

MODEL AGREEMENT

FOR

CONSTRUCTION, OPERATION AND MAINTENANCE

OF THE

RAIL SYSTEM THROUGH JOINT VENTURE

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PART I
PRELIMINARY

JOINT VENTURE MODEL AGREEMENT

THIS AGREEMENT¹ is entered into on this the ²day of³, 20⁴

BETWEEN

- 1 **THE PRESIDENT OF INDIA** represented by [³ (*Designation of the Signatory*)]³, Ministry of Railways (Railway Board), Government of India (hereinafter referred to as “**MOR**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

- 2 {⁵ Limited}⁵, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ⁴, (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) MOR has resolved to procure [a new line rail system for ** km from ** to ** km and/or gauge conversion of the rail system for ** km from ** to ** in linkage and ** km in chainage] (“**Rail System**”) under the joint venture model as specified in the Policy for Participative Models in Rail Connectivity and Capacity Augmentation of Projects dated December 10, 2012 (as amended from time to time).
- (B) The {³ *please insert the names of the relevant participants and MOR Nominee*} promoted and incorporated a limited liability company under the Companies Act, 2013 (“**Concessionaire**”) and entered into a Shareholders Agreement dated [³] to record their respective rights and obligations in relation to the management and functioning of the Concessionaire. Pursuant to the incorporation of the Concessionaire and execution of the Shareholders Agreement, MOR has awarded the Project to the Concessionaire.
- (C) The Concessionaire has issued and allotted one Golden Share to MOR on the terms and conditions as set forth herein.
- (D) MOR has agreed to enter into this Agreement with the Concessionaire for execution of the Project, 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 Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

¹Serially numbered footnotes in this Model Concession Agreement are for guidance of MOR and should be omitted from the draft Concession Agreement forming part of Bid Documents. Footnotes marked “\$” or in other non-numerical characters shall be retained in the draft Concession Agreement.

²All asterisks in this Model Agreement should be substituted by project-specific particulars in the project specific Agreement

³All project-specific provisions in this Model Agreement have been enclosed in square parenthesis and may be modified, as necessary, before executing the project specific Agreement.

⁵The provisions in curly parenthesis and the blank spaces shall be suitably modified/filled after acceptance of the Proposal to reflect the particulars relating to the private developer.

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 38) 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 ***, 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, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning 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, upgradation and other activities incidental thereto, 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 “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five

thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;

- (j) any reference to day shall mean a reference to a calendar day;
- (k) references to a “**businessday**” shall be construed as a reference to a day (other than a Sunday) on which banks in [Delhi] are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestones shall mean and include such date, period or Project Milestones as may be extended pursuant to this Agreement;
- (n) 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;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (r) “**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;
- (s) 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;
- (t) 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 shall not operate so as to increase liabilities or obligations of MOR hereunder or pursuant hereto in any manner whatsoever;
- (u) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent 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 Independent Engineer, as the case may be, in this behalf and not otherwise;
- (v) 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;

- (w) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (x) 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**”);
- (y) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;and
- (z) unless the context otherwise requires, words or expressions used in this Agreement but not defined herein, shall bear the same meaning as in the Railways Act,1989 or other rules, regulations and policies issued by MOR, from time to time or any modification thereof, in force at the date of this Agreement.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to MOR and/ or the Independent Engineer shall be provided free of cost and in three copies, and if MOR and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2 (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, clauses and schedules

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

- 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.

PART II
THE CONCESSION

ARTICLE 2
SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period:

- (a) construction and procurement of the Rail System on the Site and Project Facilities as set forth in Schedule-A and in conformity with the Specifications and Standards;
- (b) operation and maintenance of the Rail System in accordance with the provisions of this Agreement; and
- (c) 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 and Concession Period

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, MOR hereby grants to the Concessionaire, the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Rail System (the “**Concession**”), excluding performance of the Reserved Services, for a period of [30 (thirty)] years commencing from the Appointed Date, 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 In the event that modification of the Concession Period shall have become due under and in accordance with the provisions of Article 24, MOR shall, on its own or upon receiving a notice from the Concessionaire, modify the Concession Period forthwith.
- 3.1.3 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 Rail System;
 - (c) operate and maintain the Rail System;
 - (d) receive the User Fee from MOR for using the Rail System or any part thereof;
 - (e) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
 - (f) 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 Rail System nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.
- 3.1.4 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practises, the Concession hereby granted shall, without prejudice to the provisions of Clause 3.1.3, entitle the Concessionaire to undertake construction, development, operation and maintenance of the assets specified in Schedule-B⁴, subject to the conditions stipulated in Schedule-Band to exploit such development for commercial purposes (the “**Commercial Development**”) with the right to sub-license any or all parts thereof by means of Project Agreements.

3.2 Railway Administration

⁴ This Schedule shall specify the list of additional assets which the Concessionaire can develop and commercially exploit

The Parties agree that the Concessionaire shall be deemed to be a Railway Administration (*as defined in the Railways Act, 1989*) for the purpose of construction, operation and maintenance of the Rail System, and shall exercise the rights and perform the obligations of the Railway Administration as specified under the provisions of the Railways Act, 1989, however, such rights and functions shall at all times be subject to the provisions of this Agreement.

ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 21, 28, 36 and 37, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).

4.1.2 The Concessionaire may, upon providing the Performance Security to MOR in accordance with Article 9, at any time after [90 (ninety)] days from the Effective Date or on an earlier day acceptable to MOR, by notice require MOR to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 365 (three hundred and sixty five) days of the notice, or such longer period as may be mutually agreed between the Parties after the expiry of the 365 (three hundred and sixty five) days period, and the Conditions Precedent required to be satisfied by MOR shall be deemed to have been fulfilled when MOR shall have:

(a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.2; and

[(b) procured approval of the Railway authorities in the form of a general arrangement drawing that would enable the Concessionaire to construct bridges/underpasses over or under a railway line in accordance with the Specifications and Standards and subject to the terms and conditions specified in such approval.]

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within 365 (three hundred and sixty five) days from the Effective Date, or such extended date as may be mutually agreed between the Parties, shall be deemed to have been fulfilled when the Concessionaire shall have:

(a) provided Performance Security to MOR;

[(b) acquired the Site for the Rail System for and on behalf of MOR either directly or through MOR in accordance with the provisions of Clause 10.1;];

(c) executed and procured execution of Escrow Agreement;

(d) executed and procured execution of the Substitution Agreement;

(e) procured all the Applicable Permits specified in ScheduleC unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;

(f) executed the Financing Agreements and delivered to MOR 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;

(g) delivered to MOR 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;

- (h) delivered to MOR a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof; and
- (i) delivered to MOR a legally binding undertaking from [*the relevant shareholder/shareholders who is/are also developer of the target facility/facilities i.e port/mine etc.*] stating that all the applicable permits/licenses/consents/permissions required for development of the [*target facility*] have been obtained and that an investment of at least 25% (twenty five) of the project cost* of the [*target facility*] has been spent:

Provided that upon request in writing by the Concessionaire, MOR may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, MOR may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Consequences for non-fulfilment of Condition Precedents

In the event that either Party does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 or Clause 4.1.3 above, within the period specified in respect thereof, the Parties may mutually agree to extend the aforesaid period of 365 (three hundred and sixty five) days for fulfilment of the Condition Precedents by such further period not exceeding 5 (five) years, as they may deem appropriate. Upon expiry of the aforesaid extended period, either Party may terminate this Agreement and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination.

* for the purposes of this undertaking, the project cost of the [*target facility*] and 25% (twenty five per cent) thereof shall be based on the financial model approved by the lenders financing the [*target facility*].

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 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 design, engineering, procurement, construction and maintenance of the Rail System and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 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, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Rail System;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - [(e) make reasonable efforts to facilitate the acquisition of land required for the purposes of this Agreement;]
 - (f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (g) 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;
 - (h) procure that all facilities and amenities within the Rail System are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same;
 - (i) support, cooperate with and facilitate MOR in the implementation and operation of the Project in accordance with the provisions of this Agreement;

- (j) pay all charges to MOR in accordance with the provisions of this Agreement;
- (k) transfer the Rail System to MOR upon Termination of this Agreement, in accordance with the provisions thereof; and
- (l) provide assistance and support to MOR, as may be necessary and required for the provision of Reserved Services at the Rail System in accordance with the provisions of this Agreement.

5.2 Obligations relating to Project Agreements

- 5.2.1 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.
- 5.2.2 The Concessionaire shall submit to MOR the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and MOR 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 MOR 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 MOR to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by MOR. No review and/ or observation of MOR 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 MOR be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of MOR if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on MOR, 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 MOR. For the avoidance of doubt, MOR acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- [5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-licence, assign or in any manner create an Encumbrance on any Project Asset forming part of Commercial Development without prior written approval of MOR, which approval MOR may, in its discretion, deny if such sub-licence, assignment or Encumbrance has or may have a material adverse effect on the rights and obligations of MOR under this Agreement or Applicable Laws; For the avoidance of doubt, it is agreed that if MOR does not deny the approval required under this Clause 5.2.4 within a period of 60 (sixty) days from the date of receiving a notice along with full particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such sub-licence, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.]
- 5.2.5 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle MOR 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 MOR 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 MOR 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 MOR an acknowledgment and undertaking, in a form acceptable to MOR, from the counter party(ies) of each of the Project Agreements, where under 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 MOR in the event of Termination or suspension.

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of MOR.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 25% (twenty five per cent) of the total Equity of the Concessionaire; or
- (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of MOR from national security and public interest perspective, the decision of MOR in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of MOR. For the avoidance of doubt, it is expressly agreed that approval of MOR hereunder shall be limited to national security and public interest perspective, and MOR shall endeavour to convey its decision thereon expeditiously. It is also agreed that MOR shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and

- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 25% (twenty five per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligations relating to Shareholding of MOR

5.4.1 The Concessionaire shall issue and allot one non-transferable equity share of the Concessionaire (the “**Golden Share**”) in favour of MOR and shall provide for the following:

- a) appointment of a nominee of MOR on the Board of Directors of the Concessionaire;
- b) an irrevocable undertaking that the rights vested in MOR shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by the Concessionaire or any of its Associates or Affiliates;
- c) an irrevocable undertaking that any divestment of equity in the Concessionaire shall not in any manner affect the rights of MOR herein and that the successors, assigns and substitutes of the Concessionaire shall be bound by such undertaking; and
- d) all other matters mutually agreed upon between the Parties.

5.4.2 The Parties expressly agree that so long as MOR holds the Golden Shares, an affirmative vote of MOR or the Director appointed by MOR shall be necessary and required for the passing of, by the General Meeting of the Concessionaire or the meeting of Board of Directors thereof, as the case may be, any resolution providing for all or any of the following or any matter incidental or consequential thereto:

- (a) to alter or add to the provisions of the memorandum of association;
- (b) to alter or add to the articles of association;
- (c) to change the name of the Concessionaire;
- (d) to purchase the Concessionaire’s own shares or specified securities;
- (e) to issue sweat equity shares;
- (f) to issue further shares without pre-emptive rights to non-members or to convert loans or debentures into shares;
- (g) to reduce the share capital;
- (h) to remove the registered office of the Concessionaire outside the limits of the State;
- (i) to commence any new line of business;
- (j) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;

- (k) to consent to a director or his relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debenture-holders of the Concessionaire;
- (l) to make inter-corporate-loans and investments or guarantee/security to be given, etc., if the aggregate amount thereof, exceeds the limit of 10% (ten per cent) of the Concessionaire's paid-up share capital;
- (m) to apply to a Court to wind-up the Concessionaire;
- (n) to wind-up the Concessionaire voluntarily;
- (o) for various other matters pertaining to the winding up of the Concessionaire; and
- (p)

5.4.3 The Parties agree that till the time MOR holds the Golden Share, it shall be entitled to nominate a person of its choice for appointment as a non-retiring Director on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such person as Director in accordance with the Applicable Laws.

5.5 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its 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 and, 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 Contractors or 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.

5.6 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions in accordance with the Applicable Laws and also the applicable norms as may be notified by MOR from time to time.

5.7 Obligations relating to cost of procurement of the Site

It is expressly agreed that the Site shall be acquired by MOR or the Concessionaire, as the case may be, in accordance with the provisions of Clause 10.2, however at the cost of the Concessionaire. For avoidance of doubt, it is clarified that cost of the Site borne by the Concessionaire shall be treated as non-interest bearing advance deposit, and shall be refunded to the Concessionaire by MOR in accordance with the provisions of Clause 10.1.2.

5.8 Obligations relating to medical aid

For providing emergency medical aid to Users, the Concessionaire shall, at each Station, set up and operate a medical aid post equipped to render first aid and to assist in accessing emergency medical aid from hospitals in the vicinity.

5.9 Obligations relating to aesthetic quality of the Rail System

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Rail System and achieve integration of the Rail System with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Concessionaire shall engage professional architects and town planners of repute for ensuring that the design of the Rail System meets the aforesaid aesthetic standards.

5.10 Obligations relating to noise control

The Concessionaire shall take all such measures as may be necessary in accordance with Applicable Laws and Good Industry Practice to control and mitigate the noise arising from the Rail System and its impact on Users and the neighbourhood.

5.11 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of MOR, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.12 Facilities for physically challenged and elderly persons

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

ARTICLE 6
OBLIGATIONS OF MOR

6.1 Obligations of MOR

- 6.1.1 MOR shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 MOR 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 the Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and construction of the Rail System;
 - (b) provide Railway Land in accordance with Clause 6.2.1;
 - (c) undertake interconnection of the Rail System with the rail network of Indian Railways, in accordance with this Agreement;
 - (d) pay the User Fee to the Concessionaire;
 - (e) 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 to the Concessionaire than those generally available to Indian Railways receiving substantially equivalent services;
 - (f) procure that no barriers are erected or placed on or about the Rail System by any Government Instrumentality or persons claiming through or under it, except for reasons of Safety Requirements, Emergency, national security, or law and order;
 - (g) 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;
 - (h) upon written request from the Concessionaire and subject to the provisions of Clause 5.5, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreement; and
 - (i) on a best effort basis, provide a timely supply of sufficient number of rakes, wagons, locomotives and other rolling stock for the efficient movement of trains on the Rail System depending on demand, handling capacity and network capacity as mutually agreed upon; and
 - (j) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement.

6.2 Obligations relating to Inter-connection

- 6.2.1 In consideration of this Agreement and the applicable charges, the covenants and warranties on the part of the Concessionaire herein contained, MOR, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from [180] days prior to Scheduled Completion Date, Right of Way, leave and licence rights in respect of the land owned by MOR for the purpose of connecting the Rail System to [nearest existing Station or existing rail head] (“**Railway Land**”), and for no other purpose whatsoever. In consideration of the grant of leave and licence rights in respect of the Railway Land, the charges payable by the Concessionaire to MOR shall be Re. 1.00 (Rupee one) per annum.

In the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, and only if the Independent Engineer determines that the Concessionaire is unable to achieve COD on account of the delay or denial of Right of Way to any part of the Railway Land, MOR shall pay to the Concessionaire, Damages in a sum calculated at the rate of Rs. [1,000] per day of delay and until such Right of Way is granted.

- 6.2.2 The licence, access and Right of Way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way. MOR agrees that Zonal Railway will carry out or cause to be carried out under its supervision, necessary alterations / additions for the take-off of the Rail System at [*insert name of the station*] Station at the cost of the Concessionaire to handle the traffic. For the avoidance of doubt, such alteration / addition works shall not be beyond the scope as agreed and specified in the Proposal.
- 6.2.3 It is expressly agreed that the licence, access and Right of Way granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by MOR to terminate the licence, upon Termination of this Agreement for any reason whatsoever.

6.3 Maintenance obligations prior to Appointed Date

During the Development Period, MOR shall maintain the roads and pathways along the Rail System alignment, at its own cost and expense, so that its traffic worthiness and safety are at no time materially inferior as compared to its condition 7 (seven) days prior to submission of the Proposal, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof, or pay to the Concessionaire the cost and expense, as determined by the Independent Engineer, for undertaking such repair after the Appointed Date. For the avoidance of doubt, MOR shall undertake only routine maintenance during the Development Period, and it shall undertake special repairs only for ensuring safe operation of the roads and pathways along the Rail System alignment, or in the event of excessive deterioration or damage caused due to unforeseen events such as floods or torrential rain.

6.4 Obligations relating to Reserved Services

- 6.4.1 Subject to the provisions of Article 17, MOR shall perform, or cause to be performed, all the Reserved Services in accordance with the provisions of this Agreement and Applicable Laws.

6.4.2 MOR agrees and undertakes that in order to enable the Concessionaire to discharge its obligations under this Agreement and Applicable Laws, MOR shall discharge its own functions efficiently and in accordance with Good Industry Practice.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to MOR 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) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) 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;
- (e) 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 there under including any obligation, liability or responsibility hereunder;
- (f) the information furnished by the Private Participant in the Proposal or otherwise submitted to MOR and as updated on or before the Effective Date is true and accurate in all respects as on the Effective Date;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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;

- (k) all its rights and interests in the Rail System shall pass to and vest in MOR on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of MOR, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (l) no representation or warranty by it contained herein or in any other document furnished by it to MOR 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; and
- (m) 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 Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of MOR in connection therewith.

7.2 Representations and warranties of MOR

MOR 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 the 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 MOR's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects; and
- (g) it has good and valid right to the Site/Railway Land, and has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3 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 right, remedy or obligation of either Party under this Agreement.

ARTICLE 8
DISCLAIMER

8.1 Disclaimer

- 8.1.1 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 scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by MOR 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. MOR makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against MOR in this regard.
- 8.1.2 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 8.1.1 above and hereby acknowledges and agrees that MOR shall not be liable for the same in any manner whatsoever to the Concessionaire, its Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of MOR to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of MOR contained in Clause 8.1.1 and shall not in any manner shift to MOR any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and MOR shall not be liable in any manner for such risks or the consequences thereof.

PART III
DEVELOPMENT

ARTICLE 9
PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to MOR no later than [180 (one hundred and eight)] days from the Effective Date, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)⁵ in the form set forth in Schedule-D(the “**Performance Security**”).
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of [(180) one hundred and eighty days] from the Effective Date, MOR may terminate this Agreement, 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.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, MOR shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. 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, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which MOR shall be entitled to terminate this Agreement in accordance with Article 30. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, MOR shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 30.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of 2 (two) years from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than [20% (twenty per cent)] of the Total Project Cost; 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 under this Clause 9.3, MOR shall release the Performance Security forthwith.

⁵Calculated @ 3% (three per cent) of the amount specified in the definition of Total Project Cost. May be reduced to 1% (one per cent) if the Total Project Cost exceeds Rs. 2,000 crore.

ARTICLE 10
RIGHT OF WAY

10.1 The Site and Procurement

- 10.1.1 The site of the Rail System shall comprise the real estate described in Schedule-A and in respect of which the Right of Way shall be provided and granted by MOR to the Concessionaire as a licensee under and in accordance with this Agreement (the “**Site**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Rail System as set forth in Schedule-A.
- 10.1.2 The Parties agree and undertake that MOR shall acquire the Site or may require the Concessionaire to acquire the Site for and in the name of MOR, as may be mutually agreed between the Parties. It is expressly agreed that the cost of the Site shall be paid by the Concessionaire in either case, and upon Termination such cost paid by the Concessionaire shall become due and payable to the Concessionaire within 60 (sixty) days of a demand being made by the Concessionaire to MOR with the necessary particulars, and in the event of any delay, MOR shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of such cost remaining unpaid. It is expressly agreed that the cost of Site shall include the compensation to land owners and all other expenses incurred or to be incurred by the Concessionaire for acquiring the Site pursuant to Applicable Laws, and the cost to be refunded by MOR shall be such amount as certified by an Approved Valuer, who shall be selected and appointed by MOR.
- 10.1.3 In the event MOR requires the Concessionaire to acquire the Site for and on behalf of MOR, MOR shall, from time to time, upon the request of the Concessionaire, promptly and duly execute or procure the execution of all such documents and conduct such filings and registration, and take any other action (at the sole expense of the Concessionaire) as the Concessionaire may reasonably require in order to acquire the Site.

10.2 Licence, Access and Right of Way

- 10.2.1 MOR hereby agrees to grant to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary prior to the commencement of the Construction Period, it being expressly agreed and understood that MOR shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, MOR, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions, construction materials or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto , on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

- 10.2.3 The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that existing lanes, if any, along the alignment of or across the Rail System or an alternative thereof are open to road traffic at all times during the Construction Period.
- 10.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by MOR to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the licence in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.5 The Concessionaire hereby irrevocably appoints MOR (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of MOR, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees on the Site are property of MOR except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.3 Protection of Site from encroachments

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire 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.

10.4 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 Rail System and the performance of its obligations under this Agreement.

10.5 Access to MOR and Independent Engineer

The licence, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of MOR and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.6 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement 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 MOR 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 MOR forthwith of the discovery thereof and comply with such instructions as 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 MOR. It is also agreed that MOR shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

ARTICLE 11

UTILITIES, SIDINGS AND TREES

11.1 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 or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and MOR shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with reasonable assistance of MOR, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Rail System. The cost of such shifting shall be borne by Concessionaire or by the entity owning such utility, if MOR so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3 New utilities and Sidings

11.3.1 The Concessionaire shall allow, subject to such conditions as MOR 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/ guidelines of MOR. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Rail System in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.3.2 MOR shall, at any time after the COD, be entitled in its discretion to undertake or cause to be undertaken, construction of any new rail line or siding ("**Sidings**") or transport system including connection to the Rail System. Upon its completion, MOR shall have the right to operate such rail line, Sidings and transport systems and regulate the use thereof. For the avoidance of doubt, the Concessionaire shall not bear any cost in relation to construction of such railway line, Sidings or transport systems including the connecting portion. MOR may, at its discretion, share revenues from use of such Sidings with the Concessionaire in such proportion as may be determined by MOR.

11.3.3 MOR may by notice require the Concessionaire to connect, through a paved road, any public facility or amenity to a Station, whereupon the connecting portion thereof that falls within the Site shall be constructed and maintained by the Concessionaire upon advance payment of the cost to be made by the beneficiary entity in accordance with the amount and period as determined by the Independent Engineer. For the avoidance of doubt, any connecting road required on the Site for enabling the Users to access the adjacent roads shall be constructed and maintained by the Concessionaire as a part of the Rail System.

11.4 Felling of trees

MOR shall provide reasonable assistance and support to the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by MOR for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Rail System. The cost of such felling shall be borne by the Concessionaire, and 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. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by MOR and shall be disposed in such manner and subject to such conditions as MOR may in its sole discretion deem appropriate.

ARTICLE 12

CONSTRUCTION OF THE RAIL SYSTEM

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to MOR and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-E;
- (b) appoint its representative duly authorised to deal with MOR in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits;
- (d) make its own arrangements for quarrying of materials needed for the Rail System under and in accordance with the Applicable Laws and Applicable Permits; and
- (e) pay the Directional and General (D&G) Charges to the Zonal Railways for a sum of ***⁶.

12.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Rail System as set forth in Schedule-F, 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 all Drawings to the Independent Engineer;
- (b) by submitting the Drawings to the Independent 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 and the Specifications and Standards;
- (c) within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and submit the Drawings along with its observations to MOR and the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. Within 15 (fifteen) days of the receipt of the comments from the Independent Engineer, MOR may review the same and convey its observations to the Concessionaire and the Independent Engineer 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 MOR on the Drawings submitted pursuant hereto beyond the said 30 (thirty) days

⁶This amount shall equal to 0.25% (zero point two five percent) of the capital cost as reflected in the Detailed Project Report.

period and may begin or continue Construction Works at its own discretion and risk.

- (d) if the aforesaid observations of MOR and/or the Independent 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 and resubmitted to the Independent Engineer and MOR for review within 7 (seven) days of receipt of observations of MOR and/or the Independent Engineer. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings with particular reference to their conformity or otherwise with the comments given by the Independent Engineer and MOR on the initial submission, and within 15 (fifteen) days of the receipt of the comments from the Independent Engineer, if any, MOR may review the same and convey its observations, if any, to the Concessionaire and the Independent Engineer;
- (e) no review and/or observation of the Independent Engineer and/or MOR 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 MOR be liable for the same in any manner;
- (f) without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to MOR for review, comments and approval, its Drawings relating to [alignment of the Rail System, ***]⁷, and MOR shall have the right but not the obligation to undertake such review and provide its approvals and/or comments, if any, within 60 (sixty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply *mutatis mutandis* to the review and comments hereunder. For the avoidance of doubt, it is agreed that if MOR does not deny the approval or convey its comments/observations within a period of [60 (sixty)] days of the receipt of such Drawings, the approval shall be deemed to have been granted; and
- (g) within 90 (ninety) days of the COD, the Concessionaire shall furnish to MOR and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in electronic form or in such other medium as may be acceptable to MOR, reflecting the Rail System as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Rail System and setback lines, if any, of the buildings and structures forming part of Project Facilities.

12.3 Construction of the Rail System

- 12.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Rail System as specified in Schedule-A, and in conformity with the Specifications and Standards. The [1460thday] from the Appointed Date shall be the scheduled date for completion of the Project (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that construction of the Rail System shall be completed on or before the Scheduled Completion Date. [For the avoidance of doubt, it is agreed that the Project Completion Schedule and Scheduled Completion Date shall not apply to Commercial Development.]

⁷ Please insert all the relevant particulars forming part of the Drawings, which MOR will approve, such as design for interconnection, integration of signalling system etc.

12.3.2 The Concessionaire shall construct the Rail System in accordance with the Project Completion Schedule set forth in Schedule-E.

12.3.3 In the event that the Rail System is not completed within [270 (two hundred and seventy)]⁸ days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to MOR or due to Force Majeure, MOR shall be entitled to terminate this Agreement.

12.4 Maintenance during Construction Period

12.4.1 During the Construction Period, the Concessionaire shall maintain, at its cost, the existing roads along the alignment of the Rail System so that their traffic worthiness and safety are at no time materially inferior as compared to their condition 7 (seven) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the existing roads.

12.4.2 Notwithstanding anything to the contrary contained in Clause 12.4.1, the Parties agree that in the event the Concessionaire undertakes its Construction Works in phases, it may divide the Rail System into sections of not less than 2 (two) kilometres each and commence work in such sections on different dates. Upon division into sections, the Concessionaire shall assume maintenance obligations under this Clause 12.4 on and from the date 60 (sixty) days prior to commencement of Construction Works in such section, and its maintenance obligations hereunder shall cease after the works affecting the road have been completed and the section of road is reverted to MOR or a nominee thereof in a condition determined by the Independent Engineer as satisfactory in accordance with Good Industry Practice.

⁸ 25% of Scheduled Completion Period of Project.

ARTICLE 13

MONITORING OF CONSTRUCTION

13.1 Quarterly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to MOR and the Independent Engineer a quarterly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by MOR and/or the Independent Engineer.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Rail System at least once a quarter and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to MOR and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent 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 may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. The costs incurred on such tests shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.3, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Rail System is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire and MOR to this effect, and the Concessionaire shall, within 14 (fifteen) days of such notice, by a communication inform the Independent Engineer and MOR in

reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, MOR may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of MOR, such work threatens the safety of the Users and pedestrians.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by MOR and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to MOR recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, MOR 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 MOR, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 28.7, all reasonable costs incurred for maintaining and protecting the Construction 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 MOR, the Preservation Costs shall be borne by MOR.
- 13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify MOR accordingly whereupon MOR shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

13.6 Video recording

During the Construction Period, the Concessionaire shall provide to MOR for every calendar quarter, a video recording, which will be compiled into a 3 (three)hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to MOR within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

- 14.1.1 The Concessionaire shall prepare and submit, to the Independent Engineer, for examination and approval, a list of all Tests required and proposed to be conducted, during the Construction Period to determine commissioning of the Rail System, along with a tentative schedule of the same. Within 15 (fifteen) days of the receipt of the list of Tests, the Independent Engineer shall review and approve the same and convey its observations to the Concessionaire with a copy to MOR.
- 14.1.2 At least [60 (sixty)] days prior to the likely completion of the Rail System, the Concessionaire shall notify the Independent Engineer of its intent to subject the Rail System to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to MOR (at least 10 (ten) days in advance) who shall designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer and MOR Representative may reasonably require for conducting the Tests. For the avoidance of doubt, the costs to be incurred on any Test shall be borne solely by the Concessionaire.
- 14.1.3 The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Rail System with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Rail System 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 the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and MOR copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent 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 Rail System with Specifications and Standards.

14.2 Completion Certificate

Upon completion of Construction Works, and the Independent Engineer determining the Tests to be successful, the Independent Engineer shall forthwith issue to the Concessionaire and MOR a certificate certifying the completion of the Rail Systems (the “**Completion Certificate**”).

14.3 Rescheduling of Tests

If the Independent Engineer certifies to MOR and the Concessionaire that it is unable to issue the Completion Certificate 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.

14.4 Safety Certification and [Commercial Service Certificate] prior to COD

- 14.4.1 MOR shall, not later than [30 (thirty)] days after the issuance of the Completion Certificate, procure that the [Chief Engineer (construction), **] (“**Chief Engineer**”) /Commissioner of Railway Safety (as the case may be) shall review the results of the Tests submitted by the Independent Engineer to determine and certify that the Rail

System is safe for entering into commercial service; provided that the Chief Engineer/Commissioner of Railway Safety may inspect the Rail System and/or require the Concessionaire to conduct or cause to be conducted such additional tests as may be prudent and necessary in accordance with Applicable Laws and Good Industry Practice. For the avoidance of doubt, it is expressly agreed that the Concessionaire shall not be liable to pay any charges to MOR towards such certification by the Chief Engineer/Commissioner of Railway Safety.

[14.4.2 Upon safety certification of the Rail System in accordance with the provisions of Clause 14.4.1, MOR shall procure the issuance of commercial service certificate in respect of the Rail System required for the purpose of commencing train operation on the Rail System not later than 15 (fifteen) days from the date on which an application has been submitted by the Concessionaire to the Zonal Railway in this regard. MOR agrees and undertakes that in the event the Concessionaire is unable to receive User Fee on account of the delay in issuance of the commercial service certificate, MOR shall pay to the Concessionaire, Damages in a sum calculated at the rate of Rs. [1,000 (Rupees one thousand)]per day of delay commencing from the 16th (sixteenth) day of submission of the application by the Concessionaire and until such commercial service certificate is procured.]⁹

14.5 Phased completion of Rail System

The Rail System may, for the purposes of completion, be divided into [***] distinct sections, namely, [section A comprising ***; section B comprising ***; and section C comprising ***], and the Completion Certificate, safety certificate and commercial service certificate may, at the request of the Concessionaire, be issued separately for each of the [***] sections. Upon issue of Completion Certificate, safety certificate and commercial service certificate for any of the aforesaid sections, such section shall enter into commercial service in accordance with the provisions of Article 15, whereupon the User Fees proportionate to such section shall become payable. For the avoidance of doubt, the Parties agree that the proportionate User Fees for sections A, B and C shall be **% (** per cent), **% (** per cent) and**% (** per cent) of the User Fees respectively and the provisions of this Agreement shall apply *mutatis mutandis* to each such Completion Certificate, safety certification and commercial service certificate and the sections completed there under. The Parties further agree that notwithstanding anything to the contrary contained in this Clause 14.5, the obligations contained in Clauses 12.3 shall continue to be binding on the Concessionaire.

⁹ The aforesaid Clause shall be retained only for such projects which require commercial service certification.

ARTICLE 15

COMMERCIAL OPERATION DATE

15.1 Commercial Operation Date (COD)

The Rail System shall be deemed to be complete when the [safety certificate/ commercial service certificate] have been issued under the provisions of Clause 14.4. Accordingly the commercial operation date of the Rail System shall be the date on which the [the safety certificate/ commercial service certificate] is issued (the “**COD**”). The Rail System shall enter into commercial service on COD whereupon MOR shall provide the Reserved Services and make payment of User Fee to the Concessionaire in accordance with this Agreement, provided however, that the entry of Rail System into commercial service shall always be subject to compliance with the provisions of Clause 14.4.

ARTICLE 16
CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 Either Party may, notwithstanding anything to the contrary contained in this Agreement, during the Construction Period require the provision of additional works and services for providing safer and improved services to the Users, which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be undertaken on the terms and conditions as may be mutually agreed between the Parties.

16.1.2 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Rail System and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Reduction in Scope of the Project

If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to MOR, MOR may, in its discretion, require the Concessionaire to pay 90% (nifty per cent) of the sum saved there from, and upon such payment to MOR, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 90% (nifty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project. It is further agreed that the liability of MOR under this Clause 16.2 shall not extend beyond waiver of the aforesaid 90% (nifty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.

ARTICLE 17

RESERVED SERVICES

17.1 Obligations of MOR relating to Reserved Services

17.1.1 MOR shall perform, or cause to be performed, the following services (the “**Reserved Services**”) at the Rail System:

- (i) locomotion of trains, including providing the (a) wagons, locomotives and any other rolling stock and, (b) fuel/ traction power, and (c) crew, as may be required for locomotion of trains;
- (ii) fixing of tariff for movement and handling of any traffic on the Rail System;
- (iii) booking and delivery of Consignments and determining any terms and conditions related thereto;
- [(iv) Station operation and management;#]
- (v) loco and wagon examination;
- (vi) deputation of necessary staff required for providing the Reserved Services (“**Railway Staff**”); and
- [(vii) ****]10:

however, the Reserved Services shall not include the maintenance of the Rail System including tracks, overhead equipment and signalling.

Provided that nothing in this Agreement shall restrict MOR from requiring the Concessionaire to undertake any or all of the Reserved Services on such terms and conditions as may be mutually agreed between the Parties.

17.1.2 Notwithstanding anything to the contrary contained herein, MOR shall retain 50% (fifty percent) of the revenue apportionment from freight operations on the Rail System on account of the cost incurred by MOR towards provision of Reserved Services, overhead cost, central charge and all costs incidental thereto.

17.2 Obligations relating to Passenger Services

Notwithstanding anything to the contrary contained in this Agreement, MOR may undertake passenger services on the Rail System with the consent of Concessionaire. The Parties agree that all costs of Reserved Services for operating such passenger services shall be borne by MOR and the cost of construction of any additional facilities ,if required to facilitate passenger services shall be shared as mutually agreed by the Parties.

17.3 Claims and Liabilities

The general liability of MOR as a carrier of goods will be determined in terms of the Railways Act, 1989. The consignors / consignees of freight traffic originating, terminating or moving on the Rail System shall have the right to approach the concerned

In the event maintenance is undertaken by the Concessionaire, the cost of gateman at the Station only shall form part of station operation cost to be included in the cost of Reserved Services.

10MOR may insert any other services as it deems fit.

Zonal Railway which will be responsible to deal with the claims in accordance with the terms of the extant orders, procedures and circulars notified by MOR.

17.4 Liability arising out of Accidents and Indemnity

17.4.1 The Parties agree that:

- (a) in the event of any accident on the Rail System, a committee of MOR officials and a representative of the Concessionaire shall investigate such accident as per the extant policy of MOR relating to procedure of investigation and such committee shall jointly prepare a detailed note, describing the nature and cause of the accident and determining the liability for any loss, damage, compensation arising out of such accident;
- (b) in the event of any Train accident occurring due to negligence of Railway Staff or faulty maintenance of wagon and locomotives, MOR shall be liable for loss, damage, destruction, deterioration, non-delivery or shortage of the Consignment caused by such accident; and
- (c) in the event of any Train accident occurring due to negligence of the Concessionaire or its contractor or faulty maintenance of the Rail System, the Concessionaire shall be liable for loss, damage, destruction, deterioration, non-delivery or shortage of the Consignment caused by such accident.

17.4.2 Indemnity

The Concessionaire shall indemnify MOR against any loss due to damage, injury or death caused to any Railway Staff working in connection with the Rail System caused due to negligence of the Concessionaire.

17.5 Traffic Management

The Parties agree that the train movement and traffic management on the Rail System will be undertaken by [***]division of the Zonal Railway in consultation with the Concessionaire . However, the final decision will be that of the said division.

17.6 Obligations of the Concessionaire in respect of Reserved Services

The Concessionaire agrees and undertakes that it shall, at all times during the Term:

- (a) make the Rail System available to MOR and the Railway Staff for provision of the Reserved Services;
- (b) comply with all rules, regulations and guidelines prescribed by MOR in connection with the security of the Rail System;
- (c) provide support and cooperation to MOR and the Railway Staff in the discharge of their obligations under this Article 17;
- (d) provide such information as MOR and the Railway Staff may reasonably require for the provision of the Reserved Services;
- (e) provide, at its own cost, continuous supply of electricity and water that may be required by MOR and the Railway Staff to perform the Reserved Services excluding power for locomotion of trains; and

- (f) notify MOR and the Railway Staff of any proposed closure or withdrawal of any infrastructure or facilities at the Rail System, except in case of an Emergency, as per the operating procedures to be mutually agreed between the Parties from time to time.

17.7 Provision of space and access for Reserved Services

17.7.1 The Concessionaire undertakes that it shall, at all times during the Operations Period, provide to MOR and the Railway Staff such access, space and facilities at the Rail System as may be necessary to enable them to perform the Reserved Services in accordance with the provisions of this Agreement.

17.7.2 The Concessionaire shall not reduce or restrict the access, space and facilities provided to MOR and the Railway Staff for the provision of Reserved Services, except with the prior consent of MOR.

ARTICLE 18
OPERATION & MAINTENANCE

18.1 O&M obligations of the Concessionaire

18.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Rail System in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Rail System to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. Provided that notwithstanding anything to the contrary contained in this Agreement, Parties may mutually agree for MOR to undertake the maintenance of the Rail System at the cost of the Concessionaire to be calculated in accordance with provisions of Schedule-M.

The obligations of the Concessionaire hereunder shall include:

- (a) permitting safe, smooth and uninterrupted flow of traffic on the Rail System during normal operating conditions;
- (b) minimising disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Rail System by providing a rapid and effective response and maintaining liaison with emergency services of the State and the Zonal Railway;
- (c) carrying out periodic preventive maintenance of the Rail System;
- (d) undertaking routine maintenance including prompt repairs of track, via ducts, [tunnels, underpasses, skywalks], joints, drains, embankments, structures, signaling systems, communication systems, lighting and Traction System;
- (e) undertaking major maintenance such as track replacement, repairs to structures, repairs and refurbishment of signaling and communication system, overhaul of Traction System and other equipment;
- (f) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Rail System;
- (g) protection of the environment and provision of equipment and materials therefor;
- (h) maintenance of all communication, control and administrative systems necessary for the efficient operation of the Rail System;
- (i) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies;
- (j) complying with Safety Requirements in accordance with Article 19; and
- (k) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice.
- (l) maintaining a high standard of cleanliness and hygiene on the Rail System.

18.1.2 The Concessionaire shall remove promptly from the Rail System all surplus construction machinery and materials, waste materials (including hazardous materials and waste

water), rubbish and other debris (including, without limitation, accident debris) and keep the Rail System in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

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

18.2 Maintenance Requirements and Key Performance Indicator

18.2.1 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Rail System conforms to the maintenance requirements set forth in Schedule-G (the “**Maintenance Requirements**”).

18.2.2 Key Performance Indicators

- (i) Without prejudice to the obligations specified in this Agreement, the Concessionaire shall maintain the Rail System such that it achieves or exceeds the average speed of freight trains of [30 km/hr.] on a quarterly basis (the “**Key Performance Indicator**”).
- (ii) During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish a monthly report stating in reasonable detail the compliance with the Key Performance Indicator along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the performance of the Rail System.
- (iii) The Concessionaire shall ensure and procure compliance of the Key Performance Indicator and for any shortfall in average performance during a quarter, it shall pay Damages at the rate of 1% (one percent) of the User Fees for that quarter for every 10% (ten percent) in the shortfall, within 30 (thirty) days of the quarter in which the shortfall occurred subject to a maximum of 5% of the total User Fee for the quarter.

18.3 Maintenance Manual

- 18.3.1 No later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Rail System in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to MOR and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 18.3 shall apply, *mutatis mutandis*, to such revision.

- 18.3.2 Without prejudice to the provision of Clause 18.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

18.4 Maintenance Programme

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

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Rail System;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures;
- (g) intervals for major maintenance works and the scope thereof; and
- (h) intervals of carrying out intermediate and periodic overhaul of track, signalling and communication system, and Traction System.

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

18.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 18.4.1 and 18.4.2 shall apply *mutatis mutandis* to such modifications.

18.5 Safety, breakdowns and accidents

18.5.1 The Concessionaire shall ensure safe conditions for the operation of Rail System including but not limited to Consignments and consignors, and in the event of unsafe conditions, track damage, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

18.5.2 The Concessionaire’s responsibility for rescue operations on the Rail System shall include safe evacuation of all Users and staff from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth flow of traffic. For this purpose, it shall maintain and operate [2 (two)] round-the-clock road vehicles [and 1 (one) accident relief train] with rescue equipment and position them in a manner that allows access to the accident site. In addition, [1 (one)] accident relief train shall also be designated by MOR for this purpose.

- 18.5.3 In the event of any accident on the Rail System and upon receipt of a request in writing sent by the Concessionaire, MOR shall arrange for relief and evacuation in the same manner as applicable in case of accidents on any other rail lines of MOR, provided however that the allocation of cost shall be determined in accordance with the provisions of Clause 17.4.1.
- 18.5.4 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Rail System. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Rail System, and shall comply with the safety requirements set forth in Schedule-H (the “**Safety Requirements**”).
- 18.5.5 The Parties hereby agree that the Independent Engineer shall carry out safety audit of the Rail System in accordance with the Safety Requirements at least once a quarter. The Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to MOR a copy of the safety certification issued by the Independent Engineer. All costs and expenses to be incurred for facilitating the safety audit shall be solely borne by the Concessionaire.

18.6 De-commissioning due to Emergency

- 18.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Rail System, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Rail System for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to MOR without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that MOR may give for dealing with such Emergency.
- 18.6.2 The Concessionaire shall re-commission the Rail System or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Rail System and shall notify MOR of the same without any delay.
- 18.6.3 Any decommissioning or closure of any part of the Rail System and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

18.7 Section closure

- 18.7.1 The Concessionaire shall not close any section of the Rail System for undertaking maintenance or repair works except with the prior written approval of MOR. Such approval shall be sought by the Concessionaire through a written request to be made to MOR, at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, MOR shall grant permission with such modifications as it may deem necessary. Provided that for closure of any one trackway for a period not exceeding 2 (two) hours in a day, the prior notice for seeking approval of MOR shall be not less than 2 (two) hours prior to such proposed closure.
- 18.7.2 Upon receiving the permission pursuant to Clause 18.7.1, the Concessionaire shall be entitled to close the designated section for the period specified therein, and in the event of any delay exceeding [2 (two) hours] in re-opening such section, the Concessionaire shall

pay Damages to MOR calculated at the rate of 1% (one per cent) of the Average Daily User Fee, for each hour of delay or part thereof on pro-rata basis, until the section has been re-opened for traffic.

18.8 MOR's right to take remedial measures

18.8.1 In the event the Concessionaire does not maintain and/or repair the Rail System or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of a notice in this behalf from MOR or the Independent Engineer, as the case may be, MOR shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to MOR as Damages.

18.8.2 MOR shall have the right, and the Concessionaire hereby expressly grants to MOR the right, to recover the costs and Damages specified in Clause 18.8.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of MOR under this Clause 18.8.2 and debit the same to O&M Expenses.

18.9 Overriding powers of MOR

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

18.9.2 In the event that the Concessionaire, upon notice under Clause 18.9.1, fails to rectify or remove any danger to the Users within a reasonable period, MOR may exercise overriding powers under this Clause 18.9.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such danger; provided that the exercise of such overriding powers by MOR shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by MOR in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and MOR shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 18.8 along with the Damages specified therein.

18.9.3 In the event of a national emergency, civil commotion, MOR may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Rail System or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by MOR shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by MOR. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 28. It is also agreed that the Concessionaire shall comply with such instructions as MOR may issue in pursuance of the provisions of this Clause 18.9, and shall provide assistance and cooperation to MOR, on a best effort basis, for performance of its obligations hereunder.

18.10 Restoration of loss or damage to the Rail System

In the event that the Rail System or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Rail System conforms to the provisions of this Agreement.

18.11 Modifications to the Rail System

18.11.1 In the event the average daily traffic on the Rail System exceeds 120% (one hundred and twenty percent) of the system charted capacity, MOR may, notwithstanding anything to the contrary contained in this Agreement, require the Concessionaire to undertake the modifications as may be necessary for augmentation of the system charted capacity of the Rail System (the “**Modification**”). Any such Modification shall be made in accordance with the provisions of this Clause 18.11.1 and the costs thereof shall be borne by the Concessionaire. However, MOR may at its discretion, at the request of the Concessionaire, bear such cost in full or part. For the avoidance of doubt, the Parties agree that [***] shall be deemed to be the system charted capacity of the Rail System for the purposes of this Clause 18.11.1. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Clause 18.11.1. Notwithstanding anything contained in this Agreement, the Parties may decide to undertake Modification on the terms and conditions as may be mutually agreed.

18.11.2 The Concessionaire shall, at the direction of MOR, carry out electrification of the Rail System in the event the feeding line is electrified. The Parties agree that all the cost associated with and incidental to such electrification shall be borne by the Concessionaire.

18.11.3 Subject to the provisions of Clauses 18.11.1 and 18.11.2, the Concessionaire shall not carry out any material modifications to the Rail System save and except where such modifications are necessary for the Rail System to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall take prior approval of MOR. For the avoidance of doubt, if any modification to the Rail System has a material effect on its safety the same shall be subject to safety related certification in accordance with Applicable Laws and the procedure specified in Clause 14.4. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

18.12 Excuse from performance of obligations

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

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Rail System except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

- (c) compliance with a request from MOR or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Rail System.

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

18.13 Reports of unusual occurrence

The Concessionaire shall, upon occurrence of accidents or unusual occurrences on the Rail System, send to MOR, by facsimile or e-mail, a report, in a mutually agreed form, stating accidents and unusual occurrences on the Rail System relating to the safety and security of the Users and the Rail System, as soon as reasonably practicable, and in any event no later than 24 (twenty four) hours after such occurrence. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. The record of such occurrences shall be maintained as per the prevailing practices in Zonal railways. For the purpose of this Clause 18.13, accidents and unusual occurrences on the Rail System shall include:

- (a) death or injury to any person;
- (b) broken or buckled rails;
- (c) damaged or dislodged fixed equipment;
- (d) damage to or displacement of traction power conductor; or loss of traction power;
- (e) any obstruction on the track;
- (f) communication failure affecting the running of trains;
- (g) any obstruction or undue congestion in the provision of Reserved Services;
- (h) smoke or fire;
- (i) flooding of tracks;
- (j) any other event rendering the Rail System unsafe and/or unusable for providing the Reserved Services by MOR; and
- (k) such other relevant information as may be reasonably required by MOR.

18.14 Advertising on the Rail System

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site, if such advertising, display or hoarding shall diminish the aesthetic quality of the Rail System or violates Applicable Laws. All advertising on the Rail System shall also conform to Good Industry Practice.

{ 18.15 Supervision of Maintenance

The Zonal Railway shall inspect and certify the maintenance of the Rail System, at least once every month in accordance with the applicable standards/manuals notified by MOR and the Concessionaire shall pay to the Zonal Railway the inspection charges equal to an amount to be calculated at the rate of [Rs. 2,000/km].The rate for computation of inspection charges shall be revised annually on April 1, to reflect the variation in WPI. }¹¹

¹¹This clause shall be deleted in the event the Concessionaire decides to outsource O&M obligations to MOR.

ARTICLE 19

SECURITY

19.1 Security

- 19.1.1 The Concessionaire acknowledges and agrees that unless otherwise specified in this Agreement it shall, at its own cost and expense, provide or cause to be provided security at the entry, exit and within the limits of the Rail System. Provided that, the Parties may at any time mutually enter into an agreement to jointly provide security services in the Rail System. It is expressly agreed between the Parties that security for passenger train operations and related services shall be provided by and the costs thereof shall be borne and payable by MOR.
- 19.1.2 The Concessionaire shall abide by and implement any instructions of MOR for enhancing the security within and around the Rail System. The Concessionaire agrees that it shall extend its full support and cooperation to MOR and to the other organisations authorised by MOR in the discharge of their obligations there under.
- 19.1.3 The Concessionaire will tie up necessary security arrangements wherever required with State/ Central agencies for providing security of Rail System at its own cost and expense.

ARTICLE 20

INDEPENDENT ENGINEER

20.1 Appointment of Independent Engineer

The Concessionaire shall appoint a consulting engineering firm from the approved panel of consultants of Zonal Railway, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than [180 (one hundred and eighty)]days from the Effective date and shall be for a period of [1 (one)]year initially and shall be renewed till COD is achieved. On expiry of the aforesaid period prior to COD or termination of appointment of the Independent Engineer prior to expiry of the aforesaid period, the Concessionaire shall renew the appointment, or appoint another firm from the said panel, as the case may be, to be the Independent Engineer and such procedure shall be repeated after expiry or termination of each appointment till COD is achieved. Notwithstanding anything to the contrary herein, if during the Operation Period, the Concessionaire undertakes to perform the O&M of the Rail System on its own, it shall, if required by MOR, ensure that the appointment of the Independent Engineer is extended till the end of the Term.

20.2 Duties and functions

20.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-I.

20.2.2 The Independent Engineer shall submit regular periodic reports to the Parties in respect of its duties and functions set forth in Schedule-I.

20.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be borne and paid by the Concessionaire.

20.4 Termination of appointment

20.4.1 The Concessionaire may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 20.1.

20.4.2 If MOR has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Concessionaire and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Concessionaire shall hold a tripartite meeting with MOR and Independent Engineer for an amicable resolution of the Dispute. If such Dispute is not resolved within 30 (thirty) days of the dispute being referred to the Concessionaire, then the Concessionaire shall appoint forthwith another Independent Engineer in accordance with Clause 20.1.

20.5 Authorised signatories

The Concessionaire shall require the Independent Engineer to designate and notify to MOR and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any

of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

20.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Part IV
Financial Covenants

ARTICLE 21

FINANCIAL CLOSE

21.1 Financial Close

- 21.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within [1 (one) year] from the Effective Date and in the event of delay, it shall be entitled to an extension, subject to payment of Damages to MOR in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 1 (one) year 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 solely as a result of any default or delay by MOR in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure.
- 21.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify MOR forthwith, and shall have provided to MOR, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

ARTICLE 22

CONCESSION FEE

22.1 Concession Fee

- 22.1.1 In consideration of the grant of Concession, the Concessionaire shall pay to MOR by way of concession fee (the “**Concession Fee**”) a sum of Re.1 (Rupee one) per annum during the Term of this Agreement.
- 22.1.2 The Concession Fee, for each year, shall be paid in advance within [90 (ninety days) of the commencement of the Accounting Year, for which it is due and payable.

ARTICLE 23

USER FEE

23.1 Payment of User Fee

- 23.1.1 MOR shall pay to the Concessionaire a sum equal to 50% (fifty percent)¹² of the revenue apportionment from freight operations on the Rail System, determined in accordance with Inter Railway Financial Adjustment Rules, as the User Fee for using the Rail System. For the avoidance of doubt, it is hereby clarified that MOR shall retain 50% (fifty percent) of the revenue apportionment from freight operations on the Rail System on account of the cost incurred by MOR towards provision of Reserved Services, overhead cost, central charge and all costs incidental thereto.
- 23.1.2 The Parties agree that Zonal Railway shall undertake all payment obligations for and on behalf of MOR with respect to User Fee under this Article 23. It is also agreed that such undertaking of payment obligations by the Zonal Railways shall not in any manner absolve MOR from any liability or obligation under this Agreement.

23.2 Taxes and duties

- 23.2.1 It is expressly agreed by the Parties that the User Fee shall be inclusive of all taxes and duties. It is further agreed that the Concessionaire shall pay all taxes and duties in accordance with Applicable Laws.
- 23.2.2 Any payment to be made by MOR shall be subject to any tax deduction at source, if required to be made by MOR as per the Applicable Laws.

23.3 Payment

- 23.3.1 MOR agrees and undertakes that commencing from COD it shall, by the [67th (sixty seventh)] day (or, if such day is not a Business Day, the immediately following Business Day) from the last day of each month (the “**Payment Due Date**”), pay the User Fee to the Concessionaire for the relevant month, through electronic transfer, to the nominated bank account of the Concessionaire, and shall also provide a statement setting out the computation of the User Fee, details in respect of taxes/duties and Damages payable/reimbursable in accordance with this Agreement, and the net amount payable by MOR to the Concessionaire in respect of the relevant preceding month in accordance with the provisions of this Agreement.
- 23.3.2 Any amount, including the Damages due and payable by the Concessionaire in accordance with and subject to the provisions of this Agreement may be deducted from the User Fee due and payable to the Concessionaire and in the event the deductions hereunder exceed the User Fee in that month, the balance remaining shall be deducted from the User Fee due and payable to the Concessionaire for the immediately following month.

¹² In the event that the MOR decides that the cost of Reserved Services shall be high because of the planned engine reversals/ghat section operation/detentions at interchange points because of inadequate handling facilities, the User Fees shall be determined in accordance with Schedule-N.

23.4 Disputed amounts

- 23.4.1 The Concessionaire shall, within [30 (thirty) days] of receiving the payment statement, notify Zonal Railway and MOR of any amounts which it determines as payable or disputed (the “**Disputed Amounts**”), with particulars thereof. Within [15 (fifteen) days] of receiving such notice, MOR shall present, to the Concessionaire, any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable or non-payable. MOR may, if necessary, meet a representative of the Concessionaire for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment for the purposes of payment of interest thereon.
- 23.4.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 23.5.

23.5 Delayed payments

All amounts due and payable to the Concessionaire under the provisions of this Agreement shall be paid within the period set forth in Clause 23.3. In the event of delay beyond such period, MOR shall pay interest for the period of delay, calculated at a rate equal to [3% (three per cent) above the Bank Rate] on the amounts payable.

23.6 Revenue from passenger services

The Parties agree that the Concessionaire shall not be entitled to any proportion of revenue generated from passenger services.

ARTICLE 24

EFFECT OF VARIATIONS IN TRAFFIC GROWTH

24.1 Effect of variations in traffic growth on the Concession Period

24.1.1 The Parties acknowledge that the total NTKM during the Concession Period as [on October 1, 20__] is estimated to be ***** (the “**Target Traffic**”)¹³.

24.1.2 In the event that, as on expiry of 25th (twenty fifth) year after Appointed Date the actual NTKM shall have fallen short of the Target Traffic by more than [4% (four per cent) thereof or exceeded the Target Traffic by more than [4% (four per cent) thereof, the Concession Period shall be deemed to be modified in accordance with Clause 24.2. For the avoidance of doubt, in the event of any Dispute relating to actual NTKM, the Dispute Resolution Procedure shall apply.

24.2 Modification in the Concession Period

24.2.1 Subject to the provisions of this Clause, in the event actual NTKM shall have fallen short of the Target Traffic, then for every 2% (two per cent) shortfall or part thereof as compared to the Target Traffic, the Concession Period shall be increased by 6(six) months or part thereof; provided that such increase in Concession Period shall not in any case exceed 5 (five) years.

24.2.2 Subject to the provisions of Sub-clause 24.1.1 above, in the event actual NTKM shall have exceeded the Target Traffic, then for every 2% (two per cent) excess or part thereof as compared to the Target Traffic, the Concession Period shall be reduced by 6(six) months or part thereof; provided that such reduction in Concession Period shall not in any case exceed 5 (five) years.

¹³ The Target Traffic shall normally be a number based on 5% (five per cent) Cumulative Average Growth Rate over the base traffic assumed for the Rail System. The target traffic shall be for the entire Rail System and not for individual lines or sections of the Rail System.

ARTICLE 25

ESCROW ACCOUNT

25.1 Escrow Account

- 25.1.1 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.
- 25.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, MOR, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule-J.

25.2 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 User Fee and any other revenues from or in respect of the Rail System, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payments by MOR, after deduction of any outstanding Concession Fee:

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

25.3 Withdrawals during Concession Period

- 25.3.1 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 there from in the month when due:
- (a) all taxes due and payable by the Concessionaire for and in respect of the Rail System;
 - (b) all payments relating to construction of the Rail System, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
 - (c) Concession Fee due and payable to MOR;
 - (d) fee and expenses due and payable to the Escrow Bank;
 - (e) monthly proportionate provision of Debt Service due in an Accounting Year;
 - (f) all payments and Damages certified by MOR as due and payable to it by the Concessionaire;

- (g) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (h) any reserve requirements set forth in the Financing Agreements; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire.

25.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 25.3.1, except with the prior written approval of MOR.

25.4 Withdrawals upon Termination

25.4.1 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 Rail System;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by MOR 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 32;
- (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:

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 25.4.1 until a Vesting Certificate has been issued by MOR under the provisions of Article 31.

25.4.2 The provisions of this Article 25 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 25.4.1 have been discharged.

ARTICLE 26

INSURANCE

26.1 Insurance during Concession Period

26.1.1 The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on MOR as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, MOR shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

26.1.2 Without prejudice to the provisions contained in Clause 26.1.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

- (i) Loss, damage or destruction of the Project Assets, including assets handed over by MOR to the Concessionaire, at replacement value;
- (ii) comprehensive third party liability insurance including injury to or death of personnel of MOR or others who may enter the Rail System;
- (iii) the Concessionaire's general liability arising out of the Concession;
- (iv) liability to third parties for goods or property damage;
- (v) workmen's compensation insurance; and
- (vi) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (i) to (v) above.

26.2 Notice to MOR

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to MOR, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 26. Within 30 (thirty) days of receipt of such notice, MOR 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.

26.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 26 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15

(fifteen) days of obtaining any Insurance Cover, the Concessionaire shall furnish to MOR, 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 MOR.

26.4 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, MOR 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 Concessionaire.

26.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 26 shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, *inter alia*, MOR, 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.

26.6 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, MOR 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.

26.7 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 25.3, apply such proceeds 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.

ARTICLE 27

ACCOUNTS AND AUDIT

27.1 Audited accounts

- 27.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all other revenues derived/collected by it from or on account of the Rail System and/or its use), income, expenditure, payments(including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. MOR shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to MOR for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 27.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to MOR its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 27.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to MOR, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the traffic count for each category of persons using the Rail System and liable for payment of User Fee therefor, (b) User Fee charged and received, and other revenues derived from the Rail System, and (c) such other information as MOR may reasonably require.

27.2 Appointment of auditors

- 27.2.1 The Concessionaire shall, at its own cost and expense, appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it in accordance with the eligibility criteria set forth herein below:
- (a) the firm should have conducted statutory audit of the annual accounts of at least 100 (one hundred) companies registered under the Companies Act, 2013, of which at least ten should have been public sector undertakings;
 - (b) the firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;
 - (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or MOR; and
 - (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.

27.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to MOR, subject to the replacement Statutory Auditors being appointed by it in accordance with clause 27.2.1.

27.2.3 Notwithstanding anything to the contrary contained in this Agreement, MOR shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “**Additional Auditors**”) to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

27.3 Certification of claims by Statutory Auditors and Additional Auditor

Any claim or document provided by the Concessionaire to MOR in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors and Additional Auditor, if appointed. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

27.4 Set-off

In the event any amount is due and payable by MOR to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by MOR of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

27.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by MOR by recourse to the Dispute Resolution Procedure.

Part V

Force Majeure and Termination

ARTICLE 28

FORCE MAJEURE

28.1 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 28.2, 28.3 and 28.4 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 (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

28.2 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, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Rail System for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 28.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver rolling stock or equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (e) 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 MOR;
- (f) 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
- (g) any event or circumstances of a nature analogous to any of the foregoing.

28.3 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 7 (seven) days in an Accounting Year;
- (c) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any Indirect Political Event that causes a Non-Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

28.4 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;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the 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 Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any 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 Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

28.5 Duty to report Force Majeure Event

28.5.1 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 28 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.

28.5.2 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 7 (seven) 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.

28.5.3 For so long as the Affected Party continues to claim to be materially 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 28.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

28.6 Effect of Force Majeure Event on the Concession

28.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 21.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

28.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.

28.7 Allocation of costs arising out of Force Majeure

28.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

28.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "**Force Majeure Costs**") shall be allocated and paid as follows:

- (a) 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;
- (b) 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 MOR to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by MOR to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

28.7.3 Save and except as expressly provided in this Article 28, 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.

28.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) 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 28, 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.

28.9 Termination Payment for Force Majeure Event

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

28.9.2 If Termination is on account of an Indirect Political Event, MOR 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;

(b) 110% (one hundred and ten per cent) of the Adjusted Equity; and

[(c) an amount equivalent to the Additional Termination Payment 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 computation of the amount payable hereunder.]

28.9.3 If Termination is on account of a Political Event, MOR shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 30.3.2 as if it were a MOR Default.

28.9.4 Termination Payments will not include the Cost of Land.

28.10 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.

28.11 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 29

COMPENSATION FOR BREACH OF AGREEMENT

29.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 29.5, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to MOR by way of compensation, all direct costs suffered or incurred by MOR as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 29.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement.

29.2 Compensation for default by MOR

Subject to the provisions of Clause 29.5, in the event of MOR being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire, as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of User Fee, revenues, debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

29.3 Extension of Concession Period

Subject to the provisions of Clause 29.5, in the event that a material default or breach of this Agreement set forth in Clause 29.2 causes delay in achieving COD, MOR shall, in addition to payment of compensation under Clause 29.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed.

29.4 Compensation to be in addition

Compensation payable under this Article 29 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

29.5 Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

ARTICLE 30

TERMINATION

30.1 Termination for Concessionaire Default

30.1.1 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 solely as a result of any breach of this Agreement by MOR or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which 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-E and continues to be in default for [120 (one hundred and twenty) days]¹⁴;
- (d) the Concessionaire abandons or manifests intention to abandon the construction the Rail System without the prior written consent of MOR;
- (e) COD does not occur within the period specified in Clause 12.3.3;
- (f) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be, or commits repeated default in conforming to the Key Performance Indicators;
- (g) the Concessionaire has failed to make any payment to MOR within the period specified in this Agreement;
- (h) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (i) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required MOR 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;
- (j) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (k) the Concessionaire creates any Encumbrance in breach of this Agreement;

¹⁴ 5% of the Project Construction period.

- (l) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (m) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (n) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (o) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (p) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (q) 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 MOR, a Material Adverse Effect;
- (r) 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 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 the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (iii) each of the Project Agreements remains in full force and effect;
- (s) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (t) the Concessionaire submits to MOR any statement, notice or other document, in written or electronic form, which has a material effect on MOR's rights, obligations or interests and which is false in material particulars;
- (u) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or

- (v) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on MOR.

30.1.2 Without prejudice to any other rights or remedies which MOR may have under this Agreement, upon occurrence of a Concessionaire Default, MOR shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, MOR 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 30.1.3.

30.1.3 MOR shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 30.1.2 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 MOR receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) 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 180 (one hundred and eighty) days, and upon such curing thereof, MOR 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, MOR shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as MOR may deem appropriate.

30.2 Termination for MOR Default

30.2.1 In the event that any of the defaults specified below shall have occurred, and MOR 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, MOR shall be deemed to be in default of this Agreement (the "**MOR 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) MOR 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) MOR has failed to make any payment to the Concessionaire within the period specified in this Agreement; or
- (c) MOR repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

30.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a MOR Default, the Concessionaire shall, subject to

the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to MOR; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform MOR of its intention to issue the Termination Notice and grant 15 (fifteen) days to MOR 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.

30.3 Termination Payment

30.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, MOR shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) 90% (ninety per cent) of the Debt Due less Insurance Cover; and
- (b) 70% (seventy per cent) of the amount representing the Additional Termination Payment:

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.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD.

30.3.2 Upon Termination on account of a MOR Default, MOR shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) Debt Due;
- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity; and
- [(c) 115% (one hundred and fifteen per cent) of the amount representing the Additional Termination Payment.]

30.3.3 Termination Payment shall become due and payable to the Concessionaire within 45 (forty five) days of a demand being made by the Concessionaire to MOR with the necessary particulars, and in the event of any delay, MOR 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 MOR of its payment obligations in respect thereof hereunder.

30.3.4 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire; provided that in the event any Project Assets, essential for the efficient, economic and safe operation of the Rail System, shall have been acquired and installed after the 15th (fifteenth) anniversary of COD, with prior written consent of MOR (which consent shall not be unreasonably denied), a Termination Payment equal to 80% (eighty per cent) of the Adjusted Depreciated Value of such Project Assets shall, notwithstanding the provisions of Clause 30.4.1, be made by MOR to the Concessionaire.

30.3.5 Notwithstanding anything to the contrary in this Agreement, but subject to the provisions of Clause 30.3.4, in the event any Project Assets, essential for the efficient, economic and

safe operation of the Rail System, shall have been acquired and installed after the [15th (fifteenth)] anniversary of COD, with prior written consent of MOR (which consent shall not be unreasonably denied), a sum equal to 80% (eighty per cent) of the Adjusted Depreciated Value thereof shall be deemed to be Debt Due for the purposes of Termination Payment.

30.3.6 The Concessionaire expressly agrees that Termination Payment under this Article 30 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.

30.4 Certain limitations on Termination Payment

30.4.1 Termination Payment, not being Additional Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to MOR, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to MOR, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost.

[30.4.2 Additional Termination Payment due and payable in respect of Commercial Development forming part of Specified Assets shall be limited to the lowest of:

- (a) Adjusted Depreciated Value thereof;
- (b) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by MOR, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and
- (c) [40% (forty per cent)] of the sum of Total Project Cost.]

30.4.3 Additional Termination Payment due and payable in respect of Specified Assets, not being assets forming part of Commercial Development, which are constructed, acquired or installed after the 5th (fifth) anniversary of COD, but before the [15th (fifteenth)] anniversary thereof, shall be limited to the lowest of:

- (a) Adjusted Depreciated Value thereof;
- (b) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by MOR, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and
- (c) [20% (twenty per cent)] of the sum of Total Project Cost.]

30.5 Other rights and obligations of MOR

Upon Termination for any reason whatsoever, MOR shall:

- (a) be deemed to have taken possession and control of the Rail System 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) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 31.1; and
- (e) succeed upon election by MOR, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as MOR may in its discretion deem appropriate, and shall upon such election be liable to the 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 MOR 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 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 Contractors, and MOR shall not in any manner be liable for such sums. It is further agreed that in the event MOR elects to cure any outstanding defaults under such Project Agreements, the amount expended by MOR for this purpose shall be deducted from the Termination Payment.

30.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 30.3.6, 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 contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 31

DIVESTMENT OF RIGHTS AND INTEREST

31.1 Divestment Requirements

31.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) notify to MOR forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Rail System, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets of all defects and deficiencies so that the Rail System is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Rail System and its design, engineering, construction, and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction and maintenance of the Rail System and shall be assigned to MOR free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as MOR may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Rail System, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to MOR, absolutely unto MOR or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Rail System, free from all Encumbrances, absolutely unto MOR or to its nominee.

31.1.2 Subject to the exercise by MOR of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

31.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such

verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 32 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 31.

31.3 Cooperation and assistance on transfer of Project

31.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users or other members of the public or the lawful occupiers of any part of the Site.

31.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as MOR, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

31.3.3 MOR shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 31.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

31.4 Vesting Certificate

The divestment of all rights, title and interest in the Rail System shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and MOR shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-K (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Rail System, and their vesting in MOR pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by MOR or its nominee on, or in respect of, the Rail System on the footing that all Divestment Requirements have been complied with by the Concessionaire.

31.5 Divestment costs etc.

31.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Rail System in favour of MOR upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by MOR.

31.5.2 In the event of any dispute relating to matters covered by and under this Article 31, the Dispute Resolution Procedure shall apply.

ARTICLE 32

DEFECTS LIABILITY AFTER TERMINATION

32.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Rail System for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Rail System during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by MOR in this behalf, MOR shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Rail System conform to the Maintenance Requirements. All costs incurred by MOR hereunder shall be reimbursed by the Concessionaire to MOR within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, MOR shall be entitled to recover the same from the Escrow Account.

32.2 Retention in Escrow Account

32.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.2.2, a sum equal to [5% (five per cent)] of the total [User Fee] for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 36.1.

32.2.2 The Concessionaire may, for the performance of its obligations under this Article 32, provide to MOR a guarantee from a Bank for a sum equivalent to the amount determined under Clause 32.2.1, and for the period specified therein, substantially in the form set forth in Schedule-D (the "**Performance Guarantee**"), to be modified, *mutatis mutandis*, for this purpose, and MOR shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 32. Upon furnishing of a Performance Guarantee under this Clause 32.2.2, the retention of funds in the Escrow Account in terms of Clause 32.2.1 shall be dispensed with.

Part VI
Other Provisions

ARTICLE 33

ASSIGNMENT AND CHARGES

33.1 Restrictions on assignment and charges

- 33.1.1 Subject to Clauses 33.2 and 33.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of MOR, which consent MOR shall be entitled to decline without assigning any reason.
- 33.1.2 Subject to the provisions of Clause 33.2, 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 MOR, which consent MOR shall be entitled to decline without assigning any reason.

33.2 Permitted assignment and charges

The restraints set forth in Clause 33.1 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 Rail System;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, a charge on the Escrow Account arising or created in the ordinary course of business of the Rail System, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Rail System;
- (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.

33.3 Substitution Agreement

- 33.3.1 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, MOR and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-L.
- 33.3.2 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, MOR shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

33.4 Assignment by MOR

Notwithstanding anything to the contrary contained in this Agreement, MOR 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 MOR, capable of fulfilling all of MOR's then outstanding obligations under this Agreement.

ARTICLE 34

LIABILITY AND INDEMNITY

34.1 General indemnity

34.1.1 The Concessionaire will indemnify, defend, save and hold harmless the MOR and its officers, servants, agents, Government Instrumentalities and MOR owned and/or controlled entities/enterprises, (the “**MOR Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any consignor or from any negligence of the Concessionaire under contract 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 MOR Indemnified Persons.

34.1.2 MOR will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of MOR in the land comprised in the Site, and/or (ii) breach by MOR of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

34.2 Indemnity by the Concessionaire

34.2.1 Without limiting the generality of Clause 34.1, the Concessionaire shall fully indemnify, hold harmless and defend MOR and MOR 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 Concessionaire’s 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 contractors which are payable by the Concessionaire or any of its contractors.

34.2.2 Without limiting the generality of the provisions of this Article 34, Concessionaire shall fully indemnify, hold harmless and defend MOR Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which MOR 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 Concessionaire's 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 Rail System, 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 MOR a licence, at no cost to MOR, 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.

34.3 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 Article 34 (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.

34.4 Defence of claims

- 34.4.1 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 Article 34, 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.
- 34.4.2 If the Indemnifying Party has exercised its rights under Clause 34.3, 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).
- 34.4.3 If the Indemnifying Party exercises its rights under Clause 34.3, 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 34.4.3 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.

34.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 34, 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.

34.6 Survival on Termination

The provisions of this Article 34 shall survive Termination.

ARTICLE 35

RIGHTS AND TITLE OVER THE SITE

35.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as sole licensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Rail System by third parties in accordance with and subject to the provisions of this Agreement.

35.2 Access rights of MOR and others

35.2.1 The Concessionaire shall allow free access to the Site at all times for the authorised representatives of MOR, Senior Lenders, and the Independent Engineer, and for the persons duly authorised by any Government Instrumentality to inspect the Rail System and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

35.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility or road.

35.3 Property taxes

All property taxes on the Site shall be payable by the Concessionaire on behalf of MOR as user of the Site.

35.4 Restriction on sub-letting

The Concessionaire shall not sub-license or sub-let the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Rail System.

ARTICLE 36

DISPUTE RESOLUTION

36.1 Dispute resolution

36.1.1 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 36.2.

36.1.2 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.

36.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to [Insert the designation of the Person authorized in this behalf] and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 36.1.1 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 36.3.

36.3 Arbitration

36.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 36.2, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Clause 36.3.2. 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 venue of such arbitration shall be [Delhi], and the language of arbitration proceedings shall be English.

36.3.2 There shall be a board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the 2 (two) arbitrators, the appointment shall be made in accordance with the Rules.

36.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 36 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and MOR agree and undertake to carry out such Award without delay.

- 36.3.4 The Concessionaire and MOR agree that an Award may be enforced against the Concessionaire and/or MOR, as the case may be, and their respective assets wherever situated.
- 36.3.5 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.

36.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and MOR, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 36.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court¹⁵, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

¹⁵ Depending on Jurisdiction.

ARTICLE 37

MISCELLANEOUS

37.1 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 *** shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

37.2 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).

37.3 Depreciation and interest

37.3.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Assets shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, MOR shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

37.3.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

37.4 Delayed payments and Damages

37.4.1 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 [3% (three per cent)] above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

37.4.2 The rate for computation of Damages under Clause 6.2.1[, Clause 14.2.2] and para 1.2 of Schedule-G shall be revised annually on April 1, to reflect the variation in WPI.

37.5 Waiver

37.5.1 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.

37.5.2 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 there under 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.

37.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by MOR or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction or maintenance of the Rail System 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, the Applicable Laws and Applicable Permits; and
- (b) MOR shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

37.7 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.

37.8 Survival

37.8.1 Termination shall:

- (a) not relieve the Concessionaire or MOR, 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.

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

37.9 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.

37.10 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 the Dispute Resolution Procedure set forth under this Agreement or otherwise.

37.11 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.

37.12 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.

37.13 Successors and assigns

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

37.14 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 MOR; 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 number as the Concessionaire may from time to time designate by notice to MOR;
- (b) in the case of MOR, be given by facsimile or e-mail and by letter delivered by hand and be addressed to [Insert the designation of the person authorized in this behalf] with a copy delivered to MOR Representative or such other person as MOR may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in *** 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.

37.15 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.

37.16 Counterparts

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

ARTICLE 38

DEFINITIONS

38.1 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;

“**Additional Auditor**” shall have the meaning set forth in Clause 27.2.3;

“**Additional Termination Payment**” means the amount, if any, payable upon Termination, on account of the Adjusted Depreciated Value of Specified Assets, as further limited by the provisions of Clauses 30.4.2 and 30.4.3, as the case may be;

“**Adjusted Depreciated Value**” means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% (three percent) based on the written down value method) to reflect the variation occurring in WPI between the date of purchase thereof and the Transfer Date;

“**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 4th (fourth) 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; and
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42% (zero point four two per cent)¹⁶ thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

[and the aforesaid shall apply, *mutatis mutandis*, to the Equity funded in Indian Rupees and expended for System Augmentation]. For the avoidance of doubt, the Adjusted

¹⁶This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Concession Period. For example, the figure for a 20 year Concession Period shall be $100/240 = 0.416$ rounded off to two decimal points i.e. 0.42.

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 set forth in Clause 28.1;

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

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

“**Applicable Permits**” means all 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, operation and maintenance of the Rail System during the subsistence of this Agreement;

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

“**Approved Valuer**” means a firm of valuers recognized as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 cr. (Rupees one hundred crore) each in value;

“**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;

“**Associate**” or “**Affiliate**” means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (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);

“**Average Daily User Fee**” means the amount arrived at by dividing the total User Fees of the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the result thereof by 5% (five per cent); provided that the Average Daily User Fee for any period prior to completion of the first Accounting Year following the COD shall be a simple average of the User Fee computed on a daily basis, due on the date preceding the date on which the event requiring calculation thereof occurred;

“**Award**” shall have the meaning set forth in Clause 36.3.3;

“**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 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;

“**Change in Law**” means the occurrence of any of the following after the date of submission of the Proposal:

- (a) the enactment of any new Indian law as applicable to the State;
- (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 date of submission of the Proposal; or
- (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 date of submission of the Proposal;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Private Participant, in the total Equity to decline below (i) 51% (fifty one per cent) thereof during Construction Period, (ii) 33% (thirty three per cent) thereof during a period of 3 (three) years following COD, and (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by MOR during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its Proposal, as the case may be,) in the proportion of the equity holding of the Proposal to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership;

“**Change of Scope**” shall have the meaning set forth in Clause 16.1.1;

“**Chief Engineer**” shall have the meaning set forth in Clause 14.4.1;

“**COD**” or “**Commercial Operation Date**” shall have the meaning set forth in Clause 15.1;

“**Commercial Development**” shall have the meaning set forth in Clause 3.1.4;

“**Completion Certificate**” shall have the meaning set forth in Clause 14.2;

“**Concession**” shall have the meaning set forth in Clause 3.1.1;

“**Concession Fee**” shall have the meaning set forth in Clause 22.1.1;

“**Concession Period**” means the period starting on and from the Appointed Date and ending on the Transfer Date;

“**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 set forth in Clause 30.1.1;

“**Conditions Precedent**” shall have the meaning set forth in Clause 4.1.1;

“**Consignment**” means goods entrusted to the Authority for its transportation using the Rail System by the consignors on payment of applicable tariff in accordance with the provisions of this Agreement and Applicable Laws;

“**Construction Period**” means the period beginning from the Appointed Date and ending on COD;

“**Construction Works**” means all works and things necessary to complete the Rail System in accordance with this Agreement and includes tracks, signalling systems and communication systems;

“**Contractor**” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M or any other material agreement or contract for construction, and/or maintenance of the Rail System or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

“**Covenant**” shall have the meaning set forth in Clause 5.2.5;

“**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 MOR or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by MOR or the Independent Engineer to accord their approval;

“**Damages**” shall have the meaning set forth in Sub-clause (x) 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 (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (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 Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment

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

- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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;

“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 under the Financing Agreements;

“Development Period” means the period from the date of this Agreement until the Appointed Date;

“Dispute” shall have the meaning set forth in Clause 36.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 36;

“Disputed Amount” shall have the meaning set forth in Clause 23.4.1;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 31.1;

“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;

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

“Effective Date” means the date of execution of this Agreement;

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

“Encumbrances” means, in relation to the Rail System, 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 Rail System, where applicable herein but excluding utilities referred to in Clause 11.1;

“EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, *inter alia*, engineering and construction of the Rail System in accordance with the provisions of this Agreement;

“**EPC Contractor**” means the person with whom the Concessionaire has entered into an EPC Contract;

“**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 Total Project Cost, 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 set forth in Clause 25.1.2;

“**Escrow Bank**” shall have the meaning set forth in Clause 25.1.1;

“**Escrow Default**” shall have the meaning set forth in Schedule-J;

“**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 set forth in Schedule-L;

“**Financial Model**” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues there from on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“**Financial Package**” means the financing package indicating the total capital cost of the Rail System and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt;

“**Financing Agreements**” means the agreements 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, and includes amendments or modifications made in accordance with Clause 5.2.2;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 28.1;

“**Force Majeure Costs**” shall have the meaning ascribed to it in Clause 28.7.2;

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

“**Golden Share**” shall have the meaning ascribed to it in Clause 5.4.1;

“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 operator 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” means the Government of [the State];

“Government Instrumentality” means any department, division or sub-division of the Government of India 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 of India or the Government, as the case may be, and having jurisdiction over all or any part of the Rail System or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 34;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 34;

“Independent Engineer” shall have the meaning set forth in Clause 20.1;

“Indirect Political Event” shall have the meaning set forth in Clause 28.3;

“Inspection Report” shall have the meaning set forth in Clause 13.2;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 26, and includes all insurances required to be taken out by the Concessionaire under Clause 26.1 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;

“Key Performance Indicator” shall have the meaning set forth in Clause 18.2.3;

“Lenders’ Representative” means the person duly authorised by the Senior Lenders 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 set forth in Clause 18.3.1;

“Maintenance Programme” shall have the meaning set forth in Clause 18.2.2;

“**Maintenance Requirements**” shall have the meaning set forth in Clause 18.2.1;

“**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;

“**Modification**” shall have the meaning set forth in Clause 18.11.1;

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

“**MOR Default**” shall have the meaning set forth in Clause 30.2.1;

“**MOR Indemnified Persons**” shall have the meaning set forth in Clause 34.1.1;

“**MOR Representative**” means such person or persons as may be authorised in writing by MOR 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 MOR under this Agreement;

“**Nominated Company**” means a company selected by the Lenders’ Representative and proposed to MOR for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“**Non-Political Event**” shall have the meaning set forth in Clause 28.2;

“**O&M**” means the operation and maintenance of the Rail System and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, in accordance with the provisions of this Agreement, however, shall not include the performance of Reserved Services;

“**O&M Contract**” means the operation and maintenance contract(s) that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

“**O&M Contractor**” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

“**O&M Expenses**” means expenses incurred by or on behalf of the Concessionaire or by MOR, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“**Operation Period**” means the period commencing from COD and ending on the Transfer Date;

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

“**Payment Due Date**” shall have the meaning set forth in Clause 23.3.1;

“**Performance Guarantee**” shall have the meaning set forth in Clause 32.2.2;

“**Performance Security**” shall have the meaning set forth in Clause 9.1;

“**Political Event**” shall have the meaning set forth in Clause 28.4;

“**Preservation Costs**” shall have the meaning set forth in Clause 13.5.3;

“**Private Participant**” shall mean the participant[s] selected by MOR to whom the Project was awarded;

“**Project**” means the construction, operation and maintenance of the Rail System 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, EPC Contract, O&M Contract, all agreements relating to Commercial Development 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.[5(five)] crore;

“**Project Assets**” means all physical and other assets relating to and forming part of the Site including:

- (a) rights over the Site in the form of licence, Right of Way or otherwise;
- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, interchanges, bridges, drainage works, electrical systems, communication systems, rest areas, relief centres, maintenance depots, administrative offices and Stations;
- (c) Project Facilities situated on the Site;
- (d) buildings and immovable fixtures or structures forming part of Commercial Development;
- (e) all rights of the Concessionaire under the Project Agreements;
- (f) financial assets, such as receivables, security deposits etc;
- (g) insurance proceeds; and
- (h) Applicable Permits and authorisations relating to or in respect of the Rail System;

“**Project Completion Schedule**” means the progressive Project Milestones set forth in Schedule-E for completion of the Rail System on or before the Scheduled Completion Date;

“**Project Facilities**” means all the amenities and facilities situated on the Site, as described in Schedule-A;

“**Project Milestones**” means the project milestones set forth in Schedule-E;

“**Proposal**” means the documents in their entirety comprised in the proposal submitted by the Private Participant in respect of the Project in accordance with the requirements of MOR;

“**Rail System**” means the [railway in ***** comprising the _____] system built, or to be built, and maintained on the Site and includes civil, mechanical and electrical works, rail tracks, signalling and telecommunication equipment, and all other Project Assets necessary for and associated with operation of trains on the Site;

“**Railway Land**” shall have the meaning set forth in Clause 6.2.1;

“**Railway Staff**” shall have the same meaning as set forth in Clause 17.1.1;

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

“**Reference Exchange Rate**” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“**Reserved Services**” means the services specified in Clause 17.1.1;

“**Right of Way**” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Rail System and Commercial Development in accordance with this Agreement;

“**Rules**” shall have the meaning set forth in Clause 36.3.1;

“**Safety Requirements**” shall have the meaning set forth in Clause 18.4.1;

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 12.3.1;

“**Scope of the Project**” shall have the meaning 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;

“**Sidings**” shall have the meaning set forth in Clause 11.3.2;

“**Site**” shall have the meaning set forth in Clause 10.1;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Rail System, as specified by the Indian Railways from time to time, and any modifications thereof, or additions thereto, as

included in the design and engineering for the Rail System submitted by the Concessionaire to, and expressly approved by, MOR. Where no specifications and standards have been specified by the Indian Railway the construction of the Rail System shall conform to the international specification in this regard;

“**Specified Assets**” means and includes all or any of the following:

- (a) all buildings and immovable fixtures or structures forming part of Commercial Development;
- (b) such of the Project Assets which are constructed, acquired or installed after the [5th (fifth)] anniversary of COD, but before the [15th (fifteenth)] anniversary thereof; and
- (c) but shall in no case include land;

“**State**” means the State of ***** and “**State Government**” means the government of that State;

“**Station**” means a place in the Rail System where trains stop for the purposes of transporting goods;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 27.2.1;

“**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 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 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 purposes 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;

“**Substitution Agreement**” shall have the meaning set forth in Clause 33.3;

“**Target Traffic**” shall have the meaning set forth in Clause 24.1.1;

“**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 Rail System 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;

“**Term**” means the period starting on and from the Effective Date and ending on the date of Termination;

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

“**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, under and in accordance with this Agreement, by MOR to the Concessionaire upon Termination, and includes Additional Termination Payment. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 30.4;

“**Tests**” means the tests set forth in the list submitted by the Concessionaire pursuant to the provisions of Clause 14.1.1 to determine the completion of Rail System in accordance with the provisions of this Agreement;

“**Total Project Cost**” means the capital cost incurred on construction and financing of the Project, excluding Commercial Development, and shall be limited to the lowest of:

- (a) the capital cost of the Project, as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion of the Rail System; and
- (c) a sum of Rs. ***** crore (Rupees ***** crore);

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost. For the avoidance of doubt, it is agreed that Total Project Cost shall not include the cost of Specified Assets.

“**Traction System**” means the system which provides electric power for movement of trains;

“**Train**” means a series of railway coaches that is hauled as a single unit by a locomotive or by integral motors for transporting Consignments on the Rail System and includes a single coach;

“**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 uses or intends to use the Rail System or any part thereof in accordance with the provisions of this Agreement and Applicable Laws;

“**User Fee**” means the charge(s) payable by MOR to the Concessionaire for use of the Rail System by any person in accordance with the provisions of this Agreement;

“**Vesting Certificate**” shall have the meaning set forth in Clause 31.4;

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of 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; and

“**Zonal Railway**” means[***], constituted under section 3 of the Railway Act, 1989.

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of
the President of India:

(Signature)

(Name & Designation)

SIGNED, SEALED AND
DELIVERED For and on behalf of
The Concessionaire:

(Signature)

(Name)

(Designation)

THE COMMON SEAL OF THE
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

SCHEDULE – A
SITE AND PROJECT FACILITIES
(See Clause 10.1)

I. The Site

- 1.1 Site of the Rail System shall include the land, buildings, structures and road works on the Site the layout of which is set forth in Annex-I of this Schedule-A.

II. Development of the Rail System

- 2.1 Development of the Rail System shall include construction of the Rail System as described in this Schedule-A on the Site.
- 2.2 The Rail System shall be of [***] Km in Route length and from [***] Km [Chainage] [Station Name] to [***] Km [Chainage] [Station Name].
- 2.3 The Rail System shall be constructed [in tunnel/at grade/elevated] as briefly described below:

S.No	Items	Descriptions
1	Gauge	
2	Total Track Km	
3	Track in Tunnel	
4	Bridges	
5	Stations	
6	Ruling gradient	
7	Axle Load	
8	Maximum Permissible Speed	
9	[***]	

III. Project Facilities

- 3.1 The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement.
- 3.2 Project Facilities forming part of the Rail System and to be completed on or before the COD have been briefly described hereunder:
1. [Stations
 2. Freight Handling Facilities
 3. Warehousing Facilities
 4. FOIS/TMS
 5. Railway Office Infrastructure
 6. Running Room Facilities]

[Note: A brief description of the above facilities is to be provided here.]

Annex - I
(Schedule-A)

Site for the Rail System

[Note: The Concessionaire to insert the Site Layout]

SCHEDULE – B
(See Clause 3.1.4)

ADDITIONAL ASSETS FOR COMMERCIAL DEVELOPMENT

[Note: Details of additional assets along with their standards and specifications will be described here.]

SCHEDULE-C
(See Clause 4.1.3)

APPLICABLE PERMITS

1 Applicable Permits

1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the MOR in accordance with Clause 4.1.3 of the Agreement:

- (a) Permission of the State Government for extraction of boulders from quarry;
- (b) Permission of 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 Pollution Control Board for Asphalt Plant;
- (h) Clearance of Pollution Control board for installation of diesel generator sets;
- (i) Fire safety clearance from fire authorities;
- (j) Permission of State Government for cutting of trees; and
- (k) Any other permits or clearances required under Applicable Laws.

SCHEDULE–D
(See Clause 9.1.1)

PERFORMANCE SECURITY

THE PRESIDENT OF INDIA [*** (Designation of the Signatory)],
Ministry of Railways (Railway Board),
Government of India ****

WHEREAS:

- (A)(the “**Concessionaire**”) and THE PRESIDENT OF INDIA represented by [*** (Designation of the Signatory)], Ministry of Railways (Railway Board), Government of India **** (“**MOR**”) have entered into a Concession Agreement dated(the “**Agreement**”) whereby MOR has resolved to procure [a new line rail system for ** km from ** to ** km and/or gauge conversion of the rail system for ** km from ** to ** in linkage and ** km in chainage] under the joint venture model as specified in the Policy for Participative Models in Rail Connectivity and Capacity Augmentation of Projects dated December 10, 2012 (as amended from time to time), subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to MOR in a sum of Rs***** cr. (Rupees ***** crore) (the “**Guarantee Amount**”) as 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).
- (C) We, through our Branch at(the “**Bank**”) have agreed to furnish this Bank 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 faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to MOR, 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 upto an aggregate sum of the Guarantee Amount as MOR shall claim, without MOR being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from MOR, under the hand of an Officer not below the rank of Deputy Secretary to MOR, 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 MOR shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between MOR 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, MOR 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 MOR to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. MOR 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 MOR 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 MOR, and the Bank shall not be released from its liability and obligation under these presents by any exercise by MOR 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 MOR 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 MOR 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 2nd (second) 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 MOR on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of MOR 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 20% (twenty per cent) of the Total Project Cost which is deemed to be [Rs.*** cr.] 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 along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, MOR 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 MOR 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 MOR 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 as set forth in paragraph 7 or until it is released earlier by MOR 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-E
(See Clause 12.1)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-B for each of the Project Milestones and the Scheduled Completion Date (the “**Project Completion Schedule**”). Within [15 (fifteen) days] of the date of each Project Milestone, the Concessionaire shall notify the MOR of such compliance along with necessary particulars thereof.

2. Project Milestones

[Note: the Concessionaire to insert the project Completion Schedule.]

Sr. No	Activity/Project Milestone	Date

3 Scheduled Completion Date

3.1 The Scheduled Completion Date shall occur on the [***] day from the Effective Date.

3.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Rail System in accordance with this Agreement.

4 Extension of period

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-F
(See Clause 12.2)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-F.

2 Additional drawings

- 2.1 If the Independent 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 Independent Engineer, as if such drawings formed part of Annex-I of this Schedule-F.

Annex - I
(Schedule-F)

List of Drawings

1. List of Drawings and Documents to be furnished by the Concessionaire shall include, but not be limited to:
 - (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) Plans of Junction Arrangements.

2. 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;

as specified in the Indian Railways Code for Engineering Department (“**Engineering Code**”).

SCHEDULE-G
(See Clause 18.2)

MAINTENANCE REQUIREMENTS

1. Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, maintain the Rail System in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the Maintenance Requirements set forth in this Schedule-G. For avoidance of doubt, the Concessionaire shall at all times during the Operation Period adhere to the Maintenance Requirements, in accordance with the manuals set forth in Annex I of this Schedule-G.
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-G within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the MOR shall be entitled to recover Damages at the rate of [Rs. 1,000 (one thousand)] for each day of delay or part thereof. Recovery of such Damages shall be without prejudice to the rights of the MOR under the Agreement, including Termination thereof.

2. Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-G, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the MOR with reasons thereof.

3. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-G, if any defect, deficiency or deterioration in the Rail System poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

Annex - I
(Schedule-G)

Repair/Rectification of Defects and Deficiencies

The Concessionaire shall repair and rectify the defects and deficiencies wherever maintenance is with Concessionaire specified in this Annex- I of Schedule G within the time limit set forth herein.

Nature of defect or deficiency		Time limit for repair/rectification	
I. TRACTION EQUIPMENT			
(i) Failure of traction power supply	-	0.5 hour	
(ii) Failure of traction equipment	-	1 hour	
II. SIGNALLING			
Signalling defect causing detention of Trains more than 30 minutes.	-	2.0 hours	
III. STATIONS			
(i) Accumulation of litter, dust, trash, debris etc.	-	One day	
(ii) Failure of electric supply (substitution by emergency lights)	-	5 minutes	
(iii) Discontinuation of drinking water supply	-	2 hours	
(iv) Failure of public address system	-	1 hour	
(v) Failure of telecommunication system	-	1 hour	
IV. RAIL TRACKS			
(a)	Rail Track		
(i)	Breach or blockade	-	Temporary restoration of traffic within 2 hours and permanent restoration within 7 days
(ii)	Jerks during foot-plating	-	2 days

(iii)	Rail fracture, buckling of rails or welding failure	-	Temporary Restoration within 2 hours and permanent restoration within 24 hours
(iv)	Removal of debris	-	One day
(b)	Hard/earth shoulders, side slopes, drains, embankments and culverts		
(i)	Variation by more than 2% in the prescribed slope of camber/cross fall	-	15 days
(ii)	Edge drop at shoulders exceeding 100 mm	-	3 days
(iii)	Variation by more than 15% in the prescribed side (embankment) slopes	-	15 days
(iv)	Rain cuts/gullies in slope	-	7 days
(v)	Damage to or silting of culverts and side drains during and immediately preceding the rainy season	-	3 days
(vi)	Desilting of drains	-	24 hours
(c)	Track side furniture		
	Damage to shape or position; poor visibility or loss of retro-reflectivity	-	24 hours
(d)	Other Project Facilities and Approach roads		
	[Damage or deterioration in Approach Roads, pedestrian facilities, and other works]	-	2 days (Temporary)
V. BRIDGES / ELEVATED STRUCTURES			
(a)	Superstructure of bridges/ elevated structures		
(i)	Cracks Temporary measures Permanent measures	- -	within 24 hours within 15 days
(ii)	Spalling/scaling	-	7 days
(b)	Foundations of bridges / elevated structures		
	Scouring and/or cavitation	-	7 days

(c)	Piers, abutments, return walls and wing walls of bridges / elevated structures		
	Cracks and damages including settlement and tilting	-	15 days
(d)	Bearings (metallic) of bridges / elevated structures		
	Deformation	-	15 days
(e)	Joints in bridges / elevated structures		
	Loosening and malfunctioning of joints	-	7 days
(f)	Other items relating to bridges / elevated structures		
(i)	Deforming of pads in elastomeric bearings	-	3 days
(ii)	Gathering of dirt in bearings and joints; or clogging of spouts, weep holes and vent-holes	-	2 days
(iii)	Damage or deterioration in parapets and handrails	-	2 days
(iv)	Rain-cuts or erosion of banks of the side slopes of approaches	-	7 days
(v)	Damage to wearing coat	-	7 days
(vi)	Damage or deterioration in approach slabs, pitching, apron, toes, floor or guide bunds	-	15 days
(vii)	Growth of vegetation affecting the structure or obstructing the waterway	-	7 days

SCHEDULE–H
(See Clause 18.4.1)

SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Rail System, irrespective of the person(s) at fault.
- 1.2 Users of the Rail System include staff of the Railways, Concessionaire and its contractors working on the Rail System.
- 1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response etc.

2 Obligations of the Concessionaire

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

- (a) Applicable Laws and Applicable Permits;
- (b) General and subsidiary Rules, Accident manual & Disaster Management Manual of respective Division/ Zonal Railways
- (c) Provisions of this Agreement; and
- (d) Relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice.

3 Safety measures during Development Period

- 3.1 The Parties shall require the Independent Engineer for carrying out safety audit at the design stage of the Project.
- 3.2 The Concessionaire shall provide to the Independent Engineer, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the “**Safety Drawings**”). Such design details shall include horizontal and vertical alignments; sightlines; layouts of viaducts, tunnels, elevated structures and Stations along with other incidental or consequential information. The Independent Engineer shall review the design details and forward three copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward one copy each to MOR and the Concessionaire.
- 3.3 The design details shall be compiled, analysed and used by the Independent Engineer for evolving a package of recommendations consisting of safety related measures for the Rail System. The safety audit shall be completed in a period of three months and a report thereof (the “**Safety Report**”) shall be submitted to MOR, in five copies. One copy of the Safety Report shall be forwarded by the Independent Engineer to the Concessionaire.

- 3.4 The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the design of the Rail System, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of MOR, Specifications and Standards, and Good Industry Practice. If the Concessionaire does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to MOR forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Concessionaire shall make a report thereon and seek the instructions of MOR for funding such works in accordance with the provisions of Article 18.
- 3.5 Without prejudice to the provisions of Paragraph 4, within 15 (fifteen) days of receiving the Safety Report, MOR shall review the same and by notice direct the Concessionaire to carry out any or all of the recommendations contained therein with such modifications as MOR may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 18.

4 Safety measures during Construction Period

- 4.1 No later than 90 days after the signing of this agreement, Concessionaire in consultation with IE will submit safety manual pertaining to construction phase.
- 4.2 The Independent Engineer shall carry out a safety audit of the completed Construction Works.
- 4.3 The Independent Engineer shall study the Safety Report for the Development Period and inspect the Rail System to assess the adequacy of safety measures. The Independent Engineer shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional safety measures, if any, that are considered essential for reducing accident hazards on the Rail System. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 3.3, 3.4 and 3.5 of this Schedule-H.
- 4.4 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and road users in accordance with Applicable Laws and Good Industry Practice for safety in construction zones, and notify MOR and the Independent Engineer about such arrangements. The Concessionaire shall comply with various instructions related to work site safety, as compiled in compendium of Instruction issued by Northern Railway and any other instruction pertaining to work site safety, as may be issued by Railways from time to time.

5 Safety measures during Operation Period

5.1 System integrity

In the design of power supply, signalling, track-work, circuits and equipments, particular care shall be taken to minimise the likely incidence of failure.

5.2 Restoration of service

The Rail System shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.

5.3 Safety management

A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets, track and signalling, and compliance thereof. The statement shall also bring out the nature and extent of, staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Engineer within 15 (fifteen) days of the close of every quarter.

- 5.4 No later than 90 (ninety) days prior to schedule completion date, Concessionaire in consultation with IE will submit safety manual for operation phase.
- 5.5 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 5.6 The Concessionaire shall establish a Rail Safety Management Unit (the “**RSMU**”) to be functional on and after COD, and designate one of its officers to be in-charge of the RSMU. Such officer shall have specialist knowledge and training in rail system safety by having attended a course conducted by a reputed organisation on the subject.
- 5.7 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Rail System. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised in the form prescribed by MOR for this purpose. The Concessionaire shall also record the exact location of each accident on a route map. The aforesaid data shall be submitted to MOR at the conclusion of every quarter.
- 5.8 The Concessionaire shall submit to MOR before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 5.1 of this Schedule-H for averting or minimising such accidents in future.
- 5.9 Once in every Accounting Year, a safety audit shall be carried out by the Independent Engineer. It shall review and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Rail System. The Independent Engineer shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the Rail System. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 3.3, 3.4 and 3.5 of this Schedule-H.

6 Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-H, shall be met in accordance with Article 18, and in particular, the costs of the safety audit, and incidental thereto, shall be met by the Concessionaire.

SCHEDULE-I
(See Clause 20.2)

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Scope

- 1.1 These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Agreement for construction and procurement of the Rail System..... (the “**Agreement**”), which has been entered into between the MOR and (the “**Concessionaire**”) for the finance, construction and maintenance of Rail System at *** corridor in *** of *** and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction and maintenance of the Rail System.

2. Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR 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 TOR 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 TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3. Roles and functions of the Independent Engineer

- 3.1 The roles and functions of the Independent Engineer shall include the following:
- (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (iii) conducting Tests on completion of construction and submitting copies of all Test data including detailed Test results to the MOR, Chief Engineer/Independent Surveyor Assessor as set forth in Paragraph 5;
 - (iv) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (vi) assisting the Parties in resolution of disputes as set forth in Paragraph 8;
 - (vii) undertaking all other duties and functions in accordance with the Agreement; and
 - (viii) undertaking safety audit.
- 3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Drawings and Documents

- 4.1 The Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire. The Independent Engineer shall complete such review and send its comments/observations and the Concessionaire and MOR within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

5. Construction Period

- 5.1 In respect of the Drawings and Documents received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Engineer shall review the quarterly progress report furnished by the Concessionaire and send its comments thereon to the MOR and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works once every quarter, preferably after receipt of the quarterly progress report from the Concessionaire, but before the [7th (seventh) day] of next quarter in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Rail System. The Independent Engineer shall send a copy of its Inspection Report to MOR and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Rail System more than once in a quarter if any lapses, defects or deficiencies require such inspections.
- 5.5 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Rail System is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to MOR and the Concessionaire forthwith.
- 5.6 The Independent Engineer shall carry out, or cause to be carried out, all the Tests and upon completion of Construction Works, and shall issue the Completion Certificate. The Independent Engineer shall submit copies of all Test data including detailed Test results to the MOR, Commissioner of Railway Safety. For carrying out its functions under this

Paragraph 5.6 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14.

6. Operation Period

In respect of the Drawings and Documents received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

7. Determination of costs and time

7.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

7.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

8. Assistance in Dispute resolution

8.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

8.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

9. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

10 Termination

10.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Rail System for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 31.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Rail System is such that its repair and rectification would require a larger amount than the sum set forth in Clause 31.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.

10.2 The Independent Engineer shall inspect the Rail System once in every 15(fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 32, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Government and the Concessionaire.

11. Miscellaneous

- 11.1 The Independent Engineer shall notify its programme of inspection to the MOR and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the MOR forthwith.
- 11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the MOR along with its comments thereon.
- 11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the MOR or such other person as the MOR may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the MOR.

SCHEDULE-J
(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 [*** (*Designation of the Signatory*)], Ministry of Railways (Railway Board), Government of India and having its principal offices at [*****] (hereinafter referred to as the “**MOR**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) MOR has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for [a new line rail system for ** km from ** to ** km and/or gauge conversion of the rail system for ** km from ** to ** in linkage and ** km in chainage] (“**Rail System**”) under the joint venture model as specified in the Policy for Participative Models in Rail Connectivity and Capacity Augmentation of Projects dated December 10, 2012 (as amended from time to time), 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 MOR 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 “MOR”, 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 “MOR”, the Lenders’ Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than “MOR”, 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 “MOR” 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, “MOR”, 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 “MOR”, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and MOR, 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 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 User Fee and any other revenues from or in respect of the Rail System, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payments by MOR, after deduction of any outstanding Concession Fee:

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

3.2 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.

3.3 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 Rail System;
- (b) all payments relating to construction of the Rail System, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) Concession Fee due and payable to MOR;
- (d) fee and expenses due and payable to the Escrow Bank;
- (e) monthly proportionate provision of Debt Service due in an Accounting Year;
- (f) all payments and Damages certified by MOR as due and payable to it by the Concessionaire;
- (g) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (h) any reserve requirements set forth in the Financing Agreements; and
- (i) 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 Rail System;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by MOR 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 32;
- (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

Provided that the disbursements specified in Sub-clause (i) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by MOR.

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.

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 “**MOR**” 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 “**MOR**” 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, “**MOR**” 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 “**MOR**”, 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 “**MOR**” 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 “**MOR**” 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 MOR, 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 venue of arbitration shall be *** 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 at *** shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Waiver of sovereign immunity

MOR 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 MOR 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).

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 thereunder 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)

SIGNED, SEALED AND DELIVERED For and on behalf of ESCROW BANK by:

SIGNED, SEALED AND DELIVERED For and on behalf of THE PRESIDENT OF INDIA represented by [*(Designation of the Signatory)*], Ministry of Railways (Railway Board), Government of India by:

- (Signature)
- (Name)
- (Designation)
- (Address)
- (Fax No.)

- (Signature)
- (Name)
- (Designation)
- (Address)
- (Fax No.)

[§] To be affixed in accordance with the articles of association of the Concessionaire.

(e-mail
address)

(e-mail address)

In the presence of:

1.

2.

SCHEDULE-K
(See Clause 31.4)

VESTING CERTIFICATE

- 1 THE PRESIDENT OF INDIA represented by [*** (*Designation of the Signatory*)], Ministry of Railways (Railway Board), Government of India (“**MOR**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between MOR and (the “**Concessionaire**”) for [a new line rail system for ** km from ** to ** km and/or gauge conversion of the rail system for ** km from ** to ** in linkage and ** km in chainage] under the joint venture model as specified in the Policy for Participative Models in Rail Connectivity and Capacity Augmentation of Projects dated December 10, 2012 (as amended from time to time).

- 2 MOR hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 31.1 of the Agreement on the basis that upon issue of this Vesting Certificate, MOR shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Rail System shall be deemed to have vested unto MOR, free from any encumbrances, charges and liens whatsoever.

- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20 at

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

CONCESSIONAIRE by:

MOR ***** by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

SCHEDULE-L
(See Clause 33.3.1)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the day of 20....

AMONGST

- 1 THE PRESIDENT OF INDIA represented by [*** (*Designation of the Signatory*)], Ministry of Railways (Railway Board), Government of India, having its principal offices at *****] (hereinafter referred to as the “**MOR**” 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) MOR has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for [a new line rail system for ** km from ** to ** km and/or gauge conversion of the rail system for ** km from ** to ** in linkage and ** km in chainage] under the joint venture model as specified in the Policy for Participative Models in Rail Connectivity and Capacity Augmentation of Projects dated December 10, 2012 (as amended from time to time)., 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 MOR 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, MOR 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;

“**Concession Agreement**” shall have the meaning as ascribed in Recital (A);

“**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 MOR 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 MOR 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 MOR 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.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, MOR 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 MOR 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 MOR 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, MOR 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 MOR and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to MOR 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 Rail System including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards MOR 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 MOR for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to MOR that all or any of such criteria may be waived in the interest of the Project, and if MOR 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 MOR to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Rail System 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 MOR 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 MOR, the Nominated Company shall be deemed to have been accepted. MOR 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 MOR, 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.

3.5 Selection to be binding

The decision of the Lenders' Representative and MOR 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 MOR 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 MOR and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain MOR 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 MOR to terminate the Concession Agreement forthwith, and upon receipt of such notice, MOR shall undertake Termination under and in accordance with the provisions of Article 30 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to MOR 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, MOR may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

MOR 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 MOR 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 MOR 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 MOR 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 MOR, 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 MOR, 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 venue of arbitration shall be *** 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 *** shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

MOR 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 MOR 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 there under 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
“THE MINISTRY OF RAILWAYS” ***
by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders’ Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

[§] To be affixed in accordance with the articles of association of the Concessionaire.

1.

2.

SCHEDULE - M
(See Clause 18.1.1)

Cost of Maintenance

1. In the event, the Parties mutually agree for MOR to undertake maintenance of the Rail System in accordance with provisions of Clause 18.1.1, all materials required for maintenance shall be procured by MOR/ Zonal Railway and the cost thereof and related direct and indirect supervision charges will be payable by the Concessionaire to MOR on actuals.
2. All cost* of required Railway Staff for maintenance shall be paid by the Concessionaire to MOR. The number of Railway Staff to be deployed on the Rail System for undertaking maintenance should be worked out keeping in view the Konkan Railway pattern of maintenance and should be tabulated as follows :

Sr. No	Designation	Grade (as applicable from time to time)	Number	Location

* -No Overhead charges will be payable on such costs.

SCHEDULE - N
(See Clause 23.1.1)

Cost of Reserved Services

The modalities for computation of Cost of Reserved Services have been provided below:

(A) Method to calculate Hire-Charges of Goods Wagons and Locomotives

1. Hire charges of wagons will be paid by the Concessionaire to Zonal Railway for utilization of wagons as per the IRFA rates (with interest) issued by C&IS Directorate of Railway Board.
2. The number of hours each wagons/ locomotive is on the Rail System shall be calculated from the time the wagon/ locomotive leaves [***] Railway Station to the time the wagon/ locomotive arrives back to [***] Railway Station.
3. Records in connection with the interchange of wagons exchanged between Zonal Railway and Rail System at station [***] shall be maintained by Zonal Railway staff posted at station [***] so as to show separately wagons:
 - a) Loaded to empty.
 - b) Loaded in both directions.
 - c) Empty to loaded.
 - d) Empty in both directions.
4. All pooled and non-pooled goods rolling stock received from Zonal Railway will be allowed to be retained on the Rail System from point 'X' in terminal yard or any nominated point.
5. Hire charges shall be calculated on the aggregates time the wagons are on the Rail System during each month less the free time for loading and unloading; time the wagons are on other sidings for which no revenue is paid to Concessionaire and time taken for other handling and operational requirements. Free time in respect of the above shall be fixed by Zonal Railway following the normal procedure. Hire charges for locomotives shall be calculated on the aggregate time the locomotives are on the Rail System.
6. In making computation, fraction of an hour shall be dropped if less than half an hour and shall be compounded to one if more than half an hour.
7. The Concessionaire shall not be liable for hire charges for detention occasioned by Force Majeure.
8. Detention in respect of the following categories of wagons shall also be excluded from the total detention hours arrived at:
 - a) Mis-dispatched wagons.
 - b) Wagons waiting for repairs and materials.
 - c) Wagons containing MOR's material traffic.
 - d) Unconnected wagons.
 - e) Empties supplied in excess of specific demands.
 - f) Wagons suitable for being rendered water-tight which are detained for water-tightening on the MOR's account.
 - g) Wagons certified by TXR as unfit for loading.

- h) Wagons detained due to derailment on Rail System where MOR is held responsible.
 - i) Wagons stabled due to non-acceptance by MOR.
 - j) Wagons accruing demurrage for the period demurrage is collected.
 - k) Non-Railway wagons on which MOR/Zonal Railway does not pay hire charges.
9. Since cost of running repair of wagons is not included in wagon hire charges, it shall be recovered by multiplying the wagon days of the Rail System with Daily Average Indian Railway BG cost of wagon repair and maintenance figure as published in Annual Statistical Statement (ASS) of MOR (Column 13 of statement 26B). Reconciliation of figures should be done to recover any balance amount as soon as the ASS data is available for the same financial year of operations.
10. Records in connection with the interchange of locomotives exchanged between Zonal Railway and Rail System shall be maintained by Zonal Railway Staff so as to show separately for locomotives. For capturing the data FOIS data can also be used be available.
11. Detention in respect of the following categories of locomotives shall also be excluded from the total detention hours arrived at:
- a. Locomotive which is in excess as per the required load conditions
 - b. Failed locomotive on the project section awaiting clearance by MOR
 - c. Accidental locomotives on the project section awaiting clearance by MOR
 - d. Locomotives which are detained at interchange point because of reasons attributable to MOR.
12. Loco Hire Charges - Hire charges for locomotive will be paid by the Concessionaire to Zonal Railways for utilisation of locomotive as per the IRFA rates (with interest)issued by Finance Commercial Directorate of Railway Board.

(B). Cost of Fuel:

The cost of fuel can be estimated as per SFC/SEC for 1000 GTKM (Freight), of the concerned Zonal Railway every year, as published in ASS of MOR.

Calculation Methodology of cost of fuel/Electricity:

Specific Fuel Consumption	Source	A	
Cost of Fuel per litre in Rs.	Rate of HSD In Rs. Per .Ltr. (BG). <u>For the Zonal Railway to be adopted</u> – Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 27 A, Col. 68-BG) DIVIDED by 1000. Rate of Electricity In Rs. Per KWh (BG). <u>For the Zonal Railway to be adopted</u> – Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 27 A, Col. 74-BG) DIVIDED by 100 to convert in to Rs. Per KWh.	B	
GTKMs of the section, in Thousands		C	
Cost of fuel per 1000 GTKMs in Rs.		D	A * B
Cost of fuel for the section		E	D * C

Other than Fuel For Diesel Locomotive:

Item	Account Head	Unit to be used for allocation of Cost	Source of Data
Fuel / Diesel	H-200	SFC Average Specific Fuel Consumption (SFC), In Litres. / 1000 GTKm. For the concerned Zone.	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 27 B, Col. 18-BG).
Lube Oil	F-241	GTKM GTKm. for Goods Diesel of the For the concerned Zone.	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for <u>Total Diesel Traction</u> .
Other stores	F-242	GTKM GTKm. for Goods Diesel of the	<u>For the Zonal Railway to be adopted</u> – Annual Statistical Statement of the relevant year –

		Zone.	Published by Railway Board. (Statement No. 16, Col. 7-BG) for <u>Total Diesel Traction.</u> GTKm. for Goods Diesel of the NGR. <u>Summation of GTKm. (in '000)</u> as calculated from RRs Of the NGR Section for Month / Year.
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Other than Fuel for Electric Locomotive:

Item	A/cs. Code	Basis for apportionment	Source of Data
Cost of energy used for traction services	H-330	SEC Average Specific Energy Consumption (SEC), KWh/ 1000 GTKm For the concerned Zone.	<u>For the Zonal Railway to be adopted</u> – Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 27 B, Col. 18-BG).
Other operating expenses- Lubricants	F-331	GTKM/1000 GTKm. for Goods Electric For the concerned Zone.	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for <u>Electric Traction (AC +DC).</u>
Other operating expenses-Consumable stores	F-332	GTKM/1000 GTKm. for Goods Electric For the concerned Zone.	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for <u>Electric Traction (AC +DC).</u>

(C) Cost of Crew (Diesel Traction)

Item	Account Head	Unit to be used for allocation of Cost	Source of Data
Running Staff loco crew	F-212	GTKM/1000 GTKm. for Goods Diesel of the concerned ZONE.	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Total Diesel Traction.
Running Staff - Guard	G-510	TOTAL	Annual Statistical Statement

		GTKM/1000 GTKm. for Goods of the concerned ZONE(All Traction).	of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7- BG)
Other operating staff accompanying the trains	G-520	TOTAL GTKM/1000 GTKm. for Goods of the concerned ZONE (All Traction).	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7- BG) for All Traction.
Contingent expenses	F-243	GTKM/1000 GTKm. for Goods of the concerned ZONE (Traction Specific).	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7- BG) for Traction Specific.
Misc. expenses	F-291 to 294	GTKM/1000 GTKm. for Goods of the concerned ZONE(Traction Specific)	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7- BG) for Traction Specific.
Other unclassified expenses	F-295	GTKM/1000 GTKm. for Goods of the concerned ZONE (Traction Specific)	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7- BG) for Traction Specific.
Supervisory, Running and Office Staff.	8F-211	GTKM/1000 GTKm. for Goods of the concerned ZONE (Traction Specific)	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7- BG) for Traction Specific.

Cost of Crew (Electric Traction)

Item	A/cs. Head	Basis for apportionment	Source of Data & Methodology
Running staff – Loco crew	F-312	GTKM/1000 GTKm. for Goods Electric of the concerned ZONE.	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Electric Traction (<u>AC +DC</u>).
Running staff – Guard	G-510	Total GTKM/1000 GTKm. for Goods of the ZONE(All Traction).	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for All Traction.
Other operating staff accompanying freight trains	G-520	Total GTKM/1000 GTKm. for Goods of the concerned ZONE (All Traction).	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for All

			Traction.
Contingent expenses	8F-333	GTKM/1000 GTKm. for Goods of the concerned ZONE (Traction Specific).	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Traction Specific.
Misc. Expenses	8F-341 to 344	GTKM/1000 GTKm. for Goods of the concerned ZONE (Traction Specific)	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Traction Specific.
Other unclassified expenses	8F-345	GTKM/1000 GTKm. for Goods of the concerned ZONE (Traction Specific)	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Traction Specific.
Supervisory and office staff, Running	8F-311	GTKM/1000 GTKm. for Goods of the Railway (Traction Specific)	Annual Statistical Statement of the relevant year – Published by Railway Board. (Statement No. 16, Col. 7-BG) for Traction Specific.

In working out the cost of crew, the following guidelines should be observed:

- The expenditure on items against the accounting head should be worked out from Accounts Statement no.15.
- The cost pertaining to wages should be taken into account for working out the cost against a particular accounting head.
- Reconciliation of figures should be done to recover any balance amount as soon as the data for Accounts Statement No.15 is available for the same financial year of operations.

(D) INDIRECT COST

OVERHEAD COST:

- (i) These include Headquarter Costs representing expenses (under A 100 to A 400) on General Management, Financial Management, Personnel Management and Materials Management Services; Expenses on Staff Welfare & amenities like repair and maintenance of residential & welfare buildings, Educational, Medical, Health and Welfare Services; Appropriation to Pension Fund (under M 200); Provident Fund & Retirement Benefits (under Abstract L) and other Miscellaneous Expenses. In addition, working expenses such as Safety, RPF, Staff Training, etc. are included.
- (ii) Overhead costs will be applicable only on costs of Crew, Running Repair of wagons and Cost of Railway Staff.
- (iii) The Overhead costs shall be charged on the basis of Best Zonal railway average rate *.

*- The Overhead Cost percentage will be taken from Table – 15 – General Overheads as a percentage of direct expenses, under GROUP – B Costs from Latest “Summary of End Results – Freight Services Unit Costs”, Published by the Statistics & Eco. Date. (Cost Analysis Unit), Railway Board, Ministry of Railway.