>2.5 Signalling cables</p> <p>2.6 Power cables</p> <p>2.7 Relays</p> <p>2.8 Point machines with accessories</p> <p>2.9 Train Detection system</p> <p>2.10 On Board (Cab) equipment for TPWS system</p> <p>2.11 Line side equipment for TPWS system</p> <p>2.12 TMS (with remote operation system)</p> <p>2.13 Any other item/items for functioning of Signalling system as per contract requirement.</p> <p>2.14 Testing and measuring tools and equipment</p>	<p>[Specify the name of location(s) and the quantity of inventory to be supplied at each location]</p>	Quantity with unit							

	as determined in accordance with the manufacturer's manuals		
3	Integrated testing and commissioning		

2.1.3 Signalling works at major or junction stations:

The details of signalling works at major/Junction stations are:

S N	Description of work	Details of Major/Junction stations									
		Name of station	No of Lines	Std. of interlocking	Type of Signalling	Type of block working	Type of train detection	Type of point operation & locking	Type of lifting & barrier locking	Details of siding	Junction arrangement with adjacent
1	Survey, design, supply, installation, testing, manuals for new technology equipment installed for each place, supply of completion drawings, and commissioning of major/junction stations	i. ii. iii. iv.									
2	Inventory: Supply of signalling spares: List spares 2.1 to 2.14 as under paragraph 2.1.2 above.	[Specify the name of location(s) and the quantity of inventory to be supplied at each location]									
3	Integrated testing and										

commissioning			
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2.1.4 Block Signalling (BPAC/Token/Tokenless).

Details of block signalling (BPAC/Token/Tokenless) are:

S N	Description of work	Details of Block signalling (BPAC/Token/Tokenless)									
		Details of block section		System of Block working	Type of block signalling system (electronic, electrical or electromechanical)	Nominal length of each auto section	No. of aspects for automatic signalling	Type of train detection system	Provision of intermediate block signal	Token/Token less block working	Any other details (pl specify)
		Chainage (From)	Chainage (To)								
1	Survey, design, supply, installation, testing, manuals for new technology equipment installed for each place, supply of completion drawings, and commissioning of block signalling (BPAC/token/tokenless)										
2	Inventory: Supply of signalling spares: List spares 2.1 to 2.14 as under paragraph 2.1.2 above.	[Specify the name of location(s) and the quantity of inventory to be supplied at each location]		Quantity with unit							
3	Integrated testing and										

	commissioning			
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2.1.5 Train Protection and Warning System (TPWS)

The details of the Train Protection and Warning System are:

S N	Description of work	Details of Train Protection and Warning System						Single/ double line section	Any other details (pl specify)	
		Details of block section		On Board Equipment, Antenna,	Line side equipment					
		Chainage (From)	Chainage (To)		Wayside station	Junction station	Auto section			
1	Survey, design, supply, installation, testing, manuals for new technology equipment installed for each place, supply of completion drawings, and commissioning of train protection and warning system (TPWS)									
2	Inventory, Supply of signalling spares: List spares 2.1 to 2.14 as under paragraph 2.1.2 above.	[Specify the name of location(s) and the quantity of inventory to be supplied at each location]	Quantity with unit							
3	Integrated testing and commissioning									

2.1.6 Sections

[Specify meaning and description of section, and give each section a unique name.]

S N	Description of work	Details of Sections															
		Name of section	Operation Control Centre	Section single/ Double line	LC Gate	EI/PI/RRI (New/ Modification)	Train Detection (TC, Axle Counter, AFTC etc.)	Block Signalling	Block Proving Axle Counter	Point Operation and locking arrangement	Signal arrangement system	LC Gate interlocking	LC Gate telephone	Integrated Power supply at stations and UPS at OCC	Indoor/Outdoor Installation for IBS/IBH or ABS	Train Management System(TMS)/ Centralised Traffic Control	Any other details (pl specify)
1	Survey, design, supply, installation, testing, manuals for new technology equipment installed for each place, supply of completion drawings, and commissioning																
2	<p>Inventory: Supply of signalling spares:</p> <p>List spares 2.1 to 2.14 as under paragraph 2.1.2 above.</p>	[Specify the name of location (s) and the quantity of inventory to be supplied at each	Quantity with unit														

		location]					
3	Integrated testing and commissioning						

Construction must also include verification and validation of system installed and independent certification for maintenance and operation system during its life cycle. All other associated materials and works for completion not limited to items in the above table as required for execution of the signalling and telecom works to suit 25 KV has to be provided by the Contractor.

2.2 Telecommunication

2.2.1 All telecommunication works including survey, design, supply, installation, testing and commissioning shall be executed in accordance with the provisions of the Indian Railway Telecom Manual.

2.2.2 Optic fibre cable system

Optic fibre cable supply, laying in trench in all types of soil including cable laying through trenchless technique for road/road crossing, jointing, termination, testing and design, supply, installation, testing and commissioning of STM, P D/I Mux system including all associated control equipment to achieve the end goal .

S N	Description of work	Details of OFC system										
		Chainage		Name of stations	Type of STM equipment		Type of multiplexer	Power supply	Control office equipment with Power supply			Any other details
		From	To		Short Haul	Long haul			Way station	HQ	Emergency control	
1	Survey, design, supply, installation, testing, manuals for new technology equipment installed for each place, supply of completion drawings, and commissioning of optical fibre cable Communication system											

2	<p>Inventory: Supply of communication spares:</p> <p>2.1 Optical fibre cable with accessories</p> <p>2.2 HDPE duct with accessories</p> <p>2.3 Optical fibre Digital equipment's (STM with accessories)</p> <p>2.4 Digital Multiplexer equipment's (PDH with accessories).</p> <p>2.5 Power supply of STM/PDH with accessories</p> <p>2.6 Control office equipment with accessories</p> <p>(a) Way station</p> <p>(b) HQ</p> <p>(c) Power supply</p> <p>2.7 Emergency communication system with accessories</p> <p>2.8 Any other item/items for functioning of telecommunication system as per contract requirement.</p> <p>2.9 Testing and measuring tools and</p>	Quantity with unit										

	equipment as determined in accordance with the manufacturer's manuals	
3	Integrated testing and commissioning	

2.2.3 Six quad telecom cable

Six quad telecom cable supply and laying in trench in all types of soil including cable laying through trenchless technique for road/road crossing, jointing, termination and testing including provision of EC sockets at every km for emergency communication and Level crossing gate.

S N	Description of work	Details of 6 Quad telecom cable system				
		Chainage		Name of stations	LC gate No.	Any other details
		From	To			
1	Survey, design, supply, installation, testing, manuals for new technology equipment installed for each place, supply of completion drawings, and commissioning of 6 Quad telecom cable system					
2	Inventory: Supply of communication spares: 2.1 Six quad telecom cable and accessories 2.2 Emergency sockets with box and pins 2.3 Any other item/items for functioning of telecommunication system as per contract requirement 2.4 Testing and measuring tools and equipment as determined in accordance with the manufacturer's manuals	Quantity with unit				
3	Integrated testing and commissioning					

2.2.4 Mobile train radio communication

Survey, design, supply, installation, testing and commissioning of mobile train radio communication, including supply and installation of porta cabins/ service buildings, towers, power supply equipment and antenna etc.:

S N	Description of work	Details of Mobile Train Radio Communication system					
		Chainage		Name of station	No. of 3 direction base service station.	No. of 2 direction base service station	Any other Details
		From	To				
1	Survey, design, supply, installation, testing, manuals for new technology equipment installed for each place, supply of completion drawings, and commissioning of mobile train radio communication system						
2	<p>Inventory: Supply of communication spares:</p> <p>2.1 Master switching centre equipment</p> <p>2.2 Base switching centre equipment</p> <p>2.3 DT/Cab radio/Handheld</p> <p>2.4 Dispatch/Control terminals</p> <p>2.5 OPH</p> <p>2.6 GPH</p> <p>2.7 GSM Set</p> <p>2.8 Cab radio</p> <p>2.9 Any other item/items for functioning of telecommunication system as per contract requirement</p> <p>2.10 Testing and measuring tools and equipment as determined in accordance with the manufacturer's manuals</p>	Quantity with unit					
3	Integrated testing and commissioning						

2.2.5 Other locations

The details of supply, testing and commissioning of telecommunication equipment for other locations are:

(A)

S N	Description of work	Details of telecommunication equipment																						
		Station	LC Gate	Operation control centre(OCC)	Automatic signalling block hut	Single/-double line section	Optical fibre cable equipment	Control office equipment	Master switching center	Base switching center	DT/Cab Radio/ Handheld	Dispatcher/Control terminals	ODH	GPH	GSM set	CAB Radio	Master Clock system	Video surveillance System	Telephone exchange	EC Sockets	LC Gate Telephones	Earthing arrangements	Power supply equipment with	Any other Details
1	Survey, design, supply, installation, testing, manuals for new technology equipment installed for each place, supply of completion drawings, and commissioning of tele-communication equipment at specified locations																							

<p>2</p>	<p>Inventory: Supply of communication spares: 2..1 Optical fibre cable communication system 2.2 Mobile Radio communication system 2.3 CCTV system 2.4 Electronic Exchange system 2.5 Public address system 2.6 Passenger Information display system 2.7 Digital Clock system 2.8 Control office equipment's with accessories 2.9 Master switching centre equipment 2.10 Base switching centre equipment 2.11 DT/Cab radio/Handheld 2.12 Dispatch/Co ntrol terminals 2.13 OPH 2.14 GPH 2.15 GSM Set 2.16 Cab radio 2.17 Master clock system 2.18 Any other item/items for functioning of telecommunicati on system as per</p>	<p>Quantity with unit</p>
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	contract requirement. 2.19 Testing and measuring tools and equipment as determined in accordance with the manufacturer's manuals.	
3	Integrated testing and commissioning	

(B) Other Equipment

S N	Description of work	Details of telecommunication equipment											
		Station	LC Gate	CCTV	PA system	Passenger information	Electronic exchange	Digital clock				Any other Details	
1	Survey, design, supply, installation, testing, supply of manuals for new technology equipment installed for each place, supply of testing tools and testing equipment, completion drawings, and commissioning of tele-communication equipment												

2	Inventory:	Quantity with unit
	<p>Supply of communication spares:</p> <p>2..1 Optical fibre cable communication system</p> <p>2.2 Mobile Radio communication system</p> <p>2.3 CCTV system</p> <p>2.4 Electronic Exchange system</p> <p>2.5 Public address system</p> <p>2.6 Passenger Information display system</p> <p>2.7 Digital Clock system</p> <p>2.8 Control office equipment's with accessories</p> <p>2.9 Master switching centre equipment</p> <p>2.10 Base switching centre equipment</p> <p>2.11 DT/Cab radio/Handheld</p> <p>2.12 Dispatch/Control terminals</p> <p>2.13 OPH</p> <p>2.14 GPH</p> <p>2.15 GSM Set</p> <p>2.16 Cab radio</p> <p>2.17 Master clock system</p> <p>2.18 Any other item/items for functioning of telecommunicati</p>	

	on system as per contract requirement. 2.19 Testing and measuring tools and equipment as determined in accordance with the manufacturer's manuals.	
3	Integrated testing and commissioning	

All other associated materials and works for completion not limited to items in the above table as required for execution of the signalling and telecom works to suit 25 KV has to be provided by the Concessionaire.

2.3 Any other requirements of signalling and telecommunication:

[Specify with relevant details to explain the Authority's requirements]

[3. Electrification of existing railway line

3.1 Overhead Equipment (OHE)

[Specify scope of the OHE work]

3.1.1 Regulated conventional type OHE with normal contact wire height 5.80 Metre

S.N.	From Station to Station	km to km	Total Track km	Remarks

3.1.2 Regulated high rise type OHE with normal contact wire height 7.57 Metre

S.N.	From Station to Station	km to km	Total Track km	Remarks

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3.1.3 Regulated Tramway type OHE with normal contact wire height 5.80 metre

S.N.	From Station to Station	km to km	Total Track km	Remarks

3.1.4 Regulated tramway type high rise OHE with normal contact wire height 7.57 metre.

S.N.	From Station to Station	km to km	Total Track km	Remarks

3.1.5 Unregulated conventional type OHE with normal contact wire height 5.80 metre.

S.N.	From Station to Station	km to km	Total Track km	Remarks

3.1.6 Unregulated type OHE high rise with normal contact wire height 7.57 metre.

S.N.	From Station to Station	km to km	Total Track km	Remarks

3.2 25 KV Sectioning post (SP) and sub-sectioning post (SSP) (Switching Post)

S.N.	Location	Type of Switching	Remarks

		Post	

3.3 25 KV Booster Transformer and return conductor arrangement
 [Specify scope of booster transformer stations]

S.N.	From Station to Station	km to km	Length of RC (Metres)	Remarks

3.4 25 KV Auxiliary transformer stations

[Specify scope of auxiliary transformer stations]

S.N.	Location	Capacity	Quantity	Remarks

3.5 Traction sub-stations (TSS)

[Specify scope of TSS work]

S. N.	Location of TSS	Input Voltage	Number of Transformers	Capacity of each Transformer	Remarks

3.6 High voltage transmission line from grid sub-station to railway TSS

[Specify scope of work]

3.6.1 Overhead transmission line

S.N.	Location km to km	Total length in km	Nominal Voltage level	Single Circuit/ Double Circuit	3-Phase/ 2- Phase	Remarks

3.6.2 Monopole overhead transmission line

S.N.	Location km to km	Total length in km	Nominal Voltage level	Single Circuit/ Double Circuit	3-Phase/ 2- Phase	Remarks

3.7 Underground high tension cable transmission

S.N.	Location km to km	Total length in km	Nominal Voltage level	Single Circuit/ Double Circuit	3-Phase/ 2- Phase	Remarks

3.8 Bay augmentation work at grid sub-station
[Specify scope of work]

S.N.	Location	Nominal Voltage level	Number of bays	Remarks

3.9 Supervisory control and data acquisition system (SCADA).

[Specify scope of work]

S.N.	Item	Quantity	Remarks
1.	Remote Control Centre with SCADA Hardware and software		

2.	Modification of existing SCADA System		
3	SCADA Equipment at Traction Sub-Station		
4	SCADA Equipment at Switching Posts (SP/SSP)		

3.10 Various electrical general services works

[Specify scope of work]

3.11 Modification of HT power lines and crossings (raising of height)

[Specify scope of work]

Serial No.	Item	Nominal Voltage level	Single Circuit / Double Circuit	No of Phases	Designated current carrying capacity	Quantity	Remarks
1.	Track crossing						
2.	Along the Track						

3.12 Modification of HT power lines and crossings (replacement by UG cabling)

S.N .	Item	Nominal Voltage level	Single Circuit / Double Circuit	No of Phases	Designated current carrying capacity	Quantity	Remarks
1.	Track crossing						
2.	Along the track						

3.13 Modification of LT power lines and crossings (replacement by UG cabling) :

S.N	Item	Nominal Voltage level	Single Circuit / Double Circuit	No of Phases	Designated current carrying capacity	Quantity	Remarks
1.	Track crossing						
2.	Along the track						

3.14 Extension of LT power supply for CLS Work:

S.N.	Location	Current capacity/ size of conductor	Quantity	Remarks

3.15 Extension/Augmentation of electrical power supply arrangements and associated works

S.N.	Location	Load (KWH)	Remarks

3.16 Modifications of existing electrical works

3.16.1 List modifications to existing switching posts, if any.

3.16.2 List modifications to existing OHE, including dismantling of OHE, removal of brackets, cutting of masts, dismantling and removal of existing auxiliary transformer

3.16.3 List modifications to existing traction sub station, such as augmentation of bay, addition or replacement of traction transformer, circuit breakers etc.

3.17 Inventory electrical

[Specify details of tools, equipment, Materials for supply to stores]

3.18 Signalling system (for electrification works)

3.18.1 Modification to existing PI/RRI/EI systems and modification in signalling system of LC gates

All signalling works including design of signalling plan, route control chart or selection/control table, panel diagram, wiring/circuit diagram, application logic, interface details, cable route chart, cable core diagram, termination and equipment position diagram etc. as part of the modification to the existing signalling system along with supply, installation, testing and commissioning shall be executed in accordance with the provision of IRSEM and signal and Interlocking principles issued in the form of typical designs.

In addition to above, augmentation of existing service buildings to accommodate additional signalling equipment/ racks etc shall be carried out. The released materials shall be transported to the railway depot within the Site, as nominated by the Authority's Engineer.

(a) Modification in existing PI/RRI/EI systems.

S N	Description of work	Details of modifications															
		Name of station	No of Lines	Std of interlocking	Major (Junction)/ Wayside station	Relay type (metal to metal or metal to carbon)	Cables (Sig/Tele)	Type of Signal feed (local or remote)	Type of train detection system (relay, AC, AFTC Etc.)	Point Motor immunisation	Type of lifting barrier & locking arrangement	Earthing and protection	Power supply	Block working	Details of siding	Any other requirement	
1	Survey, Design, Supply, Installation, Testing, supply of manuals for new technology equipment for each place, supply of completion drawings, and commissioning of																
2	Supply of signalling	Name of station				Quantity with unit											

	<p>spares:</p> <p>2.1 Electronic Interlocking or Relay Interlocking equipment</p> <p>2.2 Power supply system</p> <p>2.3 Data logger system</p> <p>2.4 Axle counter system</p> <p>2.5 Signalling cables</p> <p>2.6 Power cables</p> <p>2.7 Relays</p> <p>2.8 Point machines with accessories</p> <p>2.9 Train Detection system</p> <p>2.10 Any other item/items for functioning of Signalling system as per contract requirement.</p> <p>2.11 Testing and measuring tools and equipment as determined in accordance with the manufacturer's manuals</p>		
3	Integrated testing and commissioning		

(b) Modification in existing LC gate:

S N	Description of work	Details of modifications						
		LC Gate No.	Type of lifting barrier locking arrangement	Cables (Sig/Tele)	Type of Signal feed (local or remote)	Earthing and protection	Power supply	Any other requirement
1	Survey, Design, Supply, Installation, Testing, supply of manuals for new technology equipment for each place, supply of completion drawings, and commissioning of							
2	<p>Supply of signalling spares:</p> <p>2.1 Electronic Interlocking or Relay Interlocking equipment</p> <p>2.2 Power supply system</p> <p>2.3 Data logger system</p> <p>2.4 Axle counter system</p> <p>2.5 Signalling cables</p> <p>2.6 Power cables</p> <p>2.7 Relays</p> <p>2.8 Train Detection system</p> <p>2.9 Any other item/items for functioning of Signalling system as per contract requirement.</p> <p>2.10 Testing and measuring tools and equipment as determined in accordance with the manufacturer's manuals</p>	LC gate No.		Quantity with unit				
3	Integrated testing and commissioning							

3.18.2 Commissioning of new Panel Interlocking/ Route Relay Interlocking

All signalling works including design of signalling plan, route control chart or selection/control table, panel diagram, wiring/circuit diagram, application logic, interface details, cable route chart, c core diagram, termination and equipment position diagram etc. as part of the detail design along with supply, installation, testing and commissioning shall be executed in accordance with the provision of IRSEM and signal and interlocking principles issued in the form of typical designs.

In addition to above, provision of new service buildings to accommodate signalling equipment, power supply equipment etc., shall be carried out.

Releasing and transporting the released materials to railway depot nominated by the Authority's Engineer.

S N	Description of work	Details of Major/Junction or Wayside stations										
		Name of station	No of Lines	Std. of interlocking	Type of Signalling	Junction (major)/ Wayside station	Type of block working	Type of train detection system	Type of point & locking arrangement	Type of lifting barrier & locking arrangement	Details of siding	Junction arrangement with adjacent stations
1	Survey, Design, Supply, Installation, Testing, supply of manuals for new technology equipment for each place, supply of completion drawings, and commissioning of											
2	Supply of signalling spares: 2.1 Electronic Interlocking or Relay Interlocking equipment 2.2 Power supply system 2.3 Data logger system 2.4 Axle counter system 2.5 Signalling cables 2.6 Power cables 2.7 Relays 2.8 Point machines with accessories 2.9 Train Detection system 2.10 On Board (Cab) equipment for TPWS system 2.11 Line side equipment for TPWS system 2.12 TMS (with remote operation system)	Name of station	Quantity with unit									

	<p>2.13 Any other item/items for functioning of Signalling system as per contract requirement.</p> <p>2.14 Testing and measuring tools and equipment as determined in accordance with the manufacturer's manuals</p>			
3	Integrated testing and commissioning			

3.18.3 Diversion of utilities like cables, location boxes and huts and lifting barriers etc., wherever necessary shall be done prior to taking up of any work in the vicinity of existing Signalling and Telecom systems.

3.18.4 All other associated materials and works for completion not limited to items in the above table as required for execution of the signalling and telecom works to suit 25 KV has to be provided by the Contractor.

3.19 Telecommunication (for electrification works)

3.19.1

a) Where optical fibre cable (OFC) and quad cable already exist in the section

Where optical fibre cable (OFC) and quad cable already exist in the section , scope of work includes supply , trenching and laying of 6 quad cables, jointing of quad cables for provision of emergency sockets in the section and SP/SSP/TSS /LC gates etc., transferring the existing communication circuits including block on new cables, supply and installation of power supply equipment, batteries and other telecom equipment, supply and installation of SDH and PD MUX equipment and their networking with the existing OFC link for augmenting existing OFC equipment at stations in the section, supply, installation and testing and commissioning of HQ and way station control equipment for giving various control phones at stations, SP/SSP/TSS etc., augmentation of existing service buildings as required, provision of cable huts and service buildings, protection of telecom lines entering 25 KV sub-station /switching posts, and protection against surge and lightning. The scope also includes masonry works for erection and installation of signalling equipment and all types of painting as per Railway Telecom Manual and standard practices. Supply of spares to the extent of 10% (minimum 1) of each type of equipment like SDH, PDMUX, control phones, emergency sockets etc.

All the materials not limited to above as required for execution of the signalling works to suit 25 KV has to be provided by the Concessionaire in accordance with the Good Industry Practice. The Concessionaire shall transport the released materials railway depot nominated by the Authority's Engineer.

b) Where OFC and quad cable does not exist in the section.

Where OFC and quad cable does not exist in the section, scope of work includes supply , trenching and laying of OFC and 6 quad cables, jointing of quad cables, splicing of OFC cable, provision of emergency sockets in the section and

SP/SSP/TSS /LC gates etc., transferring the existing communication circuits including block on new cables, supply and installation of power supply equipment , batteries and other telecom equipment, supply and installation of SDH and PD MUX equipment and their networking with the existing OFC link or forming new link if OFC is not existing in the section, commissioning of quad cable system , supply, installation and testing and commissioning of HQ and way station control equipment for giving various control phones at stations, SP/SSP/TSS etc., provision of cable huts and service buildings, protection of telecom lines entering 25 KV sub-station /switching posts, protection against surge and lightning . The scope also includes masonry works for erection and installation of signalling equipment and all types of painting as per Railway Telecom Manual and Good Industry Practice. Supply of spares to the extent of 10% (ten per cent) (minimum 1) of each type of equipment like SDH, PDMUX , control phones, emergency sockets, etc.

All the materials not limited to above as required for execution of the signalling works to suit 25 KV has to be provided by the Concessionaire.

On completion of above works, testing and commissioning of entire system in totality shall be carried out by the Concessionaire. The Concessionaire shall transport the released materials to railway depots nominated by the Authority's Engineer.

3.19.2 Quad cable work

The details of quad cable work are:

S N	Description of work	Details of 6 Quad telecom cable system					
		Chainage		Name of stations	LC gate No.	Loc of TSS/S P/SSP	Any other details
		From	To				
1	Survey, design, supply, installation, testing, supply of manuals for new technology equipment for each place, supply of completion drawings, and commissioning of 6 Quad telecom cable system						
2	Supply of communication spares: 2.1 Six quad telecom cable and accessories 2.2 Emergency sockets with box and pins 2.3 Any other item/items for functioning of telecommunication system as per contract requirement 2.4 Testing and measuring tools and equipment as determined in accordance with the manufacturer's manuals	Quantity with unit					
3	Integrated testing and commissioning						

3.19.3 Optic Fibre Cable work

The details of optic fibre cable work are:

S N	Description of work	Details of OFC system											
		Chainage		Name of stations	OF Cable	Type of STM equipment		Type of multiplexer	Power supply	Control office equipment with Power supply			Any other details
		From	To			Short Haul	Long haul			Way station	H Q	Emergency control equipment	
1	Survey, design, supply installation, testing, supply of manuals for each place, supply of completion drawings, and commissioning of optical fibre cable communication system												
2	<p>Supply of communication spares:</p> <p>2.1 Optical fibre cable with accessories</p> <p>2.2 HDPE duct with accessories</p> <p>2.3 Optical fibre Digital equipment's (STM with accessories)</p> <p>2.4 Digital Multiplexer equipment's (PDH with accessories).</p> <p>2.5 Power supply of STM/PDH with accessories</p> <p>2.6 Control office equipment with accessories</p> <p>(a) Way station</p> <p>(b) HQ</p> <p>© Power supply</p> <p>2.7 Emergency communication system with accessories</p> <p>2.8 Any other item/items for functioning of telecommunication system as per contract requirement.</p> <p>2.9 Testing and measuring tools and equipment as determined in accordance with the manufacturer's manuals</p>	Quantity with unit											
3	Integrated testing and commissioning												

3.19.4 Modification in passenger amenity works

The details of modification in passenger amenity works are:

S N	Description of work	Details of telecommunication equipment															
		Station	LC Gate	Mobile radio communication system	CCTV	PA system	Passenger information display system	Electronic exchange	Digital clock	Master Clock system	Video surveillance System	Telephone exchange	EC Sockets	LC Gate Telephones	Earthing arrangements	Power supply equipment with protection	Any other Details
1	Survey, Design, Supply, Installation, Testing, supply of manuals for new technology equipment for each place, supply of completion drawings, and commissioning of Telecommunication equipment																
2	Supply of communication spares: 2..1 Mobile Radio comm. system 2.1 CCTV system 2.4 Electronic Exchange system 2.5 Public address system 2.6 Passenger Information display system 2.7 Digital Clock system 2.8 Master clock system 2.9 Video surveillance system 2.10 Telephone exchange 2.11 EC Sockets 2.12 LC Gate telephones 2.13 Any other item/items for functioning of telecommunication system as per contract requirement. 2.14 Testing and measuring tools and equipment as determined in accordance with the manufacturer's manuals.	Quantity with unit															
3	Integrated testing and commissioning																

2	Inventory: Supply of communication spares:	Quantity with unit
	2.1 Optical fibre cable communication system 2.2 Mobile Radio communication system 2.3 CCTV system 2.4 Electronic Exchange system 2.5 Public address system 2.6 Passenger Information display system 2.7 Digital Clock system 2.8 Control office equipment's with accessories 2.9 Master switching centre equipment 2.10 Base switching centre equipment 2.11 DT/Cab radio/Handheld 2.12 Dispatch/Control terminals 2.13 OPH 2.14 GPH 2.15 GSM Set 2.16 Cab radio 2.17 Master clock system 2.18 Any other item/items for functioning of telecommunicati	

<p>on system as per contract requirement. 2.19 Testing and measuring tools and equipment as determined in accordance with the manufacturer's manuals.</p>	
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All other associated materials and works for completion not limited to items in the above table as required for execution of the signalling and telecom works to suit 25 KV has to be provided by the Concessionaire.

3.20 Civil works (for electrification works)

3.20.1 General

Civil works include building works (staff quarters, service building, tower wagon shed and siding, platform shed) raising height of FOB/ROB and any other work necessary for completion of the electrification works.

3.20.2 Staff quarter

Construction and development of staff colony comprising of following types of staff quarters including electrical internal wiring with allied work, electrical power supply arrangement with transformer/main distribution supply, sewerage system, water supply arrangement, augmentation of water supply, provision of bore well with electrical pump and pump house, approach road, levelling and earth filling of land, barbed wire fencing, boundary wall, development of lawn, rain water harvesting, street lighting arrangement etc.

S. N.	Location	Type of quarters	Single storey/multi-storey building	No. of quarters
		Type-II		
		Type-III		

		Type-IV		
		Type-V		

3.20.3 Tower wagon shed and siding:

Construction of tower wagon shed and siding including inspection pit, earthwork, approach road, water supply arrangement, ballast supply and its spreading, permanent way work with all Concessionaire's permanent way material for M+7 sleeper density with 60 Kg (90 UTS) rail and sleeper (Drg. No. T/2496), track connection with main line including thermit welding, insertion of glued joint, internal electrical wiring with allied works and electrical power supply arrangement with transformer/main distribution supply, as per the Schedule D.

Description of permanent way associated with the above work is:

S. No.	Location	Length of track	No. of turnout and derailing switch with sleepers, rail components and fittings	No. of glued joint

3.20.4 Service buildings

Construction of service buildings including electrical internal wiring with allied work, electrical power supply arrangement with transformer/main distribution supply, sewerage system, water supply arrangement, augmentation of water supply, provision of bore well with electrical pump and pump house, approach road, levelling and earth filling of land, boundary wall, street lighting arrangement etc.

Sr. no.	Description of service building	Location	Plinth area
	Administrative Offices		
	Supervisor's office and store		
	Remote Control Centre		
	OHE Depot		
	OHE and PSI depot		

3.20.5 Trip shed and siding:

Construction of trip shed and siding including inspection pit, earthwork, water supply arrangement, ballast supply and its spreading, Permanent way work with all Concessionaire's permanent way material for M+7 sleeper density with 60 Kg (90 UTS) rail and sleeper (Drg. No. T/2496), track connection with main line including thermit welding, insertion of glued joint, approach road, levelling and earth filling of land, street lighting arrangement, internal wiring with allied works and electrical power supply arrangement with transformer/main distribution supply.

Description of permanent way associated with the above work is:

S. No.	Location	Length of track	No. of turnout and derailing switch with sleepers, rail components and fittings	No. of glued joint

3.20.6 Raising height of FOB

Raising height of FOB with running out of ramp up to specified height including material required for this work, design and drawings and temporary arrangement drawing adhering approved FOB drawing.

Sr. no.	Location	FOB no.	Existing height	Height to be raised

3.20.7 Raising height of ROB

Raising height of ROB with running out of approach road up to specified height including material required for this work, design and drawings and Temporary arrangement drawing adhering approved ROB drawing.

Sr. no.	Location	ROB no.	Existing height	Height to be raised

3.20.8 Modification of platform shed

Modification of platform shed up to specified height including material required for this work, adhering approved cover over platform drawing in connection with railway electrification works.

Sr. no.	Location	Length of shed	Existing height	Height to be raised

3.20.9 Other works

Provide details of other works (sample list below)

- (a) Service roads for traction sub station and switching posts,
- (b) Tree plantation
- (c) Fencing
- (d) Bore wells
- (e) Pump house
- (f) General power supply sub-station
- (g) Number plates
- (h) [others (to be specified)]

SCHEDULE - C
(See Clause 2.1)

PROJECT FACILITIES¹⁸

1 Project Facilities

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

Civil works, signalling and telecom

- a) Subordinate rest house
- b) Officers rest house
- c) Tree plantation;
- d) Sub stations
- e) Lighting
- f) Water harvesting
- g) Project network with project monitoring software like MS project along with closed user telecom group, fax and e-mail facilities and mobile communication network for project monitoring.
- h) [Others to be specified]

Railway electrification

- a) Officers' rest house
- b) Camp office for authority
- c) Subordinate rest house
- d) Danger and caution boards
- e) Protective screens
- f) Earthing arrangement for structures

2 Description of Project Facilities

Each of the Project Facilities is described below:

S. No.	Project Facility	Location	Design Requirements	Other essential details

Note: Provide adequate details of each Project Facility to ensure their design and completion in accordance with the project-specific requirements and the provisions of the Manuals.

¹⁸ This Schedule may be suitably modified to reflect project specific requirements.

SCHEDULE - D

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1 Construction

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-D for construction of the Railway Project. The time limit for the review and clearances by the Authority for design and drawings submitted by the Concessionaire shall be as indicated in Annexure-II.

2 Design Standards

The Railway Project including Project Facilities shall conform to design requirements set out in the following documents:

[Indian Railways Permanent Way Manual, Indian Railway Bridge Manual, Indian Railway Schedule of Dimensions & relevant IRS Specifications referred in the Manual, Indian Railway Signalling Engineering Manual, Indian Railway Telecom Manual, AC Traction Manual, Rules for Opening Railways]

[Note: Specify the relevant Manual, Specifications and Standards]

3 Latest Version

Latest version of the Manuals, Specifications and Standards including the amendments notified/published by the Base Date shall be considered applicable.

4 Terms used in Manuals

The terms [‘Inspector’, ‘AEE’, ‘DE’] used in the Manuals shall be deemed to be substituted by the term “**Authority’s Engineer**”; to the extent it is consistent with the provisions of the Agreement.

5 Absence of specific provision

In the absence of any specific provision on any particular issue in the aforesaid Manuals, Specifications, or Standards, the following standards shall apply in order of priority

[Bureau of Indian Standards (BIS)

Euro Codes or British Standards or American Standards

Any other specifications/standards proposed by the Concessionaire and reviewed by the Authority’s Engineer.]

6 Alternative Specifications and Standards

- 6.1 The requirements specified in the Manuals are the minimum. The Concessionaire shall, however, be free to adopt international practices, alternative specifications, materials and standards to bring in innovation in the design and construction provided they are better or comparable with the standards prescribed in the Manuals. The specifications and techniques which are not included in the Indian Railway Manuals/ RDSO specifications shall be supported with authentic specifications and standards specified in paragraph 5 above. Such a proposal shall be submitted by the Concessionaire to the Authority's Engineer. In case, the Authority's Engineer is of the opinion that the proposal submitted by the Concessionaire is not in conformity with any of the international standards or codes, then he shall record his reasons and convey the same to the Concessionaire for compliance.
- 6.2 For Signalling and Telecommunication system, in case the Concessionaire is offering alternative specifications, materials and standards, the same should be already in use on a passenger carrying service anywhere in the world at speed more than 100KMPH and are also in operation for more than 2 years. It shall be adopted on Indian Railway using the concept of Cross Approval/Cross acceptance, which form part of the type approval guidelines already being followed by RDSO. The process shall also require Validation from an Independent Safety Assessor (ISA). Further the safety Integrated requirement/level of the system being offered should be SIL 4.

Annex - I
(Schedule-D)

Specifications and Standards for Construction¹⁹

1 Specifications and Standards

All Materials, works and construction operations shall conform to the following manuals:

1.1 For civil works:

- (a) Indian Railways Permanent Way Manual
- (b) Indian Railway Bridge Manual
- (c) Indian Railway Schedule of Dimensions
- (d) The relevant IRS Specifications referred to in the above documents listed at (i), (ii) and (iii)
- (e) Specifications of Works of concerned zonal railway
- (f) In case of any contradiction in the various codal provisions, the order of precedence shall be as follows:-
 - aa) Provisions of this Annex I.
 - bb) IRS Codal provisions
 - cc) IRC Codal provisions
 - dd) IS (BIS) Codal provisions

1.2 For signalling and telecommunication works:

- (a) Indian Railway Signal Engineering Manual for signalling; and
- (b) Indian Railway Telecom Manual for telecommunication works.

1.3 For electrification works:

- (a) Indian Railways Manual AC Traction, Volume-II Part-I and Volume-II Part-II.
- (b) Manual of Standards & Specification for Railway Electrification
- (c) Indian Railways Standards of Dimension

¹⁹ The contents of this Annexure-I may be suitably modified to reflect project specific requirements.

2 Deviations from the Specifications and Standards

[Notwithstanding anything to the contrary contained in Paragraph 1 above, the following Specifications and Standards shall apply to the Railway Project, and for purposes of this Agreement, the aforesaid Specifications and Standards shall be deemed to be amended to the extent set forth below:]

[Specify the deviations, if any]

[**Note:** Deviations from the aforesaid Specifications and Standards shall be listed out here. Such deviations shall be specified only if they are considered essential in view of project-specific requirements.]

Annex - II
(Schedule-D)

(See Clause 11.2.7(c))

Time Schedule for Review of Drawings by the Authority:

Sl. No.	Item	Preparation	Authority's Review with time limit	Review by Open Line/RDSO
1.	Alignment Design Report	Concessionaire	CE/C (45 days)	Copy to CE/P&D to give remarks in 30 days, if any.
2.	L Section	Concessionaire	CE/C (45 days)	Copy to CE/P&D to give remarks in 30 days, if any.
3.	LWR Plans	Contractor	CE/C (45 days)	Copy to CTE to give remarks in 30 days, if any.
4.	Design basis report for important bridges	Contractor	CE/C (60 days)	CBE and RDSO to give remarks in 45 days.
5.	GAD of important bridges	Contractor	CE/C (45 days), CBE and RDSO to give remarks in 30 days	Contractor to submit GAD after clearance of design basis report.
6.	GAD of major and minor bridges, affecting the existing bridge (requiring load sharing or imposition of SR during construction)	Contractor	CE/C (45 days)	Copy to CBE to give remarks in 30 days, if any.
7.	GAD of major and minor bridges (without any reduction in waterway/vertical clearance and not affecting the existing bridge)	Contractor	CE/C (30 days)	
8.	Structural drawings of important and major bridges	Contractor	CE/C (30 days)	
9.	Structural drawings of minor bridges	Contractor	Dy.CE/C (30 days)	
10.	GADs of ROBs/RUBs	Dy.CE/C	CE/C and State Authority	To be approved before invitation of tender.
11.	Structural Drawings of ROBs/RUBs	Contractor	CE/C (30 days)	
12.	GADs of FOB	Contractor	CE/C (45 days)	Copy to CBE and DRM to give remarks in 30 days, if any.

Sl. No.	Item	Preparation	Authority's Review with time limit	Review by Open Line/RDSO
13.	Structural Drawings of FOBs	Concessionaire	CE/C (30 days)	
14.	Schematic Yard Plans	Dy.CE/C	CE/C and CTPM	This needs to be done before invitation of tender.
15.	Engineering Scale Plans (ESPs)	Dy.CE/C	CE/C	Approval by Divn. & Open Line HQ. To be furnished to the Concessionaire within 6 months of Appointed Date.
16.	Signal Interlocking Plans (SIPs) and Route Control Charts (RCCs)	Contractor	CE/C and CSTE/C	Approval by Divn. & Open Line HQ, to be furnished to the Concessionaire within 4 months of approval of ESPs or within 1 year of Appointed Date, whichever is earlier.
17.	Cable Route Plan	Concessionaire	CE/C and CSTE/C (45 days)	
18.	Building Plans	Contractor	CE/C (45 days)	Copy to CE/P&D and DRM to give remarks in 30 days, if any.
19.	Drainage Plans	Contractor	Dy.CE/C (30 days)	
20.	Protection Work Design and Drawings	Contractor	CE/C (30 days)	

Time Schedule for Review of Drawings by the Authority for electrification works:

Sl. No.	Item	Preparation	Authority's Review with time limit	Review by Open Line/RDSO
1.	Final Layout Plan based on Pegging Plan supplied by Railway	Concessionaire	CPM/RE (21 days)	NIL
2.	Cross Sectioning Drawings	Contractor	CPM/RE (21 days)	NIL
3.	Structure Erection Drawings	Contractor	CPM/RE (21 days)	NIL
4.	Long Section drawings of OHE under over line structures and overhead crossings	Contractor	CPM/RE(21 days)	NIL
5.	Other design and drawings where there is any deviation from RDSO standards	Contractor	CPM/RE(15 days)	NIL
6.	As erected SED and CSD	Contractor	CPM/RE (30 days)	NIL
7.	Any special arrangement, including bridge masts, FOB/ROB modification, or structural modifications.	Contractor	CPM/RE (45 days)	CEE of the concerned Railway. CBE in case of bridge masts, FOB/ROB, engineering structure modification (CEE or CBE to review and return to CPM within 30 days)
8.	All PSI Drawings/Designs	Concessionaire	CPM/RE (21 days)	NIL
9.	Relay setting calculation of TSS	Contractor	CPM/RE (21 days)	Sr DEE (TRD) of concerned Division. (Review to be returned to CPM/RE within 14 days)
10.	HT Crossing and LT crossing modifications	Contractor	CPM/RE (45 days)	Sr DEE(TRD) of concerned Division (Review and return to CPM/RE within 30 days).
11.	Bonding Plan of Yard Area	Contractor	CPM/RE (28 days)	Sr DEE(TRD) of concerned Division (Review and return within 21 days to CPM/RE)

12.	Signalling Plan for each interlocked station, including interlocked level crossings situated outside station limits and inter locked mid-section sidings.	Contractor	CPM/RE or CSTE/RE(90 days)	Divn/HQ of concerned Railway. (within 75 days to CPM/RE or CSTE/RE)
13.	Locking Table and locking diagrams for each interlocking frames, station master's slide control, frame, interlocking key box, power frame with mechanical locking.	Contractor	CPM/RE or CSTE/RE(90 days)	Divn/HQ of concerned Railway. (within 75 days to CPM/RE or CSTE/RE)
14.	Selection Table for each EI/Relay Interlock Station	Contractor	CPM/RE (60 days)	NIL
	All other Signalling/Telecom Drawings/Designs	Contractor	CPM/RE or CSTE/RE 9 60 days)	NIL
15.	All other drawings not mentioned above, where mandatory review by Railway is necessary to comply with provision of Manuals/Codes.	Contractor	21 days where CPM/RE is approving Authority. 45 days where approval has to be taken from Open Line Railway.	As per the case.

Note: All other drawings/designs which are not mentioned herein will fall under the review of Authority's Engineer (Dy. CEE/ Dy. CE/ Dy. CSTE as the case may be) and the time limit thereof will be as per the terms and conditions mentioned in the Agreement.

SCHEDULE - E

(See Clause 4.1.8(a))

APPLICABLE PERMITS

1 Applicable Permits

1.1 The Contractor shall obtain, as required under Applicable Laws, the following Applicable Permits:

- (a) Permission of the State Government for extraction of boulders from quarry;
- (b) Permission of Village Panchayats and Pollution Control Board for installation of crushers;
- (c) Licence for use of explosives;
- (d) Permission of the State Government for drawing water from river/reservoir;
- (e) Licence from inspector of factories or other competent Authority for setting up batching plant;
- (f) Clearance of Pollution Control Board for setting up batching plant;
- (g) Clearance of Village Panchayats and Pollution Control Board for setting up asphalt plant;
- (h) Permission of Village Panchayats and State Government for borrow earth; and
- (i) Any other permits or clearances required under Applicable Laws.

1.2 Applicable Permits, as required, relating to environmental protection and conservation shall have been or shall be procured by the Authority in accordance with the provisions of this Agreement.

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SCHEDULE - F

(See Clauses 8.1.1)

FORM OF BANK GUARANTEE

Annex-I

(See Clause 8.1.1)

Performance Security

[The General Manager],

....., [Railway],

.....

WHEREAS:

- (A) (insert name and address of the contractor) (hereinafter called the “**Concessionaire**”) and (insert name and address of the project authority), (hereinafter called the “**Authority**”) have entered into an agreement (hereinafter called the “**Agreement**”) for the construction of the new railway line between-..... in the Railway zone on Annuity basis, subject to and in accordance with the provisions of the Agreement
- (B) The Agreement requires the Concessionaire to furnish a Performance Security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement) in a sum of Rs..... cr. (Rupees crore) (the “**Guarantee Amount**”).
- (C) We, through our branch at (the “**Bank**”) have agreed to furnish this bank guarantee (*hereinafter called the “**Guarantee**”*) by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and undertakes to pay to the Authority upon occurrence of any failure or default in the due and faithful performance of all or any of the Concessionaire’s obligations under and in accordance with the provisions of the Agreement during the Construction Period under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer not below the rank of [*** in the ***] Railway, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Concessionaire is in default shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the earlier of the 1st (first) anniversary of the Appointed Date or compliance of the conditions specified in paragraph 8

below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 30% (thirty per cent) of the Contract Price which is deemed to be Rs. cr. (Rupees crore) for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security alongwith the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.

SCHEDULE - G
(See Clause 11.2.7)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 11.2 of this Agreement, the Concessionaire shall furnish to the Authority's Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-G.

2 Additional Drawings

If the Authority's Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Authority's Engineer, as if such drawings formed part of Annex-I of this Schedule-G.

Annexure-I

(Schedule-G)

List of Drawings

List of Drawings and Documents to be furnished by the Concessionaire shall include, but not be limited to:

1. General & Civil Engineer:

- (a) General map of the country traversed by the Project, scale about 20 km to 1 cm;
- (b) Index map, scale about 1 km to 1 cm;
- (c) Index Plan and Sections prepared in accordance with the terms of Engineering Code;
- (d) Schematic Plans of Station Yards;
- (e) General arrangement drawings of Structures; and
- (f) River training/ Protection work.
- (g) Details of level Crossing and RUB/LHS and RFOs.
- (h) Station Yard Layout including details of connectivity with existing yards
- (i) Station Building including cabins, approach connectivity etc.
- (j) Details of Track Structure & its component.
- (k) Details of Integrated Maintenance Depots (IMD & ISMD) if any.
- (l) Details of existing utilities in Row and plan for their shifting.

2. Signal Engineer:

- (a) Signal interlocking plan (station/auto huts/gate huts)
- (b) Route Control table (station/auto huts/gate huts)
- (c) Panel/ VDU diagram (station/ gate huts)
- (d) Cable Core Chart.
- (e) Cable Route Plan (Separate for station & blocks sections)
- (f) Power Supply Diagram (station/auto huts/ control)
- (g) Equipment sizing (station/ auto huts/gate huts/control)
- (h) Equipment lay out and details including cable troughs required(station/ auto huts/gate huts/control)
- (i) Track circuit diagram (station/ auto huts/gate huts/control)
- (j) Bonding plan (station/ auto huts/gate huts/control)
- (k) Circuit Diagrams.
- (l) Station/Gate working Rule/Rule diagrams
- (m) Equipment Rack details
- (n) Cable Termination Rack Diagram
- (o) Fuse Details
- (p) Location/junction boxes lay out & wiring details
- (q) Lightning, surge protection & earthing plan.

3. Telecommunication Engineering:
 - (a) Location and connectivity of all equipment's and cables
 - (b) Schematic and wiring diagrams
 - (c) Cable core plan and numbering scheme
 - (d) Equipment mounting details
 - (e) Cable route drawings
 - (f) Layouts in equipment racks, in equipment rooms, trackside, and all other equipment locations
 - (g) Channelling plan.

4. Electrical Engineer (Traction):
 - (a) General arrangement of the Traction substation for (25 KV) system single transformer and the double transformer with incoming as 220 KV or 132 KV 3 phase. (These substations will be remotely controlled and operated)
 - (b) General arrangement of SP (Sectioning Post) with the autotransformer. (These substations will be remotely controlled and operated)
 - (c) General arrangement of the SSP (Sub sectioning post) with the autotransformer. (These substations will be remotely controlled and operated)
 - (d) Power supply arrangement for (25 KV) AT system and Sectioning drawing for the traction arrangement.
 - (e) Power supply arrangement for the signals at the stations (Auxiliary transformer and the arrangement of 230 volt supply)
 - (f) Typical layout of the control room at the traction substation SP, SSP.
 - (g) Typical layout of the remote control centre.
 - (h) General arrangement of the implementation of the SCADA system.
 - (i) Earthing arrangement at the TSS, SP and SSP.
 - (j) Typical arrangement of the regulated OHE for (25 KV) system with the feeder arrangement.
 - (k) Power supply arrangement with IR at interface point.

5. Electrical Engineer (General Power supply):
 - (a) General arrangement of the 11/33/66 KV substations for the station and the service buildings.
 - (b) General arrangement of the distribution of the 415 V 50 Hz supply to various loads

6. Tabulated details which shall consist of important characteristics of the railway or a portion of railway to be constructed, which shall, as may be applicable, include, but not be limited to the following:
 - (a) Curve Abstract;
 - (b) Gradient abstract;
 - (c) Bridge abstract;

- (d) Important bridges-particulars of waterway and construction;
- (e) Ballast and permanent way;
- (f) Station and station sites;
- (g) Station accommodation;
- (h) Station machinery;
- (i) Level crossing abstract;
- (j) Brief particular of tractions installations;
- (k) Power supply installation abstract;
- (l) Traction maintenance depot abstract;
- (m) Restricted overhead equipment clearance abstract; and
- (n) Electrical crossing over railway track abstract;

SCHEDULE - H
(See Clause 11.3.2)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction period, the Concessionaire shall comply with the requirements set forth in this Schedule-H for each of the Project Milestones and the **Scheduled Completion Date**. Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the 240th (two hundred and fortieth) day from the Appointed Date (the “**Project Milestone-I**”).

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Railway Project and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 10% (ten per cent) of the Contract Price.

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the 480th (four hundred and eightieth) day from the Appointed Date (the “**Project Milestone-II**”).

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have continued with construction of the Railway Project and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 35% (thirty five per cent) of the Contract Price.

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the [700th (seven hundredth)] day from the Appointed Date (the “**Project Milestone-III**”).

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have continued with construction of the Railway Project and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 70% (seventy per cent) of the Contract Price.

5 Scheduled Completion Date

5.1 The Scheduled Completion Date shall be the [900th (nine hundredth)] day from the Appointed Date.

5.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed construction in accordance with this Agreement.

6 Extension of time

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

—

SCHEDULE - I

(See Clause 13.1.2)

Tests on Completion

1 Schedule for Tests

- 1.1 The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of construction, notify the Authority's Engineer and the Authority of its intent to subject the Railway Project to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to the Authority's Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of Works.
- 1.2 The Concessionaire shall notify the Authority's Engineer of its readiness to subject the Railway Project to Tests at any time after 10 (ten) days from the date of such notice, and upon receipt of such notice, the Authority's Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Authority's Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 12 and this Schedule-I.

2 Tests

- 2.1 Visual and physical test: The Authority's Engineer shall conduct a visual and physical check of construction to determine that all works and equipment forming part thereof conform to the provisions of this Agreement. The physical tests shall include [***].
- 2.2 Integrated Testing of system followed by a period of trial running. The test sequence may be as shown below:-
 - a) Tests on Equipment
 - b) Installation Test and sub-system individually
 - c) System Integrated Test
 - d) Final Acceptance Test
 - e) Trial Running
- 2.3 Sanction of Commissioner of Railway Safety (CRS) is required before opening of track in terms of Chapter XIII of Indian Railway Permanent Way Manual.
- 2.4 [Riding quality of track and recording of various track parameters on electronic track recording car will be arranged and run by the Authority. This run will be scheduled after the floating parameters recorded are found to be within acceptable limits. The TGI value of this trial run shall be more than (specify value)].
- 2.5 Tests for bridges: All major and minor bridges shall be subjected to the tests as prescribed in Specifications and Standards in Schedule D.

- 2.6 Other tests: The Authority's 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 Railway Project with Specifications and Standards.
- 2.7 Environmental audit: The Authority's Engineer shall carry out a check to determine conformity of the Railway Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.8 Safety Audit: The Authority's Engineer shall carry out, or cause to be carried out, a safety audit to determine conformity of the Railway Project with the safety requirements and Good Industry Practice.

3 Agency for conducting Tests

All Tests set forth in this Schedule-J shall be conducted by the Authority's Engineer or such other agency or person as it may specify in consultation with the Authority.

4 Completion Certificate

Upon successful completion of Tests, the Authority's Engineer shall issue the Provisional Certificate in accordance with the provisions of Article 13. For the avoidance of doubt, the Completion Certificate shall not be issued by the Authority's Engineer unless authorisation of the Commissioner for Railway Safety has been obtained.

—

SCHEDULE - J

(See Clause 13.2 and 13.4)

PROVISIONAL CERTIFICATE

- 1 I/We, (Name of the Authority’s Engineer), acting as the Authority’s Engineer, under and in accordance with the Agreement dated (the “**Agreement**”), for construction of the section (km to km ...) in the State of in- Railway (the “**Railway Project**”) on Annuity basis through (Name of Concessionaire), hereby certify that the Tests in accordance with Article 12 of the Agreement have been undertaken to determine compliance of the Railway Project with the provisions of the Agreement.
- 2 Certain minor works are incomplete and these are not likely to cause material inconvenience to the Users of the Railway Project or affect their safety or the movement of rail traffic in any manner. These works have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete all such works in the time and manner set forth in the Agreement.
- 3 In view of the foregoing, I/We am/are satisfied that the Railway Project from km to km can be safely and reliably placed in service of the Authority for railway freight and passenger traffic, subject to authorisation by the Commissioner of Railway Safety in accordance with Applicable Laws. In terms of the Agreement, the Railway Project is hereby provisionally declared fit for entry into operation on this the day of 20.....

ACCEPTED, SIGNED, SEALED
AND DELIVERED
For and on behalf of
CONTRACTOR by:
by:

SIGNED, SEALED AND
DELIVERED
For and on behalf of
AUTHORITY’S ENGINEER

(Signature)

(Signature)

COMPLETION CERTIFICATE

1 I/We, (Name of the Authority's Engineer), acting as the Authority's Engineer, under and in accordance with the Agreement dated (the "**Agreement**"), for construction of thesection (km to km) of in the State of in- Railway (the "**Railway Project**") on Annuity basis through (Name of Concessionaire), hereby certify that the Tests in accordance with Article 12 of the Agreement have been successfully undertaken to determine compliance of the Railway Project with the provisions of the Agreement, and the authorisation by the Commissioner for Railway Safety under Applicable Laws has been obtained.

2 It is certified that, in terms of the aforesaid Agreement, all works forming part of Railway Project have been completed, and the Railway Project is hereby declared fit for entry into operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of

the Authority's Engineer by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE - K
(See Clause 17.1.1)

SELECTION OF AUTHORITY'S ENGINEER

1 Selection of Authority's Engineer

- 1.1 Generally, a railway officer of Selection Grade (SG)/Junior Administrative Grade (JAG) shall be appointed as Authority's Engineer.

2 Terms of Reference

The Terms of Reference for the Authority's Engineer (the "TOR") shall substantially conform with Annex-I to this Schedule-K.

Annex – I
(Schedule - K)

DUTIES & RESPONSIBILITIES FOR AUTHORITY’S ENGINEER

1 Scope

- 1.1 These Duties & Responsibilities (DR) shall apply to construction and maintenance (wherever applicable) of the Railway Project.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this DR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this DR.
- 2.3 The rules of interpretation contained in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this DR.

3. General

- 3.1 The Authority’s Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.
- 3.2 The Authority’s Engineer shall perform the duties and exercise the authority in accordance with the provisions of this Agreement, but subject to obtaining prior written approval of the Authority (where Authority’s Engineer is designated as the Authority, the compliance of these conditions have to be ensured by him/her) before determining:
- (a) any Time Extension;
 - (b) any additional cost to be paid by the Authority to the Concessionaire;
 - (c) the Termination Payment;
 - (d) providing Power Block or Traffic Block to the Concessionaire;
 - (e) approval of signalling plan and signalling plan and route control chart;

SCHEDULE - L
(See Clause 21.1)

INSURANCE

1. Insurance during Construction Period

1.1 The Concessionaire shall effect and maintain at its own cost, from the Appointed Date till the date of issue of the Completion Certificate, the following insurances for any loss or damage occurring on account of Non Political Event of Force Majeure, malicious act, accidental damage, explosion, fire and terrorism:

- (a) insurance of Works, Plant and Materials and an additional sum of [15% (fifteen per cent)] of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature; and
- (b) insurance for the Concessionaire's equipment and Documents brought onto the Site by the Concession, for a sum sufficient to provide for their replacement at the Site.

1.2 The insurance under paragraph 1.1 (a) and (b) above shall cover the Authority and the Concessionaire against all loss or damage from any cause arising under paragraph 1.1 other than risks which are not insurable at commercial terms.

2. Insurance for Concessionaire's Defects Liability

The Concessionaire shall effect and maintain insurance cover for the Works from the date of issue of the Completion Certificate until the end of the Defects Liability Period for any loss or damage for which the Concessionaire is liable and which arises from a cause occurring prior to the issue of the Completion Certificate. The Concessionaire shall also maintain other insurances for maximum sums as may be required under Applicable Laws and in accordance with Good Industry Practice.

3. Insurance against injury to persons and damage to property

3.1 The Concessionaire shall insure against its liability for any loss, damage, death or bodily injury, or damage to any property (except things insured under Paragraphs 1 and 2 of this Schedule) or to any person (except persons insured under Clause 21.9), which may arise out of the Concessionaire's performance of this Agreement. This insurance shall be for a limit per occurrence of not less than the amount specified below with no limit on the number of occurrences.

The insurance cover shall be not less than: Rs. [.....]

- 3.2 The insurance shall be extended to cover liability for all loss and damage to the Authority's property arising out of the Concessionaire's performance of this Agreement excluding:
- (a) the Authority's right to have the construction works executed on, over, under, in or through any land, and to occupy this land for the Works; and
 - (b) damage which is an unavoidable result of the Concessionaire's obligations to execute the Works.

4. Insurance to be in joint names

The insurance under paragraphs 1 to 3 above shall be in the joint names of the Concessionaire and the Authority.

—

SCHEDULE - M

(See Clauses 5.7)

Provision of Traffic Blocks and Power Blocks

1. Provision of Traffic Blocks and Power Blocks

- 1.1 The authority shall provide Power Blocks or Traffic Blocks or Power Blocks, or both, during day or night, as the case may be, to enable the Concessionaire to execute the construction works of overhead equipment, or such other work as may be determined by the Authority's Engineer. The maximum aggregate duration of blocks for the Railway Project shall be [***] hours.
- 1.2 The Concessionaire is entitled to execute the construction work within the block period specified in this Schedule-O. The total duration of Power Block or Traffic Block or both, as the case may be, shall not exceed 20% of the period specified in this Agreement. In case such total duration exceeds 20% the Concessionaire shall pay Damages at the rate of [Rs.***] per hour or part thereof for the exceeded Block periods.

—

SCHEDULE - N

(See Clauses 5.4)

Machinery and equipment

1. The Authority shall provide the following machinery and equipment to the Concessionaire at the daily rates shown against each machinery and equipment:

Sl. No.	Particulars of each type of machinery and equipment	Daily rate in rupees in rounded figures.

—

SCHEDULE - O
(See Clause 25.1.2)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the day of 20.....

AMONGST

- 1 Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 (name and particulars of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 (name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The President of India represented by [***] and having its principal offices at [****] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for the Project on Annuity basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree 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 Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually;

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out there from on the Payment Date(s).

1.2 Interpretation

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 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 Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to 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 with the Nominated Company.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

- 3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) all funds received by the Concessionaire from its shareholders, in any manner or form;
- (c) all payments by the Authority, after deduction of any outstanding Concession Fee;
- (d) any other revenues from or in respect of the project, including the proceeds of any rentals, deposits, capital receipts; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Annuity Installments and any other monies disbursed by the Authority to the Concessionaire; and
- (b) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate there from the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out there from on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) other costs and expenses incurred by the Authority in accordance with the provisions of the Concession Agreement and certified by the Authority as due and payable to it;
- (d) monthly proportionate provision of Debt Service due in an Accounting Year;
- (e) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (f) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (g) any reserve requirements set forth in the Financing Agreements; and
- (h) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement and any claims in connection with or arising out of Termination;
- (d) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 16 of the Concession Agreement;
- (e) outstanding Debt Service including the balance of Debt Due;
- (f) outstanding Subordinated Debt;
- (g) any other payments required to be made under the Concession Agreement; and
- (h) balance, if any, in accordance with the instructions of the Concessionaire.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Rail System, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, MOR may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 23 of the Concession Agreement. Any instructions given by MOR to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of MOR hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders’ Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders’ Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new

Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal there from, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, 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 Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (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, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute 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.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

- 10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the state and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Authority 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 Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenue 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 judgement 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 given in connection therewith).

11.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another 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 authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

11.6 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.

11.7 Survival

11.7.1 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.

11.7.2 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.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is 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 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

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

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised 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 authorised representative by similar notice.

11.13 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.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof[£].

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of ESCROW BANK by:

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

2.

[£] To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

SCHEDULE - P
(See Clause 25.3.1)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the day of 20....

AMONGST

- 1 The President of India represented by [***] and having its principal offices at [***], hereinafter referred to as the “**Authority**”, which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2 [..... Limited], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 3 (name and particulars of Lenders’ Representative) and having its registered office at, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for the Project (the “**Project**”) on Annuity basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Substitution 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 Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 2013, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

- 1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 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 Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Rail System as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 23 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession

Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days-time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material

adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
- (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any

court or Government and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 34 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto 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 responsible for indemnifying such claim hereunder (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 unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute 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 claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the state and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 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 in the state shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Authority 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 Authority 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 judgement 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 given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another 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 authorised 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 obligation thereunder nor time or other indulgence granted by a Party to another 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.

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 is 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 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised 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 authorised representative by similar notice.

9.13 Original Document

This Agreement may be executed in three 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.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof[£].

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

2.

[£] To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

The End of Schedules.

Appendices

APPENDIX-I

LIST OF BID-SPECIFIC CLAUSES^{\$}

A. Clauses with non-numerical (\$) footnotes:

1. Clause 1.5 : Joint and several liability pertaining to consortium
2. Clause 3.2.1 : Obligation relating to sub-contracts and any other agreements
3. Clause 13.5.1 : Power of the Authority to undertake works
4. Article 26 : Definition of Consortium
5. Schedule-F, Annexure-I : Item (C)-8
6. Schedule-F, Annexure-III : Item (B) and Item (C)-8

B. Clauses with curly { } brackets:

1. Recital : Para 2
2. Clause 1.5 : Joint and several liability
3. Clause 3.2.1 : Obligations relating sub-contracts and any other agreements
4. Clause 5.1 (l) : Representations and warranties of the Contractor
5. Article 26 : Definition of “Affiliate”, “Consortium” and “Lead Member”
6. Contract Agreement : ‘Signature’ page
7. Schedule-F, Annexure-I : Item (B) and Item (C) 1
8. Schedule-F, Annexure-III : Item (B)

C. Clauses with Blank Spaces (.....), (*)**

1. First line of the Concession Agreement
2. Recital : Para 2
3. Recital : Item A, B, C and E
4. Clause 3.9 : Training of Authority’s Personnel
5. Clause 17.1.1 : Contract Price
6. Schedule-F, Annexure-I : Item A, B and C

7. Schedule-F, Annexure-I : Signing Date
8. Schedule-F, Annexure-II : Item A and C
9. Schedule-F, Annexure-II : Signing Date
10. Schedule-F, Annexure-III : Item A, B and C
11. Schedule-F, Annexure-III : Signing Date
12. Schedule-L, Annexure-I : Clause 1.1 : Scope

[§] This Appendix-I contains a list of clauses that would need to be suitably modified for reflecting bid-specific provisions after the contractor has been selected. This Appendix-I may be included in the draft EPC Agreement forming part of the bid documents. It may, however, be deleted when the Contract Agreement is to be executed.

APPENDIX-II

LIST OF PROJECT SPECIFIC CLAUSES²⁰

A. Clauses with serially numbered footnotes

1. First line of Contract Agreement (footnote no.1)
2. Recital : Para 2 (footnote no.2 & 3)
3. Recital : Para 2 : Item A (footnote 4 & 5)
4. Clause 3.9.2 : Training of Authority's Personnel (footnote no.6)
5. Clause 4.1.3(b) and (c) : Obligation of the Authority (footnote no. 7 & 8)
6. Clause 4.3 : Environmental and forest clearances (footnote no.9)
7. Clause 4.4.3 : Machinery and equipment (footnote no.10)
8. Clause 4.5 : Electricity transmission lines (footnote no.11)
9. Clause 7.1.1 : Performance Security (footnote no.12)
10. Clause 7.5 : Retention Money (footnote no.13)
11. Clause 17.2.1 : Advance Payment (footnote no.14)
12. Clause 17.8.4 : Price adjustment for the works (footnote no.15)
13. Schedule-A, Annexure-I : Site (footnote no.16)
14. Schedule-B, Annexure-I : Description of Railway Project (footnote no.17)
15. Schedule-C : Project facilities (footnote no.18)
16. Schedule-D, Annexure-I : Specifications and standards for construction (footnote no.19)

B. Clauses with square [] parenthesis:

1. Recital : Para 1
2. Recital (B)
3. Clause 3.2.1 : Obligations relating to sub-contracts and any other agreements
4. Clause 3.4.1 : Contractor's Personnel
5. Clause 3.9 : Training of Authority's Personnel

6. Clause 4.1.3(c) : Obligations of the Authority
7. Clause 4.1.4 : Obligations of the Authority
8. Clause 4.4.1(c) : Machinery and equipment
9. Clause 4.5 : Electricity transmission lines
10. Clause 4.7 : Provision of power blocks and traffic blocks
11. Clause 8.1(a) : The Site
12. Clause 10.3.1 : Construction of Railway Project
13. Clause 10.4.1(a) : Extension of time for completion
14. Clause 12.2.1 : Provisional certificate
15. Clause 15.1.2 : Defects liability period
16. Clause 17.8.4 : Price adjustment for the works (formulae for price adjustment)
17. Clause 18.1.6 : Insurance for works
18. Clause 20.1 : Governing Law and Jurisdiction
19. Clause 25.13(a) and (b) : Notices
20. Article 26 : Definitions
 - “GAD” or “General Arrangement Drawings”
 - “Project Assets”
21. Signature of the Authority on the last page of the Agreement
22. Schedule-A, Annexure-I : Site
23. Schedule-A, Annexure-II : Date for providing Right of Way
24. Schedule-A, Annexure-III : Alignment Plans
25. Schedule-B, Annexure-I : Description of Railway Project
26. Schedule-C : Project Facilities
27. Schedule-D, Annexure-I : Specifications and Standards for Construction
28. Schedule-F, Annexure-I : Form of Bank Guarantee for Performance Security
29. Schedule-F, Annexure-II : Form of Guarantee for Withdrawal of Retention Money

30. Schedule-F, Annexure-III : Form of Guarantee for Advance Payment
31. Schedule-G : Contract Price Weightages
32. Schedule-I : Project Completion Schedule
33. Schedule-J : Tests on Completion
34. Schedule-N : Insurance
35. Schedule-O : Provision of traffic blocks and power blocks

²⁰ This Appendix-II contains a list of clauses that would need to be suitably modified prior to issue of bid documents for reflecting project specific provisions. This Appendix-II should be omitted before issuing the draft Concession Agreement, forming part of the bid documents.